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TO: ALL PUBLIC AGENCIES

SUBJECT: CARGILL, ET AL. V. METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, ET AL.

The purpose of this Circular Letter is to provide an update on the case of *Cargill v. Metropolitan Water District of Southern California*.

As explained in Circular Letter No. 200-064, this case is a class action lawsuit brought against the Metropolitan Water District of Southern California (District) and approximately eighty private sector "temporary agencies" in Los Angeles County Superior Court. The plaintiffs are individuals who have performed services for the District who allege that they should be classified as District employees. These persons were allegedly designated as temporary agency employees, temporary employees or consultants instead of "regular employees." The plaintiffs allege they have been denied compensation, benefits, and employment rights as a result of this misclassification. The District and the other defendants deny these allegations.

The District is a contracting public agency with CalPERS. Under the law governing CalPERS, all persons in the employ of the District who are not expressly excluded by statute or under the terms of the District's contract with CalPERS must be enrolled as CalPERS members.

Plaintiffs contend that they are employees entitled to CalPERS membership. Resolution of this issue will require the court to determine the meaning of the pertinent membership provisions of the Public Employees' Retirement Law (PERL). State statutes that were originally enacted over 40 years ago govern the membership eligibility of individuals. The question before the court is the meaning of these statutes.

CalPERS sought, and was granted, permission to intervene in the litigation as a party. CalPERS, plaintiffs, and the District each filed motions on the limited issue of CalPERS membership. On February 2, 2001, the trial court held a hearing and subsequently issued its decision granting the motions of CalPERS and the plaintiffs.

The court held that the District must enroll all of its "common law" employees in CalPERS. The court examined the pertinent provisions of the PERL and found that the term "employee" is defined using common law principles. The court relied on traditional

rules of statutory interpretation to reach this result and expressly rejected the District's arguments that the employee must be paid directly by the public agency employer to qualify for CalPERS membership. However, the court did not directly address the application of any statutory or contractual exclusions, such as the exclusion for part-time employees. The court also did not address any individual issues such as the calculation of service credit or final compensation.

CalPERS expects that the District will ask a Court of Appeal to review this decision. If an appellate court decides to grant this request, there will be additional court proceedings. When this process is exhausted, CalPERS will decide whether the ruling of the court warrants a review of the membership status of those individuals who have provided services to the District.

If you have any questions regarding the litigation or its impact on CalPERS, you may call Peter Mixon, Deputy General Counsel, at (916) 795-3797.

Kenneth W. Marzion, Chief
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