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JUDICIAL COUNCIL OF CALIFORNIA  
6 and ADMINISTRATIVE OFFICE OF  
THE COURTS  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 PAULA J. NEGLEY,

12 Plaintiff,

13 v.

14 JUDICIAL COUNCIL OF CALIFORNIA and  
ADMINISTRATIVE OFFICE OF THE  
15 COURTS,

16 Defendants.  
17

Case No.: CV 08 3690 MHP

**DECLARATION OF ERNESTO  
FUENTES IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT**

Date: May 10, 2010  
Time: 2:00 p.m.  
Courtroom: 15  
Before: Honorable Marilyn H. Patel

18  
19 I, Ernesto Fuentes, hereby declare:

20 1. Since September 2005, I have been employed by the Administrative Office of the  
21 Courts ("AOC") as the Director of the Human Resources Division. I have personal knowledge  
22 of the facts set forth below and, if called upon to do so, I could testify competently and  
23 accurately with respect to the facts contained herein.

24 2. The AOC hired Jim Duncan ("Duncan") as a Labor Relations Negotiator  
25 ("Negotiator") in 2001. In that position, Duncan's primary duty was serving as chief  
26 spokesperson for trial courts that requested AOC assistance in labor negotiations.

27 3. The AOC hired Plaintiff Paula Negley ("Plaintiff") in November 2005 as a  
28 Negotiator to perform the same duties as Duncan, but generally at different trial courts.

1           4.     In early 2008, the AOC conducted a recruitment for a new Negotiator to perform  
2 the functions being vacated by Duncan's retirement. While interviews for the position were  
3 being conducted in February 2008, the Administrative Director of the AOC announced a hiring  
4 freeze as a budget reduction measure. My supervisor, Ron Overholt – Deputy Director of the  
5 AOC – informed me that candidates who were already in the hiring process were not covered by  
6 the freeze, but all other candidates and positions required an exemption from the hiring freeze  
7 based on a demonstrated need to fill the position.

8           5.     I believed that the broad experience and abilities possessed by David Wolf  
9 (“Wolf”) would be a significant asset to the Human Resources Division, not only in negotiations  
10 but also in a wide range of other labor relations areas. As a result, Ken Couch and I obtained an  
11 exemption to the hiring freeze to fill a higher level position, Senior Labor and Employee  
12 Relations Officer (“SLERO”). On or about March 25, 2008, the SLERO position was offered to  
13 Wolf at the lowest salary in the pay range, \$8,969, and he accepted.

14           6.     Until Wolf was hired in 2008, Scott Gardner was acting as the lead over Plaintiff,  
15 Duncan and others in the Labor and Employee Relations Unit.

16           7.     I made the decision to terminate Plaintiff's employment. I terminated Plaintiff's  
17 employment on April 6, 2009 because she disclosed confidential documents to her attorney  
18 (including a sex harassment investigation report and disciplinary memorandum pertaining to  
19 employees in a different department) without the knowledge or consent of the AOC. Plaintiff's  
20 unauthorized disclosure of the documents violated her Confidentiality Agreement and the AOC's  
21 Personnel Manual. Relevant sections of the AOC's Personnel Manual are attached and  
22 incorporated as Exhibit 10.

23           8.     Plaintiff never filed a tort claim with the AOC or the Judicial Council of  
24 California (the “Judicial Council”).

25           9.     Plaintiff was employed by the AOC, not the Judicial Council. The Judicial  
26 Council does not have any employees.

27           10.    The AOC's Finance Department has questioned my expense claims on several  
28 occasions.

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11. On April 30, 2008, the Chief Justice of the California Supreme Court approved the classification of Senior Labor Relations Negotiator. A true and correct copy of the Chief Justice's approval is attached and incorporated as Exhibit 11.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct. Executed this 23 day of March 2010 at San Francisco, California.

  
\_\_\_\_\_  
ERNESTO FUENTES

**EXHIBIT 10**

## 5.1 Maintenance of Employee Files

The official personnel file for each employee is maintained by the Human Resources Division.

All documents intended to be part of the official personnel record must be maintained in the personnel file at all times.

A designated official in individual courts or departments may maintain copies of personnel records for convenience. These files should contain no information that is not in the official file and must be kept confidential and under stringent security standards so as to prevent any unauthorized access. Access to the copies will be restricted in accordance with Section 5.2.

Employees are required to notify the Human Resources Division of any personal changes such as address, phone number, number of dependents, additional insureds, or beneficiaries as these changes occur. Notification must be in writing so that the Human Resources Division records and the employee's benefits are kept up to date.

## 5.2 Requests for Information

Employees' personnel records are kept private. However, information may be given to persons outside the judicial branch when the information is provided:

- in response to a subpoena, court order, or order of an administrative agency;
- in a lawsuit, grievance, or arbitration in which the employee and the employing court or agency are parties, but only such information as relates to the disputed issues;
- to administer employee benefit plans;
- to a health care provider;
- to a prospective employer, but only the dates of employment, title of the employee's last or present position, and the salary range for that position may be disclosed; and
- to other persons requesting verification of employment and confirmation of the salary rate for an employee.

### ***Access to Official Employee Personnel File***

The contents of an employee's official personnel record, except for certain limited kinds of information, can be inspected by the employee or the employee's designated representative in the presence of a Human Resources Liaison. Files can be reviewed at reasonable intervals with reasonable notice at the employee's request. Employees should contact the Human Resources Division if they wish to see or have copies made of their personnel records. Personnel files are the property of the judicial branch and may not be removed from the premises without the written authorization of the Human Resources Manager.

To maintain privacy, any other access to employee personnel records, including access to electronic employee personnel records through the Human Resources Education and Management System, is limited to persons or entities whose access to the files is necessary to the performance of their duties for the judicial branch. This includes supervisors, managers, and staff of the Human Resources Division.

Rev. 10/24/05

## 6.2 Incompatible Activities

The objective of this policy is to avoid embarrassment to the judicial branch and its employees by defining activities that would be considered unethical or incompatible.

An employee of the judicial branch may engage in outside employments or enterprise where the activity:

- does not interfere with the employee's efficiency; and
- is not incompatible, inconsistent, or in conflict with the employee's duties.

Employees are expected to devote their best efforts and attention to the performance of their jobs. They are expected to use good judgment, adhere to high ethical standards, and avoid situations that create an actual or potential conflict between their personal interests and the interests of the judicial branch. A conflict of interest exists when employees' loyalties or actions are divided between the employer's interest and those of another. Both the fact and the appearance of a conflict of interest should be avoided. Employees unsure as to whether a certain transaction, activity, or relationship constitutes an incompatible activity should consult their immediate supervisor or the Human Resources Manager for clarification. Any exceptions to this guideline must be approved in writing by the appointing authority.

While it is not feasible to describe all possible incompatible activities that could develop, some of the more common conflicts from which employees should refrain include:

- receiving or accepting, directly or indirectly, any gift, including money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the state or whose activities are regulated or controlled in any way by the state, under circumstances from which it reasonably could be inferred that the gift was intended to influence the employee in official duties or was intended as a reward for any official action on the employee's part;
- receiving or accepting money or any other consideration from anyone other than the state for the performance of an act that the employee would be required or expected to render in the regular course or hours of state employment or as a part of the duties of the employee;
- using confidential information acquired by virtue of state employment for the employee's private gain or advantage, for the private gain or advantage of another, or to the employer's detriment;

- working for or having a direct or indirect financial interest in or relationship with a contractor or supplier;
- using state time, facilities, equipment, or supplies for personal gain or advantage or for the private gain or advantage of another;
- using the prestige or influence of state office or employment for personal gain or advantage or for the private gain or advantage of another;
- performing an act in other than the capacity of a state employee knowing that such act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the employee or by the employer;
- acquiring any interest in properties or assets of any kind for the purpose of selling or leasing them to the employer;
- developing a personal relationship with a subordinate employee that might interfere with the exercise of impartial judgment in decisions affecting the employer or any of its employees; and
- using electronic mail facilities to communicate or promote personal causes or gain.

If someone with whom the employee has a close relationship has a financial or employment relationship in conflict with these guidelines, an incompatible activity may exist.

Any potential conflicts must be disclosed in writing to the Human Resources Division, and an exception to the guidelines may be sought.

Failure to adhere to these guidelines, including failure to disclose any conflicts or incompatible activities or to seek an exception, may result in discipline up to and including termination of employment.



## 7.3 Disciplinary Procedures

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The success of the judicial branch depends on the quality of its employees and on its flexibility to make staffing decisions. Therefore, employees are employed at will, which means that either the employer or the employee may terminate the employment relationship at any time and for any reason not prohibited by law. However, because the employees of the judicial branch are a valuable resource, the employer may elect to counsel or warn employees about performance deficiencies or discipline them prior to terminating them to encourage the employees to correct those deficiencies and conform with organizational standards and goals. Employees are not to construe this policy or any such actions by the employer as any restriction on the employer's right to terminate employees in accordance with the policy of employment at will.

Discipline can be a positive and constructive means of increasing organizational order and efficiency. The purpose of discipline is to alter unacceptable performance and behavior and to deter other employees from demonstrating similar performance and behavior problems. Through the discipline process, employees may be given warning that their conduct or performance is not satisfactory and that they must correct it.

Employees are expected to observe certain standards of job performance and conduct for the proper, safe, and orderly operation of the judicial branch. When, in the employer's judgment, the employee's job performance and/or conduct do not meet judicial branch standards or where it is otherwise determined that the employee's continued employment may not be warranted, disciplinary action or termination may result. Provided below is a nonexhaustive list, for illustrative purposes only, of kinds of employee behavior that may lead to discipline or termination. The employer reserves its right to terminate the employment relationship at any time with or without cause.

The causes for discipline include, but are not limited to:

- fraud in securing appointment, including false statements on applications or résumés, even though their false nature may not be discovered until after the employee has been working for some time;
- falsification of records;
- unauthorized disclosure of confidential information;

- incompetence;
- inefficiency;
- inexcusable neglect of duty;
- incompatibility with a justice or manager;
- a justice's or manager's loss of confidence in an employee;
- unauthorized absences from work or excessive or habitual absenteeism or tardiness;
- failure to perform job duties adequately;
- insubordination;
- dishonesty;
- substance abuse on duty or possession or sale or being under the influence of intoxicants or narcotics while on duty or on state property;
- intemperance;
- conviction of a felony or conviction of a misdemeanor involving moral turpitude;
- discourteous treatment of the public or other employees;
- improper political activity;
- willful disobedience;
- misuse of state property;
- violation of the prohibition against incompatible activity;
- unlawful discrimination including harassment against the public or other employees while acting in the capacity of a state employee;
- retaliation against any other state officer or employee or member of the public who in good faith files a complaint with the Attorney General or any other appropriate authority; and

- any failure of good behavior either during or outside duty hours that causes discredit to the employee's agency or employment.

Each case warranting discipline or termination will be evaluated on its own merits. Depending on the circumstances, an investigation may be undertaken, the employee may be disciplined, or the employee may be immediately terminated at the discretion of the judicial branch. Discipline may take any form (or combination thereof), including but not limited to:

- oral warning;
- written warning;
- denial of merit salary adjustment;
- probation;
- suspension without pay;
- transfer;
- demotion; and
- immediate termination.

The decision whether to discipline the employee, including the form and severity of any discipline, is solely within the discretion of the judicial branch (including its duly appointed managers).

Nothing in this manual is to be deemed to limit in any way the discretion of the judicial branch to discipline and/or terminate any of its employees; neither is anything in this policy to be construed as a guarantee of employment, as a promise of continued employment, or as a right to receive progressive discipline.

**EXHIBIT 11**



JUL 07 2008

Judicial Council of California  
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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MEMORANDUM

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**Date**

April 22, 2008

**To**

Office of the State Controller

**From**

Ronald M. George  
Chief Justice of California and  
Chair of the Judicial Council

**Subject**

Judicial Branch Pay Memorandum 08-06

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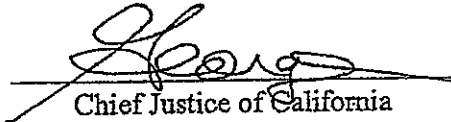
Pursuant to the authority vested in me by article VI, section 6 of the California Constitution and section 19825(b) of the Government Code, I hereby approve the following classification and salary changes, effective April 1, 2008:

Establish New Classification:

<u>Work Week</u>	<u>Class Code</u>	<u>CB ID</u>	<u>Title</u>	<u>Monthly Salary Range</u>
4C	3859	E88	Senior Labor Relations Negotiator	\$6842 - \$9100

4-30-08

Date

  
Chief Justice of California  
Chair of the Judicial Council

RMG/NCR

cc: Department of Finance

003038

**PROOF OF SERVICE**

I am a citizen of the United States, employed in the County of Alameda, California, over the age of 18 years, and am not a party to the within-entitled action. My business address is 1301 Marina Village Parkway, Suite 310, Alameda, California 94501. On the date set forth below, I served the following document(s) by the method indicated below:

**DECLARATION OF ERNESTO FUENTES IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

- Facsimile** by transmitting via facsimile on this date from fax number (510) 337-2811 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing.
- First Class Mail** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Alameda, California addressed as set forth below. I am readily familiar with the business practice at Wiley Price & Radulovich, LLP for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.
- Messenger** by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the address(es) set forth below.
- Personal Delivery** by personally hand delivering the document(s) listed above in a sealed envelope(s) to the person(s) at the address(es) set forth below.
- Overnight Delivery** by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express service carrier for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

Joseph Clapp  
Kumin Sommers LLP  
870 Market Street, Suite 428  
San Francisco, California 94102  
Tel. No.: (415) 434-4500  
Fax No.: (415) 434-8453

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on March 29, 2010 at Alameda, California.

/s/  
Eileen O'Rourke