

January 24, 2013

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Plan Administrator
Long Beach and Orange County Hotel Employees Retirement Fund
4201 Long Beach Boulevard, Suite 300
Long Beach, CA 90807

Re: [REDACTED]

Dear Plan Administrator:

The Western States Pension Assistance Project is a nonprofit law office that assists individuals with claims regarding their pensions and retirement savings plans. I am writing on behalf of our client, [REDACTED] Smith. Ms. Smith's authorization for the Western States Pension Assistance Project to represent her is attached herein. (Exhibit 1.)

Ms. Smith hereby applies for the benefits due her under the terms of the Restated Retirement Plan for the Long Beach and Orange County Hotel Employees and Restaurant Employees Retirement Fund, Restated as of May 1, 2002. A copy of Ms. Smith's completed application form is attached. (Exh. 2) A retroactive payment was not included on the benefit election form that Ms. Smith received from the Long Beach and Orange County Hotel Employees and Restaurant Employees Retirement Fund (hereinafter, "the Plan"). Please note that Ms. Smith specifically applies for the benefits due her, including (1) the distribution of her monthly annuity benefit payments forward from the date of her application; and (2) retroactive lump-sum payment with interest for the time period between April 15, 2008, when Ms. Smith reached the Normal Retirement Age ("NRA") of 65 and the date of application for benefits. As demonstrated below, our client is entitled to these retroactive benefits.

I. Relevant Factual Background

Ms. Smith worked for Anaheim Bowl from 1973 to 1988. During that time, she was a member of the Long Beach and Orange County Culinary Workers union. Ms. Smith is claiming her retirement benefits for the 15 years she worked.

Ms. Smith applied for her pension benefits on August 4, 2012. (Exh. 2.) Ms. Smith received a benefits election packet that stated she is entitled to a monthly retirement benefit of \$36.82, effective May 1, 2012.

Ms. Smith's date of birth is April 15, 1943. She is presently 69 years of age. Ms. Smith claims her monthly benefits going forward as well as benefits due her retroactively from April 15, 2008, the date she turned 65 years of age and qualified for benefits.

II. Under the Terms of the Plan, Ms. Smith Is Entitled To Receive Retroactive Benefits.

Pursuant to the applicable terms of the Restated Retirement Plan for the Long Beach and Orange County Hotel Employees and Restaurant Employees Retirement Fund, Restated as of May 1, 2002 (the "Plan"), Ms. Smith is entitled to retroactive benefits. Those applicable terms are as follows.

Ms. Smith is a "vested Participant." Pursuant to the terms of the Plan, Section 4.03:

Prior to January 1, 1999, a vested Participant is an employee who has (a) Accrued ten (10) years of Credited Service and is or was an active Participant within three (3) years of retirement under the Plan, (b) Accrued ten (10) years of Vesting Service, or (c) Attained Normal Retirement Age.

Ms. Smith accrued more than ten years of Vesting Service. Moreover, Ms. Smith attained Normal Retirement Age ("NRA") on April 15, 2008. Thus, under the terms of the Plan, Ms. Smith is a "vested Participant."

Section 7.01 of the Plan sets forth the qualifications for Service Retirement Benefits, as follows:

(a) An employee shall qualify for Service Retirement Benefits hereunder upon his eligibility date which shall be the first day of any month in which he has filed an application addressed to the Trustees of the Fund upon a form provided by the Administrative Office of the Fund, and previous to which month, but not more than six months previously, he has: (1) Attained Normal Retirement Age, or attained the age of 62 for an actuarially reduced retirement benefit, and (2) has retired, and (3)(a) accrued, beginning on or after May 1, 1959, a minimum of ten (10) years of Credited Service under this Retirement Plan without either a Permanent Break-In-Service prior to his retirement date, or without incurring a Break in Service under the Prior Plan affecting service credits prior to May 1, 1976, or (b) accrued, as of May 1, 1976 or later, a minimum of ten (10) years of Vesting Service including a minimum of five (5) years of Credited Service.

(b) *Unless the Participant elects otherwise*, in no event shall the payment of benefits begin later than the 60th day after the later of the close of the Plan Year in which: (1) the Participant attains Normal Retirement Age, or (2) the Participant terminates his covered employment and retires as defined in this Section 7.01.¹

Plan, Section 7.01 (emphasis added).

Here, Ms. Smith has attained the NRA and accrued more than the minimum number of years of Vesting Service, including more than the minimum five years of Credited Service. She has also “elected otherwise.” In other words, Ms. Smith has elected to begin receiving the payment of her benefits later than the close of the Plan Year in which she attained the NRA. However, this election does not require that Ms. Smith forfeit her benefits for the time period from when she turned 65 years of age to the present. Instead, Ms. Smith has elected to receive those retroactive vested benefits as a lump sum with interest.

Section 8.01 of the Plan, regarding the Commencement of Payment of Benefits, provides:

Retirement benefits shall be paid for that calendar month beginning with the month in which the retirement effective date provided in Section 7.01 occurs.² Benefit payments shall continue each subsequent month of entitlement thereafter for the life of the retiree.

Ms. Smith applied for benefits on August 4, 2012. She is entitled to be paid for the month in which she applied and each subsequent month of her life thereafter. Furthermore, the Plan should pay a lump sum amount, plus interest, for the time period between when Ms. Smith reached age 65 and the month of her application for benefits.

In summary, the relevant sections of the Plan entitle Ms. Smith to benefits both retroactively and in the future.

III. The Relevant Statutes, Regulations and Case Law All Require That The Plan Pay Ms. Smith Retroactive Benefits.

Several provisions of federal law and regulations and their interpretation by the courts demonstrate that Ms. Smith is entitled to retroactive benefits. Moreover, under federal common law, Ms. Smith is entitled to a presumption against forfeiture of these benefits. *See, e.g., Clarke ex rel. Estate of Pickard v. Ford Motor Co.*, 343 F. Supp. 2d 714, 722-24 (E.D. Wis. 2004)

¹ Although the section indicates “retires as defined in this Section 7.01,” there is no definition of “retire” in Section 7.01.

² Note that Section 7.01 does not include a definition of “retirement effective date.”

A. The Non-Forfeiture Rule Requires That the Plan Provide Ms. Smith With Retroactive Benefits.

Pursuant to the Employee Retirement Income Security Act (ERISA), “each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age.” 29 U.S.C. § 1053(a). If the Plan makes application for benefits a condition of eligibility, Ms. Smith would forfeit four years of her normal retirement benefits, and the application requirement would have to be struck down as violative of section 1053(a).

Moreover, the Internal Revenue Code and ERISA contain identical provisions with respect to when retirement plans must commence paying benefits. 26 U.S.C. § 401(a)(14); 29 U.S.C. § 1056. The regulation 26 C.F.R. § 1.401(a)-14 implements both statutes. The relevant portions of section 1.401(a)-14 are as follows:

§ 1.401(a)-14 Commencement of benefits under qualified trusts.

(a) In general. Under section 401(a)(14), a trust to which section 411 applies (without regard to section 411(e)(2)) is not qualified under section 401 unless the plan of which such trust is a part provides that the payment of benefits under the plan to the participant will begin not later than the 60th day after the close of the plan year in which the latest of the following events occurs-

- (1) The attainment by the participant of age 65, or, if earlier, the normal retirement age specified under the plan,
- (2) The 10th anniversary of the date on which the participant commenced participation in the plan,
- (3) The termination of the participant's service with the employer, or
- (4) The date specified in an election made pursuant to paragraph (b)(2) of this section.

Notwithstanding the preceding sentence, a plan may require that a participant file a claim for benefits before payment of benefits will commence.

If a plan contains a requirement for filing an application for benefits, the regulations treat a participant's failure to file a claim for benefits as an election to *defer* (not forfeit) payment of his or her benefits. See 26 C.F.R. § 1.411(a)-11(c)(7) (“failure of a participant to consent is deemed to be an election to defer commencement of payment of the benefit for purposes of section 401(a)(14) and section 1.401(a)-14”). Merely deferring payment of a benefit does not mean forfeiture of the entitlement to receive those benefits.

The relevant ERISA case law interpreting these statutes supports the conclusion that Ms. Smith is entitled to retroactive benefits. The cases uniformly hold that an ERISA plan may not require a participant to forfeit vested benefits. These cases also hold that *application requirements* in pension plans may not be construed as *conditions of eligibility for benefits*. Although the plan language at issue in the cases differs in varying degrees from the language in the instant Plan, the cases are nevertheless instructive.

For example, in *Canseco v. Construction Laborers Pension Trust for S. Cal.*, 93 F.3d 600, 606–07 (9th Cir. 1996), the court held that under the plan language in question the conditions of eligibility were completing fifteen years of service, reaching age sixty-two and working 700 covered hours, and that application was not a condition of eligibility. Rather, the application requirement in the plan imposed a ministerial duty, and the plan administrator's construction to the contrary was arbitrary and capricious. *Canseco* is relevant to the present case because the court based its decision in substantial part on the fact that under the language of the plan, the application requirement was in addition to, and not an element of, the eligibility requirement. The court stated:

[A]lthough Section 5.01 requires an eligible employee to submit an application to begin receiving benefit payments, it does not require an application as a condition of eligibility. On the contrary, Section 5.01 refers to employees who *already* ‘meet [] the conditions of eligibility’ By referring to eligible employees, Section 5.01 clearly contemplates that an employee will already have satisfied the conditions of eligibility before applying for payments to begin.

Id. at 606 (emphasis in original).

The language of the instant Plan similarly contemplates that a retiree will have become a member eligible for benefits before he or she makes application to the Committee therefor. In order to apply for benefits, the employee must have attained the Normal Retirement Age, either be vested or have the requisite number of years of Credited Service, and have retired from active service. Thus, as in *Canseco*, the requirement to submit an application is a ministerial duty. It is in addition to the eligibility requirement and not an element of eligibility to receive benefits. Ms. Smith was eligible to receive benefits beginning on April 15, 2008, and thus she is entitled to those benefits she has not received from that date forward.

Moreover, one of the reasons that the *Canseco* court found that the plan administrator's construction of the plan language was unreasonable was that the plan contained no “prohibition on the payment of retroactive retirement benefits.” *Id.* Similarly, the instant Plan also contains no such prohibition. It in fact *permits* a participant to elect to begin receiving benefits later than the 60th day after the later of the Plan Year in which the participant attains NRA or terminated covered employment and retires. *See*

Plan, Section 7.01(b). The Plan document does not include any language prohibiting lump sum retroactive payments or actuarial adjustment for delayed application for benefits in the case of such election.

Other cases concluding that application requirements in plans did not create conditions of eligibility for benefits include *Cotter v. Eastern Conference of Teamsters Retirement Plan*, 898 F.2d 424, 428 (4th Cir. 1990). In *Cotter*, despite Cotter's eligibility to receive benefits under the Plan upon his departure from the Eastern Conference in 1977, the Plan made no payments to him until he filed a claim in 1985, and then refused to pay retroactive benefits on the basis of the fact that the Plan required a participant to apply for benefits before receiving them. The court held:

As the facts of this case demonstrate, Miles' interpretation of the Plan might lead to forfeiture of vested rights to retirement benefits where, as here, a participant does not immediately file a claim. Such a forfeiture plainly violates 29 U.S.C. § 1053(a), which provides: “Each pension plan shall provide that an employee's right to his normal retirement benefit is *nonforfeitable* upon the attainment of normal retirement age” (emphasis added) . . . Given the incompatibility between Miles' interpretation and the statutorily prescribed critical aspect of the ERISA scheme which we have mentioned, the requirement that a participant file a claim before vested retirement benefit payments begin is unreasonable and would constitute an abuse of discretion..

Cotter, 898 F.2d at 428; *see also Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446, 449 (9th Cir.1980) (legislative history of ERISA reveals that “vested employee rights cannot be forfeited *for any reason*”) (emphasis in original)); *Alessi v. Raybestos–Manhattan, Inc.*, 451 U.S. 504, 510, (“the concepts of vested rights and nonforfeitable rights are critical to the ERISA scheme”).

Applying the above statutes and case law to the facts of the present case, Ms. Smith became 65 in 2008 and because her sixty-fifth birthday was the latest of the events identified in section 1.401(a)–14(a)(1), the Plan would have had to commence making payments not later than March 1, 2009 (60 days after the close of the plan year in which Ms. Smith turned 65) except for the fact that the Plan required participants to file an application for benefits, as the regulation permitted. Having imposed an application requirement, the Plan was not obliged to commence payments to Ms. Smith until she filed an application. But once Ms. Smith files an application, the Plan is required to pay her, retroactively, benefits from the date of her Normal Retirement Age forward, i.e., to pay her the benefits she has deferred so that she will not forfeit these benefits.

B. The Federal Common Law Presumption Against Forfeiture Requires That the Plan Pay Ms. Smith Retroactive Benefits.

Forfeitures of earned benefits are presumed to be unreasonable pursuant to federal common law. In *Harcourt Amory v. Boyden Assoc., Inc.*, 434 F. Supp. 671, 673 (S.D.N.Y. 1976), the court addressed an alleged forfeiture that occurred after the effective date of ERISA but before the effective date of section 1053(a), which states that a plan must provide that a vested benefit is nonforfeitable once the participant reaches retirement age. The court held that under federal common law, forfeitures of earned retirement benefits were presumed to be unreasonable. The court based its conclusion on the legislative history of ERISA, stating:

[T]he effective date of the prohibition against forfeiture provisions in pension plans was delayed until January 1, 1976 not because of any Congressional hesitancy concerning the wisdom of the prohibition, but because employers needed more time to insure that their funds were adequately financed to comply with the statute's vesting requirements—of which the anti-forfeiture section is a part.

Amory, 434 F. Supp. at 673 (citation omitted). Moreover, Department of Labor Opinion Letter No. 77-32 states that applying for benefits is a ministerial act and that a failure to timely apply should not be treated as a basis for forfeiture. The federal common law presumption against forfeiture further strengthens the conclusion that Ms. Smith is entitled to retroactive retirement benefits.

IV. Ms. Smith Is Entitled to Receive Retroactive Benefits as a Lump Sum Payment With Interest.

Case law cites two ways a plan may pay retroactive benefits: either in a lump sum plus interest, or as an actuarial adjustment. See *Contilli v. Local 705 Int'l Broth. of Teamsters Pension Fund*, 559 F.3d 720, 722 (7th Cir. 2009). In *Contilli*, the participant applied for benefits three months after retiring. The plan began paying him benefits but did not pay a retroactive amount or adjust his payments to reflect the period during which he qualified for but did not receive benefits. The court held that Contilli's right to receive benefits for the three months was non-forfeitable:

A right is non-forfeitable under § 1053(a) if “it is an unconditional right.” 26 C.F.R. § 1.411(a)-4(a). Requiring an application for benefits is a condition on the receipt of payment, and so it works a forfeiture of the pre-application benefits unless an actuarial adjustment is made for months that have been lost. ERISA and the implementing regulations recognize that payment of benefits often will be deferred; there is no problem with an application requirement. But the payments skipped as a result of the deferral must be made up, *either by payment (with interest) once the deferral ends*, or

by a suitable actuarial adjustment to the ongoing benefits; otherwise the value of the pension is lower than one that begins on the normal retirement date, and a reduction in the total value of all monthly benefits is a kind of forfeiture.

Id. (emphasis added), citing *Berger v. Xerox Corp. Retirement Income Guarantee Plan*, 338 F.3d 755, 759 (7th Cir. 2003); *Esden v. Bank of Boston*, 229 F.3d 154, 163 (2d Cir. 2000); see also *Music v. Western Conference of Teamsters Pension Trust Fund*, 712 F.2d 413, 419 (9th Cir.1983) (holding that, once a plan participant has satisfied all of the eligibility requirements for a disability pension, the participant has the right to receive a disability pension retroactive to the date at which it becomes vested—when the participant becomes disabled)...

Pursuant to the governing statutes, regulations and applicable case law, Ms. Smith is entitled to retroactive benefits effective to age 65 either as a lump sum payment with interest or as an actuarially adjusted monthly benefit. Ms. Smith elects to receive her retroactive payment as a lump sum with interest, which is reflective of the benefits that she would have received if she had began collecting benefits at Normal Retirement Age.

V. Summary

For the reasons stated herein, we respectfully request that the Plan provide Ms. Smith with benefit election forms that reflect her monthly annuity benefit as well as her retroactive benefits from the date she reached NRA, April 15, 2008, as a lump sum payment plus interest.

Please send us any forms that our client needs to fill out. Please direct your written response to us at: Western States Pension Assistance Project, Legal Services of Northern California, Senior Legal Hotline, 444 North 3d Street, Suite 312, Sacramento, CA 95811. Thank you for your attention to this matter.

Sincerely,

Jennifer Anders-Gable
Staff Attorney, Western States Pension Assistance Project

Cc: [REDACTED]
[REDACTED]
[REDACTED]

Enclosures

SUMMARY PLAN
DESCRIPTION

LONG BEACH AND ORANGE COUNTY
HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES
RETIREMENT FUND

ESTABLISHED 1959
AS AMENDED THROUGH JANUARY 1, 1999

Hours of Work. You cannot combine these two methods of counting Credited Service in one calendar year. You cannot earn more than one year of Credited Service in any calendar year. Credited Service prior to January 1, 1976 is based on the provisions of the Plan in effect prior to that date. For information on when Credited Service may be earned after retirement see below under "May I work after retirement and earn additional pension credit?"

4. When do I become a Participant of the Plan?

You will become a Participant on the first day of the month after you have 1,000 Hours of Service, including at least one Hour of Work, for one or more contributing employers within any calendar year or within any two consecutive calendar years

5. When can receive Pension Benefits?

You can receive Retirement Benefits as early as age 62 if you have 10 or more years of Vesting Service including at least 5 years of credited service. The amount of your benefit is reduced from the amount of Normal Retirement Benefits in accordance with the reduction factors of the Retirement Plan. See Sections 1.17 and 8.03 of the Plan. Normal Retirement Benefits are available if you are at least age 65, and have ten (10) years of Vesting Service, or five (5) years of Vesting Service which includes at least one hour of service on or after January 1, 1999. You are also entitled to a pension if you retire without meeting these rules on the later of age 65 or the tenth anniversary of your participation in the Plan and you have not suffered a permanent break in service. See Section 4.03 and the definition of "Normal Retirement Age" at Section 1.22 of the Plan.

You will receive your first pension check after your application for benefits has been processed and your eligibility for a pension has been established. You

must begin receiving pension benefits by April 1st of the year after the calendar year in which you become age 70-1/2 unless you are still working. Your pension will be effective and payable as of the first day of the month following the month in which you complete all the eligibility requirements for a pension and any monthly payments between that date and your first payment will be added to your first pension check unless you were suspended as explained in Q & A 12. See Sections 7.01 and 8.01 of the Plan regarding commencement of benefits.

Retirement Benefits cannot become effective any earlier than the first day of the sixth month preceding the month in which your application is received, provided all other requirements have been satisfied

6. How are Pension Benefits Computed?

Pension benefits are based on your Years of Credited Service multiplied by a dollar amount. Benefits were improved by the Board of Trustees effective January 1, 1992, 1996, 1997, 1998, and 1999. At normal retirement age 65, each year of Credited Service earned has a monthly benefit as shown on the table below:

<u>Period of Credited Service</u>	<u>Benefit Factor</u>
Prior to 1979	\$4.00
1979 - 1991	1.00*
1992 - 1995	3.00
1996	4.00
1997	6.00
1998	8.00
1999 and later	10.00

*\$3.00 if the participant has, in calendar 1998, either (a) one 80-hour month or (b) 500 or more hours of service. See Sections 8.03 and 8.03(b) of the Plan.

In addition, Participants are entitled to an incentive benefit of \$2.50 per month for each five (5) year period of continuous employment with any single employer. This amount is not actuarially reduced for Participants electing early retirement between the ages of 62 and 65. See Section 8.04 of the Plan.

RESTATED RETIREMENT PLAN FOR THE
LONG BEACH AND ORANGE COUNTY HOTEL EMPLOYEES
AND RESTAURANT EMPLOYEES RETIREMENT FUND

(Restated as of May 1, 2002)

The Restated Pension Plan replaces the prior plan and is applicable only to pensions or other benefits payable on and after May 1, 1976. Pension or benefits payable prior to May 1, 1976, as well as deferred vested benefits of former employees whose participation terminated prior to May 1, 1976 are to be determined under the prior plan. The changes embodied in the first restated plan of January 1, 1987, plus the amendments no. 1 through 10, including changes made in conjunction with compliance with GUST, CRA and good-faith compliance with EGTRRA are all restated herein.

ARTICLE I

DEFINITIONS

Unless the subject matter otherwise requires, the following definitions shall govern in the Plan:

Section 1.01 - The term "Trust Agreement" and Declaration of Trust dated April 13, 1978, establishing the Long Beach and Orange County Hotel Employees and Restaurant Employees Retirement Fund and any modification, amendment, extension or renewal thereof.

Section 1.02 - The terms "Fund", "Pension Fund" or "Trust Fund" shall mean the trust fund created and established by the Trust Agreement and shall include contributions from Employers, interest, income or return thereof and any other property of any kind received and held by the Trustees for the use and purposes declared by the Trust.

Section 1.03 - The term "Union" shall mean the Hotel Employees and Restaurant Employees Union, Local 681, AFL-CIO. The term "Association" shall mean the Long Beach and Orange County Restaurant Association.

Section 1.04 - The term "Employer" means any Employer who is required by a Collective Bargaining Agreement to make contributions to the Pension Fund or who, in fact, makes one or more contributions to the Pension Fund. The term "Employer" shall also include the Union and the Association and Trust Fund and the Contract Administrator for its Long Beach Office employees which makes contributions to the Pension Fund on behalf of its employees under such conditions and manner as are specified by the Board of Trustees.

Section 1.05 - The term "Employee" means any Employee who performs one or more hours of work per day of employment in the Restaurant-Hotel Industry which is covered by a Collective Bargaining Agreement requiring contributions to this Fund. The

he incurs consecutive one-year Breaks-In-Service equal to or greater than his accrued Years of Vesting Service.

(b) effective January 1, 1987, a non-Vested Participant shall incur a Permanent Break-In-Service if he incurs consecutive one-year Breaks in service, including any one-year Breaks-In-Service which occurred prior to January 1, 1987, equal to or greater of: :

1. five consecutive one-year Breaks-In-Service or
2. the aggregate number of years of Vesting Service earned before the consecutive Breaks-In-Service.

Section 6.07 - A Permanent Break in Service shall result in a forfeiture of all accrued Vesting Service and Credited Service for all purposes.'

ARTICLE VII

RETIREMENT

Section 7.01 - Service Retirement Benefits

(a) An employee shall qualify for Service Retirement Benefits hereunder upon his eligibility date which shall be the first day of any month in which he has filed an application addressed to the Trustees of the Fund upon a form provided by the Administrative Office of the Fund, and previous to which month, but not more than six months previously, he has: .

(1) Attained Normal Retirement Age, or attained the age of 62 for an actuarially reduced retirement benefit, and

(2) has retired, and

(3) a. accrued, beginning on or after May 1, 1959, a minimum of ten (10) years of- Credited Service under this Retirement Plan without either a Permanent Break-In-Service prior to his retirement date, or without incurring a Break in Service under the Prior Plan affecting service credits prior to May 1, 1976, or

b. accrued, as of May 1, 1976 or later, a minimum of ten (10) years of Vesting Service including a minimum of five (5) years of Credited Service.

(b) Unless the Participant elects otherwise, in no event shall the payment of benefit begin later than the 60th day after the later of the close of the Plan Year in which:

(1) the Participant attains Normal Retirement Age, or

(2) the Participant terminates his covered employment and retires as defined in this Section 7.01.

(c). Effective April 1, 1990, distribution to Participants who attain age 70 1/2 during 1988 and who continued in Covered Employment on or after January 1, 1989 shall occur no later than April 1 following the calendar year in which the Participant attains 70 1/2 without regard to the Participant's actual date of retirement.

ARTICLE VIII

AMOUNT AND PAYMENT OF RETIREMENT BENEFIT

Section 8.01 - Commencement of Payment of Benefits

Retirement benefits shall be paid for that calendar month beginning with the month in which the retirement effective date provided in Section 7.01 occurs. Benefit payments shall continue each subsequent month of entitlement thereafter for the life of the retiree,

Section 8.02 - Amount of Benefits

(a) Participants who retired prior to May 1, 1976 receive retirement Benefits computed under the provisions of the Plan in effect in the period May 1, 1959, to April 30, 1976.

(b) For those retiring on and after May 1, 1976, a Retired Participant shall receive a retirement benefit which will be computed under the following formula: For each full year (12 months) of Credited Service accrued prior to May 1, 1976, Four Dollars (\$4.00) in monthly benefits.

Section 8.03 -

(a). With respect to all Credited Service accrued on and after May 1, 1976, to June 1, 1979, Four Dollars (\$4.00) in monthly benefits and with respect to all Credited Service accrued after January 1, 1979, One Dollar (\$1.00) in monthly benefits shall be paid for each full year of Credited Service, plus a fraction of Four Dollars (\$4.00) for Credited Service after May 1, 1976, and prior to January 1, 1979, and plus a fraction of One Dollar (\$1.00) for Credited Service subsequent to January 1, 1979, and prior to any year in which a partial credit is earned as provided in Article V.

(b). With respect to all credited service accrued on and after January 1, 1992, Three Dollars (\$3.00) in monthly benefits shall be paid for each full year of Credited Service, plus a fraction of Three Dollars (3.00) for Credited Service subsequent to January

UNITE HERE Long Beach and Orange County Retirement Fund

Administered by: Benefit Programs Administration
(562) 595-6463 • FAX: (562) 595-6434 • Toll Free (888) 806-8941

February 28, 2013

[REDACTED]

Re: Retirement Application Part II

Dear [REDACTED]

On February 20, 2013 we received your direct deposit information and tax withholding form, and on February 25, 2013 we received your completed Application Part II.

Disbursement orders are now being prepared for signature by the Chair & Secretary of the Board of Trustees in order to authorize payment of your monthly retirement benefit of \$36.82 retroactive to May 1, 2008, the first month following your attainment of age 65. This will result in a lump sum payment in principal of \$2,172.38 for the period May 1, 2008 through March 1, 2013, which will be forwarded to your bank within the next 10 days.

The interest calculation on the retroactive payment is being prepared by the Fund Actuary. Once he has completed the calculation and informed us of the appropriate interest amount to be credited in your behalf, we will prepare a lump sum disbursement in that amount, notify and forward the additional payment to you.

If you have any questions, or need additional assistance, please do not hesitate to contact us.

Yours very truly,



Peter L. Bates
Administrative Manager

PLB

- cc: Jennifer Anders-Gable, Esq.
Staff Attorney, Western States Pension Assistance Project
Legal Services of Northern California
444 N. 3rd St. Ste. 312
Sacramento, CA 95811
- cc: Peter Cavette, Esq.
Trust Counsel
- cc: Milliman, Inc.
Trust Actuaries