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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Wendell G. Moen, Jay Davis Donna Ventura, Robert Becker, Gregory M. Bianchini, Geores Buttner, Alan Hindmarsh, Steve Hornstein, 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 **Petitioners' Trial Brief** Class Action Trial: Sep 11, 2015

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Introduction

Petitioners are ten University retirees representing a class of about 4,500 who have been deprived of University-sponsored health benefits since October 2007. In this first phase of the trial, Petitioners will show that the Regents were authorized to enter into implied contracts for these retirement benefits; and that the Regents clearly evinced an intent to be bound by their promise of such benefits during retirement. Petitioners will prevail for at least three reasons.

First, under the law of the case, the Regents may not re-litigate issues decided in Requa v. Regents of Univ. of Cal., 213 Cal.App.4th 213 (2012). To state a cause of action for breach of implied contract, Petitioners must show that the Regents authorized University-sponsored group health benefits, that during their employment, the Regents (through benefit booklets and similar materials) offered such benefits when Petitioners retired, and that Petitioners accepted this offer by continuing to work and provided services. Requa, at 227-228. If Petitioners prove their cause of action for breach of implied contract, as articulated in Requa, then under the law of the case, they will have established both that the Regents had the authority to enter into implied contracts (and did so), and that the Regents clearly evinced a legislative intent to create private enforceable rights.

Second, over a century of case law in California has implied legislative intent to be bound, especially when retirement benefits are involved (two appellate cases have held that the Regents are bound by their promises of retirement benefits), and especially after the employee has retired. The Regents' long and careful consideration of retiree health benefits before establishing their own plan and their numerous publications promising such benefits during retirement, establish their intent to be bound by the promises they made.

Third, the facts and circumstances surrounding the Regents' adoption and implementation of the retiree group health plan demonstrates their intent to create private contractual rights, including their uninterrupted provision of benefit for over 50 years, the clear promise that they made to provide these rights, the establishment of a vesting schedule for employees in order for them to receive retiree group health benefits, the intended and actual use of retiree health benefits to recruit and retain employees, and the requirement that retirees elect a monthly payout of their

UC pension benefits (in lieu of a lump sum cash out) in order to receive retiree group health care benefits.

For all of these reasons and the facts and law set forth below, the Court should find that the Regents were authorized to enter into implied contracts for these retirement benefits and that the Regents clearly evinced an intent to be bound by their promise of such benefits during retirement.

Procedural History

Petitioners worked at the Lawrence Livermore National Laboratory (LLNL) between 1952 and 2006. They retired between 1987 and 2006. Each received University-sponsored group health plan coverage until October 2007, when the Department of Labor transferred management of the Laboratory to a private-sector consortium (Lawrence Livermore National Security or LLNS) – of which the Regents are a part. See Third Amended Petition, ¶¶ 9 (Moen), 13 (Davis), 19 (Ventura), 25 (Becker), 32 (Bianchini), 39 (Buttner), 46 (Hindmarsh), 53 (Hornstein), 62 (C. Wood) and 69 (S. Wood); and see Appendix A.[1]

On August 11, 2010, Joe Requa and three other retirees filed a petition for writ of mandate, alleging breach of implied contract, impairment of contract (Cal. Const. Art. I, § 9), and estoppel. The Regents' demurrer was sustained. Petitioners filed a First Amended Petition (FAP) on January 24, 2011, attaching several booklets assuring employees they would have University-sponsored group health plan coverage when they retired. Requa, 213 Cal.App.4th at 216; and see Request for Judicial Notice of record on appeal.

On May 26, 2011, the court sustained the Regents' demurrer without leave to amend, citing three reasons:

First, the benefit booklets were "replete with conditional language" that was not "sufficient to create either an express or implied contract." Further, "as early as 1990," the Regents put

[1] The parties are working on a stipulation regarding the dates that Petitioners worked at the Laboratory, but it will not be ready by the time this brief is due. In the meantime, Petitioners note that the Regents admit the allegations with regard to Moen, Davis and Ventura, see Answer, ¶¶ 10, 14 & 20, and say they do not have insufficient information to respond with respect to Becker, Bianchini, Buttner, Hindmarsh, Hornstein, C. Wood & S. Wood. Answer, ¶¶ 26, 33, 40, 47, 54, 63 & 70. A "verified petition [for writ of mandate] constitutes evidence which is sufficient to support a judgment." Hand v. Bd. of Examiners, 66 Cal. App. 3d 605, 615 (1977). Thus, the Court may rely on undisputed and admitted allegations.

language into the benefit booklets "clearly stating that retiree medical benefits were not vested and could be modified or eliminated at any time." Requa, at 220-221.

Second, petitioners failed "to provide any statutory or legislative authorization which would allow such a promise to be binding" and had "identified no minutes, formal resolution or standing order issued by [the Regents] conferring on [Petitioners] retirement medical benefits of a certain type in perpetuity." Id. at 221. Absent such authorization, a promise of retiree medical benefits "would not constitute [a] binding contract against [the Regents], a public entity." Requa, at 221.

Third, "California courts have been clear in holding that absent clear intent on the part of the public entity, a long-term financial commitment for retiree medical benefits cannot be implied." Requa, at 221.

Promissory estoppel was rejected for failure to allege a "clear promise." Equitable estoppel was rejected because, in light of the Regents' reservation of rights, Petitioners could not allege that the Regents "knew that retirement medical benefits were not vested rights and were subject to modification and elimination, yet never communicated such information to [Petitioners]." Declaratory relief failed as "derivative of the other four causes of action." Judgment was entered June 8, 2011, and petitioners appealed. Requa, at 221.

The Court of Appeal rejected all of the reasons given by the trial court and all of the arguments by the Regents in support of the trial court ruling, noting that:

> The Regents defend the superior court's decision on a number of grounds, arguing principally that Retirees have not overcome the general presumption that a public employer's statutory scheme is not intended to create private contractual rights. According to the Regents, courts may impose implied contractual obligations on a public employer only where the relevant legislative body clearly evinces an intent to create an implied contract. Here, the Regents contend, Retirees have identified no documents that clearly evince such an intent. They further argue Retirees have not overcome the presumption against the formation of a vested right to health insurance benefits.

Requa, at 222 (fn. omitted).[2]

The Court took judicial notice of a Resolution adopted by the Regents in 1961 authorizing the President "to approve for continued payroll deductions and health insurance subsidy those

[2] The Court did reject Petitioners' express contract claim. Requa, at 226, fn. 9.

existing plans which are willing to amend their benefits to provide equal benefits to retired employees." Requa, at 227; emp. in orig.

The Court also took notice of the Regents' admission in the trial court that they had "authorized, and the University sponsored, medical insurance coverage for [Livermore] retirees until 2007." Requa, at 227 fn. 10.

In response to the Regents' contention that they had not authorized retiree health benefits, the Court stated:

> The FAP alleges the retiree health benefits were properly authorized by the Regents themselves. As we read the pleading, Retirees allege that this express authorization, the later statements of the Regents and their authorized representatives, and the uninterrupted provision of University-sponsored group health benefits from Retirees' retirement dates through 2007, create an implied contract to provide Retirees with University-sponsored group health benefits throughout the period of their retirement. In Retired Employees, the California Supreme Court held that very similar allegations were sufficient to state a claim for breach of implied contract.

Requa, at 229 ("County's removal of retired employees from unified medical insurance pool alleged to have impaired contract because of County's longstanding practice of pooling active and retired employees and County's representations to employees regarding unified pool"), citing Retired Employees' Assn. of Orange County, Inc. v. County of Orange, 52 Cal.4th 1171, at 1177-1178, 1183, 1187 (2010) (REAOC).

The Court of Appeal reiterated its rejection of the Regents' contention near the end of the published portion of the opinion:

> Moreover, the Regents have conceded they authorized retiree group health insurance benefits. If, as the Regents claim, such benefits can only be authorized by "regental action," then it would seem to follow that a "source document" authorizing those benefits must exist. Retirees have already identified one such source document – the October 23, 1961 resolution. And while it appears the Regents may not keep their own copies of such documents, this does not preclude the possibility that discovery may yield others bearing on the subject matter of this suit.

Requa, at 232-233; emp. added.[3]

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[3] In their Objections and Response to Petitioners' Trial Plan, filed March 11, 2015 ("Objections"), the Regents contend that the evidence will show that there was no authority of the President of the University to enter into a bilateral contract to provide group retiree health benefits. See Objections at p. 5, lines 9-14. But the Court of Appeal in Requa has already decided the Regents had the authority to do so, as shown by their 1961 Resolution and their judicial admission that "[t]here is no dispute that The Regents authorized, and the University sponsored, medical insurance coverage for [Livermore] retirees until 2007." Requa, 213 Cal.App.4th at 227, fn. 10, 232-233. Accordingly, the Regents are barred from raising this contention at trial.

After remand, petitioners filed a Second and Third Amended Petition to include class allegations. A class based on petitioners' implied contract claim was certified on October 30, 2014.

Statement of Facts

The Regents Establish their own Group Health Care Plan for Active and Retired Employees

In 1952, the Director of the Los Alamos National Laboratory (LANL) asked the Regents to provide group life insurance to LANL employees. See Petitioners' Trial Exh. 4.[4] The Regents' Committee on Finance discussed group life and health insurance over the next few years, but no decision was made. Exhs. 5-9. At the May 1953 meeting, Regent Carter noted that group insurance "might be an inducement to the non-academic personnel to come into the University system." Id. Exh. 7.

In April 1957, the Regents hired Michael Wermel, Ph.D., a consulting actuary to "make a survey of problems involved in establishing a group life insurance and health and welfare benefit program," Exh. 10, and in March 1958, formed a Special Committee on Group Life Insurance and Health and Welfare Benefits. Exh. 11. In May 1958, Wermel provided a detailed report, finding that all major universities – which "must compete with industry for the academic and non-academic employees" – offer some form of coverage, and there was a "noticeable shift" to do so in the private sector. Id. Exh. 12 (at 7593-7595, 7599-7600).

Wermel concluded the Regents could provide life and health benefits, Exh. 12 (at 7614), and in 1959, the Regents solicited bids to ascertain the cost. Exhs. 13-14. In October 1959, the Regents adopted and approved "Alternative II in the Wermel Report" and asked the Legislature for funds. Exh. 15. Minutes from the meeting show careful study of the issue over a number of years. Exh. 16.[5]

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[4] Unless otherwise indicated, all exhibit references are to Petitioners' Trial Exhibits. Exhibit page number citations are to the bates number of the document.

[5] Supporting documents included reports from the Regents' Special Committee on Group Life Insurance and Health and Welfare Benefits, see Exh. 16, see 7615-7616 (8/16/57), 7557-7560 (6/18/59), 7562-7564 (12/18/58), 7569-7573 (3/13/58), 7617-7619 (4/25/57), (2/12/53), and 7637-7640 (2/12/53); the Committee on Finance and Business Management, see 7636 (3/27/53), 7641-7642 (12/5/52); the Special Committee to Resurvey the Pension and Retiring Annuities System, see 7552-7554 (10/23/59), 7567-7568 (11/21/58); the Wermel Report, see 7574-7614 (5/28/58); and reports by R. C. Floss on group insurance, see

In September 1960, Vice President Wellman reported that the State had deferred funding for a University plan "pending study of a program for all State employees." Exh. 18. Regent Carter noted that a proposed State plan "would provide continuing coverage for retired employees" and urged the University to do the same, id. Exh. 18 (at 8724), which it did.

If the State plan proceeded, according to Regent Hagar, the Regents would have three choices: "(1) to accept the State plan, (2) to endeavor to have the State plan modified to include major medical insurance and perhaps a group life insurance program, or (3) to attempt to secure funds from the State with which to set up their own plan." Exh. 20.[6]

At this same time, the Regents were considering a plan to transfer the Pension and Retiring Annuities System (PRAS), as the University's retirement plan was then known, to the State Employees' Retirement System (SERS). Exh. 20 (at 8714); and see Exhs. 22, 17.[7]

If PRAS were transferred to SERS, University employees would come under the State plan for medical benefits. For this reason, the Regents deferred action on a University health care plan until the April 1961 meeting, when a decision about transferring PRAS to SERS was expected. Id. Exh. 20 (at 8714).

Before the April meeting, the Committee on Faculty and Staff Relations pointed out that the State plan did "not include major medical or group life insurance," which was included in the Regents' 1959 plan. Id. Exh. 15 (at 8678, 8680). At the April meeting, the Regents voted to establish "an independent University system," Exh. 21, effectively adopting Regent Hagar's choice (3). Id. Exh. 20 (at 8714).[8]

7620-7631 (11/8/56), and 7643-7658 (1/21/53).

[6] The Regents claim that the reason they adopted a group health plan was to take advantage of the State Legislature's $5.00 subsidy. See Objections at p. 5, lines 15-20. This assertion is not supported by the record. As set forth above, the Regents had been considering group health care benefits for years before adopting their own plan, which was broader than the State's plan, and which the Regents established to recruit and retain qualified employees.

[7] The Bylaws and Standing Orders of the Regents are the governing instruments for the Regents and may be found at http://regents.universityofcalifornia.edu/governance/standing-orders.

[8] There is no indication in the Regents' documents that PRAS was transferred to SERS. In fact, the Regents established the University of California Retirement System (UCRS) in 1961. Exh. 29, at 8670. UCRS was the predecessor of the University of California Retirement Plan (UCRP).

In October 1961, the University "received assurances from the State" that, after the Legislature passed the State Employees' Medical and Hospital Care Act (AB 541), funds would "be allocated to the Regents for financing of an independent University-sponsored health program" after the Legislature passed the State Employees' Medial and Hospital Care Act (AB541). Exh. 23 (at 8708).

At their meeting on October 20, 1961, the Regents gave the President authority to contract with three health care plans and "approve for continued payroll deductions and health insurance subsidy those existing plans which are willing to amend their benefits to approve equal benefits to retired employees," id. Exh. 23 (at 8709), Exh. 25 (at 8703), and passed a formal Resolution to that effect. Exh. 26; see Requa, at 217, 221, 223, fn.7, 227, 232-233.

The Resolution contained no reservation of rights, the significance of which is discussed below.

On November 17, 1961, the President reported that State funds had been disallowed "pending the adoption of the program for all other State employees." When the State plan passed, funds were included for a separate University program. Exh. 28 (at 7678). However, due to a technicality in the Budget Act, the State Director of Finance declined to make the funds available. Ibid.

The Regents nevertheless continued negotiations with the State and reached agreement that the University could proceed "through the use of other funds available to the Regents and with the expectation that the Legislature during its next session will correct the technical deficiency." Id. Exh. 28 (at 7679). The Regents went ahead and established their own group health care plan, using their own general funds. Exh. 29 (at 8669).

Benefit Brochures Promise University-Sponsored
Group Health Plan Coverage during Retirement

After establishing their plan in 1961, the Regents, through numerous brochures and booklets, promised to provide medical benefits during retirement. A 1961 booklet says, "Employees who cease active work because of retirement … or annuitant … will continue to be

entitled to benefits…" Exh. 19 (at 15126); and see Exh. 27 (at 7722, 7730). Numerous booklets repeated these assurances virtually every year.[9]

A 1980 publication addressed to University employees at the Laboratory said medical benefits would continue during retirement "as long as monthly income received from retirement system is large enough to cover employee contribution." See Exh. 105 (at 5031), and Exh. 106 (at 8360, 8386). And publications in 1986 and 1988, told employees at the Laboratory (in a section entitled "Your Benefits – The Other Part of Your Compensation") that: "Up-to-date, quality benefit plans make up a large part of your compensation at the Laboratory"; and goes on to say, "Benefits are like your other paycheck – because the Laboratory pays all or most of the costs for many." Exhs. 134 & 136, see 5052, 5055; emp. added. One publication explicitly states: "When you retire you can keep your health, dental and legal plan coverages; the Laboratory's contributions to the health and dental plans continue, provided you retire within four months of separating from the Laboratory..." Id. Exh. 134 (at 5067, 5070); Exh. 136 (at 5052, 5055).[10]

Discovery has produced many more benefit booklets than were attached to Petitioners' First Amended Petition, but all of the language is similar, and the Court of Appeal characterized the assurances in these booklets as a "clear promise" of retiree medical benefits. See Requa, Slip. Opin., p. 24-25.

Group Insurance and Health Plan Regulations dated June 1, 1966, states, in an introductory statement by Vice President Charles Hitch, "No provision of these Regulations shall deprive a person who is presently covered by Group Life Insurance or a Group Health Plan from continuation in the Group." Exh. 36 (at 18721). The Regulations expressly noted (in a section entitled "Continuation of

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[9] Relevant language in the benefit booklets is summarized in the accompanying Declaration of Andrew Thomas Sinclair re Benefit Booklets, Exhs. 32, 35-40, 46, 50-52, 55-68, 70-71, 74-75, 77, 79-81, 84-87, 89-94, 96-98, 100, 102-105, 107, 111-112, 115-119, 122-123, 125, 129, 131-134, 136, 139-148, 150-155, 158-160, 162-172, 174-176, 178, 182-185, 189-190, 193, 195-196, 199-202, 205-206, 208-209, 212-220, 222-227, 229-234, 236-239, 245-246, 249-253.

[10] This and similar booklets provided that retirement benefits are "governed entirely by the terms of retirement plan provisions, University of California Group Insurance Regulations and group health/insurance plan contracts, and applicable state and federal laws." Exh. 136 (at 5052). As with the 1966 Regulations, those in effect in 1988 provide (under "Continuation of Coverage after Retirement"): "Health Plan deductions for UCRS and PERS Annuitants are transferred to their annuity checks on retirement if the member elected continuation of coverage…" Exh. 124, § 170.8 (at 8816).

Coverage after Retirement") that "Plan deductions for UCRS Annuitants are transferred to their annuity checks automatically on retirement." Id. Exh. 36 (at 18730).

There is no distinction in these brochures between "health insurance during retirement" and any other retirement benefit (e.g., retirement income). Nor did any brochure contain a reservation of rights until the 1980s and 1990s.

The Regents Provide University-Sponsored Group Health Plan Coverage for over 50 Years

After establishing their plan in 1961, the Regents provided retiree medical benefits for more than 50 years, providing funding and making regular yearly increases in the University's contribution toward the cost of health care.[11] The Regents even set up a contingency fund in January 1963. Exh. 31.

In November 1969, the Regents approved the recommendation of the Committee on Finance that "the President be authorized to approve periodic revisions to existing agreements which provide employee group insurance benefits, provided that the revisions do not substantially change the authorized scope of the plans." Exh. 49, 8214 (Regents' approval) and 8215 (committee recommendation); and see Exh. 48.

In October 1977, the Regents gave the President authority to "negotiate and execute agreements with qualified health maintenance organizations ... in accordance with the Health Maintenance Organization Act of 1973," and at the same time, approved payment of Medicare Part B for employees in a "University-sponsored supplement group health insurance plan," as well as a 3% increase in other retirement benefits. Exh. 88.

In October 1979, the Regents authorized the President to negotiate agreements with Prudential Ins. Co. "equivalent to those currently underwritten by the Equitable Life Assurance Co.," Exh. 101 (at 7870, 7872-7873, 7876); and in October 1980, approved a pilot program for health care services on the San Diego campus. Exh. 108 (at 7899, 7903-7904).

[11] A table showing each of these increases is attached as Appendix B to this brief.

On October 19, 1984, the Regents amended Standing Order 100.4(dd)(5) to authorize the President "to execute contracts and other documents necessary in the exercise of the President's duties ... except that specific authorization by resolution of the Board shall be required for documents which involve or which are ... Agreements for the provision of employee group insurance benefits, with the understanding that Board authorization shall not be required for periodic revisions to existing agreements when the revisions do not substantially change the authorized scope of the benefit plans." Exh. 126, (new language underlined). After this, the President approved periodic increases without an express vote by the Regents.

The Office of the President tracked the University's contribution to health care premiums, as well as the different health care providers, from 1961 to 2011. See "Maximum Health Plan Contribution History – UC and PERS," Exh. 209,[12] and Stipulation signed June 10, 2015, ¶¶ 1-2, filed with this brief. As indicated in the "Maximum Contribution History," employees and retirees could select a health care provider during an "open enrollment" period each year. Premiums varied, depending on the provider and the level of coverage. Ibid.

The first two pages of the Maximum Contribution History, see 6125-6126, describe the Regents' contribution toward the premiums charged by the various insurers that provided health care benefits to University employees and retirees pursuant to group insurance plans negotiated by representatives of the Regents. Exh. 209, ¶ 3 (at 6125-6126). The remainder of the document provides a thumbnail description of terms of the different plans at the time they were in effect. Id. Exh. 211 (at 6127-6177).

The Vesting Schedule

On September 14, 1989, the President recommended that "eligibility for [the] employer contribution toward the University-sponsored annuitant health insurance program be based upon the active service history of [the] employee." Exh. 137 (at 23333). In a "Background" memo, the President noted that "the vesting schedule shall be fully phased in and effective for all University employees hired/appointed or rehired/reappointed on or after January 1, 1990." Id. Exh. 137 (at

[12] This document is published on the University's web site and can be found at: http://ucnet.universityofcalifornia.edu/tools-and-services/administrators/docs/girs-chronology.pdf.

23332-23333, 23337); emp. added. New employees had to work ten years to vest and then only at 50%, with incremental increases each year until fully vested at 20 years. Current employees, however, were "grandfathered in." Id. Exh. 137, see 23333.

The President reminded the Regents (in the same "Background" memo) that: "Because of the University's need for a benefit design allowing it to recruit competitively on a national basis, the University sought and received autonomy to establish its own health program, separate from the State's, for employees and annuitants." Id. Exh. 137 at 23334; emp. added.

The Committee on Finance "approved the President's recommendation," and on November 17, 1989, the Regents adopted the vesting schedule, effective January 1, 1990, with current employees being grandfathered in. Exh. 138 (at 8141-81440).[13]

Election of Monthly Pension Payments Required
for University-Sponsored Group Health Plan Coverage

To receive University-sponsored health benefits during retirement, employees who are retiring must choose monthly pension payments, rather than a "lump sum cashout." Exh. 169 (at 3866). The University of California Retirement Handbook states: "You also waive all rights to continue annuitant medical, dental, and legal benefits if you elect a lump sum cashout..." Exh. 176 (at 4107; and see Exhs. 133 (at 395), and 212 (at 2535).

Retiring employees who take a "lump sum cashout" give up University-sponsored group health coverage during retirement.

[13] In their Objections, the Regents contended that there is no evidence to reflect anything in the nature of a quid pro quo with University employees to create privately enforceable contractual rights. See Objections at p. 6, lines 1-3. As discussed below in detail, the record is full of evidence of a quid pro quo between the Regents and University employees: the Regents offered the retiree group health care benefits to employees for over 50 years and employees continued to work for the University with the promise of receiving these benefits, see Requa, at 227-228; the Regents established and published a vesting schedule, thus implicitly admitting that the benefits are vested; the Regents required employees to forego a lump sum UC pension benefit payment (and to accept a monthly payment instead) to receive UC-sponsored retiree group health care benefits, thus creating a separate enforceable contract; and the Regents used retiree group health benefits as a tool to recruit and retain employees, making a clear commitment to pay the benefits they promised.

Retiree Health Benefits Used to Recruit and Retain Employees

In discussing possible group life benefits in 1953, Regent Carter pointed out that such benefit "might be an inducement to the non-academic personnel to come into the University system." Exh. 7. Actuary Michael Wermel found that all major universities – which "must compete with industry for the academic and non-academic employees" – offer some form of coverage. Exh. 12 (at 7593-7595, 7599-7600). When the Regents were considering a vesting schedule in 1989, the President reminded them that, "to recruit competitively on a national basis, the University sought and received autonomy to establish its own health program, separate from the State's, for employees and annuitants." Exh. 137 (at 23334); emp. added. The Open Enrollment materials for 2000 told employees and retirees, "Our valuable health and welfare package is one of the outstanding benefits of working for the University. As an employer, the University strives to provide a choice of health care plans with a range of employee/retiree premium costs." Exh. 186 (at 3068).

More recently, in July 2010, the Final Report of the President's Task Force on Post-Employment Benefits noted that the University's retiree health benefits have been "critically important for recruiting and retaining outstanding faculty and staff – a key component in the University's excellence." Exh. 236, p. 9. "For many years, [the University's Post-Employment Benefits] programs have provided a key competitive advantage as the University sought to recruit and retain the highest quality faculty and staff – often times compensating for the lack of competitive salaries." Exh. 237, Executive Summary, p. 6.

Issues to Be Decided

By agreement of the parties and order of the court, the issues to be decided on September 11, 2015, are: (1) Were the Regents legally authorized to enter into bilateral contracts governing the employment relationship; and (2) Did the Regents enact legislation that clearly evinced a legislative intent to create private rights of a contractual nature enforceable against the governmental body? Joint Case Management Conference Statement, filed 6/5/15, p. 1.[14]

[14] This first phase of the trial does not involve the legal effect, if any, of the "reservation of rights" language which the Office of the President began including in the benefit booklets in the 1980s and 1990s. See Requa, at 231-232, and fn. 15. Nor does it involve whether the impairment of contract was "unreasonable." See Regents' Objections, issue # 5, pp. 2-3.

Argument

I. Under the Law of the Case, Both Issues Must Be Decided in Petitioners' Favor.

The decision of an appellate court, stating a rule of law necessary to the decision, conclusively establishes that rule and is binding in any subsequent trial or appeal. Penzinger v. West American Finance Company, 10 Cal.2d 160, 168 (1937). "Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court." Yu v. Signet Bank/Virginia, 103 Cal.App.4th 298, 312 (2002).

"The law of the case doctrine applies to appellate decisions reviewing and vacating a judgment sustaining a demurrer without leave to amend, including whether a complaint states a cause of action." Bigbee v. Pac. Tel. & Tel. Co., 34 Cal.3d 49, 53 (1983) (quoting Blatz Brewing Co. v. Collins, 88 Cal.App.2d 438, 444, 445 (1948). See also: Yu v. Signet Bank/Virginia, 103 Cal.App.4th 298, 309 (2002) (complaint stated cause of action for abuse of process); Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 217 Cal.App.2d 799, 804-806 (1963) (breach of contract); George v. City of Los Angeles, 51 Cal.App.2d 311, 314-315 (1942) (dangerous condition of public property).

The Court of Appeal articulated the "essential allegations" which Petitioners must prove to establish their claim for breach of implied contract: (1) "the Regents authorized University-sponsored group health insurance coverage for retirees," (2) "then during Retirees' employment at Livermore, the Regents -- through various benefit booklets and handbooks published by their authorized representatives -- offered to provide Retirees with University-sponsored group health plan coverage when they retired," and (3) Petitioners "accepted this offer through working at Livermore and continuing to provide services over time." Requa, at 227-228; citations omitted. Petitioners have established all three elements of their claim.

As to the first element, the facts judicially noticed in the Requa opinion and additional facts uncovered in discovery show that the Regents carefully considered group life and health benefits from 1952 to 1961. Exhs. 4-8, 10-16, 18, 20-21, 23-26, 28-29. The Regents hired an actuary who provided a detailed report finding group benefits were feasible and becoming more common in the public and private sectors (where the Regents had to complete for academic and staff employees).

Exh. 12. When the State proposed a plan in 1960, the Regents found it was deficient for their recruitment needs and established their own plan. Exh. 15 (at 8678, 8680); Exh. 21. When funding from the State was delayed due to a technical problem in the budget, the Regents used their own funds to pay for the plan, hoping for reimbursement from the State. Exhs. 28 (at 7679); Exh. 29 (at 8669). The Court also took judicial notice of the 1961 Resolution, Exh. 26, and noted Regents' admission that they "authorized, and the University sponsored, medical insurance coverage for [Livermore] retirees until 2007." Requa, at 227, fn. 10. These facts and circumstances establish the first element of Petitioners' prima facie case.

As to the second element, the evidence shows that, during Petitioners' employment, the Regents offered to provide University-sponsored group health plan coverage. The offer is apparent from the benefit booklets attached to the TAP – and from numerous additional booklets containing the same assurances that have been produced in discovery. See fn. 8, above, and accompanying Decl. re Benefit Booklets.[15] The Court of Appeal also took judicial notice of the benefit booklets attached to the First Amended Petition – at the Regents' request. Requa, at 223, fn. 7. The Court found that these benefit booklets contained a "clear offer" or University-sponsored group health care coverage during retirement. Requa, Slip. Opin., pp 22-23. It is undisputed that these benefit booklets were published during the time Petitioners were employed at the Laboratory. See verified FAP, ¶¶ 11-12 (Moen), 16-17 (Davis), 21-23 (Ventura), 26-30 (Becker), 36-37 (Bianchini), 42-44 (Buttner), 49-51 (Hindmarsh), 56-59 (Hornstein), 66-68 (C. Wood) and 72-75 (S. Wood). This evidence establishes the second element of Petitioner's prima facie case.

As to the third element, Petitioners accepted the Regents' offer by continuing to work at the Laboratory and provide services. Requa, at 228; see Appendix A hereto showing Petitioners' dates of employment. These facts establish the third and last element of Petitioners' prima facie case.

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[15] As noted, the Office of the President began inserting "reservation of rights" language in the benefit booklets in the mid-1980s. But it is the Regents' intent at the time they established the benefit that is relevant – not their intent 25 years later when they sought to abrogate their "clear promise." By this time, Petitioners had accepted the Regents' offer, Requa, at 227-228, and an enforceable contract was in existence. Further, the benefit booklets continued to assure employees they would have health care coverage during retirement. See Decl. re Benefit Booklets.

The law of the case bars the Regents from re-litigating whether the 1961 resolution, and "circumstances accompanying its passage," constitutes an offer which Petitioners accepted "through working at Livermore and continuing to provide services over time." Requa, at 227-228. Having established all of the facts necessary to the three elements of their prima facie case, it follows that they have proven the Regents' "legislative intent to create private rights of a contractual nature" and have overcome any presumption that the Regents did not intend to create private contractual rights. Requa, at 225.

Having established the three elements of a cause of action for implied contract as required by Requa, the Regents are barred by law of the case from contending that the Petitioners' have failed to make out their prima facie case.[16]

For example, in George v. City of Los Angeles, 11 Cal.2d 303 (1938), the Supreme Court reversed a demurrer alleging a dangerous condition on public property. Plaintiff prevailed in a trial after remand by establishing each element of his cause of action as set out by the Supreme Court. Defendant appealed, arguing that the evidence did not show a dangerous condition. But the Court of Appeal held that once the plaintiff had proved the facts necessary to support the cause of action as set forth by the Supreme Court, the law of the case precluded the city from arguing the condition was not dangerous. George, 51 Cal.App.2d at 314-315. The same is true here. So long as Petitioners prove their "essential allegations," Requa, at 227-228, the Regents are precluded from re-litigating the two issues of authorization and legislative intent.

Even if the Court of Appeal did not explicitly include overcoming the presumption as an element of the cause of action for breach of implied contract, overcoming of the presumption was "essential to the decision" in Requa. The appellate judgment "could not have been rendered without its determination." Witkin, California Procedure, "Appeal," § 477, pp. 535-536 (5th ed.

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[16] In their Objections, the Regents contended that REAOC is distinguishable because Orange County had engaged in collective bargaining with its employees and the Board of Supervisors had "legally authorized" the bilateral contracts (collective bargaining agreements). See Objections at p. 4, lines 13-20. It is true there were negotiated agreements in REAOC and not in this case. But the Requa court held Petitioners stated a claim for breach of an implied contract, 213 Cal.App.3d at 226-228, and a long line of cases finds that contractual rights are implied when a public agency establishes retirement benefits. Creighton, 58 Cal.App.4th 237, 242-243 (1997).

2008); see Yu v. Signet Bank/Virginia, 103 Cal.App.4th at 312. Thus, although the law of the case "does not extend to points of law which might have been but were not presented and determined in the prior appeal," it does apply to "questions not expressly decided but implicitly decided because they were essential to the decision on the prior appeal." Olson v. Cory, 35 Cal. 3d 390, 399 (1983); emp. added.

In Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 217 Cal.App.2d 799 (1963), a demurrer was sustained to a claim for breach of contract and the plaintiff appealed. The contract was made in California but involved services to be rendered at a gambling casino in Nevada. After the ruling was reversed on appeal and the case remanded, the defendant argued in the trial court and in a subsequent appeal the contract was void because it involved gambling, which was unlawful in California. See Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 194 Cal.App.2d 177 (1961). The "unlawful contract" issue was not raised in the earlier appeal but a decision on that issue was essential to its outcome vacating the demurrer. For this reason, defendant was barred from re-litigating the issue. Nevcal, 217 Cal.App.2d at 804-806; see also Kirman v. Borzage, 89 Cal.App.2d 898, 900, 901 (1949) (whether plaintiffs were licensed contractors was implicitly decided in first appeal); Penzinger v. West American Finance Company, 10 Cal.2d 160, 168 (1937); Witkin, supra, § 477, pp. 535-536 ("Where the particular point was essential to the decision, and the appellate judgment could not have been rendered without its determination, a necessary conclusion in support of the judgment is that it was determined," even though "the point was not raised by counsel or expressly mentioned" in the earlier appeal.)

Likewise here, even if the Court of Appeal in Requa did not explicitly state that the Regents had evinced a legislative intent to create private contractual rights and to be bound, that holding is implicit in its decision that Petitioners had sufficiently alleged the existence of an implied contract and entitled to proceed with their claim. The Regents are barred from contending that Petitioners have not established their prima facie case on either of the two issues that are the subject of the first phase of the trial.

If this Court decides that the law of the case does not control the ruling on the two issues, Petitioners will prove, from the facts and circumstances leading to the 1961 Resolution, numerous

benefit booklets provided in discovery, and the uninterrupted provision of benefits for over 50 years, that the Regents were authorized retiree health benefit, and clearly intended, to create enforceable contract rights.

The issue of the Regents' authority is purely legal and will be considered first.

II. The Regents Had the Authority to Enter into an Implied Contract with Petitioners.

Whether a public employer is "legally authorized to enter into bilateral contracts" came up in REAOC, where the county argued that such agreements are prohibited under Cal. Const., art. XI, § 1 (powers of county governments) and Cal. Gov. Code § 25300 (compensation of county employees). REAOC, at 1183-1185. Neither of these provisions applies to the Regents, which have "full powers of organization and government" under Cal. Const., art. IX, § 9(a). Setting employee compensation "is particularly a matter within the Regents' broad constitutional grant of authority to manage its own internal affairs." In re Work Uniform Cases, 133 Cal.App.4th 328, 344 (2005). Postretirement health benefits are an element of compensation. Creighton v. Regents of Univ. of Cal., 58 Cal.App.4th 237, 243 (1997), citing Thorning v. Hollister School Dist., 11 Cal. App. 4th 1598, 1602 (1992). Thus there is no question that the Regents had the authority to enter into contracts, either express or implied, for retiree medical benefits.

The Regents exercised their authority through the 1961 Resolution authorizing the President to implement group health care benefits for active and retired employees, Exh. 26, then re-affirmed the President's authority to continue to do so, Exhs. 49 (at 8215), 88, 101 (at 7872, 7874-7876) and 126 (at 8188, 8190). At no time – not when the Resolution was adopted in 1961 nor by Resolution, Standing Order or Minutes at any later time – did the Regents state that retiree health benefits were anything other than an integral part of retirement benefits. To the contrary, the Regents inextricably coupled retiree medical benefit with monthly pension benefits (e.g., by requiring retirees to accept monthly pension payments to receive University-sponsored group health care coverage).

III. **The Regents Clearly Evinced a Legislative Intent to Create Private Contractual Rights and Are Bound by California Law Finding Implied Vested Rights to Retirement Benefits**.

Whether legislation in California evinces "a legislative intent to create private rights of a contractual nature enforceable against the governmental body" has a long history – particularly with regard to retirement benefits.

A. The Regents Are Subject To the Implied Vested Rights Doctrine and It Applies to their Provision of Group Retiree Health Benefits In this Case.

In 1903, the California Supreme Court ruled that the Legislature creates an implied contractual right when legislation provides for payment when specified facts and circumstances are met. In County of San Luis Obispo v. Gage, 139 Cal. 398 (1903), a statute provided that the state would reimburse counties that provided "support and maintenance of minor orphans, half-orphans, or abandoned children." Id. at 400. The County of San Luis Obispo provided the services, but the State refused to reimburse. The Court held that the legislation was "the equivalent of an offer … binding as such upon the state … [as] an implied contract." 139 Cal. at 407-408.[17]

In 1917, California applied the same principle to pension benefits. "A pension ... is not a gratuity or a gift... [W]here, as here, services are rendered under such a pension statute, the pension provisions become a part of the contemplated compensation for those services and so in a sense a part of the contract of employment itself." O'Dea v. Cook, 176 Cal. 659, 661-662 (1917); and see Dryden v. Bd. of Pension Comrs., 6 Cal.2d 575, 579 (1936) (pensions are "an integral portion of the contemplated compensation set forth in the contract of employment"); and see Kern v. City of Long Beach, 29 Cal.2d 848, 852 (1947) ("pension provisions become a part of the contemplated compensation for those services and so in a sense a part of the contract of employment itself").

The right to a pension vests "as soon as [the employee] has performed substantial services for his employer," and "cannot be destroyed, once it has vested, without impairing a contractual

[17] The Regents are not the Legislature and do not enact "legislation" as such. But under their "full powers of organization and government," Cal. Const., Art. IX, § 9, "policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes." Campbell v. Regents of Univ. of Cal., 35 Cal. 4th 311, 320 (2005), quoting Regents of Univ. of Cal. v. City of Santa Monica, 77 Cal. App. 3d 130, 135 (1978); and see Kim v. Regents of Univ. of Cal., 80 Cal.App.4th 160, 165 (2000).

obligation." Kern, at 853, 855 (citing Dryden, 6 Cal.2d at 579); and see Allen v. City of Long Beach, 45 Cal.2d 128, 131 (1955), Abbott v. City of Los Angeles, 50 Cal.2d 438, 455 (1958), Betts v. Bd. of Admin., 21 Cal.3d 859, 863 (1978), Creighton v. Regents of the Univ. of Cal., 58 Cal.App.4th 237, 243 (1997), Valdes v. Cory, 139 Cal.App.3d 773, 783-784 (1983), and Bd. of Admin. v. Wilson, 52 Cal.App.4th 1109, 1131 (1997).

Public employers have argued that the intent of the governing body must be explicit. In Cal. Teachers' Assn. v. Cory, 155 Cal.App.3d 494 (1984), Governor Wilson argued that "a statute does not create contractual obligations unless it explicitly uses words of contract and that a contract therefore cannot be created by implication from a statute." Id. at 504. The court disagreed, noting that "three quarters of a century of cases ... have implied contractual obligations from the particular texts and contexts of the statutes at issue." 155 Cal.App.3d at 504-505, emp. in orig., citing County of San Luis Obispo v. Gage, supra, 139 Cal. 398, Cal. Medical Assn. v. Lackner, 117 Cal.App.3d 552 (1981), and Valdes v. Cory, 139 Cal.App.3d 773, 783-784 (1983)). [18]

Although California courts have recognized that "it is presumed a statutory scheme is not intended to create constitutionally protected contract rights,"they have also recognized "a strong preference for construing governmental pension laws as creating contractual rights for the payment of benefits." Bd. of Admin. v. Wilson, 52 Cal.App.4th 1109, 1131 (1997); emp. added. Indeed, the Supreme Court has pointed out "the unique importance of pension rights to an employee's well-being," consistently enforcing pension rights which often arise "after employees were induced to accept and maintain employment on the basis of expectations fostered by widespread, long-continuing misrepresentations by their employers." Longshore v. County of Ventura, 25 Cal.3d 14, 28 (1979), cited in Requa, Slip. Opin., pp. 24-25.

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[18] The holding that pension benefits are part of the "contract of employment" is not in conflict with the principle that public employment is not held by contract but by statute. "Although there may be no right to tenure, public employment gives rise to certain obligations," including pension rights, "which are protected by the contract clause of the Constitution." Kern, at 852-853; see Miller v. State of Cal., 18 Cal.3d 808, 815-816 (1977). This answers the Regents' contention that "civil service employees cannot state a cause of action for breach of contract." See Regents' Objections, pp. 3-4, citing Kim v. Regents of University of California, 80 Cal.App.4th 160, 164-165 2000). While there may be no claim for breach of an employment contract, there is a claim for impairment of the right to retirement benefits. Kern, at 852-853.

In California, implied contractual rights can go well beyond what is explicitly stated in legislation when "the statutory language or circumstances accompanying [the] passage [of the legislation] 'clearly "…evince a legislative intent to create private rights of a contractual nature enforceable against the [governmental body]."'" Requa, at 225, citing REAOC, at 1187, 1189.

In Valdes v. Cory, 139 Cal.App.3d 773 (1983), a statute suspended contributions to PERS. Although employees suffered "no out-of-pocket loses," id. at 785, and the statute contained "no explicit legislative commitment an actuarially sound system," ibid., the court found an implied right to an actuarially sound retirement system. "A statute will be treated as a contract with binding obligations when the statutory language and circumstances accompanying its passage clearly '... evince a legislative intent to create private rights of a contractual nature enforceable against the State.'" 139 Cal.App.3d at 786, citing United States Trust Co. v. New Jersey, 431 U.S. at p. 17, fn. 14; and see Kern, 29 Cal.2d at pp. 850-851, and REAOC, at 1183 ("The contractual right alleged in this case, then, does not necessarily depend on whether there is express language in a statute or ordinance granting REAOC members the right to a single unified insurance pool during their lifetimes").

California courts have expanded the vested rights doctrine well beyond ordinary pension benefits. As noted in Creighton, the "contractual pension expectations" of employees has been "applied to disability as well as service retirement benefits, Frank v. Bd. of Admin., 56 Cal. App. 3d 236, 243 (1976), to postretirement health benefits, Thorning v. Hollister School Dist., 11 Cal.App.4th at 1598, 1602 (1978), and even to certain nonpension benefits. California League of City Employee Associations v. Palos Verdes Library Dist., 87 Cal. App. 3d 135, 137, 139-140 (1978) (longevity salary increase, extra vacation, paid sabbatical)." Creighton, 58 Cal. App. 4th at 243.

The explicit acknowledgment that "postretirement health benefits" are subject to the vested rights doctrine, in a case involving the Regents, leaves no doubt that the Regents are bound by the Betts and Kern line of cases; and that Petitioners have a vested right to University-sponsored group health plan coverage during retirement.

Retirement benefits may be modified before retirement, but changes "must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and,

when resulting in disadvantage to employees, must be accompanied by comparable new advantages." Allen v. Bd. of Admin., 34 Cal.3d 114, 120 (1983) (citing Allen v. City of Long Beach, 45 Cal.2d 128, 131 (1955), Abbott v. City of Los Angeles, 50 Cal.2d 438, 449 (1958), and Lyon v. Flournoy, 271 Cal.App.2d 774, 782 (1969)). After retirement, however, "the scope of continuing governmental power may be more restricted, the retiree being entitled to the fulfillment without detrimental modification of the contract which he already has performed." Allen, at 120, citing Lyon, at 783; and see Creighton, at 244-245, finding a "separate binding contract" for employees who had already retired.

Petitioners may not have had a vested right if the Regents had reserved the right to modify or terminate benefits when the plan was established in 1961. At the time the Regents adopted the 1961 Resolution, the law was clear that a public employer could reserve the right to modify or terminate a benefit at the time the benefit is established. In Wallace v. City of Fresno, 42 Cal.2d 180, 183 (1954), the California Supreme Court noted that a public employer may "adopt restrictions" when a retirement benefit is established "that would be considered unreasonable impairments of the contract if subsequently imposed." As noted in Glaeser v. City of Berkeley, 148 Cal.App.2d 614, 618 (1957), "In the absence of such a reservation [of legislative power to amend or repeal] a person serving under a pension system 'acquires a vested contractual right to a substantial pension.'" See also Cal. Teachers Assn., 155 Cal.App.3d at 504, fn. 9. The Regents' decision not to include a reservation of rights when group health care benefits were established in 1961 clearly evinces an intent to create private contractual rights.

The "circumstances surrounding" the Regents' establishment of their own group health insurance plan in 1961, without a reservation of rights to terminate it, clearly "evince a legislative intent to create private rights of a contractual nature." REAOC, at 1189; Requa, at 225-226.

B. The Uninterrupted Provision of Retiree Health Benefits for Over 50 Years Shows the Regents' Intent to Be Bound.

As noted in Requa, the retirees in REAOC based their claim on the "County's long-standing and consistent practice of pooling active and retired employees, along with County's representations to employees regarding a unified pool." Requa, at 225 (citing REAOC, at 1177-

1178). The Supreme Court held the REAOC retirees could state a claim based on these facts and circumstances. REAOC, at 1194,.

Here, the Regents provided retiree medical benefits, without interruption or significant change, for over 50 years. See "Maximum Contribution" document, Exh. 209. This consistent pattern of conduct, over an extended period, is exactly what gives rise to an implied contract. See Requa, at 225, noting that, in REAOC, the Supreme Court found the retirees could state a cause of action based on the "County's long-standing and consistent practice of pooling active and retired employees, along with County's representations to employees regarding a unified pool, created an implied contractual right to a continuation of the single unified pool…". Id., citing REAOC at 1177–1178. Petitioners and class members reasonably assumed that the Regents would continue to provide benefits during their retirement, just as they had for the decades of their employment.

In addition to providing retiree medical benefits for over 50 years, the Regents kept retirees and active employees in the same "unified pool." This prevented rates for retired employees from growing at a higher rate than for active and retired employees combined. Petitioners reasonably expected that, when they retired from the University of California, they would remain in a combined "unified pool." See REAOC, at 1177-1178, 1183, 1185, 1188, 1190-1191.

C. The Regents' Intent Is Apparent from their "Clear Promise" of Group Health Care Benefits during Retirement.

The Regents' intent to "create private contractual or vested rights," Requa, at 225, is also apparent from the Court of Appeal's holding that Petitioners alleged a "clear promise" to support their promissory estoppel claim. In rejecting the Regents' argument opposing estoppel, the Court noted: "We have already concluded Retirees have sufficiently alleged an implied contract, thus the requirement of a clear promise is satisfied." Slip. Opin., pp. 22, 23; emp. added. There is no meaningful difference between a "clear promise" of retiree medical benefits and the intent to create a vested right to those benefits.

D. The Adoption of the Vesting Schedule for Entitlement to Retiree Health Benefits Confirms that the Regents Intended to Be Bound.

The Regents' adoption of an explicit vesting schedule, together with current employees' being "grandfathered in," made unmistakably clear that retiree health benefits are vested – and were considered to be vested by the Regents. Even if there had been any question before 1990, it was settled when the Regents adopted the President's recommendation and established the vesting schedule. The fact that current employees were "grandfathered in" likewise shows the Regents' awareness that the vested right could not be unilaterally modified or terminated. (All of the petitioners had more than 20 years of service so were 100% vested. See Appendix A.)

E. The Regents' Use of Retiree Health Benefits to Recruit and Retain Employees Shows an Intent to Be Bound.

In discussing group benefits in 1953, Regent Carter pointed out that they "might be an inducement to the non-academic personnel to come into the University system." Exh. 7 (at 8542). Actuary Wermel found that all major universities – which "must compete with industry for the academic and non-academic employees" – offer some form of coverage. Exh. 12 (at 7593-7595, 7599-7600). In 1989, the President reminded the Regents that, "to recruit competitively on a national basis, the University sought and received autonomy to establish its own health program, separate from the State's, for employees and annuitants." Exh. 137 (at 23334); emp. added.

More recently, in July 2010, the Final Report of the President's Task Force on Post-Employment Benefits pointed out that noted that the University's retiree health benefits have been "critically important for recruiting and retaining outstanding faculty and staff – a key component in the University's excellence." Exh. 236, p. 9; emp. added. "For many years, [the University's Post-Employment Benefits] programs have provided a key competitive advantage as the University sought to recruit and retain the highest quality faculty and staff – often times compensating for the lack of competitive salaries." Exh. 237, Executive Summary, p. 6; emp. added.

It is inconceivable that the Regents used retiree medical benefits to recruit and retain career employees without intending to create enforceable contract rights.

F. The Required Election of Monthly Pension Benefits to Receive Retiree Health Care during Retirement Created a Separate Binding Agreement.

At the time of retirement, University employees are required to choose between monthly pension benefits and a "lump sum cashout." Exh. 176 (at 4107). This election involves "an unambiguous element of exchange," which implies "a legislative intent to grant contractual rights." Cal. Teachers Assn. v. Cory, 155 Cal.App.3d at 505. Similarly, in Creighton, employees' acceptance of an early retirement plan created a "separate binding agreement" despite language in the plan saying benefits were not "vested or accrued." Creighton, at 244-245.

In the same way, the decision to forego a "lump sum cashout" in order to receive retiree medical benefits created a "separate binding agreement." Further, requiring the election shows that retiree health benefits are not a freestanding, removable element of petitioners' overall benefits. Rather, they are an integral part of the overall package, inseparable from normal retirement income benefits – which the Regents concede are vested.

The linkage is also made clear by the fact that, as a condition of receiving health benefits, the retiree's monthly income benefit must be sufficient to cover their contribution. See, e.g., Exh. 169 (at 3874, 3876), Retirement Handbook ("Your monthly retirement benefit must be large enough to cover any net premium deduction").

Conclusion

The Regents are barred by the doctrine of law of the case from re-litigating the two issues to be decided on the first day of trial, because a finding in favor of Petitioners on both issues was essential to the Requa decision vacating the trial court's demurrer to their FAP. The preponderance of the evidence shows that the Regents were legally authorized to enter into bilateral contracts governing the employment relationship with Petitioners and the class they represent, and the Regents enacted legislation that clearly evinced a legislative intent to create private rights of a contractual nature enforceable against them. This Court should issue an order in favor of Petitioners on both issues, find that Petitioners have a vested contractual right to receive UC-sponsored group health benefits throughout retirement, and move to the next phase of trial on the issue of whether the Regents have unlawfully impaired that right.

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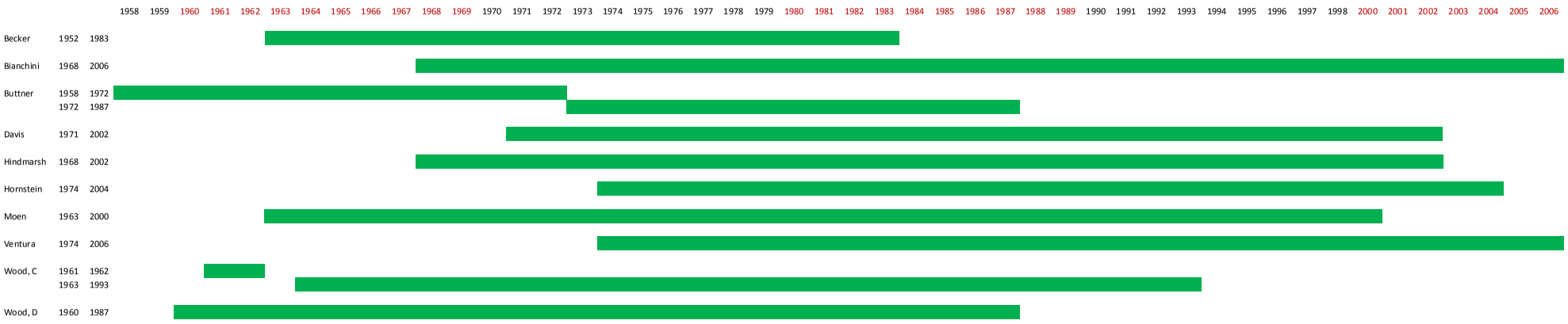
Petitioner Employment Dates



Appendix A

Petitioners' Trial Brief – Appendix B

The Regents' Contributions to Group Health Care
Authority to Increase Rates Delegated to the President in 1983
(1961-1983)

Date	Rate	Source
Oct 1961	$5	Exh. 21 [8712]
Sep 1963	$6	Exh. 33 [7692-7694] ; Exh. 34 [8691-8693]
Oct 1968	$8	Exh. 41 [8644-8647; see 8647]
Sep 1970	$16	Exh. 54 [7855-7858]; Exh. 55 [7851-7854]
Jul 1974	$19	Exh. 69 [7835-7842]
May 1975	$21	Exh. 72 [8608-8611]
Jul 1975	$22	Exh. 73 [10515-10519]; Exh. 78 [8599-8602]
Jun 1976	$29	Exh. 78 [8599-8602]
Jul 1977	$32	Exh. 82 [7825-7827]; Exh. 83 [8593-8598]
Sep 1978	$38	Exh. 95 [10532-10533]
Jul 1979	$43	Exh. 99 [7878-7884; see 7882, 7881 & 7879]
Jul 1980	$49	Exh. 107 [7910-7935; see 7919]
Jul 1981	$58	Exh. 110 [8252-8256; see 8255]
Jul 1982	$71	Exh. 113 [8550-8553; see 8553]
Aug 1983	$88	Exh. 114 [10597-10614] see10599
Oct 1983	$101	Exh. 121 [8016-8030; see 8017-8019]