

The Regents of the University of California

COMMITTEE ON FINANCE

July 15, 2009

The Committee on Finance met on the above date at UCSF–Mission Bay Community Center, San Francisco.

Members present: Regents Bernal, Garamendi, Island, Kozberg, Lozano, Makarechian, Schilling, Varner, and Wachter; Ex officio members Blum, Gould, and Yudof; Advisory member Croughan; Staff Advisors Abeyta and Martinez

In attendance: Regents De La Peña, Johnson, Kieffer, Lansing, Marcus, Nunn Gorman, Reiss, Ruiz, Stovitz, and Zettel, Regents-designate Cheng and Hime, Faculty Representative Powell, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Chief Compliance and Audit Officer Vacca, Interim Provost Pitts, Executive Vice Presidents Lapp and Taylor, Senior Vice Presidents Dooley and Stobo, Vice Presidents Beckwith, Broome, Duckett, Lenz, and Sakaki, Chancellors Birgeneau, Bishop, Block, Blumenthal, Drake, Fox, Kang, Vanderhoef, White, and Yang, and Recording Secretary Johns

The meeting convened at 9:55 a.m. with Committee Chair Lozano presiding.

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of March 19, the special meeting of May 7, and the special meeting of the Committees on Finance and Oversight of the Department of Energy Laboratories of May 7, 2009 were approved.

2. UPDATE ON THE 2009-10 BUDGET AND PRELIMINARY DISCUSSION OF THE UNIVERSITY'S 2010-11 BUDGET

[Background material was mailed to Regents in advance of the meeting, and copies are on file in the Office of the Secretary and Chief of Staff.]

[Regents were provided with a packet of correspondence received regarding this item, and copies are on file in the Office of the Secretary and Chief of Staff.]

Committee Chair Lozano affirmed that the Regents would approach the issues to be discussed by the Committee on Finance and in the following meeting by the Committees on Finance and Compensation, with a deep commitment to the University and to the guiding principles of access, affordability, and quality. The current difficult times will require difficult choices. Another guiding principle for the discussion would be the principle of fairness. The Regents recognize their responsibility to all UC constituents.

There has been extensive consultation and dialogue with all University stakeholders on the proposed measures. Committee Chair Lozano recalled the significant reductions in the University's budget for 2008-09 and 2009-10, taking into account the stimulus monies received by UC.

Vice President Lenz began his presentation by noting that, since the May meeting, the delay in enactment of the State budget has resulted in an increase of over \$3 billion in the State's fiscal gap, from \$23 billion to \$26.3 billion. Recommendations for closing this gap have been made over the past six weeks, including a \$1.3 billion reduction to the CalWORKs program and the elimination of Cal Grants. The latter recommendation would have a tremendous effect on UC students. Other suggestions made to generate revenue were the establishment of an oil severance tax and an increase in the tobacco tax. Based on discussions with members of the Governor's administration and the Legislature the previous day and that morning, Mr. Lenz anticipated a possible resolution of the State budget in the next day or two.

The University budget reflects an 18-month plan. There will be a fiscal impact to the 2008-09 budget. State General Funds to the University were cut by \$816 million. These are assumed to be replaced by \$640 million in federal American Recovery and Reinvestment Act (ARRA) economic stimulus funds. However, the University assumes that these are short-term funds. Mr. Lenz stated that there may be another wave of stimulus funding, but the University's outlook is cautious. The net reduction for 2008-09 is \$176.1 million. For 2009-10, there is a net reduction of \$637 million in State funds. The total of these two amounts over an 18-month period will be \$813 million.

This is not the only fiscal challenge facing the University. Over the past year, the University has served over 11,000 students at a cost of \$121 million without State funding for enrollment growth, based on the University's historical marginal cost agreements with the State. There is an additional \$213 million in costs for increased utilities, faculty merit increases, and other costs, such as health benefits, which are not budget reductions. This \$334 million, in addition to the \$813 million, represents real costs to the campuses. The Regents should recognize that, in discussions of bringing the \$813 million reduction down to a manageable level of \$300 million, the \$300 million amount must be doubled to acknowledge the costs incurred at the campuses.

The University has prevailed in some areas, despite the State's fiscal condition. Mr. Lenz credited the restoration of Cal Grants and outreach funding to President Yudof's testimony before the two-house budget conference committee, California State University (CSU) Chancellor Reed's testimony, and discussions with the Governor on the same day. The Governor had proposed to eliminate not only the State General Fund portion of outreach funding, but about \$12 million in University funds dedicated to outreach efforts. President Yudof was forceful in his request to the Governor that the reductions not be prescriptive, and that the University be allowed to manage the resources in its budget, regardless of the final outcome of budget reductions.

The University has also enjoyed some success in capital outlay. In April, the State sold bonds; from this sale, the University received about \$164 million for some of its capital projects. However, Mr. Lenz called attention to the fact that the University has over \$600 million in capital facilities projects it will not be able to fund until the State is able to sell the commercial paper or until the University is able to find a creative financing mechanism. These capital facilities projects have already been approved by the Governor and Legislature, and about half of the \$600 million has been approved by the people of California through general obligation bonds.

Mr. Lenz stated that he believed that the University's budget for the 2009-10 fiscal year had been reduced as far as possible. He cautioned that, if the State budget were not resolved this week, options would become more limited with each passing week, and the University would become more vulnerable to additional budget reductions.

Regent Garamendi described the State budget situation as disastrous. He expressed his view that the University has been in retreat for many years and urged the University to take an offensive strategy. He observed that UC employees who had spoken earlier during the public comment period would be willing to fight for the University and the future of California. He stated that the Regents have extraordinary power as leaders in California, as opinion-makers, and that this power has not been used. Regent Garamendi advocated pursuit of two specific angles of attack, while being mindful of the resources available to the University in its approximately one million alumni and its extraordinary faculty and staff. First, the State government has become dysfunctional. There has been discussion of a Constitutional convention or initiatives to change the Constitution. Two issues are in play: the issue of the two-thirds majority requirement for passage of a State budget and the realignment of government. Regent Garamendi emphasized the importance of the two-thirds vote issue. Essentially, there is minority rule in California on every important issue. This is not democracy, and the University should engage with this issue.

According to Regent Garamendi, the second point of attack is tax revenue. A bill now in the Legislature would bring in over \$1 billion in revenue for higher education this budget year. Regent Garamendi believed that a two-thirds vote could be secured for this bill. UC, CSU, and the California Community Colleges are now discussing the same matter: the retreat or decline of these higher education systems. He urged the University to join in a concerted, immediate effort to pass Assembly Bill 656 (Torrico) which would institute an oil severance tax in California. Regent Garamendi indicated that California is the only state that does not tax its oil. He observed that Governor Palin of Alaska raised the oil severance tax in Alaska to 25 percent. This rate, if applied in California, would raise \$4 billion this year. Regent Garamendi noted that, seven months previously, the Governor expressed support for the oil severance tax.

Regent Blum recalled that the University has sent a letter to alumni addressing many of the issues raised by Regent Garamendi. There has been an erroneous perception on the part of some, now shown to be untrue, that the University was fairly treated, and that reductions to the University were like those to other segments of the State budget. He

cited figures for decreases in State funding to the University and increases in funding for prisons and questioned the State's priorities. It is necessary for Regents, alumni, and friends of the University to emphasize to legislators that this situation is unacceptable. Fifty-five percent of the State's revenue comes from income tax, mainly capital gains and exercise of stock options. One-half of that 55 percent comes from one percent of the population. That income is by definition highly volatile, and in 2001-02 it dropped from \$17 billion to \$4 billion. Regent Blum expressed interest in a tax on extracted oil and welcomed an opportunity to raise \$1 billion for higher education. He recalled that a change to the two-thirds majority rule would require an initiative and noted that former Regent Parsky and UC Berkeley law school Dean Edley are now serving on a commission to review the tax system. Further, he emphasized the need for advocacy in Sacramento.

Committee Chair Lozano noted that Regents had received a white paper from UC faculty members associated with the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and the Institute of Medicine (IOM). She introduced University Professor Sandra Faber, Chair of the Department of Astronomy and Astrophysics at UC Santa Cruz.

Professor Faber indicated that she represented 323 distinguished UC faculty, members of NAS, NAE, and IOM, and co-authors of a letter sent the previous week to the Governor and key legislators. She emphasized the theme of excellence, and asked the Regents to consider what excellence in the University truly is. UC is the most powerful economic engine in California. Knowledge and the wealth created by new knowledge are what raise the tax base. Professor Faber stressed the importance to the nation of its innovative business clusters in Boston, Austin, Seattle, San Diego, Los Angeles, and Silicon Valley. California has three such clusters because it has great universities. Excellent universities have the best minds in the world and draw the best students. There are more business leaders in Silicon Valley from UC than from any other university.

To disinvest in the University at this time would be like eating one's seed corn. Professor Faber wondered why the public and Legislature do not understand this elementary message. She thanked Regent Garamendi for his call to advocacy.

Professor Faber underscored that UC is a fragile institution. Excellent professors are the engine for the entire organization, and they are most at risk. The UCSC Department of Astronomy and Astrophysics recently hired three world-class assistant professors, at a cost of \$150,000. These new faculty, when asked about the salary reduction plan, respond that they will wait a year and see how the University fares. However, they might not wish to pursue their lifetime career at UC for salaries that are 20 to 25 percent lower than at other institutions. As a department chair, it is not possible to retain faculty or hire new faculty with the current salary structure.

Professor Faber emphasized that the University has one year to remedy the situation, not two or three years. Professors, and particularly assistant professors, will leave UC. The

University will then commence an irrecoverable slide. Within one year, the University must get out the message that the situation has been turned around.

Professor Faber expressed the faculty’s readiness to engage in advocacy with the Regents in approaching the State government and influential individuals around the world. Professor Faber stressed that the Regents are chartered to be responsible for the health of the University. The faculty need the Regents’ advocacy, and they need the Regents to express the determination that within one year, the faculty salary problem will be solved. She suggested that the Regents could issue a communiqué stating that this situation is intolerable and that the State must recognize that this is a crisis.

Committee Chair Lozano thanked Professor Faber for her remarks. She asked the Regents to consider the difficult issues they would face at the September meeting, for action in November, concerning areas such as enrollment growth, health benefits, compensation, retirement plans, student fees, and capital outlay.

The Committee recessed at 10:20 a.m.

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The Committee reconvened at 12:55 p.m. with Committee Chair Lozano presiding.

3. **REPORT ON NEW LITIGATION**

[Background material was mailed to Regents in advance of the meeting, and copies are on file in the Office of the Secretary and Chief of Staff.]

General Counsel Robinson presented his **Report on New Litigation**, shown in Attachment 1. By this reference the report is made part of the official record of the meeting.

The meeting adjourned at 1:00 p.m.

Attest:

Secretary and Chief of Staff

NEW LITIGATION AND ARBITRATION PROCEEDINGS

Report Period: 2/14/09 – 6/3/09

Regents Meeting

July 2009

<u>Plaintiff</u>	<u>Location</u>	<u>Nature of Dispute Alleged by Plaintiff</u>	<u>Forum</u>
<u>Employment Cases</u>			
Austin, Noelle	UCDMC	Discrimination (race), wrongful termination, harassment and retaliation	Sacramento County Superior Court
Berry, John	UCSF	Discrimination	U.S. District Court, Northern District of California
Bishop-Smith, Iris	UCDMC	Discrimination (disability), intentional and negligent infliction of emotional distress	Sacramento County Superior Court
Black, Kenneth	UCD	Discrimination (race), harassment, retaliation, whistleblower retaliation	Yolo County Superior Court
Chang, Calvin	UCD	Discrimination (race, sexual orientation), failure to prevent harassment, retaliation, and intentional infliction of emotional distress	Sacramento County Superior Court
Cube, Valentin-Catalino	UCSF	Discrimination (disability), failure to accommodate, harassment and retaliation	San Francisco County Superior Court
De Souza, Mercedes	UCSF	Discrimination, retaliation	San Francisco County Superior Court
Flores, Guillermo; Menendez, Miguel	UCLAMC	Discrimination (age), wrongful termination	Los Angeles County Superior Court
Kessler, David A.	UCSF	Retaliation in violation of free speech	U.S. District Court, Northern District of California

Le, Chithien	UCD	Discrimination (race, disability), intentional infliction of emotional distress	Sacramento County Superior Court
Sharma, Sneh	UCB	Discrimination (age)	Alameda County Superior Court
Yuen-Naples, Lai Yee	UCSF	Discrimination, wrongful termination	San Francisco County Superior Court

Professional Liability Cases

Barkhordar, Parham	UCLA-SM	Professional negligence	Los Angeles County Superior Court
Cheng, Lawrence (decedent), Margaret Cheng	UCI	Breach of medical and professional obligation	Orange County Superior Court
Cohen, Norma	UCLA-SM	Elder abuse, negligence	Kern County Superior Court
Cooperman, Frank (decedent), Debra Cooperman, Angela and Rachael Cooperman, minors	UCD	Wrongful death	Sacramento County Superior Court
Dahlquist, Dylan, Ann Preszler, Guardian ad Litem	UCD	Medical malpractice, general negligence	Sacramento County Superior Court
DiMarco, Rosario	UCLA	Medical negligence	Los Angeles County Superior Court
Erlanson, John (decedent), Doris Erlanson	UCSF	Wrongful death, medical malpractice, school liability, survival claims	San Francisco County Superior Court
Ermshar, Arthur (decedent), Christine Ermshar, Karen Ermshar and Wendy Ermshar	UCD	Medical negligence, wrongful death	Placer County Superior Court
Farr, Logan (minor) Sydnee Soter, Guardian ad Litem	UCLA	Medical malpractice, negligence, negligent infliction of emotional distress	Los Angeles County Superior Court

Farrell, Betty J.	UCLA	Medical malpractice negligence, res ipsa loquitur, battery, fraud and deceit, product defect, negligent infliction of emotional distress	Los Angeles County Superior Court
Flores, Mario (decedent), Flores, Alfred	UCLA	Medical malpractice and wrongful death	Los Angeles County Superior Court
Hairston, D'Knawn	UCD	Medical negligence	Sacramento County Superior Court
Harvey, Henry B.	UCSD	Negligence, medical malpractice	San Diego County Superior Court
Hindu, Claudia	UCLA	Damages for lack of informed consent, battery, invasion of constitutional right to privacy, fraud, negligence	Los Angeles County Superior Court
Holland-Gianni, Cheryl	UCSF	Medical malpractice, loss of consortium	San Francisco County Superior Court
Karrim, Juliana (decedent), Felix Chen Felix	UCSF	Medical negligence, wrongful death	San Francisco County Superior Court
Keane, Lisa	UCD	Medical negligence, lack of informed consent	Sacramento County Superior Court
King, Robert	UCLA	Negligence	Los Angeles County Superior Court
Loupy Michelle	UCSF	Medical malpractice	San Francisco County Superior Court
Mauritz, Barbara	UCSF	Medical malpractice/wrongful death, negligent and intentional infliction of mental distress and EMTALA	San Francisco County Superior Court
Pak, Susan and Albert Eng	UCSF	Medical malpractice and loss of consortium	San Francisco County Superior Court
Perez, Ginette	UCLA-SM	Medical negligence	Los Angeles County Superior Court
Purtill, Thomas	UCSD	Medical malpractice; general negligence	San Diego County Superior Court
Riahy, Mahmoud (decedent) Vafa and Roya Riahy	UCSD	Wrongful death, medical malpractice, lack of informed consent and survivor	San Diego County Superior Court

Sakkour, Ammar, M.D., Suzanne Kafaja, M.D.	UCLA	Medical malpractice, loss of consortium	Los Angeles County Superior Court
Sanchez, Matilde	UCLA	Medical negligence, malpractice	Los Angeles County Superior Court
Santana, Alizae (minor) Sarah Schimpf, Guardian ad Litem	UCD	Premise liability, negligent supervision/ instruction, personal liability, negligent supervision of child, medical malpractice	Sacramento County Superior Court
Shaham, Daniel	UCLA	Personal injuries (medical malpractice)	Los Angeles County Superior Court
Shugart, Christine and Michael Shugart	UCLA	Medical malpractice, loss of consortium	Los Angeles County Superior Court
Solares, Oscar E.	UCLA	Medical malpractice	Los Angeles County Superior Court
Swerdlow, Barry N., M.D.	UCLA	Medical malpractice	Los Angeles County Superior Court
Taylor, Ward	UCSF	Medical negligence	San Francisco County Superior Court
Trotter, Donald	UCLA	Medical malpractice, lack of informed consent, loss of consortium	Los Angeles County Superior Court
Ward, Cecelia	UCLA	Medical malpractice; negligence and res ipsa loquitur	Los Angeles County Superior Court
White, Trevor	UCI	Medical negligence	Orange County Superior Court
Yang, David	UCI	Negligence	Orange County Superior Court

Other Cases

A-Albe, Inc., dba Fume-a- Pest and Termite Control	UCLA	Breach of contract, quantum meruit	Los Angeles County Superior Court
Antrim, James	UCOP	Personal injury – asbestos	San Francisco County Superior Court
Boone, Andrea	UCLA	Personal injury – slip and fall	Los Angeles County Superior Court

California Shock Trauma Air Rescue		Declaratory relief; breach of implied-in-law contract (quantum meruit); unjust enrichment; money due on open book account	U.S. District Court, Eastern District of California
Codrington, Lynette	UCLA	Personal injury – motor vehicle	Los Angeles County Superior Court
Cook, Aaron	UCSD	Negligence, premises liability	San Diego County Superior Court
Courtney Waterproofing, Inc.	UCLA	Breach of contract, enforcement of claim on payment bond, quantum meruit	Los Angeles County Superior Court
Echt, Robert	LLNL	Personal injury alleging dangerous and unsafe condition of property.	Santa Clara County Superior Court
Elg, Lourdes and Flores, Maria	UCSD	Sexual harassment; failure to prevent harassment; retaliation; discrimination wrongful termination in violation of public policy brought by plaintiffs Elg and Flores against The Regents, employee Hermilo Pineda, and Image Staffing, Inc.	San Diego County Superior Court
Everett, Nancy	UCOP	Breach of contract – severance agreement	Alameda County Superior Court
Feldhammer, Jon, and Rachel Kuperman	UCSF	Breach of housing rental contract, breach of implied covenant of good faith and fair dealing, violation of Fair Debt Collection Practices Act	San Francisco County Superior Court
Goldin, Constance	UCSD	Personal injury – motor vehicle	San Diego County Superior Court
Grigsby, Taylor	UCSB	Personal injury – dangerous condition of property, negligence, emotional distress	Santa Barbara County Superior Court
Haase, Warren	UCOP	Personal injury – asbestos	San Francisco County Superior Court
Hong, Juan	Systemwide	Injunctive relief challenge to limit on freshman enrollment	Orange County Superior Court
Johnson, Estate of Edward	UCOP	Petition to determine heirship (Probate Code § 11700)	Alameda County Superior Court
Kemper, Edward L.	UCDMC	Discrimination (disability access)	Sacramento County Superior Court

Kerr, Rebecca	UCDMC	Personal injury – slip and fall	Sacramento County Superior Court
Lewis, Lorin	UCOP	Personal injury – asbestos	San Francisco County Superior Court
May, Florence	UCOP	Property damage, personal injury, general and special damages	Santa Clara County Superior Court
Millard, Eugene	UCOP	Personal injury – asbestos	San Francisco County Superior Court
Millenbah, John	UCSD	Personal injury – slip and fall	San Diego County Superior Court
Miller, Owen	UCLA	Premises liability	Los Angeles County Superior Court
Murphy, Karlyn	UCSD	Personal Injury – struck in the head by a falling goal post at soccer game.	San Diego County Superior Court
Perlmutter, Lester	UCSDMC	Unfair business practices and related torts arising from patient billing	San Diego County Superior Court
Pompa, Richard	UCR	Injunctive relief – harassment and violations of civil rights	U.S. District Court, Central District of California
Progressive Floor Covering Inc.	UCSB	Breach of contract; work, labor, services/ agreed price; open book account; account stated; reasonable value/work, labor, service; breach of implied covenant of good faith and fair dealing; failure to provide adequate plans and specifications; claim against public works payment bond	Santa Barbara County Superior Court
Rapozo, Melvin	UCOP	Personal injury – asbestos	San Francisco County Superior Court
Regents	UCSFMC	Monies paid by mistake; unjust enrichment; quantum meruit (lawsuit filed against Marlene Taloban)	San Francisco County Superior Court
The Richards Group, Inc.	UCLA	Collection action	County Court, Dallas County, Texas
Richardson, James C., Conservator	UCOP	Petition under Probate Code § 850	Alameda County Superior Court

Salem, Mahnaz	UCLAMC	Malicious prosecution, retaliation	Los Angeles County Superior Court
Schram Construction	UCSF	Petition for writ of mandate, declaratory and injunctive relief – unfair business practices	San Francisco County Superior Court
Tutor-Saliba-Perini	UCLA	Breach of contract	Los Angeles County Superior Court
Utterback, Wiley and Ellen	UCOP	Personal injury – asbestos	San Francisco County Superior Court
Western Surety Company	UCD	Complaint for interpleader (this is the only cause of action asserted against the Regents); express indemnity; implied indemnity; statutory reimbursement	Los Angeles County Superior Court
Weston, Eric	UCOP	Personal injury – asbestos	Alameda County Superior Court
Wilson, Julian	UCR	Breach of contract; violation of civil rights; professional negligence; negligence	Riverside County Superior Court
Yablonski, Gabrielle	UCLA	Petition for writ of mandate to compel readmission to Ph.D. program	Los Angeles County Superior Court
Zada, Tray	UCSB	Dangerous condition of property, premises liability, failure to discharge mandatory duty	Santa Barbara County Superior Court
Zaragoza, Jose Jesus	LLNL	Personal injury – motor vehicle	Alameda County Superior Court
Zochlinski, Howard Alan	UCD	Peremptory writ of mandate and writ of prohibition	Yolo County Superior Court

Public Employment Relations Board (“PERB”)
Unfair Practices Alleged by Charging Party

CUE (Coalition of University Employees) SF-CE-880-H	San Francisco Medical Center	University refused to hire an Administrative Assistant III/Scheduler into a new position (Analyst Coder-1) in retaliation for participation in union activities.	PERB
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AFSCME (American Federation of State, County and Municipal Employees) SF-CE-881-H	San Francisco Medical Center	University unilaterally terminated negotiations over travel requirements and travel compensation without notice, notified the union of its intent to unilaterally implement changes in travel requirement for represented employees, and implemented changes in travel compensation.	PERB
CUE (Coalition of University Employees) SF-CE-882-H	Berkeley	Termination in retaliation for Assistant I's participation in union activities.	PERB
CUE (Coalition of University Employees) SF-CE-883-H	San Francisco Medical Center	University failed to meet and confer in good faith with the union, the exclusive representative of clerical employees at the Medical Center, failed to respond and provide requested information.	PERB
CUE (Coalition of University Employees) SF-CE-884-H	San Francisco Medical Center	University discriminated against employees for exercising their right to join a union and by interfering with their right to engage in protected union activity by restricting personal use of the internet for union employees, only.	PERB
CUE (Coalition of University Employees) LA-CD-1069-H	Los Angeles Medical Center	University, in violation of the 2008-2011 agreement, unilaterally imposed new or changed work rules, without providing notice or meeting with the union regarding the proposed changes.	PERB
CUE (Coalition of University Employees) SF-CE-887-H	Irvine	University disciplined, retaliated and discriminated against a clerical employee for her participation in protected activities as president of the local and as a unit bargaining team member.	PERB
May v. Regents SF-CE-891-H	Davis	University wrongfully terminated a Senior Electronics Technician employee and union member for engaging in protected whistleblowing activities.	PERB
SETCU (State Employees Trades Council United) SF-CE-890-H	San Diego	University committed a series of unfair practice actions, constituting unilateral circumvention of the current agreement with the skilled crafts union.	PERB
CUE (Coalition of University Employees) SF-CE-892-H	San Francisco Medical Center	University violated its duty to bargain by making a unilateral change to the terms and conditions of employment when the University terminated a Woman's Health Center employee without just cause, without advance notice to the union and without bargaining to impasse over the change.	PERB