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 of Retired Employees*

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13

14 SONOMA COUNTY ASSOCIATION OF  
 15 RETIRED EMPLOYEES,

16 Plaintiff,

17 v.

18 SONOMA COUNTY

19 Defendant.

Case No. 09-4432

**FIRST AMENDED COMPLAINT**

20  
 21 **INTRODUCTION**

22 1. For over four decades, Sonoma County (the “County”) promised its employees  
 23 (the “Retirees” or “County Retirees”) that, in exchange for their dedicated service to the County,  
 24 they would receive retiree health care benefits for themselves and their dependents, funded in  
 25 whole or substantially by the County. Relying on the County’s promises, the Retirees gave up  
 26 various wage increases and pension cost of living adjustments, and dedicated their working years  
 27 to the County.

28 2. Despite the Retirees’ loyalty and full performance of their employment

1 obligations, the County has now changed its system of providing retiree health care benefits and  
2 implemented drastic cuts in those benefits. These changes forced, and will continue to force,  
3 County Retirees to pay much higher, and increasing, amounts for their health care benefits.  
4 County Retirees, most of whom live on fixed incomes, will be unable to pay these costs, or may  
5 be able to pay them only by forgoing other essential expenses.

6 3. The County Retirees now face higher, and increasing, health care benefit costs at a  
7 time in their lives when they have neither the flexibility nor the capacity to earn wages to offset  
8 the increasing costs. On information and belief, approximately 30% of the Sonoma County  
9 retirees receive County pensions of \$1,000 or less per month, and 60% receive pensions of \$2,000  
10 or less per month.

11 4. On behalf of the County Retirees, the Sonoma County Association of Retired  
12 Employees (“SCARE”) now seeks injunctive and declaratory relief which would require the  
13 County to restore and honor its commitment to pay all or substantially all of the cost of health  
14 care benefits for Retirees and their dependents.

15 5. SCARE’s membership includes Retirees who were, as active employees,  
16 represented by unions, as well as Retirees who were unrepresented as active employees. This  
17 action seeks declaratory and injunctive relief for the minimum benefits owed to all County  
18 Retirees. Whether some SCARE members have rights to greater amounts of benefits arising out  
19 of memoranda of understanding (“MOUs”) between the County and their unions is not alleged or  
20 at issue, here.

21 6. Plaintiff filed a Government Code Claim, pursuant to California Govt. Code § 910  
22 et seq., with the County on February 23, 2009. The Government Code Claim raised the issues  
23 asserted in this complaint on behalf of the County Retirees. Plaintiff’s Government Code Claim  
24 was deemed denied by operation of law when the County did not respond during the statutorily-  
25 allotted time.

#### 26 **JURISDICTION AND VENUE**

27 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
28 1331 and 1343, and pursuant to its supplemental jurisdiction over Plaintiff’s claims brought under

1 the laws of the State of California. The Court has personal jurisdiction over the County because  
2 the County is located and conducts business in this judicial district and this action arises from the  
3 County's conduct occurring here.

4 8. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201  
5 and 2202. Money damages alone are inadequate, and Plaintiff's members suffer and will  
6 continue to suffer irreparable injury absent injunctive relief.

7 9. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) because the  
8 County is located in this District.

9 **INTRADISTRICT ASSIGNMENT**

10 10. This action arises in Sonoma County and thus should be assigned to the San  
11 Francisco Division.

12 **PARTIES**

13 11. Plaintiff SCARE is an unincorporated non-profit membership organization that  
14 promotes and protects the welfare and interests of the retired employees of Sonoma County.  
15 Regular membership is open to retirees of the County of Sonoma, Sonoma County Water  
16 Agency, Sonoma County Fairgrounds, Economic Development Board, Community Development  
17 Department, and the Open Space District. Associate membership is open to the spouse, domestic  
18 partner, widow, or widower of any person eligible for regular membership.

19 12. SCARE currently has 1496 total members, consisting of 1306 regular members  
20 and 190 associate members.

21 13. Defendant Sonoma County is a political subdivision of the State of California,  
22 duly authorized and existing under the laws of, and by virtue of, the Constitution and laws of the  
23 State of California. The County maintains a health care benefits system for current and retired  
24 Sonoma County employees, through both a self-funded plan and contracts with third parties.

25 **GENERAL ALLEGATIONS**

26 14. The County has provided retiree medical benefits for Retirees since at least 1964.

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1 **All or Substantially All Allegations**

2 15. The County promised to continue to pay all or substantially all of the cost of post-  
3 retirement health care benefits for its employees and their dependents and to do so pursuant to a  
4 system that pooled the Retirees and their dependents with the active employees. The pooling  
5 aspect of the retiree benefit payment system combined the more expensive Retirees with the less  
6 expensive active employees and created an “implicit subsidy” that kept Retiree health care  
7 benefits at a less costly level than if the Retirees were treated as a separate group. This  
8 arrangement also created one uniform cost for both Retirees under age 65 and active employees.  
9 Further, the pooling arrangement meant that the active employees were subsidizing the cost of the  
10 Retiree health care benefits. Consequently, the Retirees, while they were active employees,  
11 subsidized earlier generations of retirees in the expectation that they would receive that same  
12 subsidy when they retired in the future.

13 16. The County intended that the promises described in paragraph 15 would be vested  
14 benefits that would continue for the lifetimes of the Retirees and their dependents. The County’s  
15 promises did not contain any durational limitation of such benefits. The Retirees accepted these  
16 benefits in lieu of other benefits, such as a cost of living adjustment in their pensions.

17 17. The County conveyed its intent to bind itself to the promises described in  
18 paragraphs 15-16 in writing, orally, by implication, and through practice.

19 18. The County conveyed its promises and intent to continuously and consistently  
20 provide *vested* retiree health benefits in writing in numerous resolutions, salary resolutions, and  
21 Board-ratified Memoranda of Understanding (“MOUs”), including the following:

- 22 a. Resolutions 9751-1 (6/22/64) (Exh. 1<sup>1</sup>), 10292-1 (8/24/64) (Exh. 2), and  
23 29887 (6/22/70) (Exh. 3) provided retired County employees with County-  
24 paid health benefits. In practice, in order to receive County-paid health  
25 benefits, retired County employees hired before 1990 had to complete at  
26 least five years of service as a County employee, retire directly from

27 \_\_\_\_\_  
28 <sup>1</sup> This and all Exhibits listed throughout this First Amended Complaint are incorporated herein by  
reference.

1 County service, and have qualified for a County pension as contributing  
2 members of the County's Retirement System for five years. By imposing  
3 eligibility requirements used for qualifying for vested pension retirement  
4 benefits, the County implied that County employees who completed these  
5 requirements were entitled to retiree health benefits as a vested right that  
6 could not be forfeited.

7 b. Resolutions 89-1623 (8/29/89) (Exh. 4), 91-1260 (7/23/91) (Exh. 5), 93-  
8 1420 (9/21/93) (Exh. 6), 95-0926 (5/1/06) (Exh. 7), 07-0267 (4/10/07)  
9 (Exh. 8), and 08-0712 (8/19/08) (Exh. 9) stated that County employees  
10 hired after 1990 had to complete longer years of service as a County  
11 employee, retire directly from County service, and have qualified for a  
12 County pension as contributing members of the County Retirement System  
13 in order to receive County-paid health benefits for themselves and their  
14 dependents. Employees hired after 1990 had to complete 10 years of  
15 service to receive County-paid retiree health benefits for themselves or 20  
16 years of service to receive County-paid retiree health benefits for  
17 themselves and one dependent, as well as retire directly from County  
18 service, and have qualified for a County pension as contributing members  
19 of the Retirement System for the same periods of time. By imposing  
20 eligibility requirements commonly associated with vested retirement  
21 benefits and/or by conditioning eligibility for retiree health benefits on  
22 vesting for a County pension, the County implied that County employees  
23 who completed these requirements were entitled to retiree health benefits  
24 as a vested right that could not be forfeited.

25 c. MOUs between the County and employee unions, including, but not  
26 limited to:

- 1 i. Deputy Sheriffs' Association, 2000-03 (Exh. 10)<sup>2</sup>; 2003-07 (Exh.  
2 11); Aug 14, 2007-August 11, 2008 (Exh. 12);
- 3 ii. Engineers and Scientists of California, Local 20, 1990-93 (Exh.  
4 13); 1993-94 (Exh. 14); 1995-98 (Exh. 15); 1998-01 (Exh. 16);  
5 2001-04 (Exh. 17); 2003-09 (Exh. 18);
- 6 iii. International Union of Operating Engineers, Stationary Engineers,  
7 Local 39, 1990-93 (Exh. 19), 1993-94 (Exh. 20); 2000-03 (Exh.  
8 21); 2003-10 (Exh. 22);
- 9 iv. Sonoma County Sheriff's Office Employees Association Law  
10 Enforcement Management Unit, 1990-91 (Exh. 23); 1991-94 (Exh.  
11 24); 1994-95 (Exh. 25); 1995-96 (Exh. 26); 1996-99 (Exh. 27);  
12 1999-02 (Exh. 28);
- 13 v. Sonoma County Law Enforcement Managers Association, 2003-07  
14 (Exh. 29);
- 15 vi. Sonoma County Sheriff's Office Employees Association Law  
16 Enforcement Non-Supervisory and Supervisory, and Corrections  
17 and Probation Non-Supervisory and Supervisory Unit, 1990-94  
18 (Exh. 30); 1994-97 (Exh. 31); 1997-2000 (Exh. 32); 2000-03 (Exh.  
19 33);
- 20 vii. Sonoma County Public Defender Investigators' Association, 1990-  
21 94 (Exh. 34); 1994-97 (Exh. 35); 1997-2000 (Exh. 36); 2000-03  
22 (Exh. 37);
- 23 viii. Service Employees International Union Local 707 (now SEIU  
24 Local 1021), 1989-92 (Exh. 38); 1996-99 (Exh. 39); 1999-02 (Exh.  
25 40); 2002-08 (Exh. 41); and
- 26

27 <sup>2</sup> For the Court's convenience, Plaintiff SCARE has attached as exhibits the cover sheet and the  
28 relevant Health and Welfare sections addressing retiree health care for each MOU listed in  
paragraph 18, rather than the entire MOU for each union.

1 ix. Western Council of Engineers, 1990-91 (Exh. 42); 1991-93 (Exh.  
2 43); 1993-95 (Exh. 44); 1995-97 (Exh. 45); 1997-2000 (Exh. 46);  
3 2000-03 (Exh. 47); 2003-09 (Exh. 48).

4 d. Formerly represented County employees hired prior to 1990 or 1991,  
5 depending on the union, received retiree health benefits from the County  
6 pursuant to terms in the above and earlier MOUs. Consistent with its past  
7 practice and course of dealing with the unions, the County provided retiree  
8 health benefits to County employees who served for at least 5 years as  
9 County employees, retired directly from County service, and qualified for a  
10 County pension as contributing members of the County Retirement  
11 System. The County Retirement System required 5 years of service to  
12 receive County-paid benefits for themselves and their dependents. By  
13 imposing eligibility requirements commonly associated with vested  
14 retirement benefits and/or by conditioning eligibility for retiree health  
15 benefits on vesting for a County pension the County implied that County  
16 employees who completed these requirements were entitled to retiree  
17 health benefits as a vested right that could not be forfeited.

18 e. The MOUs in paragraph 18(c) stated that employees hired after 1990 or  
19 1991 had to complete longer years of service as a County employee, retire  
20 directly from County service, and have qualified for a County pension as  
21 contributing members of the County Retirement System in order to receive  
22 County-paid health benefits for themselves and their dependents.  
23 Employees hired after 1990 had to complete 10 years of service to receive  
24 County-paid retiree health benefits for themselves or 20 years of service to  
25 receive County-paid retiree health benefits for themselves and one  
26 dependent as well as retire directly from County service, and have qualified  
27 for a County pension as contributing members of the Retirement System  
28 for the same periods of time. By imposing eligibility requirements

1 commonly associated with vested retirement benefits and/or by  
2 conditioning eligibility for retiree health benefits on vesting for a County  
3 pension, the County implied that County employees who completed these  
4 requirements were entitled to retiree health benefits as a vested right that  
5 could not be forfeited.

- 6 f. County resolutions authorizing or adjusting County health insurance  
7 contributions acknowledged that the County had promised to pay all or  
8 substantially all of the cost of Retiree health benefits. *See, e.g.*,  
9 Resolutions 36867 (5/22/1972) ( Exh. 49) (“WHEREAS, this Board of  
10 Supervisors has by prior resolution authorized payment by the County to or  
11 for the benefit of employees and retired former employees who have  
12 elected to participate in the extended Medicare health insurance  
13 coverage”); 53815 (5/25/1976) (Exh. 50) (same); 69638 (6/16/1981) (Exh.  
14 51) (“WHEREAS the County of Sonoma pays the medical insurance  
15 premium for both active and retired county employees”); 74392 (6/1/83)  
16 (Exh. 52) (same); 75765 (12/13/1983) (Exh. 53) (same); Resolution 84-  
17 2539 (12/18/1984) (Exh. 54) (same); 86-2497 (12/9/1986) (Exh. 55)  
18 (same); 88-2161 (12/6/1988) (Exh. 56) (“WHEREAS, the County of  
19 Sonoma pays for most of the medical insurance premium for retired  
20 County employees”); 01-1512 (12/19/2001) (Exh. 57) (same); 02-1265  
21 (12/3/2002) (Exh. 58) (same); 03-1246 (12/9/2003) (Exh. 59) (same); 05-  
22 1039 (11/29/2005) (Exh. 60) (same); 07-0986 (12/4/2001) (Exh. 61)  
23 (same); 06-0998 (12/5/2006) (Exh. 62) (“WHEREAS, the County of  
24 Sonoma pays for the majority of the medical insurance premium for retired  
25 County employees”); and 01-1513 (12/18/2001) (Exh. 63) (“WHEREAS,  
26 the County of Sonoma pays for the majority (86%) of the medical  
27 insurance premium for retired County employees”).  
28



- 1 g. Resolution 05-0441 (5/17/2005) (Exh. 64) explains that retiree health  
2 benefits, and specifically retiree survivor medical contributions, are  
3 provided in consideration for employee recruitment and retention.

4 19. The County conveyed its promises and intent to continuously and consistently  
5 provide retiree health care benefits in writing *without durational limitation* in numerous  
6 resolutions, salary resolutions, and Board-ratified MOUs, including the following:

- 7 a. Resolutions 9751-1 (6/22/64) (Exh. 1), 10292-1 (8/24/64) (Exh. 2), 29887  
8 (6/22/70) (Exh. 3), 89-1623 (8/29/89) (Exh. 4), 91-1260 (7/23/1991) (Exh.  
9 5), 93-1420 (9/21/93) (Exh. 6), 95-0926 (5/1/06) (Exh. 7), and 07-0267  
10 (4/10/07) (Exh. 8), which authorized County contribution for retiree and  
11 employee health insurance benefits, adjust rates and define eligibility  
12 without any durational limitation;
- 13 b. Resolutions 15584 (3/15/66) (Exh. 65), 16586 (6/27/66) (Exh. 66), 18780  
14 (3/24/67) (Exh. 67), 22382 (3/25/68) (Exh. 68), 36867 (5/23/72) (Exh. 49),  
15 53815 (5/25/76) (Exh. 50), 69638 (6/24/80) (Exh. 51), 74392 (6/1/83)  
16 (Exh. 52), 75765 (12/13/83) (Exh. 53), 84-2539 (12/18/84) (Exh. 54), 86-  
17 2497 (12/9/86) (Exh. 55), 88-2161 (12/6/88) (Exh. 56), 01-1512 (12/19/01)  
18 (Exh. 57), 02-1265 (12/3/02) (Exh. 58), 03-1246 (12/9/03) (Exh. 59), 05-  
19 1039 (11/29/05) (Exh. 60), 06-0998 (12/5/06) (Exh. 62), and 07-0986  
20 (12/4/07) (Exh. 61), which authorized and/or increased the County's  
21 contribution for retiree health benefits, including reimbursements and/or  
22 offsets for increasing Medicare premiums, for employees and retirees  
23 without any durational limitation, and imply that such contributions were  
24 expected to last indefinitely into one's Medicare-eligible years;
- 25 c. MOUs between the County and the unions listed in paragraph 18(b) above  
26 which authorized and/or increased the County's contribution for retiree and  
27 employee health insurance benefits and define eligibility without any  
28 durational limitation.

1           20.           The County conveyed its promises and intent to continuously and consistently  
2 provide retiree health benefits for which the County paid *all or substantially all* of the cost in  
3 writing in numerous resolutions, ordinances, and salary resolutions, including all resolutions cited  
4 in paragraphs 18 and 19, which collectively provided a County contribution of 85% - 100% of  
5 retirees' health benefit premiums from 1964 until June 2009.

6           21.           The mutual intent of both the County and the Retirees was that the County would  
7 pay for all or substantially all of the cost of retirees' and their dependents' health benefit  
8 premiums without any durational limitation. In addition to the above paragraphs, the County's  
9 intent is also evidenced by the following:

- 10                   a.   The former County employees who drafted the resolutions and policies  
11                   listed in paragraphs 18-19, including the County Human Resource  
12                   Directors from 1973 – 2004 and other County administrators, will testify as  
13                   to the background, purpose, and intent of these resolutions.
- 14                   b.   The Board of Supervisors conveyed their promises and intent to provide  
15                   the benefits described in paragraphs 18-20 orally to the County  
16                   administrators, who in turn orally transmitted the County's promises to  
17                   employees. Ernie Carpenter, who served on the Board of Supervisors from  
18                   approximately 1976 until 1996, will testify to the Board's intent. Many of  
19                   the former County administrators responsible for receiving and  
20                   transmitting these promises will testify to the oral promises they personally  
21                   received from the Board of Supervisors and transmitted to employees on  
22                   behalf of the County.
- 23                   c.   The County's promises and intent to provide the benefits described in  
24                   paragraphs 18-20 were set forth and explained in County-issued job  
25                   announcements, job offers, retirement-related documents, and other  
26                   County-issued documents, which provided for County-paid retiree health  
27                   benefits without durational limitation.

1 d. The County's promises were implied by the decades of County conduct in  
2 conformance with these promises.

3 22. The County's promise, as described in paragraphs 18-21, to pay all or substantially  
4 all of the cost of health care benefits for its employees and their dependents after its employees  
5 retired, and the employees' performance of services in exchange for this promise, created one or  
6 more legally binding contracts.

7 23. For decades the County performed on its promise described in paragraphs 18-21,  
8 and, until June 2009, the County continued to pay all or substantially all of the cost of health care  
9 benefits for Retirees and their dependents without any durational limitation. The County also  
10 provided the same health coverage, at the same cost, to Retirees as it provided to active  
11 management employees. Specifically, the County paid the following:

12 a. From at least 1964, perhaps earlier, until 1981, the County paid 100% of  
13 the cost of the health care benefit plan selected by each Retiree.

14 b. From 1981 until 2008, the County paid all of the cost of the health care  
15 benefit plan selected by each Retiree, minus a small flat dollar amount or a  
16 small percentage (16% or less) of the premium cost.

17 c. From July 2008 to June 2009, the County paid 85% of the premium cost of  
18 the lowest cost plan offered by the County.

19 **Tie Agreement Allegations**

20 24. In 1985, the County, in exchange for amending the County Health Plan to include  
21 co-pays and deductibles for the first time, to the detriment of the Retirees, began to pay 100% of  
22 the premium cost of the County Health Plan premium for Retirees and active management  
23 employees and promised without any durational limitation that, going forward, Retirees and their  
24 dependents would receive the same health benefits, and the County would pay the same amount,  
25 as provided to and paid for the active management employees and their dependents, pursuant to a  
26 system that pooled the Retirees and their dependents with the active employees. This agreement  
27 was known as the "tie" agreement. The pooling aspect of the tie agreement combined the more  
28 expensive Retirees with the less expensive active employees and created an "implicit subsidy"

1 that kept Retiree health care benefits at a less costly level than if the Retirees were treated as a  
2 separate group. This arrangement also created one uniform cost for both Retirees under age 65  
3 and active employees. Further, the pooling arrangement meant that the active employees' were  
4 subsidizing the cost of the Retiree health care benefits. Consequently, the Retirees, while they  
5 were active employees, subsidized earlier generations of retirees in the expectation that they  
6 would receive that same subsidy when they retired in the future.

7 25. The tie agreement described in paragraph 24, above, also included an implied  
8 promise that the County would not, by subterfuge, seek to avoid its obligations made under that  
9 agreement.

10 26. The County intended that the promised retiree health benefits described in  
11 paragraphs 24-25 were vested benefits that would continue for the lifetime of the Retirees and  
12 their dependents. The County's promises did not contain any limitation on the duration of such  
13 benefits. The Retirees accepted these benefits in lieu of other benefits, such as a cost of living  
14 adjustment in their pensions.

15 27. The County conveyed its intent to bind itself to the promises described in  
16 paragraphs 24-26 in writing, orally, by implication, and through practice.

17 28. The County conveyed its promises and intent to continuously and consistently  
18 provide *vested* retiree health benefits under the tie agreement in writing in numerous resolutions,  
19 salary resolutions, and MOUs, including the following:

- 20 a. Resolutions 89-1623 (8/29/89) (Exh. 4), 91-1260 (7/23/91) (Exh. 5), 93-  
21 1420 (9/21/93) (Exh. 6), 95-0926 (5/1/06) (Exh. 7), 07-0267 (4/10/07)  
22 (Exh. 8), and 08-0712 (8/19/08) (Exh. 9) stated that County employees  
23 hired after 1990 must complete 10 years of service to receive County-paid  
24 retiree health benefits for themselves or 20 years of service, retire directly  
25 from County service, and be members of the retirement association, and  
26 have qualified for a County pension as contributing members of the  
27 Retirement System for the same periods of time. By imposing eligibility  
28 requirements commonly associated with vested retirement benefits and/or

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by conditioning eligibility for retiree health benefits on vesting for a County pension, the County implied that County employees who completed these requirements were entitled to retiree health benefits as a vested right that could not be forfeited.

b. MOUs between the County and the unions listed in paragraph 18(c) above affirmed the County’s past practice and course of dealing with the unions for County employees hired prior to 1990. Retired County employees hired before 1990 had to complete at least five years of service as a County employee, retire directly from County service, and have qualified for a County pension as contributing members of the County’s Retirement System for five years in order to receive County-paid health benefits commonly associated with vested retirement benefits and/or by conditioning eligibility for retiree health benefits on vesting for a County pension, the County implied that County employees who completed these requirements were entitled to retiree health benefits as a vested right that could not be forfeited.

c. The MOUs listed in paragraph 18(c) above stated that employees hired after 1990 or 1991 had to complete longer years of service as a County employee, retire directly from County service, and have qualified for a County pension as contributing members of the County Retirement System in order to receive County-paid health benefits for themselves and their dependents. Employees hired after 1990 had to complete 10 years of service to receive County-paid retiree health benefits for themselves or 20 years of service to receive County-paid retiree health benefits for themselves and one dependent, as well as retire directly from County service and have qualified for a County pension as contributing members of the Retirement System for the same periods of time. By imposing eligibility requirements commonly associated with vested retirement

1 benefits and/or by conditioning eligibility for retiree health benefits on  
2 vesting for a County pension, the County implied that County employees  
3 who completed these requirements were entitled to retiree health benefits  
4 as a vested right that could not be forfeited.

5 d. County resolutions authorizing or adjusting County health insurance  
6 contributions acknowledged the tie agreement. *See, e.g.*, Resolutions 84-  
7 2539 (12/18/1984) (Exh. 54) (“WHEREAS the County of Sonoma pays the  
8 medical insurance premium for both active and retired county employees”);  
9 86-2497) (12/9/1986) (Exh. 55) (same); 88-2161 (12/6/1988) (Exh. 56)  
10 (“WHEREAS, the County of Sonoma pays for most of the medical  
11 insurance premium for retired County employees”); 01-1512 (12/19/2001)  
12 (Exh. 57) (same); 02-1265 (12/3/2002) (Exh. 58) (same); 03-1246  
13 (12/9/2003) (Exh. 59) (same); 05-1039 (11/29/2005) (Exh. 60) (same); 07-  
14 0986 (12/4/2001) (Exh. 61) (same); 06-0998 (12/5/2006) (Exh. 62)  
15 (“WHEREAS, the County of Sonoma pays for the majority of the medical  
16 insurance premium for retired County employees”); and 01-1513  
17 (12/18/2001) (Exh. 63) (“WHEREAS, the County of Sonoma pays for the  
18 majority (86%) of the medical insurance premium for retired County  
19 employees”).

20 e. Resolution 05-0441 (5/17/2005) (Exh. 64) explained that retiree health  
21 benefits, and specifically retiree survivor medical contributions, are  
22 provided in consideration for employee recruitment and retention.

23 29. The County conveyed its promises and intent to continuously and consistently  
24 provide retiree health care benefits *without any durational limitation* under the tie agreement in  
25 numerous resolutions, salary resolutions, and MOUs including the following:

26 a. Resolutions 89-1623 (8/29/89) (Exh. 4), 91-1260 (7/23/1991) (Exh. 5), 93-  
27 1420 (9/21/93) (Exh. 6), 95-0926 (5/1/06) (Exh. 7), and 07-0267 (4/10/07)  
28 (Exh. 8), which authorized County contribution for retiree and employee

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health insurance benefits, adjust rates and define eligibility without durational language;

- b. Resolutions 84-2539 (12/18/84) (Exh. 54), 86-2497 (12/9/86) (Exh. 55), 88-2161 (12/6/88) (Exh. 56), 01-1512 (12/19/01) (Exh. 57), 02-1265 (12/3/02) (Exh. 58), 03-1246 (12/9/03) (Exh. 59), 05-1039 (11/29/05) (Exh. 60), 06-0998 (12/5/06) (Exh. 62), and 07-0986 (12/4/07) (Exh. 61), which authorized and/or increased the County’s contribution to Medicare for employees and retirees without durational language, and imply that benefits were expected to last indefinitely into one’s Medicare-eligible years;
- c. MOUs between the County and the unions listed in paragraph 18(c) above, which authorized and/or increased the County’s contribution for retiree and employee health insurance benefits and define eligibility without any durational limitation;
- d. Resolution 08-0712 (8/19/08) (Exh. 9), which explained that “benefits . . . for retirees [were] tied to administrative management” and that County “contributions [for retirees] have historically been tied to administrative management”, and re-stated the policy that pre-1990 hires are entitled to receive the same County contributions for retiree health as active management employees so long as they meet the eligibility requirements; and
- e. Executive Summary to Resolution 08-0712 (8/2008) (Exh. 9), which recognized that the County’s contributions for retirees’ medical benefits “directly or through a 23 year past practice, are the ‘same as’ unrepresented administrative management employees.”

30. The County conveyed its promises and intent to continuously and consistently provide *the same* health care benefits at the same cost to retirees as to active employees in the following resolutions, ordinances, salary resolutions, and MOUs:

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- a. Resolutions 89-1623 (8/29/89) (Exh. 4), 91-1260 (7/23/91) (Exh. 5), 95-0926 (5/1/06) (Exh. 7), and 07-0267 (4/10/07) (Exh. 8) stated that the County shall contribute for retirees the same amount towards a health plan premium as it contributes to active employees; and
- b. MOUs between the County and the unions listed in paragraph 18, like the resolutions in paragraph 30(a), stated that retirees who are vested in the retiree health benefits provided by the County will receive the same benefits as are provided to active management employees.

31. The mutual intent of both the County and the retirees was that the County would provide the same health care benefits at the same cost to retirees as to active employees in perpetuity. In addition to the above paragraphs, this intent is further evidenced by the following:

- a. The former County employees who drafted the policies listed in paragraphs 28-30, including the former County Human Resource Directors from 1985 – 2004, and other former County administrators will testify as to the background, purpose, and intent of these resolutions.
- b. The Board of Supervisors conveyed their promises and intent to provide the benefits described in paragraphs 28-30 orally to the County administrators, who in turn orally transmitted the County’s promises to employees. Ernie Carpenter, who served on the Board of Supervisors from approximately 1976 until 1996, will testify as to the Board’s intent. Moreover, many of the former County administrators responsible for receiving and transmitting these promises will testify to the oral promises they personally received from the Board of Supervisors and transmitted to employees on behalf of the County.
- c. The County’s promises and intent to provide the benefits described in paragraphs 28-30 were explained in County-issued job announcements, job offers, retirement-related documents, and other County-issued documents,



1 which provided for County-paid retiree health benefits without any  
2 durational limitation.

3 d. The County's promises were implied by the decades of County conduct in  
4 conformance with these promises.

5 32. The County has taken the position in other legal proceedings that it is obligated to  
6 provide the Retirees with the same benefits as are provided to active employees. The County is  
7 thereby estopped from taking a conflicting position in this litigation. The County's positions have  
8 been expressed in, for example, the following:

9 a. The County's Response to Unfair Practice Charge No. SF-CE-456-M, in  
10 which the County stated that "[s]ince 1985, the County's retirees have paid  
11 the same premiums and have the received the same benefit *as do active*  
12 *Administrative Management employees*. In and around 1989, 'the  
13 agreement was made between the County and its retirees that, in perpetuity,  
14 assured retirees that they were tied to Administrative Management  
15 employees for purposes of health care benefits.'" (quoting a 2001 letter  
16 from SCARE's president) (italics in original).

17 b. The County's Response to Unfair Practice Charge No. SF-CE-509-M, in  
18 which the County reiterated the same language as is stated in paragraph  
19 32(a).

20 33. The County's promise, as described in paragraphs 28-32, to uphold the tie  
21 agreement and the employees' performance of services in exchange for this promise, created one  
22 or more legally binding contracts.

23 34. For decades, the County performed on its promises described in paragraphs 28-32,  
24 and from at least 1985, perhaps earlier, until June 2009, the County paid the cost of health care  
25 benefits for Retirees and their dependents at least at the same level as it did for active  
26 management employees.

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1 **General Allegations**

2 35. On August 19, 2008, the County Board of Supervisors voted to change its  
3 contribution for health care benefits to a flat monthly contribution of up to \$500 per month for  
4 unrepresented active employees, administrative management, the Board of Supervisors, and all  
5 retirees (“\$500 flat contribution”). This change was effective June 2, 2009, with a five year  
6 phase-in period for retirees.

7 36. On September 16, 2008, the County Board of Supervisors passed what it called a  
8 concurrent resolution that awarded a cash allowance of \$3.45 per pay status hour (approximately  
9 \$600/month) for all individuals affected by the \$500 flat medical coverage *except* the County  
10 Retirees (“\$600 monthly benefit”).

11 37. On information and belief, the \$600 monthly benefit was created to offset the  
12 increased cost of health care benefits for employees due to the \$500 flat contribution. The \$600  
13 monthly benefit was voted shortly after the \$500 flat contribution, and was implemented just prior  
14 to the date that the \$500 flat contribution went into effect, allowing the two measures to impact  
15 employees’ paychecks simultaneously. The \$600 monthly benefit has been described by the  
16 County to County employees as extra compensation to cover their health care benefit costs. Each  
17 employee, regardless of salary level, receives the same amount. In addition, the \$600 monthly  
18 benefit will not be subject to future increases in the County salary schedule. The \$600 monthly  
19 benefit is, therefore, the County’s attempt, by subterfuge, to avoid its obligations under the tie  
20 agreement.

21 38. After a five year phase-in period, Retirees will receive a flat amount of \$500 a  
22 month toward their health care benefit costs. Active employees will, and already do, receive  
23 \$1100 a month.

24 39. The County’s wholesale changes to its retiree health care benefits system will have  
25 a devastating impact on the County Retirees, many of whom are elderly individuals who live on  
26 fixed incomes and will be required to pay many hundreds of additional dollars a month toward  
27 their medical premiums. Many will have to spend large portions of their monthly income on  
28 medical premiums and others will have to choose between medical care and other necessities. On

1 information and belief, approximately 30% of the Sonoma County retirees receive County  
2 pensions of \$1,000 or less per month, and 60% receive pensions of \$2,000 or less per month.

3 40. In reliance on the County's promises, County Retirees made numerous life  
4 decisions regarding, among other things, whether and for how long to work for the County, how  
5 much to save for retirement, and whether to select the County's retiree health care for themselves  
6 and their families over other retiree health care options formerly available through their spouse's  
7 or other dependent's employer. Many Retirees chose to continue working for the County rather  
8 than moving to other, higher paying employment at least in part because of the promise of retiree  
9 health care benefits.

10 41. Some County Retirees also chose their places of residence in reliance on the  
11 County's promises. The most expensive health care benefit plan offered by the County, the  
12 County Health Plan, is the only health plan available in many geographical areas. Until June  
13 2009, when the County paid all, or substantially all, of the premium cost, many retirees moved to  
14 locations where only the County Health Plan was available, on the belief that they would have  
15 access to health care benefits that were all, or substantially all, paid for by the County. With the  
16 change to the \$500 flat health care contribution, at least some of those retirees who live in areas  
17 that are only serviced by the County Health Plan will be forced to give up their health care  
18 insurance or pay many hundreds of additional dollars monthly out of pocket.

19 42. The County Retirees have fully performed their duties under their contracts with  
20 the County and are entitled to their vested benefits and the benefits of their bargains.

21 **FIRST CLAIM FOR RELIEF**  
22 (Breach of Contract under California law)

23 43. Plaintiff incorporates by reference paragraphs 1-23, 35, and 39-42 set forth above  
24 as though fully set forth herein.

25 44. Retiree health care benefits were an integral part of the total compensation  
26 received by County Retirees, including members of SCARE, in exchange for the performance of  
27 their services as active employees of the County. County Retirees have performed their duties  
28 under their contracts with the County.

1 45. The County is legally bound to continue its system of providing health care  
2 benefits to its Retirees, which includes the obligation to pay all, or substantially all, of the cost of  
3 health care benefits for Retirees and their dependents.

4 46. By passing and implementing the \$500 flat contribution for Retirees, the County  
5 has breached its contracts with the Retirees.

6 47. County Retirees have been, and will increasingly continue to be, damaged  
7 monetarily by the County’s breaches. The Retirees also risk losing their health care benefits  
8 and/or forgoing making other necessary payments in order to pay for their health care benefits.

9 **SECOND CLAIM FOR RELIEF**  
10 (*Alternative Breach of Contract Claim under California law*)

11 48. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as  
12 though fully set forth herein.

13 49. Retiree health care benefits were an integral part of the total compensation  
14 received by County Retirees, including members of SCARE, in exchange for the performance of  
15 their services as active employees of the County. County Retirees have performed their duties  
16 under their contracts with the County.

17 50. By passing and implementing the \$500 flat contribution for retirees *and*  
18 employees, and the \$600 monthly benefit for employees *only*, the County has breached its  
19 obligations to the County Retirees under the “tie agreement.”

20 51. In the alternative to the First Claim for Relief, if the County is not legally bound to  
21 pay all or substantially all of the cost of Retirees’ health care benefits, then the County is legally  
22 bound, pursuant to the tie agreement, to pay \$1100/month per Retiree, which is the same amount  
23 the County pays to each active management employee.

24 52. County Retirees have been, and will increasingly continue to be, damaged  
25 monetarily by the County’s breaches. They also risk losing their health care benefits and/or  
26 forgoing making other necessary payments in order to pay for their health care benefits.

27 **THIRD CLAIM FOR RELIEF**  
28 (*Alternative Claim to the First and Second Claims for Relief: Breach of the Covenant of Good  
Faith and Fair Dealing under California law*)

1 53. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as  
2 though fully set forth herein.

3 54. Under the law of the State of California, a covenant of good faith and fair dealing  
4 is implied by law in all contracts to ensure that neither party will do anything that hinders the  
5 right of the other party to receive the benefits of the agreement. The covenant is designed to  
6 effectuate the intentions and reasonable expectations of the parties reflected by the promises in  
7 the contract. The essence of the covenant is that the parties must conduct themselves in an  
8 objectively reasonable manner. In the employment context, the implied covenant prevents the  
9 employer from frustrating the employee’s enjoyment of any rights provided in the contract.

10 55. By virtue of its existence, the contract between the County and the County  
11 Retirees contains a covenant of good faith and fair dealing. The covenant imposes on the County  
12 a duty to refrain from taking any action that would frustrate the County Retirees’ rights to, at a  
13 minimum, the same benefits and premium payments as the County provides for its active  
14 management employees.

15 56. By passing and implementing the \$500 flat contribution for retirees *and*  
16 employees, and the \$600 monthly benefit for employees *only*, the County has breached its  
17 obligations to the County Retirees under the “tie agreement” and has frustrated the County  
18 Retirees’ rights. The County’s actions break the tie agreement and deny the Retirees the same  
19 medical benefits that are provided to active management employees.

20 57. The County’s actions were not objectively reasonable in light of the contract it had  
21 with the Retirees. In addition, the County’s attempts to cast the \$600 monthly contribution as  
22 unrelated to the \$500 flat contribution, and thus further cover up and frustrate the Retirees’ rights,  
23 were also objectively unreasonable. The County has, therefore, breached the covenant of good  
24 faith and fair dealing.

25 58. As a direct and proximate result of the County’s breach of the covenant of good  
26 faith and fair dealing, the County Retirees have been, and will increasingly continue to be,  
27 damaged monetarily. The County Retirees also risk losing their health care benefits and/or  
28 forgoing other necessary payments in order to pay for their health care benefits.



1 received by County Retirees, including members of SCARE, in exchange for the performance of  
2 their services as active employees of the County. County Retirees have performed their duties  
3 under their contracts with the County.

4 68. Public employment which provides for post-employment benefits gives rise to  
5 certain legal obligations on the part of the public employer, which are subject to the Contract  
6 Clause of the California Constitution. The promised post-employment benefits are an integral  
7 part of the compensation of the County's public employees, and constitute vested benefits that are  
8 earned compensation.

9 69. In the alternative to the Fourth Claim for Relief, the County is legally bound,  
10 under the tie agreement, to continue to provide health care benefits to its Retirees and their  
11 dependents, and to pay \$1100/month per Retiree, which is the same amount the County pays to  
12 each active management employee.

13 70. By passing and implementing the \$500 flat contribution for retirees *and*  
14 employees, and the \$600 monthly benefit for employees *only*, the County has substantially  
15 impaired and breached its obligations to the County Retirees under the "tie agreement."

16 71. County Retirees, including members of SCARE, have been, and will increasingly  
17 continue to be, damaged monetarily. They also risk losing their health care benefits and/or  
18 forgoing other necessary payments in order to pay for their health care benefits.

19 72. The County's actions were neither reasonable nor necessary to fulfilling an  
20 important public purpose and were not, therefore, justifiable. The County's actions unlawfully  
21 impair a contractual obligation, in violation of Article I, § 9 of the California Constitution.

22 **SIXTH CLAIM FOR RELIEF**  
23 (Impairment of Contract – U.S. Constitution)

24 73. Plaintiff incorporates by reference paragraphs 1-23, 35, and 39-42 set forth above  
25 as though fully set forth herein.

26 74. Retiree health care benefits were an integral part of the total compensation  
27 received by County Retirees, including members of SCARE, in exchange for the performance of  
28 their services as active employees of the County. County Retirees have performed their duties

1 under their contracts with the County.

2 75. Public employment which provides for post-employment benefits gives rise to  
3 certain legal obligations on the part of the public employer, which are subject to the Contract  
4 Clause of the United States Constitution. The promised post-employment benefits are an integral  
5 part of the compensation of the County's public employees, and constitute vested benefits that are  
6 earned compensation.

7 76. The County is legally bound to continue to provide health care benefits to its  
8 Retirees and their dependents, and to pay all, or substantially all, of the premium cost.

9 77. By passing and implementing the \$500 flat contribution for Retirees, the County  
10 has substantially impaired and breached its contracts with the Retirees.

11 78. County Retirees, including members of SCARE, have been, and will increasingly  
12 continue to be, damaged monetarily. They also risk losing their health care benefits and/or  
13 forgoing making other necessary payments in order to pay for their health care benefits.

14 79. The County's actions were neither reasonable nor necessary to fulfilling an  
15 important public purpose and were not, therefore, justifiable. The County's actions unlawfully  
16 impair a contractual obligation, in violation of Article I, § 10 of the United States Constitution.

17 **SEVENTH CLAIM FOR RELIEF**  
18 *(Alternative Impairment of Contract – U.S. Constitution)*

19 80. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as  
20 though fully set forth herein.

21 81. Retiree health care benefits were an integral part of the total compensation  
22 received by County Retirees, including members of SCARE, in exchange for the performance of  
23 their services as active employees of the County. County Retirees have performed their duties  
24 under their contracts with the County.

25 82. Public employment which provides for post-employment benefits gives rise to  
26 certain legal obligations on the part of the public employer, which are subject to the Contract  
27 Clause of the United States Constitution. The promised post-employment benefits are an integral  
28 part of the compensation of the County's public employees, and constitute vested benefits that are



1 earned compensation.

2 83. In the alternative to the Sixth Claim for Relief, the County is legally bound,  
3 pursuant to the tie agreement, to continue to provide health care benefits to its Retirees and their  
4 dependents, and to pay \$1100/month per Retiree, which is the same amount the County pays to  
5 each active management employee.

6 84. By passing and implementing the \$500 flat contribution for retirees *and*  
7 employees, and the \$600 monthly benefit for employees *only*, the County has substantially  
8 impaired and breached its obligations to the County Retirees under the “tie agreement.”

9 85. County Retirees, including members of SCARE, have been, and will increasingly  
10 continue to be, damaged monetarily. They also risk losing their health care benefits and/or  
11 forgoing other necessary payments in order to pay for their health care benefits.

12 86. The County’s actions were neither reasonable nor necessary to fulfilling an  
13 important public purpose and were not, therefore, justifiable. The County’s actions unlawfully  
14 impair a contractual obligation, in violation of Article I, § 10 of the United States Constitution.

15 **EIGHTH CLAIM FOR RELIEF**  
16 (Promissory Estoppel under California law)

17 87. Plaintiff incorporates by reference paragraphs 1-23, 35, and 39-42 set forth above  
18 as though fully set forth herein.

19 88. Retiree health care benefits were an integral part of the promises of total  
20 compensation made by the County to the County Retirees. The County promised the Retirees  
21 that it would pay all, or substantially all, of their, and their dependents’, health care benefit costs  
22 during retirement.

23 89. County Retirees reasonably and detrimentally relied on the County’s promises in  
24 that:

- 25 a. Retirees were induced to accept employment with the County;
- 26 b. Retirees were induced to remain employed with the County;
- 27 c. Retirees were induced to continue receiving the County’s health care
- 28 benefits, rather than those available to them through their spouses’

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employers;

d. Retirees were induced to forego other benefits, while employed, in lieu of retiree health care benefits;

e. Retirees' dependents were induced to give up health care benefits available through their employer based on the coverage promised to them by the County, and;

f. Retirees were induced to move to geographical locations that had access only to the County Health Care Plan.

90. The County knew or should have known that County Retirees would rely on the County's promises and that the County's promises would induce the Retirees to perform the acts listed in paragraph 89.

91. As a result of the acts that the County Retirees were induced to perform, as listed in paragraph 89, and the County's nonperformance of its promises to pay all or substantially of the cost of the health care benefits for Retirees and their dependents, the County Retirees have been, and will increasingly continue to be, damaged monetarily. They also risk losing their health care benefits and/or forgoing making other necessary payments in order to pay for their health care benefits.

**NINTH CLAIM FOR RELIEF**  
*(Alternative Promissory Estoppel under California law)*

92. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as though fully set forth herein.

93. Retiree health care benefits were an integral part of the promises of total compensation made by the County to the County Retirees. In the alternative to the Eighth Claim for Relief, the County promised the Retirees as part of the tie agreement that it would provide the same benefits, and pays the same portion of the costs, for them and their dependents as it does for its active management employees.

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1 94. County Retirees reasonably and detrimentally relied on the County's promises in  
2 that:

- 3 a. Retirees were induced to accept employment with the County;  
4 b. Retirees were induced to remain employed with the County;  
5 c. Retirees were induced to continue receiving the County's health care  
6 benefits, rather than those available to them through their spouses'  
7 employers;  
8 d. Retirees were induced to forego other benefits, while employed, in lieu of  
9 retiree health care benefits;  
10 e. Retirees' dependents were induced to give up health care benefits available  
11 through their employer based on the coverage promised to them by the  
12 County, and  
13 f. Retirees were induced to move to geographical locations that had access  
14 only to the County Health Care Plan.

15 95. The County knew or should have known that County Retirees would rely on the  
16 County's promises and that the County's promises would induce the Retirees to perform the acts  
17 listed in paragraph 94.

18 96. As a result of the acts that the County Retirees were induced to perform, as listed  
19 in paragraph 94, and the County's nonperformance of its promises under this agreement, the  
20 County Retirees have been, and will increasingly continue to be, damaged monetarily. They also  
21 risk losing their health care benefits and/or forgoing making other necessary payments in order to  
22 pay for their health care benefit premiums.

23 **TENTH CLAIM FOR RELIEF**  
24 (Due Process – California Constitution)

25 97. Plaintiff incorporates by reference paragraphs 1-23, 35, and 39-42 set forth above  
26 as though fully set forth herein.

27 98. Retiree health care benefits were an integral part of the total compensation  
28 received by County Retirees, including members of SCARE, in exchange for the performance of

1 their services as active employees of the County. County Retirees have performed their duties  
2 under their contracts with the County.

3 99. County Retirees have a vested property right in the County's payment of all, or  
4 substantially all, of the cost of health care benefits for them and their dependents because, inter  
5 alia:

- 6 a. the County promised to provide those benefits after retirement in exchange  
7 for services the County Retirees rendered during their active employment;
- 8 b. the County Retirees reasonably, detrimentally relied on the County's  
9 promise to pay their full health care premiums as part of their total  
10 compensation;
- 11 c. the County Retirees decided to forego other benefits, while employed, in  
12 lieu of retiree health care; and
- 13 d. the County Retirees have performed their duties under these contracts.

14 100. By passing and implementing the \$500 flat contribution for Retirees, the County  
15 has breached its contracts with the Retirees.

16 101. County Retirees have been, and will increasingly continue to be, damaged  
17 monetarily. They also risk losing their health care benefits and/or forgoing making other  
18 necessary payments in order to pay for their health care benefits.

19 102. The County's actions were neither reasonable nor necessary to fulfilling an  
20 important public purpose and were not, therefore, justifiable.

21 103. Under Article I, 7 of the California Constitution, the County may not take away  
22 this vested property right without compensating County retirees for the value that it represents.

23 **ELEVENTH CLAIM FOR RELIEF**  
24 *(Alternative Due Process – California Constitution)*

25 104. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as  
26 though fully set forth herein.

27 105. Retiree health care benefits were an integral part of the total compensation  
28 received by County Retirees, including members of SCARE, in exchange for the performance of

1 their services as active employees of the County. County Retirees have performed their duties  
2 under their contracts with the County.

3 106. In the alternative to the Tenth Claim for Relief, County Retirees have a vested  
4 property right pursuant to the tie arrangement in the County's provision of the same health care  
5 benefits, and payment of the same portion of the cost, as the County provides to active  
6 management employees, because, inter alia:

- 7 a. the County promised to provide those benefits after retirement in exchange  
8 for services the County Retirees rendered during their active employment;
- 9 b. the County Retirees reasonably, detrimentally relied on the County's  
10 promise to pay the full cost of their health care benefits as part of their total  
11 compensation;
- 12 c. the County Retirees decided to forego other benefits, while employed, in  
13 lieu of retiree health care; and
- 14 d. the County Retirees have performed their duties under these contracts.

15 107. By passing and implementing the \$500 flat contribution for retirees *and*  
16 employees, and the \$600 monthly benefit for employees *only*, the County has breached its  
17 obligations to the County Retirees under the "tie agreement."

18 108. County Retirees have been, and will increasingly continue to be, damaged  
19 monetarily. They also risk losing their health care benefits and/or forgoing making other  
20 necessary payments in order to pay for their health care benefits.

21 109. The County's actions were neither reasonable nor necessary to fulfilling an  
22 important public purpose and were not, therefore, justifiable.

23 110. Under Article I, 7 of the California Constitution, the County may not take away  
24 this vested property right without compensating County retirees for the value that it represents.

25 **TWELFTH CLAIM FOR RELIEF**  
26 (Due Process – U.S. Constitution & 42 U.S.C. § 1983)

27 111. Plaintiff incorporates by reference paragraphs 1-23, 35, and 39-42 set forth above  
28 as though fully set forth herein.

1           112.       Retiree health care benefits were an integral part of the total compensation  
2 received by County Retirees, including members of SCARE, in exchange for the performance of  
3 their services as active employees of the County. County Retirees have performed their duties  
4 under their contracts with the County.

5           113.       County Retirees have a vested property right in the County’s payment of all, or  
6 substantially all, of the cost of the health care benefits for them and their dependents, because,  
7 inter alia:

- 8                   a. the County promised to provide those benefits after retirement in exchange
- 9                   for services the County Retirees rendered during their active employment;
- 10                  b. the County Retirees reasonably, detrimentally relied on the County’s
- 11                   promise to pay the full cost of their health care benefits as part of their total
- 12                   compensation;
- 13                  c. the County Retirees decided to forego other benefits, while employed, in
- 14                   lieu of retiree health care benefits; and
- 15                  d. the County Retirees have performed their duties under these contracts.

16           114.       By passing and implementing the \$500 flat contribution for Retirees, the County  
17 has breached its contracts with the Retirees.

18           115.       County Retirees have been, and will increasingly continue to be, damaged  
19 monetarily. They also risk losing their health care benefits and/or forgoing making other  
20 necessary payments in order to pay for their health care benefits.

21           116.       The County’s actions were neither reasonable nor necessary to fulfilling an  
22 important public purpose and were not, therefore, justifiable.

23           117.       Under the Fifth and Fourteenth Amendments to the United States Constitution, and  
24 42 U.S.C. § 1983, the County may not take away this vested property right without compensating  
25 County Retirees for the value that it represents.

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**THIRTEENTH CLAIM FOR RELIEF**

(Alternative Due Process – U.S. Constitution & 42 U.S.C. § 1983)

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3 118. Plaintiff incorporates by reference paragraphs 1-14 and 24-42 set forth above as  
4 though fully set forth herein.

5 119. Retiree health care benefits were an integral part of the total compensation  
6 received by County Retirees, including members of SCARE, in exchange for the performance of  
7 their services as active employees of the County. County Retirees have performed their duties  
8 under their contracts with the County.

9 120. County Retirees have a vested property right pursuant to the tie arrangement in the  
10 County’s provision of the same health care benefits, and in payment by the County of the same  
11 portion of the cost as the County provides to active management employees, because, inter alia:

- 12 a. the County promised to provide those benefits after retirement in exchange  
13 for services the County Retirees rendered during their active employment;  
14 b. the County Retirees reasonably, detrimentally relied on the County’s  
15 promise to pay the full cost of their health care premiums as part of their  
16 total compensation;  
17 c. the County Retirees decided to forego other benefits, while employed, in  
18 lieu of retiree health care benefits; and  
19 d. the County Retirees have performed their duties under these contracts.

20 121. By passing implementing the \$500 flat contribution for retirees *and* employees,  
21 and the \$600 monthly benefit for employees *only*, the County has breached its obligations to the  
22 County Retirees under the “tie agreement.”

23 122. County Retirees have been, and will increasingly continue to be, damaged  
24 monetarily. They also risk losing their health care benefits and/or forgoing making other  
25 necessary payments in order to pay for their health care benefits.

26 123. The County’s actions were neither reasonable nor necessary to fulfilling an  
27 important public purpose and were not, therefore, justifiable.  
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1 124. Under the Fifth and Fourteenth Amendments to the United States Constitution, and  
2 42 U.S.C. § 1983, the County may not take away this vested property right without compensating  
3 County Retirees for the value that it represents.

4 **PRAYER**

5 WHEREFORE, Plaintiff respectfully requests:

- 6 1. On the First Claim for Relief:
  - 7 a. That this Court declare that the County Retirees have a contractual right to, and
  - 8 vested property interest in, the County’s system of providing health care benefits,
  - 9 which includes the obligation to pay all, or substantially all, of the cost of health
  - 10 care benefits for Retirees and their dependents, and includes the implicit subsidy.
  - 11 b. That this Court declare that the County’s recent changes to the retiree health care
  - 12 benefit system, including, but not limited to, the changes formalized by the County
  - 13 Resolution of August 19, 2008, breached the contract the County has with the
  - 14 Retirees and deprived the Retirees of a vested property interest.
  - 15 c. That this Court issues an injunction ordering the County to reinstate its health care
  - 16 benefit system for Retirees that existed prior to the County’s implementation of the
  - 17 flat \$500 contribution for retiree health care benefits.
  - 18 d. That this Court issue an injunction ordering the County to do the following:
    - 19 i. Review its records of health care benefit premium costs and payments;
    - 20 ii. Ascertain the difference between what the County has paid toward
    - 21 Retirees’ premium costs since the \$500 flat contribution system was
    - 22 implemented and what the County would have paid toward Retiree
    - 23 premium costs had the \$500 flat contribution system not been
    - 24 implemented; and
    - 25 iii. Compensate the Retirees for this amount with interest.
  - 26 e. That this Court award reasonable attorney’s fees and costs.
  - 27 f. That this Court award such additional or alternative relief as may be just, proper
  - 28 and equitable.



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2. On the Second Claim for Relief:

- a. That this Court declare that the County Retirees have a contractual right to, and vested property interest in, the County’s system of providing health care benefits, which includes the obligation to pay the same portion of the health care benefit cost for Retirees as the County pays for active management employees, and includes the implicit subsidy.
- b. That this Court declare that the County’s recent changes to the retiree health care benefit system, including, but not limited to, the changes formalized by the County Resolutions of August 19, 2008 and September 16, 2008, breached the contract the County has with the Retirees and deprived the Retirees of a vested property interest.
- c. That this Court issue an injunction ordering the County to either reinstate its health care benefit system for Retirees that existed prior to the County’s implementation of the flat \$500 contribution for retiree health care benefits, or extend the \$600 monthly benefit to Retirees, retroactive to the date it was effective for active management employees.
- d. That this Court issue an injunction ordering the County to do the following:
  - i. Review its records of health care benefit premium costs and payments;
  - ii. Ascertain the difference between what the County has paid toward Retirees’ premium costs since the \$500 flat contribution system was implemented and the \$1100 a month contribution the County provides to active management employees; and
  - iii. Compensate the Retirees for this amount with interest.
- e. That this Court award reasonable attorney’s fees and costs.
- f. That this Court award such additional or alternative relief as may be just, proper and equitable.

3. On the Third Claim for Relief:

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- a. That this Court declare that the County Retirees have a contractual right to, and vested property interest in, the County’s system of providing health care benefits, which includes the obligation to pay the same portion of the health care benefit cost for Retirees as the County pays for active management employees, and includes the implicit subsidy.
- b. That this Court declare that the County’s recent changes to the retiree health care benefit system, including, but not limited to, the changes formalized by the County Resolutions of August 19, 2008 and September 16, 2008, breached the contract the County has with the Retirees, deprived the Retirees of a vested property interest, and breached the covenant of good faith and fair dealing in the contract between the Retirees and the County.
- c. That this Court issue an injunction ordering the County to either reinstate its health care benefit system for Retirees that existed prior to the County’s implementation of the flat \$500 contribution for retiree health care benefits, or extend the \$600 monthly benefit to Retirees, retroactive to the date it was effective for active management employees.
- d. That this Court issue an injunction ordering the County to do the following:
  - i. Review its records of health care benefit premium costs and payments;
  - ii. Ascertain the difference between what the County has paid toward Retirees’ premium costs since the \$500 flat contribution system was implemented and the \$1100 a month contribution the County provides to active management employees; and
  - iii. Compensate the Retirees for this amount with interest.
- e. That this Court award reasonable attorney’s fees and costs.
- f. That this Court award such additional or alternative relief as may be just, proper and equitable.

4. On the Fourth and Sixth Claims for Relief:

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- a. That this Court declare that the County Retirees have a contractual and Constitutional right to, and vested property interest in, the County’s system of providing health care benefits, which includes the obligation to pay all, or substantially all, of the cost of health care benefits for Retirees and their dependents, and includes the implicit subsidy.
- b. That this Court declare that the County’s recent changes to the retiree health care benefit system, including, but not limited to, the changes formalized by the County Resolution of August 19, 2008, breached the contract the County has with the Retirees, deprived the Retirees of a vested property interest, and impaired the County’s contractual obligations to the Retirees under the United States and California Constitutions.
- c. That this Court issue an injunction ordering the County to reinstate its health care benefit system for Retirees that existed prior to the County’s implementation of the flat \$500 contribution for retiree health care benefits.
- d. That this Court issue an injunction ordering the County to do the following:
  - i. Review its records of health benefit premium costs and payments;
  - ii. Ascertain the difference between what the County has paid toward Retirees’ premium costs since the \$500 flat contribution system was implemented and what the County would have paid toward Retiree premium costs had the \$500 flat contribution system not been implemented; and
  - iii. Compensate the Retirees for this amount with interest.
- e. That this Court award reasonable attorney’s fees and costs.
- f. That this Court award such additional or alternative relief as may be just, proper and equitable.

5. On the Fifth and Seventh Claims for Relief:

- a. That this Court declare that the County Retirees have a contractual and Constitutional right to, and vested property interest in, the County’s system of

1 providing health care benefits, which includes the obligation to pay the same  
2 portion of the health care benefit cost for Retirees as the County pays for active  
3 management employees, and includes the implicit subsidy.

4 b. That this Court declare that the County’s recent changes to the retiree health care  
5 benefit system, including, but not limited to, the changes formalized by the County  
6 Resolutions of August 19, 2008 and September 16, 2008, breached the contract the  
7 County has with the Retirees, deprived the Retirees of a vested property interest,  
8 and impaired the County’s contractual obligations to the Retirees under the United  
9 States and California Constitutions.

10 c. That this Court issue an injunction ordering the County to either reinstate its health  
11 care benefit system for Retirees that existed prior to the County’s implementation  
12 of the flat \$500 contribution for retiree health care benefits, or extend the \$600  
13 monthly benefit to Retirees, retroactive to the date it was effective for active  
14 management employees.

15 d. That this Court issue an injunction ordering the County to do the following:  
16 i. Review its records of health care benefit premium costs and payments;  
17 ii. Ascertain the difference between what the County has paid toward  
18 Retirees’ premium costs since the \$500 flat contribution system was  
19 implemented and the \$1100 a month contribution the County provides to  
20 active management employees; and  
21 iii. Compensate the Retirees for this amount with interest.

22 e. That this Court award reasonable attorney’s fees and costs.

23 f. That this Court award such additional or alternative relief as may be just, proper  
24 and equitable.

25 6. On the Eighth Claim for Relief:

26 a. That this Court declare that the County Retirees have reasonably and detrimentally  
27 relied on the County’s promises to provide a system of providing health care  
28 benefits, which included the obligation to pay all, or substantially all, of the cost of

1 the health care benefits for Retirees and their dependents, and included the implicit  
2 subsidy, and were induced by those promises to, among other things, accept  
3 employment, remain employed, and forgo other employment benefits.

4 b. That this Court declare that the County is estopped from carrying out,  
5 implementing, or continuing to implement its recent changes to the retiree health  
6 care benefit system, including, but not limited to, the changes formalized by the  
7 County Resolution of August 19, 2008.

8 c. That this Court issue an injunction ordering the County to reinstate its health care  
9 benefit system for Retirees that existed prior to the County’s implementation of the  
10 flat \$500 contribution for retiree health care benefits.

11 d. That this Court issue an injunction ordering the County to do the following:  
12 i. Review its records of health care benefit premium costs and payments;  
13 ii. Ascertain the difference between what the County has paid toward  
14 Retirees’ premium costs since the \$500 flat contribution system was  
15 implemented and what the County would have paid toward Retiree  
16 premium costs had the \$500 flat contribution system not been  
17 implemented; and  
18 iii. Compensate the Retirees for this amount with interest.

19 e. That this Court award reasonable attorney’s fees and costs.

20 f. That this Court award such additional or alternative relief as may be just, proper  
21 and equitable.

22 7. On the Ninth Claim for Relief:

23 a. That this Court declare that the County Retirees have reasonably and detrimentally  
24 relied on the County’s promises to provide a system of providing health care  
25 benefits, which included the obligation to pay the same portion of the health care  
26 benefit cost for Retirees as the County pays for active management employees, and  
27 includes the implicit subsidy, and were induced to, among other things, accept  
28 employment, remain employed, and forgo other employment benefits.

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- b. That this Court declare that the County is estopped from carrying out, implementing, or continuing to implement its recent changes to the retiree health care benefit system, including, but not limited to, the changes formalized by the County Resolutions of August 19, 2008 and September 16, 2008.
- c. That this Court issue an injunction ordering the County to either reinstate its health care benefit system for Retirees that existed prior to the County’s implementation of the flat \$500 contribution for retiree health care benefits, or extend the \$600 monthly benefit to Retirees, retroactive to the date it was effective for active management employees.
- d. That this Court issue an injunction ordering the County to do the following:
  - i. Review its records of health care benefit premium costs and payments;
  - ii. Ascertain the difference between what the County has paid toward Retirees’ premium costs since the \$500 flat contribution system was implemented and the \$1100 a month contribution the County provides to active management employees; and
  - iii. Compensate the Retirees for this amount with interest.
- e. That this Court award reasonable attorney’s fees and costs.
- f. That this Court award such additional or alternative relief as may be just, proper and equitable.

8. On the Tenth and Twelfth Claims for Relief:

- a. That this Court declare that the County Retirees have a contractual and Constitutional right to, and vested property interest in, the County’s system of providing health care benefits, which includes the obligation to pay all, or substantially all, of the cost of health care benefits for Retirees and their dependents, and includes the implicit subsidy.
- b. That this Court declare that the County’s recent changes to the retiree health care benefit system, including, but not limited to, the changes formalized by the County Resolution of August 19, 2008, breached the contract the County has with the

1 Retirees, deprived the Retirees of a vested and Constitutionally-protected property  
2 interest, and denied the Retirees due process under the United States and  
3 California Constitutions.

4 c. That this Court issue an injunction ordering the County to reinstate its health care  
5 benefit system for Retirees that existed prior to the County’s implementation of the  
6 flat \$500 contribution for retiree health care benefits.

- 7 d. That this Court issue an injunction ordering the County to do the following:
  - 8 i. Review its records of health care benefit premium costs and payments;
  - 9 ii. Ascertain the difference between what the County has paid toward  
10 Retirees’ premium costs since the \$500 flat contribution system was  
11 implemented and what the County would have paid toward Retiree  
12 premium costs had the \$500 flat contribution system not been  
13 implemented; and
  - 14 iii. Compensate the Retirees for this amount with interest.

15 e. That this Court award reasonable attorney’s fees and costs.

16 f. That this Court award such additional or alternative relief as may be just, proper  
17 and equitable.

18 9. On the Eleventh and Thirteenth Claims for Relief:

19 a. That this Court declare that the County Retirees have a contractual and  
20 Constitutional right to, and vested property interest in, the County’s system of  
21 providing health care benefits, which includes the obligation to pay the same  
22 portion of the health care benefit cost for Retirees as the County pays for active  
23 management employees, and includes the implicit subsidy.

24 b. That this Court declare that the County’s recent changes to the retiree health care  
25 benefit system, including, but not limited to, the changes formalized by the County  
26 Resolutions of August 19, 2008 and September 16, 2008, breached the contract the  
27 County has with the Retirees, deprived the Retirees of a vested and  
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Constitutionally-protected property interest, and denied the Retirees due process under the United States and California Constitutions.

- c. That this Court issue an injunction ordering the County to either reinstate its health care benefit system for Retirees that existed prior to the County’s implementation of the flat \$500 contribution for retiree health care benefits, or extend the \$600 monthly benefit to Retirees, retroactive to the date it was effective for active management employees.
- d. That this Court issue an injunction ordering the County to do the following:
  - i. Review its records of health care benefit premium costs and payments;
  - ii. Ascertain the difference between what the County has paid toward Retirees’ premium costs since the \$500 flat contribution system was implemented and the \$1100 a month contribution the County provides to active management employees; and
  - iii. Compensate the Retirees for this amount with interest.
- e. That this Court award reasonable attorney’s fees and costs.
- f. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully Submitted,

Dated: July 6, 2010

LEWIS, FEINBERG, LEE,  
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By:           /s/ Jeffrey Lewis            
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