

Jennings v. The Regents of the University of California

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement (“Agreement”) has been voluntarily entered into by the parties engaged in the Civil Action and will be submitted to the Superior Court of California for the County of Alameda for approval. This Agreement finally resolves the litigation now pending between the parties.

This Agreement includes a joint statement of the purposes of the Agreement, a description of the history of the litigation, and various substantive provisions agreed upon by the parties. No particular provision has been agreed to because of any prior Court order. Rather, the parties have met and reached voluntary agreement on the entire contents of this Agreement.

II. PURPOSES OF THE SETTLEMENT AGREEMENT

The parties have entered into this Agreement for the following purposes:

- A. To resolve all disputes covered by this Agreement in such a way as to avoid further expensive and protracted litigation;
- B. To ensure equal employment opportunity for Female Employees in regard to compensation and promotions;
- C. To provide monetary redress to eligible members of the Settlement Class;
- D. To create an expedited procedure for distributing the monetary benefits of this settlement to eligible members of the Settlement Class and for implementing equitable relief pursuant to the terms of this Agreement; and
- E. To provide a final resolution of all claims and defenses asserted in the Civil Action.

To the extent consistent with these purposes, it is the intent of the Parties that this Agreement not unreasonably burden the Lab or interfere with its operations. However, except to the extent that a claim is released by Section VIII "Release of Claims", this Agreement may not be used as a defense to any alleged violation of law.

III. DEFINITIONS

The following terms when used in this Agreement, in addition to the terms defined elsewhere in the Agreement, shall have the following meanings:

- A. "Absolute Value Ranking" means a merit compensation system for employees which determines pay primarily based on the employee's job classification and performance.
- B. "Approval Date" means the date upon which the trial court approves this Agreement, after having determined that it is fair, adequate and reasonable to the Notice Class as a whole, and after: (i) issuing notice to the Notice Class, (ii) providing a new opportunity to members of the Notice Class to opt out of the Settlement Class and to former members of the Certified Class to opt into the Settlement Class, and (iii) conducting a hearing on the fairness of the settlement.
- C. "Best Efforts" means implementing a plan reasonably designed to comply with the specified objectives to which the best efforts are directed.
- D. "Certified Class" means the class as certified by the Court as modified through March 27, 2003.
- E. "Civil Action" means *Singleton v. The Regents of the University of California, Case No. 807233-1*, presently pending in the Superior Court for the County of Alameda, California.

F. “Class Counsel” means The Sturdevant Law Firm; Schneider & Wallace; Gwilliam, Ivory, Chiosso, Cavalli & Brewer; and Trial Lawyers For Public Justice.

G. “Class Representatives” and “Named Plaintiffs” mean Shirley Rogers Jennings, Katherine Lynette Fritz, Gloria Glasscox, Maura Spragge, Jannelle Spann, Holly Miller and Catherine Bartholdi.

H. “Court” means the Superior Court of California for the County of Alameda.

I. “Covered Positions” means positions with job codes in the 100, 200, 300, 400, or 500 salary series filled by persons with appointment codes equal to IN (Indefinite Term), IP (Indefinite Term, Probationary), FT (Term Appointee), or FX (Flexible Term).

J. “Equitable Settlement Subclass” means the settlement subclass for equitable relief certified pursuant to Section VII (B) of the Agreement.

K. “Female Employees” means women employed by the Lab in Covered Positions.

L. “Lab” means the Lawrence Livermore National Laboratory and The Regents of the University of California.

M. “Monetary Settlement Subclass” means the settlement subclass for monetary relief certified pursuant to Section VII (A) of the Agreement.

N. “Non-Scientists and Engineers” means employees in the 100, 300, 400 and 500 salary series.

O. “Notice Class” means those Female Employees who were employed by Lawrence Livermore National Laboratory at any time from December 30, 1996 until the Preliminary Approval Date.

P. “Preliminary Approval Date” means the date upon which the Court enters an Order preliminarily approving this Agreement, pending notice, an opportunity for members of the Notice Class to opt out of the Settlement Class and for former members of the Certified Class members to opt back into the Settlement Class or submit objections to the Agreement, and a fairness hearing thereon.

Q. “Rank Domain” refers to a group of employees who are ranked relative to one another.

R. “Rank Group” means the numerically designated group to which an employee is assigned as a result of Relative Value Ranking.

S. “Relative Value Ranking” and “Ranking” refers to the Lab’s process of evaluating employees based on their total contribution to the Lab as compared to other employees.

T. “Responsible Official” means the senior Lab manager responsible for overall monitoring and compliance with this Agreement within the Lab as provided in Section IX (D)(1) of the Agreement.

U. “Scientists and Engineers” means employees in the 200 salary series.

V. “Settlement Class” means those members of the Notice Class who did not opt out after the Preliminary Approval Date and those members of the Notice Class who opted out before the Preliminary Approval Date but opted back in after the Preliminary Approval Date.

IV. LITIGATION BACKGROUND AND SETTLEMENT NEGOTIATIONS

A. Litigation History

1. On December 23, 1998, plaintiffs Mary Singleton, Shirley Jennings, Katherine Fritz, Gloria Glasscox, Maura Spragge, and Jannelle Spann

(collectively, “Plaintiffs”) filed a complaint against The Regents of the University of California (“The Regents”) and C. Bruce Tarter (“Tarter”) (collectively, “Defendants”) known as *Singleton, et al. v. The Regents of the University of California, et al.*, Case No. 807233-1, on behalf of themselves and a class of past, present and future similarly situated women employees at the Lab alleging gender discrimination in pay and promotions. The complaint asserted five causes of action: (1) disparate treatment (deliberate discrimination) in violation of the California Fair Employment and Housing Act, Cal. Gov’t Code §§ 12940 *et seq.* (the “FEHA”); (2) disparate impact (policies or practices with discriminatory effect) in violation of the FEHA; (3) failure to pay men and women equal wages in violation of the California Equal Pay Act, Cal. Lab. Code § 1197.5 (the “EPA”); (4) breach of the implied covenant of good faith and fair dealing; and (5) violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (the “unfair competition claim”). The complaint sought injunctive relief, compensatory damages, statutory damages, punitive damages and an award of attorney’s fees, costs and expenses.

2. In a series of rulings from April 1999 to November, 2000, in response to motions filed by The Regents, the Court (a) struck Plaintiffs’ request for punitive damages from the complaint; (b) dismissed Plaintiffs’ claims against The Regents based on the covenant of good faith and fair dealing and for unfair competition; (c) dismissed all claims against defendant Tarter; and (d) denied The Regents’ Motion for Summary Judgment against plaintiff Mary Singleton. The Regents again moved for summary judgment against Ms. Singleton in August of 2002, which motion was granted. Ms. Singleton has appealed her resulting dismissal from the case.

3. In July, 2000, Plaintiffs moved for class certification of their remaining claims under the Equal Pay Act and the Fair Employment and Housing Act. After extensive briefing on the issue, including the introduction of 38 declarations in support of and in opposition to the motion, the Court granted Plaintiffs' motion on January 22, 2001. The Court certified a class consisting of

All current, former, and future female employees at [the Lab] employed in the 100, 200, 300, 400, and 500 [salary] series on or after October 1, 1988 to the present who are, have been, or may in the future be adversely affected by discrimination based on gender in rate of pay and promotional opportunities.

In March, 2001, in response to a motion filed by The Regents, the Court limited the class to those Female Employees employed by the Lab on or after December 23, 1995. Subsequently, The Regents filed a petition for appellate review of the Court's order certifying the class. The Court of Appeal denied this Petition in May, 2001. The Regents' subsequent Petition for Review was denied by the Supreme Court on July, 2001.

4. In April 2002, the Court sent Female Employees employed at the Lab on or after December 23, 1995, an informational notice advising them of the certification of the class and of further upcoming hearings on class issues.

5. In June and August of 2002, respectively, the Court denied The Regents' Motion For Summary Adjudication against representative plaintiff Shirley Jennings and Motion for Summary Judgment against representative plaintiff Gloria Glassox.

6. In a series of rulings from November 2002 through March 2003, the Court denied The Regents' motion to decertify the class but modified the class certification as follows:

- a. The Court granted The Regents' motion to decertify the class claims under the Equal Pay Act, without opposition from plaintiffs;
- b. The Court denied plaintiffs' request for jury instructions
1) permitting an award of back pay for a period of three years prior to the filing of the administrative complaint and 2) permitting application of the continuing violation doctrine to plaintiffs' claims, holding that recovery for class claims under the Fair Employment and Housing Act was limited to the period after December 30, 1996;
- c. The Court divided Plaintiffs' disparate impact claims (policies or practices with discriminatory effect) under the Fair Employment and Housing Act into thirteen subclasses roughly corresponding to the Lab's programmatic and operational directorates and ordered Plaintiffs to designate additional representative plaintiffs as necessary to represent the newly created subclasses. Plaintiffs named two additional class representatives, Holly Miller and Catherine Bartholdi. Following this designation, seven subclasses were not represented by a plaintiff class representative.

- d. The Court limited the Lab-wide class certification of Plaintiffs' disparate treatment (deliberate discrimination) claims under the Fair Employment and Housing Act to the assertion that the Director allegedly failed to correct existing discriminatory policies and practices, finding that Plaintiffs' more general pattern and practice disparate treatment claims were not appropriate for class certification. The Court also held that the certified class would be entitled to only injunctive relief in regard to the disparate treatment claims.

7. In May 2003, Plaintiffs filed a petition for appellate review of the Court's orders noted above relating to the sub-classing and scope of Plaintiffs' claims, the limitation of recovery for the disparate treatment claim to injunctive relief, and the denial of a request Plaintiffs' had made for a class notice and an extension of time to locate additional class representatives. In August, 2003, the California Supreme Court ordered that the court of appeal consider the petition on the merits. Plaintiffs have also appealed the ruling limiting the temporal scope of their claims. The parties have stipulated to postponing review by the court of appeal pending approval of this Agreement.

8. In May 2003, Female Employees employed at the Lab on or after December 23, 1995, were sent notices advising them of the elimination of the class EPA claims, of the modification of the prior certification, that the certification of the disparate impact claim was limited to the six subclasses with representative plaintiffs, and that only those six subclasses could recover damages at trial. The notice also informed class

members of their right to opt out of the class. Approximately 215 class members have chosen to opt out of the action since this notice was sent.

9. Over the course of the litigation, both parties have engaged in extensive discovery, including, collectively, over 452 requests for production of documents, 791 requests for admissions, 560 special interrogatories, and 25 sets of form interrogatories. Additionally, the parties, collectively, have taken 96 depositions over the course of 165 days. The parties have also brought six motions to compel, one motion for protective order, and several formal and informal motions related to the scope of discovery and particular issues regarding access to data.

B. Settlement History

The parties entered into mediation before retired Judge Daniel Weinstein of JAMS in May 2002. In the course of the mediation, the parties met on eight occasions with Judge Weinstein and numerous other times separately with each other to address settlement of the case, but were unable to resolve issues related either to injunctive relief or monetary damages. In August 2003, the parties renewed settlement efforts with the assistance of retired Judge Edward Infante, also of JAMS. After an additional five sessions with Judge Infante and several sessions involving just the parties, the parties reached agreement on substantially all issues related to injunctive relief by October 7, 2003. On that date Judge Infante made a mediator's proposal for monetary relief and attorney's fees, which the parties both accepted on October 15, 2003, subject to approval by The Regents. The Regents approved the settlement agreement on November 19, 2003.

V. JURISDICTION

The Court has jurisdiction over the parties and the subject matter of the Civil Action. The Complaint in the Civil Action asserts claims that, if proven, would authorize

the Court to grant the equitable and monetary relief set forth in this Settlement Agreement. Venue is proper in Alameda County. This Court shall retain jurisdiction of the Civil Action throughout the term of the Agreement solely for the purpose of entering all orders authorized hereunder, which may be necessary to implement the relief provided herein and/or to enforce the terms thereof.

VI. EFFECTIVE DATE OF SETTLEMENT AGREEMENT

A. Unless provided otherwise, the equitable provisions in this Agreement are effective immediately upon the Approval Date. Nothing herein shall prevent either party from seeking a stay of this Agreement pending final resolution of any appeal or petition seeking review of the approval of this Agreement by the Superior Court. Further, nothing herein is intended to alter in any way the standard the Court otherwise would apply in determining whether to grant or deny any request for a stay.

B. Notwithstanding anything in this Agreement to the contrary, the Agreement shall not become effective if (1) the number of persons who timely have opted out of the Settlement Class after the Preliminary Approval Date exceeds ten percent (10%) of the total membership of the Notice Class and (2) the Lab notifies Class Counsel, within thirty (30) days of receipt of notice from Class Counsel as to the number of such opt-outs, that the Lab does not agree to be bound by this Agreement in light of the number of opt-outs. In such case the Agreement shall be null and void, shall have no legal effect, and may not be introduced into evidence or referred to in any subsequent proceedings in the Civil Action.

VII. SETTLEMENT CLASS

Pursuant to this agreement, the Parties hereby stipulate to the certification of a Settlement Class, as defined in Section III(V), above, with two sub-classes as defined below.

A. For purposes of the monetary relief provided in this Agreement, a Monetary Settlement Subclass is hereby certified pursuant to the California Code of Civil Procedure consisting of all members of the Settlement Class.

B. For purposes of the equitable relief provided in this Agreement, an Equitable Settlement Subclass is hereby certified pursuant to the California Code of Civil Procedure consisting of all members of the Settlement Class employed by the Lab as of the close of the opt-out/opt-in period following the Preliminary Approval Date.

C. The Settlement Class closes as of the expiration of the opt-out/opt-in period after the Preliminary Approval Date. All females hired or transferred by the Lab into Covered Positions after the Preliminary Approval Date shall be eligible for the equitable relief provided in the Agreement but shall not be entitled to any portion of the monetary relief or the one percent (1%) increase to base salary provided hereunder. As used herein, "hired" means the commencement of employment as recorded in the Lab's personnel records for the start date.

D. Members of the Notice Class who have filed a timely request to opt out of the Settlement Class (and who have not timely filed a request to opt back in) shall not be entitled to individual monetary relief and shall not be deemed to have released any claims for such individual relief.

E. Female Employees who opted out of the Certified Class prior to the Preliminary Approval Date shall be provided an opportunity to opt into the Settlement Class, in which case they shall be subject to the release provided for in this Agreement.

F. Subject to approval by the Court, notice in the form of Attachment A shall be sent to all members of the Notice Class who had not previously opted out of the Certified Class advising them of this Agreement, the preliminary approval of the Agreement by the Court, and of their right to opt out of the Settlement Class; and a separate notice in the form of Attachment B shall be sent to all members of the Notice Class who previously opted out of the Certified Class advising them of this Agreement, the preliminary approval of the Agreement by the Court, and of their right to opt into the Settlement Class.

VIII. RELEASE OF CLAIMS

Effective upon the Approval Date, Class Representatives and the other members of the Settlement Class, both individually and as a class, on behalf of themselves, spouses, executors, heirs, successors, and assigns do hereby completely release and forever discharge Lawrence Livermore National Laboratory, The Regents of the University of California, the United States Department of Energy, and each of their respective present, former or future officers, trustees, agents, employees, representatives, consultants, attorneys, successors (to the extent bound by this Agreement), and assigns (“Released Parties”) from any and all claims, rights, demands charges, complaints, actions, causes of action, obligations or liability of any and every kind for discrimination on the basis of gender in regard to compensation, benefits based on amount of compensation, ranking, job assignments, training, and promotions (including promotions resulting from reclassifications), including without limitation equal pay claims, whether

based on tort, contract, public policy or any federal, state, or local law, statute, or regulation, which arose prior to the Preliminary Approval Date (“Released Claims”). Released Claim includes, without limitation, any such claims which any Class Representative or other member of the Settlement Class may have filed or caused to be filed in any court of law, or before any administrative agency, state, federal, or local, or before any arbitrator, prior to the Preliminary Approval Date, including without limitation the Civil Action. Released Claims also includes, without limitation, all class and individual claims for both monetary and injunctive relief for gender discrimination as described above.

Except as provided in Section XVI of the Agreement, Class Representatives and the other members of the Settlement Class, both individually and as a class, on behalf of themselves, spouses, executors, heirs, successors, and assigns do also hereby completely release and forever discharge the Released Parties from any and all obligations for attorneys fees or costs incurred in regard to Released Claims in connection with the Civil Action or otherwise.

Notwithstanding the foregoing, Released Claims does not include claims for sexual harassment, including quid pro quo and hostile environment, retaliation, wrongful termination, or whistle blowing, transgender, transsexual, or sexual orientation discrimination, or any other claim not based on gender discrimination.

It is understood and agreed that this is a full and final release applying not only to all Released Claims as defined above which are presently known, anticipated or disclosed to Class Representatives and other members of the Settlement Class, but also to all Released Claims which are presently unknown, unanticipated, and undisclosed to the

Class Representatives and other members of the Settlement Class. Class Representatives, on behalf of themselves and the other members of the Settlement Class hereby waive any and all rights or benefits which they or other members of the Settlement Class may now have, or may in the future have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

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.

IX. GENERAL EQUITABLE PROVISIONS

A. General Injunctive Provisions

1. The Lab shall not engage in any policy, practice or procedure which has the purpose or effect of discriminating on the basis of gender against any Class Representative or any other members of the Settlement Class in regard to compensation, promotions, job assignments, transfers, or training.

2. The Lab and its officers, agents and management or supervisory employees shall not retaliate against any Class Representative or any other member of the Notice Class because she furnished information, gave testimony or participated in any respect in the prosecution of the Civil Action.

3. Nothing herein shall be construed as any finding or admission that the Lab previously has failed to act in the manner described above or otherwise has unlawfully discriminated against any member of the Notice Class or Class Representative.

4. Individual members of the Settlement Class are not third party beneficiaries of this Agreement, and they shall have no right to bring any action for any

alleged violation of this Agreement. Only Class Counsel shall have authority to bring an action to enforce this Agreement and, except for alleged retaliation in violation of Section IX(A)(2), Class Counsel shall not bring any action to enforce this Agreement on behalf of any individual. The parties mutually intend that the enforcement provisions of this Agreement shall not be used as an alternative method for members of the Settlement Class to litigate entitlement to individual relief for claims of alleged gender discrimination.

5. The Lab shall comply with all obligations prescribed by this Agreement not later than 90 (ninety) days after the Approval Date unless a different compliance date is explicitly provided by the Agreement.

B. Standard for Judicial Enforcement

Class Counsel may petition the Court to enforce the Agreement, but only after: (a) having exhausted the dispute resolution procedures set forth in Section X without having obtained reasonably effective remedial action, and (b) having, after a reasonable investigation, concluded in good faith that the standards for enforcement set forth herein and in Code of Civil Procedure § 664.6 have been met.

C. Communication of Settlement Agreement Requirements and EEO Practices to Managers and Employees

1. Not later than thirty (30) days after the Approval Date of this Settlement Agreement, the Lab shall provide to each of its managers and supervisors of employees in Covered Positions a copy of the Notice and Summary of Settlement Agreement, which is attached hereto as Attachment C, explaining the Lab's obligations under the Agreement. Not later than thirty (30) days after the Approval Date, the Lab shall communicate to all employees, including the managers and supervisors, a statement

that gender discrimination is unlawful and unacceptable, that retaliation against any employee for complaining about the gender discrimination is unacceptable, and that such conduct, if substantiated, will result in an appropriate discipline, up to and including discharge.

2. Not later than thirty (30) days after the Approval Date, the Lab shall communicate to all currently employed Female Employees the Lab's commitment to equal opportunity for women in regard to compensation, ranking, and promotions and that the Lab's grievance and/or administrative review procedures are available to any woman who believes that she has been a victim of gender discrimination.

Notwithstanding the foregoing, however, the provisions of this Agreement are enforceable exclusively through the procedures set forth in Section X and not through the Lab's grievance or administrative review procedures. Where a grievance or request for administrative review alleges gender discrimination in regard to compensation, ranking, or promotions, the Responsible Official shall be informed of the grievance or request and the outcome. Except for the release of claims in Section VIII of this Agreement, nothing herein is intended otherwise to limit in any way the scope of claims that employees may raise through the grievance or administrative review procedures.

D. Managerial Oversight

1. Within thirty (30) days of the Approval Date, the Director shall appoint a member of the Lab's senior management to serve as the Lab's Responsible Official, who, in addition to the Director, shall have overall responsibility for monitoring and ensuring compliance with the terms of this Agreement within the Lab. The Lab shall promptly notify Class Counsel of the appointment. The responsibilities of the

Responsible Official shall include oversight of (i) establishment and implementation of programs and policies required by the Agreement, (ii) conduct of equity analyses required by the Agreement, (iii) preparation of reports and plans for compliance required by the Agreement and submission of the reports and plans to Class Counsel, (iv) preparation of reports required by the Agreement and submission of the reports and plans to Class Counsel, and (v) any corrective actions taken pursuant to the Agreement. The Lab shall communicate to all managers at the Lab the identity and responsibilities of the Responsible Official.

2. If the Lab has not already done so prior to the Approval Date, then not later than two months after the Approval Date of the Agreement, and thereafter at least once each subsequent calendar year during the term of the Agreement, the Director, the Responsible Official, and Associate Directors shall review the Lab's compliance and the plan for compliance with the terms of the Agreement.

3. If the Lab has not already done so prior to the Approval Date, then not later than two months after the Approval Date, and thereafter at least once each subsequent calendar year during the term of the Agreement, the Director shall communicate in writing to all Lab managers and supervisors of employees in Covered Positions the Lab's plan for compliance with the terms of the Agreement.

4. The Director shall continue to conduct annual workforce reviews for each directorate to be completed by February of each year. The scope of these reviews shall include ranking, pay, and promotion equity, succession planning, and other efforts to promote equal opportunity through job assignments, mentoring, and career development.

X. DISPUTE RESOLUTION PROCEDURES

A. At the request of Class Counsel or the Lab, Class Counsel and the Lab shall confer as necessary, and the parties shall use their Best Efforts to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Agreement, including the Lab's compliance with the Agreement.

B. Class Counsel or the Lab shall have the right to file a motion with the Court to resolve any dispute or issue of compliance regarding any provision of the Agreement, subject to the enforcement limitations and standards referenced in this Agreement. The procedure for resolution of such issues shall be as follows:

1. If Class Counsel or the Lab believes that a legitimate dispute exists, the initiating party shall promptly give written notice to the other party, including: (a) a reference to all specific provisions of the Agreement that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

2. Within twenty (20) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and arguments set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

3. Class Counsel and the Lab shall undertake good faith negotiations to attempt to resolve the issues in dispute or alleged noncompliance;

4. The Court, upon motion and good cause shown, may permit either Class Counsel or the Lab to take discovery as provided by the California Code of Civil Procedure, but only as to demonstrably relevant documents and/or witnesses, if the Court

determines that the informal exchange of documents or information has not been sufficient to allow either Class Counsel or the Lab to present the dispute upon a factual record adequate for the determination required hereunder;

5. If good faith efforts to resolve the matter have failed, and after written notice of an “impasse” to the non-initiating party, Class Counsel or the Lab may file a motion with the Court, with a supporting brief requesting resolution of the dispute or the issue of non compliance, provided, however, that such motion shall be limited to the dispute(s) and/or issue(s) as to which the “meet and confer” provisions of this Agreement, have been exhausted;

6. The non-moving party will have fifteen (15) days to respond to any such motion; and

7. The Court shall attempt within fifteen (15) days after filing of the final brief to resolve the dispute and may schedule a hearing or other proceeding to resolve the matter.

C. The provisions of this Section do not prevent Class Counsel or the Lab from promptly bringing an issue directly before the Court when exigent facts or circumstances require immediate Court action to prevent a serious violation of the terms of this Agreement, which otherwise would be without meaningful remedy. The moving papers shall explain the facts and circumstances that allegedly necessitate immediate action by the Court. If any such matter is brought before the Court requesting immediate Court action, the opposing party shall be provided with appropriate actual notice, and an opportunity to be heard in opposition to the motion, pursuant to the California Rules of Court. The Court in its discretion may set such procedures for emergency consideration

as are appropriate to the particular facts or circumstances, but no such matter may be conducted on an ex parte basis.

XI. TRAINING AND EDUCATION

A. Additional Training of Individuals Involved In Ranking and/or Conducting Performance Appraisals

1. All Lab managers and supervisors involved in the process of Ranking and/or conducting performance appraisals for employees in Covered Positions shall receive training on compliance with this Agreement and those who have not previously received training on the following topics shall do so: (a) equal employment opportunity; (b) federal, state and Lab prohibitions against discrimination and retaliation; (c) diversity; and (d) recognizing and avoiding the influence of stereotyping in the making of personnel decisions. The Lab initially shall complete such training prior to commencement of the preparation of performance appraisals or participation in ranking sessions in FY 2004, and shall provide such training on an ongoing basis to new managers and supervisors thereafter.

2. The training described herein may be held in conjunction with other Lab business, at the Lab's discretion, and may be organized temporally and geographically in such fashion as the Lab deems appropriate.

B. Record-Keeping.

The Lab will maintain a record of the training provided pursuant to section XI(A), including names of employees who attended and shall provide such records to Class Counsel on an annual basis for the duration of the Agreement.

XII. EQUITABLE RELIEF FOR ALL CURRENT FEMALE LAB EMPLOYEES

A. Subject to Section VII(C) of this Agreement, the Lab will within sixty (60) days of the Approval Date increase the salary of every current Female Employee by 1%, provided that no employee in the classified salary series shall receive an increase resulting in a salary beyond the top of her applicable salary range.

B. Women who receive the 1% settlement increase shall not be disadvantaged in future salary actions because of the increase (i.e., receive a smaller pay increase because of the 1% addition to base than that provided to male employees similarly situated in regard to compensation level, target salary, and ranking). The Lab shall inform all current employees in Covered Positions and their supervisors and managers of this directive and shall monitor increases to ensure compliance with this directive and take appropriate action if necessary.

XIII. EQUITABLE PROVISIONS REGARDING RANKING, SALARY INCREASES AND PERFORMANCE APPRAISALS

A. Commitment to Equitable Ranking Procedures

The Director shall communicate on an annual basis to all individuals involved in Ranking the commitment of the Lab to fair and equitable procedures, standards, and results in the performance evaluation, ranking, compensation, and promotion processes of the Lab and that adherence to this commitment shall be an important factor in the performance appraisals of all managers.

B. Scientists and Engineers and Exempt Technical Employees

1. The Lab may continue Relative Value Ranking for 200 and 300 series employees subject to the provisions of this Agreement. When using Relative Value Ranking, the directorates shall provide copies of the specific ranking criteria to all

employees at the commencement of the performance period. If this has not previously occurred, these criteria shall be reviewed and approved by the Director prior to issuance.

2. Each directorate at the Lab will utilize the same number of Rank Groups.

3. To the extent not already in place, within ninety (90) days of the Approval Date of this Agreement, the Lab shall develop minimum standards for assuring that persons participating in Ranking have sufficient information about the person being ranked to make informed non-gender-biased decisions.

4. Within 90 days of the Approval Date of this Agreement, the Lab shall

a. develop and publish written guidelines to ensure that supervisors and managers involved in Ranking have adequate information about the persons being ranked to make well informed decisions, including but not limited to familiarity with the job content and performance assessment sections of the employees' performance appraisals; and

b. supplement its ranking guidelines to provide that the assessment of performance in the Ranking process shall take into account the performance of the employee as documented in the annual performance appraisal.

5. The Lab shall preserve for the duration of the Agreement the following Ranking related documents:

- a. All initial Ranking lists showing either the Rank Group or the 1-to-N assignment of employees submitted by group leaders as the first step of the Ranking process;
- b. Any final Ranking lists resulting from the merger of lower-level lists, such as at the division or department level, if prepared; and
- c. The final Ranking lists prepared at the conclusion of the Ranking process.

6. The results of the Ranking process (i.e., how each employee is ranked) shall be available to the Responsible Official at any time and shall be provided to Class Counsel on an annual basis for the duration of the Agreement.

7. At the same time that salary cards informing employees of their salary increases are distributed, the Lab shall inform employees of their rank-group assignments and, upon request by the employee, of their relative position (e.g., number 5 out of 35) within that rank group. For organizations that rank 1 to n across the entire organization, the 1 to n assignment shall be provided. Also upon request by the employee, the Lab shall inform him or her of the final rank group assignment and, if applicable, the 1-to-N assignments of other employees within their rank domain. Also at the same time that salary cards informing employees of their salary increases are distributed, the Lab shall inform all employees subject to ranking of the right to request the above information.

C. Non-exempt Administrative and Technical Employees.

1. The Lab shall replace Relative Value Ranking for the 400 and 500 series employees with Absolute Value Ranking. Salary decisions for the 400 and 500 series employees effective October 1, 2004 shall be made pursuant to Absolute Value Ranking, unless the Lab can show good cause for deferring such initial salary decisions pursuant to Absolute Value Ranking to October 1, 2005.

D. Exempt Administrative Employees

Following completion of the current review of the structure of the salary series 100, the Lab shall replace Relative Value Ranking with Absolute Value Ranking for all 100 series positions remaining in the classified structure. Salary decisions for such 100 series employees effective October 1, 2005 shall be made pursuant to Absolute Value Ranking, unless the Lab reasonably can do so sooner. For all employees not remaining in the classified structure, the Lab may, at its option, continue Relative Value Ranking, subject to the provisions of this Agreement applicable to Relative Value Ranking for salary series 200 and 300. The Lab anticipates that all current 100 series employees except executive staff and executive managers will remain in the classified structure.

E. Uniform Performance Appraisals.

The Lab shall adopt uniform, Lab-wide performance appraisal forms for each salary series. Different forms may be used for different salary series.

F. Evaluation of Managers and Supervisors.

1. Annually as part of the regular performance evaluations, to commence during FY 2004, the Lab shall evaluate managers and supervisors on their management and supervisory responsibilities, including informed and effective ranking, performance evaluation skills, attention to mentoring opportunities, ability to

communicate expectations to employees, and compliance with equal employment opportunity.

G. Promotions

1. As part of the annual workforce reviews, the directorates shall report to the Director on promotion equity in their organizations for the prior year.
2. The Lab shall monitor the posting process to ensure that promotional opportunities are posted as required by the Lab's policy.
3. In connection with the analysis of promotion equity referred to in Section XIII (J), below, the Lab shall prepare annually a report on promotions at the Lab, identifying the pools from which promotions were made, the gender composition of those pools, and the gender composition of those promoted from such pools.
4. Within ninety (90) days of the Approval Date, the Lab will develop a written plan and use its best efforts to promote equal opportunity for Female Employees to obtain career-enhancing and rank-enhancing job assignments. This will include publicizing career-development programs and providing training to managers and supervisors on avoiding bias in job assignments.
5. In order to enhance equal opportunities for promotion, the Lab will require written approval from Human Resources for exceptions to the requirement that vacancies be posted and will limit and will narrowly construe the circumstances under which such exceptions can be granted. Where an exception to posting is granted because the vacancy is to be filled by a lateral transfer within a directorate, the employee selected for the vacancy will not be eligible for an evolutionary reclassification for 9 months after his or her transfer to the new position. Exceptions to posting for lateral transfers will not

be automatic and will depend upon the factual circumstances and justification for the lateral transfer.

H. Mentoring and Career Development

1. Within sixty (60) days of the Approval Date, and at least annually thereafter, the Lab will issue a written statement which emphasizes the value of mentoring and encourages managers, supervisors and experienced employees to engage in mentoring.

2. Within ninety (90) days of the Approval Date, the Lab shall develop and maintain institutional guidelines for requesting and obtaining access to career development training opportunities.

3. The Lab shall exert best efforts to provide equal opportunity for Female Employees to career development training opportunities.

I. Communications.

On or before (30) days after the Approval Date, the Lab shall disseminate information about the changes to the Lab's Performance Management System described in Section XIII , including a notification in "Newslines" describing the changes in the Lab's Performance Management System and the time of its anticipated introduction, and posting of such information on the Lab's web site.

J. Analysis of Promotions, Rank Equity and Compensation Paid to Employees.

1. On an annual basis, within ninety (90) days of the close of each fiscal year or the close of the salary input process, whichever is later (for FY 2003, within ninety (90) days of the Approval Date), the Lab shall conduct a pay, promotion, and rank

equity study of male and female employees in all Covered Positions during the prior ranking and salary review period. For the first such study following the Approval Date, the results shall be not deemed a measure of compliance with the obligations of this Agreement.

2. If there is a statistically significant (two or more standard deviations) promotion, pay or ranking difference adverse to women shown in the equity studies described in this Section, then the Lab shall inquire further into the basis for such disparity and either establish mechanisms for correcting the disparity or document the non-discriminatory reasons for the disparity.

3. Statistical Methodology.

- a. For the equity and outlier analyses required by this Section XIII (J), the Lab shall use professionally recognized and appropriate statistical methodologies which comply with applicable legal requirements. Such analyses shall compare similarly situated men and women so far as the data permit. Class Counsel shall not challenge the use of salary survey codes or job codes in the analyses, except to the extent Class Counsel can show that the Lab has discriminated since the Preliminary Approval Date (i.e. has made decisions with statistically significantly adverse impact on women) in regard to changes in job codes or salary survey codes.

- b. The Lab shall use a professionally recognized and appropriate method to determine which variables to include in each regression in order to ensure that the variables included meaningfully explain variation in pay or ranking. The variables may differ for the different populations.
- c. Subject to the procedures provided by Subsection 6, below, in determining whether the Lab has complied with its obligations under this Agreement, the Court may consider any statistical analysis submitted by Class Counsel.

4. Subject to the forgoing provisions, for each directorate/salary series for which the rank or pay equity analysis produces a statistically significant result adverse to women (2.0 or more standard deviations), the Lab shall also determine whether individual women in Covered Positions in that directorate/salary series are “outliers”, meaning women whose rank or compensation is two (2) standard deviations or more below what would be expected for a similarly situated male. For each identified female outlier, the Lab shall conduct a good-faith investigation of the reasons for the discrepancy. In addition, for each such directorate/salary series for which the rank or pay equity analysis produces a statistically significant result adverse to women, the Lab shall also report the number of women whose rank or compensation is 1.5 standard deviations or more below what would be expected for a similarly situated male. Whether particular individuals should be paid as predicted by the statistical models used for the outlier analyses shall not be an enforcement issue under this Agreement, provided this shall not

preclude Class Counsel from asserting that the outliers collectively constitute a sufficient pattern to raise an issue as to compliance with the terms of this Agreement.

5. For the promotion equity studies, the Lab may examine promotions by salary series and may control for the number of promotions in each directorate.

6. Any issue regarding whether the Lab's equity or outlier studies comply with this Agreement, including without limitation issues relating to statistical methodology, shall be resolved pursuant to the following procedure rather than in accordance with Section X. Class Counsel shall file a regularly noticed motion with the Court not later than ninety (90) days after receipt of the studies and report on methodology. In such motion, or in connection with any other enforcement action under this Agreement, Class Counsel may not rely on any acts or omission of the Lab prior to the Preliminary Approval Date.

XIV. REPORTING AND RECORDKEEPING

A. Documents to Be Preserved

The Lab shall retain the following employment-related records for Covered Positions for the duration of this Agreement or as required by state or federal law, whichever is longer:

1. A computer-readable database or databases containing computerized payroll and personnel information for all employees in Covered Positions for the duration of the Agreement. The payroll and personnel information contained in the database or databases shall, at a minimum, include information of the type produced to Class Counsel during discovery in the Civil Action, including employee identification

number, and shall permit the identification of the directorate to which each employee is assigned. Nothing herein is intended to require the Lab to alter its current databases.

2. A computer-readable database or databases of Ranking results which includes how many Rank Groups each Ranking system utilized, the scope of the applicable Rank Domains, the total number of employees in each Rank Group (or the value of n where 1 to n Ranking is used), each employee's final Rank Group assignment or 1-to-n Rank, and the employee's name and identification number. Nothing herein is intended to require the Lab to alter its current databases.

3. Completed performance appraisal forms for employees in Covered Positions.

4. A record of the training given to each employee as required by this Agreement, as provided by the current L-Train database.

5. The training materials for training programs required by this Agreement.

6. All internal complaints of gender discrimination regarding pay or promotions and of retaliation for complaining about gender discrimination submitted to the Lab's grievance or administrative review procedures.

7. The compensation, promotion, and rank equity analyses referred to in Section XIII (J).

8. All documents presented to or generated by or at the direction of the Director in connection with the annual workforce reviews referred to in Section IX(D).

9. Nothing in this Agreement shall be interpreted to relieve the Lab of any recordkeeping requirements otherwise imposed by applicable Federal or State law.

B. Documents to Be Maintained for Duration of Agreement

All documents expressly required to be created by this Agreement for which a time period is not specified shall be maintained for the duration of the Agreement or as required by state or federal law, whichever is longer.

C. Access to Documents

1. In addition to the materials to be provided Class Counsel in connection with the annual reports required by this Agreement, Class Counsel shall be entitled to review other documents required to be maintained or created by the express terms of this Agreement as follows:

- a. For workforce review materials (Section XIV(8)), training materials (Section XIV(4) & (5)), and internal complaints (Section XIV(6)), upon reasonable notice.
- b. For any other material (not described in subpart a) pertaining to any directorate or group within a directorate for which the rank, pay, or promotion equity analysis pursuant to Section XIII(J) shows a prima facie statistically significant disparity adverse to women, upon reasonable notice.
- c. For any other material (not described in subparts a or b), upon reasonable notice, provided the Lab may object that the request is overbroad, unreasonably burdensome, or

otherwise inappropriate, in which case the parties shall meet and confer. If they cannot agree, the Court shall determine whether and the extent to which the requested documents should be produced.

As used in this Subsection C(1), “reasonable notice” means written notice reasonably in advance of the date for the requested production describing the documents requested and explaining the reason for the request.

2. For any production of data required by the terms of this Agreement that pertain to individual employees, the Lab shall include employee identification numbers.

3. All or any part of the documents provided to Class Counsel pursuant to section XIV(C)(1) of this Agreement, including without limitation the equity studies required by Section XIII and their underlying data, may be marked, “Confidential, Subject to Protective Order,” provided that the Lab makes a good faith determination that the material is not already publicly available. Materials marked “Confidential, Subject to Protective Order” shall not be disclosed by Class Counsel or any person affiliated with or engaged by Class Counsel to any other person unless required by law and after adequate advance written notice to the Lab of the intended disclosure, and shall not be used for any purpose unrelated to enforcement of this Agreement. Upon request by a Settlement Class Member, Class Counsel may, however, disclose the executive summary of the equity studies, but not the underlying data, to Settlement Class Members. In addition, Class Counsel may disclose information marked “Confidential” as is reasonably necessary to

carry out their responsibilities to members of Class Councils' firms, persons employed by such firms, experts engaged by such firms, Class Representatives, and to the Court and its employees, provided that such persons, other than the Court and its employees, agree not to use or disclose such information except as permitted herein. In addition, information marked "Confidential" regarding an individual Settlement Class Member may be disclosed to that Settlement Class Member where necessary for Class Counsel to carry out their responsibilities under the Agreement as they relate specifically to that individual, provided the Settlement Class Member agrees not to use or disclose such information except as permitted herein. Nothing herein is intended to restrict any request by anyone under the California Public Records Act or the Freedom of Information Act.

D. Reporting Schedule

Within six (6) months of the Approval Date, and annually thereafter through the Term of this Agreement, the Lab shall provide written progress reports to Class Counsel ("Annual Progress Reports") on the Lab's compliance with and plans for compliance with the Agreement's requirements.

E. Contents of the Annual Progress Reports

The Annual Progress Reports described in Section XIV(D) shall include the following information:

1. The results and methodologies of compensation, ranking, and promotion analyses as described above.
2. A description of the implementation and delivery of the training required by this Agreement, including the number who attended.

3. Certification by the Responsible Official that he or she has used Best Efforts to see that the Notice and Summary of Settlement Agreement as described in this Agreement has been provided to employees as required by the Agreement.

4. Certification by the Responsible Official that he or she has used Best Efforts to see that the summary leaflet described in this Agreement has been and remains posted.

XV. MONETARY RELIEF

A. The Lab shall pay the sum of Nine Million, Seven Hundred Thousand Dollars (\$9,700,000), less withholdings, if any, required by law, to the members of the Monetary Settlement Class ("Class Settlement Sum").

B. In addition to and independent of the sum described in Section XV(A), above, the Lab shall pay the total sum of Eighty Thousand Dollars (\$80,000), less withholdings, if any, required by law, to the Class Representatives as reimbursement for their time, effort, and risk involved in undertaking and pursuing this action on behalf of the class. ("Representatives Reimbursement Sum").

C. The Class Settlement Sum and the Representatives Reimbursement Sum shall each be distributed as determined by the Court. The Lab shall pay each such sum within ninety (90) days of final resolution of any challenges to the approval by the Court of this Agreement in favor of the Agreement as approved by the Court, including appeals if any.

XVI. ATTORNEYS FEES AND COSTS

A. IN REGARD TO THE CIVIL ACTION

1. As full settlement for all claims for attorneys' fees and costs incurred in connection with the Civil Action and subject to subsection 4, below, the Lab

shall pay Class Counsel within ten (10) working days after the Final Resolution Date an amount not to exceed Eight Million, Two Hundred Twenty Thousand Dollars (\$8,220,000). Concurrently with such payment, the Lab shall also pay Class Counsel simple interest at the rate of ten percent (10 %) per annum on the amount determined to be due. Such interest shall accrue for the time period commencing on the Approval Date and ending on the date of payment. The "Final Resolution Date" is (i) the Approval Date if there are no challenges to the approval of the Agreement by the Court; (ii) sixty (60) days after the Approval Date if there are challenges but there is no timely appeal from any ruling by the Court in favor of the Agreement as approved by the Court; or (iii) if there are such appeals, is the date on which all such appeals are finally resolved in favor of the Agreement as approved by the Court.

2. If the parties cannot agree on the amount of fees and costs by the Preliminary Approval Date, they shall submit the matter to expedited arbitration before either the Honorable Daniel Weinstein or another arbitrator mutually agreed upon by the parties. In such arbitration, there shall be no discovery, except that Class Counsel shall provide (i) to counsel for the Lab copies of all bills for fees and costs for which it seeks payment with sufficient detail for the Lab to determine whether such costs and fees are reasonable (to include for each item of the fees bill the identity of the time keeper, the time keeper's hourly rate, the time billed, the date the work was performed, and a description of the work performed); and (ii) to the arbitrator only copies of all fee agreements between Class Counsel and Plaintiffs pertaining to the Civil Action. The Lab shall provide (i) to Class Counsel a tabulation of total fees and costs billed and the hourly rates of all timekeepers billed in connection with the Civil Action; and (ii) to the

arbitrator copies of all bills for fees and costs submitted to the Lab in the same detail as described for the bills of Class Counsel. On a schedule to be determined by the parties or by the arbitrator if they cannot agree, the parties shall file simultaneous opening briefs and simultaneous reply briefs. The arbitrator shall determine whether a hearing is desirable and shall render a written decision not later than thirty (30) days after said hearing, if held, or after the submission of reply briefs, if not. The decision of the arbitrator shall be final and binding.

3. All documents required to be produced by subsection 2 above by the Lab shall be deemed confidential and shall not be disclosed by Class Counsel to any person outside Class Counsels' respective law firms except to the Plaintiffs on a need-to-know basis only. All documents required to be produced by subsection 2 above by any party shall not be used for any purpose other than the determination of reasonable fees and costs to be paid in connection with the Civil Action, and shall be returned to the originator promptly after conclusion of the arbitration or an agreement on costs and fees, as the case may be. Nothing herein shall preclude a party from disclosing its own records nor preclude the Court from ordering any party to disclose its own records.

4. If an appeal is timely filed from the Court's approval of this Agreement, then Class Counsel may petition the Court for interim payment prior to the Final Resolution Date of some or all of the fees and costs determined to be due. The Court shall grant such petition in whole or in part as it deems appropriate only if it determines that that such payment prior to the Final Resolution Date is fair and reasonable, is permitted under applicable state and federal law, and is an allowed expenditure under the Management and Operating contract between the US Department

of Energy and The Regents of the University of California. The United States may intervene or otherwise submit its views to the Court on the issue of whether such payment is permitted. Plaintiffs and Class Counsel may object on the merits to any position or views expressed by the United States on the issue of whether such payment is permitted. In the event that the Court orders such payment(s), for all amounts distributed prior to the Final Resolution Date Class Counsel shall provide The Regents or its designee letters of credit in the amount of such distributions. If all challenges to the Agreement are finally resolved in favor of the Agreement as approved by the Court, including appeals, any amounts not previously distributed shall be paid to Class Counsel as provided by this Agreement, and The Regents or its designee shall return any and all letters of credit to Class Counsel. If any challenge to the Agreement is sustained and all appeals from same have been exhausted, then within thirty (30) days of the of the date on which such decision becomes final without right of further appeal, issued letters of credit will be redeemed and Class Counsel shall pay simple interest at the rate of seven percent (7%) on all letters of credit issued from the date of issue to the date on which the payment is due. Letters of credit issued pursuant to this Agreement shall not be redeemed unless and until a challenge to the Agreement is sustained and all appeals from same have been exhausted.

B. IN REGARD TO MONITORING OR ENFORCEMENT

1. Class Counsel shall be entitled to reasonable attorneys fees and costs in connection with their monitoring of this Agreement, including review of the annual reports required by Section XIV(E) of the Agreement, of up to \$20,000 per year. If the parties cannot agree that fees and/or costs incurred are reasonable, the Lab may

submit the matter to the dispute resolution procedures of Section X, and the Lab shall have the burden of proof to show that the fees and costs are not reasonable. If Class Counsel believe a greater amount is required in any given year, they shall meet and confer with counsel for the Lab prior to incurring fees and costs in excess of \$20,000. If the parties cannot agree, Class Counsel may submit the matter to the dispute resolution procedures of Section X for a determination of whether there is good cause for additional fees and/or costs, and Class Counsel shall have the burden of proof to show good cause. Good cause to recover additional fees or costs shall require a showing that the nature, format, and/or volume of reports and/or data or other factors were such that it was reasonably necessary to expend in excess of \$20,000 to review same.

2. Separately, in connection with any enforcement action, Class Counsel shall be entitled to reasonable attorneys fees and costs, in accordance with Government Code section 12965, including expert witness fees and compensation for the review of documents or data reasonably necessary for such enforcement motion, if they prevail on the motion. Class Counsel shall not be entitled to recovery of attorneys fees or costs in connection with any enforcement motion if they do not prevail on the motion.

XVII. DURATION

This Agreement shall remain in effect through September 30, 2007 (the "Term").

XVIII. SUCCESSIONSHIP

This Agreement shall be binding on successors, if any, to The Regents of the University of California as manager of the Lab to the extent permitted by law.

XIX. ENTIRE AGREEMENT

The terms of this Agreement and its attachments are the exclusive and final expression of all agreements by the Parties with respect to full and final settlement of the Civil Action, including all claims for injunctive or monetary relief by Plaintiffs and by the members of the Settlement Class. The Parties have entered into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The terms of this Agreement may not be contradicted either by evidence of any prior or contemporaneous agreement or by the use of any form of extrinsic evidence whatsoever in any judicial, administrative, or other legal proceeding involving this Agreement.

Regents of the University of California

Shirley Rogers Jennings, on behalf of
herself and the Settlement Class

By: _____

Its: _____

Katherine Lynette Fritz, on behalf of
herself and the Settlement Class

Gloria Glasscox, on behalf of herself and
the Settlement Class

Maura Spragge, on behalf of herself and
the Settlement Class

Jannelle Spann, on behalf of herself and
the Settlement Class

Holly Miller, on behalf of herself and the
Settlement Class

Catherine Bartholdi, on behalf of herself
and the Settlement Class

Approved as to form:

Approved as to form:

James E. Boddy, Jr.

MORRISON & FOERSTER LLP

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