

March 23, 2019

Dear Class Member:

This is to update you on the last few months.

### **The Appeal**

As most of you already know, we won the appeal of the order “de-certifying” the class action which was signed and filed on November 27, 2017. The Court of Appeal ruled that Judge Hernandez made a legal error when he de-certified the class and ordered that the class action be reinstated. The Court also published the decision in light of its importance. *Moen v. Regents of Univ. of Cal.*, 25 Cal.App.5th 845 (8/1/18). (The majority of decisions from the Court of Appeal, about 90%, are *not* published; only important, legally significant decisions are published.)

### **The Trial**

The Court of Appeal filed its opinion on August 1, 2018. The case was remanded to the Alameda Superior Court on October 2, 2018. Judge Hernandez retired at the end of 2018, so the case was assigned to Judge Winifred Y. Smith, who sits in Department 21 of the Alameda Superior Court. We asked Judge Smith to set a trial date as early as possible. She set February 11, 2019, as the trial date. However, as explained below, both sides agreed to move the trial to **May 6, 2019**, so we would have more time to work through issues relating to a possible settlement.

### **Our Efforts to Settle the Case**

After winning the appeal, we have been working hard to find an acceptable way to settle the case. If we can find a way, we could avoid more years in court. At the same time, we recognize that any settlement must be fair to everyone in the class.

At a Case Management Conference on August 20, 2018, we asked Judge Robert McGuinness to order a mandatory settlement conference. Judge McGuinness set a settlement conference with Judge Patrick Zika, who met with Petitioners and UC on September 7, 2018, and again on October 12, 2018. Since Judge Zika’s time was limited and the issues were complex, he suggested that we agree to use a private mediator. Both sides eventually agreed on Judge Maria-Elena James (Ret.) with ADR Services.

We have met with Judge James and the University attorneys several times, including three all-day sessions, most recently on February 28, 2019. We are making progress, but the going is slow, in part due to the complexity of some issues, and it is not clear that we will be able to reach a settlement before the trial begins on May 6, 2019. We are making every effort to find an acceptable way to settle the case but there are of course no guarantees.

Regardless of which side wins at the trial, the other side is very likely to appeal, and any appeal is likely to consume at least a year and probably more to resolve. We are all getting older. So we would like to find a fair and reasonable way to settle the case for the class.

### **Expenses Are Mounting**

I know we keep asking you to contribute to our efforts. And now we have to ask again. As we get closer to trial, the costs are getting higher.

Mediation: Private mediators are expensive. Although we are splitting cost with UC, it still costs tens of thousands of dollars. We feel it is worth the expense to make every effort to find a way to settle the case and get health care benefits to you before any more members of the class pass away.

Experts: We have hired two experts, a health care economist and an actuary. We have spent a great deal of time discussing ways to settle the case with our experts, and our experts have spent a great deal of time working on possible settlement “scenarios.” In addition, our experts will testify if the case goes to trial.

### **LLNS Has Cut Our Benefits by Failing to Provide for the Increased Cost of Health Care**

At the time of the transition to LLNS in 2007, responsibility for our retiree health care benefits was transferred to the LLNS Health and Welfare Benefit Plan for Retirees (LLNS Plan). Most members of the class were given an “HRA” of \$200 per month (\$2,400 per year). The HRA did not increase from 2007 until 2014. And in 2014, LLNS provided only a pitifully small increase (from \$2,400 to \$2,450). This clearly did not come close to covering the increased cost of health care. The effect of not providing increases is to reduce the health care provided to class members through LLNS.

### **What Happened When Our Health Care Benefits Were Transferred**

As many of you know, under the Transfer Agreement between the Regents, the Laboratory and the Department of Energy, UC retirees who worked at the Laboratory were transferred to the LLNS Plan. The Transfer Agreement states that “On November 1, LLNL UCRP retirees will become members of the health plans of LLNS...” This was done without the knowledge or consent of the class members.

What you may not know is that the Regents, as one part of the joint venture in LLNS, receive an “equity distribution” each year from LLNS. The following information is from the LLNS annual financial reports:

#### **UC Equity Earnings & Cash Distributions from LLNS (36.3%)**

<b>Year Ending</b>	<b>Equity in earnings of LLNS</b>	<b>Cash Distributions</b>
2007-2008	\$10 million	\$5.5 million
2008-2009	\$22 million	\$19.3 million
2009-2010	\$26.5 million	\$28.3 million
2010-2011	\$29.1 million	\$28.7 million

2011-2012	\$29.3 million	\$29.2 million
2012-2013	\$27 million	\$27.8 million
2013-2014	\$12.4 million	\$12.0 million
2014-2015	\$23.8 million	\$23.5 million
2015-2016	\$12.2 million	\$11.6 million
2016-2017	\$23.7 million	\$22.7 million
2017-2018	\$23.7 million	\$23.3 million
<b>TOTAL</b>	<b>\$239.7 million</b>	<b>\$231.9 million</b>

So, while LLNS has been fighting our lawsuit in court of nearly 10 years, the Regents have received substantial profits from LLNS. Clearly, the Regents have funds available to resolve this case and provide the University-sponsored benefits that were promised in more than 100 publications over the years.

### **Please Support the Case**

We have asked for your support many times over the years. And you have supported our efforts. None of us thought it would take almost ten years to get to trial when we filed the lawsuit on August 11, 2010! But we did not quit. Even after the Alameda Superior Court tossed our case out, and later de-certified the class, we kept going. The only reason we have been able to do so is because of your financial support. Please continue your support and give what you can. As we said above, the cost of experts and mediators has risen significantly, so if you can, please do. Each and every one of you is important, especially your medical cost. Remember, only give what you can afford. Your contributions are tax deductible.

Make check payable to:

UCLRG Legal Defense Fund  
c/o Marty Crowningshield  
34400A Mission Blvd #1438  
Union City Ca 94587

UCLRG Tax Exempt # 27-0290259.

Thanks again for your support.

Marty Crowningshield  
(925 216-0968)  
martycr@sbcglobal.net  
**90323**