HANSON, BRIDGETT LLP
Attn: Liu, Dorothy S
425 Market Street
26th Floor
San Francisco, CA 94105

c/o John Stember
429 Forbes Ave., 1616 Allegheny Building
Pittsburgh, PA 15129

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Requa Plaintiff/Petitioner(s) VS. The Regents of the University of California Defendant/Respondent(s) (Abbreviated Title)	No. RG10530492 Order Motion for Class Certification Granted

The Motion for Class Certification filed for Donna Ventura and Jay Davis and Wendell G. Moen and Joe Requa was set for hearing on 10/15/2014 at 02:30 PM in Department 17 before the Honorable George C. Hernandez, Jr.. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion of Petitioners Wendell G. Moen et al. for Class Certification is GRANTED IN PART, as set forth below.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND. Petitioners Wendell G. Moen et al. ("Petitioners") are persons who worked at Lawrence Livermore National LLNL ("LLNL") until retirement, or the spouses/dependents of persons who worked at LLNL until retirement or death (collectively referred to herein as "Retirees"). LLNL was initially operated by the University of California ("UC") system, which is governed by Respondent The Regents of the University of California ("Regents"), under a contract with the US Department of Energy or its predecessor agencies. During the time they worked at LLNL, Petitioners were UC employees. Through a resolution passed in 1961, the Regents authorized healthcare benefits for employees of LLNL, including Retirees.

In or about October 2007, the management and operation of LLNL was transferred from the UC to a private consortium. On January 1, 2008, Retirees' university-sponsored group health insurance was terminated, and the consortium assumed responsibility for providing Retirees' health insurance benefits.

Petitioners filed their complaint on August 11, 2010. After this court's sustained a demurrer without leave to amend, the Court of Appeal reversed in part, holding that while the express contract claim lacks merit, the remaining claims are adequately treated. (See Order of District Court of Appeal, dated Dec. 31, 2012.) Petitioners filed the Second Amended Petition on October 15, 2013, and the operative, Third Amended Petition on March 27, 2014. Petitioners contend that the switch from the UC-sponsored pool to the consortium (LLNL retiree-only) pool constituted an unconstitutional impairment of an implied agreement; Petitioners also contend that Regents are estopped under the doctrine of doctrines of promissory and equitable estoppel.

LEGAL STANDARD FOR CLASS CERTIFICATION. "To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class-members." (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435, citing Richmond v. Dart

Industries, Inc. (1981) 29 Cal.3d 462.) This requires an inquiry into numerosity, ascertainability, whether common questions of law or fact predominate, whether the class representatives have claims or defenses typical of the class, and whether the class representatives can represent the class adequately. (See id.; see also Brinker Rest. Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1022.) Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. (Linder, supra, at 435.)

"[T]he focus in a certification dispute is on what type of questions -- common or individual -- are likely to arise in the action, rather than on the merits of the case[.]" (See Sav-On Drug Stores Inc. v. Superior Court (2004) 34 Cal.4th 319, 327; see also Brinker, supra, at 1022.) Analysis of class certification criteria may come close to examining the merits, because facts relevant to the merits may be and are often enmeshed with class certification criteria, such as commonality; but it is not a merits decision. (See Linder, supra, at 432.)

It is Petitioners' burden to support each of the above factors with a factual showing. (See Hamwi v. Citinational-Buckeye Inv. Co. (1977) 72 Cal.App.3d 462.) The court is vested with discretion in weighing the concerns that affect class certification. (See Sav-On, supra, at 336; Brinker, supra, at 1022.) This includes "questions as to the weight and sufficiency of the evidence, the construction to be put upon it, the inferences to be drawn therefrom, the credibility of witnesses ... and the determination of [any] conflicts and inconsistency in their testimony." (Sav-On at 334, quoting Thompson v. City of Long Beach (1953) 41 Cal.2d 235, 246.)

EVIDENTIARY ISSUES. Petitioners submitted 38 pages of objections to evidence, many of which lack merit. In its tentative ruling, the court invited Petitioners to identify any critical objections at the hearing; Petitioners merely highlighted general concerns with Respondent's evidence. In light of the court's decision to grant certification in part, and Petitioners' failure to identify any objections that could impact the court's ruling on the estoppel claims, the court OVERRULES Petitioners' objections in their entirety. (See Reid v. Google, Inc. (2010) 50 Cal. 4th 512, 532-33 ["litigants should focus on the objections that really count"]; Cole v. Town of Los Gatos (2012) 205 Cal.App.4th 749, 764& n.6 ["where a trial court is confronted ...with a large number of nebulous evidentiary objections, a fair sample of which appear to be meritless, the court can properly overrule, and a reviewing court ignore, all of the objections on the ground that they constitute oppression of the opposing party and an imposition on the resources of the court"].)

The court's consideration of the evidence will be limited to this motion for class certification and any rulings thereon should not be construed as an indication of admissibility in future motions or at trial.

APPLICABLE SUBSTANTIVE LAW. "In order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (Hicks v. Kaufman & Broad Home Corp. (2001) 89 Cal.App.4th 908, 916.) This includes determining what elements necessary to establish liability, so it can determine whether those elements are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence. (See Brinker, supra, at 1024, citing Sav-On, supra, 34 Cal.4th at 334.)

[W]hether an element may be established collectively or only individually, plaintiff by plaintiff, can turn on the precise nature of the element and require resolution of disputed legal or factual issues affecting the merits. For example, whether reliance or a breach of duty can be demonstrated collectively or poses insuperable problems of individualized proof may be determinable only after closer inspection of the nature of the reliance required or duty owed and, in some instances, resolution of legal or factual disputes going directly to the merits.

(Brinker, supra, at 1024, citing authorities.) While this court strives to avoid ruling on merits issues unless necessary to the certification decision (id. at 1025), the parties have disputed "the precise nature of the element[s]" of Petitioners' claims, suggesting that a "closer inspection" of some elements may be necessary.

A. Implied Contract Claim

"The essential elements of a claim of breach of contract, whether express or implied, are the contract,

plaintiff's performance or excuse for nonperformance, defendant's breach, and the resulting damages to plaintiff." (San Mateo Union High Sch. Dist. v. Cnty. of San Mateo (2013) 213 Cal.App.4th 418, 439, review denied (Apr. 10, 2013).)

The terms of an express contract are stated in words. (Civ. Code, § 1620.) The existence and terms of an implied contract are manifested by conduct. (Civ. Code, § 1621.) The distinction reflects no difference in legal effect but merely in the mode of manifesting assent. (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 102, p. 144.) Accordingly, a contract implied in fact "consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words." (Silva v. Providence Hospital of Oakland (1939) 14 Cal.2d 762, 773, 97 P.2d 798.)

(Retired Employees Assn. of Orange Cnty., Inc. v. Cnty. of Orange (hereinafter "REAOC I") (2011) 52 Cal.4th 1171, 1178-79.) The parties to an express agreement may create an implied additional term, provided that the implied term is not read to vary any express terms. (REAOC I, supra, at 1178-79, citing authorities.) Otherwise, the implied term stands on equal footing with express terms. (Id.)

1. Implied Public Contracts

The rules of contract construction apply equally to public, as well as private, contracts. (REAOC I at 1178-79.) However, the intent of the public entity to create an implied agreement, while it need not be expressly stated in words, must be very clear. (Id. at 1187-88.) If the intent is not clearly stated, there must be "convincing extrinsic evidence." (Id. at 1991.) The evidence of the public entity's intent must be "unmistakable" so "that neither the governing body nor the public will be blindsided by unexpected obligations." (Retired Employees Ass'n of Orange Cnty., Inc. v. Cnty. of Orange ("REAOC II") (9th Cir. 2014) 742 F.3d 1137, 1141, 1143, citing authorities including REAOC I.) Thus, vague statements by the alleged promisor, or statements by a person not authorized to speak for the public entity, will not be sufficient. (Sacramento Cnty. Retired Employees Ass'n v. Cnty. of Sacramento ("SCREA") (E.D. Cal. 2013) 975 F.Supp.2d 1150, 1165-66 [granting defendant's pre-certification motion for summary judgment].)

2. Contract formation: Offer and Acceptance by Retirees

Petitioners assert that the Retirees' acceptance of the implied term - or even knowledge of the term - is not necessary, relying upon an individual, private-employer case, Hunter v. Sparling (1948) 87 Cal.App.2d 711. In that case, plaintiff employee believed that he was entitled to a pension, based upon representations that were made to him and observations of other employees experience during his long tenure, but had not read the employer's governing policies nor did he know their terms or the amount to which he would be entitled. (The policies were written in Japanese, which he did not understand.) The court held there was an enforceable promise to pay pension benefits, which was inferred from the employer's personnel policies. (Id. at 721-722.) The policies' content, although not specifically known to the plaintiff, were accepted by him through his continued employment. (Id.)

In its tentative ruling, the court asked the Regents to identify any authority to support their contention that some form of acceptance or assent is required to create an implied contract term (and that each employee's assent must be directly shown). The Regents cited Sappington v. Orange Unified Sch. Dist. (2004) 119 Cal.App.4th 949. In that case, after the school district started to require Retirees to contribute a step up fee for PPO health plans (but not HMO plans), plaintiffs sued, alleging that a written policy that the school district had agreed to "underwrite" the cost of the district's medical insurance program for all Retirees who worked 10 years or more, combined with a practice over the span of 20 years of paying 100% of Retirees' costs for both PPO and HMO plans, created an implied contractual obligation to pay 100% of eligible Retirees costs for PPO coverage. (Id. at 952.) The trial court concluded that there was no intent to confer a vested right to free PPO coverage on Retirees, and the court of appeal affirmed. (Id. at 953.) The court of appeal found that the language of the policy did not evince any intent by the district to pay 100% of any medical insurance plan (as "underwrite" can include partial payment) and the 20-year practice of providing Retirees with the choice of a fully paid PPO plan, which Retirees accepted, did not itself prove an implied contract. (Id. at 954-55.)

However, the Sappington analysis concerns the reasonableness of inferring a specific promise by the district; it does not reach the question of employees' acceptance; more importantly, it suggests that the reasonableness question can be determined on a group basis. (Id. at 955, emphasis added ["In their

briefs, the Retirees fail to cite any evidence that they, individually or as a group, had a reasonable expectation the District would always provide free PPO coverage as part of the medical insurance program " or "believed that promise specifically included free, lifetime PPO coverage."].) As illustrated by Kashmiri v. Regents of Univ. of California (2007) 156 Cal. App. 4th 809, 832, as modified (Nov. 15, 2007), as modified (Nov. 28, 2007), "[t]he reasonableness of the [promisee's] expectation is measured by the definiteness, specificity, or explicit nature of the representation" by the promisor (in that case, also the Regents). Thus, it is primarily an objective determination based upon the totality of circumstances. (Id. at 838.)

Implied contracts are created by conduct, not subjective beliefs, and the question of formation turns on what a reasonable observer would infer from the parties' conduct. "Conduct will create a contract if the conduct of both parties is intentional and each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract." (CACI 305, citing Section 19(2) of the Restatement Second of Contracts.) "Reason to know" is not actual knowledge, nor does it incorporate any duty to inquire. (Restatement (Second) of Contracts § 19 (1981), comments subd. (b).) Indeed, "[a]ctual mental assent is not essential to the formation of an informal contract enforceable as a bargain." (Restatement (Second) of Contracts § 19, Comments, subd. (d).)

In sum, each Retiree's individual awareness (or lack thereof) of the alleged offer to provide UC-sponsored medical benefits in retirement, his or her subjective understanding of the offer and its effect, will have at most minimal relevance to the question of whether the Regents unmistakeably intended to make the alleged offer, which turns primarily on factors other Retirees' mental state. At trial, this will entail a close examination of the Regents' words, conduct and other surrounding circumstances - i.e., the "totality of the employment relationship." (See Harlan v. Sohio Petroleum Co. (N.D. Cal. 1988) 677 F. Supp. 1021, 1029-31 ["the effect of [Plaintiff's] alleged lack of awareness is simply one factor for the trier of fact to consider", in addition to other factors which include the employer's words, conduct, customs, or combination thereof, as well as industry practice]; Pugh v. See's Candies, Inc. (1981) 116 Cal.App.3d 311, 329, disapproved of on other grounds by Guz v. Bechtel Nat. Inc. (2000) 24 Cal. 4th 317 [in determining whether an implied term existed, the trier of fact should consider the totality of the employer-employee relationship; and that an agreement may be "shown by the acts and conduct of the parties, interpreted in the light of the subject matter and the surrounding circumstances."]; Guz at 1101 [all of the circumstances must be examined to determine whether the "parties' conduct evidenc[es] a similar meeting of minds"].) As for the question of whether Retirees accepted this offer, trial will involve close examination of Retirees' conduct, an objective measure, not their subjective beliefs.

B. Promissory Estoppel

In California, under the doctrine of promissory estoppel, 'A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.' [Citations.]

(Poway Royal Mobilehome Owners Ass'n v. City of Poway (2007) 149 Cal.App.4th 1460, 1470-71.) The elements of promissory estoppel are: (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages "'measured by the extent of the obligation assumed and not performed.'" (Id. at 1471, citing Toscano v. Greene Music (2004) 124 Cal.App.4th 685, 692.)

The parties' arguments focus on the second (reliance) element. Petitioners assert that under analogous authorities construing the reliance element of a fraud cause of action, reliance can be inferred if action is taken based upon material misstatements. However, it is not clear whether that principle can safely be imported into the estoppel context, particularly in a case such as this, where the employees' allege reliance consisted of inaction (remaining employed, maintaining the status quo), rather than action.

The court was unable to locate any authority directly on point, and non-California authority suggests that in the promissory estoppel context, the employee's awareness of and actual reliance on the alleged promise must be directly established. (See Polich v. Burlington N., Inc. (D. Mont. 1987) 116 F.R.D. 258, 262.)

C. Equitable Estoppel

Generally, the elements of a claim for equitable estoppel are: "(1) the party to be estopped must be

apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."
(City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 489; Longshore v. Cnty. of Ventura (1979) 25 Cal.3d 14, 28.)

Element (2) appears to be duplicative of the "implied contract" requirement, discussed above, requiring clear evidence of the public entity's intent that its conduct create an enforceable agreement. Similarly, element (3) will likely overlap with the finder of fact's examination of circumstances that would either tend to buttress or undermine the reasonableness of employees' belief in, and reliance upon, such statements as enforceable promises. And element (4) appears to constitute substantially the same "actual reliance" requirement as promissory estoppel.

D. Affirmative Defenses

The Regents contend that affirmative defenses of waiver, estoppel, and consent raise individual issues, but fail to explain how. (See Opp. Mem. at 19-20.) The Regents contend that prior notice that retiree benefits were not guaranteed or vested constitutes an affirmative defense, but the authorities cited did not involve or refer to affirmative defenses, but rather an element of the Petitioners' claim.

COMMONALITY

"Petitioners' burden on moving for class certification ... is not merely to show that some common issues exist, but, rather, to place substantial evidence in the record that common issues predominate." (Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096, 1108; Brinker, supra, 53 Cal.4th at 1021.)

The determination of how much commonality is enough to warrant use of the class mechanism requires a fact-specific evaluation of the claims, the common evidence, and the anticipated conduct of the trial. California courts consider "pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate." (Sav-On, supra, at 333, fn. omitted.)

Commonality is determined with respect to the claims and defenses as pleaded. (Hicks v. Kaufman & Broad Home Corp. (2001) 89 Cal.App.4th 908 at 916 n.22.) The Court must also consider the Regents affirmative defenses, because the Regents may defeat class certification by showing that a defense would raise individualized issues that predominate over common issues. (See Gerhard v. Stephens (1968) 68 Cal.2d 864, 913; Kennedy v. Baxter Healthcare Corp. (1996) 43 Cal.App.4th 799, 811.)

A. Implied Contract Claim

At trial, Petitioners will bear the burden of establishing that (1) the Regents' 1961 resolution authorized retirement health care benefits for qualified LLNL employees; (2) through their subsequent statements and conduct, the Regents clearly offered to provide "UC-sponsored" health care benefits throughout retirement; and (3) the Retirees' accepted this offer.

Respondent did not dispute that the first question presents common, not individual, issues.

The second question will turn on evidence about the Regents' conduct and that of their authorized representatives: e.g., statements made by the Regents and their authorized representatives in written materials and during individual and group presentations and counseling; testimony concerning the Regents' intent; experience and practice, including how the Regents treated class members and what retirement medical benefits were provided during the relevant period; and whether any of the conduct or statements by the Regents was contradicted by any caveat, reservation or prohibition in the written agreement approved by resolution. The record does not disclose that the foregoing evidence will vary from employee to employee (as it did in Fletcher v. Security Pacific Nat'l Bank (1979) 23 Cal.3d 442); the Regents' conduct was uniform as to Retirees, as a group. While the Regents points out that many statements were made in a one-on-one setting, and that some written materials were not widely distributed or were distributed in varying time-frames, the statements, as described, do not vary materially. The question at trial of whether the foregoing types of evidence - all taken together -

demonstrate a "convincing" or "clear" or "unmistakable" intent by the Regents to confer a benefit will be a common legal question.

Whether Retirees reasonably understood the Regents' conduct to create a binding obligation to provide UC-sponsored healthcare throughout retirement may be a factor in ascertaining the Regents' intent, but it is one of many. Other factors may include the conduct and statements by the Regents, including written statements, disclaimers and caveats; oral retirement presentations, advice and counseling; and actual benefits provided to class members after retirement; as well as the employer's custom, industry practices, and the "realities of the marketplace" (including compensation available to class members in the public sector and private sector, and the possibility that promises of deferred benefits may have been utilized as recruitment/retention tools). All of these are objective, common factors which are likely to have far more weight, in determining the Regents' intent, than Retirees' subjective interpretations of the Regents' conduct.

Moreover, as previously discussed, Retirees' subjective understandings and beliefs are not relevant at all to their acceptance, which is measured by their conduct. Petitioners' theory of the case is that Retirees accepted the offer by continuing to work for LLNL through retirement (see Third Am. Pet. ¶ 135); because the proposed class is limited to persons (or their beneficiaries) who worked at LLNL to retirement (or death), it appears that evidence of Retirees' assent will not vary from Retiree to Retiree. For the same reason, the question of whether Retirees performed their end of the bargain will also likely be common.

The Regents' main objections are based upon certain disclaimers and caveats that they began to insert into printed retirement booklets and include in presentations in the 1980s. However, the content of the disclaimers did not vary by individual retiree and generally included the same content (though phrased in different ways). The meaning and impact of such disclaimers, if any, will present common legal issues. (Guz, supra, 24 Cal.4th at 340, 346. See also Creighton v. Regents of Univ. of California (1997) 58 Cal.App.4th 237, 242-43 [pension benefits vest upon acceptance of employment; this principle also applies to post-retirement health benefits, citing Thorning v. Hollister School Dist. (1992) 11 Cal.App.4th 1598, 1605]; compare Asmus v. Pac. Bell (2000) 23 Cal.4th 1, 10 [discussing the issue of whether and how an employer can terminate or modify an existing, unilateral implied agreement in the private-employment context].)

While disclaimers could potentially invalidate claims by some class members, this is a merits question that will be common to the ascertainable subgroup of Retirees who were hired after the Regents started to use such disclaimers. If, at trial, these later-hired Retirees lose their claims, it will be as a group, based upon common issues. Similarly, under this scenario, the remaining, earlier-hired Retirees could face the additional question of whether and how a disclaimer can unilaterally vitiate an existing implied agreement with the Regents; however, this again, presents a legal question which will be common to the remaining Retirees.

B. Promissory Estoppel and Equitable Estoppel

The court tentatively opined that some of the elements of the estoppel claims overlap with the "implied contract claim," and thus present common legal and factual questions. (For example, promissory estoppel requires proof of a "clear promise" by the Regents and equitable estoppel requires proof of the Regents' "intent that its conduct be relied upon." Each of these elements significantly overlaps with implied contract's requirement that Petitioners prove the "existence of an implied agreement" by showing the Regents' statements and conduct evince an unmistakable intent to be bound.) It further concluded that neither the element of harm nor the amount of damages sustained would require individualized mini-trials; these issues can be tried through a straightforward accounting.

However, the court asked the parties to better address the element of reliance and when, and under what circumstances, reliance can be inferred. The court expressed its concern that it could be inequitable to infer from a class members' decision to maintain the status quo (not leave employment) that they in fact relied upon a statement which they may not have seen. The court further observed that, if actual reliance must be established directly and is based upon the knowledge and beliefs of the class members, the record discloses some variation among class members -- specifically, regarding their awareness, understanding of and reliance on the Regents' statements regarding the provision of UC-Sponsored healthcare after retirement. The court tentatively concluded that Petitioners have not shown how these individualized issues could be effectively managed at trial.

Petitioners did not contest this portion of the tentative ruling and, at the hearing failed to address the court's concerns. Thus, the court concludes that "reliance" will present a significant and highly individualized issue and that, as a result, the estoppel claims are not amenable to class treatment.

C. Affirmative Defenses

While the court must consider affirmative defenses and determine whether they are sufficiently common and manageable, the Regents failed to adequately explain the defenses at issue. At the hearing, they focused on potential defenses arising out of participation by some Retirees in a voluntary early retirement program (VERIP-III); however, the Regents did not cite to any evidence in the record, such as the "documentation" they contend was signed by Retirees who accepted early retirement benefits; nor did they explain how the statements in the documentation would create individualized issues, as opposed to an single issue of law ("what is the effect of the early retirement agreement?") that will be common to an ascertainable subclass of Retirees. Thus, the record does not disclose any affirmative defenses that create significant individualized issues.

OTHER CLASS CERTIFICATION CRITERIA. The Regents do not challenge numerosity or ascertainability. Respondent's argument that the proposed class representatives are inadequate because they do not have typical claims, turns on the same arguments discussed above and fails for the same reasons. Further, there is no evidence that earlier-hired Retirees cannot or will not vigorously represent the later-hired Retirees, or that there is any conflict among them that could not be managed at trial.

MANAGEABILITY AND SUPERIORITY. Superiority involves a weighing of the costs and benefits of adjudicating Petitioners' claims together, on one hand, versus proceeding by numerous separate actions, on the other. (Sav-on, supra, at 1347.) Petitioners have demonstrated that there is common evidence on liability issues for the "implied contract" claim and that the claim can be tried without devolving into a mini-trial of every class member's time subjective understanding and personal experiences. Given the numerous common issues, and the likelihood that any individualized issues can be resolved through the use of appropriate management techniques, the benefits of trying these claims on a class basis is high. To the extent there are issues that have the potential to impact different groups of Retirees differently, it would appear that the issues affect ascertainable subgroups and thus could be managed through subclassing.

CONCLUSION. For the foregoing reasons, the motion is GRANTED IN PART, as to the implied contract claim, only. As to the claim for breach of an implied contract, the following class is certified:

(1) University of California Retirees who worked at LLNL who were eligible for University-sponsored group health plan coverage when they retired, but lost this coverage in late 2007 or early 2008 in connection with transfer of LLNL's management to Lawrence Livermore National Security (LLNS); or

(2) Spouses, surviving spouses, or dependents who were eligible for University-sponsored group health plan coverage as a consequence of a University of California employee's retirement after working at LLNL, or death while working at LLNL, but who lost this coverage in connection with transfer of LLNL's management to Lawrence Livermore National Security (LLNS).

Plaintiffs Wendell G. Moen, Jay Davis, Donna Ventura, Robert Becker, Gregory A. Biachini, Geores Buttner, Alan Hindmarsh, Steve Hornstein, Cal Wood, and Sharon Wood are APPOINTED to represent the above-defined class.

Petitioners' counsel Sinclair Law Office, Stember Cohn & Davidson-Welling, LLC, Carter Carter Fries & Grunschlag, and Calvo Fisher & Jacob LLP are hereby APPOINTED as class counsel for the class.

FURTHER PROCEEDINGS. Petitioners shall serve a proposed form of class notice and a proposed order re notice procedures upon the Regents no later than November 10, 2014. The parties shall conclude meet-and-confer regarding the form and procedures for class notice no later than November 21, 2014. The proposed notice shall be submitted to the court for its review and approval, in the form of an ex parte application for court approval of notice procedures and content (or stipulation) and proposed order, no later than November 25, 2014.

If the parties cannot agree on the proposed form of notice, Petitioners should submit, no later than

November 15, 2014, an ex parte application for approval of notice. The application should attach a single proposed notice containing all agreed-upon provisions, and for each disputed provision, each side's preferred language (so that the court may strike the language it declines to approve). Briefing, if any, should be in the form of a single, joint statement that concisely sets forth the parties' respective arguments, together, on each disputed provision.

At least 90 days before trial, on a date to be determined, Petitioners shall present a trial plan that demonstrates that there can be an effective class trial of common issues and any individualized issues, that will provide due process to the absent class members and Defendant while respecting the time of the court and/or jury. The trial plan must identify the common factual and legal issues and identify the specific documents and witnesses that Petitioners will present to prove the common factual issues. For each witness, Petitioners must describe their testimony in 3 - 4 sentences and estimate the hours of direct testimony. (See Tate v. Kaiser, RG07 318416, Order of 4/28/09; Workman Decl. filed 6/25/09.)

The trial plan is not a substitute for Local Rule 3.35 and will not bind the Petitioners to the precise witnesses and documents that they can present at trial. The trial plan must, however, give the court a factual basis for determining whether the trial will be manageable and for determining the length of the trial.

The next CCMC will be at 2:30 p.m. on February 18, 2015.

Dated: 10/30/2014

facsimile

Judge George C. Hernandez, Jr.

SHORT TITLE:	CASE NUMBER:
Requa VS The Regents of the University of California	RG10530492

ADDITIONAL ADDRESSEES

Robinson, Charles F.
University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200

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

Calvo Fisher & Jacob LLP
Attn: Hebert, William N.
1 Lombard Street,
Second Floor
San Francisco, CA 94111____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG10530492
Order After Hearing Re: of 10/30/2014

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/31/2014.

Leah T. Wilson Executive Officer / Clerk of the Superior Court

By Yestrada Digital

Deputy Clerk