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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GARY CANOVA et al., Plaintiffs and Appellants, v. TRUSTEES OF IMPERIAL IRRIGATION DISTRICT EMPLOYEE PENSION PLAN, et al., Defendants and Respondents,	D048156 (Super. Ct. No. L-01273) Modification Order NO CHANGE IN JUDGMENT

THE COURT:

The opinion filed May 22, 2007, as modified on June 8, is further modified so as to clarify the June 8 modification order as follows: The five paragraphs added in the June 8 modification order are to replace the last three paragraphs of the DISCUSSION, i.e., the last full paragraph on page 13 that begins "While the claims" and both full paragraphs on page 14. The language inserted on June 8 has not changed and is again set forth below.

> While the claims for recalculation of the Rate Amendment and equity adjustment seek monetary relief and are barred based on Plaintiffs' failure to file a timely claim, we reject Defendants' argument that barring monetary relief, there is nothing left of Plaintiffs' case. Plaintiffs alleged that the termination of the Pension Plan and creation of the Contribution Plan were unreasonable and violated Defendants ministerial duty under the Contract Clause of the California Constitution. As an alternative theory, Plaintiffs sought a writ of mandate declaring the rollover into the Contribution Plan invalid and an order that Defendants perform their contractual duties under the Pension Plan.

Assuming that the trial court agrees with Plaintiffs' assertions and declares the rollover invalid, Plaintiffs would be entitled to an order directing Defendants to comply with the terms of the Pension Plan. While such relief, if granted, may ultimately result in money being transferred between the two systems, such relief does not render the request a claim for money or damages that requires the filing of a government claim. (*Board of Administration*, *supra*, 52 Cal.App.4th at pp. 1125-1126 [mandamus action challenging change in how pensions were financed and directing return to the previous financing system did not seek money or damages].)

We reject Defendants' assertion that allowing Plaintiffs to litigate the merits of their alternative theory is legally inconsistent with our conclusion that Plaintiffs' challenges to the rate amendment and equity adjustment are barred by the Claims Act. An order invalidating the rollover into the Contribution Plan and requiring that Defendants perform their contractual duties under the Pension Plan, if issued, does not address or impact the rate adjustment and would invalidate the equity adjustment to the extent the adjustment was part of the rollover. Plaintiffs will not be able to challenge the amount of the equity adjustment or the rate amendment.

Defendants also assert that they violated no ministerial duty when they terminated the Pension Plan and that mandamus relief is inappropriate to compel legislative action or an appropriation. Defendants, however, moved for summary judgment on the ground the entire action was barred based on Plaintiffs' failure to comply with the Claims Act. Accordingly, Defendants' assertions were not before the trial court, they are not properly before us and we express no opinion on the validity of these assertions or the merits of Plaintiffs' remaining claim.

In summary, Plaintiffs' request to invalidate the rollover and compel Defendants to change the retirement plan back to the Pension Plan was not one for money or damages. Thus, they were not required to comply with the Claims Act to obtain mandamus relief on this claim and summary judgment of the *entire* action based on Plaintiffs' failure to comply with the Claims Act was improper. Accordingly, this matter is remanded to the trial court to determine whether Plaintiffs are entitled to a writ of mandate invalidating the

rollover and compelling Defendants to change the retirement plan back to the Pension Plan.

NO CHANGE IN JUDGMENT

McINTYRE, Acting P. J.