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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.

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUL 19 2021**

CLERK OF THE SUPERIOR COURT

By CHRISTNA ROGERS Deputy

No. RG 10530492

**Declaration of Blake Deady ISO  
Ex Parte Application to Close the  
Class, Dispose of Unclaimed  
Settlement Funds, and Release  
Attorneys' Fees; and Order  
[Proposed]**

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

Decl. of Blake Deady ISO Application to Close Class, Unclaimed Funds, Fees & Order

1 I say and declare:

2 1. My name is Blake A. Deady. I am the President and General Counsel of ARCHER  
3 Systems, LLC (“ARCHER”). ARCHER was appointed by the Court to act as Settlement and QSF  
4 Administrator(s). Final Approval Order, ¶¶ 16, 18.

5 **The Need to Close the Class**

6 Initial \$1000 Payment and Past Damages

7 2. Earlier this year, I provided a report regarding the progress of the settlement to  
8 Court Monitor, Hon. Maria-Elena James. Judge James attached this report to her own report to  
9 the Court, which was filed February 25, 2021. This report provided information regarding the  
10 number of class members who had returned Class Member Data Forms (“CMDFs”) in order to  
11 receive benefits pursuant to the Settlement Agreement signed on December 11, 2019, final  
12 approval for which was granted by this Court on April 10, 2020. The Accompanying Ex Parte  
13 Application revises those figures as reflected in 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%

18  
19 3. As the Settlement and QSF Administrator, ARCHER is responsible for ensuring  
20 that settlement funds are available for the Supplemental Payment which began this year, 2021,  
21 and will last for 20 years or until there are 1,000 or fewer class members who are still living, at  
22 which time remaining funds will be distributed to living class members. Settlement Agreement,  
23 ¶¶ V-A, subparts 3, 6-7, 13, Schedules A & C.

24 4. The Settlement Agreement provides that a Voluntary Employees Beneficiary  
25 Association (VEBA) will be established by Petitioners to preserve the tax-advantaged status of  
26 this benefit. Id. ¶ V-A-4-(i), (iii). After the first year (2021), settlement funds will be directed to  
27 the Livermore Retirees Health Insurance Trust (the VEBA Trust), which will invest the funds with  
28

1 the goal of maintaining the Supplemental Payment for 20 years or until there are 1,000 or  
2 fewer living class members. Settlement Agreement, ¶ V-A-14.

3 5. ARCHER Systems has retained Phillips Consulting Partners, LLC (“PCP”), an  
4 actuarial and employee benefits consulting firm, to assist the Settlement and QSF Administrator  
5 with ensuring that Supplemental Payments to living class members remain sustainable in light  
6 of the life expectancy of living class members, investment return, and increasing health care  
7 costs over the next 20 years.

8 6. To accurately determine the actuarial calculations, dates certain need to be  
9 established for class members to return their Class Member Data Form (“CMDF”). ARCHER is  
10 making and will continue to make every reasonable effort to locate class members. As noted  
11 above, approximately 80% of the class has registered, which reflects an additional 8% increase  
12 in registrations since the Court Monitor issued her report on February 25, 2021. Despite  
13 ongoing and best efforts to locate additional class members or their personal representative(s)  
14 or successor(s)-in-interest, ARCHER anticipates that it will be unattainable to locate all class  
15 members (or their personal representatives).

16 7. Particularly with respect to the Initial \$1000 Payment and Past Damages  
17 Payments, the Settlement Administrator, in consultation with PCP, requires dates certain to  
18 close the class. The Settlement Agreement provides for \$20 million for the Initial \$1000  
19 Payment and Past Damages Payments. ARCHER and the Administrator’s retained experts must  
20 be able to determine the amount of unclaimed funds from the Initial \$1000 Payment so that  
21 unclaimed funds can be reallocated, preferably to the Supplemental Payments. Petitioners,  
22 ARCHER, and PCP recommend that unclaimed funds from both the Initial \$1000 Payments and  
23 from Past Damages Payments be reallocated to the Supplemental Payments. It will not be  
24 possible to determine the amount of unclaimed funds from the Initial \$1000 Payments or from  
25 Past Damages Payments unless date(s) certain are established to close the class.

26 8. ARCHER recommends a deadline of April 10, 2022, the two-year anniversary of  
27 the Effective Date of Settlement, for submission of CMDFs with respect to the Initial \$1000  
28 Payment and Past Damages.

1  
2 The Supplemental Payment

3 9. From the Settlement Administrator’s perspective, distinct considerations apply  
4 to the Supplemental Payment, which is limited to living class members. Based on my  
5 discussions with Class Counsel, I have been informed and it is my understanding that  
6 Petitioners recommend that the class remain open indefinitely with respect to the  
7 Supplemental Payment, with the notable exception that class members who register their claim  
8 after end the of this year, December 31, 2021, shall not be entitled to retroactive payments for  
9 any year preceding the year in which a CMDF is submitted. Thus, if a class member submits a  
10 CMDF in 2025 and meets the Settlement Administrator’s requirements to receive the  
11 Supplemental Payment, the class member would be entitled to receive the Settlement  
12 Supplement on a going-forward basis only. There would be no retroactive Supplemental  
13 Payment for years 2021, 2022, 2023 or 2024. Moreover, any class member registering after  
14 April 10, 2022, would remain ineligible to receive the \$1,000 Initial Payment and Past Damages  
15 Payment.

15 **Release of Attorneys’ Fees Held Back by Court**

16 10. The Order (1) Granting Final Approval of Class Settlement and (2) Granting  
17 Motion for Award of Fees And Costs (April 10, 2020) provides in relevant part that “\$500,000 of  
18 the fee award [shall] be kept in the [QSF] administrator’s trust fund until at least one year after  
19 the final approval of the settlement,” that, “If the system is running smoothly after one year,  
20 then the court will be inclined to release the hold-back of attorney fees.” Order Granting Final  
21 Approval and Fees, p. 7. (Note that this Order is distinct from the Final Approval Order and  
22 Judgment (also filed April 10, 2020). Pursuant to the Order Granting Final Approval and Fees,  
23 after The Regents made a payment of \$5 million on July 9, 2020, the QSF Administrator  
24 reserved \$500,000 from funds that were available as attorneys’ fees. The Regents effected a  
25 second payment of \$5 million on July 9, 2021.

26 11. I can and do certify that, since the Final Approval Order and Judgment, and the  
27 Order Granting Final Approval and Fees, were entered on April 10, 2020, the system for  
28 implementation of the settlement and the distribution of the attorneys’ fee have “run

1 smoothly.” As described in the Ex Parte Application to (1) Approve Legal Structure to  
2 Implement Settlement Agreement, etc. (May 17, 2021), establishing the legal structure to  
3 implement the Settlement Agreement has been an unusually challenging and protracted  
4 process. Ex Parte Application (May 17, 2021), pp. 2-6. Class counsel has and continues to work  
5 diligently and tirelessly with the Settlement Administrator at each step in creating the complex  
6 legal structure necessary to ensure that the Supplemental Payment(s) to members of the class  
are tax advantaged.

7 12. I can and do also certify that class counsel have worked responsively with the  
8 Settlement Administrator to resolve issues that have arisen with respect to settlement funds  
9 and that settlement funds are being distributed to the class as required by the Final Approval  
10 Order and the Settlement Agreement. I have every reason to believe that the cooperation of  
11 class counsel will continue well into the foreseeable future. Accordingly, I believe that the goal  
12 of ensuring that counsel remain “attentive in the event any of their clients have complications  
13 in the claims process,” namely, “complications with the initial \$1,000 payment or if the  
14 settlement administrator or the members of the class have questions or concerns as the  
15 settlement administrator sets up the mechanism for distributing the settlement funds over the  
16 following 20 years,” has been satisfied.

17 I declare under penalty of perjury and the laws of the State of California that the  
18 foregoing declaration was executed by me on July 15, 2021, at Houston, Texas.

19  
20   
21 \_\_\_\_\_  
22 Blake A. Deady