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United States District Court,  
D. Arizona.

George RUDEBUSCH, et al., Plaintiffs,  
v.

STATE OF ARIZONA, et al., Defendants.

Nos. CIV 95–1313–PCT RCB, CIV 96–1077–PCT  
RCB. | Aug. 14, 2006.

#### Attorneys and Law Firms

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& Horowitz Ltd., Phoenix, AZ, for Plaintiffs.

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#### Opinion

### ORDER

ROBERT C. BROOMFIELD, Senior District Judge.

\*1 On June 7, 2006, this Court partially granted Plaintiffs’ cross-motion for summary judgement regarding damages in this matter. Order (doc. 316). In its order, the Court concluded that two issues of fact remained in dispute regarding the correct calculation of damages owed to Plaintiffs. *Id.* at 18–24. Specifically, the two issues that remained in dispute were (1) the actual percentage increases for administrative positions and (2) whether the purpose of the 1995 adjustments was to remedy the inequities created by the Hughes adjustments. *Id.* Accordingly, the Court granted the parties additional time to present evidence on these issues. *Id.* at 23–24. After reviewing each party’s evidence and arguments on these matters, the Court now rules.

At the outset, the Court notes that Defendants no longer dispute the 22% salary increase for administrative positions that was included in Plaintiffs’ damages proposal. Def. Submission of Evidence (doc. 24) at 5.<sup>1</sup> Hence, the Court concludes that the 22% salary increase for administrative positions shall apply.

<sup>1</sup> The Court notes that Defendants’ filing entitled “Defendants’ Submission of Evidence Re: 1995 Salary Adjustments and Administrative Appointments” was not filed in the Court’s docket for this case, CIV 95–1313–PCT RCB. Instead, Defendants filed this

document in the docket for CIV 96–1077–PCT RCB. The parties are directed to file all future pleadings and filings related to this matter in the docket of the lead case, CIV 95–1313–PCT RCB.

Unlike the salary increases for administrative positions, the issue regarding the purpose of the 1995 adjustments remains in dispute. Defendants have submitted numerous affidavits and other evidence arguing that the 1995 increases were intended to “further eliminate any perceived inequity remaining after the Hughes and Lovett increases[.]”*Id.* at 2. Additionally, Defendants assert that “even if this were not the intent, the Plaintiffs would not have received the 1995 increases (or at least an increase in the same amount) had they received an increase to their predicted salary in 1993.”*Id.* The Court is not convinced by either of these arguments.

First, Defendants concede that the 1995 adjustments were market equity increases. *Id.* at 2–3 (“In 1995 the NAU administration moved to a different benchmark for determining appropriate salary figures—the prevailing market rate as determined by comparing NAU salaries to those of peer institutions.”). The fact that the NAU administration may have internally referred to this adjustment as “Lovett Fix 2,” as asserted by Defendants, does not sufficiently establish that the adjustments were intended to remedy the inequities created by the Hughes adjustments. In fact, Defendants concede that all faculty, minorities and non-minorities, were eligible for the 1995 increases. Def. Submission of Evidence (doc. 24) at 3. They do not deny that some minorities received such a raise. Moreover, according to Defendants, only twenty-eight of the Plaintiffs received a raise pursuant to the 1995 adjustments. *Id.* Thus, not all of the Plaintiffs who had been harmed by the 1993 Hughes adjustments received a raise under the 1995 adjustments, which Defendants contend were intended to repair the damage caused to such Plaintiffs by the 1993 Hughes adjustments.

Second, Defendants attempt to argue that, even if the 1995 adjustments were not intended to remedy the inequities created by the Hughes adjustments, they must still be considered in the damages calculation because the Plaintiffs would not have received the 1995 increases (or at least an increase in the same amount) had they received an increase to their predicted salary in 1993. *Id.* at 2. Generally, Defendants maintain that if the 1995 adjustments are not considered in the damages calculation, Plaintiffs will be “overcompensated.” *Id.* at 3–5. This argument, however, is of no moment to the issue at hand. In its prior order, the Court granted the parties additional time to present evidence regarding the “purpose” of the 1995 adjustments. Order (doc. 316) at 23–24. The alleged “purpose” was the only factual issue

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regarding the 1995 adjustments that was raised by the parties in their motions for summary judgment. *Id.* at 19–20. Thus, Defendants’ argument regarding the alleged “overcompensation” of Plaintiffs is a new argument that does not address the Court’s question regarding the “purpose” of the 1995 adjustments.

\*2 Finding no clear evidence indicating that the 1995 adjustments were intended to remedy the inequities created by the Hughes adjustments, the Court concludes that the 1995 adjustments should not be considered in the calculation of damages incurred by Plaintiffs. Thus, the Court shall accept Plaintiffs’ proposed calculation of

damages in its entirety.

Therefore,

IT IS ORDERED directing counsel for Plaintiffs to submit a proposed judgment, based on the Court’s order dated June 7, 2006 (doc. 316) and this order, thirty (30) days from the date of this order. Defendants must file any objection they have to such proposed judgment ten (10) days from the date of its filing.