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OF COUNSEL  
MARTIN J. FASSLER

July 18, 2006

**Sent by Federal Express**

Joshua E. Morrison  
Atkinson, Andelson, Loya, Ruud & Romo  
17871 Park Plaza Drive, Suite 200  
Cerritos, CA 90703-8597

Re: **Ventura County Community College District-**  
**Failure to Provide Health Insurance for Retirees -**  
**Amended Claim**

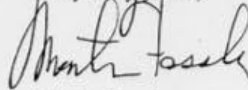
Dear Mr. Morrison,

Enclosed is an Amended Claim (pursuant to the Government Code) in the matter referred to above. This Amended Claim has additional information and allegations, primarily on pages 3, 10 and 11, although there are smaller revisions on a few other pages.

In addition, we now include Exhibit 1, referred to on page 10; and Exhibit A, a list of names and addresses of claimants.

If you have any questions, please call.

Very truly yours,



Martin Fassler

cc: Retirees' Association

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OF COUNSEL  
MARTIN FASSLER

July 17, 2006

**Amended Governmental Claim  
Filed Against  
Ventura County Community College District  
By Ventura County Community College District Retirees' Association, named  
retirees, and others who are similarly situated**

**1. The name and post office address of the claimants:**

Name of Claimants	Address of Claimants
Ventura County Community College District Retirees' Association (herein referred to as "The Retirees' Association") on behalf of itself and all retirees who are members of The Retirees' Association and on behalf of all similarly situated retirees of the Ventura County Community College District (herein referred to as "District"), who retired from the District on or after July 1, 1972 and who qualified for and have received district-paid retiree health benefits. Among the Claimants are persons who, before their retirement, were (1) faculty employees, (2) classified employees, (3) classified supervisors, (4) educational administrators, and (5) District managers,	Ventura County Community College District Retirees' Association:  c/o President Rene G. Rodriguez 4674 Via Del Rancho Newbury Park, CA 91320
Gary Johnson, Past President, The Retirees' Association	3421 Rio Hato Court, Camarillo, CA 93010

Harry Culotta, Vice President, The Retirees' Association	c/o Retirees' Association
Barbara Buttner, Secretary-Treasurer, The Retirees' Association	93 N. Ashwood Avenue, No. 402, Ventura, CA 93003
Rene G. Rodriguez, President, The Retirees' Association	As above
Other members of the Retirees' Association, see attached list, Exhibit A.	

**2. The Post Office Address to which the person presenting the claim desires notices to be sent:**

Martin Fassler  
 Robert J. Bezemek  
 Law Offices of Robert J. Bezemek, PC  
 1611 Telegraph Ave., Suite 936  
 Oakland, CA 94612

Ventura County Community College District Retirees' Assn.  
 c/o President Rene G. Rodriguez  
 4674 Via Del Rancho  
 Newbury Park, CA 91320

**3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:<sup>1</sup>**

**I. Impairment of Vested Rights and Breach of Contract**

**A. An overview of the District's repeated promises of paid health insurance for its employees, during their employment and after their retirement.**

**(1) Post-Retirement Benefits Promised by the Governing Board prior to enactment of the current collective bargaining system**

In August 1973, prior to enactment of the Rodda Act (which established the current collective bargaining system in local school and community college districts), the District's governing board unanimously adopted a policy of paying for the Blue Cross insurance of District faculty retirees who had served the District for a minimum of 15 years, and who had reached the age of 60 or more at the time of retirement, including those persons who had retired during the 1972-1973 school year.

In August 1974, the District governing board unanimously voted to extend the policy of providing fully-paid Blue Cross health insurance after retirement to those classified employees and District trustees who complete 15 years of service to the District and are at least 60 years of age at time of retirement.

**(2) Benefits Promised by Collective Bargaining Agreements.**

In a series of Collective Bargaining Agreements ("CBA's") between the District and the unions representing its employees, beginning in 1977, the District expressly stated that retirees (meeting certain conditions, as age at retirement, and years of continuous service to the District) would receive District-paid health insurance coverage after retirement. These promises were made in union contracts covering faculty employees, classified employees, and classified supervisors.

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<sup>1</sup> This Claim is submitted without prejudice to arguments by Claimants that they are exempt from compliance with the Claims statutes by virtue of District policy and/or Government Code section 905, including but not limited to subsections (c) and (f), for those parts of their claim alleging impairment of vested rights or breach of contractual promises, and estoppel.

Each of these CBA's with the Unions identified either Blue Cross or Blue Cross Foundation as the health insurance carrier. These contracts repeatedly committed the District to providing payments for either Blue Cross or Blue Cross Foundation health insurance "or at least equivalent benefits." The District regularly and repeatedly distributed and otherwise made available to its employees descriptions of each of the health insurance plans in effect. Thus the District informed the employees of the particular benefits to which they would be entitled as a result of the District's purchase of the Blue Cross policies on behalf of its employees.

Beginning in 1990, in each of the contracts (AFT, CSEA and then SEIU and Classified Supervisors), the contracts created two sub-groups of retirees- those hired before July 1, 1990, and those hired afterwards. In each instance, the contract protected the rights of those hired prior to July 1, 1990; the AFT contract and the classified supervisors' contract stated "current coverage for retirees shall continue for faculty employed on or before June 30, 1990." The same promise was included in each of the later AFT contracts.

Each of these CBA's, beginning in 1977, was approved by the District's Governing Board and bound the District to fulfill the ministerial act of purchasing or providing retiree insurance benefits without the retirees having to pay any premiums or assessments for such benefits, once they met eligibility requirements. Each of these agreements became a valid and binding agreement upon approval of them by the District's governing board. The District and its Governing Board have a ministerial obligation to carry out the District's obligation to provide health insurance including specific forms and levels of benefits without charging premiums to eligible retirees, who are claimants herein, and their eligible surviving spouses.

The Collective Bargaining Agreements are described in some detail below.

### **(3) Benefits Promised to Administrators Outside Collective Bargaining**

In December 1991, and perhaps earlier, the District Governing Board adopted a "Managers Policy and Operations Manual" which incorporated a lengthy sequence of formal policies for the District. Among the policies was the following (included in "Article VI, Health and Welfare Benefits"):

B. Managers retiring from the District shall be maintained on the District's existing group medical, dental and vision policies with premiums paid by the District under the following conditions . . . .

The manual section then specified the supervisor's age at retirement and number of years of service to establish entitlement to the District-paid insurance.

On information and belief, this policy remained in effect in the years from 1991 through 2005.

By adopting these formal Policies, and by offering employment to the managerial employees pursuant to the terms of these Policies, the District entered into a series of contracts with these managerial employees.

#### **(4) Deferred Compensation**

The provision of medical insurance coverage policies purchased by the District, pursuant to the District's Policies and CBA's, and the particular medical services to be enjoyed by retired employees, and paid for by the insurance plans, constituted a form of deferred compensation from the District to its employees, in exchange for the services that the employees provided to the District, prior to retirement.

At all relevant times the District had a contractual relationship with Claimants under which the District had an obligation to pay retirees their deferred compensation in the form of retirement health benefits free of premiums and/or assessments and/or fees. This contract came into effect when granted to retirees during the term of said employment. The District was required to carry out its obligations upon retirees' performance of services and meeting eligibility requirements. Each retiree involved herein acquired vested rights to specific District-paid retiree health benefits by virtue of these collective bargaining agreements and/or District Policies governing non-bargaining unit employees.

Employees first hired by and/or employed by the District beginning in or about August 1973 (or August 1974 for some employees) understood that if they served the requisite number of years, and met the eligibility requirements (such as age and years of continuous service to the District) then after retirement the District would pay the premiums for their retiree health benefit plan. Eligibility was established by entering retirement status directly from employment with the District, and reaching the requisite age, combined with the required years of service. Moreover, because the District repeatedly promised in union contracts that if a health insurance provider other than Blue Cross were chosen, that alternative would provide "at least equivalent benefits;" and repeatedly promised to increase its premium payments to maintain the level of benefits, each of the employees who performed services covered by the CBA's understood that the District's promise of deferred compensation meant that after his or her retirement, he or

she would continue to enjoy the kinds and levels of medical treatment and services that he or she had enjoyed prior to retirement.

#### **B. Promises to Ventura Community College District Faculty**

Beginning in or about July 1, 1977, the District, in its contract with Ventura County Federation of College Teachers, AFT Local 1828 ("the AFT"), promised to pay for Blue Cross health insurance (or under another plan with "at least equivalent benefits") for its full-time faculty employees. In the same contract, the District promised to increase its payments for the health insurance plan on October 1, 1978, "by the amount that would be required to maintain the above-mentioned Blue Cross . . . coverage."

And, in the same contract, the District promised that "Contract faculty members who are employed by the District at the time of retirement shall be retained on the District's existing group medical policy, with premiums paid by the District . . . " Another section promised; "Eligibility and benefits shall be as specified in the then-existing group medical insurance plan."

Thus, the District promised to its faculty employees that in exchange for their teaching, counseling, library or other faculty services during the two years between 1977 and 1979 the District would pay them the salary specified in the union contract; AND during the contract term would pay for specified fringe benefits, including the Blue Cross health insurance plan; AND that, in the future, (for faculty employees who had completed fifteen years of continuous service, who were age 60 or over), pay for health insurance for those retired employees during their retirement; and that the benefits would be as specified in the existing group medical insurance plan at the time of retirement.

All of these promises were repeated in the next three collective bargaining agreements with the AFT: the 1979-1982 agreement, the 1982-1986 agreement, and the 1986-1989 agreement.

**In the 1990-1993 agreement**, the District added another promise:

Current coverage for retirees shall continue for faculty employed on or before June 30, 1990.

Faculty employed after such date shall receive District provided coverage to the age 65 at which time the retirees' Medical care plan shall be replaced by Medicare and a medicare supplemental plan which provides comparable benefits and is provided and paid for by the District.

**In the 1994-1997 agreement**, the District and the AFT agreed that if health insurance premiums were to increase during the term of the agreement, the benefits provided by the health insurance company would be modified so that employee-patients would have to make larger payments. But, significantly, the contract continued to promise that "current coverage for retirees shall continue for faculty employed on or before June 30, 1990." Thus, the District promised that retirees, who were not able to voice their views, or exercise any influence within the AFT, would not be required to make greater payments for medical services.

**In the 1998-2001 agreement**, the 1994 provision for additional payments by employee-patients, to lead to lower premium payments by the District, was eliminated. The District continued to promise "Current coverage for retirees shall continue for faculty employed on or before June 30, 1990." And, the District continued to promise that it would pay for health insurance for retirees who met age and years-of-service requirements at the time of retirement.

#### **C. Promises made to District's Classified Employees:**

The promises made to the classified employees, in the contracts with the California School Employees Association, Chapter 697 ("CSEA"), were essentially identical to the promises made to the faculty employees.

In the 1977-1979 agreement with CSEA, the District promised to pay for Blue Cross health insurance (or under another plan with "at least equivalent benefits") for its classified employees. In the same contract, the District promised to increase its payments for the health insurance plan on October 1, 1978, "by the amount that would be required to maintain the above-mentioned Blue Cross . . . coverage;" and that employees who were employed by the District at the time of retirement "shall be retained on the District's existing group medical policy, with premiums paid by the District . . ." provided they met specified age and years of service requirement.

These provisions were retained in the 1979-1981 agreement, in the 1982-1983 agreement with SEIU local 690 (which replaced CSEA) and then with Local 535, in the 1984-1987 agreement, and in the 1986-1990 agreement.

In the 1990-1993 agreement, the District and the SEIU recognized the possibility that the premiums charged by Blue Cross might increase, and provided that the District would pay for any increase up to 20 per cent for 1991-1992. The District and SEIU agreed that the cost of any additional premium increase would be imposed on current



employees- not on retirees: "Any cost increase in excess of that percentage will be adjusted by a corresponding reduction in the amount of funds provided for a salary increase effective July 1, 1991."

In the 1994-1997 agreement, the District and SEIU Local 535 for the first time agreed that if the health insurance carriers sought to raise premiums during the contract term, the nature of the insurance coverage to be provided to employees would be changed to require higher payments for services by employees, and that the nature of the payments to be made by Blue Cross on behalf of covered employees (and dependents) would be reduced, to bring down the premium costs. Section 11.4 provided

... increases in premium costs beginning October 1, 1994 shall be absorbed by plan design modification as follows: increase in deductibles up to \$200 and co-insurance corridor limit up to \$4,000. Alternative plan design modifications may be made upon agreement between the District and SEIU. The savings realized from such modifications above shall not exceed the increase in premium costs.

And, for the first time, this contract specified: "Any modifications to the plans or contributions required of active employees shall be required of retirees." While this provision was repeated in two later collective bargaining agreements with SEIU, none of the previous contracts included a provision which authorized current employees to agree to modifications of the health insurance benefit levels for employees who had already retired, or for those who would retire in the future.

Both of these provisions were carried forward to later CBA's, for the period 1998-2001, and 2001-2004.

**D. Promises made to the District's classified supervisors:**

**The 1981-1982 agreement between the District and the Classified Supervisors Association** was the first agreement with that organization which referred to the District-paid health insurance for retirees. In that agreement, the District promised:

The District pay any increases in the cost of the fringe benefit package consisting of medical insurance, dental insurance and vision insurance;  
and:

District-paid retiree medical coverage for a combination of service plus age to total 75 years, with a minimum age of 50 years and a minimum service of 10 years.

**In the 1982-1983 agreement**, the District promised that "all conditions of employment for supervisory employees, including benefits" that were in effect prior to the agreement would remain in effect. In addition,

3. RETIREMENT BENEFITS:

Classified supervisor shall receive District paid health, vision and dental insurance upon retirement, with a minimum of ten years of service with the district and having attained an age and years of service to the District equal to or greater than 75. . . .

**In the 1983-1985 agreement**, the District continued to promise to pay the premiums for health, dental and vision insurance for retired supervisors with the required age and years of service.

As for active classified supervisors, the District promised different health insurance retirement benefits for two different groups of classified supervisors, those "hired" prior to June 1, 1984, and those hired after that date, placing a dollar cap on the payments for the latter group. However, this distinction was not referred to in the contract section promising to pay the health insurance for retired supervisors.

The same arrangements were in place during the 1985-87 CBA and in the 1987-1990 CBA.

**In the 1990-1993 agreement**, the District and the SEIU recognized the possibility that the premiums charged by Blue Cross might increase, and provided that the District would pay for any increase up to 20 per cent for 1991-1992. The District and SEIU agreed that the cost of any additional premium increase would be imposed on current employees - not on retirees: "Any cost increase in excess of that percentage will be adjusted by a corresponding reduction in the amount of funds provided for a salary increase effective July 1, 1991."

**E. Promises made to the District's management-level employees:**

In a series of policy statements, designated as "Health and Welfare Benefits," included within the District's "Policy and Operations Manuals" adopted by the District over the years, beginning in the 1990-1991 school year and perhaps earlier, and repeatedly distributed to its management level employees, the District promised:

Managers retiring from the District shall be maintained on the District's existing group medical, dental and vision policies with premiums paid by the District under the following conditions [referring to age and years of service at time of requirement].

The statements in these formally adopted District policies made no mention of the possibility that the District held the continuing right or authority to alter, revise or withdraw the nature of the health insurance provided to retirees after their retirement. Nor did any of these policy statements reserve for the District the right to rescind its promises made to its employees after they had provided services to the District based on the understanding that health insurance during retirement was part of their compensation, simply deferred until after retirement.

**F. The District's adoption of less advantageous health insurance policies beginning July 2005.**

On or about July 1, 2005, the District unilaterally imposed on its retired employees a series of reductions of benefits, each bringing financial disadvantages to its former employees, now retired. These applied to retired employees in all of the employee categories referred to above: faculty employees, classified employees, classified and educational supervisors and managers.

The July 1, 2005 changes imposed on all retired employees significantly higher costs for purchase of prescription medications. It also imposed on all retirees significantly higher costs as a consequence of the imposition of higher "deductible" ceilings, requiring payments by individual retirees for medical services, for which the insurance carrier did not pay and for which they did not reimburse retirees. And, the new insurance plan imposed on retirees significantly higher "out of pocket maximum" payments, which, as a consequence, would delay the insurer's duty to pay for further medical services. Comparison charts and lists that were circulated by the District's administrators made clear the worsened conditions for retired employees, as described on **Exhibit 1** attached hereto. Exhibit 1 consists of portions of the "Power Point" presentation made by District administrators to District employees on or about July 1, 2005, describing the changes in the medical insurance being provided to District employees beginning on or about that date for most employees (and a few months later for faculty employees). This document identifies the changes in the payments for prescription drugs, the increased "deductible" levels and the increased out-of-pocket ceilings, all to the disadvantage of the retirees.

**G. Additional facts concerning all claimants**

All claimants herein, including those similarly situated retirees for whom claimants

bring this claim, were employed either: (1) prior to the time that the District first agreed to provide District-paid retiree health benefits; or, (2) were hired after the District agreed to provide District-paid retiree health benefits; and, in either case, continued to work for the District during periods then those promises were in effect.

Employees were advised of these health insurance benefits during pre-employment discussions with District personnel; in the series of collective bargaining agreements which included the promise; and in other communications made at the time of retirement or shortly before employees retired.

Repeatedly since the late 1970's, the District distributed to its employees in all bargaining units, to its supervisors and managerial employees, and to retirees brochures and other written materials which: (1) identified by name the medical insurance plans which the District purchased for its employees and retirees; and (2) identified some of the medical services and treatments available through those medical insurance policies. By identifying these insurance policies by name, the District, by clear implication promised to its employees (during both their time of employment and after retirement) and to those who were retirees at the time the written materials were circulated, the specific services and benefits which were provided by the specific medical insurance plan.

The District also promised to pay the premiums for each retiree's spouse and/or dependents.

From 1977 through 2005, the District never notified the faculty employees who worked pursuant to the faculty CBA's that at any time after retirement the District might or would force retired employees to shoulder a larger financial burden than in the past.

As for classified employees, it was not until the 1994-1997 contract that the District informed classified employees of the possibility that if active employees were required to make larger payments for medical services and treatment, retired employees would, likewise, be required to make these higher payments. Because there was no such clear statement to classified employees who worked for the District prior to the effective date of the 1994-1997 contract, those employees provided their services to the District with the understanding that the health insurance arrangements after their retirement would remain in place, and had no reason to believe that their health insurance arrangements after retirement would be inferior, or might become inferior to what they enjoyed during their earlier employment. Moreover, insertion of the new phrase in the 1994-1997 agreement between the District and SEIU is ineffective to rescind, withdraw or limit the promises previously made, which promises were among the bases for the employees'

repeated decisions to continue working for the District, month after month, year after year.

At no time prior to 1994, did the District notify classified supervisors that at any time after retirement the District might or would force retired employees to shoulder a larger financial burden than in the past.

Each claimant herein is either: a beneficiary of the District's agreement to provide retiree health benefits as specified in a CBA; or a beneficiary of a District Policy promise to provide retiree health benefits to employees outside the collective bargaining unit; or a beneficiary of both a CBA and a Policy. The District, by the acts and conduct alleged in this Claim, has breached its contractual agreements with claimants. For many retirees, and spouses, the additional out-of-pocket costs they will be required to pay under the inferior plan that was adopted by the District on July 1, 2005 will cause diminution of their financial stability and security. For many retirees, it has and will cause significant financial hardship.

## **II. Applicable Legal Principles**

The right to receive promised District-paid retiree health benefits is a vested right protected by the California and the United States Constitutions. See *Thorning v. Hollister School District* (1992) 11 Cal.App.4th 1598; *Olson v. Cory* (1980) 27 Cal.3d 532; *Betts v. Board of Administration* (1978) 21 Cal.3d 859; *Kern v. City of Long Beach* (1947) 29 Cal.2d 848.

These retiree health benefits are part of the deferred compensation of the retirees. Once promised, the District cannot disregard its promises to retirees without violating their contractually vested rights, and therefore the Constitution. Both the California and the United States Constitution protect as vested, contractual rights these retiree health benefits. Promised compensation is protected by the Contract clause of the United States and State Constitutions. *Olson v. Cory* (1980) 27 Cal.3d 532, 538. "Once vested, the right to compensation cannot be eliminated without unconstitutionally impairing the contract obligation." *Id.* Requiring retiree payments in the form of payments previously not required for the same services, treatment or prescription medicines impairs contract obligations with the District. *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 133.

The right to deferred compensation vests upon acceptance of employment. *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853, 856. This is so "even though the right to immediate payment of [the benefits] may not mature until certain conditions are satisfied." *Miller v. State of California* (1977) 18 Cal.3d 808, 815; *Kern v. City of Long*

*Beach, supra; Wallace v. City of Fresno* (1954) 42 Cal.2d 180, 183. Public employees also acquire vested rights to additional benefits granted during employment. *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866; *Olson v. Cory*, 27 Cal.3d at 540. By definition, each claimant, and retiree on whose behalf this claim is brought, became vested in retirement health benefits either upon initial hiring or during continuing employment between August 1973 and the present.

No language in the CBA's or Policies or Governing Board resolutions referenced herein reserved the right of the District to change the retirees' health benefits by requiring additional out-of-pocket payments by retirees for services, treatment or prescription medicines that had previously been covered by the insurance paid for by the District. Prior to commencement of the 1994-97 agreement (for classified employees) the District did not notify claimants, while they were employees that, following retirement, the District would impose additional out-of-pocket payments by retirees for services, treatment or prescription medicines that had previously been covered by the insurance paid for by the District. This warning provision was never included in the other applicable CBA's (for the faculty and classified supervisors). The District is therefore prohibited by law from imposing such additional costs on the claimants herein.

Once the District promises to pay for an insurance policy that provides specific levels of medical benefits, as defined by a specific health insurance plan, the District cannot simply refuse to comply with its promise even if a third party insurance provider withdraws a particular insurance policy from the market. Under California law, the District, as a promisor, is legally obligated to provide to its retired employees the equivalent level of medical benefits. *McCulloch v. Ligouri* (1948) 88 Cal. App. 2d 366; and *Waegemann v. Montgomery Ward & Company*, (9<sup>th</sup> Cir. 1983) 713 F. 2d 452, (under California law the doctrine of frustration [of performance of contractual requirements] "is inapplicable when an unforeseeable event merely makes performance more expensive or less profitable than anticipated").

By purchasing for its retirees in 2005 and since then a health insurance plan which required retirees to pay significantly higher fees for medical treatment and prescription drugs, the District impairs the vested rights of claimants and violates the contractually vested promises made to the claimants. Vested retiree health benefit rights cannot be bargained away through negotiations or agreements between the District and any of its employee unions. "Under established contract principles, vested retirement rights may not be altered without the pensioner's consent." *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.* (1971) 404 U.S. 157, 181 (n. 20). In purporting to modify the promise made to claimants, the District has defeated the reasonable expectations of the claimants. In each instance in which the District

negotiated collective bargaining agreements with labor organizations which imposed, or allowed the imposition of additional out-of-pocket payments to medical providers, the labor organizations did not represent the claimants herein, nor did the unions have legal authority to represent the claimants herein.

### **III. Equitable Estoppel**

We incorporate all prior paragraphs of this claim.

As alleged above, the District represented to employees that, as retirees, they would receive District-paid health benefits, with the benefits specified in particular health insurance policies. At various times and in various ways, as described above, the District and the unions recognized the possibility that insurance carriers would raise premium charges. In various contracts, as described above, the District promised that in these circumstances, retirees would not be required to bear the burden of the additional costs. The District, its officers, agents and representatives, intended for claimants, as prospective employees and employees, to rely upon these representations.

With the limited exceptions notes, retirees were not made aware of the possibility that, after their retirement, the district, by purchasing less beneficial policies, would impose additional out-of-pocket costs for medical treatment and services and prescription medicines on individual retirees

The District intended that retirees, in accepting employment, or continuing in employment by the District, would rely on District representations concerning their retiree health benefits.

The District by its conduct as alleged herein, induced persons who were at the relevant times employees of the District to rely on or act based upon such representations. Retirees, as a consequence, accepted employment, and continued long and loyal service to the District.

Retirees who are claimants herein reasonably relied on these District representations to their detriment. These retirees have suffered, or will suffer and will continue to suffer financial loss as a result of the above.

The District is equitably estopped to impose either insurance premiums or higher out-of-pocket costs on claimants, or to negotiate any agreements with labor organizations which allow for or require the imposition of premiums or higher out-of-pocket costs on retirees.



The District also concealed, until relatively recently, that it would, after claimants retired, act to impose higher out-of-pocket costs on retirees, by purchasing less beneficial policies than it had promised during the employment of claimants.

Information was withheld from retirees, that the District intended to impose on retirees higher out-of-pocket costs after retirement, and this withholding was made with the knowledge, actual or virtual, of the true facts, by the District, its officers, agents and/or representatives.

#### **IV. Promissory Estoppel**

We incorporate all prior paragraphs of this claim.

As alleged herein, the District clearly intended for eligible retirees to believe they would receive specific levels and kinds of district-paid health benefits after retirement. The District should reasonably have expected its promises to induce employment and long service by claimants.

The District promised such benefits in order to induce employment, and long, loyal employment, by claimants. The claimants relied on such promises and accepted and/or provided long, loyal service to the District.

If the District were allowed now to impair this promise by purchasing a less advantageous and less expensive (to the District) health insurance policy, thus forcing the retired employee to pay more than they would have had to pay under prior policies, an injustice would occur.

The District is bound by the doctrine of promissory estoppel to fulfill its promises to claimants.

#### **4. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim:**

We incorporate herein by reference as though set forth fully at length the full text of Section 3 above. In addition, the District has damaged the retirees by requiring them to pay, or to be at continued risk of paying, higher out-of-pocket costs for medical treatment, services and prescription medicine than what the District promised would be provided to retirees pursuant to District-paid retiree health benefits.

##### **A. District Failure and Refusal to Honor and Fulfill Vested Rights**



### **of Retirees to a District-Paid Retiree Health Benefit Plan**

The District has impaired the vested rights of retirees by negotiating agreements allowing the imposition of premiums and assessments on claimants, and by taking steps to and/or requiring the payment of premiums, fees and/or assessments by retirees. Once implemented, retirees will be required, as a condition of receiving their benefits, make payments in an amount exceeding \$10,000 in the aggregate, and on a continuing basis. These injuries and damages are of a continuing nature.

#### **B. Equitable Estoppel , Promissory Estoppel and Judicial Estoppel**

The District is estopped under doctrines of equitable estoppel, promissory estoppel, and judicial estoppel, to impose additional costs on retirees, as a direct consequence of District decisions to purchase less advantageous medical insurance policies than were promised to claimants during their periods of employment.

#### **C. All Other Legal Theories Applicable Are Subsumed Within this Claim**

Claimants assert that the District is liable to retirees and claimants based on any and all other theories as would apply to the facts involved in this matter, whether known or unknown to claimants, including but not limited to fraud, misrepresentation, conspiracy to defraud or misrepresentation, and abuse of discretion.

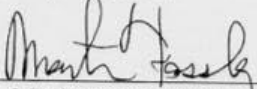
#### **5. The name or names of the public employee or employees causing the injury, damage, or loss, if known:**

Chancellor, Dr. James Mezneck  
Chair and Members of the Board of Trustees:  
Chair: Mary Anne Rooney  
Vice Chair: Dr. Larry O. Miller  
Trustee Cheryl Heitmann  
Trustee Arturo D. Hernandez  
Trustee Robert O. Huber  
Student Trustee Brian Lovatt  
Ventura County Community College District  
Does 1-100

**6. The amount claimed: "If the amount claimed exceed ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether jurisdiction over the claim would rest in municipal or superior court."**

The amount claimed is presently unknown, but will exceed \$10,000 once claimants are informed of and begin paying premiums, fees and assessments. Jurisdiction over the claim and an action to enforce claimants rights to vested rights and other violations alleged herein rests in the superior court.

Dated: July 17, 2006

By:   
Martin Fassler, Attorney  
Robert J. Bezemek, Attorney  
Signed on behalf of claimants

Y:\Documents\0205\0205 Ventura College claim 3B.wpd

**EXHIBIT 1**

**FOR CLAIM AGAINST VENTURA COUNTY  
COMMUNITY COLLEGE DISTRICT BY  
VENTURA COUNTY COMMUNITY COLLEGE  
RETIREES ASSOCIATION AND OTHERS**



**VCCCD Blue Cross Plan  
Effective 7/01/05**

**Retiree ASCC Group  
(Administrators, Supervisors,  
Confidentials and Classified)**



## Current Blue Cross Plan

**\$50/Individual Deductible/\$150 Family Max**  
**Hospital Services @ 100% In\* / 100% Non\*\***  
**Professional Services @ 80% In / 80% Non**  
(Deductible Applies to Professional Services Only)  
**Out-of-Pocket Maximum - \$450**

**Generic Rx @ 0% Co-Insurance**  
**Brand Rx @ 20% Co-Insurance**  
**Mail Order @ 90-day Supply:**  
**\$5.00 Co-Pay - Brand/Generic**

(\*In – Refers to In-Network Providers  
(\*\*Non – Refers to Non-Network Providers)

**BC Plan Modification – 7/01/05  
Medical Deductible Applies to All Services**

**\$200 Individual Deductible / \$600 Family Max**

**Hospital Services @ 100% In / 70% Non**

**Professional Services @ 80% In / 60% Non**

**Out-of-Pocket Maximum –**

**\$1,500 + Deductible – In**

**\$3,000 + Deductible – Non**

**Emergency Room Services @ 100% In / 80% Non**

**\$50 Per Individual Rx Deductible (separate from medical deductible)**

**Generic Rx @ \$10.00 Copayment**

**Brand Rx @ \$30.00 Copayment**

**Brand Rx with Generic Equivalent @ \$30.00 Copayment plus difference in cost between Brand and Generic**

**Mail Order @ 2x Retail Copayment – 90-Day Supply**

**\$5,000,000 Lifetime Maximum**

# Plan Design Comparison

## Current Plan

\$50 Individual/\$150 Family Max  
(Major Med Only)

## Modified Plan Effective 7/01/05 – Medical Deductible Applies to All Services

\$200 Individual Deductible / \$600 Family Deductible

Hospital Services @ 100% In / 100% Non	Hospital Services @ 100% In / 70% Non
Professional Services @ 80% In / 80% Non	Professional Services @ 80% In / 60% Non
Out-of-Pocket Maximum \$400 + Deductible	Out-of-Pocket Maximum \$1,500 In + Deductible \$3,000 Non + Deductible
	Emergency Room Services – 100% In / 80% Non
	\$50 Per Individual Rx Deductible (separate from medical deductible)
Generic Rx @ 0% Coinsurance	Generic Rx @ \$10.00 Copayment
Brand Rx @ 20% Coinsurance	Brand Rx @ \$30.00 Copayment
Mail Order @ 90-day Supply: \$5.00 Copay Brand/Generic	Brand Rx w/Generic Equivalent @ \$30.00 Copayment plus difference in cost between Brand and Generic
	Mail Order @ 2x Retail Copayment - 90 Day Supply <sup>4</sup>