

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between CHARLES ASUBONTEN (“Employee”), on the one hand, and California Public Employees’ Retirement System (“CalPERS” or “Employer”), on the other hand, (collectively referred to as “the Parties”).

1. Recitals.

1.1. On or about October 2, 2017, Employee was hired as Employer’s Chief Financial Officer. Employee was employed in that role until May 16, 2018, at which time he separated from employment with Employer.

1.2. As a result of disputes between the Parties over the bases for Employee’s separation from employment, Employee filed an appeal of that decision with the California State Personnel Board (“SPB”), Case No. 18-030 (hereinafter, “SPB Action”).

1.3. The Parties now desire to address and resolve any and all Claims (as defined at paragraph 4.1 below) arising from, or related to, Employee’s employment with Employer including, but not limited to, all issues raised in the SPB Action, based on the terms and conditions below.

2. Settlement Terms. As consideration for the promises and covenants contained in this Agreement, Employer and Employee agree to settle all Claims (as defined at paragraph 4.1 below) on the following terms:

a. Employee agrees that by the terms of this Agreement he is tendering the voluntary resignation of his employment with Employer, which such resignation shall be effective as of May 16, 2018. For its part, Employer agrees to accept Employee’s

voluntary resignation of his employment and will ensure his personnel file reflects the same.

b. Employer agrees that any inquiry regarding Employee from prospective employers (or other third parties) will be referred to Employer's Chief of the Human Resources Division, who will provide only the Employee's dates of employment and the position held in response to any such inquiry.

3. Dismissal of SPB Action With Prejudice. As further consideration for the promises and covenants contained in this Agreement, Employee agrees to dismiss the SPB Action with prejudice within two (2) business days of Employer's execution of this Agreement.

4. Releases of Liability.

4.1. Mutual General Release. Except for the obligations expressly set forth in this Agreement, the Parties shall and hereby do release and forever discharge each other, as well as each Party's predecessors, successors, heirs, assigns, executors, administrators, agents, employees, representatives, attorneys, affiliates, subsidiaries, insurers, reinsurers, and any and all past or present officers and/or directors, and any of them, as well as any and all persons and/or entities acting or allegedly acting by, under, through, or in concert with any of them (hereinafter referred to as "Related Parties"), against any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs, and expenses (including, but not limited to, attorneys' fees), damages, and charge of whatsoever nature, whether known or unknown, suspected or unsuspected, foreseen, or unforeseen, fixed or contingent, or ever filed or prosecuted (hereinafter, collectively referred to as "Claims") which Employee may now have, or claims to have, or at any time prior to the execution of this Agreement had, or claimed to have had, against Employer or Related Parties, or

which Employer may now have, or claims to have, or at any time prior to the execution of this Agreement had, or claimed to have had, against Employee or Related Parties, as a result of any acts and/or omissions undertaken, said, stated, or done by Employer, Employee, or Related Parties.

4.2. Specific Release of Statutory Rights Claims. Employee

understands and acknowledges that Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, the Americans With Disabilities Act, the Vietnam Era Veterans Readjustments Assistance Act of 1974, the California Family Rights Act of 1991, the Federal Family and Medical leave Act of 1993, the California Fair Employment and Housing Act, as amended, and applicable provisions of California's Labor Code, provide an employee the right to bring charges, claims, causes of action, or complaints against an employer if the employee believes he has been discriminated against on a number of bases, including race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status , as well as any and all other protected classifications provided by applicable federal, state, and local laws. Employee, with full understanding of the rights afforded him under these federal, state, and local laws, agrees that he will not file, or cause to be filed against Employer, any charges, complaints, or actions based on any alleged violation of these federal, state, or local laws, or any successor or replacement federal, state, or local laws. Employee hereby releases and waives any right to assert any charges, complaints, or actions for relief available under these federal, state, or local laws including, but not limited to, back pay, attorneys' fees, damages, reinstatement, or injunctive relief, which Employee may otherwise

recover based on any alleged violation of these federal and state laws, or any successor or replacement federal or state laws.

4.3. Specific Release of Age Discrimination Claim. By the terms of this Agreement, Employee acknowledges he understands that the Age Discrimination in Employment Act of 1967, as amended, provides him the right to bring a claim against Employer and Related Parties if Employee believes he has been discriminated against on the basis of age. Employee specifically releases Employer and/or Related Parties from any charges, complaints, or actions based on the Age Discrimination in Employment Act of 1967, as amended, arising prior to the date of this Agreement. Employee specifically waives and releases any right to assert charges, complaints, or actions for relief under this Act, including but not limited to, claims for back pay, attorneys' fees, damages, reinstatement, or injunctive relief.

4.4. Older Workers' Benefit Protection Act. Pursuant to the terms of the Older Workers' Benefit Protection Act (OWBPA), Employee acknowledges that he has twenty-one (21) days from the date of presentation of this Agreement to him, which occurred on July 5, 2018, in which to consult with any attorney of his choice regarding the terms and conditions of this Agreement. Employee acknowledges that, by the terms of this Agreement, he has been advised in writing of his right to consult with an attorney regarding the terms and conditions of this Agreement. Employee further acknowledges that, by the terms of this Agreement, he has been advised that following execution of the Agreement, he has seven (7) days in which he may revoke this Agreement. If Employee does not exercise his right to revoke this Agreement during this seven (7) day revocation period, the Agreement shall become effective on the eighth (8th) day following his execution of it.

4.5. Mutual Waiver of Unknown and Unanticipated Claims. It is

understood and agreed that the release of Claims set forth in paragraph 4.1 above is a full and final mutual release by the Parties, and that such full and final release includes, without limitation, all unknown and unanticipated Claims, as well as those now known or disclosed.

With respect to any Claims by Employer against Employee or Related Parties, or by Employee against Employer or Related Parties, Employer and Employee expressly waive the provisions of California Civil Code section 1542, which provides as follows:

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

In connection with this waiver, the Parties acknowledge that one or more of the Claims released by this Agreement may include losses sustained by Employer on account of conduct by Employee or Related Parties, or losses sustained by Employee on account of conduct by Employer or Related Parties, that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future, which are not now anticipated. Nevertheless, the Parties acknowledge that this release has been negotiated and agreed upon and that in consideration for the rights and benefits under this Agreement, the Parties intend and hereby does release, acquit, and forever discharge each other and Related Parties, as set forth above, from any and all Claims, including those that are unknown, unsuspected, or unforeseen.

5. No Admissions. The Parties mutually acknowledge that this Agreement is entered into in order to resolve matters about which the Parties are in dispute. Nothing contained in this Agreement shall be deemed an admission of any kind by or to any party to this Agreement regarding any issue arising out of, or related to, Employee's employment with Employer.

6. **Entire Agreement.** This document constitutes the entire agreement between the Parties, all oral agreements being merged herein, and supersedes all prior representations or agreements by or between the Parties. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

7. **Waiver.** Any of the terms or conditions of this Agreement may be waived in a writing signed by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

8. **Amendment.** The terms and conditions of this Agreement may be modified or amended at any time by agreement of the Parties. Any such amendment or modification as hereinafter may be made, shall be ineffective to modify this Agreement in any respect unless in writing and signed by the party or parties against whom enforcement of the modification or amendment is sought.

9. **Representation By Counsel.** The Parties have carefully read this Agreement and the contents hereof are known and understood by all Parties. The Parties acknowledge that each has had an adequate period of time in which to consider the terms and conditions of this Agreement and each has had the opportunity to receive independent legal advice from attorneys of their choice with respect to the preparation, review, and advisability of executing this Agreement. Prior to the execution of this Agreement by each party, each party's attorneys reviewed the Agreement, and each party acknowledges that he, she, or it has executed this Agreement after independent investigation and without fraud, duress, or undue influence.

10. Severability. If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated, unless expressly stated otherwise in this Agreement.

11. Succession. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the respective Parties hereto.

12. Governing Law; Forum Selection. This Agreement will be governed in all respects by the laws of the State of California as such laws are applied within California, without regard to conflicts of law. Any dispute regarding the interpretation or enforcement of this Agreement shall be filed in the Superior Court of the State of California in and for the County of Sacramento.

13. Attorneys' Fees. If any action or proceeding is filed regarding the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to costs and attorneys' fees.

14. Captions. All paragraph captions are for reference only and should not be considered in construing this Agreement.

15. Representation of Authority to Settle. Each party warrants and represents that he, she, or it has the power and authority to compromise and release the Claims as set forth in this Agreement and that, in the case of corporate or public entities, its signatory is duly authorized and empowered to sign this Agreement on its behalf. Each party further warrants and represents that he, she or it has not transferred, assigned, hypothecated, or sold any Claims released by this Agreement.

16. Responsibilities of Parties. Each party to this Agreement agrees to execute and to deliver any such additional documents and instruments, and to perform such additional acts, as may be necessary to effectuate, consummate or perform any of the terms, provisions or conditions of this Agreement. The Parties agree that this Agreement is a valid and binding obligation on each party, enforceable against each party in accordance with the terms of this Agreement.

17. Enforcement. Each party to this Agreement reserves any and all rights any party may have to enforce this Agreement whether at law, in equity, or otherwise. Pursuant to *California Evidence Code* Section 1123(b), this Agreement is enforceable, binding and admissible in a court of law.

18. Costs of Litigation. In entering into this Agreement, the Parties acknowledge that each party shall bear his or its own attorneys' fees, costs of litigation, and that no such claim for attorneys' fee and costs may be made at any subsequent time by either party, except in connection with the interpretation and enforcement of this Agreement as provided in paragraph 13, hereof.

19. Non-Disparagement. In consideration of the promises and consideration contained in this Agreement, and to the extent permitted by applicable law, both Parties represent and agree that they will not directly or indirectly criticize, denigrate or otherwise disparage or cause disparagement to the other Party.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same document.

21. Nonassignability. This Agreement shall not be assigned by any party without the prior written consent of the other Parties. Any assignment contrary to the provisions of this Agreement shall be deemed a default under the Agreement, allowing the nondefaulting Parties to exercise all remedies available under law.

Dated: July 10, 2018

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

By 

Its General Counsel

Dated: _____

CHARLES ASUBONTEN