C. Robert Boldt (S.B.N. 180136)
rboldt@kirkland.com
Mark T. Cramer (S.B.N. 198952)
mcramer@kirkland.com
Elizabeth M. Kim (S.B.N. 239978)
ekim@kirkland.com
KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, California 90017-5800
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Robert R. Gasaway (*Pro Hac Vice*)
rgasaway@kirkland.com
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Attorneys for Plaintiff
COUNTY OF ORANGE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COUNTY OF ORANGE, CALIFORNIA, a political subdivision of the State of California, Plaintiff, vs. ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS and BOARD OF RETIREMENT OF THE ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM, a local public entity, Defendants. _______________ ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS, Cross-Complainant	Case No. BC 389758 Assigned For All Purposes To: The Honorable Helen I. Bendix **AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF** Complaint Filed: February 1, 2008 Trial Date: None Set

NATURE OF ACTION

1. It has come to the attention of the current Board of Supervisors for the County of Orange that the adoption and implementation of a resolution approved by a prior Board violates the California Constitution.

2. In December 2001, on the recommendation of then-Sheriff Michael S. Carona, the prior Board purported to commit the County to a $100 million long-term liability (that has since grown to approximately $187 million) for extra pension benefits for services rendered years earlier, and in some cases decades earlier, by public safety personnel such as deputy sheriffs, as well as related County managerial and executive personnel. The Board awarded these extra benefits in 2001 notwithstanding that the employees receiving the benefits had already been paid in full for their services in accordance with the terms of their contracts. Unless corrected by this Court, the burden of this hundred-million-dollar giveaway will continue to be borne by Orange County taxpayers far into the future.

3. Consistent with the oaths they have sworn to uphold the California Constitution, the current Board of Supervisors has authorized this litigation, which is now brought to correct two separate, independent constitutional violations. ***First***, the County's citizens were never given the opportunity to vote to approve the 2001 pension benefit giveaway. The prior Board's award of additional pension benefits to be paid out into the indefinite future using future tax revenues therefore violated the California Constitution's limitations on incurring County debt to be funded by future-year taxes. ***Second***, the prior Board's action amounted to an award of extra compensation for work already completed on the public's behalf. As such, it violated the California Constitution's limitations on granting extra pay for completed work to incumbent public employees.

4. In accordance with the Board of Supervisors' responsibilities to uphold the law and protect the interests of County taxpayers, this case is brought for declaratory and injunctive relief. It is being brought on the County's behalf in order to obtain judicial recognition and correction of both constitutional violations described above.

PARTIES

A. Plaintiff

5. Plaintiff, the County of Orange, California, is a political subdivision of the State of California located in southern California with 34 incorporated cities, stretching from La Habra to San Clemente. The County, which was incorporated in 1889, covers 798.3 square miles and has a current population of over 3 million residents.

6. The Board of Supervisors of Orange County (the "Board of Supervisors") oversees the management of the County government. The Board's offices are located in the Hall of Administration at Santa Ana Boulevard and Broadway in Santa Ana. Its mailing address is 333 W. Santa Ana Boulevard, Santa Ana, California 92701.

7. The Board of Supervisors is composed of five elected officials representing the five Supervisorial Districts of Orange County. Each district elects a Supervisor to a four-year term, and each Supervisor is permitted to serve for up to two full terms. The current Board of Supervisors includes: Janet Nguyen (First District), John M.W. Moorlach (Second District), Bill Campbell (Third District), Chris Norby (Fourth District), and Patricia C. Bates (Fifth District). On January 8, 2008, Supervisor John M.W. Moorlach was elected the Chairman of the Board of Supervisors; on that same date, Supervisor Patricia C. Bates was elected the Vice Chair of the Board of Supervisors.

8. The Board of Supervisors' overarching mission is to make Orange County a safe, healthy, and fulfilling place to live, work, and play, today and for generations to come, by providing outstanding, cost-effective regional public services. As authorized under California law, the Board of Supervisors functions as both a legislative and executive body. Its legislative duties include adopting ordinances, resolutions, and minutes within limits prescribed by California law. Its executive duties include establishing policy, approving the annual budget, approving contracts for projects and services, and conducting public hearings on land-use and other matters.

9. Supervisors Nguyen, Moorlach, Campbell, Norby, and Bates have all sworn an oath to uphold the California Constitution.

B. Defendant Board of Retirement of the Orange County Employees Retirement System

10. Defendant Board of Retirement of the Orange County Employees Retirement System (the "Retirement Board") is the nine-member governing body of the Orange County Employees Retirement System ("OCERS"). OCERS is a public entity that administers the Orange County retirement system. *See* Cal. Gov't Code § 31550. The "members" of OCERS are persons who are in line to be paid benefits by OCERS, typically upon retirement, and are employees of the County and certain public districts situated within Orange County that have elected to participate in OCERS. OCERS offices are located at 2223 Wellington Avenue, Santa Ana, California 92701.

11. At all times relevant to this action, OCERS was and is a public retirement system operating under the provisions of the County Employees Retirement Law of 1937 ("CERL"), as codified in Government Code section 31450 *et seq.* OCERS is an independent legal entity separate and apart from Orange County and its government.

12. OCERS has made public statements regarding the County's questions regarding the constitutionality of the benefit award at issue in this case. Specifically referring to the retroactive benefits now being challenged in this lawsuit, OCERS has stated publicly that it will continue "to pay statutory benefits unless ordered otherwise by a court with due authority or there is a relevant change in the state law relating to the payment of benefits." *See* OCERS Website ("3%@50" Safety Members Information, available at http://www.ocers.org/latestnews/safetymemberinformation.htm).

C. Defendant Association of Orange County Deputy Sheriffs

13. Defendant Association of Orange County Deputy Sheriffs ("AOCDS") is the exclusive representative body of the 1,800 fully-sworn deputies, investigators, and sergeants of the Orange County Sheriff's Department and the District Attorney's Bureau of Investigations. Its offices are located at 1314 West 5th Street, Santa Ana, California 92703.

14. According to its by-laws, AOCDS has five classes of members: Regular Members, Associate Members, Retired Members, Honorary Members, and Affiliate Members. (A copy of excerpts from By-Laws of Association of Orange County Deputy Sheriffs is attached to this

Complaint as Exhibit J.)

15. Although the injunctive relief the County seeks in this case would be directed solely against OCERS, the case's outcome will also affect active and retired County deputy sheriffs, and other current and former County safety employees, including employees in the County's management and executive ranks, as well as County taxpayers.

16. Under its bylaws, AOCDS is positioned to defend, motivated to defend, and capable of defending the interests of all of the individuals whose benefits could be affected by this litigation. AOCDS plainly is positioned to defend the interests of both active and retired County employees who are AOCDS members. Given its role in obtaining retroactive benefits from the County via collective bargaining, AOCDS is also positioned to defend, motivated to defend, and capable of defending the interests of those persons, such as beneficiaries, benefits designees, benefits recipients and ex-spouses, who, although not themselves active or retired County employees, nonetheless enjoy benefits as a result of past service in County employment by AOCDS members.

17. In addition, AOCDS is also positioned to defend the interests of current and retired managerial and executive employees who have obtained retroactive benefits from the County, and whose retroactive benefits are being challenged by this suit. Although few, if any, of these persons are AOCDS members at this time, nevertheless, because the County is challenging the constitutional validity of these employees' retroactive benefit awards on the same constitutional grounds as the retroactive benefits awarded to AOCDS members, AOCDS is positioned to defend, motivated to defend, and capable of defending the interests in this suit of these non-AOCDS members.

18. In short, AOCDS's interest in retaining the enhanced benefits provided by Resolution No. 01-410 is aligned with all persons who have claimed or received retroactive benefits from Resolution No. 01-410's adoption and implementation, regardless of whether the particular individual has claimed or received benefits by virtue of collective bargaining, by operation of law, by being designated a benefits recipient by an active or former County employee, by a domestic relations order, or by some other means. Moreover, in a previous submission in this case, AOCDS has stated its willingness to defend the interests of all of these persons.

JURISDICTION

19. Section 1085 of the California Code of Civil Procedure provides for review in this Court of actions by governmental agencies and officers to determine whether those actions are inconsistent with or otherwise contrary to law.

20. Under section 1060 of the California Code of Civil Procedure, this Court may make a binding declaration of the parties' rights and duties, and the declaration shall have the force of a final judgment. In addition, sections 525 and 526 of the California Code of Civil Procedure provide that the Court may award an injunction when it appears the plaintiff is entitled to the relief sought.

21. Accordingly, and based on the facts stated in this Complaint, this Court has jurisdiction to grant declaratory and injunctive relief, and authority to issue a writ of mandate on the causes of action presented here.

VENUE

22. Venue was transferred to this Court from Orange County Superior Court on April 23, 2008. Venue is also proper in this Court under section 394 of the California Code of Civil Procedure.

RELEVANT CONSTITUTIONAL PROVISIONS

23. The California Constitution, like the federal Constitution, is designed to enshrine foundational and enduring principles of transparent and accountable governance.

24. California's Constitution includes public finance provisions directed at improving transparency in democratic government and, hence, accountability to the people. Two constitutional provisions are most relevant to this case: (1) a prohibition on unapproved debt (the "debt-limit provision"); and (2) a prohibition against granting extra compensation to current public employees for service those employees have previously rendered (the "extra compensation provision").

California's Constitution Prohibits Burdening Future Taxpayers With Unapproved Debt

25. California's Constitution includes a "balanced budget" requirement designed to impose fiscal discipline on public officials by preventing them from incurring debts today at the expense of taxpayers tomorrow.

26. Article XVI, Section 18(a) of the Constitution requires a two-thirds vote of the electorate before a County may incur certain liabilities. Article XVI, Section 18(a) states in relevant part: "[n]o County … shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose."

27. Article XVI, Section 1 of the Constitution imposes a related debt limitation on the Legislature. Article XVI, Section 1 provides, with certain specified exceptions, that the "Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000) …."

28. The Constitution's drafters designed the local debt-limit provision of Article XVI, Section 18(a) to put significant, legally enforceable limitations on the practice of local government incurring liabilities in excess of current-year income and revenues. The provision therefore prohibits counties and other subunits of local government from creating a floating indebtedness that has to be repaid from the income and revenues of future years. Consistent with this goal, the debt-limit provision establishes the "pay as you go" principle as a cardinal rule of municipal finance.

29. The constitutional debt-limit provision serves two critical functions. ***First***, the provision enhances political transparency and accountability by ensuring that the actual cost of government in a given year is closely related to tax revenue available for that same year. This alignment of current taxes and current expenditures means County citizens are able to make informed judgments on the performance of their government officials simply by comparing the taxes they pay to the public services they receive in return.

30. ***Second***, and of equal importance, in a form of government that strives to be of, by, and for the people, the constitutional debt-limit provision gives "the people" the ultimate power to approve or reject projects requiring long-term funding from future-year taxes. This requirement of voter approval by a super-majority protects against insider dealing to benefit favored constituencies. Requiring County government to gain voter approval — after explaining why a given expenditure

justifies assuming a burden on taxes to be collected in future years — also facilitates governmental transparency and accountability. Without the constitutional debt-limit provision, public officials might in many cases impose long-term debt burdens on local citizens without ever truly facing the voters, simply by imposing burdens to be funded by tax collections set to occur long after the responsible officials leave office.

31. The practical functioning of the debt-limit provision is straightforward. As a general rule, subject to certain exceptions, each year's income and revenue must pay for expenditures made and liabilities incurred during that same year. As a general matter, then, no indebtedness incurred in one year can be paid out of the revenue of any future year, unless two-thirds of the voters cast their ballots to approve imposing that indebtedness on future taxpayers.

32. For constitutional purposes under the debt-limit provisions, the amount of an indebtedness or liability is measured at the time the debt is incurred. A debt or liability therefore violates the debt-limit provision if the amount of the liability incurred exceeds the amount of unappropriated revenues available for the year in which the debt or liability is incurred.

33. Notwithstanding the debt limit, local government officials have the ability to choose between competing expenditures that fall within available income and revenue for a given year. But where a given liability would exceed the available unappropriated revenues for that year, thus burdening future taxpayers, local government officials must reallocate their expenditures of current tax revenues in order to meet that liability — or, alternatively, obtain the support of two-thirds of the electorate.

34. The requirements of the debt-limit provision are clear and the language admits of only one interpretation: the provision generally confines municipal expenditures for each year to the income and revenue of that year, except where the voters assent by a two-thirds majority.

California's Constitution Prohibits Granting Extra Compensation To Favored Public Employees

35. California's Constitution includes provisions prohibiting government from granting "extra compensation" to any "public employee" for service that already has been rendered.

36. Article XI, Section 10(a) of the Constitution provides, in relevant part, that a "local

government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part."

37. Similarly, Article IV, Section 17 of the California Constitution makes clear that the state legislature has no power to nullify this constitutional limitation by authorizing extra compensation that would otherwise be prohibited: "The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part …."

38. A public officer may only collect and retain such compensation as was specifically provided by pre-existing law. Payments are considered "extra compensation" if the payments are not specifically authorized by a statute, rule, or contract already in effect at the time the work is performed or the benefits are earned. Statutes or contracts relating to such compensation are strictly construed in favor of the government.

39. As interpreted by the California courts, the constitutional prohibition of extra compensation does not bar all increases in compensation for public service. Most importantly, the prohibition on extra compensation does not prevent government from providing enhanced compensation or extra benefits to current employees for services to be rendered in future years. As interpreted by the Courts, Article XI, Section 10(a) also does not bar local governments from increasing pension benefits payable to *former* public employees, including former employees who are retired and drawing a public pension. But what the Constitution does prohibit is retroactively increasing benefits to *current* employees for *past* services.

40. This distinction — between, on one hand, respecting and preserving the rights of former employees and, on the other hand, preventing the provision of retroactive benefits to current employees — is of critical importance. The California Constitution thus quite understandably distinguishes between a current "public officer, public employee, or contractor" and a person who formerly may have held such a status. Most importantly, there are much greater risks that *current*

officers, employees, and contractors will be able to bring pressures to bear (such as threatened work slowdowns or stoppages or other instances of withholding of services) in order to encourage local government officials to provide retroactive, unearned benefits and other forms of favored treatment. To the County's knowledge, the California courts have never approved a retroactive giveaway to incumbent public employees.

GENERAL ALLEGATIONS

Orange County's Pension Benefit System

41. The County Employees Retirement Law ("CERL") regulates the manner in which Orange County provides retirement benefits to its employees. *See* Gov't Code § 31450 *et seq*.

42. The Orange County Employees Retirement System ("OCERS") is an independent entity that administers the County's retirement system. *See* Gov't Code § 31550. Most County employees become members of OCERS in the first month after they begin employment.

43. As a general matter, the County has the discretion to determine the benefit levels to be provided to the members of its retirement system. Each of the approved benefit levels under the CERL is set forth in a separate California Government Code section that includes a list of retirement ages with corresponding fractions, and describes how an employee's retirement allowance is to be calculated. *See* Gov't Code §§ 31676.1-31676.19. A retiring employee's pension benefit under CERL depends on the statutory fraction amount, along with the employee's retirement age, years of qualified service, and the relevant level of annual compensation to be used in computing the pension. *Id.*

44. Retirement benefits are generally funded in the year they are earned through a mix of County and employee contributions to the retirement fund. *See* Gov't Code § 31453.5. As a general matter, the County is obliged to fund retirement benefits earned in a given year through some combination of employer and employee contributions made during that same year. Section 31580 of CERL requires the County to "appropriate annually" the funds "necessary to defray the entire expense of administration of the retirement system." Gov't Code § 31580.

45. Normal cost contributions are set on an actuarial basis at least every three years to

cover the anticipated costs of pension benefits provided to County employees. *See* Gov't Code § 31453. The purpose of actuarially determining normal cost contributions on a periodic basis is to ensure that benefits are fully funded.

46. Because State law generally requires that pension benefits be funded in the year in which they are earned, unfunded liabilities should ordinarily occur due to variances between actual events and actuarial and other assumptions and predictions concerning factors that underpin the determination of the amount of money that employers and employees need to contribute in order to meet pension obligations. For instance, unfunded actuarial liabilities might occur due to inaccurate assumptions about retirement patterns or predictions as to investment returns.

47. In contrast, as described below in more detail, the genesis of the unfunded liabilities at issue in this case was a decision by a former Board of Supervisors to incur a large, additional, discretionary, multi-year liability without seeking, let alone obtaining, voter approval.

48. If an unfunded liability does occur, the County is obliged to close the funding gap by making additional contributions to OCERS in addition to the "normal contributions" to provide monies to fund benefits earned in current years of service. *See* Gov't Code § 31580. These unfunded liabilities must, by law, be eliminated by extra contributions that "amortize" the liabilities over "a period not to exceed 30 years." Gov't Code § 31453.5. In fact, OCERS has chosen an amortization period of 30 years with respect to the "3% at 50" pension benefit enhancement.

49. In short, unfunded liabilities are generally supposed to result only from external forces beyond the control of OCERS, such as unexpected changes in patterns of deaths, retirements, investment returns, and the like. Unfunded liabilities generally are *not* supposed to arise from political decisions.

50. To the extent that pension obligations are lawfully incurred, they become legally binding obligations of the County. Section 31586 of CERL states that any and "[a]ll payments of the county or of any district into the retirement fund … are an obligation of the county." Gov't Code § 31586. In addition, section 31584 of CERL provides that if the Board of Supervisors "fails or neglects to make the appropriations, the county auditor shall transfer from any money available in

any fund in the county treasury the sums" necessary to make up the shortfall. Gov't Code § 31584 (if the Board of Supervisors fails to make the appropriations, the county auditor must transfer the money from the county treasury).

51. Accordingly, all lawfully incurred pension obligations are subject to being funded through County contributions to OCERS made, if necessary, by operation of law and without any need for an appropriation or other affirmative act by the County Board of Supervisors.

Sheriff Carona Recommends Additional Pension Benefits

52. As of December 31, 2000, the Orange County Retirement System was fully funded. In fact, it was funded at approximately 103.74% and 94.69% for the years ending December 31, 2000, and 2001, respectively. (A copy of excerpts from OCERS' Comprehensive Annual Financial Report for the year ended December 31, 2002, is attached to this Complaint as Exhibit A.)

53. At that time, there was no uncertainty as to the rate at which pension benefits accrued for work performed. To the contrary, the rate at which benefits accrued was defined by statute. *See* Gov't Code § 31664.

54. Members of the Association of Orange County Deputy Sheriffs ("AOCDS") and related County managerial and executive personnel therefore accepted and maintained employment with the understanding that they had accrued pension benefits for prior years of service, and would continue to accrue benefits for future years of service, at 2% of annual compensation, multiplied by the number of years of service for members who retired at age 50 or over ("2% at 50").

55. These understandings were confirmed by the then-applicable Memorandum of Understanding ("MOU") between the County and AOCDS, which had been executed in October 1999. (A copy of excerpts from the 1999 Memorandum of Understanding is attached to this Complaint as Exhibit B.)

56. The MOU made clear that members of AOCDS were entitled to receive a retirement allowance of 2% of annual compensation, multiplied by the number of years of service for members who retired at age 50 or over ("2% at 50"). Under the MOU, members made employee contributions into the retirement plan, and the County made contributions to the plan, based on the "2% at 50"

formula.

57. In May 2001, even though the current AOCDS MOU with the County was not due to expire until October 2002, AOCDS formally requested to reopen contract negotiations and proposed retroactively increasing retirement benefits using the 3% at 50 formula. In particular, then-Sheriff Carona recommended that the County implement a retroactive pension increase for the benefit of current deputy sheriffs.

Actuarial Analysis of Various Potential Enhancements to Pension Benefits

58. Around this same time, OCERS retained Towers Perrin, an actuarial consulting firm, to analyze different potential changes to the County's pension benefit system. *See, e.g.,* Towers Perrin, Results of AB 1937 Analysis (Nov. 2, 2000) (A copy of the Towers Perrin Report is attached as Exhibit C.)

59. In a report provided to OCERS, and at OCERS's direction, Towers Perrin considered various options for increasing pension benefits. For example, Towers Perrin calculated the change in employer and member contributions if the benefits under the "3% at 50" formula were adopted. The impact was analyzed by Towers Perrin in "two pieces: a two percent of pay benefit for service up to the effective date" of any change in benefits, and "a three percent of pay benefit for service on and after the effective date."

60. Similarly, Towers Perrin calculated the expected employer and member contributions in the event employee contributions to the retirement plan were increased enough to fund entirely "a three percent of pay benefit" for service both on and before the effective date.

61. In addition, Towers Perrin calculated the expected change in employer and member contributions based on "a 2.7 percent of pay benefit" with eligibility for retirement with full benefits at 55 years of age.

62. In short, as the former Board of Supervisors deliberated over whether to increase retirement benefits in late 2001, it had several options before it. The former Board of Supervisors could have adopted a benefit increase that did not include a retroactive component awarding increased benefits for years of service already completed; or it could have adopted a benefit increase

including a retroactive component that would be paid for exclusively by the members of AOCDS and related County managerial and executive personnel; or it could have adopted the smaller retroactive benefit increase associated with the "2.7 percent at 55" option and then paid the entire added cost of that benefit by an immediate appropriation to OCERS equal to the amount of the immediate benefit liability.

63. In the actual event, however, the former Board of Supervisors chose none of these alternatives. It chose instead another option altogether. This option, analyzed by the Towers Perrin report, involved increasing retirement benefits to 3% of annual compensation, multiplied by the number of total years of service for employees who retired at age 50 or over ("3% at 50"); applying that increase to past years of service; and imposing the cost of that increase almost exclusively on tax revenues to be paid by taxpayers in future years.

64. Specifically, the Towers Perrin report showed that a change in benefits to "3 percent at 50" applied retroactively to *all years of service* (both past and future), with the shortfall in contributions paid by the County, would create an increase in actuarial accrued liability of between approximately $99 million and $100 million, as compared to a decrease in liability of between $4 million and $6 million if the change in formula were applied only prospectively to future service.

65. The Towers Perrin report thus showed that the immediate additional liability to the County created by the benefit enhancement for past service would equal roughly $100 million.

Implementation of Resolution No. 01-410

66. On December 4, 2001, the then-current (now former) members of the Orange County Board of Supervisors voted to adopt Orange County Resolution No. 01-410 and took related actions. (A copy of Resolution No. 01-410 is attached as Exhibit D.) These actions took effect on June 28, 2002 — two days before the end of the County's 2002 fiscal year. Resolution No. 01-410 authorized the 3% at 50 pension formula, while the accompanying MOU between the County and AOCDS, approved at the same time, provided that AOCDS members would receive the increased retirement benefits for "all years of service." Resolution No. 01-410, together with steps taken in implementing it, thus purported to provide increased benefits for both past and future work

performed by AOCDS members.

67. Significantly, members of AOCDS who had already retired at the point in time when Resolution No. 01-410 became effective — that is, members who had retired on or before June 27, 2002 — did not receive any increase in pension benefits as a result of Resolution No. 01-410. Instead, the enhanced benefits provided by Resolution 01-410 were limited to the current and newly hired deputy sheriff members of AOCDS and certain other County employees, in particular, certain employees retiring on or after June 28, 2002.

68. Supervisors, managers, and non-represented employees with similar job classifications as active AOCDS members also received the enhanced and retroactive benefits as a result of the prior Board's implementation of Resolution 01-410. The benefit enhancement as to these employees occurred by operation of law under Government Code § 31678.3. Subdivision (c) of that statute provides as follows: "Any nonrepresented employees within similar job classifications as employees in a bargaining unit described in subdivision (b) or supervisors and managers thereof shall be subject to the same formula for the calculation of retirement benefits applicable to the employees in that bargaining unit." Gov't Code § 31678.3(c). Section 31678.3, which is applicable only in Orange County, *see* Gov't Code § 31678.3(g), was enacted by the California legislature at the urging of Orange County and its employee unions and took effect on June 27, 2002 — one day before Resolution No. 01-410 became effective.

69. Even though the enhanced "3% at 50" benefit purported to apply retroactively for "all years of service," as of Resolution No. 01-410's June 28, 2002 effective date, no employee arrears contributions have been collected by OCERS to cover the retroactive portion of the benefit increases provided for by Resolution No. 01-410's adoption and implementation.

70. In particular, Government Code § 31678.2(b) gives the County the authority (with AOCDS agreement) to require members of AOCDS "to pay all or part of the contributions by a member or employer, or both" to fund an enhanced benefit, including requiring members to make "arrears" contributions for pension benefits awarded for years of service already completed. Despite this statutory authorization, Resolution No. 01-410 did not provide for the collection of "arrears"

contributions from AOCDS members or other County employees in order to fund the retroactive portion of the "3% at 50" benefit. Instead, as further described below, the only additional employee contribution made in connection with the benefit increase was a comparatively small, short-term contribution that did not change its essential nature as a giveaway to incumbent employees.

71. Hence, at the moment it adopted Resolution No. 01-410, the County incurred an unfunded debt or liability. In particular, the adoption of Resolution No. 01-410 created a liability because it gave rise to an obligation that, if constitutionally incurred, was binding. Likewise, this liability was unfunded, because at the time the liability was incurred, the events giving rise to the retroactive portion of the benefit increase (past services performed by current County employees) had already occurred and no funds to offset the liability had been collected.

72. The County did not seek — much less obtain — voter approval for the debt or liability incurred as a result of the retroactive portion of the benefit increases authorized by Resolution No. 01-410.

73. Since Resolution No. 01-410's effective date, certain persons in addition to active AOCDS members, retired AOCDS members, and active and retired managerial and executive employees awarded retroactive benefits by operation of law under Government Code § 31678.3(c), have claimed or have been paid enhanced retroactive benefits by virtue of the adoption and implementation of Resolution No. 01-410. Some of these persons have claimed or have been paid benefits by virtue of having been designated as a benefits recipient by a County employee whose service was retroactively rewarded by Resolution No. 01-410's adoption and implementation. Others are ex-spouses of current or former County employees who, by virtue of a domestic relations order, have claimed or been paid a portion of the benefits Resolution No. 01-410 purported to authorize. These payments are also unconstitutional for reasons described herein.

The Effect of Implementing Resolution No. 01-410

74. Consultants retained by OCERS calculated the immediate debt or liability incurred due to the retroactive benefit increase to be in excess of $99 million. *See* Towers Perrin, Results of AB 1937 Analysis, at 12 (Nov. 2 2000); *see also* Letter from John E Bartel, Bartel Associates, LLC

to Robert J. Franz, County of Orange (July 20, 2007) (A copy of the July 20, 2007 letter is attached as Exhibit E.)

75. The County's unappropriated revenue for fiscal year 2002 — the year in which this debt or liability was incurred — totaled less than $99 million. *See* Statement of Revenues and Expenditures for Year Ended 6/30/2002 (showing that excess revenues over expenses were approximately $48.5 million, and that excess revenues after interdepartmental transfers were approximately $29 million).

76. The immediate debt or liability incurred due to the retroactive benefit increase thus exceeded the available unappropriated revenues for the year.

77. The cost of the retroactive portion of the "3% at 50" enhancement was not borne by beneficiaries of this enhancement. No individual employee was required to do, or forgo, anything that might provide offsetting benefits to the County in order to obtain the enhanced retroactive benefits. Instead, the retroactive portion of the benefit enhancement was based on past services already performed. In short, no adequate consideration was provided by AOCDS members and related County managerial and executive personnel for the retroactive portion of the "3% at 50" benefit enhancement.

78. An amended MOU, executed by the County and AOCDS in October 2001, did provide that the affected employees would contribute 1.78% of pay to reduce the cost to the County of implementing the "3% at 50" benefit increase. But this increase was effective only from June 28, 2002, through October 17, 2003, at which point the increased deferral was removed.

79. This comparatively small, short-term contribution did not change the essential nature of the benefit increase. In particular, these incremental, short-term contributions did not — and were not designed to — pay for the cost of the immediate $99 million liability incurred from the retroactive benefit enhancement. Instead, the contributions were intended to cover only part of the "short term cost of approximately 6 million dollars" associated with increased pay-outs. *See* AOCDS, Notice of 3% @ 50 Agreement (Oct. 17, 2001) (A copy of the AOCDS Notice is attached as Exhibit F.)

80. The financial condition of the County — and of OCERS — suffered significantly as the County took on additional unfunded pension liabilities. Although OCERS had been regarded as fully funded in June 2001, only four years later some observers were claiming that OCERS's future benefit costs greatly exceeded its abilities to meet those obligations, given its assets and expected revenues. *See*, *e.g.*, Martin Wisckol, *County could face $1 billion in unseen pension costs*, Orange County Register, June 17, 2005, *available at* http://www.ocregister.com/ocr/sections/breaking_news/article_564522.php.

Sheriff Carona Advocates In Favor Of Retroactive Benefits

81. In an effort to justify awarding retroactive benefits to be paid for by future taxpayers, then-Sheriff Carona contended that his department had the money to cover the enhanced benefits. *See The Facts of 3@ 50*, created by Michael S. Carona (Sept. 18, 2007) (A copy of this presentation is attached as Exhibit G.) In particular, then-Sheriff Carona pointed to certain short-term funding sources that could be tapped to offset the cost of the increased benefit in its initial months. *See id.* But these contentions overlooked that out-of-pocket payments attributable to the new liability were expected to grow over time as more deputies retired, and that no dedicated revenue stream or dedicated pot of money would be set aside to cover these retirement costs in future years. In short, nothing said at the time Resolution No. 01-410 was adopted addressed or contradicted the simple fact that the Resolution's adoption would impose a massive, unfunded, nine-figure liability on future taxpayers.

The Segal Report Commissioned By OCERS

82. Beginning October 18, 2003, and continuing through the present, the obligation of paying the unfunded liability has ultimately fallen, by operation of law under Government Code § 31584, *exclusively* on the County General Fund. The liability has been rolled into the overall liability of OCERS, which is amortized over a 30-year period.

83. In 2007, OCERS retained The Segal Company, an actuarial consulting firm, to evaluate "the liability impact of the past service portion (*i.e.*, pre June 28, 2002) of the 3% at 50 benefit improvement granted in 2002. *See* Letter from The Segal Company to Julie Wyne, OCERS

(Sept. 6, 2007) (A copy of the Segal letter is attached as Exhibit H.)

84. The Segal Company calculated that, as of October 1, 2007, the amount needed to "pay off" the cost of this retroactive past service benefit is approximately $187 million.

85. Unless enjoined by this Court from making further contributions to OCERS to pay for this unfunded liability, the County will continue paying for this unfunded liability using tax revenues assessed and received long after the initial adoption and implementation of Resolution No. 01-410. Unless an injunction issues, County Supervisors and taxpayers, none of whom had an opportunity to vote for or against Resolution No. 01-410, will be forced to fund these large payments to OCERS far into the future until the entire unfunded pension liability is satisfied.

Resolution No. 08-005

86. On January 29, 2008, the current Board of Supervisors voted to approve Resolution No. 08-005, reflecting its determination that the retroactive compensation awarded to and received by Orange County peace officers by virtue of Resolution No. 01-410's adoption and implementation was unconstitutional in 2001 and 2002, and remains unconstitutional today. (A copy of Resolution No. 08-005 is attached as Exhibit I.)

87. Resolution No. 08-005 stated that the investigation conducted on behalf of the current Board of Supervisors, "ascertained that the County of Orange has incurred a large additional liability that The Segal Company, actuarial consultants retained by the Orange County Employees Retirement System ("OCERS"), estimated as totaling some $187 million as of September 2007, as a result of the retroactive compensation awarded by Resolution No. 01-410."

88. Resolution No. 08-005 directed counsel for County (1) to file a complaint seeking declaratory and injunctive relief against OCERS as a single named defendant; (2) not object to the participation in this litigation by appropriate representatives of the affected active-duty and retired peace officers, including AOCDS; (3) recommend to the Court that the Court appoint a special master to provide added protection against the occurrence of computational or other errors in any re-computation of benefits to be prospectively paid by OCERS to those active-duty and retired peace officers affected by the litigation; and (4) not seek the repayment or any other recovery of monies

paid out by OCERS to retired peace officers and received by those peace officers prior to an initial judicial declaration of the constitutional invalidity of the aspects, elements, and effects of Resolution No. 01-410 described in this Complaint.

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief)

VIOLATION OF ARTICLE XVI, SECTION 18(a) OF THE CALIFORNIA <u>CONSTITUTION (THE CONSTITUTIONAL DEBT LIMIT)</u>

89. The County re-alleges and incorporates by reference the allegations of paragraphs 1 through 88 of this Complaint as if fully set forth herein.

90. The former Board of Supervisors' adoption and implementation of Resolution No. 01-410 violates the constitutional debt-limit provision set forth in Article XVI, Section 18 of the California Constitution.

91. Specifically, the retroactive portion of the "3% at 50" benefit enhancement created a purportedly binding obligation that, if constitutional, would be a legally enforceable debt or liability in excess of $99 million. This liability was incurred immediately — rather than at some point in the future — because the events giving rise to the retroactive portion of the benefit increase (past services performed by AOCDS members and related County managerial and executive personnel) had already occurred.

92. The County failed to obtain voter approval for this debt or liability, as required by Article XVI, Section 18 of the California Constitution.

93. The County failed to take the available actions necessary to prevent the retroactive benefit increase from burdening future taxpayers by failing to provide for funding the liability out of some combination of *current* County contributions to OCERS and future *employee*-only OCERS contributions.

94. To the contrary, the County has paid this debt or liability in whole or in part with tax revenues assessed and received in subsequent years. In these years, the obligation of paying the unfunded liability has fallen primarily or entirely on the County General Fund.

95. Although lacking voter approval, the immediate debt or liability due to the retroactive portion of the pension benefit increase arising from the adoption and implementation of Resolution No. 01-410 exceeded the available unappropriated funds for the year in which it was incurred.

96. The constitutional debt limit is currently being violated through the collection by OCERS of large amounts of County money needed to fund the retroactive portion of the benefit enhancement. To remedy this constitutional violation, the County seeks a declaratory judgment against OCERS and AOCDS that the retroactive portion of the "3% at 50" benefit enhancements described in this Complaint violate the constitutional debt limit and are therefore void.

97. The County further requests injunctive relief prohibiting OCERS from continuing to collect and distribute the County monies that are currently funding the retroactive portion of the enhanced benefit formula, as to active and retired County safety employees and their beneficiaries, designees, spouses, ex-spouses, and any other persons who may claim or enjoy benefits as a result of the retroactive benefit award described in this Complaint. In particular, the County is entitled to injunctive relief prohibiting OCERS (1) from collecting further County contributions to fund the retroactive portion of the benefit enhancements described in this Complaint, and (2) from commencing or continuing to pay the retroactive portion of the enhanced benefits described in this Complaint to retired County employees and their beneficiaries, designees, spouses, ex-spouses, and any other persons who purportedly received retroactive benefits described in this Complaint.

SECOND CAUSE OF ACTION

(Declaratory and Injunctive Relief)

VIOLATION OF ARTICLE XI, SECTION 10 OF THE CALIFORNIA CONSTITUTION
<u>(THE CONSTITUTIONAL PROHIBITION ON EXTRA COMPENSATION)</u>

98. The County re-alleges and incorporates by reference the allegations of paragraphs 1 through 97 of this Complaint as if fully set forth herein.

99. The former Board of Supervisors' adoption and implementation of Resolution No. 01-410 violates the constitutional prohibition on extra compensation set forth in Article XI, Section 10 of the California Constitution.

100. The retroactive portion of the "3% at 50" benefit enhancement grants extra compensation to public employees "after service has been rendered or a contract has been entered into and performed in whole or in part," in violation of Article XI, Section 10 of the California Constitution.

101. The additional compensation in the form of purportedly vested pension rights was not authorized by any statute, rule, or contract already in effect at the time the relevant work was performed by members of AOCDS and other County employees.

102. Members of AOCDS and other County employees accepted and maintained employment with the understanding that they would accrue pension benefits at "2% at 50." No adequate consideration was provided by AOCDS members and other County employees for the retroactive portion of the "3% at 50" benefit enhancement.

103. The constitutional prohibition on "extra compensation" is currently being violated by OCERS through the payment of the retroactive benefit enhancement to members of AOCDS and others. The County therefore requests a declaratory judgment against OCERS and AOCDS that the retroactive portion of the "3% at 50" benefit enhancements described in this Complaint violate the prohibition on "extra compensation" and are void.

104. The County further requests injunctive relief prohibiting OCERS from continuing to collect and distribute the County monies that are currently funding the retroactive portion of the enhanced benefit formula as to active and retired County safety employees and their beneficiaries, designees, spouses, ex-spouses, and any other persons who may claim or enjoy benefits as a result of the retroactive benefit award described in this Complaint. In particular, the County is entitled to injunctive relief prohibiting OCERS (1) from collecting further County contributions to fund the retroactive portion of the benefit enhancements described in this Complaint, and (2) from commencing or continuing to pay the retroactive portion of the enhanced benefits described in this Complaint to retired County employees and their beneficiaries, designees, spouses, ex-spouses and any other persons who purportedly received the retroactive benefits described in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Orange County respectfully requests that the Court enter the following relief:

1. A declaratory judgment against OCERS and AOCDS, under section 1060 of the California Code of Civil Procedure, that the retroactive portion of the "3% at 50" benefit enhancement violates the constitutional debt limit of Article XVI, Section 18 of the California Constitution and is therefore void;

2. A declaratory judgment against OCERS and AOCDS, under section 1060 of the California Code of Civil Procedure, that the retroactive portion of the "3% at 50" benefit enhancement violates the constitutional prohibition on "extra compensation" of Article XI, Section 10 of the California Constitution and is therefore void;

3. A permanent injunction prohibiting OCERS from (1) collecting further contributions to fund the retroactive portion of the "3% at 50" benefit enhancement, and (2) continuing to pay that portion of the "3% at 50" benefit enhancement to any retired County employee or their beneficiary, designee, spouse, ex-spouse or any other person;

4. The appointment of a special master to make an accounting of the payments due to individual members of OCERS, and to provide added protection against the occurrence of computational or other errors in any re-computation of benefits to be prospectively paid by OCERS to those active-duty and retired County employees, as well as their beneficiaries, designees, spouses, ex-spouses and any other persons who may be affected by this litigation; and

5. Such other and further relief available that may be considered appropriate under the circumstances and to which Orange County is entitled.

DATED: July 23, 2008

KIRKLAND & ELLIS LLP

By: Mark T. Cr

C. Robert Boldt (State Bar No. 180136)
rboldt@kirkland.com
Mark T. Cramer (State Bar No. 198952)
mcramer@kirkland.com
Elizabeth M. Kim (S.B.N. 239978)
ekim@kirkland.com
KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, California 90017-5800
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Robert R. Gasaway
(*Pro Hac Vice*)
rgasaway@kirkland.com
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Attorneys for Plaintiff
COUNTY OF ORANGE

Exhibit A

COMPREHENSIVE ANNUAL FINANCIAL REPORT

For the Year Ended December 31, 2002

Orange County Employees Retirement System
Orange County, California

Keith Bozarth
Chief Executive Officer

Orange County Employees Retirement System
Required Supplementary Information - Trend Information
Schedule of Funding Progress for the Years Ended December 31
(in thousands)

	Valuation Year					
	2002	2001	2000	1999	1998	1997
Actuarial Value of Assets[1] (a)	$4,695,675	$4,586,844	$4,497,362	$3,931,744	$3,504,708	$3,128,132
Actuarial Accrued Liability (b)	$5,673,754	$4,843,899	$4,335,025	$4,017,279	$3,682,686	$3,332,967
Total Unfunded Actuarial Accrued Liability (UAAL) (b-a=c)	$978,079	$257,055	($162,337)	$85,535	$177,978	$204,835
Funded Ratio (a/b)	82.76%	94.69%	103.74%	97.87%	95.17%	93.85%
Covered Payroll (d)	$1,242,348	$1,122,763	$994,669	$912,490	$863,199	$781,890
UAAL as a Percentage of Covered Payroll (c/d)	78.73%	22.89%	(16.32%)	9.37%	20.62%	26.20%

Notes:

1. The 12/31/97, 12/31/98, 12/31/99, 12/31/00, 12/31/01, and 12/31/02 actuarial value of assets exclude $322,333,000, $302,909,000, $286,139,000, $272,789,000, $221,643,000 and $143,675,000 respectively. Effective December 31, 2002, the Retirement Board elected to change the amortization period for the General Member and Probation Officer unfunded actuarial accrued liability (UAAL) to 30 years. The amortization is a level dollar amount.

   The amortization of the Safety Member UAAL has not changed. That UAAL is amortized in pieces as follows. The UAAL as of December 31, 1995, is amortized as a level dollar amount over 28 years. Actuarial gains and losses for each year are amortized over separate 15-year periods on a level dollar basis. Changes in the UAAL arising from assumption changes and plan amendments are amortized over periods determined by the Board. All amortization periods are considered closed (i.e., level dollar amortization with a fixed end date).

The accompanying notes are an integral part of the Required Supplementary Information.

Exhibit B

Attachment A

MEMORANDUM OF UNDERSTANDING

1999 - 2002

COUNTY OF ORANGE

AND

ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS

FOR THE

PEACE OFFICER UNIT

AND

SUPERVISING PEACE OFFICER UNIT

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the Association Of Orange County Deputy Sheriffs as the Exclusively Recognized Employee Organization for the Peace Officer Unit and Supervising Peace Officer Unit for the period beginning October 22, 1999 through October 17, 2002. Unless otherwise indicated herein, all provisions shall become effective October 22, 1999.

ARTICLE XXI

RETIREMENT

Section 1.

Eligible employees of this Unit are included in the Orange County Employees Retirement System as determined by their date of entry into eligible County service.

Section 2.

The County will pay toward general and safety member employees' total retirement contribution the statutory maximum allowable of one-half (1/2) under the provisions of Government Code Section 31581.1.

Section 3.

Members' normal and cost-of-living contributions shall be adjusted subsequent to and in accordance with actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.

Section 4.

Effective October 19, 2001, the County will pay any remaining contributions normally required of the safety members in the Peace Officer and Supervising Peace Officer Units, pursuant to Government Code Section 31581.2.

Section 5. Tax-Deferred Retirement Plan

The County shall continue the tax-deferred retirement plan, known as 414H(2) for the duration of the Memorandum (unless the Internal Revenue Service rules that 414H(2) is no longer applicable).

Exhibit C

Orange County Employees Retirement System

Results of AB 1937 Analysis

November 2, 2000

Overview of the Study

Currently, Safety Members of the Orange County Employees Retirement System (OCERS) earn benefits based on a "two percent of pay" formula. Safety Members for this purpose are law enforcement officers and firefighters. Benefits are provided under both a Tier 1 and a Tier 2 structure as explained below. AB 1937 allows for an increase in retirement benefits for Safety Members effective as early as January 1, 2001. AB 1937 also allows for a cost-of-living adjustment for certain retirees based on year of retirement. Towers Perrin was asked to determine the change in employer and member contributions if the benefits under AB 1937 are adopted. At the direction of the Board of Retirement, these results are being provided to the County of Orange, the Association of Orange County Deputy Sheriffs, the Orange County Professional Firefighters Association and the Orange County Fire Authority.

In addition to the above overview, this report provides:

- A refresher on how contributions under OCERS's funding policy are determined,
- An overview of the retirement benefits currently provided to Safety Members,
- A summary of the changes allowed under AB 1937,
- A summary of the actuarial assumptions used for the study, and
- Results using different plan provisions and assumptions.

OCERS Funding Policy

Employer contributions for benefits under the Retirement System are developed in two pieces: normal cost and amortization of any unfunded actuarial accrued liability (UAAL). Changes in UAAL from one valuation date to the next are amortized over time periods established by the Board of Retirement. In particular, changes in UAAL that result from plan improvements are amortized over 30 years.

Normal Cost

Normal cost is the value of benefits expected to be earned by active members in the coming year. For example, consider an active member with 20 years of service at the beginning of the year. At the end of the year, this member will have 21 years of service resulting in an increase in retirement benefits. Normal cost is the actuarial value of that increase in benefits.

Actuarial Accrued Liability

Actuarial accrued liability is the value of the benefits already earned to the date of the valuation. It is essentially the accumulated value of prior normal costs. The unfunded actuarial accrued liability (UAAL) is the difference between the actuarial accrued liability (AAL) and the actuarial value of assets (AVA). The AVA is a "smoothed" asset value that attempts to dampen market volatility.

Actuarial value

Actuarial value as used in this case is simply the present value of a future stream of benefit payments. Because the payments are contingent, among other things, on the recipient's survival, the present value is "actuarial".

Change in benefit levels

The change in benefit levels contemplated for active members under AB 1937 will increase both the normal cost and the actuarial accrued liability (AAL). The cost of living adjustment for retirees will increase only the AAL. Any increase in AAL will obviously increase the UAAL. This additional UAAL will be amortized as a level dollar amount over 30 years.

Member contributions

It should be remembered that members contribute toward the cost of their pension benefits. A change in benefits for active members will change the member contribution rates.

Member contributions are determined in two pieces: a normal or basic contribution rate and a cost-of-living contribution rate. The rates vary by age at entry to the system and Tier. The normal contribution rates are based on a formula provided by the 1937 Act (County Employees Retirement Law or CERL) and do not vary based on the benefits provided. These rates are determined using the interest, salary increase and mortality assumptions. The normal contribution rate is:

- Tier 1 – A level percent of pay from entry age to age 50 sufficient to provide an annuity of $1/200^{th}$ (one two-hundredth) of the member's final compensation per year of service.
- Tier 2 – A level percent of pay from entry age to age 50 sufficient to provide an annuity of $1/100^{th}$ (one one-hundredth) of the member's final compensation per year of service.

Essentially, Tier 2 members pay a normal contribution rate that is double the rate paid by a Tier 1 member who entered the system at the same age.

The member's cost-of-living contribution rate is determined as a level percent of pay necessary to provide one-half of the cost of a cost-of-living increase on the retirement benefit. This portion of the member's contribution rate is based on the actual benefit provided. All actuarial assumptions, including retirement, termination and disability rates, are used for determining this portion of the member contribution rate. If the benefit provided by the system changes, the member's cost-of-living contribution rate will change.

In particular, if a three-percent of pay formula is adopted then the cost-of-living portion of all future member contributions must increase. If the three-percent formula is adopted for all service then, arguably, members have not contributed enough during their prior years of service. Recall, their cost-of-living contributions during prior years of service were based on a two-percent of pay formula. We refer to this under-contribution for prior periods as the "shortfall" in member contributions.

Exhibit 15 shows the current and proposed cost-of-living "load". This is the percent that is multiplied by the basic member contribution rate to determine the cost-of-living contribution rate.

In Exhibits 2 and 3, we show the results if the shortfall is added to the unfunded actuarial accrued liability and amortized through employer contributions. In Exhibits 4 and 5, we show results assuming that the members pay the shortfall. It should be noted that having members pay the shortfall may be administratively difficult.

Participant Data Used

Exhibit 1 summarizes the data used for this analysis. The data is the same data used for the December 31, 1999 actuarial valuation.

Benefits Valued for This Analysis

AB 1937 allows for two possible levels of benefits:

- Three percent of pay multiplied by years of service multiplied by an "age" factor that is 1.0 for retirements at age 50 and older. For retirements before age 50, the age factors are less than 1.0. This formula will be referred to in the remainder of this report as **"3% at 50"**.
- Three percent of pay multiplied by years of service multiplied by an "age" factor that is 1.0 for retirements at age 55 and older. For retirements before age 55, the age factors are less than 1.0. This formula will be referred to in the remainder of this report as **"3% at 55"**.

The current benefits provided to Safety Members are based on a formula equal to two percent of pay multiplied by years of service multiplied by an "age" factor that is 1.0 for retirements at age 50. Examples of the current benefit formula as well as both the 3% at 50 and 3% at 55 formulae are provided below.

Pay used to determined benefits for Tier 1 members is based on the member's final twelve consecutive months of pensionable pay, unless the member requests that another twelve-month period be used. Benefits for Tier 2 members are based on an average of the final 36 consecutive months, unless the member requests that another 36-month period be used.

Example 1

Consider a Tier 1 Safety Member retiring at age 50 with 25 years of service and final pay of $80,000. The current formula produces a benefit equal to 2% multiplied by 25 years multiplied by $80,000 multiplied by an age factor of 1.00. This produces a benefit of $40,000 per year. The 3% at 50 formula produces a benefit equal to 3% multiplied by 25 years multiplied by $80,000 multiplied by an age factor of 1.00. This produces a benefit of $60,000 per year.

Example 2

Consider the same demographic data as assumed in Example 1. Obviously, the current benefit is unchanged. The 3% at 55 formula produces a benefit of 3% multiplied by 25 years of service multiplied by $80,000 multiplied by 0.7634, the age 50 "age" factor. The resulting benefit is $45,804.

At ages below age 50, the 3% at 50 formula provides benefits that are 50% greater than the current benefits. Age factors under the current formula continue to increase after age 50 to a maximum of 1.3099 for retirements at age 55 and older. The 3% at 50 age factors, however, are 1.0 for retirements at ages 50 and older. This means that the difference between the 3% at 50 benefits and the current benefits narrows after age 50. At age 55, the 3% at 50 formula produces a benefit that is 14.5% greater than the benefit under the current formula.

The 3% at 55 formula age factors are 1.0 for retirements at ages 55 and older. Hence, the difference between the 3% at 55 benefit and the current benefit is not as large before age 50 and narrows more quickly for retirements above age 50.

Alternative Benefits

In addition to the above, we were asked to determine the increase in contributions if AB 1937 was adopted for future service only. In other words, a member's benefit would be calculated in two pieces: a two percent of pay benefit for service up to the effective date (e.g., July 1, 2001) and a three percent of pay benefit for service on and after the effective date. For both pieces of the benefit, pay would be based on pay at retirement. The following example will help clarify this approach.

Example 3:

Consider the same demographic data as for Example 1 except that 20 years of the member's service were earned before the effective date (i.e., under the two percent of pay formula) and five years were earned after the effective date. Under the 3% at 50 future service formula, the member's benefit would be calculated as:

- Two percent (the current formula) multiplied by 20 years multiplied by $80,000 ($32,000) plus
- Three percent multiplied by 5 years multiplied by $80,000 ($12,000) for a total annual benefit of $44,000.

In the above example, the age factors for both pieces of the benefit are 1.0 since we assumed that the member retired at age 50. For the purpose of this analysis, we assumed that the two-percent piece of the benefit would be multiplied by the current age factors and the three-percent piece would be multiplied by the appropriate AB 1937 age factor.

Exhibits 6 and 7 show the increase in contributions for the 3% at 50 and 3% at 55 formulae, respectively if the change is applied to future service only.

Cost-of-living Adjustment

AB 1937 allows for a cost-of-living (COL) increase to be granted to certain retirees. The amount of the increase will vary based on date of retirement. The COL schedule is as follows:

Period during which retirement or death occurred:	Percentage:
January 1, 1998 or later	0.0%
12 months ending December 31, 1997	1.0%
24 months ending December 31, 1996	2.0%
60 months ending December 31, 1994	3.0%
60 months ending December 31, 1989	4.0%
120 months ending December 31, 1984	5.0%
12 months ending December 31, 1974, or earlier	6.0%

Two comments are important:

- The results are shown separately for Tier 1 and Tier 2 and General versus Safety. It is not clear to us whether the potential COL increase applies only to Safety Members.
- While it is not clear, the COL will likely reduce a retiree's cost-of-living "bank". This would have two effects:
  - STAR COLA benefits, for any retiree receiving STAR, would decrease by exactly the same amount that their benefit increased because of this COL. This would leave all retirees who retired before April 2, 1980 with no net change in their benefit.
  - Less bank would be available to be used to increase a retiree's benefit in years when the actual CPI is less than three percent.

The increase in contributions for providing this cost-of-living increase is shown in Exhibit 14.

Decrements

An actuarial valuation is an estimation process that relies on many assumptions. One of the important assumptions used in this AB 1937 analysis is the retirement decrement, i.e., the percentage of active members expected to retire at each age eligible. The assumptions used in the annual actuarial valuation have been developed over time using the results of the triennial investigations.

If AB 1937 is adopted, however, it is expected that Safety members will retire earlier than they do now. In order to reflect this expectation, we have valued the benefits using different retirement decrements. The table below shows the current retirement decrements and two sets of alternatives, one for the 3% at 50 benefits and one for the 3% at 55 benefits. The alternatives are intended to test the sensitivity of the cost for increases in benefits to changes in retirement patterns. Results for the alternative assumptions are shown in Exhibits 8 through 13.

TABLE OF RETIREMENT DECREMENTS

		Assumed Assumptions		Alternative Assumptions	
Age	Current Assumptions	3% at 50	3% at 55	3% at 50	3% at 55
50	6.6%	26.6%	6.6%	35.0%	10.0%
51	5.4	20.0	5.4	20.0	8.0
52	6.5	20.0	6.5	20.0	9.0
53	9.3	20.0	9.3	20.0	13.0
54	18.0	20.0	18.0	20.0	20.0
55	26.6	20.0	26.6	20.0	30.0
56	16.5	20.0	16.5	16.5	16.5
57	19.5	20.0	19.5	19.5	19.5
58	16.6	20.0	16.6	16.6	16.6
59	18.5	20.0	18.5	18.5	18.5
60	57.7	100%	100%	100.0	100.0
61	60.4	--	--	--	--
62	100.0	--	--	--	--

All other assumptions are the same as used for the December 31, 1999 actuarial valuation

Results

As stated earlier, the attached tables show the results under the various benefit formulae including the future service only alternative. Results are presented for both the Assumed Decrements and the Alternative Decrements. It should be noted that the final set of decrements that would be used for the annual valuation have not been chosen or approved by the Board of Retirement. It is expected that those decrements will be similar to the Assumed Decrements. Of course, these decrements will be reviewed with future triennial investigations and will be adjusted as needed.

Summary

Benefits for Safety members are currently calculated using a two-percent of pay formula. AB 1937 allows for benefits to be calculated under a three-percent of pay formula. The increased benefits may be calculated with an age factor of 1.0 for retirements at and after age 50 or 1.0 for retirements at and after age 55. The revised formulae may be based on all service or just future service. AB 1937 also allows for a cost-of-living increase for certain retirees. This report shows the increased cost of adopting these different plan provisions under different assumptions.

Exhibit 1

Orange County Employees Retirement System
Summary of Participant Data Used for Analysis

	Firefighters	Law Enforcement	Total
Active member count	754	1,802	2,556
Active payroll	47,991,264	125,543,541	173,534,805

Exhibit 2

Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,844,000	6,364,000	9,208,000
Change in Actuarial Accrued Liability	41,778,000	99,030,000	140,808,000
Increase in Amortization	3,711,000	8,796,000	12,507,000
Total Increase	6,555,000	15,160,000	21,715,000
Percent of Pay	13.66%	12.08%	12.51%

Exhibit 3

Orange County Employees Retirement System

3% at 55
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	1,433,000	2,979,000	4,412,000
Change in Actuarial Accrued Liability	22,567,000	54,153,000	76,720,000
Increase in Amortization	2,005,000	4,811,000	6,816,000
Total Increase	3,438,000	7,790,000	11,228,000
Percent of Pay	7.16%	6.20%	6.47%

Exhibit 4

Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by Member

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,844,000	6,364,000	9,208,000
Change in Actuarial Accrued Liability	38,239,000	91,830,000	130,069,000
Increase in Amortization	3,397,000	8,157,000	11,554,000
Total increase	6,241,000	14,521,000	20,762,000
Percent of Pay	13.00%	11.57%	11.96%

Exhibit 6

Orange County Employees Retirement System

3% at 50
Future Service Only

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,305,000	5,902,000	8,207,000
Change in Actuarial Accrued Liability	(1,031,000)	(4,140,000)	(5,171,000)
Increase in Amortization	(92,000)	(368,000)	(460,000)
Total Increase	2,213,000	5,534,000	7,747,000
Percent of Pay	4.61%	4.41%	4.46%

Exhibit 7

Orange County Employees Retirement System

3% at 55
Future Service Only

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	1,134,000	2,818,000	3,952,000
Change in Actuarial Accrued Liability	890,000	1,963,000	2,853,000
Increase in Amortization	79,000	174,000	253,000
Total Increase	1,213,000	2,992,000	4,205,000
Percent of Pay	2.53%	2.38%	2.42%

Exhibit 8

Alternative Assumptions
Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,933,000	6,641,000	9,574,000
Change in Actuarial Accrued Liability	43,040,000	101,883,000	144,923,000
Increase in Amortization	3,823,000	9,050,000	12,873,000
Total Increase	6,756,000	15,691,000	22,447,000
Percent of Pay	14.08%	12.50%	12.94%

Exhibit 9

Alternative Assumptions
Orange County Employees Retirement System

3% at 55
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	1,437,000	3,106,000	4,543,000
Change in Actuarial Accrued Liability	23,339,000	54,942,000	78,281,000
Increase in Amortization	2,073,000	4,880,000	6,953,000
Total Increase	3,510,000	7,987,000	11,497,000
Percent of Pay	7.31%	6.36%	6.62%

Exhibit 10

Alternative Assumptions
Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by ~~Member~~

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,933,000	6,641,000	9,574,000
Change in Actuarial Accrued Liability	39,318,000	94,315,000	133,633,000
Increase in Amortization	3,493,000	8,378,000	11,871,000
Total Increase	6,425,000	15,019,000	21,444,000
Percent of Pay	13.39%	11.96%	12.36%

November 2, 2000

S:\00759\00EBS\RET\AB 1937\REPORT.DOC

Exhibit 11

Alternative Assumptions
Orange County Employees Retirement System

3% at 55
All Service
Assuming Shortfall Paid by Member

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	1,437,000	3,106,000	4,543,000
Change in Actuarial Accrued Liability	21,547,000	51,310,000	72,857,000
Increase in Amortization	1,914,000	4,558,000	6,472,000
Total Increase	3,351,000	7,664,000	11,015,000
Percent of Pay	6.98%	6.10%	6.35%

Exhibit 13

Alternative Assumptions
Orange County Employees Retirement System

3% at 55
Future Service Only

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	1,159,000	2,974,000	4,133,000
Change in Actuarial Accrued Liability	1,430,000	2,152,000	3,582,000
Increase in Amortization	127,000	191,000	318,000
Total Increase	1,286,000	3,165,000	4,451,000
Percent of Pay	2.68%	2.52%	2.56%

Exhibit 14

Orange County Employees Retirement System

Cost-of-Living Increase for Retired Members

Change in Accrued Liability as of December 31, 1999

General Members

Tier	Before Ad Hoc	After Ad Hoc	Net Change
1	1,121,855,000	1,153,505,000	31,650,000
2	175,334,000	178,248,000	2,914,000
Total	1,297,189,000	1,331,753,000	34,564,000
Annual Increase in Contribution			3,070,000
Percent of Pay			0.42%

Safety Members

Tier	Before Ad Hoc	After Ad Hoc	Net Change
1	276,820,000	284,114,000	7,294,000
2	67,483,000	68,842,000	1,359,000
Total	344,303,000	352,956,000	8,653,000
Annual Increase in Contribution			769,000
Percent of Pay			0.44%

Total System

Tier	Before Ad Hoc	After Ad Hoc	Net Change
1	1,398,675,000	1,437,619,000	38,944,000
2	242,817,000	247,090,000	4,273,000
Total	1,641,492,000	1,684,709,000	43,217,000
Annual Increase in Contribution			3,839,000
Percent of Pay			0.42%

Exhibit 15

Orange County Employees Retirement System

Member Contribution
Cost of Living Load Factors

	Tier 1	Tier 2
Current load	75.35%	38.47%
3% at 50	98.38%	50.15%
3% at 55	86.01%	44.03%

Exhibit D

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
DECEMBER 4, 2001

WHEREAS, the Board of Supervisors has the authority to adopt certain provisions of the County Employees Retirement Law of 1937 for calculating the benefits available to safety members of the County and other retirement plan sponsors of the Orange County Employees Retirement System within the County; and

WHEREAS, Government Code section 31664.1 establishes an alternative "3% at 50" formula for calculating the benefits of safety members of retirement systems governed by the County Employees Retirement Law of 1937; and

WHEREAS, by making such benefits available, this Board does not mandate such benefits for any employees or employer; and

WHEREAS, implementation of such benefits is properly the subject of collective bargaining as set out in the Meyers – Milias - Brown Act (Government Code section 3500 et seq.); and

WHEREAS, the County of Orange ("County") has concluded meeting and conferring with the Association of Orange County Deputy Sheriffs representing certain classifications designated as safety members of the Orange County Employees Retirement Systems; and

WHEREAS, this Board does not wish to mandate the costs and benefits of Government Code section 31664.1 on County and non-County members of the Orange County Employees Retirement System prior to completion of their respective meet and confer requirements; and

WHEREAS, as required by Government Code section 7507, the County has provided an actuarial study showing the potential cost of the implementation of such benefits.

///

Resolution No. 01-410
Approve amended MOU for Association of Orange County
Deputy Sheriffs; Government Code Section 31664.1
WSF:azs

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby resolves that Government Code section 31664.1 shall become applicable in Orange County effective June 28, 2002.

BE IT FURTHER RESOLVED that on June 28, 2002 this Resolution is applicable to employees and officials of the Orange County Sheriff's Department and Orange County District Attorney's Office in classifications designated as safety members of the Orange County Employees Retirement System.

BE IT FURTHER RESOLVED that the Board of Supervisors requests, to the extent permitted by law, that the Orange County Employees Retirement System implement the retirement allowance provided in Government Code section 31664.1 as to County and non-County members of the Retirement System only after the completion of any meet and confer requirements applicable to those member agencies and employees.

///

///

///

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on December 04, 2001, to wit:

AYES:	Supervisors:	TODD SPITZER, CYNTHIA P. COAD, CHARLES V. SMITH JAMES W. SILVA, THOMAS W. WILSON
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

CHAIR

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 01-410

Agenda Date: 12/04/2001

Item No: 48

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: ______________________
Deputy

Exhibit E

BARTEL
ASSOCIATES, LLC

July 20, 2007

Robert J. Franz
Chief Financial Officer
County of Orange
10 Civic Center Plaza, 3rd Floor
Santa Ana, CA 92701Name

Re: Law Enforcement 3%@50

Dear Mr. Franz:

We reviewed the historical information related to the implementation of the Law Enforcement 3%@50 benefit improvement. Towers Perrin's November 2, 2000 report indicates the Actuarial Accrued Liability (prior service cost) increase was $99.0 million. Using an 8% interest rate and a level dollar payment amortization method (the assumption and method used at the time of the benefit improvement) results in an amortization of 7.01% of pay. This result appears consistent with similar benefit improvements calculated by actuaries for other California public sector entities.

We also reviewed the more recent February 3, 2005 reconciliation of valuation results between Towers Perrin and Segal. This reconciliation indicates no problems or inconsistencies between results calculated by Towers Perrin and Segal. This further indicates the results calculated by Towers Perrin in their November 2000 report are reasonable.

Please call me with any questions about this letter.

Sincerely,

John E. Bartel
President
jb: JEB:
c:\documents and settings\john bartel\my documents\clients\county of orange\ocers\ba letter 07-07-20 e-mail.doc

Exhibit F

Association of Orange County Deputy Sheriffs
1314 West Fifth Street, Suite A • Santa Ana, CA 92703
(714) 285-2800 • Fax (714) 954-1156

3% @ 50 AGREEMENT

October 17, 2001

AOCDS eached a tentative agreement with County Negotiators at 12:37 a.m. today which ll implement the 3% @ 50 retirement formula. Our fully paid retirement benefit ill go into effect Friday, October 19 without modification.

How 3 o @ 50 Works - Our current retirement formula is 2% @ 50. Under that formul an employee who retires at age 50 with 25 years service would receive a retiren it benefit approximately equal to 50% of salary. Under the 3% @ 50 retiren it formula an employee who retires at age 50 with 25 years service will receive retirement benefit approximately equal to 75% of salary. As an example, a top p DS II who retired at age 50 with 25 years service, at today's salary rate, would ceive a retirement benefit of at least $1500 per month higher than would have b n received under a 2% @ 50 retirement formula. Assuming a four-percent salary crease each year for the next ten years, a top step DSII would realize at least a 2200 higher monthly retirement benefit than under the 2% @ 50 formula.

The T itative Agreement - There are three major components to our agreement.

Imple ntation Date – The 3% @ 50 retirement formula will be effective for retirer nts which take place on or after June 28, 2002.

Contr Extension and Salary Increase – Our contract with the County will be exten d for a period of one year. Our contract is scheduled to expire on October 17, 2C . Instead it will expire on October 16, 2003. All members of our bargaining units l receive a 4% salary increase effective October 17, 2002.

Cost the Benefit – An actuarial study by the Orange County Retirement System actua determined that the cost of applying the benefit to all existing service and future ervice is 12.5% of payroll (approximately 21 million dollars). The County, the S riff's Department and the Office of the District Attorney are absorbing that cost. here is an additional short term cost of approximately 6 million dollars which repre its the difference in the cost of fully paid retirement at our current 2% @ 50 formu and at the new 3% @ 50 formula. We have agreed to share that cost with the C nty on a fifty-fifty basis. All 830.1 peace officers will share the cost.

Effect e on June, 28, 2002, the same date the 3% @ 50 benefit becomes effective, all ac e employees will begin to pay an amount equal to 1.78% of their base salary to co r one half of the six million dollar shortfall. That 1.78% payment will be in effect nly from June 28, 2002 until the end of the contract.

On Oct ær 16, 2003 employees will stop paying the 1.78% and that amount will return take home pay.

As an ample, a top step DS II will pay approximately $47.00 each pay check for 34 pay eriods (approximately $1600 total). That amount will be recovered for virtuall very employee in his or her first monthly retirement check.

<u>Chron ogical Summary</u>

tober 19, 2001	Fully paid retirement - 4.5% average benefit
ne 28, 2002	3% @ 50 benefit effective 1.78% employee contribution begins
tober 17, 2002	Four percent salary increase
tober 16, 2003	Contract expires – 1.78% contribution ends Unknown salary increase in new contract

<u>We u nimously recommend that you vote to accept the tentative agree ent.</u>

- We eel strongly that it is crucial to every member, whether they have been wa ng to retire or plan to work many more years, that we attain 3% @ 50 now.

- If e economy continues to decline, political and financial constraints could del or eliminate our chances of successfully negotiating 3% @ 50. The wir ow of opportunity is open today, it may close very soon.

- We re also very fortunate to be attaining this benefit in a reopener and not at ma table negotiations, especially when you consider the County still has over $9 ,000,000 in bankruptcy debt.

Meml r Voting - Members of the Board of Directors and staff will be available at the A(DS office from 8 a.m. to 5 p.m. on Wednesday, October 17 and Thursday, Octob 18 to answer your questions either in person or over the phone (714-285-2800). Members will vote to accept or reject the tentative agreement on Friday, Octob 19, 2001 from 8 a.m. to 5 p.m. You may vote in person at the AOCDS office, y phone (714-285-2800) or through your Area Representative who will fax (714-! I-1156) in your votes. We will power fax the voting results Friday evening as so as we have a final tabulation. If you vote to accept the tentative agree nt, it will become final when the Board of Supervisors approve the tentative agree nt at their next meeting.

A.O.C.D.S. Board of Directors

Sgt. Wayne Quint – Inv. Tom Dominguez – Inv. Brian Heaney
Deputy Bob Hack – Deputy Herb Siegmund – DA Inv. Doug Kennedy

Exhibit G

The Facts
of 3 @ 50

Sheriff Michael S. Carona

September 18, 2007

Purpose

- I asked to speak today to ensure that the men and women of my department and those who would be affected by Supervisor Moorlach's proposal continue to get the facts

- Today the Board was scheduled to reconvene on Supervisor Moorlach's proposal to void and rescind the 3% @ 50 retirement provision – a formula that was negotiated in good faith

- The Board continues to pursue Civilian Oversight "to create transparency." Yet this process has been anything but transparent.

Road to 3% @ 50

August 25, 2000: The California legislature passes AB 1937 – "This bill would authorize counties or districts, subject to approval by the county board of supervisors, to (1) provide service retirement allowances for safety members based on a 3% at age 50 formula or 3% at age 55 formula, and (2) increase allowances being paid on account of retired or deceased members by up to 6%, as specified."

September 16, 2000: California legislature passes SB 1696 – "This bill would (1) authorize a board of supervisors or governing body of a district to apply any formula retroactively to service credit earned during a designated period prior to the adoption of the formula and (2) subject to approval by the employee representatives, authorize collection of additional contributions attributable to that formula during the designated period, as specified."

- The State Association of County Retirement Systems supported this legislation. OCERS, as a member of SACRS supported this legislation. Then-Orange County Treasurer John Moorlach was a member of the OCERS Board.
- There were no letters of opposition to this legislation.

Road to 3% @ 50

August 2001: AOCDS enters into negotiations with the County. Supervisor Moorlach serves as County Treasurer at the time and sits on the OCERS Board. Meetings held on:

- August 8, 14, 22, and 30
- September 13, 21, 24 and 27

November 2001: The Actuary Report analyzed the costs to the Board. This report was requested of OCERS, who hired Towers-Perrin to conduct the cost analysis of this retirement provision.

Orange County Employees Retirement System

Results of AB 1937 Analysis

November 2, 2000

Exhibit 2

Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,844,000	6,364,000	9,208,000
Change in Actuarial Accrued Liability	41,778,000	99,030,000	140,808,000
Increase in Amortization	3,711,000	8,796,000	12,507,000
Total Increase	6,555,000	15,160,000	21,715,000
Percent of Pay	13.66%	12.08%	12.51%

Road to 3% @ 50
Towers-Perrin Cost Analysis

Exhibit 4

Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by Member

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,844,000	6,364,000	9,208,000
Change in Actuarial Accrued Liability	38,239,000	91,830,000	130,069,000
Increase in Amortization	3,397,000	8,157,000	11,554,000
Total increase	6,241,000	14,521,000	20,762,000
Percent of Pay	13.00%	11.57%	11.96%

Exhibit 6

Orange County Employees Retirement System

3% at 50
Future Service Only

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,305,000	5,902,000	8,207,000
Change in Actuarial Accrued Liability	(1,031,000)	(4,140,000)	(5,171,000)
Increase in Amortization	(92,000)	(368,000)	(460,000)
Total Increase	2,213,000	5,534,000	7,747,000
Percent of Pay	4.61%	4.41%	4.46%

Road to 3% @ 50
Towers-Perrin Cost Analysis

Exhibit 8

Alternative Assumptions
Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by County

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,933,000	6,641,000	9,574,000
Change in Actuarial Accrued Liability	43,040,000	101,883,000	144,923,000
Increase in Amortization	3,823,000	9,050,000	12,873,000
Total Increase	6,756,000	15,691,000	22,447,000
Percent of Pay	14.08%	12.50%	12.94%

Exhibit 10

Alternative Assumptions
Orange County Employees Retirement System

3% at 50
All Service
Assuming Shortfall Paid by Member

	Firefighters	Law Enforcement	Total
Increase in Normal Cost	2,933,000	6,641,000	9,574,000
Change in Actuarial Accrued Liability	39,318,000	94,315,000	133,633,000
Increase in Amortization	3,493,000	8,378,000	11,871,000
Total Increase	6,425,000	15,019,000	21,444,000
Percent of Pay	13.39%	11.96%	12.36%

Road to 3% @ 50

November 2001: The CEO reviewed the Actuary Report and reported the costs were within budget.

December 2001: The Board reviewed –

- the CEO's Report
- the HR Report
- the amended MOU

and APPROVED Resolution No. 01-410.

The Board's motivation, from the CEO's report:

- "Their request was primarily based on market factors, i.e., a significant number of agencies in California had already implemented the benefit which would impact Orange County's ability to recruit top law enforcement candidates."
- "The applicant pool of qualified law enforcement recruits is diminishing. Factors causing this impact include a decline in population of people ages 20-25 which is the sector where most law enforcement candidates come from."
- "The competition for top qualified law enforcement is fierce. In order to remain competitive and recruit the best officers, Orange County's benefits cannot lag behind those of other public sector jurisdictions."

Funding 3% @ 50

Specific to funding: Here are the cost issues that were reviewed at the August 30th meeting between the CEO, HR and AOCDS on August 30^{th} meeting:

- Staff verified CEO calculations of 3 @ 50 : $14.4 mil to $15.8 mil
  - Calculations were based on pay period 16 annualized, times the 12.5% rate for 3 @ 50 which was calculated by Towers Perrin
- The Towers Perrin assumptions for 12.5% include the expectation that only 26.6% of the employees eligible to retire actually would. Supposedly, this is based on experience PERS cities which had already adopted this option.
- Staff then recalculated the first year of $14.4M with the updated assumptions for COLA (2.25%) to match what CEO was applying in their other projections. The revised amount was $14.7M, not significantly different than CEO's estimates in each year calculated.
  - One-time pay downs were not included in CEO's estimates, which were estimated to be approximately $6.2M.

Funding 3% @ 50

August 30 meeting notes, cont.:

- Revenue offset from Contract Cities (approx. $2.7M) could reduce the estimated savings projected by CEO.
- Total first-year costs for ongoing retirement and one-time pay downs were approximated at $21M
- Assumes a July 2, 2002 start up date

• Potential Revenue offset for 3 @ 50 could come from:

– Retirement rate reductions from the budgeted amount:	$3.7M
– Law Enforcement Contract Revenue:	$2.7M
– Rancho Santa Margarita Contract Revenue:	$2.5M
– Aliso Viejo Contract Revenue:	$2.0M
– 14B for one-time pay downs:	<u>$6.2M</u>
❖ Subtotal	$17.1M
– Less total first year retirement cost:	($20.9M)
– Unfunded liability	$3.8M

Under the 3% @ 50 agreement, it was anticipated that with an effective date of June 28, 2002, all active employees would begin to pay an amount equal to 1.78% of their base salary to cover one half of the six million dollar shortfall. That 1.78% payment would be in effect from June 28, 2002 until the end of the contract.

Does Not Violate the Debt Limitation

- Moorlach says, "The retroactive pension increase violates the debt limitation provision" (Article XVI, Section 18)
  - –The unfunded liability attributable to the pension increase does not violate the debt limitation of the provision
    - The State Attorney General has specifically opined that "[t]he so-called 'unfunded liability' of the state's portion of the Public Employees Retirement System does not violate article XVI, section 1, of the California Constitution"
    - The State Attorney General has said, "There is nothing in the debt limitation provisions of the state Constitution which suggests that the economic advisability of increasing contributions to a pension system is tantamount to an 'indebtedness or liability'"
  - – In Orange County, we have never identified the cost of the pension as a debt.

Not a Gift
Not Extra Compensation

- Moorlach says, the retroactive increase is:
  - an improper 'gift of public funds'" (Article XVI, Section 6)
    - A few weeks back, we met with a group of attorneys who serve our department as Reserves. They agreed that there are numerous cases that show that increased pension benefits based on past service are not gifts
    - Pensions aren't gifts, they're compensation
  - "extra compensation" for work already performed (Article IV, Section 17 and Article XI, Section 10).
    - Again, our Reserves said that there were numerous cases which show that increased pension benefits based on past service are not extra compensation
    - Pensions for all service have been OK'd since 1941 by the California Supreme Court.

Examine All of the Evidence

- I'm not asking you to take my word for it. The documentation exists and speaks for itself.

- It is time for the Board to consider all of the documentation in front of you.

- Two months ago, this Board was told that if you did nothing, you were breaking the law. You were told that you had to rescind the benefit and go forward with an injunction. This issue was positioned as an extreme constitutional crisis. Now the facts are becoming even clearer:
  - This is not a gift
  - It was not retroactive to all employees
  - This does not violate the debt limitation
  - It was fully funded, including contributions by members of AOCDS

Do the Right Thing

There is even more information that deserves to be analyzed.

The legal arguments are as compelling today as they were two months ago. However, now these arguments are guiding this board to stop moving forward.

I now reassert the recommendation I put in front of the Board two months ago:

> Thoughtful deliberation with all of the facts should be completed before you waste more taxpayers' dollars on frivolous lawsuits and political grandstanding.

Exhibit H

SEGAL

THE SEGAL COMPANY
120 Montgomery Street, Suite 500 San Francisco, CA 94104-4308
T 415.263.8200 F 415.263.8290 www.segalco.com

VIA EMAIL AND USPS

September 6, 2007

Ms. Julie Wyne
Interim CEO/General Counsel
Orange County Employees Retirement System
2223 Wellington Avenue
Santa Ana, California 92701-3101

Re: Past Service Liabilities for the 3% at 50 Benefit Improvement for Law Enforcement

Dear Julie:

You have asked us to evaluate the liability impact of the past service portion (i.e., pre June 28, 2002) of the 3% at 50 Law Enforcement benefit improvement granted in 2002. The total actuarial accrued liability (AAL) impact, measured based on the October 1, 2007 date requested by OCERS, amounts to about $187 million under the Entry Age Normal Method. Details on the estimated AAL impact by retired and active plus deferred vested membership status as of December 31, 2006 are provided later in this letter.

As part of this study, we were asked to verify whether the retirement age assumptions used in the calculation of the current employer contribution rates include the impact of earlier retirements of Law Enforcement members that are likely to occur as a result of the benefit increase. After reviewing the available experience, we have concluded that the retirement age assumptions used by Segal in the December 31, 2006 valuation are reasonably reflective of the post-improvement retirement experience of the Law Enforcement members. We provide the details later in this letter.

Results and Discussions

There are a few points worthy of mention regarding the above two results:

- The AAL of about $187 million reflects the impact of the retroactive portion of the increase calculated based on the retirement age assumptions used by Segal in the December 31, 2006 valuation. If the past service portion of the 3% at 50 benefit were to be reduced back to the 2% at 50 pre-improvement level, members might not retire as early as predicted by the current retirement age assumptions used in the December 31, 2006 valuation. The AAL of $187 million does not include any impact that receiving the past service portion might have on future retirement age patterns.

- The AAL of $187 million also does not take into account the higher benefit payments that have been paid by OCERS from the date of the benefit improvement on June 28, 2002 to the date of this calculation as of October 1, 2007.

- Some contributions would have been made since the 2002-2003 fiscal year to pay off part of the cost of the past service improvement; however, just as we have not calculated the benefit payments made by OCERS on the past service improvement from June 28, 2002, we have also not determined how much of the AAL is remaining unfunded as of October 1, 2007.

- In the original 2000 study of the 3% at 50 benefit improvement completed by OCERS' prior actuary, they included two alternative sets of retirement age assumptions to anticipate earlier retirements under the 3% at 50 benefit. The first set of alternative assumptions predicted earlier retirements at every age when compared to the then-current retirement age assumptions. The second set of alternative assumptions assumed an acceleration of retirements through about age 54.

  The Segal assumptions used in the December 31, 2006 valuation and applied in this study are somewhat in between the then-current assumptions and either of the prior actuary's alternative assumptions at 50 and 51 but higher than either of the prior actuary's alternative assumptions at most other ages.

Liability Calculation

The following table provides a breakdown of the past service portion of the 3% at 50 improvement for Law Enforcement members measured as of October 1, 2007.

For this table, the liability is broken down by membership status as of December 31, 2006. For instance, the past service portion of the liability for a member who has retired since January 1, 2007 is included under the "Active and Deferred Vested" membership category. For members in the "Retiree" category, we have included the past service liability for all service retirements from June 28, 2002 plus those disability retirements indicated by the System as those whose benefits determined under the service retirement formula are greater than the disability retirement formula (e.g., 50% of final average salary for duty disability).

Also, this calculation is based on the same actuarial assumptions and demographic data used in preparing the December 31, 2006 actuarial valuation, except we have supplemented the data with the amount of past service that the Law Enforcement members have accrued under the 2% at 50 formula. Due to the lack of past service data for deferred vested members, we have estimated the liability for deferred vested members based on information provided for the December 31, 2006 valuation.

Membership Type	Past Service Liability for Service Before June 28, 2002 Determined As of October 1, 2007
Active and Deferred Vested	$120 million
Retiree	$67 million

Review of Retirement Experience

We have reviewed the retirement age assumptions by examining the number of Law Enforcement member retirements over the 2003 to 2006 calendar years. Experience for the 2002 calendar year (the first year the improvement was adopted for Law Enforcement) was not included to avoid reflecting the surge in retirements caused by members who may have delayed retiring in previous years in anticipation of the upcoming improvement. Following are the actual versus expected retirements for the four calendar years. Expected retirements are based on the same retirement age assumptions Segal used in the December 31, 2006 valuation.

Calendar Year	Actual Law Enforcement Retirements	Expected Law Enforcement Retirements
2003	46	43
2004	60	44
2005	28	42
2006	39	47
Total	173	176

Based on these results, our conclusion is that the current Segal retirement assumptions reasonably anticipate future retirement experience under the 3% at 50 formula for Law Enforcement members. The retirement age assumptions will be reviewed in more detail at our December 31, 2007 triennial experience study.

Please let us know if you need any additional information.

Sincerely,

Paul Angelo

Paul Angelo, FSA, EA, MAAA, FSA
Senior Vice President and Actuary

Andy Yeung

Andy Yeung, ASA, EA, MAAA
Vice President and Associate Actuary

/kek

Exhibit I

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

January 29, 2008

WHEREAS, the members of the Board of Supervisors (the "Board") are sworn to uphold the California Constitution and the laws of California.

WHEREAS, after an extensive investigation and legal assessment, the Board has determined that the retroactive compensation awarded by Resolution No. 01-410 to Orange County peace officers was unconstitutional at the time of its adoption and remains unconstitutional today.

WHEREAS, the investigation conducted on behalf of the Board has ascertained that the County of Orange has incurred a large additional liability that The Segal Company, actuarial consultants retained by the Orange County Employment Retirement System ("OCERS"), estimated as totaling some $187 million as of September 2007, as a result of the retroactive compensation awarded by Resolution No. 01-410.

NOW, THEREFORE, BE IT RESOLVED that this Board hereby authorizes Kirkland & Ellis LLP, as outside counsel to the County, to seek to obtain a declaration of unconstitutionality and an injunction against OCERS prohibiting it from paying out any benefit increases arising from Board Resolution 01-410 and based on years of service rendered before June 28, 2002, the effective date of that Resolution.

BE IT FURTHER RESOLVED, to ensure that the rights and interests of the affected active-duty and retired peace officers are protected to the greatest extent possible, the Board hereby directs:

1. That the contemplated litigation be brought under an initial complaint that seeks only declaratory relief and an injunction, solely against OCERS as a single named defendant;

2. That counsel for the County not object to the participation in the contemplated litigation of appropriate representatives of the affected active-duty and retired peace officers, including the Association of Orange County Deputy Sheriffs ("AOCDS");

3. That counsel for the County recommend to the Court that the Court appoint a special master to provide added protection against the occurrence of computational or other errors in any re-computation, resulting from the contemplated litigation, of benefits to be prospectively paid by OCERS to those active-duty and retired peace officers affected by the litigation contemplated by this Resolution; and

4. That counsel for the County in the contemplated litigation not seek the repayment or any other recovery of monies paid out by OCERS to retired peace officers and received by those peace officers prior to an initial judicial declaration of the constitutional invalidity of the challenged portions of Board Resolution 01-410.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on January 29, 2008, to wit:

AYES:	Supervisors:	JOHN M. W. MOORLACH, CHRIS NORBY, JANET NGUYEN BILL CAMPBELL, PATRICIA BATES
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

CHAIRMAN

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chairman of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 08-005

Agenda Date: 01/29/2008

Item No: 37

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors , Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: ______________________
Deputy

Exhibit J

BY-LAWS

OF

ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS

ARTICLE 1. OBJECTIVES

The purpose of the corporation is to represent employees in dealing with their employer concerning grievances, labor disputes, wages, rates of pay, hours, and terms and conditions of employment; and to promote the professional interests of the members and to protect their individual and collective rights to such economic, educational and other benefits and services as may be desirable. To seek legislation necessary or conducive to the well being of the members. To play an active role in the political arena in furtherance of the interest of the membership.

ARTICLE 2. OFFICES

Section 2.01. Principal Office. The principal office of the corporation for the transaction of its business is located at 1314 West Fifth Street, Santa Ana, California. Organizational records shall be maintained at the principal office. Membership information will be maintained in such a manner as to protect member confidentiality.

Section 2.02. Change of Address. The county of the corporation's principal office can be changed only by amendment of the Articles of Incorporation of this corporation and not otherwise. The Board of Directors may, however, change the principal office form one location to another within the named county by noting the changed address and effective date below, and such change of address shall not be deemed an amendment of these By-Laws.

____ Dated:____________

____ Dated:____________

____ Dated:____________

ARTICLE 3. MEMBERS

Section 3.01. Classes of Membership and Rights. The corporation shall have five (5) classes of members, as follows: (1) Regular Members; (2) Associate Members; (3) Retired Members; (4) Honorary Members; and (5) Affiliate Members. In addition, all persons who become Associate Members prior to and including September 6, 1976 or Regular Members prior to and including October 15, 1976 shall also be known as "Charter Members".

Honorary and Affiliate Members shall have no voting rights nor may they hold office. Retired and Associate Members may vote on issues of organizational importance but may not vote on bargaining unit issues. Retired and Associate Members may not hold office. In all other respects, the rights, interests and privileges of each member, regardless of his classification and whether or not a Charter Member are equal unless otherwise provided by these by-laws.

Section 3.02. Qualifications. Any person, other than an Honorary Member, employed as a full time Peace Officer by the County of Orange is qualified to become a Regular or Associate Member of the corporation. Regular Members shall be limited to full time Peace Officers as defined in C.P.C. 830 and 830.1

employed by the County of Orange and holding a rank below that of Lieutenant. All other full time Peace Officers as defined in C.P.C. 830 and 830.1 employed by the County of Orange are qualified to become Associate Members regardless of their rank. Regular and Associate Members who leave County service due to regular or medical retirement shall become Retired Members.

Honorary Members shall be individuals or entities as authorized by the Board of Directors.

Affiliate Members shall be those members of an independent public employee group comprised wholly or substantially of peace officers which has affiliated by contract or otherwise for the purpose of securing services for its members. Affiliate Members shall be entitled to receive such services as may be established by mutual agreement.

Section 3.03. Fees, Dues, and Assessments. No initiation fee shall be charged to Regular, Associate, Retired or Honorary Members. Initiation fees charged to affiliating groups shall not exceed an amount necessary to cover affiliation costs to the corporation.

The monthly dues payable to the corporation by Regular and Associate Members shall be one and one half percent (1.5 %) of the monthly salary of a grade II Deputy Sheriff at the top step of the salary range. Dues for Affiliate and Honorary Members shall be as determined by the Board of Directors.

Retired Members shall not pay dues.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Kirkland & Ellis LLP, 777 South Figueroa Street, Suite 3400, Los Angeles, California 90017.

On July 23, 2008, I served the foregoing document(s) described as:

1. AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

on the interested parties as follows:

☐ **[U.S. MAIL]** By placing the documents listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth herein. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

☒ **[VIA EMAIL]** By transmitting the document(s) listed above in PDF format via email to the parties listed below at their respective email address.

☐ **[BY HAND DELIVERY]** I caused these document(s) to be personally served in such envelope by hand to the person at the address set forth below.

SEE ATTACHED SERVICE LIST

☒ **[STATE]** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed July 23, 2008, at Los Angeles, California.

LaVetta Washington

SERVICE LIST

Case No. BC389758

Harvey Leiderman, Esq.
Jeffrey R. Rieger, Esq.
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111
Telephone: (415) 543-8700
Facsimile: (415) 391-8269
Email: hleiderman@reedsmith.com
Email: jrieger@reedsmith.com

Attorneys for Board of Retirement of The Orange County Employees Retirement System

Joseph L. Wyatt, Esq.
Tritia M. Murata, Esq.
MORRISON AND FOERSTER LLP
555 West Fifth Street, Suite 3500
Los Angeles, CA 90013-1024
Telephone: (213) 892-5200
Facsimile: (213) 892-5454
Email: jwyatt@mofo.com
Email: tmurata@mofo.com

Attorneys for Association of Orange County Deputy Sheriffs

James P. Bennett, Esq.
Maria Chedid, Esq.
MORRISON AND FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone: (415) 268-7169
Facsimile: (415) 268-7522
Email: jbennett@mofo.com
Email: mchedid@mofo.com

Attorneys for Association of Orange County Deputy Sheriffs

Thomas J. Umberg, Esq.
MANATT, PHELPS & PHILLIPS LLP
Park Tower
695 Town Center Drive, 14th Floor
Costa Mesa, CA 92626
Telephone: (714) 371-2500
Facsimile: (714) 371-2550
Email: tumberg@manatt.com

Attorneys for Association of Orange County Deputy Sheriffs