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ALAMEDA COUNTY

DEC 20 2019

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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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, 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

Assigned For All Purposes to

Judge: Hon. Winifred Y.
Smith

Dept.: 21

~~[PROPOSED]~~ ORDER
GRANTING ESTABLISHMENT
OF A QUALIFIED
SETTLEMENT FUND AND
APPOINTING QUALIFIED
SETTLEMENT FUND
ADMINISTRATOR

Moen, et al. v. Regents of Univ. of Cal. et al., No. RG 10530492
[PROPOSED] ORDER GRANTING ESTABLISHMENT OF A QUALIFIED SETTLEMENT
FUND AND APPOINTING SETTLEMENT ADMINISTRATOR

1 This matter came before the Court on Petitioners' Notice of Motion and Motion to Establish
2 Qualified Settlement Fund and Appointment of Settlement Administrator on December 20, 2019 at 10:00
3 a.m., in Department 21 of the Superior Court of California, County of Alameda. The Court, having
4 considered the motion, the submissions of the parties, and the argument of counsel, and good cause
5 appearing therefore, hereby GRANTS Petitioners' Motion to Establish a Qualified Settlement Fund
6 ("QSF") and Appointment of Settlement Administrator.

7 The Court hereby FINDS, CONCLUDES, and ORDERS as follows:

8 1. Under the Settlement Agreement, the Parties have agreed that the Class will engage
9 ARCHER Systems, LLC, as the Settlement Administrator and QSF Administrator, subject to Court
10 approval. The Court finds that ARCHER possesses the requisite resources and experience to properly
11 and effectively set-up and administer the QSF. ARCHER's address is as follows: 1775 Saint James
12 Place, Suite 200, Houston Texas 77056.

13 2. The Court GRANTS Petitioners' request and approves the engagement and appointment
14 of ARCHER Systems, LLC ("ARCHER" or "QSF Administrator") and its successors and/or assigns as
15 the Settlement Administrator and the QSF Administrator pursuant to the terms, conditions, and
16 restrictions of this Order, and is hereby granted the authority to conduct any, and all activities necessary
17 to administer and ultimately wind down the QSF as described herein and in the Settlement Agreement
18 (including, without limitation, being authorized to make disbursements from the QSF consistent with the
19 Settlement Agreement).

20 3. ARCHER submits personally to the jurisdiction of this Court. ARCHER, as the QSF
21 Administrator, will be authorized to make distributions from the QSF consistent to the terms of the
22 Settlement Agreement and this Order. Should ARCHER experience dissolution or bankruptcy, its
23 appointment as QSF Administrator shall terminate and Petitioners shall seek Court approval of a
24 successor QSF Administrator.

25 4. Under the terms of the Settlement Agreement, a Qualified Settlement Fund is to be
26 established by the Settlement Administrator under 26 CFR § 1.468B-1 for the purpose of receiving and
27 distributing the Settlement Funds as defined under the Settlement Agreement.

1 5. To be a Qualified Settlement Fund ("QSF") Treasury Regulations 1.468B-1 *et seq.* the
2 QSF (1) is established pursuant to an order of or approval by, the United States, any state (including the
3 District of Columbia), territory, possession, or political subdivision thereof, or any agency or
4 instrumentality (including a court of law) of any of the foregoing and is subject to the continuing
5 jurisdiction of that governmental authority; (2) the QSF is established to resolve or satisfy one or more
6 contested or uncontested claims that resulted or may result from an event (or related series of events) that
7 has occurred and that has given rise to at least one claim asserting liability arising out of a tort, breach of
8 contract or violation of law; and (3) the QSF is a trust under applicable state law, or its assets are
9 otherwise segregated from other assets of the transferor (and related persons).

10 6. The Court hereby orders ARCHER to establish and administer, a QSF to be called LLNL
11 Retiree Qualified Settlement Fund. The QSF shall be established within the meaning of Treas. Reg. §
12 1.468B-1 and pursuant to the jurisdiction conferred on this Court by Treas. Reg. § 1.468B-1(c)(1), and
13 shall remain subject to the continuing jurisdiction of this Court. The QSF shall also constitute a trust
14 under state law.

15 7. The Settlement Funds are the sole property of the QSF. No portion of the Settlement
16 Funds shall be made available to the eligible Class Members as determined under the Settlement
17 Agreement in any fashion, except as specifically set forth in the Settlement Agreement. Until such time
18 as monies are distributed from the QSF, the Class shall not possess any rights to demand or receive any
19 portion of the Settlement Funds or to mortgage, pledge or encumber the same in any manner. To the
20 extent possible, this shall be construed so as to prevent the Class from being in constructive receipt, as
21 determined under federal income tax principles, of any amounts held by the QSF.

22 8. Petitioners request that no bond be required, provided that all settlement proceeds, which
23 include all principal and interest earned thereon, shall be deposited in an account held in custody at
24 Esquire Bank (the "Custodian"), a financial institution with headquarters in the state of New York for the
25 benefit of, and titled in the legal name of, the LLNL Retiree Qualified Settlement Fund. The Custodian
26 shall invest monies deposited pursuant to the instructions of the QSF Administrator. Such investment
27 may be (a) with third parties in instruments/securities comprised of United States Agency, Government

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1 Sponsored Enterprises or Treasury debt securities or obligations (maturities not to exceed five years at a
2 time of purchase) or mutual funds invested solely in such instruments (average maturity not to exceed
3 five years); (b) with third parties in cash equivalent securities including SEC registered money market
4 funds and collateralized money market accounts; (c) in one or more checking accounts at the Custodian
5 up to current FDIC insurance limits; and (d) certificate of deposits that are fully insured by the Federal
6 Deposit Insurance Corporation ("FDIC") through use of the Certificate of Deposit Account Registry
7 Services ("CDARS"), and/or Insured Cash Sweep ("ICS") pursuant to the CDARS/ICS Deposit
8 Placement Agreement with the Custodian. The Custodian shall be responsible for following the written
9 investment instructions of the QSF Administrator. The QSF Administrator shall be responsible for
10 ensuring that a principal preservation investment policy is implemented. Notwithstanding the foregoing,
11 the Custodian shall not be allowed to distribute any income or principal from the QSF except upon
12 written instructions of the QSF Administrator, or, if requested, upon the order of this Court upon the joint
13 motion of the Parties. The QSF Administrator retains the right to remove the Custodian with or without
14 cause, in its sole and absolute discretion. The QSF Administrator may designate a replacement custodian
15 upon the written consent of Petitioners. In the event of such replacement, the terms and conditions of this
16 paragraph, including without limitation, those addressing bond requirements, investments, and
17 distributions from the QSF, shall apply to any such custodian. The QSF Administrator shall not be liable
18 for any losses as a result of investing the Settlement Funds as directed by the Court. Any such losses
19 shall not be recoverable from the Parties, and the Parties shall have no responsibility for the QSF
20 Administrator's performance.

21 9. All interest or investment income earned on the account(s) of the QSF shall inure to the
22 benefit of the QSF and shall be used first to pay any taxes and tax return administration/preparation costs
23 for the QSF, QSF Administrator to pay taxes on gains in the QSF, tax return/accounting fees, and any
24 other costs associated with administration of the QSF. QSF Administrator shall direct any and all
25 payments of such interest or investment income and any interest accrued on the QSF account.
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1 10. Within fifteen (15) days of the end of each calendar quarter, QSF Administrator will
2 prepare and deliver QSF Statements ("Statements") to Class Counsel and the Court (if requested). The
3 Statements shall include a statement of receipts, investment earnings, and disbursements.

4 11. QSF Administrator shall have the right to rely upon any affidavit, certificate, letter, notice,
5 electronic mail or other document believed by the QSF Administrator to be genuine and sufficient, and
6 upon any other evidence believed by the QSF Administrator, in its reasonable judgment, to be genuine
7 and sufficient, which may be provided to the QSF Administrator by Class Counsel.

8 12. QSF Administrator shall be indemnified and held harmless by Class Counsel or any Class
9 Member and/or their counsel, (current and/or future, as applicable) from any claims made by any alleged
10 lien holder, or other person that attempts to assert a right of payment, reimbursement or garnishment
11 against the QSF. Should the QSF Administrator be named as a party to, or threatened to be made a party
12 to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil,
13 administrative or arbitrative, and whether brought by or against or otherwise involving the QSF, by
14 reason of the QSF Administrator having served in any capacity on behalf of the QSF, the QSF
15 Administrator shall be indemnified and held harmless by Class Counsel or any Settling Class Member
16 (current and/or future, as applicable) against reasonable expenses, costs and fees (including attorney
17 fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the
18 QSF Administrator in connection with or resulting from such actual or threatened action, suit or
19 proceeding; except to the extent that it is finally determined by this Court that the QSF Administrator was
20 negligent or acted with willful misconduct in connection with the administration of the QSF.

21 13. Upon final distribution of all monies paid into the QSF, the QSF Administrator shall take
22 appropriate steps to wind down the QSF and, thereafter, be discharged from any further responsibility
23 with respect to the Settlement Payment.

24 14. The QSF Administrator shall obtain a Federal Taxpayer Identification Number for the
25 QSF upon the execution of an Order by this Court establishing the Fund.

26 15. Once all proceeds are deposited into the QSF and the dismissals are filed, the Regents
27 shall have no further obligation to the QSF. Any alleged civil liability or actual civil liability of the

1 Regents to any Class Member arising from the claims asserted as a result of the Regents' conduct is
2 requested to be extinguished pursuant to 26 C.F.R. § 468B-3(c).

3 **IT IS SO ORDERED.**

4 DATE: December 20, 2019

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7 Hon. Winifred Y. Smith
8 Judge of the Superior Court
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