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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

Wendell G. Moen, Jay Davis, Donna Ventura, Gregory M.  
Bianchini, Alan Hindmarsh, Cal Wood and Sharon Wood,  
on behalf of Themselves and Others Similarly Situated,

Petitioners,

v.

Regents of University of California, and Does, 1 through  
99, inclusive,

Respondents.

No. RG 10530492

Assigned For All Purposes to

Judge: Hon. Winifred Y. Smith  
Dept.: 21

**[PROPOSED] FINAL  
APPROVAL ORDER AND  
JUDGMENT**

1 WHEREAS, Petitioners Wendell G. Moen, Jay Davis, Donna Ventura, Gregory M. Bianchini,  
2 Alan Hindmarsh, Calvin Wood and Sharon Wood (“Petitioners” or “Class Representatives”) and The  
3 Regents of the University of California (“Respondent” or “The Regents”) through their counsel of record,  
4 have reached an agreement to settle all claims in this case; and

5 WHEREAS, this matter came before the Court pursuant to Petitioners’ Notice of Motion and  
6 Motion for Final Approval of Stipulation of Class Action Settlement and Release and Petitioners’ Motion  
7 for Attorneys’ Fees on April 10, 2020 at 10:00 a.m. in Department 21 of the Superior Court of California,  
8 County of Alameda; and

9 WHEREAS, the Parties entered into a Stipulation of Class Action Settlement and Release on or  
10 about December 11, 2019 (the “Settlement Agreement”) which has been filed with the Court and which,  
11 if approved, would resolve the above-captioned class action lawsuit (the “Action” or the “Class Action  
12 Lawsuit”); and

13 WHEREAS, on December 20, 2019, the Court issued its Order Granting Preliminary Approval of  
14 Class Action Settlement and Release (entering Petitioners’ proposed order); and on the same day its  
15 Order, Motion for Preliminary Approval of Class Settlement Granted (entering the Court’s tentative  
16 order); and

17 WHEREAS, due and adequate notice having been given to the Class of the proposed Settlement  
18 Agreement and the pending motions, as required by the Court’s orders, and upon consideration of all  
19 papers filed and proceedings had herein, and good cause appearing;

20 NOW, IT IS ORDERED AND JUDGMENT IS HEREBY ENTERED PURSUANT TO THE  
21 FOLLOWING:

- 22 1. The Court incorporates by reference in this Final Approval Order and Judgment the  
23 capitalized defined terms set forth in the Settlement Agreement, attached hereto as **Exhibit A**.
- 24 2. This Court has subject matter jurisdiction of this matter and all claims asserted against The  
25 Regents, and jurisdiction over all Parties, including all Class Members.
- 26 3. For purposes of this Final Approval Order and Judgment, including for purposes of  
27 settling the Released Claims in accordance with the Settlement Agreement and for purposes of California

1 Code of Civil Procedure Section 382, the following persons are members of the “Class”:

2 All University of California Retirees who worked at Lawrence Livermore National  
3 Laboratory (LLNL), who were eligible for University of California-sponsored group  
4 health plan coverage when they retired, and who retired prior to October 1, 2007 and  
5 received University-sponsored group health plan coverage after retiring until November  
6 30, 2007 in connection with transfer of LLNL’s management to Lawrence Livermore  
7 National Security (LLNS), and

8 Spouses, surviving spouses, or dependents, who were eligible for University-sponsored  
9 group health plan coverage as a consequence of a University of California employee’s  
10 retirement after working at LLNL, or death while working at LLNL, and who received  
11 University-sponsored group health plan coverage until November 30, 2007 in connection  
12 with transfer of LLNL’s management to LLNS.

13 4. The Court hereby certifies for settlement purposes the Class, which it provisionally  
14 certified for settlement purposes in the Order Granting Preliminary Approval of Class Action Settlement  
15 and Release (12/20/19). Excluded from the Class are any persons who timely and properly opted-out of  
16 the Class following notice ordered by the Court and mailed on or about January 21, 2015, and on or about  
17 August 4, 2017 (“Opt-Outs”). The Court finds that a full and fair opportunity has been previously  
18 afforded to the Class Members to opt- out of the Class. Opt-Outs shall not receive any benefits of the  
19 terms of the Settlement Agreement, and shall not be bound by this Final Approval Order and Judgment.

20 5. The Court reaffirms that this Action is properly maintained as a class action for settlement  
21 purposes and that Class Counsel and the Petitioners, as Class Representatives, fairly and adequately  
22 represent the interests of the Class. In support of its conclusion that this Action is properly maintained as  
23 a class action, for settlement purposes, the Court finds as follows:

24 (a) the Class Members are so numerous that joinder of all members is  
25 impracticable;

26 (b) there are questions of law and fact common to the Class Members, and these  
27 questions predominate over any questions affecting individual Class  
28 Members;

(c) the named Class Representatives’ claims are typical of the claims of the Class  
Members;

1 (d) the named Class Representatives and Class Counsel have adequately  
2 represented and will continue to adequately represent and protect the interests  
3 of the Class;

4 (e) class-wide treatment of the disputes raised in this Action is superior to other  
5 available methods for adjudicating the controversy before this Court;

6 (f) manageability issues do not prevent certification for settlement purposes; and

7 (g) the Class has been objectively defined and can and has been ascertained.

8 6. The form, content, and method of dissemination of the notice given to the Class Members  
9 were adequate and reasonable, and constituted the best notice practicable under the circumstances. The  
10 notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and  
11 conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such  
12 notice, and said notice fully satisfied the requirements of California Rules of Court, Rule 3.766(e) and (f),  
13 and due process.

14 7. The Court finds that a full and fair opportunity has been afforded to the Class to object and  
15 to participate in the hearing convened to determine whether the Settlement Agreement should be given  
16 final approval. No objections were made by the Class Members to the Settlement Agreement. The Court  
17 hereby determines that all members of the Class are bound by this Final Approval Order and Judgment.

18 8. After considering (1) the strength of the Petitioners' case; (2) the risk, expense,  
19 complexity, and likely duration of further litigation, including appeal; (3) the risk of maintaining class  
20 action status throughout the trial and any appeal; (4) the benefits offered to the Class in settlement; (5)  
21 the extent of discovery completed and the stage of the proceedings; (6) the experience and views of  
22 counsel; and (7) the reaction of the Class Members to the proposed Settlement Agreement, the Court  
23 hereby finds that the Settlement Agreement, including the exhibits thereto, is in all respects fair,  
24 reasonable, and adequate and in the best interests of the Class. In addition, the Court finds that there was  
25 no collusion in connection with the Settlement Agreement, that the Settlement Agreement has been  
26 entered into in good faith, that the Settlement Agreement was the product of informed and arm's-length  
27

1 negotiations among competent counsel, and that the record is sufficiently developed to have enabled the  
2 Class Representatives and The Regents to adequately evaluate and consider their respective positions.  
3 Accordingly, the Court hereby fully, finally and unconditionally approves the Settlement Agreement.

4 9. The Settlement Agreement represents a fair resolution of all claims asserted on behalf of  
5 Petitioners, as Class Representatives, and the Class in this Action, and fully and finally resolves all such  
6 claims. The Settlement Agreement is in compliance with all applicable requirements of the California  
7 Code of Civil Procedure, the California Civil Code, the California Rules of Court, the California  
8 Constitution and the United States Constitution (including the Due Process Clause).

9 10. Petitioners, The Regents, and Class Members shall consummate the settlement according  
10 to the terms of the Settlement Agreement. The Settlement Agreement, and each and every term and  
11 provision thereof, shall be deemed incorporated herein as if explicitly set forth herein and shall have the  
12 full force and effect of an order of this Court.

13 11. The Regents and each member of the Class shall forever be bound by the Settlement  
14 Agreement, including the Releases set forth in the Settlement Agreement, and by this Final Approval  
15 Order and Judgment.

16 12. Each Released Claim of each Class Member is hereby extinguished as against the  
17 Released Parties. Petitioners and each Class Member shall be deemed conclusively to have  
18 compromised, settled, discharged, and released the Released Claims against the Released Parties upon  
19 the terms and conditions provided in the Settlement Agreement.

20 13. Class Members shall be and hereby are permanently barred and enjoined from instituting,  
21 filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an  
22 individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of  
23 any kind whatsoever, any action in any state court, any federal court, any regulatory authority, or in any  
24 other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Release  
25 Claims.

26 14. Neither this Final Approval Order and Judgment, the Settlement Agreement, the  
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1 settlement contained therein, nor any act performed or document executed pursuant to or in furtherance  
2 of the Settlement Agreement or the settlement: (a) is or may be deemed to be or may be used as an  
3 admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or  
4 liability of The Regents; or (b) is or may be deemed to be or may be used as an admission of, or evidence  
5 of, any fault or omission of The Regents in any civil, criminal, or administrative proceeding in any court,  
6 administrative agency, or other tribunal. The Regents may file the Settlement Agreement or the Final  
7 Approval Order and Judgment in any action that may be brought against it in order to support a defense  
8 or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,  
9 judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense  
10 or counterclaim.

11 15. Class Counsel are hereby awarded attorneys' fees in the amount of  
12 \$ \_\_\_\_\_ which is to be paid by The Regents and shall not come out of the Settlement Funds  
13 identified in Section V of the Settlement Agreement. The Court finds these amounts to be fair and  
14 reasonable and fairly compensates Class Counsel for their contributions to the prosecution of this Action  
15 and the Settlement Agreement. The Court further orders that \$500,000 of the fee award shall be kept in  
16 the Settlement Administrator's trust fund until one year after the final approval of the settlement. If the  
17 mechanisms for delivering benefits under the Settlement Agreement are running smoothly after one year,  
18 then the court will be inclined to release the hold-back of attorney fees.

19 16. In its Order Granting Preliminary Approval of Class Action Settlement and Release, the  
20 Court approved Archer Systems, LLC ("Archer") to serve as the Settlement Administrator. The  
21 Settlement Administrator shall continue to perform those duties and responsibilities that remain under the  
22 Settlement Agreement and this Final Approval Order and Judgment.

23 17. The Parties and Settlement Administrator are hereby directed to implement this Final  
24 Approval Order and Judgment and the Settlement Agreement in accordance with the terms and  
25 provisions thereof, including processing the payments provided for under the Settlement Agreement.

26 18. In its Order Granting Preliminary Approval of Class Action Settlement and Release and in  
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1 its Order Granting Establishment of a Qualified Settlement Fund and Qualified Settlement Fund  
2 Administrator (12-20-2019) (“QSF Order”), the Court directed that the Qualified Settlement Fund  
3 (“QSF”) be established to perform functions in accordance with the terms of the Settlement Agreement.  
4 The Court also appointed Archer as QSF Administrator. The QSF shall continue to operate and Archer  
5 Systems, LLC shall continue to perform those duties and responsibilities that remain under the Settlement  
6 Agreement and this Final Approval Order and Judgment. This Final Approval Order and Judgment is  
7 subject to amendment by the Court *sua sponte* or upon application of the Parties. This Court retains  
8 jurisdiction over all matters covered by, or related to, the QSF.

9         19. The Court orders that the Settlement Administrator is authorized to establish a sub-  
10 account to the QSF (“Sub-Account”) to receive the Attorney Fee Payments pursuant to Section XII of the  
11 Settlement Agreement and this Final Approval Order and Judgment, and the Court retains jurisdiction  
12 thereof. The Sub-Account, to be called LLNL Retiree Settlement Attorneys’ Fees Sub-Account, shall be  
13 operated in a manner consistent with the rules of Treasury Regulation Section 1.468B-1. The QSF Sub-  
14 Account shall remain open to receive all payments from The Regents pursuant to Section XII of the  
15 Settlement Agreement. Consistent with the QSF Order, the QSF Administrator retains the authority to  
16 conduct any and all activities necessary to administer the funds in the Sub-Account, in accordance with  
17 the Settlement Agreement and this Final Approval Order and Judgment.

18         20. The QSF Administrator is authorized to effect qualified assignments of any resulting  
19 structured settlement liability or similar vehicle within the meaning of Section 130(c) of the Internal  
20 Revenue Code to the qualified assignee and to distribute all settlement sums pursuant to the Settlement  
21 Agreement and this Final Approval Order and Judgment, subject to the following:

- 22             a. When the initial deposit of the Attorney Fee Payment is made into the Sub-Account,  
23                 \$500,000 shall be held in the account for one year after the final approval of the  
24                 Settlement Agreement. The QSF Administrator shall not authorize any distributions  
25                 of this \$500,000 without further order(s) of this Court;





1 kind or nature that the Petitioners asserted in the Third Amended Petition for Writ of Mandate, including  
2 damages, costs, expenses, penalties, and attorneys' fees. "Released Claims" includes all claims  
3 predicated on the allegations in the Third Amended Petition arising under the Employee Retirement  
4 Income Security Act of 1974 (ERISA), as amended, or other claims against all Released Parties relating  
5 to the provision or failure to provide health benefits, the level of health benefits coverage and/or the cost  
6 of health benefits. Class Members' sole avenue to resolve any future dispute regarding LLNS or any  
7 Successor Contractor's provision or failure to provide health benefits, the quality and/or quantity of the  
8 benefits, rights and features provided by the LLNS Plan or any Successor Contractor plan or the cost of  
9 the health benefits is provided for under Sections V.C and V.D of the Settlement Agreement, titled  
10 Reinstatement as Backstop for Catastrophic Events and Remedies for any Material Change in Benefits by  
11 LLNS. Notwithstanding the foregoing, Class Members are not prohibited from appealing eligibility or  
12 benefit determinations pursuant to the claims and administration procedures for the applicable plan in  
13 which the Class Member participates. For the avoidance of doubt, "Released Claims" excludes future  
14 claims, if any, against LLNS or a Successor Entity relating to actions or omissions by LLNS or a  
15 Successor Entity that take place or occur 20 years or more after the Effective Date. "Released Claims"  
16 excludes claims to enforce rights under pension plans, the University of California Retirement Plan  
17 ("UCRP"), the California Public Employees' Retirement System ("CalPERS"), the Radiation Exposure  
18 Compensation Act ("RECA"), or any other state or federal statute limiting the release of claims based on  
19 employment.

20           24. As of the Effective Date, The Regents, for itself, its predecessors and successors, in  
21 consideration of the benefits set forth in this Agreement, fully, finally, and forever releases the Class  
22 Members, their attorneys, beneficiaries, successors and assigns, from any and all judgments, liens,  
23 indebtedness, losses, claims, liabilities, actions, demands, rights, suits, and causes of action of whatever  
24 kind or nature that the Petitioners asserted in the Third Amended Petition for Writ of Mandate, including  
25 damages, costs, expenses, penalties, and attorneys' fees. "Released Claims" includes all claims  
26 predicated on the allegations in the Third Amended Petition arising under the Employee Retirement  
27

1 Income Security Act of 1974 (ERISA), as amended, or other claims against all Released Parties relating  
2 to the provision or failure to provide health benefits, the level of health benefits coverage and/or the cost  
3 of health benefits. Class Members' sole avenue to resolve any future dispute regarding LLNS or any  
4 Successor Contractor's provision or failure to provide health benefits, the quality and/or quantity of the  
5 benefits, rights and features provided by the LLNS Plan or any Successor Contractor plan or the cost of  
6 the health benefits is provided for under Sections V.C and V.D of the Settlement Agreement, titled  
7 Reinstatement as Backstop for Catastrophic Events and Remedies for any Material Change in Benefits by  
8 LLNS. Notwithstanding the foregoing, Class Members are not prohibited from appealing eligibility or  
9 benefit determinations pursuant to the claims and administration procedures for the applicable plan in  
10 which the Class Member participates. For the avoidance of doubt, "Released Claims" excludes future  
11 claims, if any, against LLNS or a Successor Entity relating to actions or omissions by LLNS or a  
12 Successor Entity that take place or occur 20 years or more after the Effective Date. "Released Claims"  
13 excludes claims to enforce rights under pension plans, the University of California Retirement Plan  
14 ("UCRP"), the California Public Employees' Retirement System ("CalPERS"), the Radiation Exposure  
15 Compensation Act ("RECA"), or any other state or federal statute limiting the release of claims based on  
16 employment.

17 25. As of the Effective Date, Petitioners shall further be deemed to have expressly waived and  
18 released any and all provisions, rights and benefits conferred by Section 1542 of the California Civil  
19 Code or similar laws of any other state or jurisdiction.

20 26. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the  
21 exclusive remedy for any and all Released Claims of the Releasing Parties.

22 27. The Court hereby dismisses this Action with prejudice, and without fees or costs except as  
23 provided in the Settlement Agreement and this Final Approval Order and Judgment. Petitioners and all  
24 Class Members are hereby permanently barred and enjoined from instituting, filing, commencing,  
25 prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively,  
26 representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any  
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1 action in any state court, any federal court, any regulatory authority, or in any other tribunal, forum, or  
2 proceeding of any kind, against the Released Parties that asserts any Released Claims, provided that this  
3 injunction shall not apply to the claims of any people who were otherwise Class Members but who timely  
4 and validly requested to be excluded from the Class. This permanent bar and injunction is necessary to  
5 protect and effectuate the Settlement Agreement, this Final Approval Order and Judgment and this  
6 Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction  
7 and to protect its judgments.

8 28. The Released Parties may file this Final Approval Order and Judgment in any other action  
9 that may be brought against them in order to support a defense or counterclaim based on principles of res  
10 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory  
11 of claim preclusion or issue preclusion or similar defense or counterclaim.

12 29. Nothing in this Final Approval Order and Judgment shall preclude any action to enforce  
13 the terms of the Settlement Agreement.

14 30. Without affecting the finality of this Final Approval Order and Judgment in any way, this  
15 Court retains continuing jurisdiction over the Parties and the Class Members for the administration,  
16 consummation, and enforcement of the terms of the Settlement Agreement, including the Court's  
17 monitoring and reporting functions set forth in the Settlement Agreement, pursuant to California Rule of  
18 Court 3.769(h) and California Code of Civil Procedure § 664.6.

19 31. Neither this Final Order and Final Judgment, nor the Settlement Agreement (nor any other  
20 document referred to herein, nor any action taken to carry out this Final Approval Order and Judgment)  
21 shall be construed as or used as an admission or concession by or against The Regents or Released  
22 Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability  
23 whatsoever. The Settlement Agreement and this resulting Final Approval Order and Judgment simply  
24 represent a compromise of disputed allegations.

25 32. Without further order of the Court, the Parties may agree to reasonably necessary  
26 extensions of time to carry out any of the provisions of the Settlement Agreement and to make other non-  
27

1 material modifications, in implementing the Settlement Agreement, that are not inconsistent with this  
2 Final Approval Order and Judgment.

3 33. In the event the Effective Date does not occur, this Final Approval Order and Judgment  
4 shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement  
5 Agreement, the Final Approval Order and Judgment and all orders entered in connection herewith shall  
6 be vacated and null and void.

7 34. Each side to bear their own fees and costs, except as set forth in this Final Approval Order  
8 and Judgment or other order of the Court.

9 35. Pursuant to California Rule of Court 3.771(b), the Court hereby directs Class Counsel to  
10 publish notice of this Final Approval Order and Judgment on the settlement website. Such notice shall be  
11 maintained on the website for a period of no less than 90 days. Class Counsel shall serve a copy of this  
12 Final Approval Order and Judgment on all named parties or their counsel, and the Settlement  
13 Administrator, immediately upon receipt.

14 36. A compliance hearing shall be held in this matter on \_\_\_\_\_.

15 37. The Clerk shall enter this Final Approval Order and Judgment forthwith.

16 38. This document constitutes a judgment and a separate document for purposes of California  
17 Code of Civil Procedure § 664.

18  
19 **IT IS SO ORDERED.**

20  
21 DATE: \_\_\_\_\_

22  
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24 \_\_\_\_\_  
25 Hon. Winifred Y. Smith  
26 Judge of the Superior Court  
27

# **EXHIBIT A**

## STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED, by and between Petitioners Wendell G. Moen, Jay Davis, Donna Ventura, Gregory M. Bianchini, Alan Hindmarsh, Calvin D. Wood and Sharon Wood, (collectively, "Petitioners" or "Class Representatives"), on behalf of themselves and the Class that they represent (defined below as "Class Members"), on the one hand, and Respondent The Regents of University of California (referred to herein as "The Regents" or "University of California"), on the other hand, through their duly-authorized counsel, that the proceedings in the Superior Court of the State of California, County of Alameda ("Court") captioned *Requa, et al. v. Regents of University of California*, later denominated *Moen, et al. v. Regents of University of California*, Case No. RG 10530492 (the "Action"), before the Honorable Winifred Y. Smith, is settled, fully and finally, on the terms and conditions set forth in this Agreement and the exhibits hereto, subject to and expressly conditioned upon the approval of the Court and the entry of Final Judgment.

### I. THE PARTIES

A. **THE REGENTS.** The Regents managed the Lawrence Livermore National Laboratory ("LLNL" or "Laboratory") from its inception in 1952 to 2007 as a service to the nation pursuant to a contract with U.S. Department of Energy and its predecessor agencies which own LLNL. In 2007, the U.S. Department of Energy awarded the LLNL management contract to Lawrence Livermore National Security, LLC ("LLNS"), a limited liability corporation comprised of Bechtel National, the University of California, BWX Technologies, and AECOM. LLNS began managing the Laboratory on October 1, 2007.

B. **CLASS REPRESENTATIVES.** This case involves retirees of the University of California ("University" or "UC") who worked at the Laboratory in service of the national interest. While working at the Laboratory, each retiree contributed to furthering the Laboratory's mission of strengthening the United States' security through the development and application of world-class science and technology to enhance the nation's defense. The Parties recognize the retirees' critical role in supporting the important work of the Laboratory.

The Class Representatives are retirees of the University and spouses, surviving spouses, and dependents of retirees of the University who spent all or most of their careers at the Laboratory and who retired from the University before management and oversight of the Laboratory transitioned from The Regents to LLNS on October 1, 2007. Prior to transition, the Class Representatives had been receiving University-sponsored group health plan coverage. After a period of transition following the October 1, 2007 transfer of Laboratory operations from the University to LLNS, University-sponsored group health plan coverage for the Class Representatives ended. On or about November 30, 2007, the Class Members' health plan coverage was transferred to the LLNS Health and Welfare Benefit Plan for Retirees ("LLNS Plan"). During the pendency of this litigation, two Class Representatives passed away (Robert Becker and Geores Buttner). Petitioners assert that the Class Representatives have provided invaluable service to the Class, including attending numerous meetings involving this litigation, assembling and analyzing databases, evaluating litigation and settlement options, and staying active and engaged in this case for many years, without which a successful outcome would not

have been possible. Throughout this time, the Class Representatives assert that they have been motivated primarily by a desire to reinstate University-sponsored group health care coverage for themselves and the Class Members and to restore the security of those benefits provided by the University; and secondarily to recover monetary damages resulting from the termination of University-sponsored health benefits when management was transferred to LLNS.

C. **THE CLASS MEMBERS.** On October 30, 2014, the Court certified a class of retirees “who worked at LLNL, who were eligible for University-sponsored group health plan coverage when they retired, but lost this coverage in late 2007 or early 2008 in connection with transfer of LLNL’s management to [LLNS],” as well as their “[s]pouses, surviving spouses, or dependents . . . .” On February 22, 2017, the Court issued an Order granting Petitioners’ Motion for a Complete Class List, clarifying that deceased persons remain part of the Class. The Class includes approximately 9,000 Class Members, of whom approximately 2,000 have passed away. The Class Members who were employed at LLNL, like the Class Representatives, dedicated some or all of their careers to performing work in support of the Laboratory’s mission.

## II. THE SETTLEMENT AGREEMENT

A. **COMPROMISE.** This Agreement reflects a compromise between the Parties and shall in no event be construed as an admission by any Party of the validity of any claim or defense.

B. **NO ADMISSIONS.** The Class Representatives assert an impairment of their contractual right to University-sponsored benefits. The Regents denies any wrongdoing or liability in connection with any facts or claims that have been alleged in the Action. Nevertheless, the Class Representatives and The Regents consider it desirable to resolve the Action on the terms stated herein.

C. **BEST INTERESTS OF THE CLASS.** Class Representatives believe that their claims are valid and likely to prevail if the case proceeds to trial. Nevertheless, based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the Action, Class Representatives, on behalf of the Class, have agreed to settle the Action pursuant to the provisions of this Agreement, after considering, among other things: (1) the substantial benefits to the Class under the terms of this Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and inevitable delays inherent in such litigation, including appeals regardless of which side prevails at trial; and (3) the desirability of consummating this Agreement promptly in order to provide expeditious and effective relief to the Class, all of whom are aging and have an immediate interest in securing the benefits of this Agreement as soon as possible, including receiving the distributions described in Section V.A.3.

D. **THIS AGREEMENT IS THE PRODUCT OF MEDIATION BEFORE HON. MARIA-ELENA JAMES.** This Settlement was reached after arm’s-length settlement negotiations among and between Class Counsel, Class Representatives, The Regents, and The Regents’ Counsel, including two mandatory settlement conferences before Alameda County Superior Court Judge Patrick Zika, and more than ten in-person mediation sessions and multiple

telephone conferences with the Honorable Maria-Elena James (Ret.) over the last ten months. This Settlement Agreement is the product of a mediator's proposal presented at a mediation session on April 1, 2019 and given in writing to the Parties on April 3, 2019. Both Parties preliminarily accepted the Mediator's Proposal, subject to several conditions by The Regents, on April 26, 2019. Following the preliminary acceptance of the Mediator's Proposal, the Parties continued to negotiate details regarding the potential settlement with the help of Judge James, as well as through independent arm's-length discussions. The Parties reached an agreement on all material terms on December 11, 2019.

### III. DEFINITIONS AND CONVENTIONS

#### A. DEFINITIONS

As used in this Agreement, terms have the following meaning (in alphabetical order), unless specifically provided otherwise:

1. "Action" means the class action petition filed in *Requa/Moen, et al., v. Regents of University of California*, Case No. RG 10530492, currently pending in the Superior Court of the State of California, County of Alameda, before the Honorable Winifred Y. Smith.

2. "Administration Cost" or "Administrative Costs" means the reasonable, actual and direct costs charged by the Settlement Administrator for its services and includes the costs of providing Notice to the Class of this Agreement and carrying out any other responsibility consistent with the terms of this Agreement. Administration Costs do not include other fees, costs or expenses, including Attorneys' Fees and Costs. The allocation of Administrative Costs between the parties is set forth below.

3. "Administrator" or "Settlement Administrator" means the third-party administrator retained to administer the Settlement, including providing Notice to the Class Members of this Agreement; processing payments to the Class Members; receiving, managing and distributing the Settlement Fund distributions to the Class Members in conjunction with the VEBA Trustee; and performing other tasks that are provided for in this Agreement. The Parties have agreed that the Class will engage Archer Systems, I.I.C as the Settlement Administrator, subject to Court approval.

4. "Agreement" or "Settlement Agreement" means this document.

5. "Attorneys' Fees and Costs" means such funds as may be awarded by the Court to Class Counsel to compensate all Class Counsel in the Action for their fees and expenses incurred in connection with the Action and the Settlement.

6. "Benefits Counseling Services" means services provided by a third-party to facilitate the Class Members' selection, acquisition and utilization of health insurance. The Settlement Administrator will select the third party that will provide the Benefits Counseling Services.



7. “Class Counsel” refers collectively to the law firms listed below who were appointed as Class Counsel on October 30, 2014:

Sinclair Law Office  
300 Frank H. Ogawa Plaza  
Rotunda Building, Suite 160  
Oakland, CA 94612  
Tel: (510) 465-5300  
Fax: (510) 465-5356

Carter Carter Fries & Grunschlag  
582 Market Street, Suite 518  
San Francisco, CA 94104  
Tel: (415) 989-4800  
Fax: (415) 989-4864

Calvo Fisher & Jacob LLP  
535 Pacific Avenue, Suite 201  
San Francisco, CA 94133  
Tel: (415) 374-8370  
Fax: (415) 374-8373

The law firm of Stember Feinstein Doyle Payne & Cordes, LLC, acted as counsel to Petitioners from August 2009 to November 22, 2013, when the law firm of Stember Cohn & Davidson-Welling, LLC, was substituted for Stember Feinstein. On May 28, 2014, Stember Cohn withdrew as counsel of record.

8. “Class” or “Class Member” or “Class Members” means:

All University of California Retirees who worked at Lawrence Livermore National Laboratory (LLNL), who were eligible for University of California sponsored group health plan coverage when they retired, and who retired prior to October 1, 2007 and received University-sponsored group health plan coverage after retiring until November 30, 2007 in connection with transfer of LLNL’s management to Lawrence Livermore National Security (LLNS), and

Spouses, surviving spouses, or dependents, who were eligible for University-sponsored group health plan coverage as a consequence of a University of California employee’s retirement after working at LLNL, or death while working at LLNL, and who received University-sponsored group health plan coverage until November 30, 2007 in connection with transfer of LLNL’s management to LLNS.

Excluded from the Class are any persons who timely and properly opted out of the Class following notice ordered by the Court and mailed on or about January 21, 2015, and on or

about August 4, 2017.

9. “Class Member Database” means the electronic database containing the Operative Class List. The Class Member Database will be maintained by the Settlement Administrator.

10. “Court Monitor” shall, subject to the approval of the Court, refer to Hon. Maria-Elena James.

11. “Effective Date” means the date on which the Settlement Agreement becomes effective.

(i) “Effective Date” shall be the later of the following:

a) The Court’s entry of a Final Order and Judgment (substantially in the form appended here to as **Exhibit 1**) following its final approval of Settlement if no objection by a Class Member consistent with appellate standing under *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260 (2018) has been filed or if all objections that have been filed have been withdrawn;

b) The date on which the time of appeal has expired if an objection by a Class Member consistent with appellate standing under *Hernandez* has been filed and not withdrawn; or

c) The Court’s entry of a Final Order and Judgment following the final resolution of any appeal that has been filed and is consistent with appellate standing under *Hernandez* and exhaustion of any further appeals (whether available by right, petition or writ, or otherwise).

(ii) Notwithstanding anything herein to the contrary, if any appeal is filed and not dismissed, and if the sole basis for such appeal is a challenge to a request for, or any award by the Court of, Attorneys’ Fees and Costs to be made to Class Counsel, then the Effective Date shall be the expiration of any time for appeal, review, or alteration of the Final Order and Judgment.

(iii) The Parties recognize that it is of the utmost importance to deliver the benefits of this Agreement to the Petitioners and Class Members as soon as possible, including payments to them, and therefore agree to work in good faith to expedite the resolution of any appeals that are filed in this Action.

12. “Election Data File” means a file that includes Class Members’ selections during open enrollment every calendar year. With respect to Class Members who are Medicare eligible and select benefits through ViaBenefits or a successor vendor, the Election Data File is to be produced in a manner that identifies the Class Member and the election of ViaBenefits or a successor vendor, but no additional detail with respect to additional selections made through ViaBenefits or a successor vendor. With respect to Class

Members who elect benefits through Empyrean or a successor vendor, the Election Data File is to be produced in a manner that identifies each Class Member, the plan they have selected, if any, the category of coverage they have selected (e.g., retiree only, retiree plus spouse, retiree plus family, etc.), the total cost of the plan, and the Class Members' financial cost for the premium for the selection plan.

13. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, including the regulations and guidance promulgated thereunder.

14. "Execution Date" means the date upon which the last signature is placed on this Agreement.

15. "Final Approval Hearing" or "Fairness Hearing" means a hearing held before the Court during or following which the Court will: (1) make a final decision regarding whether to finally approve this Agreement as fair, reasonable, and adequate; (2) make a determination as to the appointment of the Settlement Administrator, and any other person or entity necessary to effectuate the terms of the Agreement; (3) determine the amount of any Attorneys' Fees and Costs award; and (4) rule on the merits of any objections to this Agreement.

16. "Final Approval" or "Final Approval Order" means an order issued by the Court finally approving this Agreement as binding upon the Parties and substantially in the form attached hereto as **Exhibit 2**.

17. "Final Order and Judgment," which shall occur after the Court rules on the merits of any objections of this Agreement, means collectively the order and the judgment entered by the Court:

- (i) Giving final approval to the terms of this Agreement as fair, adequate, and reasonable;
- (ii) Providing for the orderly performance and enforcement of the terms and conditions of the Agreement;
- (iii) Granting Final Approval;
- (iv) Discharging the Released Parties of and from all further liability for the Released Claims;
- (v) Permanently barring and enjoining Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims; and

(vi) The actual form of the Final Order and Judgment entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Agreement and will be substantially in the form attached as Exhibit 1.

18. “First Payment Date” is the date by which The Regents will deposit with the Settlement Administrator the sum of \$15,000,000. The First Payment Date is thirty calendar days (30) after the Effective Date. The Regents will deposit the sum at the direction of the Settlement Administrator into the Qualified Settlement Fund established for the benefit of the Class Members by the Settlement Administrator.

19. “Form of Notice” means a notice approved by the Court, which the Settlement Administrator shall send to the Class Members by first class mail and make available on a settlement website created and maintained by the Settlement Administrator. The Form of Notice will at a minimum contain the information set forth in Section VI.B.1.iii, below.

20. “IRC” means the Internal Revenue Code of 1986, as amended, including the regulations and guidance promulgated thereunder.

21. “Notice of Settlement” means the notice that will be provided to the Class Members pursuant to California Rules of Court, Rule 3.769(f), the Preliminary Approval Order and this Agreement.

22. “Notice Date” is the date by which the Notice of Settlement shall be completed by the Administrator and shall be completed in no less than thirty (30) days after Preliminary Approval unless a different date is ordered by the Court.

23. “Objection Deadline” means forty-five (45) days following the Notice Date unless a different date is ordered by the Court.

24. “Operative Class List” means the list of Class Members, which shall contain the most recent contact information, including current mailing addresses, whether the Class Member is living or deceased, and, if deceased, his/her/their date-of-death, and which shall be updated as new information becomes available. A list of all Class Members is attached hereto as **Exhibit 3**. This list will remain confidential and its contents will not be publicly filed with the Court. In no circumstance will this list be expanded upon for any reason, other than by order of the Court under the circumstances set forth below. The Operative Class List shall include everyone who was part of the Class as of the date of the October 30, 2014 Certification Order, plus anyone whose name has been added by agreement of the Parties. If the Settlement Administrator becomes aware of any individuals who fall within the Class definition contained herein but were omitted from the Class List, the Settlement Administrator shall, upon obtaining adequate verification of the person’s status as a Class Member, submit a proposed order to the Court adding such individuals to the Operative Class List; provided, that the Class, The Regents and the Court Monitor shall be given a reasonable opportunity to oppose or support such proposed order. This provision does not place any burden on The Regents to seek out additional putative Class Members.

25. “Party” or “Parties” means individually or collectively the named Petitioners and The Regents as defined herein.

26. “Policy Holder” is the Class Member who is an individual retiree, spouse, or child (over 18 and under 26, or the court appointed guardian of a minor under 18 whose parents have predeceased them) who is contractually responsible for the payment of the retiree health care premium as determined by LLNS or a Successor Contractor.

27. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court preliminarily approving the terms and conditions of this Agreement and the Settlement, substantially in the form of **Exhibit 4** attached hereto.

28. “Qualified Settlement Fund” or “QSF” is a fund that will be established by the Settlement Administrator under IRC § 468B for the purpose of receiving and distributing the Settlement Funds.

29. “Regents’ Counsel” means the following attorneys:

CHARLES F. ROBINSON #113197  
MARGARET L. WU #184167  
NORMAN J. HAMILL #154272  
The Regents of the University of California  
Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200

JENNIFER S. ROMANO #195953  
Crowell & Moring LLP  
515 S. Flower Street  
Los Angeles, CA 90071

J. DANIEL SHARP #131042  
Crowell & Moring LLP  
3 Embarcadero Center, 26th Floor  
San Francisco, CA 94111

30. “Released Claims” means, subject to the limitations in Section IX below, any and all judgments, liens, indebtedness, losses, claims, liabilities, actions, demands, rights, suits, and causes of action of whatever kind or nature that the Petitioners asserted in the Third Amended Petition for Writ of Mandate, including damages, costs, expenses, penalties, and attorneys’ fees. “Released Claims” includes all claims predicated on the allegations in the Third Amended Petition arising under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or other claims against all Released Parties relating to the provision or failure to provide health benefits, the level of health benefits coverage and/or the cost of health benefits. Class Members’ sole avenue to resolve any future dispute regarding LLNS or

any Successor Contractor's provision or failure to provide health benefits, the quality and/or quantity of the benefits, rights and features provided by the LLNS Plan or any Successor Contractor plan or the cost of the health benefits is provided for under Sections V.C and V.D of this Agreement, titled Reinstatement as Backstop for Catastrophic Events and Remedies for any Material Change in Benefits by LLNS. Notwithstanding the foregoing, Class Members are not prohibited from appealing eligibility or benefit determinations pursuant to the claims and administration procedures for the applicable plan in which the Class Member participates. For the avoidance of doubt, "Released Claims" excludes future claims, if any, against LLNS or a Successor Entity relating to actions or omissions by LLNS or a Successor Entity that take place or occur 20 years or more after the Effective Date. "Released Claims" excludes claims to enforce rights under pension plans, the University of California Retirement Plan ("UCRP"), the California Public Employees' Retirement System ("CalPERS"), the Radiation Exposure Compensation Act ("RECA"), or any other state or federal statute limiting the release of claims based on employment.

31. "Released Party" or "Released Parties" means The Regents, as well as any of its present or former employees, officers, members of the Board of Regents, agents, attorneys, affiliates, successors, assigns, and all other representatives. "Released Parties" also includes LLNS, the National Nuclear Security Administration ("NNSA"), and the U.S. Department of Energy, as well as any of these entities' present or former employees, officers, members of the Board of Regents, agents, attorneys, affiliates, successors, assigns, and all other representatives.

32. "Releasing Parties" means Petitioners and each and every Class Member, for themselves and each of their respective beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, current and former employees, officers, agents, directors, attorneys, administrators, legal representatives, conservators, assigns, affiliates, and with respect to minors, parents, and guardians.

33. "Settlement" means the terms and conditions set forth in this Agreement.

34. "Settlement Fund" means the sum of \$80,000,000 to be paid by The Regents to the Settlement Administrator pursuant to Section V.A.1 and V.A.2. "Settlement Funds" means money within the Settlement Fund.

35. "Successor Contractor" means the entity awarded the contract by the federal government to manage and operate the Lawrence Livermore National Laboratory after LLNS, if LLNS ceases to manage and operate the Laboratory, and any entity thereafter awarded the contract to manage and operate the entirety of the Laboratory.

36. "Voluntary Employees' Beneficiary Association" or "VEBA" means the "University of California Livermore Retirees Health Insurance Trust," which will be formed by the Class Members through a trust agreement (the "VEBA Trust Agreement"). The VEBA will be used to provide funds for the Class Members' purchase of health insurance or any other benefit permissible under IRC § 501(c)(9). The VEBA will be an organization described

in IRC § 501(c)(9). Aside from The Regents' obligation to make the contributions to the Settlement Fund under this Agreement, the Released Parties shall not have any role, responsibility or liability in connection with the VEBA or its ongoing existence, including, but not limited to, under the IRC and any other applicable laws.

37. “VEBA Trustee” or “Trustee” means the third-party trustee of the VEBA, which is retained to receive and manage the funds for the VEBA, to oversee the Supplemental Payments to the Class Members from the VEBA, and to execute all other duties set forth in the VEBA Trust Agreement or as directed by the Court. At the end of the trust term as set forth in Section V.A.14 below, the Trustee shall terminate the VEBA and distribute the corpus, if any, pursuant to the terms of this Agreement. The Settlement Administrator will engage the initial VEBA Trustee, whose appointment is subject to Court approval.

## **B. CONVENTIONS**

1. All personal pronouns used in this Agreement shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary.

2. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference.

3. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

## **IV. THE LAWSUIT**

### **A. THE UNDERLYING DISPUTE**

1. Class Representatives and the Class Members are retirees (or spouses, surviving spouses, or dependents of retirees) of the University of California who worked at the Laboratory. The Regents managed the Laboratory from 1952 to 2007 as a service to the nation pursuant to a contract with the U.S. Department of Energy (and its predecessor agencies), which owns LLNL. From 1961 to 2007, The Regents provided University-sponsored group health plan coverage to employees and retirees who worked at the Laboratory. In 2007, the U.S. Department of Energy awarded the management contract to LLNS, a private-sector limited liability company. LLNS began managing the Laboratory on October 1, 2007.

2. Certain Class Members who were employed at LLNL retired from the University on or before September 30, 2007. After the Class Member employees at LLNL retired, the Class Member employees at LLNL and their spouses, surviving spouses, and/or dependents received University-sponsored group health plan coverage.

3. As part of the October 1, 2007 transition in Laboratory management, Class Members were transitioned from University-sponsored retiree health plans to the LLNS Health and Welfare Benefit Plan for Retirees (“LLNS Plan”).

4. The LLNS Plan is a private-sector plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, *et seq.* Health and welfare benefits, including retiree health care benefits, are expressly not vested under ERISA and may be modified or terminated at any time. *See* 29 U.S.C. §§ 1051(1), 1081(a)(1); *M&G Polymers USA, LLC v Tackett*, 135 S.Ct. 926, 933 (2015).

5. Petitioners contend that in addition to being not vested and being less secure, for some Class Members, the health care benefits provided by LLNS cover less and cost more than the University-sponsored coverage.

## B. THE LITIGATION

1. This action was initially filed on August 11, 2010. A demurrer was sustained to the First Amended Petition, and on December 31, 2012, the decision was reversed by the Court of Appeal. *Requa v. Regents of Univ. of Cal.*, 213 Cal.App.4th 213 (2012).

2. Petitioners filed a Second Amended Petition on October 15, 2013, adding class allegations and several more petitioners as class representatives (Robert Becker, Gregory M. Bianchini, Geores Buttner, Alan Hindmarsh, Steve Hornstein, Calvin Wood, and Sharon Wood). The Regents filed an Answer and Return on December 6, 2013.

3. On December 23, 2013, Joe Requa withdrew for medical reasons. The case proceeded as *Moën v. Regents of Univ. of California*.

4. Petitioners filed the operative Third Amended Petition on March 27, 2014. The parties stipulated that the Answer filed on December 6, 2013 would constitute The Regents’ Answer to the Third Amended Petition.

5. On October 30, 2014, the Court certified a class of retirees “who worked at LLNL who were eligible for University-sponsored group health plan coverage when they retired, but lost this coverage in late 2007 or early 2008 in connection with transfer of LLNL’s management to [LLNS],” as well as their “[s]pouses, surviving spouses, or dependents . . . .” The Court also appointed Petitioners to represent the Class and appointed Class Counsel. Notice was mailed to approximately 4,500 putative class members on or about January 21, 2015. Approximately 150 putative Class Members opted out.

6. In 2015, the Court adopted a trial plan proposed by The Regents to decide five issues: (1) whether The Regents was authorized to enter into bilateral contracts governing employment relations, including group medical plans; (2) whether The Regents intended to create private contractual rights; (3) whether the parties’ conduct implied an offer and acceptance of mutual promises creating a bilateral contract; (4) whether the terms of any



such contract included the same health care coverage during retirement as other UC retirees; and (5) whether The Regents unreasonably impaired Appellants' contractual rights in violation of Cal. Const., Art. I, § 9.

7. The Court decided to hear Issues (1) and (2) in Phase I of the trial.

8. Phase I was heard and submitted on September 11, 2015. On December 8, 2015, the Court ruled that (1) The Regents was legally authorized to enter into bilateral contracts governing the employment relations; and (2) The Regents enacted legislation with language or circumstances accompanying its passage that clearly evinced a legislative intent to create private rights of a contractual nature enforceable against The Regents.

9. Trial for Phase II was initially set for June 24, 2016 but was continued as the parties conducted further discovery. On February 22, 2017, the Court ordered The Regents "to comply with the court's prior order to provide a complete class list." Petitioners identified additional class members and revised the class list. On or about August 4, 2017, Petitioners mailed notice to approximately 4,500 additional class members. Approximately 50 putative class members opted out.

10. On July 7, 2017, the Parties made cross-motions for summary adjudication. The Court denied Petitioners' motion on October 27, 2017 and denied The Regents' motion on November 27, 2017.

11. The Regents filed a motion to decertify the class on August 23, 2017. The Court granted the motion. Petitioners appealed. On August 1, 2018 the Court of Appeal reversed the decertification order. *Moen v. Regents of Univ. of Cal.*, 25 Cal.App.5th 845 (2018). Trial was then scheduled for February 11, 2019, but was continued to May 6, 2019, and then continued to a date to be determined by the Court.

12. On August 20, 2018, the Court ordered a mandatory settlement conference with Judge Patrick Zika, who met with the parties on September 7, 2018 and October 12, 2018. Judge Zika eventually declined to entertain further settlement discussions due to his schedule and the complex issues involved in the case. Judge Zika suggested the Parties retain a private mediator.

13. On November 2, 2018, Petitioners submitted a Revised Trial Plan (Including Damages).

14. In November 2018, the parties agreed to work with Honorable Maria-Elena James (Ret.) as a private mediator, and a working group convened to exchange information.

15. The Parties have engaged in over ten in-person mediation sessions and numerous telephone conferences with Judge James. The Parties have exchanged substantial amounts of information. While the Parties continued to negotiate, discovery was completed, and expert discovery of Petitioners' experts was begun. The Parties filed motions on April 16,

2019 and began exchanging trial exhibits.

16. In a mediation session on April 1, 2019, Judge James made a Mediator's Proposal, which was then given in writing to the Parties on April 3, 2019. On April 26, 2019, both Parties preliminarily accepted the Mediator's Proposal, subject to several conditions by The Regents. The Parties thereafter continued to negotiate the terms of the Settlement with Judge James' assistance.

17. On July 22, 2019, Judge James made a further Mediator's Proposal Re Administrative Costs and Benefits Counseling.

18. On November 21, 2019, Steve Hornstein withdrew for medical reasons.

## V. CLASS RELIEF AND DISTRIBUTION OF SETTLEMENT BENEFITS

In full, complete, and final settlement and satisfaction of the Action and all Released Claims against the Released Parties, and subject to all the terms, conditions, and provisions of this Agreement, including Preliminary Approval and Final Approval, The Regents shall provide the following:

### A. MONETARY PAYMENTS FROM THE REGENTS

1. Funding Amount. Pursuant to the payment schedule set forth below, The Regents will pay to the Settlement Administrator, the sum of \$80,000,000 to create the Settlement Fund, which, in addition to the other purposes set forth below, will be used to enhance the Class Members' existing retiree health benefits. The Settlement Fund will be initially maintained by the Settlement Administrator in a trust account in compliance with IRC Section 468B. Any and all interest earned by the Settlement Fund shall be utilized pursuant to the terms of this Agreement and in compliance with IRC Section 468B and shall not be used for any other purpose. Subject to the payment obligations set forth below, Settlement Funds can be transferred to investment accounts or products, as determined to be prudent by the Settlement Administrator and the other provisions of this Agreement and in compliance with IRC Section 468B.

2. Payment Schedule. The Regents will make the following payments into the Settlement Fund trust account:

- First Payment: Within 30 days of the Effective Date of this Agreement, The Regents will deposit \$15 million.
- Second Payment: One year after the Effective Date, The Regents will make a further payment of \$15 million.
- Third Payment: Two years after the Effective Date, The Regents will make a further payment of \$15 million.

- Fourth Payment: Three years after the Effective Date, The Regents will make a further payment of \$10 million.
- Fifth Payment: Four years after the Effective Date, The Regents will make a further payment of \$10 million.
- Sixth Payment: Five years after the Effective Date, The Regents will make a further payment of \$10 million.
- Seventh Payment: Six years after the Effective Date, The Regents will make a further payment of \$5 million.

The Regents shall have no discretionary authority regarding the payment of the funds to the Settlement Administrator, nor any discretionary authority regarding the use of the funds by the Settlement Administrator, including, but not limited to, regarding any payments made by the Settlement Administrator to the Class Members in accordance with Section V.A.3 or otherwise under this Agreement.

3. Use of Settlement Funds. In furtherance of the purposes of the underlying litigation, the Settlement Funds, and any interest or growth generated from the Settlement Funds, will be used for five primary functions described in **Schedule A**. First, the Settlement Funds will be used to pay certain costs of administration of the Settlement Fund. Second, the Settlement Funds will be used to provide a one-time distribution to all Class Members in the amount of \$1,000. The Initial \$1,000 Payment will be made from the QSF and not the VEBA. Third, the Settlement Funds will be used to pay certain eligible Class Members additional amounts for damages incurred as the result of the difference in premium costs between health care plans provided by LLNS and University-sponsored group health care plans which accrued between October 15, 2010, and the Effective Date of this Agreement (referred to as “Past Damage Payments” or “Past Damages”). Fourth, the Settlement Funds will be used to provide annual payments through the VEBA to Policy Holders going forward to provide a supplement to benefits provided by LLNS (or a Successor Contractor) for health care coverage or any benefit permissible under IRC § 501(c)(9) (“Supplemental Payments”). The Settlement Funds designated for Supplemental Payments will be transferred into the VEBA, from which they will be distributed as determined by the VEBA Trustee pursuant to the terms of this Agreement. In the event the Settlement Administrator or VEBA Trustee determines that an alternative distribution method for Supplemental Payments is more beneficial to the Class Members, he/she/it shall seek Court approval to implement such alternative distribution method. The Regents shall have no authority to direct or control any determination by the Settlement Administrator or VEBA Trustee regarding if and/or to what extent the Settlement Funds are transferred to the VEBA or used to make any Supplemental Payments. The Regents shall have no role, responsibility or interest in connection with any issue relating to the distribution of the Settlement Funds, except as provided in Sections V.A.1 and V.A.2. At no time shall any funds paid, or to be paid, by The Regents into the Settlement Fund be deemed to be assets paid, or payable by The Regents to the VEBA. And fifth, the Settlement Funds will be used to pay a Final Distribution.

4. Establishment and Operation of the VEBA.

(i) The VEBA will be established by the Class Representatives and administered by the VEBA Trustee for the purpose of providing benefits to the Class Members. In the event that the VEBA Trustee is unable or unwilling to continue administration of the VEBA for any reason, a replacement trustee shall be selected by the Settlement Administrator, subject to Court approval. Settlement Funds that the Settlement Administrator receives that are not needed for Administrative Costs, monitoring and reports to the Court, the Initial \$1,000 Payment, Past Damages Payments, or the Benefit Counseling Services will be transferred to the VEBA Trust unless otherwise determined by the Court.

(ii) The Regents shall not be responsible for the VEBA in any way, including, but not limited to, for the creation and establishment of the terms of the VEBA or the VEBA Trust instrument, the timely and proper filing of the application for recognition of exemption under Internal Revenue Code Section 501(a) (Form 1024), the timely and proper filing of the annual returns for an organization exempt from tax (Form 990), the timely and proper filing of the annual reports or any other return required to be filed by or with respect to the VEBA or the benefits provided thereunder. The Regents shall not be responsible for ensuring the VEBA's compliance with the IRC or any other applicable laws and shall have no liability in the event the VEBA is deemed to violate any applicable laws. Other than making the contributions to the Settlement Fund, The Regents shall have no responsibility or liability, whether or not all or a portion of such Settlement Funds are used to fund the VEBA, for the VEBA's continuing administration and operation or the VEBA's continuing ability to provide benefits. The Regents shall have no authority or obligation to assess or determine the fairness of the benefit design of the VEBA or the administration and operation of the VEBA, including, but not limited to, establishing the distributions which eligible Class Members may receive under the VEBA, and shall not be deemed to be a fiduciary or sponsor of the VEBA. The Regents shall not be responsible for any costs of the administration of the VEBA, including, but not limited to, fees for lawyers, auditors, and other professionals. The Regents shall not be responsible for establishing a procedure for the selection or replacement of the VEBA Trustee or monitoring of the Settlement Administrator.

(iii) The Class Representatives, by virtue of their sharing an employment related common bond with the Class Members, shall establish the VEBA Trust as a "voluntary employees' beneficiary association" under IRC § 501(c)(9), and the regulations and guidance promulgated thereunder.

(iv) The VEBA shall be responsible for all costs for its administration commencing on the day following the selection of the VEBA Trustee and continuing thereafter.

5. Allocation of Settlement Funds. The allocation of Settlement Funds between Past Damages and Supplemental Payments shall be made as set forth in the attached **Schedule A.**

6. Amount of Funds Available for Distribution Each Year as Supplemental Payments. Each year, following the selection of the initial VEBA Trustee, such Trustee will cause the distribution of an amount of funds from the VEBA as Supplemental Payments. The remaining funds will be invested, as determined by the VEBA Trustee. An actuarial evaluation of the anticipated Supplemental Payments, with assumptions regarding healthcare expense market trends, return on investments, and the life span of the Class Members, will be determined on an annual basis. The amount of actual Supplemental Payments will be determined each year as set forth in Section V.A.7 below.

7. Supplemental Payments. For the duration of the VEBA and to the extent sufficiently funded, a Supplemental Payment for each Policy Holder who is living will be calculated to provide a subsidy for the premium paid by each Policy Holder consistent with the formulas and guidelines in **Schedule C** based upon the Policy Holder's health plan choice and the number of Class Members to be covered by the plan (e.g. retiree, retiree plus spouse, retiree plus spouse plus child, etc.). The VEBA Trustee will cause the Supplemental Payments to be delivered to the Policy Holder. Where a Class Member(s) is/are covered under a health plan under the name of another Class Member who is the Policy Holder of said plan, the Supplemental Payments for all such individuals will be provided to the Policy Holder only. The Settlement Agreement and Schedule C provide for only one payment per family, to the Policy Holder. No distinct payments will be made to Class Members in a family unit who are not the Policy Holder.

(i) The formulas for the Supplemental Payments shall be calculated on a yearly basis as provided in **Schedule C**. In the event the Settlement Administrator or VEBA Trustee determines that an alternative distribution method for Supplemental Payments is more beneficial to the Class Members, he/she/it shall seek Court approval to implement such alternative distribution method.

(ii) On or before December 31 of each year or by the preceding business day if December 31 is not a business day, The Regents shall provide to the Settlement Administrator the following information to the extent the information is available to The Regents in its own records or through LLNS or a Successor Contractor: (1) a list of all Class Members who have passed away during the past year together with the date-of-death, and (2) the most current Election Data File. The Parties acknowledge that this information is needed by the VEBA Trustee to make decisions about Supplemental Payments in the following year. While The Regents agrees to provide the most accurate information available to it, it cannot guarantee and is not responsible for the accuracy of the information provided under this section. The Regents has no obligation to provide the above information to the Settlement Administrator more than once per year notwithstanding mid-year adjustments or changes to benefits that may occur.

(iii) At any time that the Election Data File, or any data and information in The Regents' possession, custody, or control is needed and not provided, the Settlement Administrator may seek an order from the Court on shortened notice requesting an order directing the data or information to be provided.

8. Restrictions on Supplemental Payments. No Supplemental Payments will be made to the heirs or the estate of a Class Member after the Class Member dies, or to Class Members who do not elect to participate in a LLNS or Successor Contractor plan, or to Class Members who are no longer eligible for retiree health benefits through LLNS or a Successor Contractor due to a change that terminates eligibility such as divorce or age.

9. Changed Status. To the extent a living Class Member changes categories of eligibility, the Supplemental Payment the following year shall be determined based on the changed status.

10. Allocation of Past Damages Payments. As soon as possible after The Regents makes the First Payment, each Class Member will receive the Initial \$1,000 Payment. The Initial \$1,000 Payment shall be deducted from any amount that a given Class Member is entitled to receive as a Past Damages Payment. The Past Damages Payments shall be made pursuant to the allocations in **Schedule B**.

11. Past Damages Payments to Living Class Members. If no records or information indicate that a Class Member is deceased, the Settlement Administrator will deliver the Past Damages Payments to the Class Member by sending a check via first class mail to the Class Member's mailing address in the Class Member Database. Upon request by the Settlement Administrator, The Regents will take reasonable steps to access its pension records to provide information in its possession, custody, and control regarding whether Class Members are deceased and will reasonably cooperate in obtaining relevant information from CalPERS for the purpose of providing Past Damages Payments, including, but not limited to, issuing and enforcing subpoenas, communicating with CalPERS and responding to reasonable requests from the Settlement Administrator.

12. Initial \$1,000 Payment and Past Damages Payments to Deceased Class Members. In determining where and to whom Past Damages Payments should be sent, the Settlement Administrator will adhere to the following guidelines:

(i) If records or information indicate that a Class Member is deceased, the Settlement Administrator will attempt to identify the Class Member's personal representative or successor-in-interest (often, the "next of kin"). Where the Settlement Administrator has not ascertained the identity of a deceased Class Member's personal representative or successor-in-interest, the envelope containing the Notice of Settlement will be addressed to the "Estate of [Name of Deceased Class Member]" and mailed to the deceased Class Member's last known address.

(ii) The Notice of Settlement mailed to the Class Members will state: "If the Class Member to whom this letter is addressed is deceased, please inform the personal representative or successor-in-interest (often, the 'next of kin') of that Class Member about this letter." The mailed Notice of Settlement will include a self-addressed return envelope and a form for a personal representative or successor-in-interest of the Class Member to identify themselves, sign, and return to the Settlement Administrator ("Class

Member Data Form”).

(iii) If the Class Member Data Form is returned, and the person identified as the personal representative or successor-in-interest on the Class Member Data Form matches the name of any spouse or dependent in the Class Member Database associated with the deceased Class Member, the Settlement Administrator will mail the Past Damages Payment to the personal representative or successor-in-interest without further verification. If the Class Member Data Form is returned, and the person identified as the personal representative or successor-in-interest does not match the name of any spouse or dependent in the Class Member Database, the Settlement Administrator will take reasonable steps to verify the identity of the personal representative or successor-in-interest before sending any payment.

(iv) If records or information indicate that a Class Member is deceased and no Class Member Data Form is returned, the Settlement Administrator will take reasonable steps to identify the personal representative or successor-in-interest. If the person identified by the Settlement Administrator as the personal representative or successor-in-interest matches the name of any spouse or dependent in the Class Member Database associated with the deceased Class Member, the Settlement Administrator will mail the Past Damages Payment to the personal representative or successor-in-interest without further verification. If the person identified by the Settlement Administrator as the personal representative or successor-in-interest does not match the name of any spouse or dependent in the Class Member Database associated with the deceased Class Member, the Settlement Administrator will require that person to execute an affidavit stating that the person is the successor-in-interest or personal representative, or utilize any other satisfactory documentary proof, before mailing the Past Damages Payment.

(v) If the Settlement Administrator is unable to identify or locate a deceased Class Member’s personal representative or successor-in-interest, and one year has passed since the Effective Date, the Past Damages Payment due to that deceased Class Member will escheat to the portion of the Settlement Fund allocated for Supplemental Payments to the other Class Members.

(vi) The Settlement Administrator will exercise its best judgment in determining the identity of personal representatives and successors-in-interest, including whether verification of this relationship has been adequately established. The Settlement Administrator shall not be held liable by any Class Member, or the personal representative or successor-in-interest of any Class Member, for misidentifying any personal representative or successor-in-interest of a deceased Class Member.

13. Dispute Resolution Procedure for Class Members regarding Payments from Settlement Fund. If a Class Member believes that the amount of payment that they receive as either a Supplemental Payment or Past Damages Payment is in error, they may submit a written Request for Review to the Settlement Administrator. The Request for Review must contain appropriate documentation regarding the issue and must be signed under penalty of perjury. The Settlement Administrator may require specific documentation from the Class

Member before determining if the Request for Review is meritorious and may consult with the VEBA Trustee or other professional in making any decisions. The Settlement Administrator will state in writing whether the Request for Review is being granted or not.

14. Sunset Provision and Final Distribution. The Supplemental Payments are intended to continue until December 31, 2040; or until such time as the Settlement Administrator and the VEBA Trustee estimate in good faith that 1,000 or fewer Class Members are still living. In January 2040, or at such time as the Settlement Administrator and the VEBA Trustee estimate that 1,000 or fewer Class Members are living, whichever is earlier, after paying any remaining Administration Costs, the funds remaining in the VEBA Trust, subject to any amount that may be deducted in taxes, will be returned to the QSF for distribution to the Class Members who are living consistent with the terms of this Agreement. The VEBA Trust will then be closed and terminated.

15. Default by Regents. If The Regents defaults on any payment obligation under this Agreement and such default is not cured within fifteen (15) business days thereafter, the Settlement Administrator and/or Class Counsel may seek an order from the Court on shortened notice requiring immediate payment of the sum due in addition to any additional amount determined by the Court is necessary to make the Settlement Fund whole for the delay and any appropriate penalty for non-payment as consequential damages and the payment of the legal fees of the Settlement Administrator, and/or the Class Counsel.

16. Taxability of Benefits. The Supplemental Payments are being structured to avoid being taxable in light of their characterization as payments that fall within IRC § 501(c)(9). The Initial \$1,000 Payment and Past Damages Payment will likely be deemed taxable and the Settlement Administrator will provide 1099 forms to individual Class Members. The Settlement Administrator and the VEBA Trustee are responsible for distribution of the benefits provided to Class Members. The Regents shall bear no responsibility for the tax liability associated with any payment to the Class Members.

17. Discretion of Settlement Administrator. In the event a VEBA is not formed, or is formed and is discontinued or terminated, the Settlement Administrator shall have discretion to present to the Court alternative plan designs and/or an alternative plan for distribution of the Settlement Fund to Class Members consistent with the purposes and intent of this Agreement.

18. Total Contribution by The Regents. The Regents' total financial contribution for this settlement will be the total of \$80 million for the Settlement Fund as set forth in Section V.A, \$4.5 million for Administrative Costs and Benefits Counseling Services as set forth in Section V.B, The Regents' share of expenses for court monitoring as set forth in Section V.E.2, and attorneys' fees and costs as set forth in Section XII and pursuant to Court order. The Regents shall be responsible for no other financial contribution, costs, or expenses as part of this Settlement.



## B. UNIVERSITY-FUNDED BENEFIT COUNSELING SERVICES

The Regents to Provide Payment for Benefits Counseling Services. In addition to the payments in Section V.A.1 & 2 above, The Regents shall pay \$4.5 million into a trust account as designated by the Settlement Administrator. Of such funds, \$500,000 shall be due within seven days of the Preliminary Approval Order, with such funds to be used to pay for Administrative Costs necessary to achieve final approval including setting up the Benefit Counseling Services. The remaining \$4 million is intended to be used to provide Benefit Counseling Services in order to facilitate the Class Members' selection, acquisition, and utilization of health insurance, and shall be due within 30 days of the Effective Date. The Benefit Counseling Services will be provided by a third party selected by the Settlement Administrator. If for any reason this Settlement is not granted final approval and is terminated, the funds that have been deposited but not yet used shall be returned to The Regents within 90 days of such termination; provided, Petitioners and the Class have no obligation to return any funds that have already been used to pay Administrative Costs, Benefits Counseling Services, or other related expenditures. However, upon the Effective Date, The Regents shall release all rights and claims to these funds which may be used for the benefit of the Class Members as determined by the Settlement Administrator.

## C. REINSTATEMENT AS BACKSTOP FOR CATASTROPHIC EVENTS

1. Purpose. Petitioners assert that the primary premise underlying Class Members' agreement to forego reinstatement and instead to accept Supplemental Payments is that LLNS or its Successor Contractor will continue to provide retiree health benefits to Class Members.

2. Ensuring Future Health Care Benefits. If LLNS ceases to exist and a Successor Contractor does not offer retiree health care benefits to some or all of the Class Members, and The Regents does not cure the defect within 30 calendar days, The Regents shall restore University-sponsored group health care benefits to Class Members to whom benefits are no longer offered and who are living at the time. Reinstatement is a remedy available to the Class Members only until the earlier of December 31, 2040, or until there is a Final Distribution.

3. Single-Payer Health Insurance or Similar Change in Health Insurance System. Reinstatement shall not be required between the Effective Date and the earlier of December 31, 2040, or the Final Distribution in the event that single-payer health care insurance or a similar change in the health insurance system is adopted at the local, state, or national level covering individuals like the Class Members, except as provided below. If retiree health benefits with LLNS or a Successor Contractor are terminated or modified for any Class Members due to a single-payer health insurance, or a similar change in the health insurance system, and the Petitioners, the Class Members, or the Settlement Administrator believe that the coverage available is not comparable in value to the health benefits offered to retirees of LLNS who retired between 2008 and 2019 and who remain in a LLNS Plan, or in a health plan offered by a Successor Contractor to retirees of LLNS who retired between 2008 and 2019, then any one of them may petition the Court for reinstatement of living Class

Members, or any relevant portion thereof, to University-sponsored benefits. In such circumstances, up until the Final Distribution, the Court can order reinstatement in the University-sponsored benefit if it determines that the single-payer health care insurance or a similar change in the health insurance system is not comparable in value to the health benefits offered to retirees of LLNS who retired between 2008 and 2019 who remain in a LLNS Plan or in a health plan offered by a Successor Contractor after the introduction of a single-payer system or similar change in the health insurance system. To the extent that LLNS or Successor Contractor's termination or modification for any Class Members due to single-payer health insurance or a similar change in the health insurance system, results in coverage that is comparable in value to the health benefits offered to retirees of LLNS who retired between 2008 and 2019 and who remain in a LLNS Plan, or in a health plan offered by a Successor Contractor to retirees of LLNS who retired between 2008 and 2019, no Material Change in Benefits will have occurred.

4. Consequence of Reinstatement.

(i) If University-sponsored group health care benefits are restored to the Class, or any portion thereof, before the Third Payment as referenced in section V.A.2 is made, the obligation to pay the monetary payments set forth in section V.A.2 will cease to the extent that the payment applies to any portion of the Class whose University-sponsored group health care benefits are reinstated. In such event, to the extent consistent with all applicable laws and regulations, including applicable tax laws and regulations, any portion of the Settlement Fund and/or VEBA that has been deposited but not earmarked to pay Past Damages Payments or to pay Supplemental Payments to Class Members whose University-sponsored benefits are not to be reinstated, shall, when reinstatement is effectuated, be delivered to a VEBA or a welfare benefit plan providing benefits permitted under Section 501(c)(9) of the Code and the regulations provided thereunder ("Permitted Benefits") created or sponsored by The Regents to be used for health care benefits for the reinstated Class Members. In the event of a restoration of University-sponsored group health care benefits to less than all of the members of the Class, such delivery to a VEBA or welfare benefit plan providing Permitted Benefits of all or a portion of the monetary payments set forth in section V.A.2 shall be effectuated through the Settlement Administrator and/or VEBA delivering the amount of the monetary payment deposited by The Regents to supplement the health benefits for such reinstated Class Members. The calculation of the amount of funds to be delivered to a VEBA or welfare benefit plan providing Permitted Benefits created or sponsored by The Regents shall be based on the Settlement Administrator's and VEBA Trustee's then current actuarial analyses regarding the allocation of VEBA funds intended to be used for the Supplemental Payments for the Class Members to be reinstated and shall be approved by the Court at the time of reinstatement of any Class Members. In the event the Class Members to be reinstated experience a period of time in which they are not otherwise receiving coverage between termination of benefits through LLNS or a Successor Contractor and reinstatement, the Settlement Administrator and/or VEBA Trustee shall use the Settlement Fund to pay for health benefits for such Class Members during that period; however, such benefits shall be no more favorable than those previously provided to those Class Members through LLNS or a Successor Contractor plus the value of the Supplemental Payment.

(ii) If University-sponsored group health care benefits are restored to the Class, or any portion thereof, between the time when the Third and Seventh Payments as referenced in section V.A.2 are made, the obligation to make the payments set forth in section V.A.2 will cease to the extent that the payment is applied to any portion of the Class whose University-sponsored benefits are reinstated. In such event, any portion of the Settlement Fund and/or VEBA that has been deposited will be used to make the payments as provided in Section V.A.3 of this Agreement subject to the following: to the extent consistent with all applicable laws and regulations, including applicable tax laws and regulations, any portion of the Settlement Fund that has been received from The Regents but not earmarked to pay Past Damages Payments or to pay Supplemental Payments to Class Members whose University-sponsored benefits are not to be reinstated, shall, when reinstatement is effectuated, be delivered to a VEBA or a welfare benefit plan providing benefits permitted under Section 501(c)(9) of the Code and the regulations provided thereunder ("Permitted Benefits") created or sponsored by The Regents to be used for health care benefits for the reinstated Class Members. In the event of a restoration of University-sponsored group health care benefits to less than all of the members of the Class, such delivery to a VEBA or welfare benefit plan providing Permitted Benefits of all or a portion of the monetary payments set forth in section V.A.2 shall be effectuated through the Settlement Administrator and/or VEBA delivering the amount of the monetary payment deposited by The Regents to supplement the health benefits for such reinstated Class Members. The calculation of the amount of funds to be delivered to a VEBA or welfare benefit plan providing Permitted Benefits created or sponsored by The Regents shall be based on the Settlement Administrator's and VEBA Trustee's then current actuarial analyses regarding the allocation of VEBA funds intended to be used for the Supplemental Payments for the Class Members to be reinstated and shall be approved by the Court at the time of reinstatement of any Class Members. In the event the Class Members to be reinstated will experience a period of time in which they are not otherwise receiving coverage between termination of benefits through LLNS or a Successor Contractor and reinstatement, the Settlement Administrator and/or VEBA Trustee shall use the Settlement Fund to pay for health benefits for such Class Members during that period; however, such benefits shall be no more favorable than those previously provided to those Class Members through LLNS or a Successor Contractor plus the value of the Supplemental Payment.

(iii) If University-sponsored group health care benefits for the Class or any portion thereof are restored after the Seventh Payment, as referenced in section V.A.2 is made, the Settlement Funds that have been deposited will be used to make the payments as provided in Section V.A.3 of this Agreement subject to the following: to the extent consistent with all applicable laws and regulations, including applicable tax laws and regulations, any portion of the Settlement Fund that has been deposited but not earmarked to pay Supplemental Payments to Class Members whose University-sponsored benefits are not to be reinstated, shall, when reinstatement is effectuated, be delivered to a VEBA or a welfare benefit plan providing benefits permitted under Section 501(c)(9) of the Code and the regulations provided thereunder ("Permitted Benefits") created or sponsored by The Regents to be used for health care benefits for the reinstated Class Members. In the event of a restoration of University-sponsored group health care benefits to less than all of the members of the Class, such delivery to a VEBA or welfare benefit plan providing Permitted Benefits of all or a portion of the monetary payments set forth in section V.A.2 shall be effectuated through the Settlement

Administrator and/or VEBA delivering the amount of the monetary payment deposited by The Regents to supplement the health benefits for such reinstated Class Members. The calculation of the amount of funds to be delivered to a VEBA or welfare benefit plan providing Permitted Benefits created or sponsored by The Regents shall be based on the Settlement Administrator's and VEBA Trustee's then current actuarial analyses regarding the allocation of VEBA funds intended to be used for the Supplemental Payments for the Class Members to be reinstated and shall be approved by the Court at the time of reinstatement of any Class Members. In the event the Class Members to be reinstated will experience a period of time in which they are not otherwise receiving coverage between termination of benefits through LLNS or a Successor Contractor and reinstatement, the Settlement Administrator and/or VEBA shall use the Settlement Fund to pay for health benefits for such Class Members during that period; however, such benefits shall be no more favorable than those previously provided to those Class Members through LLNS or a Successor Contractor plus the value of the Supplemental Payment.

(iv) Subject to all of the subparts in this Section V.C, if University-sponsored benefits are restored for only a portion of the Class, only a proportional amount of the Settlement Fund and/or VEBA shall be delivered to a VEBA or a welfare benefit plan providing Permitted Benefits under Section 501(c)(9) of the Code and the regulations provided thereunder created or sponsored by The Regents.

#### **D. REMEDIES FOR ANY MATERIAL CHANGE IN BENEFITS BY LLNS**

LLNS currently provides the Class Members with access to the same retiree health benefits available to LLNS's retirees in the LLNS Health and Welfare Benefit Plan for Retirees who are not Class Members, including access to the same plans with the same employee and employer share of premiums for non-Medicare eligible retirees, and to the same employer contribution to HRA accounts for Medicare-eligible retirees.

In further consideration for the releases set forth herein, The Regents agrees that in the event of a Material Change in Benefits to the Class Members, as defined below, which is not cured as set forth herein, impacted Class Members who are living at the time will be entitled to reinstatement into the same University-sponsored group health care coverage as other eligible University retirees. Once the Final Distribution is made, which in no event will be later than December 31, 2040, there will be no right to reinstatement to University-sponsored health care.

For purposes of this Agreement, the definition of "Material Change in Benefits" will change over time as follows:

1. For years one through seven, inclusive, following the Effective Date, a "Material Change in Benefits" is defined as follows (the start of year one is the Effective Date):

(i) For Medicare-eligible Class Members. For years one through seven, inclusive, following the Effective Date, a Material Change in Benefits will occur if the Medicare-eligible Class Members no longer are offered by LLNS or the Successor Contractor

at least a total of \$2,450 per year (prorated for eligibility based on years of service) for a Health Reimbursement Arrangement (HRA) to purchase Kaiser benefits or to purchase other Medicare Supplement Insurance (Medigap) or a Medicare Advantage Plan through ViaBenefits or any other third-party as determined by LLNS or any Successor Contractor, or to use for other qualified health care purposes.

(ii) For Non-Medicare Eligible Class Members. For years one through seven, inclusive, following the Effective Date, a Material Change in Benefits will occur if both of the following conditions occur in a given calendar year:

a) LLNS or a Successor Contractor no longer offers at least one plan with a value that is comparable to, or greater than, a “Gold” tier plan as defined in the most recent Actuarial Value Calculator published by the Centers for Medicare and Medicaid Services. Section 1302(d)(2)(A) of the Patient Protection and Affordable Care Act (PPACA) stipulates that actuarial value be calculated based on the provision of essential health benefits (EHB) to a standard population; and

b) LLNS or a Successor Contractor no longer offers at least one Gold tier plan or greater than Gold tier plan at a comparable employer premium cost share percentage for the health plans offered by LLNS in 2019. For purposes of this paragraph, “comparable employer premium cost share percentage” means that each category of coverage, e.g., retiree, retiree + spouse, retiree + children, etc. remains within 1% of the employer premium cost share percentage in place in 2019. This takes into account the fact that different categories of coverage for a Gold tier plan, or greater than Gold tier plan, may have slightly different employer premium cost share percentages. For example, the employer premium cost share percentage in 2019 for retiree + spouse could be 80% but the retiree + spouse + children employer premium cost percentage may be 80.5%. So long as LLNS or Successor Contractor continues to provide a Gold tier plan (or greater) at employer premium cost share percentages within 1% of what was provided in 2019 for that particular category of coverage, no Material Change in Benefits has occurred. In the example provided, this would permit the employer premium cost share percentage for retiree + spouse to change to 79.5% and the retiree + spouse + children employer cost share percentage to change to 80% in years one through seven without triggering a Material Change in Benefits.

c) For the avoidance of doubt, as long as LLNS or the Successor Contractor offers at least one Gold tier plan (or greater in value plan than a Gold tier plan), with a comparable employer premium cost share percentages as set forth for such plan in 2019, no Material Change in Benefits has occurred. The Class Members acknowledge that the overall cost of the premium will likely rise, but as long as at least one Gold tier plan, or greater than Gold tier plan, is offered at a comparable employer premium cost share percentage set forth for that Gold tier or greater plan, no Material Change in Benefits has occurred.

2. For years eight through 20 following the Effective Date, a “Material Change in Benefits” is defined as offering group retiree health care benefits to the Class Members that are different from the health benefits offered to retirees of LLNS who retired between 2008 and 2019 who are in the LLNS Plan or in a health plan offered by a Successor

Contractor. In addition, for years eight through 20, for non-Medicare eligible Class Members only, a reduction in the annual dollar amount of the employer contribution to a Class Member below the employer contribution for that Class Member for year seven shall also constitute a “Material Change in Benefits.” The foregoing will not apply if the reduction occurs due to the Class Member’s decision to change plans. The foregoing also will not apply if the overall cost of the non-Medicare plan provided in a given year is less than the amount of the employer contribution in year seven. This provision does not require LLNS or a Successor Contractor to maintain any particular health plans to avoid a Material Change in Benefits.

3. The only conditions that will constitute a Material Change in Benefits are set forth in paragraphs V.D.1 and V.D.2 above. As such, the following changes to benefits are examples of changes that shall not constitute a Material Change in Benefits unless the conditions in paragraphs V.D.1 and V.D.2 are met: discontinuing certain plan options available to Class Members and other LLNS retirees; changing the third parties with which LLNS contracts for group health benefits or other services associated with group health benefits; changing the name of a health plan provided by LLNS or Successor Contractor; changing the providers included in the health plan’s network; changing plan features such as amounts associated with deductibles, coinsurance or copayments for services. This list is illustrative and does not constitute all examples where changes to the health benefits do not constitute a Material Change in Benefits.

4. Procedure and Opportunity to Cure.

(i) In the event that Class Members or the Settlement Administrator contends that a “Material Change in Benefits” is planned or has occurred, he/she/they shall promptly inform The Regents and request to meet and confer in an effort to resolve the dispute.

(ii) If the Parties agree that a Material Change in Benefits has occurred or is planned, the Material Change in Benefits can be cured by: (i) an adjustment of the benefits offered by LLNS or a Successor Contractor; or (ii) by The Regents making up the difference through an additional contribution to the Supplemental Payment for the year in question, and additional payments in any future year(s) in which the Material Change in Benefits would be carried forward.

5. Court-Ordered Reinstatement. If Class Members or the Settlement Administrator contends that a Material Change in Benefits has occurred and The Regents disagrees with this assessment, or the Material Change in Benefits has not been cured within 30 calendar days after notice is provided, he/she/it may file a motion with the Court, under the Court’s continuing supervisory jurisdiction, seeking an order to enforce rights under this Settlement Agreement and/or for restoration of University-sponsored group health care benefits of the Class Members who are living at the time.

## **E. MONITORING AND REPORTS TO COURT**

1. Continuing Jurisdiction. The Court shall retain jurisdiction pursuant to the California Code of Civil Procedure § 664.6.

2. Court Monitor (First Three Years). To ensure successful implementation of the Settlement Agreement, for three years following the Effective Date, the Court Monitor will provide annual reports to the Court by March 1 of each year (the first report shall be provided no earlier than six months after Final Approval), and additional reports at any other time that the Court Monitor deems it necessary for successful implementation of the Settlement, regarding the status of the benefits provided by LLNS (or a Successor Contractor) during the preceding year, the status of UC's contributions to the Settlement Fund and the VEBA, and the status of the payments to Class Members. The Settlement Administrator will provide annual reports to the Court Monitor in a timely manner, and additional reports at her request, to facilitate her reporting to the Court. Before submitting the report to the Court, the Court Monitor shall provide a draft copy to The Regents and Class Counsel. When the report is submitted to the Court, it shall contain comments by The Regents and Class Counsel, if either The Regents or Class Counsel determines that such comments are necessary or appropriate. The cost of the Court Monitor shall be borne equally by Petitioners and The Regents.

3. Reporting by the Settlement Administrator (Year Four to Seven). Starting year four following the Effective Date, the Settlement Administrator will take over the role of providing an annual report to the Court by March 1. The reports by the Settlement Administrator shall address the same matters and follow the same procedures as those by the Court Monitor. The cost of the annual reports by the Settlement Administrator by the Settlement Administrator shall come out of the Settlement Fund.

4. Continued Reporting (After Year Seven). Starting year seven, following the Effective Date, the Settlement Administrator will provide an annual report to the Court by March 1. The reports shall address the maintenance, adequacy, adjustments to the Supplemental Payment and any other relevant issue as the Settlement Administrator deems necessary. Annual reports by the Settlement Administrator are required as long as the VEBA Trustee continues to provide Supplemental Payments to the Class Members. The cost of the annual reports by the Settlement Administrator shall come out of the Settlement Fund.

5. Duration. The Settlement Administrator shall no longer be required to make annual reports once the Final Distribution has been made.

## **VI. NOTICE OF SETTLEMENT TO THE CLASS**

### **A. AGREEMENT REGARDING NOTICE PROCEDURES**

The Parties, subject to Court approval, agree to the following procedures for providing Notice of this Settlement to the Class, which the Parties agree is the best notice practicable.

## B. NOTICE PROCEDURES

Notice of this Settlement shall be provided to the Class Members as follows:

1. By First Class Mail. The Settlement Administrator shall provide notice to the Class Members by mailing the Notice of Settlement, as described in paragraph iii below, to the Class Members within 30 days of the Court's issuance of the Preliminary Approval Order. The notice shall conform with the following:

(i) Class Member Database. The Regents shall assist the Settlement Administrator with obtaining the most current contact information for the Class Members, including current mailing addresses, as well as the date-of-death for deceased Class Members, and whether the Class Member is living or deceased. This shall include issuing subpoenas to any appropriate third-parties and providing all relevant information within The Regents' control. Within fourteen (14) days of the Preliminary Approval Order, or on such date otherwise ordered by the Court, The Regents shall provide this information to the Settlement Administrator. Subject to corrections of contact information, the mailing addresses on the Updated Class List (and other relevant contact information) assembled in 2017 constitute the most accurate contact information and shall be incorporated into the Class Member Database. Unless more recent information becomes available before the notice described below is mailed, the Settlement Administrator shall use the contact information on the Updated Class List to provide notice of this Settlement.

(ii) By Internet Website. Within 30 days of the Preliminary Approval Order, Class Counsel shall ensure that a copy of the Notice of Settlement is posted on an Internet Website established by the Settlement Administrator with information and documents regarding the settlement including, in PDF format, the Third Amended Petition, this Agreement, the Motion for Preliminary Approval, the Preliminary Approval Order, any papers filed in support of Final Approval of the Settlement, Class Counsel's application for attorneys' fees and costs (after it is filed), the Final Approval Order (after it is entered), and other case documents as agreed upon by the Parties and/or required by the Court.

(iii) Content of Notice of Settlement. The Notice of Settlement shall include the following:

- a) a concise statement of the background of the Action, the certification of the Class for settlement purposes, and the Settlement;
- b) a description of the nature and scope of the claims, causes of action, and facts compromised in the Settlement that will be subject to the release;
- c) a description of the relief provided by the Settlement;
- d) information about the potential amounts being sought by Class Counsel as Attorneys' Fees and Expenses;



- e) instructions to the Class Members of their right to object to the Settlement;
- f) an explanation of the impact of the Settlement on participation in any existing and future litigation, arbitration, regulatory action, remediation, or other proceeding(s);
- g) a statement that any relief to the Settlement Class is contingent on the Court's Final Approval;
- h) a statement that Class Counsel's Attorneys' Fees and Costs award must be approved by the Court and will be paid by The Regents and not the Settlement Fund, and that individual Class Members will not be responsible themselves for paying any attorneys' fees, costs, litigation expenses, administration expenses (unless they elect to retain their own attorney at their own expense);
- i) the date, time, and place of the Final Approval Hearing, notice of Class Members' right to object to the Settlement, their right to appear in support of any timely and validly submitted objection, and their right to appear at the Final Approval Hearing as provided by this Settlement or ordered by the Court in the Preliminary Approval Order, on their own or through counsel of their own selection (at their own expense), and the procedures for doing so as further described below;
- j) a statement that any Final Judgment entered in the Action will be binding on all Class Members; and
- k) an explanation to Class Members on how to communicate with the proposed Settlement Administrator for purposes of ensuring that the Class Member Database contains the most current mailing address and contact information.

## **VII. OBJECTIONS TO SETTLEMENT**

### **A. OBJECTION RIGHTS AND PROCEDURE**

1. Right to Object. Any Class Member or person legally entitled to act on a Class Member's behalf may object to the fairness, reasonableness, or adequacy of the Settlement, and/or Class Counsel's request for Attorneys' Fees and Costs.
2. Form and Deadlines. To be valid, any objection must be made in writing and mailed to the Settlement Administrator at the address provided in the Notice of Settlement, postmarked no later than the Objection Deadline. In addition, any objection must include the following: (i) the name of this Action; (ii) the objector's full name, address, and telephone number; (iii) if applicable, the name and address of any person claiming to be legally entitled to object on behalf of a Class Member and the basis of such legal entitlement; (iv) all grounds for the objection; (v) whether the objector is represented by counsel and, if so,

the identity of such counsel, and all previous objections filed by the objector and their counsel within the last two years; and (vi) the objector's signature. Not later than seven (7) calendar days after the Objection Deadline, the Settlement Administrator shall provide to Class Counsel and The Regents' Counsel all objections submitted by Class Members.

3. Right to Appear. Any Class Member who submits a timely written objection may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's own personal expense and also may be subject to discovery, subject to Court approval.

4. Failure to Object. Any Class Member who fails to make a timely objection shall waive and forfeit any and all rights the Class Member may have to object and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the Action including the Final Approval Order and Final Judgment.

5. Objection is Not Forfeiture. Any Class Member who objects to the Settlement shall nevertheless be entitled to all benefits of the Settlement if it is approved and becomes final.

6. Submitting Objections. Not later than twenty (20) days after the Objection Deadline, Class Counsel shall file with the Court any and all objections to the Settlement Agreement and/or to Class Counsel's Application for Attorneys' Fees and Costs. In accordance with the Rules of Court and any applicable local rules, all sensitive personal identifying information shall be redacted before objections are filed with the Court.

7. The Parties recognize and agree that Class Members were previously provided fair notice of this class action and an adequate opportunity to opt out of the Class, and that the Class now includes all Class Members who did not timely and properly opt out of the Class following the notice ordered by the Court and mailed on or about January 21, 2015, and on or about August 4, 2017. If the Court permits additional Class Members to opt out of the Class or to otherwise be excluded from being bound by the terms of this Agreement, then up to the time of Final Approval, The Regents shall have the right to terminate this Agreement and declare as void the terms agreed to herein, in which case the Settlement shall not take effect, and the matter shall proceed to trial.

## **VIII. GENERAL ADMINISTRATION**

### **A. SETTLEMENT ADMINISTRATOR**

1. Duties. In addition to disseminating the Notice of Settlement as set forth above in Section VI.B and other duties set forth in this Agreement, the Settlement Administrator shall be responsible for the following:

(i) Creating and maintaining a toll-free number that Class Members can call to request a copy of this Agreement, or any other information concerning this Settlement or this Agreement;

(ii) Consulting with The Regents' Counsel and Class Counsel concerning any relevant issues, including (without limitation) distribution of the Notice of Settlement;

(iii) Receiving objections and providing them to Class Counsel and The Regents' Counsel in a timely manner;

(iv) Establishing a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code, and regulations promulgated thereunder, for the purpose of administering this Settlement;

(v) Monitoring and receiving the Settlement Funds;

(vi) Working with Class Counsel and The Regents' Counsel to create the Class Member Database and update the information contained therein;

(vii) Working with Class Counsel and The Regents' Counsel to identify deceased Class Members and the identity and mailing addresses of their successors-in-interest or personal representatives. The Parties agree to make reasonable efforts to compile dates of death from the data presently available to them, as well as additional data potentially produced by CalPERS;

(viii) Overseeing allocation of and mailing of the Initial \$1,000 Payment and Past Damages Payments to the Class Members pursuant to the terms of this Agreement;

(ix) Contracting with a VEBA Trustee, subject to Court approval, and determining appropriate plan design for issuance of Supplemental Payments to be distributed by the VEBA;

(x) Receiving and managing payments of Settlement Funds from The Regents, managing funds for purposes of making Past Damages Payments, and transferring funds to the VEBA in accordance with this Agreement. The Regents shall have no liability or responsibility for any actions taken by the Settlement Administrator, including, but not limited to, investments made by the Settlement Administrator that negatively impact the value of the Settlement Fund;

(xi) Overseeing distribution of Supplemental Payments;

(xii) Monitoring level of benefits provided by LLNS (or a Successor Contractor);

(xiii) Monitoring provision of Benefit Counseling Services;

(xiv) Preparing reports to Court as set forth in this Agreement;

(xv) Deciding whether to seek redress for breach of this Agreement, including any default;

(xvi) Deciding whether to hire counsel and using Settlement Funds to pay for fees or costs to enforce the terms of this Agreement;

(xvii) Protecting the confidentiality of any personal identifying information it received regarding the Class Members and to destroy such information upon the completion of the Settlement Administrator's duties;

(xviii) Providing any information or declarations as the Parties request to assist with seeking Preliminary Approval and Final Approval, including an affidavit about the Settlement notice;

(xix) If the parties determine it is necessary, entering into a Business Associates Agreement ("BAA"). The BAA shall relate to the confidentiality of individually identifiable health information and in compliance with privacy standards adopted by the U.S. Department of Health and Human Services and the security standards adopted by the U.S. Department of Health and Human Services; and

(xx) Such other tasks as the Parties mutually agree or that the Court orders the Settlement Administrator to perform.

2. Costs of Settlement Administrator. As set forth in Section V.B, The Regents shall pay \$500,000 for Administrative Costs. The Regents shall also bear its portion of the costs of the services of the Court Monitor for three years, as set forth in Section V.E, above. All other fees and expenses associated with the performance of the Settlement Administrator's fiduciary and non-fiduciary duties shall be paid out of the Settlement Funds.

3. Other Provisions Regarding Settlement Administrator.

(i) Upon completion of the implementation and administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to counsel for all Parties.

(ii) The Parties acknowledge and agree that the Settlement Administrator is not an agent of the Petitioners, Class Counsel, The Regents, or The Regents' Counsel; and that the Settlement Administrator is not authorized by this Agreement or otherwise to act on behalf of the Petitioners, Class Counsel, The Regents, or The Regents' Counsel. The Settlement Administrator is a neutral third-party whose appointment is subject to Court approval.

(iii) If a Class Member requests that the Settlement Administrator and/or its agent or employee refer the Class Member to Class Counsel, or if a Class Member requests advice beyond merely ministerial information, or other Settlement-related questions

for which the Settlement Administrator does not have an approved response, then the Settlement Administrator and/or its agent or employee shall promptly refer the inquiry to Class Counsel.

(iv) The Regents shall have no liability or responsibility for any of the Settlement Administrator's actions or omissions in connection with this Settlement Agreement, including, but not limited to, the Settlement Administrator's actions or omissions regarding investments, providing notice to Class Members, overseeing and allocating amounts in the Settlement Fund, overseeing and allocating Past Damages Payments, overseeing or distributing Supplemental Payments, or any of the duties described in Section VIII.A of this Settlement.

#### **B. VEBA TRUSTEE**

1. Duties. The VEBA Trustee shall be responsible for the following:

(i) Serving as trustee of the VEBA pursuant to the terms in the VEBA Trust;

(ii) Determining amount of funds in VEBA that are to be invested versus distributed each year; and

(iii) Managing and investing funds in the VEBA, including consulting with or hiring any investment specialists or other specialists as necessary.

2. Costs of VEBA Trustee and Administration. All fees and expenses associated with the VEBA shall be paid out of the Settlement Funds in the VEBA.

3. The Regents shall have no liability or responsibility for any of the VEBA Trustee's actions or omissions in connection with this Settlement Agreement, including, but not limited to, the VEBA Trustee's actions or omissions regarding investments of funds in the VEBA, overseeing or distributing Supplemental Payments, or any of the duties described in Section VIII.B of this Settlement.

#### **C. NO FINANCIAL INTEREST IN ADMINISTRATION**

Each Party represents that the Party has no financial interest in the Settlement Administrator or VEBA Trustee the Court appoints, nor any relationship with the Settlement Administrator and VEBA Trustee, that creates or could create a conflict of interest.

#### **IX. RELEASES**

A. As of the Effective Date, the Releasing Parties, in consideration of the benefit set forth in this Agreement, fully, finally, and forever release the Released Parties from all Released Claims.

B. As of the Effective Date, The Regents, for itself, its predecessors and successors, in consideration of the benefits set forth in this Agreement, fully, finally, and forever releases the Class Members, their attorneys, beneficiaries, successors and assigns, from all Released Claims.

C. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed in any way to impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

D. Notwithstanding the inclusion of LLNS, a Successor Contractor, NNSA and the U.S. Department of Energy as Released Parties, this Agreement shall not, and cannot, be enforced against LLNS, a Successor Contractor, NNSA, or the U.S. Department of Energy, nor shall LLNS, a Successor Contractor, NNSA or the U.S. Department of Energy have any right to enforce this Agreement, except to the extent that LLNS, a Successor Contractor, NNSA and the U.S. Department of Energy may use this Agreement to defend against Released Claims filed by Class Members, their attorneys, beneficiaries, successors, and assigns.

#### **E. CIVIL CODE SECTION 1542 ACKNOWLEDGMENT**

The Regents and the Petitioners acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount. The Regents and the named Petitioners are each hereby deemed to acknowledge and understand that they are familiar with principles of law such as and including California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Petitioners and The Regents are each hereby deemed to agree that Civil Code § 1542 and all similar federal or state laws, rules or legal principles of any other jurisdiction are knowingly and voluntarily waived by Petitioners in connection with the Released Claims, and the Petitioners and The Regents are deemed to agree that this is an essential term of this Settlement Agreement. The Petitioners and The Regents are also deemed to acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, it is the intention of the Petitioners and The Regents to fully, finally, and forever settle and release any and all Released Claims that exist, or might have existed, in connection with the Action; provided, however, that nothing in this paragraph IX.E shall be deemed to release any claims in connection with pension benefits, the University of California Retirement Plan ("UCRP"), the California Public Employees' Retirement System ("CalPERS"), the Radiation Exposure Compensation Act ("RECA"), or any other state or federal statute of

similar effect.

## **X. DISPUTE RESOLUTION**

A. Scope of Disputes and Court Jurisdiction. Any dispute arising out of or relating to, or involving the enforcement, implementation, application, or interpretation of this Settlement Agreement shall be enforceable only by The Regents or its successors or representatives, the Settlement Administrator, or the Petitioners or Class Members through either the Settlement Administrator or Class Counsel. The Final Approval Order will provide that the Court will retain exclusive jurisdiction to resolve any such disputes.

B. Attempt at Resolution. Although the Court retains exclusive jurisdiction to resolve disputes arising out of or relating to the enforcement, implementation, application, or interpretation of this Settlement Agreement, the Parties agree that, except as provided otherwise in this Agreement, prior to seeking recourse to the Court, the Parties shall attempt informally to resolve any such dispute relating to this Agreement by first submitting the dispute to mediation before the Honorable Maria-Elena James or, if Judge James is unavailable, another mediator who is mutually agreeable to the Parties or appointed by ADR Services if the Parties cannot agree. The mediation shall take place in Oakland, California, or at such other place as the Parties mutually agree, within twenty (20) calendar days after any Party's receipt of a written request for mediation by Class Counsel, Regents' Counsel, and/or the Settlement Administrator.

C. Prevailing Party. The Court shall have discretion to award the prevailing party in any dispute arising out of or relating to, or involving the enforcement, implementation, application, or interpretation of this Settlement Agreement its attorney fees and expenses reasonably incurred, including, but not limited to, court costs, experts' fees, and mediation fees.

## **XI. PRELIMINARY APPROVAL, FINAL APPROVAL AND JUDGMENT**

A. Proof of Notice. Proof that the Notice of Settlement procedures have been complied with shall be provided by the Settlement Administrator and/or Class Counsel no later than fifteen (15) calendar days following the Objection Deadline.

B. Preliminary Approval Order. On or before December 11, 2019, or any subsequent mutually agreed upon date, Petitioners shall file with the Court a motion seeking Preliminary Approval of the Settlement and asking the Court to enter a Preliminary Approval Order substantially in the form attached as Exhibit 4 to this Settlement Agreement.

C. Request for Fairness Hearing. In connection with the motion for Preliminary Approval, the Parties shall ask the Court to set a date for the Fairness Hearing as soon as practicable, but in no event no earlier than 30 days after the Objection Deadline.

D. Final Approval Order. In connection with the Motion for Final Approval, the Parties shall ask that the Court enter the Final Approval Order and Final Judgment substantially in the form attached to this Settlement Agreement as Exhibits 1 and 2.

E. Continuing Jurisdiction. After entry of the Final Approval Order, the Parties agree that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement and the Final Approval Order and the Final Judgment.

## **XII. ATTORNEYS' FEES AND COSTS**

A. Class Counsel shall submit an application for an award of attorneys' fees and expenses to the Court at or before the time of the motion for preliminary approval. Following mediation with Honorable Maria-Elena James (Ret.), Petitioners and The Regents accepted a September 12, 2019 Mediator's Proposal whereby the parties agreed that Class Counsel's request for a Fee and Expense Award would not exceed Twelve Million Dollars (\$12,000,000). Class Counsel shall not be permitted to petition the Court for any additional payments for fees or expenses to be paid by The Regents. In no event will Class Counsel's Fee and Expense Award reduce any other benefit provided to the Settlement Class. If the Court for any reason enters a Fee and Expense Award that is in excess of the above amount, Class Counsel will nevertheless accept, in full satisfaction of the amounts awarded by the Court, payment by The Regents of Twelve Million Dollars (\$12,000,000).

B. The Regents shall not object to Class Counsel's request for a Fee and Expense Award provided Class Counsel's request for a Fee and Expense Award does not collectively exceed Twelve Million Dollars (\$12,000,000).

C. Any Fee and Expense Award approved by the Court, which does not exceed Twelve Million Dollars (\$12,000,000), shall be paid by The Regents via a wire transfer as directed by Class Counsel via one of the following alternative methods. First, the payment can be made in one lump sum within 90 days of the Effective Date. Second, the Regents can pay over a three year period, as follows: the Regents will pay Five Million Dollars (\$5,000,000) within 90 days of the Effective Date, pay another Five Million Dollars (\$5,000,000) within one year of the first payment, and pay the remaining Two Million Dollars (\$2,000,000) within two years of the first payment; no interest will be applied to the balance. The Regents shall not be required to otherwise pay any portion of the attorneys' fees and expenses of Class Counsel, the Class Representatives, Class Members, or Settlement Class Members, through the date of final approval. Payment of the attorneys' fees and expenses noted above shall constitute full satisfaction by The Regents of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the Action incurred by any attorney on behalf of Petitioners, the Class Members, or the Settlement Class and shall relieve The Regents, Regents' Counsel, and the Released Parties of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Petitioners, the Class Members, and/or the Settlement Class for any Released Claim, through the date of final approval.



D. Neither Petitioners nor the Class shall be responsible for any portion of The Regents' own legal fees, costs, and expenses incurred in the Action.

### **XIII. CONFIDENTIALITY**

Protection of Confidential Information. The Parties acknowledge that private and confidential data, information, and documents have been produced in the course of the Action, whether in response to formal discovery or informally for purposes of mediation. Some or all of the data, information and documents are subject to one or more Protective Orders entered by the Court. The Parties agree to cooperate and to work with one another to protect private and confidential data, information, and documents. The Parties further agree that their attorneys, experts, and consultants shall comply with all relevant Protective Orders. If any private or confidential data, information, or documents are relevant and necessary to any dispute that arises in the future, the Parties will meet and confer in good faith to find a means of protecting the data, materials, and/or documents from disclosure; and will cooperate in sealing such materials if filing with the Court is necessary.

### **XIV. MISCELLANEOUS**

A. The Parties, their successors and assigns, and their attorneys, agree to use reasonable efforts to cooperate with one another in seeking Court approval of this Agreement and to effectuate this Agreement.

B. The Parties agree to cooperate in the settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

C. Each signatory to this Agreement hereby warrants that the person signing has the authority to execute this Agreement and thereby bind the respective Party for which the person is signing. Each Class Representative warrants and represents that the Class Representative is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that the Class Representative has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

D. Class Representatives represent and certify that: (1) they have agreed to serve as representatives of the Class; (2) they are willing, able, and ready to perform all of the duties and obligations of representatives of the Class; (3) they have read the operative complaint or have had the contents of such pleadings described to them; (4) they are generally familiar with the results of the fact-finding undertaken by Class Counsel; (5) they have read this Agreement or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) they have consulted with Class Counsel about the Action and this Settlement Agreement and the obligations imposed on them as representatives of the Class; and (7) they shall remain and serve as representatives of the Class until the terms of the Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Class Representatives cannot represent the Class.

E. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon the Effective Date.

F. This Agreement and its attachments constitute the entire agreement of the Parties with respect to the matters discussed herein and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement.

G. All exhibits to this Agreement are integrated herein and are to be considered terms of this Agreement as if fully set forth herein.

H. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the Parties to this Agreement. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval.

I. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

J. This Agreement may be executed in one or more counterparts, each of which shall be an original, and this Agreement is effective upon execution of at least one counterpart by each Party to this Agreement.

K. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representatives that any of their claims are without merit.

L. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by The Regents of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. The Regents continues to deny all liability and all of the claims, contentions, and each and every allegation made by the Class Representatives in the Action.

M. Neither Class Counsel nor The Regents' Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall it be relied upon as such. The Regents shall have no liability or responsibility for any representations made by third-parties, including, but not limited to, the Settlement Administrator, regarding taxes related to the Settlement Fund, or for any tax consequences of the Settlement. Nor shall The Regents have any liability or responsibility for any payments, taxes, fees, or costs under the Settlement aside from the amounts set forth in

Section V.A.1 and V.A.2 of this Agreement. Under no circumstances shall The Regents be required to pay any amounts in furtherance of the Agreement and its administration other than as set forth herein.

N. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement will supersede and control.

O. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

P. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it and the Parties agree that any rule which construes ambiguities against the drafter shall have no force or effect.

Q. The Parties agree that this Agreement was drafted and executed in the State of California and that the laws of the State of California shall govern its enforcement without regard to its choice of law principles. The Parties further agree that any action relating to or arising out of this Agreement, including an action to enforce or void any of its terms or to rescind it in its entirety shall be venued in the Superior Court of California, County of Alameda. All Parties consent to personal jurisdiction in courts within the Superior Court of California, County of Alameda.

## **XV. LIST OF EXHIBITS & SCHEDULES**

Exhibit 1 – [Proposed] Final Order and Judgment.

Exhibit 2 – [Proposed] Final Approval Order

Exhibit 3 – Class List

Exhibit 4 – [Proposed] Preliminary Approval Order

Schedule A

Schedule B – Past Damages

Schedule C – Supplemental Payments (with Exhibits 1 & 2 thereto)

## **XVI. CONDITIONS IMPACTING FINALITY OF SETTLEMENT**

A. Approval by The Regents and Related Conditions. The Parties shall have the option, in their sole discretion, to terminate and withdraw from the Agreement in its entirety, if within sixty (60) calendar days of the Execution Date (“60-day Approval Window”), the following condition has not been met: The Board of Regents has not approved the Agreement, provided, however, that the Party must notify the Court and other Party in writing within seven (7) days after expiration of the 60-day Approval Window that it is exercising such option and provide the explanation for doing so. The Parties will thereafter cooperate in proceeding to trial at the earliest possible date that the Court is available. The Parties may reasonably extend the time periods in this paragraph by written agreement.

B. Other Conditions. In addition to the conditions in paragraph 1 of this section, the Parties expressly agree that in the event of any of the following conditions, either of the Parties may invoke the right to withdraw from and terminate this Settlement:

1. The Court does not grant preliminary or final approval of the Settlement, or will not grant such approval unless changes are made, and after attempting in good faith to reach an agreement as to any such changes, the Parties are unable to do so;

2. The Court does not enter the Final Approval Order and Final Judgment;  
or

3. This Settlement does not become final for any reason, including on subsequent review by any appellate court(s) in the Action, the Court ultimately rejects, modifies, or denies approval of any portion of this Agreement that either Class Representatives or The Regents reasonably determines is material, including, without limitation, the terms of relief and/or the scope and terms of the Released Claims and Released Parties.

C. Method for Invoking Right to Terminate. Other than as provided in paragraph A of this section, any Party exercising its right to terminate and withdraw must exercise this option as provided under paragraph B of this section, by a signed writing served on the Court and the other Party no later than fourteen (14) calendar days after receiving notice of the event prompting the termination. The Parties may reasonably extend this fourteen (14) calendar day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the Court.

D. Effect of Termination. In the event that a terminating party exercises its option to withdraw from and terminate this Settlement Agreement pursuant to this section:

1. This Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect and neither Party to this Agreement shall be bound by any of its terms, except as otherwise specifically provided for herein;

2. No Party will object to having the case tried at the earliest possible date;

3. Petitioners shall be prohibited from referring to or using as evidence this Settlement Agreement or any confidential mediation communications.

**Petitioners and Class Representatives**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Wendell G. Moen

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jay Davis

Dated: \_\_\_\_\_

\_\_\_\_\_  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

\_\_\_\_\_  
Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its Duly Authorized Representative

APPROVED AS TO FORM:

SINCLAIR LAW OFFICE

\_\_\_\_\_  
Andrew Thomas Sinclair (SB NO. 72681)

Dated: \_\_\_\_\_

SINCLAIR LAW OFFICE  
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Tel: (510) 465-5300  
Fax: (510)465-5356  
ats@sinclairlawoffice.com

Attorney for the Petitioners and Class

CROWELL & MORING LLP

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Jennifer S. Romano (SB No. 195953)

Dated: \_\_\_\_\_

CROWELL & MORING LLP  
515 S. Flower Street  
Los Angeles, CA 90071  
Tel: (213) 442-552  
Fax: (213) 622-2690  
jromano@crowell.com

Attorneys for Respondent  
The Regents of the University of California

B. Other Conditions. In addition to the conditions in paragraph 1 of this section, the Parties expressly agree that in the event of any of the following conditions, either of the Parties may invoke the right to withdraw from and terminate this Settlement:

- 1. The Court does not grant preliminary or final approval of the Settlement, or will not grant such approval unless changes are made, and after attempting in good faith to reach an agreement as to any such changes, the Parties are unable to do so;
  - 2. The Court does not enter the Final Approval Order and Final Judgment;
- or
- 3. This Settlement does not become final for any reason, including on subsequent review by any appellate court(s) in the Action, the Court ultimately rejects, modifies, or denies approval of any portion of this Agreement that either Class Representatives or The Regents reasonably determines is material, including, without limitation, the terms of relief and/or the scope and terms of the Released Claims and Released Parties.

C. Method for Invoking Right to Terminate. Other than as provided in paragraph A of this section, any Party exercising its right to terminate and withdraw must exercise this option as provided under paragraph B of this section, by a signed writing served on the Court and the other Party no later than fourteen (14) calendar days after receiving notice of the event prompting the termination. The Parties may reasonably extend this fourteen (14) calendar day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the Court.

D. Effect of Termination. In the event that a terminating party exercises its option to withdraw from and terminate this Settlement Agreement pursuant to this section:

- 1. This Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect and neither Party to this Agreement shall be bound by any of its terms, except as otherwise specifically provided for herein;
- 2. No Party will object to having the case tried at the earliest possible date;
- 3. Petitioners shall be prohibited from referring to or using as evidence this Settlement Agreement or any confidential mediation communications.

**Petitioners and Class Representatives**

Dated: December 11, 2019

Wendell G. Moen  
Wendell G. Moen

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jay Davis

B. Other Conditions. In addition to the conditions in paragraph 1 of this section, the Parties expressly agree that in the event of any of the following conditions, either of the Parties may invoke the right to withdraw from and terminate this Settlement:

1. The Court does not grant preliminary or final approval of the Settlement, or will not grant such approval unless changes are made, and after attempting in good faith to reach an agreement as to any such changes, the Parties are unable to do so;

2. The Court does not enter the Final Approval Order and Final Judgment;  
or

3. This Settlement does not become final for any reason, including on subsequent review by any appellate court(s) in the Action, the Court ultimately rejects, modifies, or denies approval of any portion of this Agreement that either Class Representatives or The Regents reasonably determines is material, including, without limitation, the terms of relief and/or the scope and terms of the Released Claims and Released Parties.

C. Method for Invoking Right to Terminate. Other than as provided in paragraph A of this section, any Party exercising its right to terminate and withdraw must exercise this option as provided under paragraph B of this section, by a signed writing served on the Court and the other Party no later than fourteen (14) calendar days after receiving notice of the event prompting the termination. The Parties may reasonably extend this fourteen (14) calendar day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the Court.

D. Effect of Termination. In the event that a terminating party exercises its option to withdraw from and terminate this Settlement Agreement pursuant to this section:

1. This Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect and neither Party to this Agreement shall be bound by any of its terms, except as otherwise specifically provided for herein;

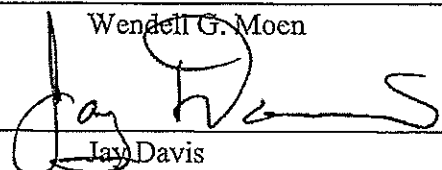
2. No Party will object to having the case tried at the earliest possible date;

3. Petitioners shall be prohibited from referring to or using as evidence this Settlement Agreement or any confidential mediation communications.

**Petitioners and Class Representatives**

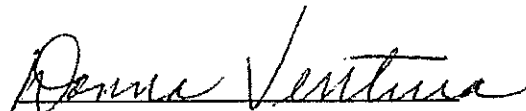
Dated: \_\_\_\_\_

Dated: Dec 10, 2019

\_\_\_\_\_  
Wendell G. Moen  
  
\_\_\_\_\_  
Jay Davis



Dated: 12/10/19

  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

\_\_\_\_\_  
Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its Duly Authorized Representative

APPROVED AS TO FORM:

SINCLAIR LAW OFFICE

\_\_\_\_\_  
Andrew Thomas Sinclair (SB NO. 72681)

Dated: \_\_\_\_\_

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Tel: (510) 465-5300  
Fax: (510)465-5356  
ats@sinclairlawoffice.com

Dated: \_\_\_\_\_

\_\_\_\_\_  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
*Gregory M. Bianchini*  
\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

\_\_\_\_\_  
Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its Duly Authorized Representative

APPROVED AS TO FORM:

SINCLAIR LAW OFFICE

*Andrew Thomas Sinclair*  
Andrew Thomas Sinclair (SB NO. 72681)

Dated: 12/11/19

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Fax: (510)465-5356  
ats@sinclairlawoffice.com


Dated: \_\_\_\_\_

\_\_\_\_\_  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: 10 Dec. 2019

  
\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

\_\_\_\_\_  
Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its Duly Authorized Representative

APPROVED AS TO FORM:

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Andrew Thomas Sinclair (SB NO. 72681)

Dated: \_\_\_\_\_

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Fax: (510)465-5356  
ats@sinclairlawoffice.com

Dated: \_\_\_\_\_

\_\_\_\_\_  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: 12/10/2019

Calvin D. Wood  
Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its Duly Authorized Representative

APPROVED AS TO FORM:

SINCLAIR LAW OFFICE

\_\_\_\_\_  
Andrew Thomas Sinclair (SB NO. 72681)

Dated: \_\_\_\_\_

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Tel: (510) 465-5300  
Fax: (510) 465-5356  
ats@sinclairlawoffice.com

Dated: \_\_\_\_\_

\_\_\_\_\_  
Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

\_\_\_\_\_  
Calvin D. Wood

Dated: December 10, 2019

Sharon Wood  
Sharon Wood

**The Regents of the University of California**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its Duly Authorized Representative

APPROVED AS TO FORM:

SINCLAIR LAW OFFICE

\_\_\_\_\_  
Andrew Thomas Sinclair (SB NO. 72681)

Dated: \_\_\_\_\_

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Donna Ventura

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Bianchini

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alan Hindmarsh

Dated: \_\_\_\_\_

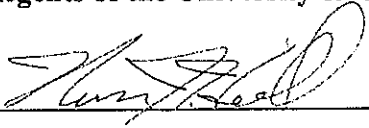
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Calvin D. Wood

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sharon Wood

**The Regents of the University of California**

Dated: December 11, 2019

By:  \_\_\_\_\_

Its Duly Authorized Representative

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The Regents of the University of California

**Schedule A**  
**to**  
**Stipulation of Class Action Settlement and Release**



### Schedule A

The Settlement Funds paid by the Regents pursuant to Section V.A.1 and V.A.2 (totaling \$80,000,000) shall be used as follows:

1. Administrative Costs or Other Expenses Associated with the Settlement or Implementing its Terms: Any Administrative Costs or other expenses associated with the Settlement or implementing its terms in excess of the \$4,500,000 paid by The Regents for Administrative Costs and Benefits Counseling Services shall be paid with Settlement Funds.
2. Initial \$1,000 Payment: Approximately \$9,000,000 of the Settlement Funds shall be used to pay \$1,000 to each of the Class Members (both living and deceased), who number approximately 9,000 people. This payment is meant to provide immediate relief to each Class Member or his/her heir(s) without a costly claims procedure, and in recognition that in this Action, the Class Members assert that they experienced damages not otherwise accounted for in the Settlement as part of the transition of health care benefits from University-sponsored benefits to LLNS-sponsored benefits.
3. Past Damages Payments: Approximately \$11,000,000 will be paid in Past Damages Payments to eligible Class Members and/or their heirs, such that the Past Damages Payments plus the Initial \$1,000 Payment will equal \$20,000,000. The Settlement Administrator will apply the methodologies in Schedule B to calculate past damages for each eligible Class Member. To the extent the initial calculation projects the total amount of payments will exceed the funds available, the Past Damages Payments will be adjusted on a pro rata basis so that the Past Damages Payments total no more than approximately \$11,000,000. In no event will Past Damages Payments to eligible Class Members plus the Initial \$1,000 Payment exceed \$20,000,000.
4. Supplemental Payments: Funds not needed to satisfy obligations set forth in Paragraphs 1-3 above, will be deposited in a VEBA Trust to be used for Supplemental Payments as described in Schedule C. The purpose of a VEBA Trust is to qualify as a tax-exempt investment instrument pursuant to IRC § 501(c)(9) and to provide tax-exempt supplemental payments for use by the Class Members for the purchase of additional health care or services.
5. Final Distribution: At the end of the term of the VEBA Trust, as defined by Section V.A.14 to be a term of 20 years or when there are 1,000 living eligible Class Members, the remaining corpus, if any, shall be distributed to the surviving members of the Class as described in Section V.A.14.

# **Schedule B**

**to**

**Stipulation of Class Action Settlement and Release**

## Schedule B – Past Damages

### A. Eligibility

Class Members who (i) are living and not eligible for Medicare, (ii) are living and Medicare-eligible and elected Kaiser Senior Advantage Part B between October 15, 2010 to the Effective Date, or (iii) who died between October 15, 2010 and the Effective Date, may be eligible for a Past Damages Payment. Not all Class Members falling into these three categories will receive a Past Damages Payment. Eligibility for Past Damages Payments for Class Members who fall into these categories will depend on the Class Members' circumstances and plan selections between October 15, 2010 and the Effective Date.

The Settlement Administrator has received substantial information provided in the litigation to identify Class Members eligible for Past Damages Payments and to calculate the amount of such payments pursuant to the methodologies set forth below. In addition, pursuant to the Agreement, all Class Members will receive notice of the Settlement of this Action, and will be given the opportunity to provide additional or corrected information to the Settlement Administrator to demonstrate eligibility for Past Damages Payments or adjustments to the proposed calculation for Past Damages Payments.

### B. Description of Past Damages Methodology.

Past damages for each eligible Class Member will be calculated according to the methodologies below. Some Class Members fall into different categories in different years. Past damages will be calculated based on each Class Member's circumstances and plan selection each year, to the extent such information is available.

#### 1. Non-Medicare-Eligible Class Members Who are Still Living

##### a. Currently 65 or older

- i. Past damages for these Class Members have been calculated for each year from 10/15/2010 through 12/31/2020.
- ii. Past damages for each year were calculated by taking the difference between the Class Member's required contribution for the premium for his/her LLNS-sponsored plan, and a retiree's required contribution for the premium for the most similar University-sponsored plan that same year using the rates in effect in each year.
- iii. For each year, it was determined whether the Class Member was older or younger than age 65, so that the proper rates were used.
- iv. LLNS-sponsored plans were mapped to similar University-sponsored plans, as follows:

	<b>LLNS-Sponsored</b>	<b>University-Sponsored</b>
<b>Kaiser</b>	Kaiser	Kaiser
<b>Pre-2014 Blue</b>	Blue Cross Plus	Blue Cross Plus

<b>Cross Plans</b>		
	Blue Cross PPO	Blue Cross PPO
	Blue Cross EPO	Blue Cross EPO
	Blue Cross Core	Blue Cross Core
<b>2014 and later Blue Cross Plans</b>	Blue Cross Plus	UC Care
	Blue Cross PPO	
	Blue Cross EPO	
	Blue Cross Core	Blue Cross Core

v. Other Assumptions and Adjustments

1. The 2018 non-Medicare election (plan option and coverage category) was used as a proxy for each Class Member's plan election in all years (i.e. it was assumed that the same election was in force for all years prior and subsequent to 2018).
2. For 2010, the annual damage was calculated and prorated to reflect 2.5 months of damages from 10/15/2010.
3. Past damages for 2020 damage were calculated as 1.0425 times the Class Member's 2019 past damages (4.25%).
4. No interest was added.

b. Currently younger than 65

- i. It is not clear from the data if any Class Member falls into this category.
- ii. If it is determined that there are Class Members in this category, Past Damages Payments for these Class Members will be calculated using the same formula as above for non-Medicare-eligible Class Members who are currently 65 or older. However, the amount of Past Damages Payments for Class members younger than 65 may be different since they generally have lower required contributions.

2. Kaiser Senior Advantage Members Who Are Still living

- a. Past damages for these Class Members have been calculated for each year from 10/15/2010 through 12/31/2020.
- b. Past damages for each year were calculated by taking the difference between the Class Member's required contribution for the LLNS-sponsored Kaiser Senior Advantage plan selected and a retiree's required contribution for the premium for the University-sponsored Kaiser Senior Advantage plan.
  - i. For purposes of this calculation, the Class Member's required contribution for the LLNS-sponsored Senior Advantage plan included the premium for the Medicare Part B Supplement.
- c. For each year, it was determined whether the Class Member was older or younger than age 65, so that damages for Kaiser Senior Advantage members were only applied when the member was 65 or older.

- d. Assumptions/Adjustments
  - i. The 2018 Kaiser Senior Advantage election (plan option and coverage category) was used as a proxy for each Class Member's plan election in all years (i.e. it was assumed that the same election was in force for all years prior and subsequent to 2018).
  - ii. For 2010, the annual damage was calculated and prorated to reflect 2.5 months of damages from 10/15/2010.
  - iii. Past damages for 2020 damage were calculated as 1.0425 times the Class Member's 2019 past damages (4.25%).
  - iv. No interest was added.

3. All Class Members who died between 10/15/2010 and the Effective Date

- a. For each year, age was calculated to determine whether the member was older or younger than age 65.
- b. Past plan election information for each year up to and including the year of death was used, where available. Where no plan election information was available, no damages were calculated. However, as described above, all Class Members will receive notice of the Settlement of this Action, and will be given the opportunity to provide additional or corrected information.
- c. Past damages for non-Medicare eligible Class Members who died between 10/15/2010 and the Effective Date were calculated in the same manner as set forth above for non-Medicare eligible Class Members who are still living, except past damages were prorated based on the date of death.
- d. Past damages for Medicare-eligible Class Members who were Kaiser Senior Advantage members and who died between 10/15/2010 and the Effective Date were calculated in the same manner as set forth above for Medicare-eligible Class Members who were Kaiser Senior Advantage Members and who are still living, except past damages were prorated based on the date of death.
- e. All other Class Members who died between 10/15/2010 and the Effective Date were Medicare-eligible and were eligible for LLNS-sponsored benefits through ViaBenefits (formerly OneExchange). Past damages for these members were calculated as follows:
  - i. Past damages for these Class Members have been calculated for each year from 10/15/2010 through date of death.
  - ii. For OneExchange members who were California residents, past damages for each year were calculated by taking the difference between the Class Member's total premium paid for the OneExchange coverage selected after offsetting it by the HRA contribution (\$2,400 prior to 2016, \$2,450 thereafter), and a retiree's required contribution for the premium for the most similar University-sponsored plan that same year using the rates in effect in each year. OneExchange plans were mapped to similar University-sponsored plans, as follows:

<b>OneExchange Plans</b>	<b>University-Sponsored</b>
Medicare Supplement Plans	UC High Option Supplement

Medicare Advantage Plans	UC Medicare PPO
--------------------------	-----------------

iii. For OneExchange members who were not California residents, past damages for each year prior to 2014 were calculated using the same methodology used for California residents. For OneExchange members who were not California residents, past damages for 2014 and 2015 were determined to be \$600/year, and past damages for 2016 and later were determined to be \$550/year based on the difference in the HRA contributions by LLNS and The Regents in those years.

f. Other Assumptions and Adjustments

- i. Premium data for One Exchange elections was available only for the initial election year. For example, if a Class Member first selected a plan in 2009, no data regarding the premium rate after 2009 was available. As a result, medical trend factors were used to increase the original premium to a reasonable estimate for future years.
- ii. Medical trend factors used were based upon Medicare trend survey data at the time for Medicare Advantage Plans and Medicare Supplement Plans as follows:

Year	Medicare Advantage Trend	Medicare Supplement Trend
2010	8.2%	9.5%
2011	7.4%	7.0%
2012	7.9%	6.4%
2013	8.2%	5.3%
2014	6.6%	4.9%
2015	5.6%	3.2%
2016	4.2%	3.2%
2017	4.4%	4.3%
2018	4.5%	3.6%
2019 and later	4.25%	4.25%

- iii. Member plan election data for the One Exchange members was only provided through 2016. If a member died after 2016, it was assumed the same election was in place thereafter and the trend factors in the table above were applied.
- iv. Members with no state code data available were assumed to be California residents.
- v. For 2010, the annual damage was calculated and prorated to reflect 2.5 months of damages from 10/15/2010.
- vi. Damages were prorated to the date of death.
- vii. No interest was added.

### **C. Calculation of Past Damages Payments**

Approximately \$11,000,000 will be paid in Past Damages Payments to Class Members and their heirs, such that Past Damages Payments plus the Initial \$1,000 Payment will equal \$20,000,000. The Settlement Administrator will apply the above methodologies to calculate past damages for each eligible Class Member. The Settlement Administrator will then subtract \$1000 from the total past damages for each eligible Class Member to account for the initial \$1000 in damages paid to each Class Member after the Effective Date. The Settlement Administrator will then determine each eligible Class Member's pro rata share, if any, of the approximate \$11,000,000 total for Past Damages Payments and issue checks to eligible Class Members and/or their heirs in those amounts.

# **Schedule C**

**to**

**Stipulation of Class Action Settlement and Release**



## Schedule C- Supplemental Payments

### A. Discretion of Trustee

Each year, the Settlement Administrator or VEBA Trustee will use its discretion and professional judgment to determine the amount of the Supplemental Payments and the formulas used to calculate them consistent with the goal of maximizing payments for health care coverage for Class Members for the next 20 years. After the earlier of 20 years, or when there are 1,000 Class Members who are still living, the Trustee shall terminate the Trust and distribute any remaining funds to the living Class Members, estimated to be 1,000 people whose average age will be approximately 91. The Settlement Administrator or VEBA Trustee will aim to provide increases to the Class Members' Supplemental Payments over the 20 year period as determined appropriate and feasible.

Due to uncertainties with respect to the cost of health care and health care coverage, the rate of return on investment, the life expectancy of the class, the needs of the class, and potential changes in the health care delivery system and/or coverage for health care, as well as other uncertainties, the amount of the Supplemental Payments and the formulas used to calculate them are subject to change and are at the discretion and within the professional judgment of the Settlement Administrator or VEBA Trustee.

### B. Eligibility

All living Class Members are eligible for an annual Supplemental Payment unless otherwise not eligible under Section V.A.7 and/or Section V.A.8 of the Stipulation of Class Action Settlement and Release ("Agreement"). Where a Class Member is covered under a health plan under the name of another Class Member who is the Policy Holder of said plan, the Supplemental Payments for all such individuals will be paid to the Policy Holder.

### C. Description of Supplemental Payment Formulas.

Non-Medicare-eligible and Pre-65 Not Currently Eligible for Medicare: The Supplemental Payment for these Class Members will be calculated initially so that Class Members in this category will be responsible for 10% of the total cost of their plan choice. If, prior to receiving any Supplemental Payment, the Class Member is paying less than 10% of the total cost to cover the Class Member under the plan, the Supplemental Payment for that Class Member will be zero.

#### Example Calculation for Anthem PPO for Non-Medicare-eligible 65 and Older:

1. Annual Cost of Anthem PPO Plan	$\$1,792.60 \times 12 = \$21,511.20$
2. Annual Retiree Contribution	$\$ 440.00 \times 12 = \$5,280.00$
3. Desired Retiree Contribution	$\$21,511.2 \times .10 = \$2,151.12$
4. Amount of Supplement (2) – (3)	$\$ 5,280.00 - \$2,151 = \$3,128.88$

Kaiser Senior Advantage Medicare-eligible: The Supplemental Payment for these Class Members will be calculated initially so that Class Members in this category will be responsible for 20% of the total cost of their plan choice. The total cost to cover these Class Members under the plan is defined initially to be the sum of the total premium plus \$1,028, which reflects the current cost of the 2019 Medicare Part B reimbursement.

Example Calculation for Kaiser Sr. Adv:

1. Annual Cost of KSA Plan <sup>1</sup>	$(\$2,732.16 + 1,028) = \$3,760.16$
2. Annual Retiree Contribution	$(\$3,760.16 - \$2,450) = \$1,310.16$
3. Desired Retiree Contribution	$(\$3,760 \times .20) = \$752$
4. Amount of Supplement (2) – (3)	$\$1,310.16 - \$752 = \$558.16$

<sup>1</sup> Includes the 2019 out of pocket premium plus the \$1,028 Part B Supplement.

ViaBenefits Medicare Eligible: Both The Regents and LLNS provide benefits to some of their retirees through ViaBenefits. The Regents provides \$3,000 per year to its out-of-state retirees through ViaBenefits, while LLNS provides \$2,450 per year to Class Members who select ViaBenefits. The initial Supplemental Payment for these Class Members will be \$550 per year, which equals the difference between what The Regents and LLNS provide to their retirees through ViaBenefits.

If the methodology for calculating the Supplemental Payments for Medicare-Eligible Class Members who receive health benefits through ViaBenefits becomes not feasible due to changed circumstances, invalid assumptions or other reasons, an alternative initial methodology to calculate the Supplemental Payments to these Class Members will be to identify a Medicare Supplement plan found on the ViaBenefits exchange that is substantially similar to the UC preferred provider organization (PPO) for Medicare-eligible members, and calculate Supplemental Payments so that the Class Members would be responsible for 20% of the total cost of the ViaBenefits plan identified as substantially similar. See below for an example of the mapped calculation.

Example for Mapped ViaBenefits Plan to UC's PPO:

1. Annual Cost of Equivalent Plan <sup>1</sup>	\$3,660
2. Annual Retiree Contribution	$(\$3,660 - \$2,450) = \$1,210$
3. Desired Retiree Contribution	$(\$3,660 \times .20) = \$732$
4. Amount of Supplement (2) – (3)	$\$1,210.16 - \$732 = \$478$
5. Greater of (4) and \$550 <sup>2</sup>	\$550

<sup>1</sup> Cost was determined by taking the sum of the Blue Shield Medicare Supplement plan rates as of April 1, 2019 for Plan F and Plan D Region 8  $(\$171 + \$134) = \$305 \times 12 = \$3,660$ .

<sup>2</sup> The \$550 amount was chosen to match the difference between the UC HRA contribution of \$3,000 to its non-California HRA members and the LLNS contribution of \$2,450.

**D. Rates Based on 2019 Data and Actuarial Analysis**

A spreadsheet showing the Supplemental Payment Rates based on 2019 data is attached hereto as Exhibit 1. Attached as Exhibit 2 is an actuarial evaluation of the anticipated Supplemental Payments, with assumptions regarding healthcare expense market trends, return on investments, and the life span of the Class Members, to assess the viability of the corpus of the VEBA Trust over time.

**E. Future Changes to Supplemental Payments**

The VEBA Trustee shall have the discretion to increase or decrease Supplemental Payments based on actual costs, market trend, or other relevant information, while staying in conformance with the terms and goals of the Agreement. The methodology set forth above for determining the initial Supplemental Payment is not required hereafter but may be a guide for future year's supplements.

**Exhibit 1**  
to  
**Schedule C**

**2019 Non-Medicare 65 and Over Retiree Medical Monthly Contributions**

	Kaiser - North	Kaiser - South	Anthem Blue Cross PLUS	Anthem Blue Cross PPO	Anthem Blue Cross Core Value	Anthem Blue Cross EPO
<b>20+ years of service</b>						
Retiree only	\$338.00	\$338.00	\$773.00	\$440.00	\$82.00	\$339.00
Spouse only	\$373.00	\$373.00	\$852.00	\$483.00	\$91.00	\$375.00
Retiree + Spouse	\$711.00	\$711.00	\$1,624.00	\$923.00	\$173.00	\$713.00
Retiree + Children	\$610.00	\$610.00	\$1,392.00	\$791.00	\$150.00	\$612.00
Spouse + Children	\$644.00	\$644.00	\$1,470.00	\$836.00	\$158.00	\$648.00
Retiree + Spouse + Children	\$983.00	\$983.00	\$2,243.00	\$1,275.00	\$240.00	\$986.00
Children only	\$67.00	\$67.00	\$506.00	\$319.00	\$67.00	\$262.00
<b>0% Subsidy (Access Only)</b>						
Retiree only	\$1,706.16	\$1,706.16	\$2,142.12	\$1,792.96	\$1,307.20	\$1,688.96
Spouse only	\$1,876.76	\$1,876.76	\$2,356.28	\$1,972.16	\$1,437.88	\$1,857.84
Retiree + Spouse	\$3,582.88	\$3,582.88	\$4,498.44	\$3,765.08	\$2,745.16	\$3,546.80
Retiree + Children	\$3,071.08	\$3,071.08	\$3,855.80	\$3,227.24	\$2,353.00	\$3,040.08
Spouse + Children	\$3,241.64	\$3,241.64	\$4,070.00	\$3,406.56	\$2,483.72	\$3,209.04
Retiree + Spouse + Children	\$4,947.84	\$4,947.84	\$6,212.08	\$5,199.48	\$3,790.92	\$4,897.96
Children Only	\$622.40	\$622.40	\$1,116.44	\$934.40	\$681.28	\$880.24
<b>Supplemental Payment</b>						
Retiree only	\$2,009	\$2,009	\$6,705	\$3,128	\$0	\$2,041
Spouse only	\$2,224	\$2,224	\$7,396	\$3,429	\$0	\$2,271
Retiree + Spouse	\$4,233	\$4,233	\$14,090	\$6,558	\$0	\$4,300
Retiree + Children	\$3,635	\$3,635	\$12,077	\$5,619	\$0	\$3,696
Spouse + Children	\$3,838	\$3,838	\$12,756	\$5,944	\$0	\$3,925
Retiree + Spouse + Children	\$5,859	\$5,859	\$19,462	\$9,061	\$0	\$5,954
Children only	\$57	\$57	\$4,732	\$2,707	\$0	\$2,088

**2019 Non-Medicare Pre-65 Retiree Medical Monthly Contributions**

	Kaiser - North	Kaiser - South	Anthem Blue Cross PLUS	Anthem Blue Cross PPO	Anthem Blue Cross Core Value	Anthem Blue Cross EPO
<b>20+ years of service</b>						
Retiree only	\$84.00	\$84.00	\$633.00	\$398.00	\$82.00	\$328.00
Spouse only	\$92.00	\$92.00	\$696.00	\$438.00	\$91.00	\$362.00
Retiree + Spouse	\$176.00	\$176.00	\$1,330.00	\$837.00	\$173.00	\$689.00
Retiree + Children	\$151.00	\$151.00	\$1,139.00	\$717.00	\$150.00	\$591.00
Spouse + Children	\$158.00	\$158.00	\$1,203.00	\$757.00	\$158.00	\$624.00
Retiree + Spouse + Children	\$243.00	\$243.00	\$1,836.00	\$1,155.00	\$240.00	\$953.00
Children only	\$67.00	\$67.00	\$506.00	\$319.00	\$67.00	\$262.00
<b>0% Subsidy (Access Only)</b>						
Retiree only	\$778.00	\$778.00	\$1,395.52	\$1,168.04	\$851.64	\$1,100.28
Spouse only	\$855.76	\$855.76	\$1,535.04	\$1,284.76	\$936.72	\$1,210.32
Retiree + Spouse	\$1,633.80	\$1,633.80	\$2,930.56	\$2,452.84	\$1,788.36	\$2,310.64
Retiree + Children	\$1,400.40	\$1,400.40	\$2,511.96	\$2,102.48	\$1,532.92	\$1,980.52
Spouse + Children	\$1,478.20	\$1,478.20	\$2,651.44	\$2,219.24	\$1,618.08	\$2,090.56
Retiree + Spouse + Children	\$2,256.16	\$2,256.16	\$4,047.00	\$3,387.32	\$2,469.64	\$3,190.88
Children Only	\$622.40	\$622.40	\$1,116.44	\$934.40	\$681.28	\$880.24
<b>Supplemental Payment</b>						
Retiree only	\$74	\$74	\$5,921	\$3,374	\$0	\$2,616
Spouse only	\$77	\$77	\$6,510	\$3,714	\$0	\$2,892
Retiree + Spouse	\$151	\$151	\$12,443	\$7,101	\$0	\$5,495
Retiree + Children	\$132	\$132	\$10,654	\$6,081	\$0	\$4,715
Spouse + Children	\$122	\$122	\$11,254	\$6,421	\$0	\$4,979
Retiree + Spouse + Children	\$209	\$209	\$17,176	\$9,795	\$0	\$7,607
Children only	\$57	\$57	\$4,732	\$2,707	\$0	\$2,088

	<u>One Exchange</u>	<u>Kaiser Senior Advantage</u>				
2019 LLNS Total Cost	\$305.00	\$313.35				
Annual Cost	\$3,660	\$3,760				
Est. Class Members	N/A	N/A				
Participation Pct.	N/A	N/A				
Target Percent Cost Sharing	20%	20%				
Total Cost	\$3,660	\$3,760				
LLNS Subsidy	\$2,450	\$2,450				
2019 Actual Member Cost	\$1,210	\$1,310				
2019 Cost Sharing Pct.						
Expected Contribution	\$732	\$752				
Difference	\$478	\$558				
Supplement	\$478	\$558				
Actual Supplement Used	\$550	\$558				

**Exhibit 2**  
to  
**Schedule C**

VEBA Settlement Solvency Projections  
 Via Benefits/One Exchange Supplement Scenario: \$550  
 Administrative Cost Scenario: \$500,000 Per Year

Version as of August 6, 2019

Valuation Year 2019  
 Annual Administrative Costs \$500,000  
 Investment Return 4.75%  
 One Exchange Supplement \$550  
 Annual Benefit Increase 4.25%  
 Mortality Table RP2014(adj) with MP18 Projection Scale, Total Dataset

Contributions			Liabilities				Fund Solvency Calculations							
	Date	Contribution	Date	Benefit Payments	Head-count*	Average Payment/Head-count	Beginning Balance	Contribution	Benefit Payments	Administrative Costs	Investment Return	Ending Balance	Terminal Balance	Per Capita Payout
1	2019 12/31/2019	15,000,000	12/31/2019	10,000,000	6,361	n/a	0	15,000,000	(10,000,000)	-	-	5,000,000		
2	2020 12/31/2020	15,000,000	12/31/2020	10,000,000	6,044	n/a	5,000,000	15,000,000	(10,000,000)	(500,000)	225,625	9,725,625		
3	2021 12/31/2021	15,000,000	1/1/2021	4,417,013	5,732	771	9,725,625	15,000,000	(4,417,013)	(500,000)	240,264	20,048,897		
4	2022 12/31/2022	10,000,000	1/1/2022	4,352,957	5,433	801	20,048,897	10,000,000	(4,352,957)	(500,000)	733,682	25,929,621		
5	2023 12/31/2023	10,000,000	1/1/2023	4,276,011	5,132	833	25,929,621	10,000,000	(4,276,011)	(500,000)	1,016,671	32,170,282		
6	2024 12/31/2024	10,000,000	1/1/2024	4,191,826	4,838	866	32,170,282	10,000,000	(4,191,826)	(500,000)	1,317,102	38,795,558		
7	2025 12/31/2025	5,000,000	1/1/2025	4,100,033	4,551	901	38,795,558	5,000,000	(4,100,033)	(500,000)	1,636,162	40,831,687		
8	2026	-	1/1/2026	3,997,287	4,267	937	40,831,687	-	(3,997,287)	(500,000)	1,737,759	38,072,160		
9	2027	-	1/1/2027	3,886,594	3,990	974	38,072,160	-	(3,886,594)	(500,000)	1,611,939	35,297,505		
10	2028	-	1/1/2028	3,766,807	3,718	1,013	35,297,505	-	(3,766,807)	(500,000)	1,485,833	32,516,531		
11	2029	-	1/1/2029	3,639,096	3,453	1,054	32,516,531	-	(3,639,096)	(500,000)	1,359,803	29,737,238		
12	2030	-	1/1/2030	3,502,301	3,194	1,097	29,737,238	-	(3,502,301)	(500,000)	1,234,284	26,969,221		
13	2031	-	1/1/2031	3,357,806	2,941	1,142	26,969,221	-	(3,357,806)	(500,000)	1,109,667	24,221,083		
14	2032	-	1/1/2032	3,205,370	2,696	1,189	24,221,083	-	(3,205,370)	(500,000)	986,371	21,502,085		
15	2033	-	1/1/2033	3,048,675	2,461	1,239	21,502,085	-	(3,048,675)	(500,000)	864,662	18,818,072		
16	2034	-	1/1/2034	2,885,913	2,235	1,291	18,818,072	-	(2,885,913)	(500,000)	744,903	16,177,061		
17	2035	-	1/1/2035	2,719,173	2,018	1,347	16,177,061	-	(2,719,173)	(500,000)	627,375	13,585,263		
18	2036	-	1/1/2036	2,550,814	1,814	1,406	13,585,263	-	(2,550,814)	(500,000)	512,261	11,046,710		
19	2037	-	1/1/2037	2,381,143	1,621	1,469	11,046,710	-	(2,381,143)	(500,000)	399,739	8,565,307		
20	2038	-	1/1/2038	2,211,548	1,439	1,536	8,565,307	-	(2,211,548)	(500,000)	289,929	6,143,687		
21	2039	-	1/1/2039	2,043,418	1,270	1,608	6,143,687	-	(2,043,418)	(500,000)	182,888	3,783,158		
22	2040	-	1/1/2040	1,878,111	1,114	1,685	3,783,158	-	(1,878,111)	(500,000)	78,615	1,483,661	1,331	
Total								80,000,000	(86,411,894)	(10,500,000)	18,395,556			

\* Lifetime projection for "single", last-survivor for "joint", lifetime up to age 26 for "child"

Please refer to page 3 of the July 10, 2019 deliverable for disclosures regarding data, assumptions, and methods used in these projections.  
 The only change with this deliverable is the addition of administrative costs.



# **EXHIBIT 1**

**to**

**Stipulation of Class Action Settlement and Release**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

Wendell G. Moen, Jay Davis, Donna Ventura, Robert  
Becker, Gregory M. Bianchini, Geores Buttner, Alan  
Hindmarsh, Steve Hornstein, Calvin Wood and Sharon  
Wood, on behalf of Themselves and Others Similarly  
Situating,

Petitioners,

v.

Regents of University of California, and Does, 1 through  
99, inclusive,

Respondents.

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No. RG 10530492

Assigned For All Purposes to

Judge: Hon. Winifred Y. Smith  
Dept.: 21

**[PROPOSED] FINAL ORDER  
AND JUDGMENT**

1 This matter is before the Court on Petitioners Wendell G. Moen, Jay Davis, Donna Ventura,  
2 Gregory M. Bianchini, Alan Hindmarsh, Steve Hornstein, Calvin D. Wood and Sharon Wood  
3 (collectively, "Petitioners" or "Class Representatives"), and Respondent The Regents of the University of  
4 California's ("The Regents," and collectively with Petitioners, the "Parties") Settlement Agreement dated  
5 \_\_\_\_\_, 2019 and all exhibits thereto. On \_\_\_\_\_, the Court entered a Final Approval  
6 Order approving the parties' settlement and adopting the terms of the Settlement Agreement. Therefore,  
7 for the reasons stated in the Final Approval Order and good cause appearing, judgment is hereby entered  
8 pursuant to the following:

9 1. The Court incorporates by reference in this Judgment the capitalized defined terms set  
10 forth in the Settlement Agreement.

11 2. This Court has subject matter jurisdiction of this matter and all claims asserted against The  
12 Regents, and jurisdiction over all Parties, including all Class Members.

13 3. The Court incorporates herein by reference the Final Approval Order, and all findings set  
14 forth therein. The Final Approval Order, which attaches the Settlement Agreement, is attached hereto as  
15 **Exhibit A.**

16 4. The form, content, and method of dissemination of the notice given to the Class Members  
17 were adequate and reasonable, and constituted the best notice practicable under the circumstances. The  
18 notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and  
19 conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such  
20 notice, and said notice fully satisfied the requirements of California Rules of Court, Rule 3.766(e) and (f),  
21 and due process.

22 5. Pursuant to California Code of Civil Procedure Section 382, and this Court's Preliminary  
23 Approval Order and Final Approval Order, for the purposes of settling the Released Claims in  
24 accordance with the Stipulation, the following Persons are members of the Settlement Class:

25 All University of California Retirees who worked at Lawrence Livermore National  
26 Laboratory (LLNL), who were eligible for University of California-sponsored group health  
27 plan coverage when they retired, and who retired prior to October 1, 2007 and received  
28 University-sponsored group health plan coverage after retiring until November 30, 2007 in

1 connection with transfer of LLNL's management to Lawrence Livermore National Security  
(LLNS), and

2 Spouses, surviving spouses, or dependents, who were eligible for University-sponsored  
3 group health plan coverage as a consequence of a University of California employee's  
4 retirement after working at LLNL, or death while working at LLNL, and who received  
5 University-sponsored group health plan coverage until November 30, 2007 in connection with  
transfer of LLNL's management to LLNS.

6 6. Excluded from the Class are any persons who timely and properly opted out of the Class  
7 following notice ordered by the Court and mailed on or about January 21, 2015, and on or about August  
8 4, 2017 ("Opt-Outs").

9 7. Opt-Outs shall not receive any benefits of the terms of the Settlement Agreement, and  
10 shall not be bound by this Judgment.

11 8. Petitioners, The Regents, and Class Members shall consummate the settlement according  
12 to the terms of the Settlement Agreement. The Settlement Agreement, and each and every term and  
13 provision thereof, shall be deemed incorporated herein as if explicitly set forth herein and shall have the  
14 full force and effect of an order of this Court.

15 9. Each Released Claim of each Class Member is hereby extinguished as against the  
16 Released Parties. Petitioners and each Class Member shall be deemed conclusively to have compromised,  
17 settled, discharged, and released the Released Claims against the Released Parties upon the terms and  
18 conditions provided in the Stipulation.

19 10. Class Members shall be and hereby are permanently barred and enjoined from instituting,  
20 filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an  
21 individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of  
22 any kind whatsoever, any action in any state court, any federal court, any regulatory authority, or in any  
23 other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Release  
24 Claims.

25 11. Neither this Judgment, the Final Approval Order, the Settlement Agreement, the  
26 settlement contained therein, nor any act performed or document executed pursuant to or in furtherance  
27

1 of the Settlement Agreement or the settlement: (a) is or may be deemed to be or may be used as an  
2 admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or  
3 liability of The Regents; or (b) is or may be deemed to be or may be used as an admission of, or evidence  
4 of, any fault or omission of The Regents in any civil, criminal, or administrative proceeding in any court,  
5 administrative agency, or other tribunal. The Regents may file the Settlement Agreement, the Final  
6 Approval Order and/or this Judgment in any action that may be brought against it in order to support a  
7 defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith  
8 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or  
9 similar defense or counterclaim.

10 12. Without affecting the finality of this Judgment in any way, this Court retains continuing  
11 jurisdiction over the Parties and the Class Members for the administration, consummation, and  
12 enforcement of the terms of the Agreement pursuant to California Rule of Court 3.769(h) and California  
13 Code of Civil Procedure § 664.6.

14 13. In the event the Effective Date does not occur, the Final Approval Order and this  
15 Judgment shall be rendered null and void and shall be vacated and, in such event, as provided in the  
16 Settlement Agreement, the Final Approval Order and this Judgment and all orders entered in connection  
17 herewith shall be vacated and null and void.

18 14. Each side to bear their own fees and costs, except as set forth in the Final Approval Order  
19 or other order of the Court.

20 15. Pursuant to California Rule of Court 3.771(b), the Court hereby directs Class Counsel to  
21 publish notice of this judgment on the settlement website. Such notice shall be maintained on the website  
22 for a period of no less than 90 days.

23 16. This document constitutes a judgment and a separate document for purposes of California  
24 Code of Civil Procedure § 664.



# **EXHIBIT 2**

**to**

**Stipulation of Class Action Settlement and Release**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

Wendell G. Moen, Jay Davis, Donna Ventura, Robert  
Becker, Gregory M. Bianchini, Geores Buttner, Alan  
Hindmarsh, Steve Hornstein, Calvin Wood and Sharon  
Wood, on behalf of Themselves and Others Similarly  
Situaded,

Petitioners,

v.

Regents of University of California, and Does, 1 through  
99, inclusive,

Respondents.

No. RG 10530492

Assigned For All Purposes to

Judge: Hon. Winifred Y. Smith  
Dept.: 21

**[PROPOSED] ORDER  
GRANTING FINAL  
APPROVAL OF STIPULATION  
OF CLASS ACTION  
SETTLEMENT AND RELEASE**

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Moen, et al. v. Regents of Univ. of Cal. et al., No. RG 10530492

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF STIPULATION OF CLASS  
ACTION SETTLEMENT**









1 negotiations among competent counsel, and that the record is sufficiently developed to have enabled the  
2 Class Representatives and The Regents to adequately evaluate and consider their respective positions.  
3 Accordingly, the Court hereby finally and unconditionally approves the Settlement Agreement.

4 13. Class Counsel are hereby awarded attorneys' fees and costs in the amount of  
5 \$ \_\_\_\_\_ both of which are to be paid by The Regents and shall not come out of the  
6 Settlement Funds. The Court finds these amounts to be fair and reasonable and fairly compensates Class  
7 Counsel for their contributions to the prosecution of this Action and the Settlement Agreement.

8 14. The Parties are to bear their own costs, except as awarded by this Court in this Final  
9 Approval Order.

10 15. In its Order Granting Petitioners' Motion for Preliminary Approval, the Court approved  
11 Archer Systems, LLC ("Archer") to serve as the Settlement Administrator. The Settlement Administrator  
12 shall continue to perform those duties and responsibilities that remain under the Settlement Agreement  
13 and this Final Approval Order.

14 16. The Parties and Settlement Administrator are hereby directed to implement this Final  
15 Approval Order and the Settlement Agreement in accordance with the terms and provisions thereof,  
16 including processing the payments provided for under the Settlement Agreement.

17 17. In its Order Granting Petitioners' Motion for Preliminary Approval, the Court directed that  
18 the Qualified Settlement Fund ("QSF") be established to perform functions in accordance with the terms  
19 of the Settlement Agreement. The Court also appointed Archer as QSF Administrator. The QSF shall  
20 continue to operate and Archer Systems, LLC shall continue to perform those duties and responsibilities  
21 that remain under the Settlement Agreement and this Final Approval Order. This Order is subject to  
22 amendment by the Court *sua sponte* or upon application of the Parties. This Court retains jurisdiction  
23 over all matters covered by, or related to, the QSF.

24 18. The Regents shall have no liability or responsibility for any payments, fees, or costs under  
25 this Order except as set forth in ¶ 13 above and as provided in the Settlement Agreement.

26 19. As of the Effective Date, Petitioners and each and every Class Member, for themselves



1 Members, their attorneys, beneficiaries, successors and assigns, from any and all judgments, liens,  
2 indebtedness, losses, claims, liabilities, actions, demands, rights, suits, and causes of action of whatever  
3 kind or nature that the Petitioners asserted in the Third Amended Petition for Writ of Mandate, including  
4 damages, costs, expenses, penalties, and attorneys' fees. "Released Claims" includes all claims  
5 predicated on the allegations in the Third Amended Petition arising under the Employee Retirement  
6 Income Security Act of 1974 (ERISA), as amended, or other claims against all Released Parties relating  
7 to the provision or failure to provide health benefits, the level of health benefits coverage and/or the cost  
8 of health benefits. Class Members' sole avenue to resolve any future dispute regarding LLNS or any  
9 Successor Contractor's provision or failure to provide health benefits, the quality and/or quantity of the  
10 benefits, rights and features provided by the LLNS Plan or any Successor Contractor plan or the cost of  
11 the health benefits is provided for under Sections V.C and V.D of the Settlement Agreement, titled  
12 Reinstatement as Backstop for Catastrophic Events and Remedies for any Material Change in Benefits by  
13 LLNS. Notwithstanding the foregoing, Class Members are not prohibited from appealing eligibility or  
14 benefit determinations pursuant to the claims and administration procedures for the applicable plan in  
15 which the Class Member participates. For the avoidance of doubt, "Released Claims" excludes future  
16 claims, if any, against LLNS or a Successor Entity relating to actions or omissions by LLNS or a  
17 Successor Entity that take place or occur 20 years or more after the Effective Date. "Released Claims"  
18 excludes claims to enforce rights under pension plans, the University of California Retirement Plan  
19 ("UCRP"), the California Public Employees' Retirement System ("CalPERS"), the Radiation Exposure  
20 Compensation Act ("RECA"), or any other state or federal statute limiting the release of claims based on  
21 employment.

22         21. As of the Effective Date, Petitioners shall further be deemed to have expressly waived and  
23 released any and all provisions, rights and benefits conferred by Section 1542 of the California Civil  
24 Code or similar laws of any other state or jurisdiction.

25         22. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the  
26 exclusive remedy for any and all Released Claims of the Releasing Parties.



1 Order or the accompanying Final Judgment) shall be construed as or used as an admission or concession  
2 by or against The Regents or Released Parties of the validity of any claim or defense or any actual or  
3 potential fault, wrongdoing, or liability whatsoever. The Settlement Agreement and this resulting Final  
4 Approval Order simply represent a compromise of disputed allegations.

5 28. Without further order of the Court, the Parties may agree to reasonably necessary  
6 extensions of time to carry out any of the provisions of the Settlement Agreement and to make other non-  
7 material modifications, in implementing the Settlement Agreement, that are not inconsistent with this  
8 Order.

9 29. The Clerk shall enter Final Judgment, consistent with this Order, forthwith.

10 30. Class Counsel shall serve a copy of this Final Approval Order on all named parties or their  
11 counsel, and the Settlement Administrator, immediately upon receipt and the Settlement Administrator  
12 shall post a copy of this Final Approval Order on the Settlement Website immediately upon receipt.

13 **IT IS SO ORDERED.**

14 DATE: \_\_\_\_\_, 2019

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17 \_\_\_\_\_  
18 Hon. Winifred Y. Smith  
19 Judge of the Superior Court  
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# **EXHIBIT 3**

to

**Stipulation of Class Action Settlement and Release**

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PER STIPULATOIN**

# **EXHIBIT 4**

**to**

**Stipulation of Class Action Settlement and Release**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

Wendell G. Moen, Jay Davis, Donna Ventura, Robert  
Becker, Gregory M. Bianchini, Geores Buttner, Alan  
Hindmarsh, Steve Hornstein, Calvin Wood and Sharon  
Wood, on behalf of Themselves and Others Similarly  
Situating,

Petitioners,

v.

Regents of University of California, and Does, 1 through  
99, inclusive,

Respondents.

No. RG 10530492

Assigned For All Purposes to

Judge: Hon. Winifred Y. Smith  
Dept.: 21

**[PROPOSED] ORDER  
GRANTING PRELIMINARY  
APPROVAL OF STIPULATION  
OF CLASS ACTION  
SETTLEMENT AND RELEASE**

1 This matter came before the Court on Petitioners' Notice of Motion and Motion for Preliminary  
2 Approval of Stipulation of Class Action Settlement and Release on \_\_\_\_\_, 2019 at 10:00 a.m., in  
3 Department 21 of the Superior Court of California, County of Alameda. The Parties have entered into a  
4 Stipulation of Class Action Settlement on or about \_\_\_\_\_, 2019 (the "Settlement Agreement") which  
5 has been filed with the Court and which, if approved, would resolve the above-captioned class action  
6 lawsuit (the "Action" or the "Class Action Lawsuit"). Upon review and consideration of the motion  
7 papers and the Settlement Agreement and all exhibits thereto, including the proposed Notice of  
8 Settlement to the Class, the Court finds that there is sufficient basis for (1) granting preliminary approval  
9 of the Settlement Agreement; (2) granting approval and ordering the proposed Notice of Settlement to be  
10 sent to the Class; (3) appointing a Settlement Administrator to conduct the duties assigned to that position  
11 in the Settlement Agreement; and (4) setting a schedule for the final approval process, including setting a  
12 hearing date (the "Fairness Hearing") at which time the Court will consider: (a) whether to grant Final  
13 Approval of the Settlement Agreement; and (b) Class Counsels' Application for Attorney's Fees and  
14 Costs.

15 The Court hereby FINDS, CONCLUDES, and ORDERS as follows:

16 1. Petitioners Wendell G. Moen, Jay Davis, Donna Ventura, Gregory M. Bianchini, Alan  
17 Hindmarsh, Steve Hornstein, Calvin Wood and Sharon Wood ("Petitioners" or "Class Representatives")  
18 and The Regents of the University of California ("Respondent" or "The Regents") through their counsel  
19 of record in this Action, have reached an agreement to settle all claims in the Class Action Lawsuit.

20 2. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and  
21 attachments thereto, as well as the supporting declarations in support of the motion for preliminary  
22 approval describing investigation into the claims and defenses in this matter, the information exchanges  
23 by the parties, the past proceedings, and the settlement process. The Court finds that the proposed  
24 Settlement Agreement is the product of informed, non-collusive, and arm's-length negotiations. Based  
25 on the papers submitted, the Court finds that the proposed Settlement Agreement to be within the range  
26 of possible approval as fair, reasonable, and adequate, such that notice should be given to the Class.



1 Subsequently, the Court required that the class definition be modified to include an end date for the class  
2 period, limiting the class to retirees whose retirement date was effective prior to October 1, 2007. To  
3 address this issue, and the fact that the transfer to the LLNS Health and Welfare Benefit Plan for Retirees  
4 (“LLNS Plan”) did not occur until the end of November 2007, the Court on December 3, 2014 approved  
5 a form of notice to the Class Members that contained a modified class definition, as follows:

6 All University of California Retirees who worked at Lawrence Livermore National  
7 Laboratory (LLNL), who were eligible for University of California-sponsored group  
8 health plan coverage when they retired, and who retired prior to October 1, 2007 and  
9 received University-sponsored group health plan coverage after retiring until November  
10 30, 2007 in connection with transfer of LLNL’s management to Lawrence Livermore  
11 National Security (LLNS), *and*

12 Spouses, surviving spouses, or dependents, who were eligible for University-sponsored  
13 group health plan coverage as a consequence of a University of California employee’s  
14 retirement after working at LLNL, or death while working at Lawrence LLNL, and who  
15 received University-sponsored group health plan coverage until November 30, 2007 in  
16 connection with transfer of LLNL’s management to Lawrence Livermore National  
17 Security (LLNS).

18 (12/2/2014 Renewed Ex Parte Application for Approval of Notice of Pendency of Class Action and  
19 Petitioners’ Statement regarding Class Notice, Ex. A; *see also* 12/3/2014 Application Re: Other Ex Parte  
20 Granted). This class definition was incorporated into the notice ordered by the Court and mailed on or  
21 about January 21, 2015. When a second round of notice was provided to additional Class Members in  
22 2017, the Court approved a form of notice containing the same class definition that was used in the prior  
23 notice (with a typo corrected). (*See* 5/25/2017 Order re Supplementary Notice of Class Action and  
24 Petitioners’ Statement re Class Notice in Support Thereof; *see also* 5/24/2017 Stipulation re Notice to  
25 Updated Class List, Ex. A; *see also* 2/22/2017 Order, Motion Granted at 1 (describing Court’s earlier  
26 modification of the class definition in 2014).

27 4. The Class is provisionally certified for Settlement purposes, pursuant to section  
28 382 of the California Code of Civil Procedure, using the same class definition ordered by the  
Court on December 3, 2014 and May 25, 2017. Specifically, for Settlement purposes, the  
litigation may be maintained on behalf of a Class defined as follows:

1 All University of California Retirees who worked at Lawrence Livermore National  
2 Laboratory (LLNL), who were eligible for University of California-sponsored group  
3 health plan coverage when they retired, and who retired prior to October 1, 2007 and  
4 received University-sponsored group health plan coverage after retiring until November  
5 30, 2007 in connection with transfer of LLNL's management to Lawrence Livermore  
6 National Security (LLNS), and

7 Spouses, surviving spouses, or dependents, who were eligible for University-sponsored  
8 group health plan coverage as a consequence of a University of California employee's  
9 retirement after working at LLNL, or death while working at LLNL, and who received  
10 University-sponsored group health plan coverage until November 30, 2007 in connection  
11 with transfer of LLNL's management to LLNS.

12 Excluded from the Class are any persons who timely and properly opted out of the class following notice  
13 ordered by the Court and mailed on or about January 21, 2015, and on or about August 4, 2017.

14 5. Petitioners Wendell G. Moen, Jay Davis, Donna Ventura, Gregory M. Bianchini, Alan  
15 Hindmarsh, Steve Hornstein, Calvin Wood and Sharon Wood, who were previously appointed as the  
16 Class Representatives, shall remain in those positions for Settlement purposes.

17 6. The Settlement Administrator selected and agreed to by the Parties, Archer Systems, LLC,  
18 is approved as the Settlement Administrator.

19 7. The Court hereby approves the form of Notice of Settlement, which is attached to this  
20 Order as Exhibit A.

21 8. The Notice of Settlement, and the rights of Class Members to object to the terms of the  
22 Settlement Agreement, shall be given by mailing the Notice of Settlement by first class, postage prepaid,  
23 to all Class Members pursuant to the applicable provisions in the Settlement Agreement. The Parties  
24 shall provide the Settlement Administrator with the information necessary to conduct this mailing as set  
25 forth in the Settlement Agreement.

26 9. The Court finds that the notice to the Class Members regarding settlement of this Action,  
27 including the method of dissemination to the Class Members in accordance with the terms of this Order  
28 constitute the best notice practicable under the circumstances and constitute valid, due and sufficient  
notice to all Class Members, complying fully with the requirements of California Code of Civil

1 Procedure § 382 and California Rule of Court, Rule 3.766, the California and United States Constitutions,  
2 and any other applicable law.

3 10. Written objections by Class Members to the proposed Settlement Agreement will be  
4 considered if received by the Settlement Administrator in writing no later than forty-five (45) days after  
5 the date of the initial mailing of the Notice of Class Settlement by the Settlement Administrator;

6 a. At the final approval hearing, Class Members may be heard orally in support of the  
7 Settlement Agreement, or in opposition to the Settlement Agreement, provided  
8 they submit a timely written objection to the Settlement Agreement and indicate  
9 their intent to appear at the hearing. The Court will consider all timely objections  
10 and Class Members do not need to appear at the final approval hearing to have  
11 their objection considered;

12 b. Class Counsel and Respondent's Counsel should be prepared at the hearing to  
13 respond to any objections filed by the Class Members and to provide other  
14 information as appropriate, bearing on whether or not the Settlement Agreement  
15 should be approved; and

16 c. The Court reserves the right to adjourn or continue the date of the Fairness Hearing  
17 without further notice to the Class.

18 11. The Notice of Settlement shall also be posted on an Internet Website established by the  
19 Settlement Administrator with information and documents regarding the Settlement including, in PDF  
20 format, the Settlement Agreement, the Third Amended Petition, the Motion for Preliminary Approval, the  
21 Preliminary Approval Order, any papers filed in support of Final Approval of the Settlement, and Class  
22 Counsel's application for attorneys' fees and costs (after it is filed).

23 12. In the event the Effective Date occurs, all Class Members will be deemed to have forever  
24 released and discharged the Class Members' Released Claims as set forth in the Settlement Agreement.  
25 In the event the Effective Date does not occur for any reason whatsoever, the Settlement Agreement shall  
26 be deemed null and void and shall have no effect whatsoever.





1 experience dissolution or bankruptcy, its appointment as QSF Administrator shall terminate and  
2 Petitioners will seek Court approval of a successor QSF Administrator.

3 18. Archer shall select the financial institution at which the QSF Administrator will establish  
4 bank and investment accounts for the QSF in accordance with this Order.

5 19. The Court orders the following implementation schedule for further proceedings:  
6

7 Preliminary approval order.	TBD by Court.
8 Mail Notice of Settlement to Class Members 9 (“Notice Date”).	Thirty (30) calendar days after issuance of this Order.
10 Settlement Administrator shall create 11 settlement website and post Notice of 12 Settlement and other relevant documents.	Thirty (30) calendar days after the issuance of this Order.
13 Deadline for receipt by the Settlement 14 Administrator of any objections to the 15 Settlement.	Forty-five (45) days after the Notice Date.
16 Deadline for Class Counsel to file Motion for 17 Final Approval of Settlement.	Sixteen (16) calendar days before the Final Fairness and Final Approval Hearing.
18 Deadline for Class Counsel to file reply papers 19 in support of Motion for Final Approval of 20 Settlement, if needed.	Five (5) calendar days before the Final Fairness and Final Approval Hearing.
21 Final Fairness and Final Approval Hearing.	_____, 2020. Approximately 22 eighty (80) days after the first mailing 23 of the Notice of Class Settlement. 24 25 26

