

employees who are currently employed at the Los Alamos National Laboratory (“LANL”). Each of the individual plaintiffs are participants or beneficiaries under the University of California Retirement Plan (“UCRP” or “the Plan”). The individual plaintiffs bring this action on their own behalf and on behalf of all other similarly situated employees of UC at LANL, and UPTE brings this action on behalf of its members who are employed by UC at LANL, for damages and for declaratory and injunctive relief, or alternatively a peremptory writ of mandate, to enforce their rights under the terms of the UCRP.

II. JURISDICTION AND VENUE

2. The amount in controversy exceeds the jurisdictional minimum of this Court.

3. This Court has jurisdiction under Article XVI, Section 17, of the California Constitution. In the alternative, this Court has jurisdiction under CCP §§ 1085-1086 to issue a writ of mandate to "any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station," upon the verified petition of any party beneficially interested and lacking a "plain, speedy and adequate remedy, in the ordinary course of law." In this case, plaintiffs lack any speedy and adequate remedy in the ordinary course of law to prevent defendants from breaching their fiduciary duties to plaintiffs and members of their class.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure Section 395. Defendant UC is based in Oakland, California. The UCRP, which is focus of this action, is similarly based in Oakland, California. Plaintiff UPTE is based in Berkeley, California.

III.

PARTIES

5. **Plaintiff UNIVERSITY PROFESSIONAL AND TECHNICAL EMPLOYEES, CWA LOCAL 9119, AFL-CIO (“UPTE”)** is a labor union that is comprised of members who are employees of the University of California, including members who work at LANL. UPTE represents, and works for better working conditions on behalf of, its members and other employees of the University of California. UPTE sues on behalf of its members at UC-LANL who have been harmed and are being harmed in the manner described herein. The nature of the claims alleged herein is closely related to UPTE’s mission.

6. **Richard Montoya** has been employed by UC at LANL (“UC-LANL”) as a Work Management Team Leader in Facilities Maintenance for approximately 8 years and has vested retirement benefits in UCRP. He resides in the State of New Mexico.

7. **Plaintiff Catherine Chapman** has been employed by UC-LANL as a Design Technician for approximately 8 years and has vested retirement benefits in UCRP. She resides in the State of New Mexico.

8. **Plaintiff Thomas Marks** has been employed by UC-LANL as a Computer Programmer for approximately 24 years and has vested retirement benefits in UCRP. He resides in the State of New Mexico.

9. **Plaintiff Manuel Trujillo** has been employed by UC-LANL as a project engineer. He first worked for UC-LANL from the period 1985 to 1995, after which, due to a “Reduction in Force” (“RIF”), he was laid off and allowed to retire under the terms of the UCRP. Subsequently, in 1998, UC rehired him as a “rehired retiree”, at which time receipt of his UCRP pension benefits was suspended. Like all of the other individual

plaintiffs, Mr. Trujillo has vested retirement benefits in UCRP. He resides in the State of New Mexico.

10. The individual plaintiffs bring this action on their own behalf and on behalf of all other similarly situated current or former employees of UC-LANL. Each individual plaintiff and class member has been threatened and/or coerced with respect to their vested benefits under UCRP and has been required to make critical employment and retirement decisions without benefit of adequate information or time. Upon information and belief, plaintiffs allege that there are 9,000 or more potential members of the class. Each member of the class shares a community of interest in that common questions of law and fact exist regarding each class member's claim, which makes separate adjudication of the claims impractical and inefficient. The claims of the named individual plaintiffs are typical of the claims of the other class members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the losses suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impractical for most class members individually to seek redress for the wrongful conduct alleged. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel competent and experienced in both class action and employment litigation. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting only individual class members. Among the common questions of law and fact are whether defendants have violated their fiduciary duties, and if so what measure of damages and other remedies are appropriate?

11. Defendant Board of Regents of the University of California ("Regents") is

headquartered in Oakland, California, and is sponsor of the UCRP.

12. Defendant Los Alamos National Security, LLC (“LANS”), is a limited liability company, incorporated in Delaware, which has entered into a contract to manage the Los Alamos National Laboratory (“LANL”), a United States Department of Energy (“DOE”) Laboratory.

13. At all times mentioned herein, each defendant was and is the agent of each of the remaining defendants, and in doing the acts hereinafter alleged, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of defendants, and each of them. Moreover, defendants engaged in a civil conspiracy to carry out the conduct alleged herein.

14. Plaintiffs are currently unaware of the true names and capacities of those individuals or entities sued as Does 1 through 40, inclusive. Pursuant to California Code of Civil Procedure Section 474, plaintiffs will request leave of court to amend this Complaint to allege the true names of such individuals or entities when their true names and capacities are ascertained. On information and belief, plaintiffs allege that, at all relevant times, defendant Does 1 through 40, inclusive, were employees or agents of the other defendants and acted within the course and scope of such agency, employment or joint venture.

IV. FACTUAL BACKGROUND

15. For decades prior to December 21, 2005, the University of California managed the Los Alamos National Laboratory under a contract with the United States Department of Energy. On December 21, 2005, the DOE awarded the contract to manage LANL to LANS, an LLC formed by a group of entities that includes UC, Bechtel National,

BWX Technologies and Washington Group International.

16. Sometime on or after March 15, 2006, individual plaintiffs and other members of their class received documents from UC and LANS as part of an “Employment Offer Package” (“LANS Package”) notifying them of their impending separation from UC employment, which is currently scheduled for May 31, 2006, and providing them with employment related materials. All of the materials contained in the LANS Package are dated March 15, 2006.

17. Pursuant to the choices set forth in the LANS Package, all UC-LANL employees who are in active employment status and in good standing with UC through May 31, 2006 and who are vested in the UCRP have been offered guaranteed employment at LANS, if and only if they relinquish certain choices, rights and/or vested benefits that they have under the UCRP. Specifically, guaranteed employment is lost unless employees agree to either rollover their pension assets out of the UCRP and into a LANS retirement plan entitled “Pension Plan One” (“PP1”), or else refrain from retiring as of the close of their UC employment on May 31, 2006, and instead take “inactive status” in the UCRP. PP1 is significantly smaller than the UCRP, with fewer participants, lesser assets, no track record and lesser prospect of future viability, and PP1 does not provide all of the same options and benefits as the UCRP, meaning that certain options and benefits would be lost under the rollover option.

18. The LANS Package also coerces employees to rollover their assets out of the UCRP by stating that if they do not do so, and instead choose to take “inactive status” in the UCRP, then upon starting at LANS they will be placed in Total Compensation Package 2 (“TCP2”) instead of Total Compensation Package 1 (“TCP1”). A principal difference

between the two packages is that TCP1 includes a defined benefit pension plan (PP1), while TCP2 includes only a defined contribution savings plan entitled "Pension Plan 2" ("PP2") which offers substantially lower benefits.

19. Defendants have further announced their likely intent to "spinoff" UC-LANL retirees who do not voluntarily transfer their assets. Under this spinoff, for all UC-LANL employees who choose to exercise their right to retire, who have retired in the past, or who elect to take "inactive status" under the UCRP, all pension assets and liabilities attributable to such employees would be transferred to an entirely new, as of yet unnamed, pension plan that is significantly smaller than the UCRP, with fewer participants, lesser assets, no track record and lesser prospect of future viability.

20. The LANS Package instructs UC-LANL employees to submit a completed form no later than 5:00 p.m. Mountain Time, May 15, 2006. The LANS Offer Acceptance Form states that LANS' offer of employment expires as of this same date and time.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty, California Constitution, Article XVI)

21. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 20 as if set out in full.

22. At all relevant times, Article XVI, Section 17 of the California Constitution imposed upon the Board of Regents, in its capacity as the fiduciary of the UCRP, the sole and exclusive authority and responsibility over the Plan's assets and administration. Accordingly the Board of Regents and its agents, as the Plan's fiduciaries, operated under an affirmative duty to act solely in the interest of, and for the exclusive purposes of providing benefits to the Plan's participants and beneficiaries, including plaintiffs and

their class. At all relevant times, the California Constitution mandated that the fiduciary duties owed to plaintiffs and their class took precedence over other duties.

23. By the conduct described hereinabove, and particularly in paragraphs 16 through 20 above, defendants have breached their fiduciary duties to individual plaintiffs and members of their class.

24. As a direct and proximate result of defendants' breach of fiduciary duty as described herein, plaintiffs and their class have been harmed and will continue to be harmed in that their vested benefits under UCRP will be transferred to separate pension plans without all of the features or financial security of UCRP, and/or they will lose their offer of guaranteed employment at LANS, and/or they will be placed in the lesser pension plan known as PP2.

WHEREFORE, plaintiffs pray for judgment as set forth below.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty, California Constitution, Art. XVI)

25. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 24 hereinabove as if set out in full.

26. Since December 2005, following the DOE's awarding of the contract to manage LANL to LANS, UC has provided insufficient information to plaintiffs for them to make an informed decision with respect to the transfer of their UCRP benefits by May 15, 2006. Solely by way of example, neither the materials provided in the LANS Package or referenced web sites provide plan documents or summary plan descriptions for the pension

plans into which plaintiffs and members of their class are coerced to transfer their vested UCRP benefits. As yet another example, defendants have failed and refused to notify plaintiff and members of their class as to whether, if they choose to keep their assets in the UCRP either for reasons of financial security or on other grounds, they will end up being involuntarily spunoff into a new as of yet unnamed pension plan. Rather than provide this information or extend plaintiffs' deadline for making their choices, defendants have done neither, instead indicating that more certain information will be available only after plaintiffs have already made their choices, and defendants have provided no opportunity for revoking or altering those choices after the fact.

27. By the conduct described hereinabove, and particularly in paragraph 26 above, defendants have breached their fiduciary duties to plaintiffs.

28. As a direct and proximate result of defendants' breach of fiduciary duty as described herein, plaintiffs have been harmed and will continue to be harmed in that they are being required to make critical employment and/or retirement decisions on the basis of inadequate information, and/or in that their vested benefits under UCRP will be transferred to separate pension plans without all of the features or financial security of UCRP, and/or they will lose their offer of guaranteed employment at LANS, and/or they will be placed in the lesser pension plan known as PP2.

WHEREFORE, plaintiffs pray for judgment as set forth below.

THIRD CAUSE OF ACTION

(Declaratory Relief -- Cal. Code of Civil Procedure § 1060)

29. Plaintiffs incorporate Paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. An actual and substantial controversy exists between plaintiffs and members of the class on the one hand, and defendants on the other hand, as to whether defendants have violated their fiduciary duties, and if so what measure of damages and other remedies are appropriate.

31. Plaintiffs contend that defendants have violated California law as described above. Defendants contend the opposite. Declaratory relief is therefore appropriate.

WHEREFORE, plaintiffs pray for judgment as set forth below.

**FOURTH CAUSE OF ACTION
(For an Accounting)**

32. Plaintiffs incorporate Paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Plaintiffs do not know the precise amount of compensation due to them and to each member of the class. Upon information and belief, Defendants possess records from which the amount of compensation due and owing to Plaintiffs and members of the class can be determined.

WHEREFORE, plaintiffs pray for judgment as set forth below.

ALLEGATIONS CONCERNING RELIEF SOUGHT

AND PRAYER FOR RELIEF

34. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 33 as if set out in full.

35. A dispute has arisen and presently exists between plaintiffs and defendants with respect to their rights, benefits and options under the UCRP. Plaintiffs are entitled to a declaration of their rights in this regard.

36. Plaintiffs are likewise entitled to injunctive relief prohibiting defendants from further carrying through with the unlawful actions described above and requiring these unlawful actions to be remedied.

37. In the alternative, issuance of a writ of mandamus is indispensable to enforcement of plaintiffs' rights because plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of the law, other than the relief sought in this Petition. The individual plaintiffs and members of the class, and the UPTE members employed at UC-LANL, have a beneficial interest in the lawful exercise of their rights under the UCRP.

WHEREFORE, plaintiffs pray for judgment as follows:

- 1. That the court grant plaintiffs/petitioners appropriate declaratory relief and injunctive relief prohibiting defendants from further carrying through with the unlawful actions described above and requiring these unlawful actions to be remedied;**
- 2. In the alternative, that after an appropriate hearing the court grant a peremptory writ of mandate prohibiting defendants from further carrying through with the unlawful actions described above and requiring these unlawful actions to be remedied;**
- 3. For an accounting;**
- 4. For general and special damages according to proof;**
- 5. For prejudgment interest;**
- 6. For the costs of this action;**
- 7. For attorney's fees; and**
- 8. For such other and further relief as this Court may deem just and proper.**

Dated: April 18, 2006

LEONARD CARDER, LLP

By:

Peter W. Saltzman and Arthur Krantz
Attorneys for Plaintiffs/ Petitioners

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all claims herein as to which they are so entitled.

Dated: April 18, 2006

LEONARD CARDER, LLP

By:

**Peter W. Saltzman and Arthur Krantz
Attorneys for Plaintiffs/Petitioners**