Sinclair Law Office
Andrew Thomas Sinclair (SB No. 72681)
300 Frank H. Ogawa Plaza
Rotunda Building, Suite 160
Oakland, CA 94612
Tel: (510) 465-5300
Fax: (510) 465-5356
ats@sinclairlawoffice.com

Carter Carter Fries & Grunschlag
Dov M. Grunschlag (SB No. 42040)
582 Market Street, Suite 518
San Francisco, CA 94104
Tel: (415) 989-4800
Fax: (415) 989-4864
dgrunschlag@carterfries.com

Calvo Fisher & Jacob LLP
Kathleen V. Fisher (SB No. 70838)
Rodney J. Jacob (SB No. 146428)
Alexander M. Freeman (SB No. 237811)
Maya S. Maravilla (SB No. 209081)
535 Pacific Avenue, Suite 201
San Francisco, CA 94133
Tel: (415) 374-8370
Fax: (415) 374-8373
kfisher@calvofisher.com
rjacob@calvofisher.com
mmaravilla@calvofisher.com
afreeman@calvofisher.com

Attorneys for Petitioners and Class

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

Declaration of Andrew Thomas Sinclair in Support of Motion for Final Approval of Stipulation of Class Action Settlement and Release; and in Support of Motion for Attorneys' Fees

Date: April 10, 2020
Time: 10:00 a.m.
Dept.: 21
Judge: Hon. Winifred Y. Smith
Reservation Nos.: R-2151295
R-2151296

I say and declare:

1. My name is Andrew Thomas Sinclair. I am one of the attorneys for Petitioners and the class. This declaration outlines the work I did in this case and describes the time that I devoted to each stage of the case. As to time worked, this declaration is supported by my contemporaneous time notes which I have reviewed and which accurately track the time I devoted to this case. My practice is and was to record time conservatively so that lower times are recorded if there is any question.

My Experience with University of California Cases

2. I have a long history of representing employees at the Lawrence Livermore National Laboratory (LLNL). I began handling cases at LLNL in 1975 while I was still in law school and working for the California State Employees Association (CSEA). I continued representing employees at LLNL after passing the California bar in 1976. Since that time, I have handled numerous cases at LLNL, including internal grievances, writs of mandate, California Public Records Act cases, unfair labor practices before the Public Employment Relations Board, and employee benefit cases. I was the lead attorney in *Creighton v. Regents of Univ. of Cal.*, 58 Cal.App.4th 237 (1997). Although the petitioners/retirees did not prevail in *Creighton*, the case established legal principles that have been helpful to Petitioners' in this case, including that California cases involving implied contractual rights in pension and retiree health care apply to the Regents. *Id*. at 242-243, citing *Betts v. Bd. of Admin*., 21 Cal.3d 859, 863 (1978), and *Thorning v. Hollister School Dist*., 11 Cal.App.4th 1598, 1605 (1992). Over the years, I have also handled at least two other appeals involving LLNL and have handled more than 15 appeals involving the University of California. For the last 25–30 years, the majority of my practice has involved University of California cases.

3. This case involves legal issues that were not clearly established under California law when the Petition for Writ of Mandate was filed in 2010. Petitioners alleged in their Petition that they have an implied contract to University-sponsored group health plan coverage which the Regents impaired by terminating their retiree health care benefits in 2007. Although *Creighton* noted that *Betts* and *Thorning* applied to the University of California, this was arguably *dicta*. Further, the California Supreme Court had recently clarified that, to prevail on a contract theory, Petitioners would have to allege facts that, if

proven, would overcome the presumption that "that a statutory scheme is not intended to create private contractual or vested rights." *Retired Employees of Orange County v. County of Orange*, 52 Cal.4th 1171, 1186 (2011) (*REAOC*); *see Requa v. Regents of Univ. of Cal*., 213 Cal.App.4th 214, 225 (2012).

4. In the first appeal in this case, Petitioners prevailed on their contention that their First Amended Petition alleged facts sufficient to overcome this presumption. *Requa*, at 226-227. Although *REAOC* held that an implied term of an express contract for retiree health care benefits could arise, *id*. at 1185, no case had squarely held that an implied contract could arise without an express contract. Petitioners knew it would be difficult to overcome the presumption disfavoring implied contractual rights, especially in light of the Regents' "full powers of organization and governance" under Cal. Const., Art. IX, § 9. There were other impediments as well. In addition to the foregoing, there was also an issue as to whether Petitioners could assert their rights through a writ of mandate, as opposed to a civil claim for breach of contract; whether Petitioners could assert claims on behalf of deceased class members; whether the claim regarding contract formation and terms could be asserted through a class action; and whether Petitioners could assert claims for class members who had not suffered actual economic loss. Indeed, as explained below, these latter two issues formed the basis for the Superior Court de-certifying the class in 2017, and for the Court of Appeal reversing that decision in 2018. *See Moen v. Regents of Univ. of Cal.*, 25 Cal.App.5th 845, 855-858 (2018).

My Involvement in this Case

5. In March 2009, I was contacted by Joe Requa concerning the Regents' termination of University-sponsored group health care benefits for UC retirees who had worked at the Lawrence Livermore National Laboratory (LLNL) before Lawrence Livermore National Security (LLNS) took over management of LLNL on October 1, 2007. At about the same time, Dov Grunschlag was contacted by another retiree with the same concern. Shortly thereafter, Mr. Grunschlag and I were contacted by a law firm in Pittsburgh (Stember, Feinstein, Doyle, Payne & Kravec LLC) which had also been contacted by other retirees from LLNL. Eventually, the three law firms agreed to work together on the case and entered into a contract with Petitioners.

Agreement with Petitioners

6. The contract for legal services between petitioners and counsel that was in effect when the case settled in December 2019 provides that, before seeking a contingency recovery, counsel will first seek an award of fees from the court to be paid by the Regents, separate from and in addition to any agreement on the merits of the case. If there is no award of fees, then counsel would be entitled to a contingency fee of 20% of the recovery. (*See* Sinclair Decl. ISO Motion for Preliminary Approval, filed 12/11/19, ¶ 32, Exh. C, p. 10.)

Summary of Time Spent on Ten Stages of Case

7. The case has now lasted more than ten years and can be divided into several stages:

a. Stage 1: Initial Consultation through First Amended Petition;

b. Stage 2: First Appeal and *Requa* opinion;

c. Stage 3: Class Certification and Notice to Class;

d. Stage 4: Phase I Trial and Statement of Decision;

e. Stage 5: Discovery re "Actual Economic Damages";

f. Stage 6: Order re Complete Class List and Second Notice;

g. Stage 7: Decertification;

h. Stage 8: Second Appeal and *Moen* opinion;

i. Stage 9: Mediation, Trial Preparation and Settlement; and

j. Stage 10: Post-settlement to the Present (February 29, 2020).

Stage 1 (Initial Consultation through First Amended Petition)

8. After the parties entered into an agreement for legal services, the clients requested an evaluation of the case. The retirees' case presented a substantial number of unsettled legal questions (touched on above): Were the Regents' promises to provide health insurance in retirement legally enforceable? Had the Regents entered into a contractual obligation to provide health insurance to the retirees for their lifetimes? Did the termination of benefits constitute an impairment of any such contractual obligation in violation of the California Constitution? What was the significance, if any, of the fact that the U.S. Department of Energy (DOE) contract (under which the University was reimbursed

for the cost of providing retiree health care) had expired? Was it significant that at least for the time being, some health care benefits were being provided by the LLNS, the successor contractor? Would the retirees be able to obtain relief for their families as well as themselves? What about retirees who had passed away? Would a court order the Regents to reinstate UC health care coverage, or would retirees be limited to monetary damages (based on higher premiums, co-pays, and deductibles of the LLNS plans vs. UC plans)? After substantial research, the attorneys provided a detailed letter to the clients (on or about March 24, 2010).

9. Petitioners decided to go forward with their claim, in court if necessary. Efforts to resolve the matter without litigation were not successful. The Regents maintained they had *no legal obligation* to provide University-sponsored health care coverage because coverage had been provided as a matter of policy, *not* contractual obligation. This was the Regents' fundamental position throughout the litigation, buttressed by numerous arguments and defenses. *See Requa,* at 222.

10. On August 11, 2010, Joe Requa, Wendell G. Moen, Jay Davis and Donna Ventura filed a Petition for Writ of Mandate. Substantial time researching issues and drafting the Petition preceded the filing, including delving into the complex law on whether and when retiree health care benefits are guaranteed ("vested") to public employees in California. The filing was not undertaken lightly. Dov Grunschlag and I had considerable experience with litigation involving the Regents and expected vigorous and well-presented opposition.

11. The Regents demurred, arguing there was *no legal obligation* to provide University-sponsored health care coverage because benefits had been provided as a matter of policy, *not* contractual obligation. *See Requa,* at 222. The Regents' demurrer was sustained with leave to amend on December 21, 2010.

12. With my assistance, Joe Requa sought relevant documents through a request under the California Public Records Act. In response, the Regents produced documents that proved critical, including a 1961 Resolution passed by the Regents establishing University-sponsored health care benefits for employees and retirees. *See Requa,* at 217, 226-228, 232. A number of these documents were included as exhibits and incorporated into to the First Amended Petition, including the 1961 Resolution

and other important documents, including a University brochure promising to provide "University-sponsored group health plan coverage for you and your family when you retire."

13. Despite the case being only at the pleading stage, the Regents sought discovery of Petitioners' documents. Hundreds of documents were produced by Petitioners, who did succeed in negotiating a stipulated protective order covering the production. This work consumed significant time.

14. Petitioners filed a First Amended Petition on January 24, 2011. This was not a routine rehash of a rejected pleading but rather detailed factual allegations supported, as noted above, by University brochures as well as the 1961 Resolution, a document that proved to be supremely important in the subsequent appeals. *Requa*, at 217; *Moen*, at 849.

15. The Regents demurred to the First Amended Petition. On May 26, 2011, the court sustained the demurrer without leave to amend, ruling that the facts alleged failed to state a cause of action based on contract, express or implied.

Stage 2 (First Appeal and *Requa* Opinion)

16. Petitioners filed their appeal on July 29, 2011. Substantial time and energy were devoted to the appeal by all three law firms. The Stember firm took the lead on Appellants' Opening Brief, I took the lead on Appellants' Reply, and Dov Grunschlag argued the matter on November 20, 2012. While the appeal was pending, the California Supreme Court decided *REAOC, supra*, 52 Cal.4th 1171. *REAOC* addressed whether implied contractual rights could arise with respect to retiree health care benefits in public employment. Because of the significance of *REAOC* to the appeal, counsel followed the case closely and participated in the preparation of *REAOC* counsel for oral argument before the California Supreme Court. This paid off. The Supreme Court held that a claim for an implied term of an express contractual term relating to retiree health care benefits in public employment was viable under California law, *REAOC* at 1180, a ruling on which Petitioners were able to rely in their appeal, and which formed the basis for the Court's decision. *Requa*, at 221-222, 224-226.

17. On December 31, 2012, the Court of Appeal reversed the trial court, finding that Petitioners had stated a cause of action for impairment of implied contract, *Requa*, at 226-227, 227-228, as well as for promissory and equitable estoppel. (*See* Unpublished Portion of Opinion, Slip. Opin., pp.

22-28.) The claim for breach of express contract was rejected, *Requa*, at 226, fn. 9, as were a number of defenses asserted by the Regents, all essentially arguing that an implied contract could not arise with respect to retiree health care benefits. *Id*. at 228-233; Slip. Opin., pp. 22-28. The Court did not initially publish the Opinion. Petitioners asked the Court to do so and solicited letters asking for publication by two law firms. On January 29, 2013, the Court published the Opinion in part. Publication had a significant benefit to Petitioners and other employees and retirees of the University, as well as other public agencies, because the holding was then, both in the University and outside. *Requa* has since been cited in 16 appellate decisions.

Stage 3 (Class Certification and Notice to Class)

18. Remittitur was issued on March 8, 2013. After discussing the matter with counsel, Petitioners decided to amend the Petition to add class allegations and several additional class representatives (Robert Becker, Gregory Bianchini, Geores Buttner, Alan Hindmarsh, Steve Hornstein, Cal Wood and Sharon Wood). A Second Amended Petition was filed October 15, 2013. A Third Amended Petition was filed on March 27, 2014, to correct and expand the class definition. All three law firms were involved in drafting both the Second Amended Petition and the Third Amended Petition.

19. On November 22, 2013, the firm of Stember, Cohn & Davidson Welling was substituted for Stember, Feinstein, Doyle, Payne & Kravec.

20. On November 26, 2013, Petitioners associated Calvo, Fisher & Jacob LLP ("Calvo firm"), a San Francisco firm with expertise in class actions. Thereafter, Petitioners determined that the Calvo firm provided the class action expertise that was needed and that continuing with Stember Cohn & Davidson-Welling would be duplicative. The Stember firm withdrew on May 28, 2014. At the time Stember Cohn & Davidson-Welling withdrew as counsel for Petitioners, an agreement was reached, based in part on a contract for legal services that was then in effect (but later superseded by the agreement currently in effect). The agreement with Stember is set forth in attachments to a letter from John Stember dated April 18, 2014, a true and correct copy of which is attached as **Exhibit 1.**

21. On December 23, 2013, the Court allowed Joe Requa to withdraw as a named Petitioner for medical reasons. The case then proceeded as *Moen v. Regents of University of California*.

22. On February 20, 2014, Petitioners filed their motion to certify the class. Before responding, the Regents noticed the depositions of each of the ten named Petitioners and made document additional requests to each. Although Petitioners had a good faith basis for limiting discovery, especially with regard to Petitioners' individual understanding of the Regents' contractual commitment, *see, e.g.*, *Moen*, at 858 – they decided it would be more efficient to allow full discovery rather than requesting a limitation. Counsel from the three firms devoted substantial time to preparing Petitioners for their depositions, responding to the Regents' wide-ranging document requests, and defending the depositions. I was responsible for preparing Geores Buttner, Jay Davis, Alan Hindmarsh and Wendell Moen and defending their depositions. Dov Grunschlag responsible for Steve Hornstein and Donna Ventura. William Hebert from the Calvo firm was responsible for Robert Becker, Gregory Bianchini, Cal Wood and Sharon Wood.

23. On June 5, 2014, the Regents filed an extensive opposition to Petitioners' motion to certify the class, supported by numerous deposition excerpts and exhibits, essentially arguing that class certification was not appropriate because an individualized determination was required with regard to each Petitioner's individual understanding of the terms of the implied contract – a theory found to be wholly without merit in *Moen*, at 858, but vigorously advanced by the Regents throughout the litigation.

24. After filing their opposition and prior to the scheduled hearing on the motion to certify, the Regents proposed mediation. Petitioners agreed. The parties selected Jeff Ross, and a mediation took place on September 24, 2014. The case did not settle, and Petitioners filed their closing papers, responding to the Regents' opposition, on June 26, 2014.

25. The matter was heard on October 15, 2014. On October 30, 2014, the Court granted the motion to certify the class with regard to the claim for impairment of implied contract but not for estoppel. (*See* Order re Class Certification (10/30/14), p. 7.) The Court agreed that the evidence on all key issues of liability was common to the class as a whole: The Regents' authorization of coverage (the 1961 Resolution), the offer (and promise) of University-sponsored health care during retirement, the retirees' acceptance of the Regents' offer through continued employment, the termination of the benefit, and the primary relief sought (reinstatement to University-sponsored coverage). (*Id*., pp. 5-7.) The court

defined the class as UC employees who had worked at LLNS, retired prior to October 1, 2007, and lost University-sponsored health plan coverage as a result of the transition to LLNS in 2007, as well as their spouses, surviving spouses, and dependents. (*Id*. p. 7.) The Court also found that Petitioners were adequate class representatives and appointed the three law firms then involved (Sinclair Law Office; Carter, Carter, Fries & Grunschlag; and Calvo, Fisher & Jacob) as counsel for the class.

26. In the order certifying the class, the Court directed that notice be provided to the class and ordered the Regents to "provide to Class Counsel and the claims administrator a master mailing list consisting of the names and addresses of all class members." (*See* Order re Notice Procedures (12/2/14), cited in Order re Complete Class List (2/22/17).)

27. In spite of the order to provide "the names and address of *all class members*," the Regents produced the names and addresses of *retirees only*, and did not disclose the fact that the list was so limited, but rather, insisted that it was an accurate and complete list of *all* members of the class. Two years later, in 2017, Petitioners learned that the Regents had omitted the names of spouses, dependents and deceased class members. *See below*.

28. On or about January 21, 2015, notice was mailed to approximately 4,500 putative class members. Approximately 150 opted-out.

29. The notice listed the attorneys for the class and said they could be contacted if there were questions. I was listed first and received most of the calls from putative class members. I responded to approximately 27 telephone inquiries in January 2015, approximately 16 inquiries in February, and about 3 in March. Inquiries continued over the next few months but diminished in number. My co-counsel responded to inquiries as well, but most inquiries came to me.

Stage 4 (Phase I of the Trial and Statement of Decision)

30. After granting the motion to certify the class, the Court decided to try five separate issues: (1) Were the Regents authorized to enter into bilateral contracts governing the employment relationship?; (2) Did the Regents enact legislation clearly evincing an intent to create private contract rights?; (3) Did the parties' conduct show the formation of an implied contract?; (4) Does any such contract include the

promise that Retirees would remain in health insurance "pools" with University employees?; and (5) Has any such contract been unconstitutionally impaired? *See Moen,* at 850.

31. The first two issues were to be tried in Phase I. Trial was set for September 11, 2015. To prepare for the Phase I trial, I reviewed over 4,000 documents consisting of approximately 85,500 pages, produced by the Regents in discovery. The most relevant documents fell into two main categories: (1) Minutes and other records of the Regents' actions beginning in 1952 and extending to 2007 (when the Regents terminated University-sponsored health care benefits for Petitioners); and (2) over 150 booklets published after the Regents adopted the 1961 Resolution authorizing University-sponsored health care benefits for employees and retirees that contained assurances, promises, and representations of health care coverage during retirement.

32. Discovery was complicated by the fact that, on March 4, 2015, the Regents substituted Crowell & Moring for Hanson Bridgett. Crowell undertook a further review of Petitioners' document requests and produced thousands of additional documents. I developed a Master Index of documents in an Excel spreadsheet, noting relevant information about each document. Reviewing the documents and developing the Master Index was time-consuming but proved to be critical in locating documents needed to present the case that the Regents intended to create contractual rights in granting University-sponsored group health care benefits to employees and retirees, which was necessary to overcome the legal presumption that the Regents had not intended to create contractual rights. *See Requa,* at 222, 225-228.

33. In addition to the preceding matters, in reviewing the documents produced by the Regents, counsel was able to establish how the Regents participated in structuring the UC Termination Agreement with DOE such that University-sponsored retiree health care benefits were terminated at the time of the transition to LLNS, and responsibility for retiree health care was transferred to the LLNS Health and Welfare Benefit Plan for Retirees (LLNS Plan), under which: "LLNS, in its sole discretion, reserves the right to amend or terminate in writing at any time the Plan … and/or any Benefit Program. No benefit described in the Plan will be considered to 'vest.'" *Moen,* at 849.

34. Phase I was tried on the papers. Using the extensive discovery described above, Petitioners were able to chronicle the Regents' actions and decisions, beginning in 1952, which

eventually resulted in the decision in 1961 to provide University-sponsored group health care benefits for employees and retirees. To support Petitioners' contentions, I was mainly responsible for collecting and analyzing Minutes of Regents' meetings from the early 1950s to 1961 (during which group health care was being considered), as well as Minutes and other documents reflecting the Regents' actions in maintaining and enhancing University-sponsored benefits from 1961 up to the time Petitioners' moving papers were filed on July 15, 2015. As noted above, Petitioners were able to obtain benefit booklets, published from shortly after the 1961 Resolution to the present, in which the Regents assured employees that "You may continue your University-sponsored group health plan coverage for you and your family after you retire," or gave similar assurances. The benefit booklets played a critical role in the Court's decision.

35. The Regents filed their opposition on August 17, 2015, and Petitioners filed their reply on September 4, 2015. The matter was heard on September 11, 2015. Several weeks later, the Court issued a Statement of Decision, which was finalized on December 8, 2015, finding that "the University and Petitioners reasonably understood that the University offered employee benefits, including retiree health coverage, to prospective and existing employees in exchange for their agreement to accept and remain in employment with the University," (Statement of Decision (12/8/15), p. 7); and that "The October 1961 resolution, the circumstances surrounding its passage, the Regents subsequent description of retirement health benefits and repeated, unqualified promises that those benefits would remain available in retirement, and their acknowledgement the benefits were offered as part of a *quid pro quo*, all lead to the inexorable conclusion, by convincing extrinsic evidence, that the offer of retiree health benefits was intended to be a contractual obligation, upon which University employees would reasonably rely." (*Id*. pp. 8-9); and *see Moen*, at 850-851.

Stage 5 (Discovery re "Actual Economic Damages")

36. Petitioners planned to promptly move on to Phase II of the trial and obtained a trial date of June 24, 2016. However, shortly after the trial date was set, a dispute arose as to whether the Court would require a showing of "actual economic damages" to prove impairment of implied contractual rights. When the Court agreed with the Regents that monetary damages are required to prove

impairment, Petitioners had no choice but to ask the Court to delay Phase II so they could conduct discovery and develop a damages model. Petitioners then embarked on extensive discovery to obtain documents, data and information needed to establish monetary loss by members of the class, lasting well over a year, as described below. *Moen* later held that "actual economic damages" are not required to prove impairment, but Petitioners had no way to know how the *Moen* court would rule and so had to engage in discovery to preserve their rights.

37. In response to numerous requests for production and subpoenas, the Regents, LLNS, Kaiser, and various companies providing administrative services to LLNS, including Empyrean, Hewitt Associates and Via Benefits (formerly Extend Health, then One Exchange), provided Excel spreadsheets containing data needed to determine who was in the class and what damages they had suffered, whether they were living or deceased, what benefits they were receiving and had received in the past, and similar data and information.

38. The requests for production and subpoenas, and the spreadsheets produced in response, may be summarized as follows:

	RFP / Subpoenas	**Spreadsheets**
Empyrean	1	9
Hewitt	5	41
Kaiser	1	1
LLNS	9	16
Via Benefits	2	3
Regents	9	38
Total	**27**	**108**

39. Data and information in the Excel spreadsheets were typically complex and required extensive review. Follow-up with the entity producing the spreadsheet was often required to clarify the data produced. In addition, a number of the spreadsheets contained more than one "tab" (each tab being a separate spreadsheet within a spreadsheet). One example of the problems that Petitioners encountered

involved an Excel spreadsheet which contained extensive data that UC had provided to LLNS (via Hewitt) in 2007 as part of the transition in management to LLNS and the transfer of Petitioners to the LLNS Plan. The spreadsheet contained critical data and information. However, according to the Regents, the UC employee who developed the spreadsheet had left UC employment, and no one at UC was familiar with the spreadsheet, so it was only possible to identify *some* column headings (which were typically abbreviated) identifying the data in the column. Eventually, the Regents stipulated to the meaning of about half of the column headings, but this left potentially critical data and information unaccounted for.

40. Another example involved LLNS's claim, at some times but not other times, that it did not "possess" data and information that Petitioners requested via subpoena; and that Petitioners would have to subpoena the various companies with which LLNS contracted to provide administrative services relating to retiree health care benefits (Via Benefits, Hewitt and Empyrean, etc.) Although Petitioners believed that LLNS clearly had *access* to the data from companies hired to provide administrative services, Petitioners felt it was more efficient to issue subpoenas to the companies than to bring one or more motions to compel. Accordingly, Petitioners issued numerous subpoenas, causing significant delay.

41. Most of the companies providing administrative services to LLNS were cooperative in responding to subpoenas, but this was not always the case. For example, Via Benefits fully cooperated in providing data in response to a subpoena issued in 2016, but when Petitioners sent a follow-up subpoena in 2017, Via Benefits demanded approximately $100,000 to comply. Another example involves the frustration of both Petitioners and the Regents in securing accurate and consistent data regarding deceased class members. Given inconsistent data, in particular data provided by LLNS, Petitioners and the Regents agreed to jointly hire a company with access to Social Security date-of-death records (Accurint), but even the data provided by Accurint was far from complete and accurate. See below.

42. After the Court ruled that Petitioners had to show "actual economic damage," *Moen*, at 853, Petitioners hired experts and consultants to review the data and information produced in discovery, mainly Excel spreadsheets, and develop a damages model. The amount of data in these spreadsheets was overwhelming. I took the lead in searching for experts and consultants who could make sense of the

spreadsheets and develop a damages model. I contacted at least a dozen possible experts and consultants. This consumed substantial time and resources since most turned out to be inappropriate. I researched numerous experts and consultants and contacted and interviewed a number of them before we settled on an actuary with extensive experience in the health care industry (Allan Phillips) and a health care economist with extensive experience in retiree health care benefits (Roger Feldman, Ph.D.). Once on the job, these experts and consultants found numerous cases of data being incomplete, inaccurate or simply missing. This led to further requests to the Regents, LLNS and the various companies employed by LLNS.

43. In addition to other difficulties, obtaining responses from the Regents and LLNS, as well as the entities noted above, almost always required negotiations regarding what data and information would be provided, and usually required a Protective Order, given the private and confidential information, including Social Security numbers and similar information included in the data. Petitioners had to negotiate and obtain at least five (5) Protective Orders during the course of this discovery.

44. Complicating the situation was the California Supreme Court's decision in *Duran v. U.S. National Bank*, 59 Cal.4th 1 (2014), decided shortly before the class was certified. The Regents insisted that *Duran* precluded certification, and the court repeatedly considered the Regents' arguments. The issue was not settled until *Moen* agreed with Petitioners that "*Duran* does not preclude classwide determination of liability." *Moen*, at 864.

Stage 6 (Order re Complete Class List and Second Notice)

45. Ironically, during discovery into actual economic loss, it became apparent that the Regents had *not* produced a complete class in response to the Court's order to do so in December 2014. Rather, the "class list" provided by the Regents in 2015 contained *only* retirees who were living. It did not include "spouses, surviving spouses and dependents," who are clearly part of the class; nor did it include class members who had passed away. (Order Certifying Class (10/30/14), p. 7.) Upon discovering that the 2015 "class list" was incomplete, Petitioners asked the Regents to provide the names of spouses, surviving spouses, dependents and deceased class members not on the 2015 list. The Regents refused. On January 23, 2017, Petitioners filed a motion for a complete class list, which the Regents vigorously

opposed. On February 22, 2017, the Court granted Petitioners' motion and ordered the Regents "to comply with the court's prior order [of December 2, 2014] to produce a complete class list." (*See* Order re Complete Class List (2/22/17), p. 4.)

46. Even after the Court issued this Order, the Regents continued to resist, but eventually agreed to include "spouses, surviving spouses and dependents" in the class, as well as deceased class members. The parties eventually agreed that an additional 4,500 members would be added to the class. On May 25, 2017, the Court ordered a second notice to be mailed. Notice was mailed on or about August 4, 2017. Approximately 50 putative class members opted-out.

47. Throughout the time devoted to obtaining a complete class list and providing appropriate notice, I continued to work on collecting and analyzing data and information to develop, along with Petitioners' experts and consultants, a damages model for use in the Phase II trial.

Stage 7 (Decertification)

48. At a Case Management Conference on June 2, 2017, the parties indicated they were ready to proceed to Phase II of the trial. However, the Court decided to hear dispositive motions before setting a trial date and approved a plan for the parties to file cross-motions for summary adjudication; and for the Regents to file a motion to decertify the class. Both sides filed motions for summary adjudication on July 7, 2017. Opposition papers were filed by both parties on September 6, 2017, and reply briefs were filed September 15, 2017. Class Counsel spent a significant time preparing Petitioners' motion for summary adjudication and opposing the Regents' motion, both of which involved novel and complex questions of law.

49. On October 27, 2017, the Court denied Petitioners' motion on the grounds that "If class members did not suffer any actual economic damage from the Regents' alleged impairment of their implied contract rights, they cannot prevail on that claim" (Order Denying Petitioners' Motion for Summary Adjudication (10/27/17), p. 1), a holding later rejected in *Moen*, at 863 ("A noneconomic impairment can constitute impairment"). On November 27, 2017, the Court also denied the Regents' motion for summary adjudication, finding that it was, in effect, a motion for reconsideration of the Phase I ruling. (Order Denying Regents' Motion for Summary Adjudication (11/27/17), p. 1.)

50. The Regents filed their motion to decertify the class on August 23, 2017. Petitioners filed their opposition on September 6, 2017. On November 21, 2017, the Court granted the motion to decertify the class, effectively ending the litigation (except for the ten named Petitioners). (Order Decertifying Class (11/21/17), p. 3.)

Stage 8 (The Second Appeal and *Moen* Opinion)

51. Petitioners filed a notice of appeal on January 17, 2018. In light of the long delays incurred by the first appeal (some 18 months), and the fact that the class members were passing away at rapid rate (some 1,800 class members had passed away by this time), Petitioners wanted to obtain relief as quickly as possible. Accordingly, the next day, January 18, 2019, Petitioners filed a Petition for Writ of Mandate in the Court of Appeal, seeking immediate reversal of the decertification order. The Court of Appeal denied the writ on January 19, 2018, but noted that "various procedures available to petitioners to expedite record and briefing in the appeal." Heeding this ruling, on January 31, 2018, Petitioners filed a Motion for Calendar Preference / Priority on Appeal, which the Court of Appeal granted in part on February 2, 2018, directing the parties to file briefs with no extensions and discouraging oral argument ("If oral argument is waived, the court will submit the cause for decision and will issue its opinion as soon as practicable").

52. Appellants' Opening Brief was filed March 29, 2018, Respondents' Brief, on May 7, 2018, and Petitioners' Reply, on May 29, 2018. Two months later, on August 1, 2018, the Court of Appeal, in a published decision, reversed the order decertifying the class in its entirety, allowing the case to move forward as a class action. *Moen*, 25 Cal.App.5th 845 (8/1/18). The appeal was decided in near record time. In addition to reinstating the class action, the Court of Appeal established several important principles of law, beneficial to the parties, and having significance for public employees and public employers throughout the state, and for this reason, published the decision without prompting by Petitioners.

53. In an extensive and detailed opinion, the Court squarely rejected the trial court's conclusion that "actual economic damage" is required to establish a claim for impairment of implied contract. *Moen*, at 853, 863 ("In sum, we conclude the trial court's conclusion that Retirees must prove

they suffered actual economic damage in order to prove their impairment claim was erroneous. A noneconomic impairment can constitute impairment.").

54. *Moen* was the first case in California to squarely address whether impairment of implied contract – as opposed to breach of express contract – could be proven without "actual economic damage." The Court noted that, in *Valdes v. Cory*, 139 Cal.App.3d 773 (1983), "the interest of the employee at issue here is in the security and integrity of the funds available to pay future benefits," and the statute in question "substantially impairs public employees' assurance that they will ultimately receive the retirement benefits to which they become entitled." *Moen*, at 861, citing *Valdes*, at 790. Similarly, the Court noted that, in *Teachers' Retirement Bd. v. Genest*, 154 Cal.App.4th 1012 (2007), the failure to make mandated contributions to a teachers' retirement funds, even when not required actuarially, "increases the risk to [retirement system] members that the [supplemental] funds will be insufficient to make the supplemental benefit payments in the future" and so "impairs the contractual rights [of teachers] … in violation of the state and federal Constitutions." *Id*. at p. 1039; *Moen*, at 862. The public agencies in those cases had not argued that "actual economic damage" was required to establish impairment. *Moen* was the first case in California to squarely address this issue.

Phase 9 (Mediation, Trial Preparation, and Settlement)

55. Petitioners began exploring settlement even before the case was remanded on October 2, 2018. At a Case Management Conference on August 20, 2018, Petitioners requested a mandatory settlement conference. Judge Robert McGuiness referred the matter to Judge Patrick Zika, who met with the parties on September 7, 2018, and again on October 12, 2018, but decided his calendar did not allow the time needed to resolve the complex issues involved. Judge Zika suggested the parties hire a private mediator. In November 2018, the parties agreed on Hon. Maria-Elena James (Ret.), ADR Services.

56. For 15 months, Petitioners engaged in settlement discussions with the Regents, beginning with Judge Zika and continuing with Judge James. The mediation required extensive consultation between counsel and Petitioners. The mediations and client conferences in Livermore may be summarized as follows:

1	9/7/18	Judge Zika

2	9/14/18	Livermore Library
3	10/12/18	Judge Zika
4	12/7/2018	ADR Mediation
5	12/20/2018	Livermore Library
6	1/15/2019	ADR Mediation
7	1/25/2019	Livermore Library
8	1/28/2019	ADR Mediation
9	2/28/2019	ADR Mediation
10	4/1/2019	ADR Mediation
11	4/7/2019	Livermore Library
12	4/24/2019	Livermore Library
13	4/29/2019	Livermore Library
14	5/1/2019	ADR Mediation
15	5/7/2019	ADR Mediation
16	5/8/2019	Livermore Library
17	5/20/2019	ADR Mediation
18	6/21/2019	ADR Mediation
19	6/27/2019	Livermore Library
20	7/11/2019	Livermore Library
21	7/19/2019	ADR Mediation
22	7/25/2019	Livermore Library
23	8/9/2019	ADR Mediation
24	8/22/2019	Livermore Library
25	8/29/2019	Livermore Library
26	9/4/2019	ADR Mediation
27	9/27/2019	Livermore Library
28	9/27/2019	ADR Mediation
29	11/12/2019	Livermore Library
30	1/17/2020	Livermore Library

57. Throughout the settlement discussions, Petitioners devoted a great deal of time, energy and resources to fashion a settlement structure that would address the health care needs of approximately 7,000 class members who were still living. This was complicated by numerous circumstances, including the fact that a small minority of class members was not eligible for Medicare and therefore was both more vulnerable to the risk of loss than class members who were eligible for Medicare; and the fact that these class members required significantly greater resources to defray the costs of their health care coverage. There was also the need to address the risk of future loss of health care coverage if LLNS terminated or materially altered the benefit it provides, the need to address past damages, inflation of health care coverage costs, general uncertainty as to the structure of the health care industry in the future,

the status of spouses and dependents, the need to collect and analyze relevant data (that was in constant need of being updated), finding a structure for delivering future benefits over a 20-year period, balancing the class members' immediate needs against their future needs, tax issues, navigating the interplay of the Regents and the Department of Energy, as well as countless other issues that had to be introduced to, negotiated and re-negotiated with The Regents. As noted in the above summary of meetings, Petitioners fully participated in considering and eventually approving the Settlement Agreement throughout the months it took to reach final agreement. Given the education and background of the Petitioners, their involvement contributed significantly to the final Settlement Agreement. Petitioners carefully considered whether to settle the case and debated the matter fully before approving the Settlement Agreement.

58. Even as settlement discussions proceeded, the case moved forward towards the Phase II trial. Again concerned with the rate at which class members were passing away (by this time approximately 25 per month), Petitioners made a motion for preference, which was denied on October 19, 2018, although the Court did set an early trial date (February 11, 2019). There was also an issue regarding subclasses. The parties agreed to submit simultaneous briefs. On January 18, 2019, the Court created six subclasses. Throughout this time, based on statements from the Court of Appeal in *Moen*, Petitioners continued to refine their damages model and update relevant data.

59. Petitioners were ready to proceed with the Phase II trial on February 11, 2019. However, in the meantime, on January 4, 2019, Petitioner Jay Davis met with UC Vice President Kim Budil to discuss settlement. Based on their discussion, Petitioners agreed to continue the trial date to allow time for further settlement discussions. The Court set a new trial date of May 6, 2019.

60. As settlement discussions proceeded, Petitioners' experts and consultants were called upon to respond to numerous proposals and counter-proposals as the parties exchanged and discussed data and information. In addition to the in-person mediations noted above, counsel (and on occasion petitioners) participated in *numerous* telephone conferences with Judge James and opposing counsel.

61. Settlement discussions were interrupted when, on March 4, 2019, the California Supreme Court decided *Cal Fire Local v. CalPERS*, 6 Cal.5th 965 (2019). For reasons that are not clear, *Cal Fire*

raised the Regents' hopes of convincing the Court to reconsider the Phase I Statement of Decision. In fact, *Cal Fire* had little if any relevance.

62. On March 21, 2019, the Regents asked the Court for an "immediate" Case Management Conference to consider the impact of *Cal Fire*. Petitioners opposed the request, and on April 8, 2019, the Court advised the parties: "The court will not set an earlier CMC to address the effect, if any, of *Cal Fire v. CalPERS* on this case. [¶] The Court's preliminary review of both *Cal Fire* and the Phase I decision of Judge Hernandez dated 12/7/15 suggests that the *Cal Fire* decision does not require reconsideration of the Phase I decision." Even this did not deter the Regents, who two days later, on April 10, 2019, filed a Motion for a New Trial based on *Cal Fire*. In response, Petitioners sent a letter explaining that the Regents' motion was procedurally defective and saying Petitioners would seek sanctions if the motion were not withdrawn. A draft motion for sanctions was attached. In response, on April 15, 2019, the Regents filed a Notice of Withdrawal of the motion. In the meantime, counsel had spent substantial resources opposing the Regents' ill-advised efforts around *Cal Fire* and lost valuable time that could have been devoted to settlement.

63. Settlement discussions resumed, but preparation for the May 6 trial also moved forward, including pre-trial motions, an Addendum to Petitioners' Trial Plan, Petitioners' Trial Brief, and expert discovery. Depositions of Petitioners' experts (Allan Phillips and Roger Feldman) went forward on April 17 and 19, 2019, respectively. Both experts traveled to California for their depositions. Maya Maravilla and I prepared both experts and defended both depositions. Meanwhile, my office, the Calvo office, and Dov Grunschlag's office continued preparation for trial. Motions *in limine* were filed by both sides, trial briefs were drafted, expert and lay witnesses were prepared, examinations of adverse witnesses were planned, graphics and demonstratives were designed, and witness and exhibit lists were exchanged.

64. During a conference with the parties on April 1, 2019, Judge James presented a mediator's proposal to settle the case of $80,000,000. Shortly thereafter, on April 3, 2019, she provided the proposal to writing to the parties.

65. To enhance the prospects for settlement, Petitioners drew attention to the case through newspapers, television, and letters to UC President Janet Napolitano. On April 25, 2019, the NBC "We

Investigate" team interviewed Jay Davis, Alan Hindmarsh and Wendell Moen at the Livermore Library. The story aired on May 10, 2019, providing an in-depth description on the case. On April 18, 2019, the *Livermore Independent* ran an article telling the story of the litigation. Petitioners also began a letter-writing campaign to convince UC President Janet Napolitano to support efforts to settle the case. In addition, at Petitioners request, on April 25, 2019, University Professional and Technical Employees (UPTE), a union representing employees at the Livermore Laboratory, wrote to President Napolitano urging UC to resolve the case. On May 23, 2019, the *Livermore Independent* published an open letter to President Napolitano from Petitioner Alan Hindmarsh urging her to settle the case. These efforts made a difference, and in my opinion, encouraged the Regents to settle the case. On April 26, 2019, the parties accepted Judge James' proposal (subject, however, to several conditions by the Regents which eventually required over six months to resolve).

66. With settlement on the horizon, counsel began looking for an appropriate entity to administer the settlement. On May 6, 2019, Kathleen Fisher and I met with Ernest Galvan, an attorney with Rosen, Bien, Galvan & Grunfeld, a firm with extensive experience administering settlements. Mr. Galvan suggested Archer Systems, LLC ("Archer") in Houston, Texas. Counsel for Petitioners engaged in a number of conference calls with Archer. Counsel also continued working on structuring a settlement and began to discuss with Archer the best way to deliver the greatest benefit for the class. It was important to Petitioners and the class that the benefits be tax-exempt to the extent possible. Petitioners also wanted to compensate class members (including deceased class members) who had suffered even minimal loss during the litigation; and, most importantly, to provide benefits going forward for living class members. In line with the goal of providing benefits going forward, counsel discussed with Archer the possibility of establishing a Voluntary Employees Beneficiary Association Plan (VEBA) trust so as to make these benefits tax-exempt under IRC § 501(c)(9). Establishing a VEBA trust raised a number of issues requiring further consultation with experts in the area.

67. On July 1, 2019, Kathleen Fisher, Maya Maravilla, Rodney Jacob and I flew to Houston to meet with representatives Archer Systems. Allan Phillips joined us there as well. We had productive sessions with Archer representatives on July 2-3, 2019, and made progress toward finding a structure that

would meet the above goals. These discussions, in turn, led to a great deal of legal research, expert consultations, and negotiations with the Regents.

68. On July 22, 2019, Judge James submitted a Mediator's Proposal to the parties under which the Regents would pay $4,000,000 for Petitioners to provide benefit counselors; and would pay $500,000 toward administrative costs of the settlement. This proposal was accepted by the Regents on September 6, 2019.

69. The parties continued their efforts to get accurate, up-to-date contact and date-of-death information for the class. As noted above, the parties eventually decided to jointly hire Accurint, a commercial company with access to Social Security data. In addition, both parties issued subpoenas to CalPERS (approximately 23% of the class is in CalPERS and 77% is in UCRP). It was particularly challenging to convince CalPERS to provide contact and date-of-death information, but the parties persevered and eventually reached agreement with CalPERS several months later. CalPERS provided needed data and information in December 2019, pursuant to a stipulated court order.

70. In May 2019, counsel for Petitioners began drafting the Settlement Agreement. Petitioners did most of the work drafting the Agreement, sharing drafts the Regents, incorporating changes when agreed upon, and discussing the structure of the settlement with Petitioners. The draft soon exceeded 30 single-spaced pages, plus about 40 pages of Schedules and Exhibits. The draft underwent numerous revisions as a multitude of issues were worked out.

71. As noted, Petitioners took their responsibility as fiduciaries with the utmost seriousness, taking an active part in formulating in analyzing data and information and formulating negotiating positions for the mediation. One class representative in particular, Steve Hornstein, devoted hundreds if not thousands of hours to assisting counsel throughout the litigation in seeking relevant data and information through subpoenas and requests for production, then analyzing the data once it was produced. (Mr. Hornstein had to withdraw as a class representative for medical reasons on November 21, 2019.) All of the Petitioners made substantial contributions to consideration and eventual approval of the Settlement Agreement.

72. The Regents' representatives worked closely with the Department of Energy to resolve issues and find a path going forward to settlement. This took a long time and required a significant commitment of time and resources to address concerns raised by DOE. However, the parties persisted and finally reached agreement. The direct involvement of UC General Counsel Charles Robinson was particularly helpful.

73. After reaching agreement in principle on April 26, 2019, it took another eight months (April to December) of negotiation and mediation to finalize the agreement. Eventually, after overcoming numerous hurdles and obstacles, the Regents signed the Stipulation of Class Action Settlement and Release on December 11, 2019.

74. Once the Settlement Agreement was signed, Petitioners filed a motion for preliminary approval, which was heard and granted on December 20, 2019. (*See* Order, Motion for Preliminary Approval of Class Settlement Granted (12/20/19) and Order Granting Preliminary Approval of Stipulation of Class Action Settlement and Release (12/20/19).)

Stage 10 (Post-Settlement to February 29, 2020)

75. Pursuant to the Order Granting Preliminary Approval of Stipulation of Class Action Settlement and Release, the Regents transferred $500,000 for administrative costs to Archer System on January 3, 2020.

76. After preliminary approval, an intense effort began to find and verify contact information for class members. The task was complex because contact information was spread over multiple Excel spreadsheets, making it virtually impossible to track and update contact information without reviewing each separate spreadsheet. To assist in the process, Petitioners hired Beezwax, a company that specializes in developing databases. Beezwax was able to import the relevant spreadsheets into a single database and produce reports showing current and historical contact and other relevant information for virtually all class members. Beezwax produced reports showing contact information from several sources to check consistency and pinpoint missing data and information. This in turn allowed my office to locate missing information based on my knowledge of the numerous spreadsheets produced in discovery. Working with Archer and Beezwaz, my office was able to locate contact information for

virtually all class members not included in the Beezwax reports, a surprisingly good result for a class of 9,000 class members, especially since 2,000 had passed away so next-of-kin had to be located and their identity verified.

77. As a result of the above-noted work, Archer was able to mail the Notice of Proposed Settlement of Class Action ("Notice of Proposed Settlement") to approximately 9,000 class members on January 21, 2020, including retirees, spouses, dependents, and next-of-kin for deceased class members.

78. The Notice of Proposed Settlement indicated that Archer was available (through an 800-number and a website) to answer questions. (*See* Declaration of Scott H. Freeman, filed December 11, 2019, Exh. 2, Notice of Proposed Settlement, p. 16.) Questions that could not be answered by Archer were directed to class counsel (the three law firms). Most inquiries were directed to (or were referred to) my office. *See below*. In addition, a number of class members posed questions to UCRLG (University of California Livermore Retirees Group), which had been instrumental in raising funds to support the litigation and had regular contact with class members. Questions to UCLRG were typically referred to me for response.

79. Many of the inquiries were routine, albeit time-consuming. But many inquiries were challenging and often involved explaining the terms of the Settlement Agreement, which are complex. The final Settlement Agreement itself consists of some 41 pages of single-spaced type and has 7 attachments numbering 43 pages. The relatively short summary contained in the Notice of Proposed Settlement is 13 pages of single-spaced type with an additional 10 pages of attachments. My practice was to spend as much time as necessary to answer questions and try to ensure that the class member felt able to make an informed decision.

80. The first inquiry came to me on January 8, 2020, from a trustee of a deceased class member who had heard about the settlement. Thereafter, there was a steady stream of inquiries, which have continued to the time this declaration is filed. I have responded to approximately 90 inquiries from class members (or individuals who believed they should be in the class). I have maintained a detailed Inquiry Log of these inquiries, and related documentation. The Inquiry Log and supporting documentation now fills a 3-inch binder.

81. In responding to the above-noted inquires, I have worked closely with Settlement Administrator Archer Systems. The inquiries included at least one prospective objector, whose concerns were addressed to his satisfaction resulting in his withdrawing the objection.

82. I have updated the Inquiry Log each day and forwarded copies to Archer as appropriate. As a result, to my knowledge, virtually all inquiries from class members have been answered to the satisfaction of the person making the inquiry.

83. In responding to these inquiries, I have encountered several instances in which class members were apparently not included in the class list. I have informed UC counsel Jennifer Romano, as well as Blake Deady of Archer, and asked that the Notice of Proposed Settlement be sent to prospective class members where it appeared that the person should be treated as a member of the class. The Inquiry Log is available for inspection should the Court wish to review it.

84. At least two inquiries appear to have resulted in locating possible class members not previously identified (as of this date, the Regents are continuing to research the status of these potential class members). I believe the many hours devoted to responding to inquiries is warranted since this is the first opportunity that class members have had to get answers directly from counsel regarding the potential settlement. The inquiries are continuing but diminishing in number.

Summary of Time Spent on Case

85. The time that I spent on each stage can be fairly estimated (excluding time written off) as follows:

Stage	From	To	Description	Hours
1	3-14-09	7-28-11	Petition for Writ of Mandate to Demurrer	530.1
2	7-29-11	3-8-13	First Appeal and *Requa* Opinion	261.9
3	3-9-13	1-21-15	Class Certification and Notice to Class	931.0
4	1-22-15	12-8-15	Phase I Trial and Statement of Decision	617.5
5	12-9-15	2-27-17	Discovery re "Actual Economic Damages"	999.7
6	2-28-17	8-4-17	Order re Complete Class List and Second Notice	774.8
7	8-5-17	11-27-17	Decertification	375.6
8	11-28-17	8-1-18	Second Appeal and *Moen* Opinion	699.6
9	8-2-18	12-11-19	Mediation, Trial Preparation, and Settlement	1,565.6
10	12-12-19	Present	Post-Settlement to February 29, 2020	200.5
			TOTAL HOURS:	**6,956.3**

86. The time spent by all law firms, by stage, is summarized in **Exhibit 2**.

Reasonableness and Fairness of Settlement Agreement

87. My evaluation of the settlement and my reasons for recommending it are set forth in my declaration filed December 11, 2019; and is further supported by the data and analysis set forth in the declaration of Allan Phillips filed on that same date ("Phillips Decl."). As detailed in my December 11 declaration, my recommendation was and is based on Petitioners' *primary* purpose in filing the lawsuit (restoration of security lost through termination of UC-sponsored health care benefits), as well as Petitioners' *secondary* purpose (recovering past economic losses). I also considered the probability of success on the merits if the case were to go to trial, as well as the effect of further delays, which were certain to occur, since the losing side in the Phase II trial would certainly appeal.

88. The *primary* purpose of the lawsuit has always been to restore the *security* of retiree health care benefits that was lost when the Regents terminated University-sponsored benefits as part of the transition in management to LLNS. (Settlement Agreement, § IV.A.) Although the settlement does not require the Regents to restore University-sponsored benefits, it does require the Regents to reinstate UC benefits if LLNS terminates or materially alters the benefits it provides. Obviously, the value of the settlement going forward depends on LLNS maintaining the benefits it provides since the settlement supplements the LLNS benefits. The settlement provides substantial security that health care benefits will be available to the class for 20 years; and will be replaced by UC benefits if LLNS terminates or materially alters the benefits it provides.

89. The settlement builds on, and does not replace, health care benefits provided by LLNS. Accordingly, to maintain the value of the settlement, it is critical that the LLNS benefits be maintained, and the settlement provides they will be maintained or the class will be reinstated to UC benefits. (Settlement Agreement, § V.C.1.)

90. The Settlement Agreement brings benefits for Class Members significantly closer to UC benefits than benefits provided through the LLNS Plan. As noted above, approximately $60,000,000 of the Settlement Fund (minus administrative costs) is devoted to funding a Voluntary Employees

Beneficiary Association (VEBA) under IRC § 501(c)(9), which will provide annual Supplemental Payments to the living class members. (Settlement Agreement §§ V.A.3, 5, 7 & Schedule A.)

91. Petitioners' expert has provided a comprehensive comparison of the benefits going forward under the settlement to University-sponsored benefits. (Phillips Decl. ¶¶ 48-63.) Approximately 95% of the class members select their benefits through Via Benefits or are in Kaiser Senior Advantage. (*Id*. ¶¶ 58, 60.) The expert analysis shows that for these class members, with annual Supplemental Payments delivered from the VEBA in addition to the benefits provided by the LLNS Plan, the settlement provides coverage that is reasonably comparable to University-sponsored benefits. (*Id*. ¶ 61.) The remaining living class members consist of those who are Non-Medicare eligible (5% of the living class members). (*Id*. ¶ 62.) As to these Non-Medicare eligible class members, more than half are better off or equal under the settlement compared to the University-sponsored benefits. (*Id*.) While a handful of Non-Medicare eligible Class Members under Kaiser (approximately 133 people) will pay more than under University-sponsored plans, they will be provided a significantly larger amount of past damages on average, and will receive a significant supplement going forward. (*Id*. ¶ 63) Additionally, the remaining financial burden on these Non-Medicare eligible class members under Kaiser is also relatively small and within the target contemplated by the settlement for all Non-Medicare eligible class members (10%). (*Id*.)

92. A secondary goal has been recovery of monetary losses resulting from Petitioners and the class being transferred to the LLNS Health and Welfare Benefit Plan for Retirees. A comprehensive description of the economic damages suffered by the class members is set forth in Petitioners' expert declaration. (Phillips Decl. ¶¶ 19-38.) The data show that a substantial percentage of the class suffered past economic damages of $1,000 or less, where such damages are measured by the difference between what the class member paid in premiums with LLNS versus what the class member would have paid under a UC plan. (*See id*., ¶¶ 14-15.) These class members will be fully compensated by the one-time Initial $1,000 Payment to all class members (both living and deceased). (*Id*. ¶¶19-20.) Accordingly, the Initial $1,000 Payment will address most (or all) of the past harm suffered by most of the class. (*Id*. ¶¶ 14, 15, 19, 20.) Since there are approximately 9,000 class members, this distribution will cost

approximately $9 million. The remaining $11,000,000 allocated for past economic harm will be distributed to class members who suffered a disproportionate amount of damages on a *per capita* basis, as measured by the difference in premium payments between the LLNS plans and UC plans, and to class members who died between October 15, 2010 and the Effective Date. (*Id*. ¶¶ 21, 24, 33-38.) Based on current data, Phillips estimates that these class members will receive approximately 42% to 64% of their past damages. (*Id*. ¶ 38.) I believe this is a fair and reasonable allocation in light of the fact that the emphasis is on providing significantly better health care coverage going forward.

93. In my view, this is an exceptional settlement. It provides health care and prescription benefits that are close to those provided by UC for 20 years, or until 1,000 class members (11% of the class, 1,000 ÷ 9,000 = 11.1%) are still living. At this time, remaining funds, expected to be approximately $1 million, will be distributed to class members living at the time based on life expectancy. (Settlement Agreement, § V.A.14 and Ex. 2 to Schedule thereto; *see also* Phillips Decl. ¶¶ 46-47.)

94. In addition to other considerations, settlement is reasonable because there is no assurance that Petitioners and the class would prevail on the merits. Petitioners would have had to convince the Court that they were entitled to a Peremptory Writ of Mandate restoring University-sponsored benefits and any consequential damages. Even if Petitioners were to prevail in this Court, the Regents have made clear they would appeal, which would likely lead to years of delay. Although Petitioners persuaded the Court of Appeal to expedite the second appeal, there is no assurance the Court would do so again. Approximately 25 class members are passing away each month (300 per year). Thus, if the matter were not resolved at this time, it was likely there would be hundreds of deaths before the class members who were still living saw any benefit; and this assumes Petitioners would prevail in a third appeal. This factor weighed heavily in favor of settlement, even if the terms were not all that Petitioners and the class wanted.

95. Taking all of these factors into consideration, Petitioners decided that the most prudent course was to settle now rather than go to trial.

Attorneys' Fees

96. The resolution of the attorney fee issue is the result of the parties' acceptance of Judge James's mediator proposal on September 25, 2019, well after the substantive terms of the settlement were agreed. The settlement provides that the Regents will not oppose an award of fees up to $12,000,000, to be paid within 90 days of the Effective Date of the settlement; or alternatively, to be paid in three installments, $5,000,000 within 90 days, then $5,000,000 one year thereafter, and $2,000,000 two years thereafter. (Settlement Agreement, § XII-C.) If the Regents pay over time, as expected, the present value of $12,000,000 paid on this schedule, assuming a 5.5% interest rate, is approximately $11,510,175.

Hourly Rate & Lodestar

97. The rate I am requesting, $875 per hour, which is commensurate with (or below) rates charged for attorneys with similar experience and expertise in the San Francisco Bay Area. (*See* Declaration of Richard M. Pearl ¶¶ 12-27.) Although I billed 7,055.9 hours, I wrote-off a total of 99.6 hours. The adjusted hours (after write-offs) is 6,956.3 hours for a lodestar amount of $6,086,762.50. A chart reflecting this lodestar calculation for all of the firms is attached hereto as **Exhibit 3**. A detailed description of work performed and time spent is available for the Court's *in camera* review should the Court request it.

Legal Fees Paid by UCLRG

98. A non-profit organization, the University of California Livermore Retirees Group (UCLRG) Legal Defense Fund, was established to raise funds to support the litigation, including both fees and costs. UCLRG was initially able to pay some of the attorneys' fees, but funds were soon exhausted as the cost of experts and consultants mounted. Counsel have not been paid for work since February, 2016. Counsel are not asking to be paid twice for the same work and will return fees that have been paid to UCLRG or a successor. Nor are counsel requesting that UCLRG be reimbursed for the cost of experts and consultants they have paid.

99. A summary of legal fees paid by UCLRG is as follows:

Sinclair Law Office	$239,830.03
Carter Carter Fries & Grunschlag	$38,140.62

Stember Feinstein Doyle Payne & Kravec	$98,434.81
Stember Cohn & Davidson-Welling	$25,000.00
Calvo Fisher & Jacob	$44,720.00
TOTAL:	$446,125.46

100. These funds will be returned to the UCLRG or a successor.

Effect of Representation on Sinclair Law Office

101. Since 2016, when the court ruled that Petitioners would have to show "actual economic damage," followed by a period of intense discovery began, I have not been able to take any significant new cases and have devoted almost all of my time and resources to this case. The time that I have spent on this case compared to other cases is as follows:

	Requa/Moen	Other Matters
2016	840.6	42.6
2017	1,443.8	17.2
2018	1,000.5	25.6
2019	1,071.7	1.3

102. I estimate that it will take at least a year to rebuild my practice to where it was before taking on this case.

103. Pursuant to Dept. 21's Procedural Guidelines for Final Approval of Class Action Settlements, ¶ 9, I provided a copy of Petitioners' [Proposed] Final Approval Order and Judgment to the Regents' counsel on March 12, 2020 for their review. We are filing Petitioners' motion for final approval and motion for attorneys' fees, as well as the [Proposed] Final Approval Order and Judgment, a day early in response to concerns related to the COVID-19 situation.

I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on March 17, 2020 at Oakland, California.

Andrew Thomas Sinclair

EXHIBIT 1

S|C|D-W Stember Cohn + Davidson-Welling LLC

429 Forbes Avenue
1616 Allegheny Building
Pittsburgh, PA 15219

jstember@stembercohn.com

April 18, 2014

VIA U.S. MAIL AND EMAIL
ats@sinclairlawoffice.com

Andrew Thomas Sinclair, Esquire
Sinclair Law Office
300 Frank H. Ogawa Plaza
Rotunda Building, Suite 160
Oakland, CA 94612

Re: Joe Requa, et al. v. Regents of University of California, et al.
Case No. RG 10530492 (Superior Court, California)

Dear Tom:

Enclosed find two originals of the Agreement Between Law Firms and UCLRG, which I have signed.

As we discussed, I removed the last two paragraphs from the prior version. Other than that and the addition of the final section, **"Signing In Counterparts/ Copies May Serve As Originals,"** the Agreement is the same as the last one.

Please have each party sign and then return one fully-executed original to me. (The Agreement provides it can be signed in counterparts and that copies may serve as originals.) As soon I receive a signed original, I'll bring the pro hac fees up to date.

If you have any questions, please let us know.

Sincerely,

John Stember

JS/tms

Enclosure

AGREEMENT BETWEEN LAW FIRMS AND UCLRG

WHEREAS, the law firms of Stember Cohn & Davidson-Welling, LLC (including its predecessor firms) ("SCDW"), Carter Carter Fries & Grunschlag ("CCFG"), and Sinclair Law Office (collectively, "Original Firms") have provided legal services to Petitioners in the case of *Requa v. Regents* ("the Case") from the outset of the Case; and

WHEREAS, Calvo Fisher & Jacob LLP ("Calvo Firm") was associated as counsel of record on November 26, 2013; and

WHEREAS, the University of California Livermore Retirees Group ("UCLRG") has paid the Original Firms for the legal services specified and in accordance with several letter agreements between them, the most recent of which is dated April 23, 2013 ("Revised Letter Agreement") and to which the Calvo Firm is a party, a copy of which is attached as **Exhibit A**; and

WHEREAS, SCDW, CCFG, Sinclair Law Office and the Calvo Firm (collectively, the "Law Firms") and the UCLRG wish to restructure their relationship;

IT IS AGREED that:

1. John Stember will pay to the Alameda Superior Court outstanding annual *pro hac vice* renewal fees in accordance with Cal. Gov. Code § 70617 (e)(l)(2);

2. Within five (5) business days of payment of the renewal fees described above, UCLRG agrees to pay SCDW $25,000 in full payment, as between the Law Firms, of any claim that SCDW may have to UCLRG contributions or payments for services rendered to this date. The payment to SCDW will be made from funds in the Sinclair Law Office trust account; and SCDW agrees that it will be used to pay John Stember for time he worked on the Case since April 23, 2013;

3. Within five (5) business days after receipt of the $25,000 payment, SCDW will file a motion to withdraw as counsel for petitioners, which Petitioners will not oppose;

4. SCDW agrees that past payments will be allocated to persons admitted to practice law in California;

5. UCLRG understands that allocating fees in this way may result in a slightly higher hourly rate for SCDW attorneys admitted to practice in California;

6. Sinclair Law Offices, CCFG and the Calvo Firm agree to keep SCDW reasonably informed from time to time and upon reasonable request as to the status and developments in the Case, and to reasonably provide SCDW with submissions and rulings in the Case.

7. The parties to this Agreement acknowledge and agree that in the event of a recovery or if Petitioners prevail, subject to and in accordance with the terms of the Revised Letter Agreement, SCDW may share in any attorneys' fees and/or cost recovered and/or join in any application for attorney's fees and costs incurred by SCDW.

8. The Law Firms and UCLRG agree that the $25,000 payment to SCDW described above is made solely to satisfy any claim of SCDW to funds paid and/or contributed by UCLRG towards the Case, and that this Agreement is not intended to, nor shall it, affect any claim by SCDW or predecessor firms to attorneys' fees from a recovery in the Case, whether by settlement, judgment, verdict or other means, or from a statutory fee award.

SIGNING IN COUNTERPARTS/COPIES MAY SERVE AS ORIGINALS

This Agreement may be signed in counter-parts by the parties hereto, all of which together shall comprise one and the same instrument, and copies of may serve as originals.

If this Agreement accurately reflects your understanding of our agreement, please sign below and return the original to Thomas Sinclair, Esquire, Sinclair Law Office, 300 Frank H. Ogawa Plaza, Rotunda Building, Suite 160, Oakland, CA 94612.

[intentionally left blank]

AGREED AND ACCEPTED:

Carter Carter Fries & Grunschlag

Date — Dov Grunschlag, Esquire

Sinclair Law Office

Date — Andrew Thomas Sinclair, Esquire

Stember Cohn & Davidson-Welling, LLC

Date — John Stember, Esquire

Calvo Fisher & Jacob, LLP

Date — William N. Hebert, Esquire

AGREED AND ACCEPTED

Clients have read this Agreement and had the opportunity to ask Attorneys to explain any provisions Clients do not understand. Clients have been given a reasonable opportunity to seek the advice of any independent lawyer. Clients have received a copy of this Agreement. Clients signing below have authority to sign on behalf of any organization for which Client signs.

Date — Marty Crowningshield, President
UCLRG / UCLRG Legal Defense Fund

EXHIBIT A

SINCLAIR LAW OFFICE

VIA U.S. MAIL
e-mailed to jrequa@comcast.net

April 23, 2013

Joe Requa, President
UCLRG Legal Defense Fund
563 Brookfield Dr.
Livermore, CA 94551

RE: Contract for Legal Services

Dear Mr. Requa:

This is an Agreement for Legal Services. Please review it carefully. If it is acceptable, please have an authorized representative sign on behalf of UCLRG Legal Defense Fund and return to my office. This Agreement supercedes all earlier agreements for legal services.

LEGAL REPRESENTATION

This Agreement involves work that will be done by four law firms: Sinclair Law Office, Oakland, California; Carter Carter Fries & Grunschlag, San Francisco, California; Stember Feinstein Doyle Payne & Kravec, LLC, Pittsburgh, Pennsylvania; and Calvo Fisher & Jacob LLC, San Francisco, California. The firms are referred to as "Attorneys." The law firms will perform the legal services described below for the UCLRG Legal Defense Fund, which is referred to as "Client" or "Clients" below. "Clients" includes the named Petitioners (Requa, Davis, Ventura and Moen) in the pending Petition for Writ of Mandate. This is an hourly fee agreement not a contingency fee agreement. Clients understand that, if Clients prevail, Attorneys will request that the Court make an award of attorney's fees for the legal services covered by this Agreement and any past Agreements relating to this matter.

PRIOR AGREEMENTS

Clients have entered into previous Agreements for Legal Services with Sinclair Law Office, Carter Carter Fries & Grunschlag, and Stember, Feinstein, Doyle & Payne (dated August 6, 2009, May 7, 2010, and April 10, 2012). This Agreement has similar but different terms. Please review it carefully before signing. The terms of this Agreement shall control legal services provided under this agreement.

ROTUNDA BUILDING, SUITE 160 300 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612
TEL: 510.465.5300 FAX: 510.465.5356

PURPOSE

Petitioners were successful in their appeal. See *Requa v. Regents of University of California*, 213 Cal. App. 4th 213 (2012). Remittitur has been issued by the Court of Appeal, returning the case to the Alameda County Superior Court.

This Agreement is intended to cover the following services to be provided by Attorneys: (1) filing a motion to amend the Petition for Writ of Mandate to add "class action" allegations (possibly adding or deleting one or more Petitioners as class representatives) and drafting the Amended Petition; and (2) filing a motion to certify the class (assuming that the motion to amend is granted).

If the Court grants these motions and this case is certified as a class action, Clients and Attorneys will discuss the next steps. Among other matters, Clients and Attorneys will discuss whether to revise their Agreement to be a contingency or partial contingency fee agreement. Likewise, if the Court denies the motion to amend or the motion to certify, Clients and Attorneys will discuss next steps in the litigation and negotiate an agreement covering legal services going forward.

EFFECTIVE DATE

This Agreement is not effective, and Attorneys have no obligation to provide legal services, until Clients return a signed copy of this Agreement and have provided Attorneys with a retainer discussed below.

This Agreement is intended to cover legal services provided after the date of this Agreement, regardless of when Clients sign the Agreement. Attorneys will not charge Clients for legal services prior to the date of this Agreement. However, Clients understand that Attorneys have performed legal services since the last distribution of funds (in July 2012) and that Attorneys will request these fees if and when an application for attorney's fees is submitted to the Court or negotiated with the Regents.

SCOPE OF SERVICES

This Agreement is limited to the above purpose and does not include legal services for any other matter or any other purpose. Attorneys will provide those legal services reasonably required to represent Clients. Attorneys will take reasonable steps to keep Clients informed of progress and will respond to Clients' inquiries. Attorneys' channel of communication to and from Clients will be through UCLRG Legal Defense Fund

President Joe Requa.

In the event Clients wish Attorneys to provide services other than those described herein, Clients will enter into a new written agreement with Attorneys. Should Clients request that Attorneys provide legal services outside the scope of this Agreement before a new Agreement is signed, Clients agree to pay for such legal services.

This Agreement is limited to legal services during the next phase of the lawsuit, as described above under "Purpose," and does not include legal services for any other matter, including but not limited to responding to or bringing a petition for extraordinary relief in a higher court. If a petition for extraordinary relief is filed, Clients and Attorneys will meet and negotiate an agreement covering legal services relating the request for extraordinary relief. (Petitions for extraordinary relief are rare but do occur and can cause proceedings in the trial court to be held in abeyance pending the outcome.)

It is possible that some discovery will be necessary during the class certification phase. If so, Clients agree to meet with Attorneys to discuss the legal fees and expenses that will be involved in this discovery. Discovery during the class certification phase is not covered by this Agreement.

AVOIDANCE OF DUPLICATION

Clients and Attorneys have discussed the fact adding the firm of Calvo Fisher & Jacob LLP as counsel of record will increase the number of law firms involved to four. Attorneys agree to make a good faith effort to avoid unnecessary duplication and work and to perform the legal services provided for in this Agreement in the most efficient manner possible.

CLIENTS' DUTIES

Clients agree to be truthful and forthcoming with Attorneys, to cooperate, to keep Attorneys informed of any pertinent information or developments that may come to their attention, to abide by this Agreement, to pay Attorneys' bills on time and to keep Attorneys advised of Clients' address, phone number, e-mail address and whereabouts. Clients will assist Attorneys in providing information and documents needed for representation in this matter.

/
/

ATTORNEY-CLIENT COMMUNICATIONS

Communications between Attorneys and Clients are *privileged and confidential.* However, this privilege can be *waived* by Clients. Normally, if a Client discloses a privileged communication to a third party, the Client waives the attorney-client privilege, and this waiver can be used against the Client in a lawsuit. Waiver can have adverse (even disastrous) consequences for Clients (and other retirees). To avoid waiver of this privilege, Clients agree to consult with Attorneys before disclosing communications involving the litigation subject to this Agreement. Clients are advised to mark communications *about the pending litigation*, even if the communication is not directly with Attorneys, as "Privileged & Confidential." Clients agree to consult Attorneys before disclosing any such documents or communications, including disclosure on the UCLRG website.

DEPOSIT / RETAINER

Clients agree to return a retainer of $25,000 with a signed copy of this Agreement. These funds will be held in the trust account of Sinclair Law Office until the Court rules on the motion to amend. Clients agree to forward an additional $40,000 if and when the motion to amend is granted. Clients also agree to make a good faith effort to raise an additional $10,000 by the time the motion to certify the class is heard by the Court.

Clients understand that Attorneys will bill their legal services against the retainer paid by Clients and that Attorneys may withdraw such monies on deposit in the trust account as are necessary to pay for the legal services and related costs as described in this Agreement. Attorneys will periodically provide Clients with a statement of monies spent and remaining in the trust account. If any funds remain in the trust account when legal services are concluded that are not need to satisfy obligations, these funds will be returned to Clients.

LEGAL FEES AND HOURLY RATES

The normal billing rates for the four law offices vary but are generally between $450 and $550 per hour for senior attorneys, less for associates and paralegals. Attorneys have agreed to bill clients at the reduced rates specified in Schedule A (attached). The rates for legal services in Schedule A will not be changed while Attorneys are providing legal services under this Agreement. The rates may be changed, with Clients' consent, after the services to be performed under this Agreement are completed.

Attorneys have agreed to work at rates significantly lower than market and normal billing rates because (l) Attorneys support the goals of Clients to preserve the rights of retirees to health benefits, and (2) Attorneys hope to obtain a court-ordered award of fees, or a negotiated settlement covering their fees, that will compensate them for the market value of their services.

ATTORNEY'S FEES RECOVERED FROM REGENTS

Clients agree that any attorney's fees recovered by way of award by the Court or settlement shall be the sole and exclusive property of Attorneys. Clients shall make no claim or assert any interest in such fees. Clients understand that, if they prevail or substantially prevail, Attorneys may seek an award of fees at rates higher than the rates Attorneys have charged Clients and may seek a multiple of their then current market rates based on the contingent nature of the representation and/or other factors that courts may consider under California law authorizing an award of fees (including but not limited to Cal. Code of Civ. Proc. § 1021.5). If attorney's fees are recovered by way of settlement or court award, such fees shall first be used to compensate Attorneys. Remaining funds will then be used to reimburse Clients and UCLRG for funds paid to support the litigation. Attorneys agree to make every reasonable effort to recover their fees from the Regents rather than from a portion of the retiree medical health benefits sought in this litigation.

BILLING PRACTICES

Time charged by Attorneys will include time spent on phone calls relating to Clients' matter, including calls with Client(s) and other parties and attorneys, and time spent conferring with other attorneys and personnel working on the matter, including consultants and experts. Attorneys and legal staff working on Clients' matter may confer among themselves, as required and appropriate. When they confer, each person will charge for the time expended, as long as the time is reasonably necessary and not duplicative. If more than one attorney, legal assistant or paralegal attends a meeting, court hearing or other proceeding, each will charge for the time spent, so long as attendance was reasonably necessary and not duplicative. Each office will bill in one-tenth hour segments.

TIME WRITTEN OFF

Attorneys may, in their sole discretion, write off or reduce time on invoices. Clients understand that there is no "right" to have time written off or reduced. As Clients

know, Attorneys have agreed to write off certain time and accept less than full payment for legal services in the past. Clients understand that Attorneys may seek funds that have been written off in an application for an award of fees by the Court or in settlement negotiations. Clients understand that Attorneys have not given up their right to seek reimbursement for fees that have been written off or not collected due to Clients' limited financial resources.

COSTS AND OTHER CHARGES

Clients understand that there are and will be costs associated with this matter and that Attorneys will incur various out-of-pocket costs and other expenses in advancing costs and performing legal services under this Agreement. Some but not all of these out-of-pocket costs may be recovered if Clients prevail. The out-of-pocket costs include but are not limited to:

(a) Office and Related Expenses. Clients agree to pay all out-of-pocket costs and other expenses related to legal services provided by Attorneys. These costs and expenses commonly include, for example, court costs, filing fees, motion fees, deposition and/or video deposition costs, service of process fees, investigator fees, courier fees, costs of travel and lodging, long-distance phone calls, electronic legal research, outside copying and reproduction, in-house copying, printing, and scanning, faxing, mail, express delivery and similar charges, paralegal services, and other costs of obtaining and presenting evidence. Typical charges for copying, scanning, digital printing, and incoming and outgoing faxes are 25¢ per page. This rate is subject to change. These expenses will be included on Clients' monthly invoice and will be paid from the retainer at the time fees are paid.

(b) Out-of-town travel. Clients agree to pay transportation, meals, lodging, and all other costs of any necessary out-of-town travel by Attorneys and their personnel. Clients will also be charged the hourly rates for the time legal personnel spend traveling at the reduced rate noted above. Attorneys agree to consult with Clients regarding any travel between the East Coast and California.

(c) Consultants and Investigators. To aid in the representation in Clients' matter, it may become necessary to hire consultants or investigators. Clients agree to pay the fees and charges of consultants and investigators. Attorneys will select consultants or investigators to be hired, and to the extent practicable, Clients will be informed of the persons chosen and their charges in advance.

(d) Experts. If expert consultants or witnesses are needed for the legal services provided, Clients agree to pay for these services.

The above list contains examples only, not a comprehensive list of out-of-pocket expenses that may be incurred.

INVOICES

Attorneys earlier agreed to provide invoices on a monthly basis. However, Attorneys have found it is impractical to provide invoices until a decision is made about distributing funds from the trust account. Clients agree invoices will be provided at the time funds in the trust account are distributed. Clients agree to promptly review all invoices and inform Attorneys of any questions or concerns so that these can be promptly addressed. Attorneys normally do not charge for inquiries regarding invoices. Clients may request an estimate of time spent and costs incurred between invoices, which Attorneys will try to provide as promptly as possible.

SETTLEMENT

Attorneys will not make any settlement or compromise of any nature of Clients' claims without Clients' prior approval. Time spent by Attorneys on settlement will be billed like any other time spent on the litigation.

DISCHARGE AND WITHDRAWAL

Clients may discharge Attorneys at any time. Attorneys may withdraw with Clients' consent or for good cause. Good cause includes Clients' breach of this Agreement (including failure to comply with the financial terms), refusal to cooperate or to follow Attorneys' advice on a material matter, or any fact or circumstance that would render Attorneys' continuing representation unlawful or unethical. If and when Attorneys' services are concluded, all unpaid charges will immediately become due and payable.

CLIENTS' FILE

After legal services are concluded, Attorneys will, upon Clients' request, deliver Clients' file and property in Attorneys' possession to Clients, whether or not Clients have paid for all services.

COPY OF FILE

Attorneys may retain a copy of the file. Attorneys may copy the file after the Clients ask that it be returned. Copying of the file by Attorneys will be at Attorneys' expense. Attorneys may have a reasonable time to copy the file.

RETENTION OF FILES FOR FIVE YEARS

Attorneys may destroy files relating to Clients' case after five years from the termination of legal services without further notice to Clients.

NO GUARANTEE OR WARRANTY / EVALUATION

Nothing in this Agreement or in Attorneys' evaluation or comments or statements to Clients shall be understood by Clients as a promise or guarantee about the outcome of the matter or as a representation of probable or likely success or a warranty of success. Attorneys make no such promises or guarantees or representations. Attorneys' comments about the outcome of the matter are expressions of opinion only. Attorneys' evaluation may (and often do) change during the course of the case as new facts and circumstances come to light. Similarly, any estimate of fees provided by Attorneys shall not be a guarantee of the actual fees incurred, which may vary from estimates.

ASSOCIATION OF COUNSEL

Attorneys may associate other counsel needed to provide advice and representation to Clients. Attorneys will discuss associating other counsel with Clients before doing so. Clients understand that Calvo, Fisher & Jacob LLP will be counsel of record (along with the three firms that have represented Clients to this time).

ENTIRE AGREEMENT

This Agreement contains the entire agreement between Attorneys and Clients, and no other agreement, statement, or promise made on or before the effective date of this Agreement will be binding.

SEVERABILITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision, and the remainder of the Agreement, will

be severable and remain in effect.

MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by Attorneys and Clients.

COPY OF AGREEMENT

Clients have a right to a signed copy of this Agreement. By signing and returning the Agreement, Clients acknowledge receipt of a copy.

TAX ADVICE

Attorneys do not provide tax advice. Clients acknowledge that Clients are responsible for obtaining their own tax advice and will not rely on Attorneys for tax advice.

COMMUNICATIONS BY E-MAIL

It has become more and more common to communicate by electronic mail (e-mail) in modern society. The right to privacy and confidentiality in e-mail communications is often but not always respected. Technology is changing rapidly. The courts cannot always keep up in providing guidance on what communications are entitled to privacy protections. Thus, parties using electronic forms of communication assume certain risks in doing so. Attorneys will take all reasonable steps to keep electronic communications with Clients private and confidential. Clients understand that Attorneys cannot ensure that every electronic communication will receive the same protections that a mailed communication or a telephonic communication would receive under the law. If Clients communicate with Attorneys by e-mail, Clients assume the risks associated with this technology. If Clients wish communications sent by e-mail to be password protected, or wish communications to be transmitted and received using some form of security or encryption, Clients will inform Attorneys so that appropriate arrangements can be made.

CLIENTS' RIGHTS

Depending on the nature of the contract, Clients have or may have rights under California Business and Professionals Code §§ 6147-6148. Clients are advised to consult these statutes.

INSURANCE

Attorneys maintain errors and omissions insurance applicable to the legal services to be rendered.

MEDIATION OF FEE DISPUTES

Clients agree to inform Attorneys of any dispute involving fees, costs or expenses promptly after receiving an invoice for the services or costs in question. If Attorneys and Clients cannot resolve the matter, then Attorneys and Clients agree, upon the request of either party, to submit the dispute to mediation before a mutually agreed-upon mediator, or before a mediator provided by the Alameda County Bar Association, if a private mediator cannot be agreed upon, or to a mediator provided by any other generally accepted mediation service if the Alameda County Bar Association does not provide a mediator within 30 days.

ARBITRATION OF FEE DISPUTES UNDER M.F.A.A.

If a fee dispute arises, Clients have a right to arbitration under the Mandatory Fee Arbitration Act, Cal. Bus. & Prof. Code § 6200, *et seq.* Arbitration under the M.F.A.A. is advisory unless the parties agree to make it binding. If the dispute is not resolved under the M.F.A.A., it may be resolved under final and binding arbitration or judicial referral, as described below.

FINAL AND BINDING ARBITRATION.

If any dispute arises under this Agreement, including disputes as to fees, Attorneys and Clients agree to submit the dispute to final and binding arbitration under the rules of the American Arbitration Association. The forum for any such arbitration shall be Alameda County, California.

ALTERNATIVE PROCEDURE BY MUTUAL CONSENT

As an alternative to final and binding arbitration, Attorneys and Clients may consent to general judicial reference, pursuant to California Code of Civil Procedure §§ 638 and 641 through 645.1. California Code of Civil Procedure § 638 allows parties to a contract to agree that, if a dispute arises in the future and a lawsuit is filed, the controversy will be submitted to judicial reference.

WAIVER OF VALUABLE RIGHT TO JURY TRIAL

One of the principal effects of an agreement to submit a dispute to final and binding arbitration, or to submit a dispute to judicial reference, is that both parties give up the right to a jury trial. In the case of arbitration, the dispute is heard by an arbitrator selected by mutual agreement or under the rules of the American Arbitration Association. In the case of judicial reference, the dispute is heard by a referee appointed by the court. The right to a jury trial is a valuable and important right. Clients should consider carefully whether Clients wish to give up this right by entering into this Agreement. **Clients may seek the advice of an independent lawyer of Clients' choice with respect to this provision. Attorneys will give Clients a reasonable opportunity to seek the advice of an independent lawyer if Clients wish to do so. By signing below, Clients acknowledge that Attorneys have advised Clients that this provision involves the waiver of the valuable and important right to a jury trial and offered Clients a reasonable opportunity to seek the advice of an independent lawyer before signing.**

CALIFORNIA LAW

This contract is made in California and shall be governed by California law.

AUTHORITY TO SIGN

The individual signing below on behalf of UCLRG Legal Defense Fund has discussed this Agreement with the governing board of the UCLRG Legal Defense Fund and has the authority to enter into this Agreement on behalf of the Legal Defense Fund. The UCLRG Legal Defense Fund agrees and understands that a copy of this Agreement shall be kept in the records of the organization and that UCLRG Legal Defense Fund is responsible for the obligations undertaken by signing this Agreement.

SIGNING IN COUNTERPART

This Agreement may be signed in counter-part by the parties hereto.

If this Agreement accurately reflects your understanding of our agreement, please sign below and return the original to me. A copy for your records is enclosed.

Date: _____

CARTER CARTER FRIES & GRUNSCHLAG

_____
DOV GRUNSCHLAG

Date: 4/23/13

SINCLAIR LAW OFFICE

_____
ANDREW THOMAS SINCLAIR

Date: 04/29/2013

STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

_____
JOHN STEMBER

Date: _____

CALVO FISHER & JACOB LLP

_____
WILLIAM N. HEBERT

AGREED AND ACCEPTED

Clients have read this Agreement and had the opportunity to ask Attorneys to explain any provisions Clients do not understand. Clients have been given a reasonable opportunity to seek the advice of an independent lawyer. Clients have received a copy of this Agreement. Clients signing below have authority to sign on behalf of any organization for which Client signs.

Date: _____

_____
JOSEPH REQUA, PRESIDENT
UCLRG Legal Defense Fund

Date: 4/23/13

CARTER CARTER FRIES & GRUNSCHLAG

DOV GRUNSCHLAG

Date: _____

SINCLAIR LAW OFFICE

ANDREW THOMAS SINCLAIR

Date: _____

STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

JOHN STEMBER

Date: _____

CALVO FISHER & JACOB LLP

WILLIAM N. HEBERT

AGREED AND ACCEPTED

Clients have read this Agreement and had the opportunity to ask Attorneys to explain any provisions Clients do not understand. Clients have been given a reasonable opportunity to seek the advice of an independent lawyer. Clients have received a copy of this Agreement. Clients signing below have authority to sign on behalf of any organization for which Client signs.

Date: _____

JOSEPH REQUA, PRESIDENT
UCLRG Legal Defense Fund

Date: _____

CARTER CARTER FRIES & GRUNSCHLAG

_____
DOV GRUNSCHLAG

Date: _____

SINCLAIR LAW OFFICE

_____
ANDREW THOMAS SINCLAIR

Date: _____

STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

_____
JOHN STEMBER

Date: 4/23/13

CALVO FISHER & JACOB LLP

_____
WILLIAM N. HEBERT

AGREED AND ACCEPTED

Clients have read this Agreement and had the opportunity to ask Attorneys to explain any provisions Clients do not understand. Clients have been given a reasonable opportunity to seek the advice of an independent lawyer. Clients have received a copy of this Agreement. Clients signing below have authority to sign on behalf of any organization for which Client signs.

Date: _____

_____
JOSEPH REQUA, PRESIDENT
UCLRG Legal Defense Fund

SCHEDULE "A"

UCLRG LEGAL DEFENSE FUND RATES

Stember Feinstein Doyle & Payne	
John Stember	$360
Maureen Davidson	$180
Emily Town	$180
Jon Cohn	$360
William Payne	$360
Carter Carter Fries & Grunschlag	
Dov Grunschlag	$360
CCF&G Associate	$180
CCF&G Paralegal	$100
Sinclair Law Office	
Andrew Thomas Sinclair	$360
Sinclair Associate	$180
Sinclair Paralegal	$100
Calvo Fisher & Jacob LLP	
Kathleen V. Fisher	$360
William N. Hebert	$360
Calvo Fisher & Jacob Associate	$180
Calvo Fisher & Jacob Paralegal	$100

EXHIBIT 2

Stages of Litigation

SUMMARY OF LITGATION STAGES								
Stage	**From**	**To**	**Description**	**SLO Hours**	**CCFG Hours**	**Stember Hours**	**CFJ Hours**	**Total**
1	3-14-09	7-28-11	Petition for Writ of Mandate to Demurrer	530.1	107.2	626.3		**1,263.6**
2	7-29-11	3-8-13	First Appeal and Requa Opinion	261.9	65.9	163.9	2.1	**493.8**
3	3-9-13	1-21-15	Class Certification and Notice to Class	931.0	94.6	298.4	445.9	**1,769.9**
4	1-22-15	12-8-15	Phase I Trial and Statement of Decision	617.5	37.2		491.4	**1,146.1**
5	12-9-15	2-27-17	Discovery re "Actual Economic Damages"	999.7	54.9		760.1	**1,814.7**
6	2-28-17	8-4-17	Order re Complete Class List and Second Notice	774.8	19.5		268.8	**1,063.1**
7	8-5-17	11-27-17	Decertification	375.6	27.0		228.8	**631.4**
8	11-28-17	8-1-18	Second Appeal and Moen Opinion	699.6	25.0		586.9	**1,311.5**
9	8-2-18	12-11-19	Mediation, Trial Preparation, and Settlement	1,565.6	282.2		4,629.5	**6,477.3**
10	12-12-19	Present	Post-Settlement to February 29, 2020	200.5	109.8		535.7	**846.0**
	TOTAL HOURS			**6,956.3**	**823.3**	**1,088.6**	**7,949.2**	**16,817.4**

EXHIBIT 3

Lodestar Chart

CALVO FISHER & JACOB LLP (CFJ)
(as of February 29, 2020)

Professional	Rate	Hours	Fees Amount
Kathleen V. Fisher (1976)	$ 875.00	1639.4	$ 1,434,475.00
William N. Hebert (1988)	$ 775.00	519.9	$ 402,922.50
Rodney J. Jacob (1990)	$ 775.00	267.0	$ 206,925.00
Alexander M. Freeman (2004)	$ 625.00	1754.2	$ 1,096,375.00
Maya S. Maravilla (2000)	$ 650.00	1074.9	$ 698,685.00
Dominique S. Palacios	$ 300.00	2333.8	$ 700,140.00
Matthew Leon Guerrero	$ 225.00	360.0	$ 81,000.00
Others		232.1	$ 32,390.00
		8,181.3	$ 4,652,912.50
CFJ Fees		8,181.3	$ 4,652,912.50
CFJ Write-Off		-232.1	$ (32,390.00)
CFJ Lodestar		7,949.2	**$ 4,620,522.50**

STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

Professional	Rate	Hours	Fees Amount
John Stember (1976)	$ 875.00	343.2	$ 300,300.00
William Payne (1979)	$ 875.00	36.0	$ 31,500.00
Maureen Davidson-Welling (2007)	$ 545.00	58.8	$ 32,046.00
Lauren Hoye (2009)	$ 425.00	93.1	$ 39,567.50
Kathryn Bailey (2010)	$ 375.00	206.3	$ 77,362.50
Morshe Marvit (2010)	$ 375.00	107.4	$ 40,275.00
Lynne Pistritto (2010)	$ 375.00	134.5	$ 50,437.50
Others		24.3	$ 9,097.50
		1003.6	$ 580,586.00
Stember Feinstein Fees		1003.6	$ 580,586.00
Stember Feinstein Write-Off		-34.6	$ (17,010.00)
Stember Feinstein Lodestar		969.0	**$ 563,576.00**

STEMBER COHN & DAVIDSON-WELLING (Stember)

Professional	Rate	Hours	Fees Amount
John Stember (1976)	$ 875.00	27.3	$ 23,887.50
Maureen Davidson-Welling (2007)	$ 545.00	96.1	$ 52,374.50
Others		14.1	$ 2,647.50
		137.5	$ 78,909.50
Stember Cohn Fees		137.5	$ 78,909.50
Stember Cohn Write-Off		-17.9	$ (4,982.50)
Stember Cohn Lodestar		119.6	**$ 73,927.00**

SINCLAIR LAW OFFICES (SLO)

Professional	Rate	Hours	Fees Amount	Write-Off	Write-Off Amount	Adjusted Hours (after write-off)	Lodestar
Andrew Thomas Sinclair (1976)	$ 875.00	7,055.9	**$6,173,912.50**	-99.60	**$ (87,150.00)**	**6,956.30**	**$6,086,762.50**

CARTER CARTER FRIES & GRUNSCHLAG (CCFG)

Professional	Rate	Hours	Fees Amount	Write-Off	Write-Off Amount	Adjusted Hours	Lodestar
Dov M. Grunschlag (1966)	$ 975.00	828.5	**$ 807,787.50**	-5.20	**$ (5,070.00)**	**823.30**	**$ 802,717.50**

Summary

	Hours	Amount
Lodestar (All Firms)	**16,817.40**	**12,147,505.50**