

1 Sinclair Law Office  
Andrew Thomas Sinclair (SB No. 72681)  
2 300 Frank H. Ogawa Plaza  
Rotunda Building, Suite 160  
3 Oakland, CA 94612  
Tel: (510) 465-5300  
4 Fax: (510) 465-5356  
ats@sinclairlawoffice.com

5  
6 Carter Carter Fries & Grunschlag  
Dov M. Grunschlag (SB No. 42040)  
44 Montgomery St., Suite 2405  
7 San Francisco, CA 94104  
Tel: (415) 989-7694  
8 Fax (415) 989-4864  
dgrunschlag@carterfries.com

9  
10 Calvo Fisher & Jacob LLP  
William N. Hebert (SB No. 136099)  
555 Montgomery Street, Suite 1155  
11 San Francisco, CA 94101  
Tel: (415) 374-8370  
12 Fax: (415) 374-8373  
whebert@calvoelark.com

13 Attorneys for Petitioners

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF ALAMEDA  
17

18  
19 Wendell G. Moen, Jay Davis Donna Ventura, Robert  
Becker, Gregory M. Bianchini, Geores Buttner, Alan  
20 Hindmarsh, Steve Hornstein, Cal Wood and Sharon  
Wood, on behalf of Themselves and Others Similarly  
21 Situated,

No. RG 10530492  
**Petitioners' Trial Brief**  
Class Action

22 Petitioners, Trial: Sep 11, 2015

23 v.

24 Regents of University of California, and Does, 1  
through 99, inclusive,

25 Respondents.

26 \_\_\_\_\_ /

**Table of Contents**

1

2 Introduction ..... 1

3 Procedural History ..... 2

4 Statement of Facts ..... 5

5     The Regents Establish their own Group Health Care Plan for Active  
6     and Retired Employees ..... 5

7     Benefit Brochures Promise University-Sponsored Group Health Plan  
8     Coverage during Retirement ..... 7

9     The Regents Provide University-Sponsored Group Health Plan Coverage  
10     for over 50 Years ..... 9

11     The Vesting Schedule ..... 10

12     Election of Monthly Pension Payments Required for University-Sponsored  
13     Group Health Plan Coverage ..... 11

14     Retiree Health Benefits Used to Recruit and Retain Employees ..... 12

15 Issues to Be Decided ..... 12

16 Argument ..... 13

17     I.     Under the Law of the Case, Both Issues Must Be Decided in  
18     Petitioners’ Favor. .... 13

19     II.    The Regents Had the Authority to Enter into an Implied Contract with  
20     Petitioners. .... 17

21     III.   The Regents Clearly Evinced a Legislative Intent to Create Private  
22     Contractual Rights and Are Bound by California Law Finding Implied  
23     Vested Rights to Retirement Benefits. .... 18

24         A.     The Regents Are Subject To the Implied Vested Rights  
25         Doctrine and It Applies to their Provision of Group  
26         Retiree Health Benefits In this Case. .... 18

27         B.     The Uninterrupted Provision of Retiree Health Benefits for Over 50  
28         Years Shows the Regents’ Intent to Be Bound. .... 21

       C.     The Regents’ Intent Is Apparent from their “Clear Promise” of Group  
          Health Care Benefits during Retirement. .... 22

       D.     The Adoption of the Vesting Schedule for Entitlement to Retiree  
          Health Benefits Confirms that the Regents Intended to Be Bound. .... 23

       E.     The Regents’ Use of Retiree Health Benefits to Recruit and Retain  
          Employees Shows an Intent to Be Bound. .... 23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

F. The Required Election of Monthly Pension Benefits to Receive Retiree Health Care during Retirement Created a Separate Binding Agreement. . . 24

Conclusion ..... 25

1 **Table of Authorities**

2 **CASES**

3 Abbott v. City of Los Angeles, 50 Cal.2d 438 (1958).....19, 21

4 Allen v. Bd. of Admin., 34 Cal.3d 114 (1983).....21

5 Allen v. City of Long Beach, 45 Cal.2d 128 (1955).....19, 21

6 Bd. of Admin. v. Wilson, 52 Cal.App.4th 1109, 1131 (1997).....19

7 Betts v. Bd. of Admin., 21 Cal.3d 859 (1978).....19

8 Bigbee v. Pac. Tel. & Tel. Co., 34 Cal.3d 49, 53 (1983).....13

9 Blatz Brewing Co. v. Collins, 88 Cal.App.2d 438 (1948) .....13

10 California League of City Employee Associations v. Palos Verdes Library Dist.,

11 87 Cal. App. 3d 135 (1978).....20

12 Cal. Medical Assn. v. Lackner, 117 Cal.App.3d 552 (1981).....19

13 Cal. Teachers’ Assn. v. Cory, 155 Cal.App.3d 494 (1984).....19, 21, 24

14 Campbell v. Regents of Univ. of Cal., 35 Cal. 4th 311 (2005).....18

15 County of San Luis Obispo v. Gage, 139 Cal. 398 (1903).....18, 19

16 Creighton v. Regents of Univ. of Cal., 58 Cal.App.4th 237 (1997).....passim

17 Dryden v. Bd. of Pension Comrs., 6 Cal.2d 575 (1936).....18, 19

18 Frank v. Bd. of Admin., 56 Cal. App. 3d 236 (1976).....20

19 George v. City of Los Angeles, 51 Cal.App.2d 311 (1942) .....13, 15

20 Glaeser v. City of Berkeley, 148 Cal.App.2d 614 (1957).....21

21 Hand v. Bd. of Examiners, 66 Cal. App. 3d 605 (1977).....2

22 In re Work Uniform Cases, 133 Cal.App.4th 328 (2005).....17

23 Kern v. City of Long Beach, 29 Cal.2d 848 (1947).....18, 19, 20

24 Kim v. Regents of Univ. of Cal., 80 Cal.App.4th 160 (2000).....18, 19

25 Kirman v. Borzage, 89 Cal.App.2d 898 (1949).....16

26 Longshore v. County of Ventura, 25 Cal.3d 14 (1979).....19

27 Lyon v. Flournoy, 271 Cal.App.2d 774 (1969).....21

28 Miller v. State of Cal., 18 Cal.3d 808 (1977).....19

1 Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 217 Cal.App.2d 799 (1963) .....13, 16

2 O’Dea v. Cook, 176 Cal. 659 (1917).....18

3 Olson v. Cory, 35 Cal. 3d 390 (1983).....16

4 Penzinger v. West American Finance Company, 10 Cal.2d 160 (1937).....16

5 Regents of Univ. of Cal. v. City of Santa Monica, 77 Cal. App. 3d 130 (1978).....18

6 Requa v. Regents of Univ. of Cal., 213 Cal.App.4th 213 (2012).....passim

7 Retired Employees’ Assn. of Orange County v. County of Orange, 52 Cal.4th 1171(2010).....passim

8 Thorning v. Hollister School Dist., 11 Cal. App. 4th 1598 (1992) .....17, 20

9 United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) .....20

10 Valdes v. Cory, 139 Cal.App.3d 773 (1983).....19, 20

11 Wallace v. City of Fresno, 42 Cal.2d 180 (1954).....21

12 Yu v. Signet Bank/Virginia, 103 Cal.App.4th 298 (2002) .....13, 15-16

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OTHER AUTHORITIES**

Cal. Const., art. XI, § 1 .....2, 17

Cal. Gov. Code § 25300 ..... 17

Witkin, Cal. Procedure, “Appeal” § 477.....15-16

1 **Introduction**

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

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

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

22 Third, the facts and circumstances surrounding the Regents' adoption and implementation  
23 of the retiree group health plan demonstrates their intent to create private contractual rights,  
24 including their uninterrupted provision of benefit for over 50 years, the clear promise that they  
25 made to provide these rights, the establishment of a vesting schedule for employees in order for  
26 them to receive retiree group health benefits, the intended and actual use of retiree health benefits  
27 to recruit and retain employees, and the requirement that retirees elect a monthly payout of their  
28

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

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

### 6 Procedural History

7 Petitioners worked at the Lawrence Livermore National Laboratory (LLNL) between 1952 and  
8 2006. They retired between 1987 and 2006. Each received University-sponsored group health plan  
9 coverage until October 2007, when the Department of Labor transferred management of the  
10 Laboratory to a private-sector consortium (Lawrence Livermore National Security or LLNS) – of  
11 which the Regents are a part. See Third Amended Petition, ¶¶ 9 (Moen), 13 (Davis), 19 (Ventura),  
12 25 (Becker), 32 (Bianchini), 39 (Buttner), 46 (Hindmarsh), 53 (Hornstein), 62 (C. Wood) and 69 (S.  
13 Wood); and see Appendix A.<sup>1</sup>

14 On August 11, 2010, Joe Requa and three other retirees filed a petition for writ of mandate,  
15 alleging breach of implied contract, impairment of contract (Cal. Const. Art. I, § 9), and estoppel.  
16 The Regents’ demurrer was sustained. Petitioners filed a First Amended Petition (FAP) on January  
17 24, 2011, attaching several booklets assuring employees they would have University-sponsored  
18 group health plan coverage when they retired. Requa, 213 Cal.App.4th at 216; and see Request for  
19 Judicial Notice of record on appeal.

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

22 First, the benefit booklets were “replete with conditional language” that was not “sufficient  
23 to create either an express or implied contract.” Further, “as early as 1990,” the Regents put  
24

---

25 <sup>1</sup> The parties are working on a stipulation regarding the dates that Petitioners worked at the  
26 Laboratory, but it will not be ready by the time this brief is due. In the meantime, Petitioners note that the  
27 Regents admit the allegations with regard to Moen, Davis and Ventura, see Answer, ¶¶ 10, 14 & 20, and say  
28 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.

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

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

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

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

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

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

28 Regua, at 222 (fn. omitted).<sup>2</sup>

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

---

<sup>2</sup> The Court did reject Petitioners’ express contract claim. Regua, at 226, fn. 9.



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

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

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

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

16 Requa, at 229 (“County’s removal of retired employees from unified medical insurance pool alleged  
17 to have impaired contract because of County’s longstanding practice of pooling active and retired  
18 employees and County’s representations to employees regarding unified pool”), citing Retired  
19 Employees’ Assn. of Orange County, Inc. v. County of Orange, 52 Cal.4th 1171, at 1177-1178, 1183,  
20 1187 (2010) (REAOC).

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

23 Moreover, the Regents have conceded they authorized retiree group health  
24 insurance benefits. If, as the Regents claim, such benefits can only be authorized by  
25 “regental action,” then it would seem to follow that a “source document” authorizing  
26 those benefits must exist. Retirees have already identified one such source  
27 document – the October 23, 1961 resolution. And while it appears the Regents may  
28 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.<sup>3</sup>

---

<sup>3</sup> 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.4<sup>th</sup> at 227, fn. 10, 232-233. Accordingly, the Regents are barred from raising this contention at trial.

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

3 **Statement of Facts**

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

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

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

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

---

24 <sup>4</sup> Unless otherwise indicated, all exhibit references are to Petitioners' Trial Exhibits. Exhibit page  
25 number citations are to the bates number of the document.

26 <sup>5</sup> Supporting documents included reports from the Regents' Special Committee on Group Life  
27 Insurance and Health and Welfare Benefits, see Exh. 16, see 7615-7616 (8/16/57), 7557-7560 (6/18/59),  
28 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

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

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

9 At this same time, the Regents were considering a plan to transfer the Pension and Retiring  
10 Annuities System (PRAS), as the University’s retirement plan was then known, to the State  
11 Employees’ Retirement System (SERS). Exh. 20 (at 8714); and see Exhs. 22, 17.<sup>7</sup>

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

16 Before the April meeting, the Committee on Faculty and Staff Relations pointed out that the  
17 State plan did “not include major medical or group life insurance,” which was included in the  
18 Regents’ 1959 plan. *Id.* Exh. 15 (at 8678, 8680). At the April meeting, the Regents voted to establish  
19 “an independent University system,” Exh. 21, effectively adopting Regent Hagar’s choice (3). *Id.*  
20 Exh. 20 (at 8714).<sup>8</sup>

21 \_\_\_\_\_  
22 7620-7631 (11/8/56), and 7643-7658 (1/21/53).

23 <sup>6</sup> The Regents claim that the reason they adopted a group health plan was to take advantage of the  
24 State Legislature’s \$5.00 subsidy. See Objections at p. 5, lines 15-20. This assertion is not supported by the  
25 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.

26 <sup>7</sup> 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>.

27 <sup>8</sup> There is no indication in the Regents’ documents that PRAS was transferred to SERS. In fact, the  
28 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).

1 In October 1961, the University “received assurances from the State” that, after the  
2 Legislature passed the State Employees’ Medical and Hospital Care Act (AB 541), funds would “be  
3 allocated to the Regents for financing of an independent University-sponsored health program”  
4 after the Legislature passed the State Employees’ Medial and Hospital Care Act (AB541). Exh. 23 (at  
5 8708).

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

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

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

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

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

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

1 entitled to benefits...” Exh. 19 (at 15126); and see Exh. 27 (at 7722, 7730). Numerous booklets  
2 repeated these assurances virtually every year.<sup>9</sup>

3 A 1980 publication addressed to University employees at the Laboratory said medical  
4 benefits would continue during retirement “as long as monthly income received from retirement  
5 system is large enough to cover employee contribution.” See Exh. 105 (at 5031), and Exh. 106 (at  
6 8360, 8386). And publications in 1986 and 1988, told employees at the Laboratory (in a section  
7 entitled “Your Benefits – The Other Part of Your Compensation”) that: “Up-to-date, quality benefit  
8 plans make up a large part of your compensation at the Laboratory”; and goes on to say, “Benefits  
9 are like your other paycheck – because the Laboratory pays all or most of the costs for many.” Exhs.  
10 134 & 136, see 5052, 5055; emp. added. One publication explicitly states: “When you retire you can  
11 keep your health, dental and legal plan coverages; the Laboratory’s contributions to the health and  
12 dental plans continue, provided you retire within four months of separating from the Laboratory...”  
13 Id. Exh. 134 (at 5067, 5070); Exh. 136 (at 5052, 5055).<sup>10</sup>

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

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

23 <sup>9</sup> Relevant language in the benefit booklets is summarized in the accompanying Declaration of  
24 Andrew Thomas Sinclair re Benefit Booklets, Exhs. 32, 35-40, 46, 50-52, 55-68, 70-71, 74-75, 77, 79-81, 84-87,  
25 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.

26 <sup>10</sup> This and similar booklets provided that retirement benefits are “governed entirely by the terms of  
27 retirement plan provisions, University of California Group Insurance Regulations and group health/insurance  
28 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).

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

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

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

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

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

17 In October 1977, the Regents gave the President authority to “negotiate and execute  
18 agreements with qualified health maintenance organizations ... in accordance with the Health  
19 Maintenance Organization Act of 1973,” and at the same time, approved payment of Medicare Part  
20 B for employees in a “University-sponsored supplement group health insurance plan,” as well as a  
21 3% increase in other retirement benefits. Exh. 88.

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

26  
27  
28 <sup>11</sup> A table showing each of these increases is attached as Appendix B to this brief.

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

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

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

#### 21 The Vesting Schedule

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

28 <sup>12</sup> 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>.

1 23332-23333, 23337); emp. added. New employees had to work ten years to vest and then only at  
2 50%, with incremental increases each year until fully vested at 20 years. Current employees,  
3 however, were “grandfathered in.” Id. Exh. 137, see 23333.

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

8 The Committee on Finance “approved the President’s recommendation,” and on November  
9 17, 1989, the Regents adopted the vesting schedule, effective January 1, 1990, with current  
10 employees being grandfathered in. Exh. 138 (at 8141-81440).<sup>13</sup>

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

13 To receive University-sponsored health benefits during retirement, employees who are  
14 retiring must choose monthly pension payments, rather than a “lump sum cashout.” Exh. 169 (at  
15 3866). The University of California Retirement Handbook states: “You also waive all rights to  
16 continue annuitant medical, dental, and legal benefits if you elect a lump sum cashout...” Exh. 176  
17 (at 4107; and see Exhs. 133 (at 395), and 212 (at 2535).

18 Retiring employees who take a “lump sum cashout” give up University-sponsored group health  
19 coverage during retirement.

---

23 <sup>13</sup> In their Objections, the Regents contended that there is no evidence to reflect anything in the  
24 nature of a quid pro quo with University employees to create privately enforceable contractual rights. See  
25 Objections at p. 6, lines 1-3. As discussed below in detail, the record is full of evidence of a quid pro quo  
26 between the Regents and University employees: the Regents offered the retiree group health care benefits to  
27 employees for over 50 years and employees continued to work for the University with the promise of  
28 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.



1 Retiree Health Benefits Used to Recruit and Retain Employees

2 In discussing possible group life benefits in 1953, Regent Carter pointed out that such benefit  
3 “might be an inducement to the non-academic personnel to come into the University system.” Exh.  
4 7. Actuary Michael Wermel found that all major universities – which “must compete with industry  
5 for the academic and non-academic employees” – offer some form of coverage. Exh. 12 (at 7593-  
6 7595, 7599-7600). When the Regents were considering a vesting schedule in 1989, the President  
7 reminded them that, “to recruit competitively on a national basis, the University sought and  
8 received autonomy to establish its own health program, separate from the State’s, for employees  
9 and annuitants.” Exh. 137 (at 23334); emp. added. The Open Enrollment materials for 2000 told  
10 employees and retirees, “Our valuable health and welfare package is one of the outstanding  
11 benefits of working for the University. As an employer, the University strives to provide a choice of  
12 health care plans with a range of employee/retiree premium costs.” Exh. 186 (at 3068).

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

20 **Issues to Be Decided**

21 By agreement of the parties and order of the court, the issues to be decided on September  
22 11, 2015, are: (1) Were the Regents legally authorized to enter into bilateral contracts governing  
23 the employment relationship; and (2) Did the Regents enact legislation that clearly evinced a  
24 legislative intent to create private rights of a contractual nature enforceable against the  
25 governmental body? Joint Case Management Conference Statement, filed 6/5/15, p. 1.<sup>14</sup>

26 \_\_\_\_\_  
27 <sup>14</sup> This first phase of the trial does not involve the legal effect, if any, of the “reservation of rights”  
28 language which the Office of the President began including in the benefit booklets in the 1980s and 1990s.  
See Regua, 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.

1 **Argument**

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

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

9 "The law of the case doctrine applies to appellate decisions reviewing and vacating a  
10 judgment sustaining a demurrer without leave to amend, including whether a complaint states a  
11 cause of action." Bigbee v. Pac. Tel. & Tel. Co., 34 Cal.3d 49, 53 (1983) (quoting Blatz Brewing Co. v.  
12 Collins, 88 Cal.App.2d 438, 444, 445 (1948). See also: Yu v. Signet Bank/Virginia, 103 Cal.App.4th  
13 298, 309 (2002) (complaint stated cause of action for abuse of process); Nevcal Enterprises, Inc. v.  
14 Cal-Neva Lodge, Inc., 217 Cal.App.2d 799, 804-806 (1963) (breach of contract); George v. City of Los  
15 Angeles, 51 Cal.App.2d 311, 314-315 (1942) (dangerous condition of public property).

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

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

1 Exh. 12. When the State proposed a plan in 1960, the Regents found it was deficient for their  
2 recruitment needs and established their own plan. Exh. 15 (at 8678, 8680); Exh. 21. When funding  
3 from the State was delayed due to a technical problem in the budget, the Regents used their own  
4 funds to pay for the plan, hoping for reimbursement from the State. Exhs. 28 (at 7679); Exh. 29 (at  
5 8669). The Court also took judicial notice of the 1961 Resolution, Exh. 26, and noted Regents’  
6 admission that they “authorized, and the University sponsored, medical insurance coverage for  
7 [Livermore] retirees until 2007.” Regua, at 227, fn. 10. These facts and circumstances establish the  
8 first element of Petitioners’ prima facie case.

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

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

24

25

26 <sup>15</sup> As noted, the Office of the President began inserting “reservation of rights” language in the benefit  
27 booklets in the mid-1980s. But it is the Regents’ intent at the time they established the benefit that is  
28 relevant – not their intent 25 years later when they sought to abrogate their “clear promise.” By this time,  
Petitioners had accepted the Regents’ offer, Regua, 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.

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

8 Having established the three elements of a cause of action for implied contract as required  
9 by Regua, the Regents are barred by law of the case from contending that the Petitioners’ have  
10 failed to make out their prima facie case.<sup>16</sup>

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

20 Even if the Court of Appeal did not explicitly include overcoming the presumption as an  
21 element of the cause of action for breach of implied contract, overcoming of the presumption was  
22 “essential to the decision” in Regua. The appellate judgment “could not have been rendered  
23 without its determination.” Witkin, California Procedure, “Appeal,” § 477, pp. 535-536 (5<sup>th</sup> ed.

---

24  
25 <sup>16</sup> In their Objections, the Regents contended that REAOC is distinguishable because Orange County  
26 had engaged in collective bargaining with its employees and the Board of Supervisors had “legally  
27 authorized” the bilateral contracts (collective bargaining agreements). See Objections at p. 4, lines 13-20. It  
28 is true there were negotiated agreements in REAOC and not in this case. But the Regua 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).

1 2008); see Yu v. Signet Bank/Virginia, 103 Cal.App.4th at 312. Thus, although the law of the case  
2 “does not extend to points of law which might have been but were not presented and determined  
3 in the prior appeal,” it does apply to “questions not expressly decided but implicitly decided  
4 because they were essential to the decision on the prior appeal.” Olson v. Cory, 35 Cal. 3d 390, 399  
5 (1983); emp. added.

6 In Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 217 Cal.App.2d 799 (1963), a demurrer  
7 was sustained to a claim for breach of contract and the plaintiff appealed. The contract was made  
8 in California but involved services to be rendered at a gambling casino in Nevada. After the ruling  
9 was reversed on appeal and the case remanded, the defendant argued in the trial court and in a  
10 subsequent appeal the contract was void because it involved gambling, which was unlawful in  
11 California. See Nevcal Enterprises, Inc. v. Cal-Neva Lodge, Inc., 194 Cal.App.2d 177 (1961). The  
12 “unlawful contract” issue was not raised in the earlier appeal but a decision on that issue was  
13 essential to its outcome vacating the demurrer. For this reason, defendant was barred from re-  
14 litigating the issue. Nevcal, 217 Cal.App.2d at 804-806; see also Kirman v. Borzage, 89 Cal.App.2d  
15 898, 900, 901 (1949) (whether plaintiffs were licensed contractors was implicitly decided in first  
16 appeal); Penzinger v. West American Finance Company, 10 Cal.2d 160, 168 (1937); Witkin, supra, §  
17 477, pp. 535-536 (“Where the particular point was essential to the decision, and the appellate  
18 judgment could not have been rendered without its determination, a necessary conclusion in  
19 support of the judgment is that it was determined,” even though “the point was not raised by  
20 counsel or expressly mentioned” in the earlier appeal.)

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

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

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

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

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

7 Whether a public employer is "legally authorized to enter into bilateral contracts" came up  
8 in REAOC, where the county argued that such agreements are prohibited under Cal. Const., art. XI, §  
9 1 (powers of county governments) and Cal. Gov. Code § 25300 (compensation of county  
10 employees). REAOC, at 1183-1185. Neither of these provisions applies to the Regents, which have  
11 "full powers of organization and government" under Cal. Const., art. IX, § 9(a). Setting employee  
12 compensation "is particularly a matter within the Regents' broad constitutional grant of authority to  
13 manage its own internal affairs." In re Work Uniform Cases, 133 Cal.App.4th 328, 344 (2005).  
14 Postretirement health benefits are an element of compensation. Creighton v. Regents of Univ. of  
15 Cal., 58 Cal.App.4th 237, 243 (1997), citing Thorning v. Hollister School Dist., 11 Cal. App. 4th 1598,  
16 1602 (1992). Thus there is no question that the Regents had the authority to enter into contracts,  
17 either express or implied, for retiree medical benefits.

18 The Regents exercised their authority through the 1961 Resolution authorizing the President  
19 to implement group health care benefits for active and retired employees, Exh. 26, then re-affirmed  
20 the President's authority to continue to do so, Exhs. 49 (at 8215), 88, 101 (at 7872, 7874-7876) and  
21 126 (at 8188, 8190). At no time – not when the Resolution was adopted in 1961 nor by Resolution,  
22 Standing Order or Minutes at any later time – did the Regents state that retiree health benefits  
23 were anything other than an integral part of retirement benefits. To the contrary, the Regents  
24 inextricably coupled retiree medical benefit with monthly pension benefits (e.g., by requiring  
25 retirees to accept monthly pension payments to receive University-sponsored group health care  
26 coverage).

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

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

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

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

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

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

---

27           <sup>17</sup> The Regents are not the Legislature and do not enact “legislation” as such. But under their “full  
28 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).

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

6 Public employers have argued that the intent of the governing body must be explicit. In Cal.  
7 Teachers’ Assn. v. Cory, 155 Cal.App.3d 494 (1984), Governor Wilson argued that “a statute does  
8 not create contractual obligations unless it explicitly uses words of contract and that a contract  
9 therefore cannot be created by implication from a statute.” Id. at 504. The court disagreed, noting  
10 that “three quarters of a century of cases ... have implied contractual obligations from the particular  
11 texts and contexts of the statutes at issue.” 155 Cal.App.3d at 504-505, emp. in orig., citing County  
12 of San Luis Obispo v. Gage, supra, 139 Cal. 398, Cal. Medical Assn. v. Lackner, 117 Cal.App.3d 552  
13 (1981), and Valdes v. Cory, 139 Cal.App.3d 773, 783-784 (1983)).<sup>18</sup>

14 Although California courts have recognized that “it is presumed a statutory scheme is not  
15 intended to create constitutionally protected contract rights,” they have also recognized “a strong  
16 preference for construing governmental pension laws as creating contractual rights for the payment  
17 of benefits.” Bd. of Admin. v. Wilson, 52 Cal.App.4th 1109, 1131 (1997); emp. added. Indeed, the  
18 Supreme Court has pointed out “the unique importance of pension rights to an employee’s well-  
19 being,” consistently enforcing pension rights which often arise “after employees were induced to  
20 accept and maintain employment on the basis of expectations fostered by widespread, long-  
21 continuing misrepresentations by their employers.” Longshore v. County of Ventura, 25 Cal.3d 14,  
22 28 (1979), cited in Regua, Slip. Opin., pp. 24-25.

23

24

25 <sup>18</sup> The holding that pension benefits are part of the “contract of employment” is not in conflict with  
26 the principle that public employment is not held by contract but by statute. “Although there may be no right  
27 to tenure, public employment gives rise to certain obligations,” including pension rights, “which are  
28 of action for breach of contract.” 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.



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

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

16 California courts have expanded the vested rights doctrine well beyond ordinary pension  
17 benefits. As noted in Creighton, the “contractual pension expectations” of employees has been  
18 “applied to disability as well as service retirement benefits, Frank v. Bd. of Admin., 56 Cal. App. 3d  
19 236, 243 (1976), to postretirement health benefits, Thorning v. Hollister School Dist., 11 Cal.App.4th  
20 at 1598, 1602 (1978), and even to certain nonpension benefits. California League of City Employee  
21 Associations v. Palos Verdes Library Dist., 87 Cal. App. 3d 135, 137, 139-140 (1978) (longevity salary  
22 increase, extra vacation, paid sabbatical).” Creighton, 58 Cal. App. 4th at 243.

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

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

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

9         Petitioners may not have had a vested right if the Regents had reserved the right to modify  
10 or terminate benefits when the plan was established in 1961. At the time the Regents adopted the  
11 1961 Resolution, the law was clear that a public employer could reserve the right to modify or  
12 terminate a benefit at the time the benefit is established. In Wallace v. City of Fresno, 42 Cal.2d  
13 180, 183 (1954), the California Supreme Court noted that a public employer may “adopt  
14 restrictions” when a retirement benefit is established “that would be considered unreasonable  
15 impairments of the contract if subsequently imposed.” As noted in Glaeser v. City of Berkeley, 148  
16 Cal.App.2d 614, 618 (1957), “In the absence of such a reservation [of legislative power to amend or  
17 repeal] a person serving under a pension system ‘acquires a vested contractual right to a substantial  
18 pension.’” See also Cal. Teachers Assn., 155 Cal.App.3d at 504, fn. 9. The Regents’ decision not to  
19 include a reservation of rights when group health care benefits were established in 1961 clearly  
20 evinces an intent to create private contractual rights.

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

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

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

1 1178). The Supreme Court held the REAOC retirees could state a claim based on these facts and  
2 circumstances. REAOC, at 1194,.

3 Here, the Regents provided retiree medical benefits, without interruption or significant  
4 change, for over 50 years. See “Maximum Contribution” document, Exh. 209. This consistent  
5 pattern of conduct, over an extended period, is exactly what gives rise to an implied contract. See  
6 Regua, at 225, noting that, in REAOC, the Supreme Court found the retirees could state a cause of  
7 action based on the “County’s long-standing and consistent practice of pooling active and retired  
8 employees, along with County’s representations to employees regarding a unified pool, created an  
9 implied contractual right to a continuation of the single unified pool...”. Id., citing REAOC at  
10 1177–1178. Petitioners and class members reasonably assumed that the Regents would continue  
11 to provide benefits during their retirement, just as they had for the decades of their employment.

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

17 C. The Regents’ Intent Is Apparent from their “Clear Promise” of  
18 Group Health Care Benefits during Retirement.

19 The Regents’ intent to “create private contractual or vested rights,” Regua, at 225, is also  
20 apparent from the Court of Appeal’s holding that Petitioners alleged a “clear promise” to support  
21 their promissory estoppel claim. In rejecting the Regents’ argument opposing estoppel, the Court  
22 noted: “We have already concluded Retirees have sufficiently alleged an implied contract, thus the  
23 requirement of a clear promise is satisfied.” Slip. Opin., pp. 22, 23; emp. added. There is no  
24 meaningful difference between a “clear promise” of retiree medical benefits and the intent to  
25 create a vested right to those benefits.  
26  
27  
28

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

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

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

13 In discussing group benefits in 1953, Regent Carter pointed out that they "might be an  
14 inducement to the non-academic personnel to come into the University system." Exh. 7 (at 8542).  
15 Actuary Wermel found that all major universities – which "must compete with industry for the  
16 academic and non-academic employees" – offer some form of coverage. Exh. 12 (at 7593-7595,  
17 7599-7600). In 1989, the President reminded the Regents that, "to recruit competitively on a  
18 national basis, the University sought and received autonomy to establish its own health program,  
19 separate from the State's, for employees and annuitants." Exh. 137 (at 23334); emp. added.

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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”).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**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.

Date: July 15, 2015

  
\_\_\_\_\_  
Sinclair Law Office  
Andrew Thomas Sinclair  
Attorney for Petitioners

\_\_\_\_\_  
Carter Carter Fries & Grunschlag  
Dov M. Grunschlag  
Attorney for Petitioners

  
\_\_\_\_\_  
Cawo Fisher & Jacob LLP  
William N. Hebert  
Attorney for Petitioners

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

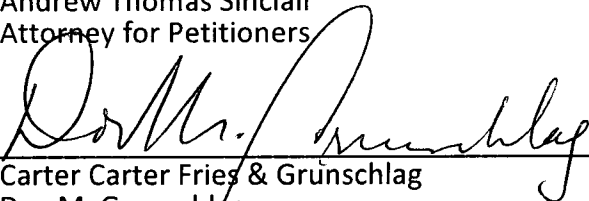
**Conclusion**

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.

Date: July 15, 2015

---

Sinclair Law Office  
Andrew Thomas Sinclair  
Attorney for Petitioners



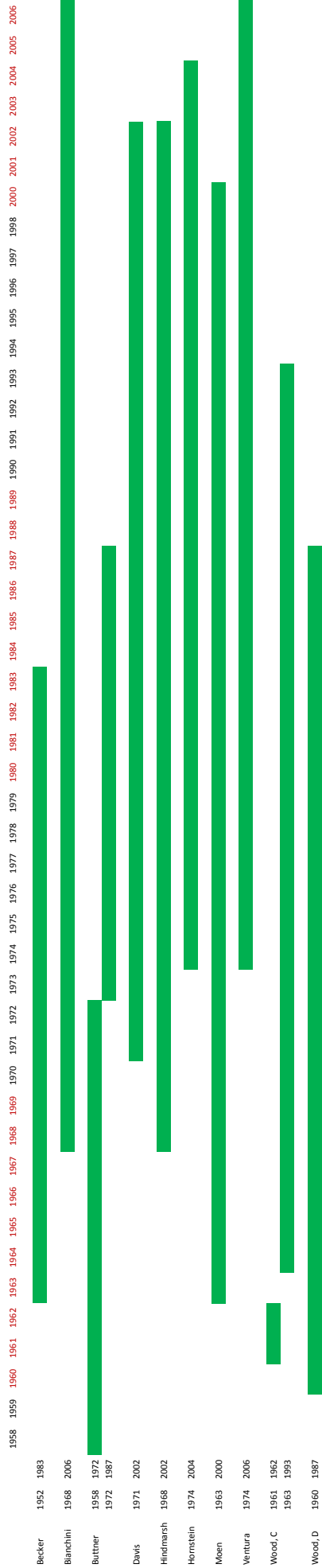
---

Carter Carter Fries & Grunschlag  
Dov M. Grunschlag  
Attorney for Petitioners

---

Calvo Fisher & Jacob LLP  
William N. Hebert  
Attorney for Petitioners

Petitioner Employment Dates





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]