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Attorneys for Petitioners and Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Wendell G. Moen, et al.,

Petitioners,

v.

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

Respondents.

No. RG 10530492

**Ex Parte Application re Closing
Class, Disposition of Unclaimed
Settlement Funds, Release of
Attorneys' Fees, and Order
[Proposed]**

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

Ex Parte Application re Closing Class, Unclaimed Funds, Release of Fees & Order

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Introduction

1 Since the last conference with the Court when Court Monitor Hon. Maria-Elena James
2 submitted her annual report (on March 10, 2021), ARCHER has been distributing settlement funds to
3 the Class in the form of the Initial \$1,000 Payment and Supplemental Payments. The Settlement
4 Administrator is now prepared to distribute Past Damages. However, in order to proceed, ARCHER
5 needs to know what will happen with unclaimed settlement funds.

6 The Settlement Agreement provides that settlement funds will go to three "pots": (1) the
7 Initial \$1000 Payment to all class members, both living and deceased; (2) Past Damages to certain
8 class members who suffered an economic loss; and (3) a Supplemental Payment for living class
9 members for the next 20 years (or until 1,000 class members are still living).

10 Based on experience to date, it is clear that it will not be possible to locate all 9,000 members
11 of the class. At this time, approximately 80% of the class has submitted a Class Member Data Form
12 (CMDf). Even if 90% are located and submit a CMDf, this would still leave substantial unclaimed
13 settlement funds from the Initial \$1000 Payment and Past Damages "pots." ARCHER needs to know
14 what will happen to these unclaimed funds before distributing Past Damages. This is because
15 unclaimed funds could potentially be allocated to Past Damages, thus making the calculation of Past
16 Damages dependent on the amount of unclaimed funds.

17 Settlement Administrator ARCHER Systems and Petitioners recommend that unclaimed funds
18 be allocated to the Supplemental Payment and not to Past Damages. This will allow ARCHER to
19 distribute all Past Damages now without having to later make a (much smaller) second Past Damages
20 distribution based on unclaimed funds. This approach would also be consistent with the Settlement
21 Agreement itself, which provides that unclaimed funds for deceased class members will escheat to
22 the Supplemental Payment fund (Settlement Agreement, Section V-A-12(v)). It would also further the
23 stated priority of the Settlement Agreement, which was to secure adequate future health care
24 benefits for living class members via the Supplemental Payments. See Settlement Agreement, ¶ I-B;
25 Motion for Final Approval of Settlement (4-15-20) at 5:13-14.

26 Settlement Administrator ARCHER and Petitioners also recommend that the Court set April
27 10, 2022 (the second anniversary of the settlement's Effective Date) as the final cut-off date for
28 purposes of the Initial \$1000 Payment and Past Damages. This cut off-date would align with the

1 deadline in the Stipulation and Order entered on February 18, 2021, which extended the deadline for
2 identifying personal representatives of deceased class members until April 10, 2022.

3 The proposed deadline of April 10, 2022 would apply only to the Initial \$1000 Payment and to
4 Damages, not to the Supplemental Payment. ARCHER and Petitioners recommend that there be no
5 cut-off date for the Supplemental Payment with the understanding that there would be no
6 retroactive Supplemental Payments.

7 Finally, Petitioners seek the release of \$500,000 in attorneys' fees withheld by the Court in
8 2020, pending certification that the settlement is proceeding smoothly.

9 Background

10 Joe Requa filed a Petition for Writ of Mandate on August 13, 2010, challenging The Regents'
11 termination of University-sponsored health care benefits for retirees who worked at the Lawrence
12 Livermore National Laboratory before the transition in management in 2007. A class was certified on
13 October 30, 2014. The case settled on December 11, 2019. The Court granted preliminary approval
14 on December 20, 2019, appointing ARCHER Systems as Settlement Administrator and QSF
15 Administrator. Order (12/20/19), p. 3, ¶¶ 1-7, 6 & 17. The Court entered a Final Approval Order on
16 April 10, 2020. Final Approval Order, ¶¶ 16-18.

17 The Final Approval Order provides in relevant part: "Petitioners, The Regents, and Class
18 Members shall consummate the settlement according to the terms of the Settlement Agreement. The
19 Settlement Agreement, and each and every term and provision thereof, shall be deemed
20 incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order
21 of this Court." Final Approval Order, ¶ 10. And: "The Parties and Settlement Administrator are
22 hereby directed to implement this Final Approval Order and Judgment and the Settlement Agreement
23 in accordance with the terms and provisions thereof, including processing the payments provided for
24 under the Settlement Agreement." Id. ¶ 17. The Court retained jurisdiction and appointed Hon.
25 Maria-Elena James (Ret.) as Court Monitor. Final Approval Order, ¶¶ 18-19, 25 & 30; Order (1)
26 Granting Final Approval of Class Settlement and (2) Granting Motion for Award of Fees and Costs, pp.
27 4, 7; Settlement Agreement, ¶¶ III-A-10, V-E.

28 The Settlement Agreement provides that The Regents will provide \$80 million in settlement
funds for three purposes: (1) the Initial \$1000 Payment for all class members, living or deceased

1 (approximately \$9 million); Past Damages for certain class members who suffered economic loss
2 (approximately \$11 million); and (3) a Supplemental Payment for living class members, starting in
3 2021 and continuing for 20 years through 2040 or until 1,000 or fewer class members are still living,
4 whichever occurs first (approximately \$60 million). Settlement Agreement, ¶ V-A-3 & Schedule A.¹

5 It is apparent that, for class members who cannot be located or who choose not to
6 participate, it will not be possible to distribute the Initial \$1000 Payment. For example, if 10% of the
7 class members (900 class members) cannot be located or choose not to participate, there will be
8 \$900,000 (900 X \$1000 = \$900,000) remaining out of the \$9 million Initial \$1000 Payment "pot."

9 By the same token, it will not be possible to distribute Past Damages to eligible class members
10 who cannot be located or choose not to participate. (Keep in mind that the Settlement Agreement
11 does not contemplate full reimbursement of Past Damages but rather a portion ranging from 42% to
12 64%. See Decl. of Allan Phillips in Support of Motion for Preliminary Approval (12/11/19), ¶ 38.)

13 There are two ways that settlement funds designated for the Initial \$1000 Payment and for
14 Past Damages could be re-allocated: (1) unclaimed funds could be added to the Past Damages "pot";
15 or (2) unclaimed funds could be directed to the Supplement Payment "pot." See Settlement
16 Agreement, ¶ V-A-3.

17 The Settlement Agreement is not clear on whether and when the class will be closed, that is,
18 by what date class members must submit a Class Member Data Form to be eligible to receive
19 settlement funds. See Settlement Agreement, Schedule A, ¶ 3 and Schedule B, ¶ C. However, the
20 Settlement Agreement does provide that as to deceased class members whose personal
21 representatives cannot be located within one year, their unclaimed Initial \$1000 Payment and Past
22 Damages will escheat to the Supplemental Payment fund. See Settlement Agreement, ¶ V-A-12(v)
23 ("If the Settlement Administrator is unable to identify or locate a deceased Class Member's personal
24 representative or successor-in-interest, and one year has passed since the Effective Date, the Past

25 ¹ As the name suggests, the Supplemental Payment supplements retiree health care benefits
26 that are provided by the Lawrence Livermore National Security Health and Welfare Benefit Fund for
27 Retirees so as to make the overall benefit roughly comparable to University-sponsored retiree health
28 care benefits. (The "Supplemental Payment" is sometimes referred to the "Settlement
Supplement.")

1 Damages Payment due to that deceased Class Member will escheat to the portion of the Settlement
2 Fund allocated for Supplemental Payments to the other Class Members.”).

3 The Court recently entered an Order extending the time to locate the personal representative
4 or successor-in-interest of deceased class members by one year, until April 10, 2022. Order
5 (2/18/21), p. 4. However, neither this Order nor the Settlement Agreement itself explicitly addressed
6 when living class members must submit a CMDF; nor did the Order address the disposition of
7 unclaimed funds.

8 As of June 2021, approximately 80% of the living and deceased class members (through their
9 personal representative or successor-in-interest) have registered with the Settlement Administrator.
10 This is a significant improvement since the Court Monitor’s report on February 25, 2021, as shown in
11 the following table:

	Feb 2021	%	Jun 2021	%
Class members (living and deceased)	8,941		8,941	
Class Member Data Forms returned to ARCHER	6,450	72.1%	7,121	79.6%
CMDFs returned by living class members	4,919	55.0%	5,368	60.0%
CMDFs returned for deceased class members	1,531	17.1%	1,753	19.6%
Class members who have not returned CMDF	2,491	27.9%	1,818	20.3%

16 If the current figures were to remain constant, there would be 1,818 CMDFs that may not
17 have been returned. This would result in unclaimed Initial \$1000 Payments of $1,818 \times \$1000 =$
18 $\$1,818,000$. Similarly, there would be a certain amount of unclaimed Past Damages.

19 Petitioners expect that the above figures will improve as more class members are located.
20 Nevertheless, it is apparent that there will likely be meaningful unclaimed settlement funds – which
21 raises the seminal question -- how will unclaimed funds be allocated?

22 There are two ways that unclaimed funds could be used: (1) unclaimed funds could be
23 allocated to Past Damages, or (2) unclaimed funds could be allocated to the Supplemental Payment.

24 Petitioners have discussed this issue and conferred with the Settlement Administrator and
25 Phillips Consulting; all agree that unclaimed funds should be allocated to the Supplemental Payment.
26 Providing retiree health care funds to replace UC-sponsored benefits was the primary relief sought in
27 this protracted litigation.

1 The amount of the Supplemental Payment distributed to the class after 2021 will depend on
2 the actuarial assessment of the funds needed to provide the Supplemental Payment for 20 years or
3 until only 1,000 class members are living. This in turn depends on the overall pool of funds, the
4 return on investment, and the rising cost of health care services.

5 Petitioners believe that the purpose of the settlement is best served by devoting unclaimed
6 funds to support the Supplemental Payment for living class members. See Decl. of Jay Davis, ¶ 4.

7 Petitioners and the Settlement Administrator also agree that it is reasonable to establish a
8 date to close the class with respect to the Initial \$1000 Payment and Past Damages. Both suggest
9 April 10, 2022.

10 If the Court approves the proposals set forth above, the Settlement Administrator can
11 immediately begin to distribute Past Damages Payments to eligible class members without being
12 concerned that there may be an additional distribution of Past Damages based on unclaimed funds.

13 Again, the proposed deadline would not apply to submitting a CMDF for Supplemental
14 Payments going forward (CMDFs can be submitted at any time for such purpose, although with no
15 right to retroactive Supplemental Payments).

16 Firm dates are needed to ensure that actuarial calculations can be performed with certainty
17 for Supplemental Payments going forward. Decl. of Allan Phillips, ¶¶ 5-6.

18 Release of Attorneys' Fees Held Back by Court

19 The Final Approval Order (4/10/20) provides in relevant part that "\$500,000 of the fee award
20 [shall] be kept in the [QSF] administrator's trust fund until at least one year after the final approval of
21 the settlement," that, "If the mechanisms for delivering benefits under the Settlement Agreement are
22 running smoothly after one year, then the court will be inclined to release the hold-back of attorney
23 fees." Order, ¶ 15.

24 Pursuant to this Order, after The Regents made a payment of \$5 million on July 9, 2020, QSF
25 Administrator ARCHER Systems held back \$500,000 from funds that were available to the attorneys.
26 The Regents made a second payment of \$5 million on July 9, 2021.

27 QSF and Settlement Administrator, ARCHER Systems, LLC, has certified that the conditions for
28 release of the \$500,00 have been satisfied. Class counsel have been actively involved in
implementing the Final Approval Order and the Settlement Agreement, which has been complex and

1 time-consuming. Class counsel has been actively and consistently involved with ARCHER Systems in
2 resolving questions and concerns by class members. Deady Decl. ¶¶ 11-12. In addition, all steps
3 necessary to distribute the Supplemental Payment to eligible class members were finally
4 accomplished by May 2021, when ARCHER Systems began distributing the Supplemental Payment.
5 Deady Decl. ¶ 3. Class counsel will continue to be actively involved in implementing the Final
6 Approval Order and Settlement Agreement for as long as it takes to do so. Deady Decl. ¶ 12.

Request for Relief

- 7 1. Based on the foregoing considerations, Petitioner and Settlement Administrator, with
8 the approval of Court Monitor Maria-Elena James, request that the Court enter an order
9 providing relief and modifying the Final Approval Order and Judgment as follows:
- 10 2. To be considered for the Initial \$1000 Payment and for Past Damages (for class
11 members who are eligible for Past Damages), class members must submit a Class Member
12 Data Form (CMDf) to ARCHER Systems postmarked on or before April 10, 2022;
- 13 3. Living class members may submit a CMDf requesting the Supplemental Payment at
14 any time but will be limited to Supplemental Payments going forward from the year in which
15 the CMDf is submitted (no retroactive Supplemental Payments will be allowed);
- 16 4. Settlement Administrator ARCHER Systems shall allocate unclaimed funds from the
17 \$1000 Initial Payment(s) and Past Damages Payment(s) to the Supplemental Payment for the
18 benefit of living class members;
- 19 5. The QSF Administrator be directed to release the \$500,000 in attorneys' fees that were
20 withheld pursuant to the Final Approval Order, ¶¶ 15, 20-a.

21 Dated: July 16, 2021

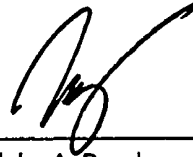


Andrew Thomas Sinclair
Attorney for Petitioners and Class

Approval by Settlement Administrator

I have read the above Ex Parte Application re Closing Class, Disposition of Unclaimed Settlement Funds and Release of Attorney's Fees and agree that the requested Order should be granted.

Dated: July 15, 2021



Blake A. Deady
ARCHER Systems, LLC
Settlement & QSF Administrator

Approval by Court Monitor

I have read the above Ex Parte Application re Closing Class, Disposition of Unclaimed Settlement Funds and Release of Attorney's Fees and agree that the requested Order should be granted.

Dated: 7/16/21



Hon. Maria-Elena James (Ret.)
Court Monitor

Statement by The Regents

The Regents do not oppose the Ex Parte Application re Closing Class, Disposition of Unclaimed Settlement Funds and Release of Attorneys' Fees.

Dated: July 16, 2021



Jennifer Romano
Crowell & Moring
Attorneys for Respondent

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ORDER

1 The Court has read the above Ex Parte Application re Closing Class, Disposition of Unclaimed
2 Settlement Funds and Release of Attorneys' Fees and agrees that the relief requested should be
3 granted. Accordingly,

4 1. IT IS ORDERED that:

5 2. To be considered for the Initial \$1000 Payment and for Past Damages (for class
6 members who are eligible for Past Damages), class members must submit a Class Member
7 Data Form (CMDF) to ARCHER Systems postmarked on or before April 10, 2022;

8 3. Living class members may submit a CMDF requesting the Supplemental Payment at
9 any time but will be limited to Supplemental Payments going forward from the year in which
10 the CMDF is submitted. No retroactive Supplemental Payments will be allowed;

11 4. Settlement Administrator ARCHER Systems shall allocate unclaimed funds from the
12 \$1000 Initial Payment(s) and Past Damages Payment(s) to the Supplemental Payment for the
13 benefit of living class members;

14 5. The QSF Administrator is directed to release the \$500,000 in attorneys' fees that were
15 withheld pursuant to the Final Approval Order. ¶¶ 15, 20-a.

16 Dated: *July 20, 2021*

17 *Winifred Y. Smith*
18 Winifred Y. Smith
19 Judge of the Superior Court
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