

Liebert Cassidy Whitmore
A Professional Law Corporation
550 West C Street, Suite 620
San Diego, California 92101

1 Bruce A. Barsook, Bar No. 70084
bbarsook@lcwlegal.com
2 Steve M. Berliner, Bar No. 142835
sberliner@lcwlegal.com
3 Frances E. Rogers, Bar No. 227973
frogers@lcwlegal.com
4 LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5 550 West C Street, Suite 620
San Diego, California 92101
6 Telephone: 619.481.5900
Facsimile: 619.446-0015
7

8 Attorneys for Respondents COUNTY OF ORANGE; BOARD OF
SUPERVISORS OF THE COUNTY OF ORANGE
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12 ORANGE COUNTY ATTORNEYS
ASSOCIATION,

13 Petitioner,

14 v.

15 COUNTY OF ORANGE; BOARD OF
16 SUPERVISORS OF THE COUNTY OF
ORANGE,

17 Respondents.
18

Case No.: 30-2013-00638110-CU-WM-CJC

Complaint Filed: March 15, 2013

**ANSWER TO PETITION FOR WRIT OF
MANDATE**

(*Exempt from filing fees pursuant to Gov.
Code, § 6103.)

19
20 Respondent, COUNTY OF ORANGE and the BOARD OF SUPERVISORS OF THE
21 COUNTY OF ORANGE (collectively, "Respondent" or "County"), hereby answer the Verified
22 Petition for Writ of Mandate [CCP § 1085] filed by Petitioner, ORANGE COUNTY
23 ATTORNEYS ASSOCIATION ("Petitioner" or "Association"), as follows:

24 [PARTIES]

25 1. Answering paragraph 1 of the Petition, Respondent admits that the Association is
26 an "employee organization" within the meaning of Government Code section 3501(a).
27 Respondent admits the Association is the "recognized employee organization, within the meaning
28

1 action of the Board of Supervisors, and administration by OCERS. Respondent denies each and
2 every remaining allegation of paragraph 5.

3 6. Answering paragraph 6 of the Petition, Respondent admits that required employee
4 contribution rates are established by the CERL and upon action of the Board of Supervisors
5 (“Board”) pursuant to actuarial valuations conducted by, and recommendations of, OCERS. To
6 the extent that the County agrees to pay, on behalf of employees represented by the Association,
7 all or a portion of the contributions required to be paid by employees, this is sometimes
8 memorialized in Memoranda of Understanding (“MOU”) between the County and the
9 Association. Respondent admits that required employee contribution rates change over time
10 pursuant to action of the Board based upon OCERS’ recommendations due to changes in actuarial
11 valuations and other factors. Respondent admits that the amount of required employee
12 contributions which the County agrees to pay on behalf of employees, if any, changes over time.
13 Respondent denies each and every remaining allegation of paragraph 6.

14 7. Answering paragraph 7 of the Petition, Respondent admits that the Association
15 and the County have entered into a series of MOUs since approximately 1980. Respondent
16 admits that the MOUs stated that those hired prior to September 20, 1979 receive a retirement
17 benefit calculated pursuant to the formula contained in Government Code section 31676.12, and
18 their corresponding statutorily required employee contributions are calculated pursuant to
19 Government Code section 31621.5. Respondent admits that the MOUs stated that those hired
20 after September 20, 1979 and who are not “new members” as defined by the California Public
21 Employees’ Pension Reform Act of 2013 (“PEPRA”), receive a retirement benefit calculated
22 pursuant to the formula contained in Government Code section 31676.1, and their corresponding
23 statutorily required employee contributions are calculated pursuant to Government Code section
24 31621. Respondent denies each and every remaining allegation of paragraph 7 and to the extent
25 the allegations constitute a legal conclusion, Respondent is not required to respond.

26 8. Answering paragraph 8 of the Petition, Respondent lacks sufficient understanding
27 of the factual allegation contained in paragraph 8 and on that basis denies each and every
28 allegation of paragraph 8.

1 9. Answering paragraph 9 of the Petition, Respondent admits that in or about 2000,
2 the Association and the County agreed that effective June 28, 2002, the County would agree to
3 pay all of the statutorily required employee contributions towards OCERS to fund the basic
4 retirement benefit. Respondent lacks sufficient information or knowledge as to the remaining
5 allegations in paragraph 9 and on that basis denies each and every remaining allegation.

6 10. Answering paragraph 10 of the Petition, Respondent admits that the County's
7 agreement to pay all of the statutorily required employee contributions towards OCERS was
8 memorialized in the 2000-2003 MOU between the Association and the County which was ratified
9 by the Board. Respondent admits that in successor MOUs up to the MOU which expired on June
10 16, 2011, the County agreed to pay all of the statutorily required employee contributions towards
11 OCERS. Respondent denies each and every remaining allegation of paragraph 10.

12 11. Answering paragraph 11 of the Petition, Respondent admits that on or about June
13 25, 2004, the Association and the County agreed that employees in the Attorney Unit who retire
14 after July 1, 2005, and who are not "new members" as defined under the PEPRA, will receive an
15 enhanced retirement benefit calculated pursuant to the formula contained in Government Code
16 section 31676.19. This formula is commonly referred to as the "2.7% at 55" benefit formula.
17 Respondent admits that the statutorily required employee contributions and employer
18 contributions required to fund the 2.7% at 55 retirement benefit are higher than the contributions
19 required to fund the retirement formulas set forth in Government Code sections 31676.12 and
20 31676.1. Respondent admits that the statutorily required employee contribution required to fund
21 the 2.7% at 55 retirement formula is calculated pursuant to Government Code section 31621.8.
22 Respondent avers that, additionally, there is a "past service liability" cost for the 2.7% at 55
23 benefit formula which is .54% of employee compensation earnable pursuant to Government Code
24 section 31678.3(d). Respondent denies each and every remaining allegation of paragraph 11.

25 12. Answering paragraph 12 of the Petition, Respondent admits that the County and
26 Association agreed in the 2004-2007 MOU that implementation of the 2.7% at 55 benefit formula
27 would not result in any additional cost to the County. The County avers that this agreement
28 survived the expiration of that MOU. Respondent admits that, with respect to all employees

1 represented by the Association who are not “new members” as defined under the PEPRA, the
2 County also agreed in the 2004-2007 MOU that it would pay the entire statutorily required
3 employee contributions required to fund the retirement formulas under Government Code
4 sections 31676.12 and 31676.1. The County avers that this agreement did not survive the
5 expiration of the MOU. Respondent admits that the County and Association agreed in the 2004-
6 2007 MOU that employees represented by the Association who were not “new members” as
7 defined under the PEPRA, would pay the statutorily required employee contributions required to
8 fund the 2.7% at 55 benefit formula, as well as the .54% past service liability. Respondent denies
9 each and every remaining allegation of paragraph 12.

10 13. Answering paragraph 13 of the Petition, Respondent admits that the agreements
11 described in paragraph 12 of this Answer were memorialized in the 2004-2007 MOU and all
12 subsequent MOUs between the County and the Association. Respondent denies each and every
13 remaining allegation of paragraph 13.

14 14. Answering paragraph 14 of the Petition, Respondent admits that the most recent
15 MOU between the Association and the County had an initial term from June 22, 2007 to June 28,
16 2009. Respondent admits that the term of this MOU was later extended through June 16, 2011.
17 Respondent admits that the Association and the County began formal negotiations for a successor
18 MOU in or about May, 2011. Respondent denies each and every remaining allegation of
19 paragraph 14.

20 15. Answering paragraph 15 of the Petition, Respondent admits that on or about
21 March 5, 2013, the Board passed and enacted Resolution 13-015 imposing terms and conditions
22 of employment on all employees in the Attorney Unit. Resolution 13-015 speaks for itself.
23 Respondent denies each and every remaining allegation of paragraph 15.

24 16. Answering paragraph 16 of the Petition, Respondent lacks sufficient information
25 or knowledge to answer the allegations, and on that basis denies each and every allegation
26 contained therein.

27 17. Answering paragraph 17 of the Petition, Respondent admits that at times before
28 and after Resolution 13-015 was enacted, the County contributed or contributes at a greater rate to

1 the retirement plans of some nonrepresented employees and some managerial employees based
2 on varying factors including the retirement formula applicable to those nonrepresented and
3 managerial employees, the optional benefits available to those employees, and whether the
4 County agreed to pick-up all or a portion of the required employee contributions and/or cost-of-
5 living adjustments for those nonrepresented and managerial employees. The Respondent admits
6 that employees in the Attorney unit are in the general (non-safety) membership classification and
7 that there are some nonrepresented and managerial employees who are also in the general
8 membership classification. Respondent denies each and every remaining allegation of paragraph
9 17.

10 FIRST CAUSE OF ACTION

11 18. Answering paragraph 18 of the Petition, Respondent admits that Government Code
12 section 31631 was enacted as part of the PEPRA and went into effect on January 1, 2013.
13 Government Code section 31631 speaks for itself. Respondent denies each and every remaining
14 allegation contained in paragraph 18.

15 19. Answering paragraph 19 of the Petition, Government Code section 31631 speaks
16 for itself. Respondent denies each and every remaining allegation in paragraph 19.

17 20. Answering paragraph 20 of the Petition, Respondent admits that a unilateral
18 impositions of terms and conditions of employment followed an exhaustion of impasse
19 procedures when the Association and the County were unable to reach agreement on a successor
20 MOU. Respondent denies each and every remaining allegation in paragraph 20.

21 21. Answering paragraph 21 of the Petition, Respondent denies each and every
22 allegation in paragraph 21.

23 22. Answering paragraph 22 of the Petition, Respondent denies each and every
24 allegation in paragraph 22.

25 23. Answering paragraph 23 of the Petition, Respondent denies each and every
26 allegation in paragraph 23.

27 24. Answering paragraph 24 of the Petition, Respondent denies each and every
28 allegation in paragraph 24.

[SECOND CAUSE OF ACTION]

1
2 25. Answering paragraph 25 of the Petition, Respondent admits that Government Code
3 section 31678.3 was enacted prior to Government Code section 31631. Government Code section
4 31678.3 speaks for itself. Respondent denies each and every remaining allegation in paragraph
5 25.

6 26. Answering paragraph 26 of the Petition, Government Code section 31678.3 speaks
7 for itself. Respondent denies each and every remaining allegation in paragraph 26.

8 27. Answering paragraph 27 of the Petition, Respondent admits that a unilateral
9 impositions of terms and conditions of employment followed an exhaustion of impasse
10 procedures when the Association and the County were unable to reach agreement on a successor
11 MOU. Respondent denies each and every remaining allegation in paragraph 27.

12 28. Answering paragraph 28 of the Petition, Respondent denies each and every
13 allegation in paragraph 28.

14 29. Answering paragraph 29 of the Petition, Respondent denies each and every
15 allegation in paragraph 29.

16 30. Answering paragraph 30 of the Petition, Respondent denies each and every
17 allegation in paragraph 30.

18 31. Answering paragraph 31 of the Petition, Respondent denies each and every
19 allegation in paragraph 31.

[THIRD CAUSE OF ACTION]

20
21 32. Answering paragraph 32 of the Petition, Respondent admits that Government Code
22 section 7522.30 was enacted as part of the PEPRA and went into effect on January 1, 2013.
23 Government Code section 7522.30 speaks for itself. Respondent denies each and every
24 remaining allegation in paragraph 32.

25 33. Answering paragraph 33 of the Petition, Respondent denies each and every
26 allegation in paragraph 33.

27 34. Answering paragraph 34 of the Petition, Respondent denies each and every
28 allegation in paragraph 34.

Liebert Cassidy Whitmore
A Professional Law Corporation
550 West C Street, Suite 620
San Diego, California 92101

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **Unclean Hands**

3 5. The Petition, and each and every allegation contained therein, is barred in that
4 Petitioner is guilty of wrongful misconduct and/or omissions in connection with the claims that
5 form the basis of this litigation.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **Estoppel**

8 6. Petitioner is estopped by its own conduct from asserting any and all claims it may
9 have against Respondent arising from the transactions and occurrences set forth in the Petition.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **Consent**

12 7. Petitioner, at all relevant times gave its consent, express or implied, to the alleged
13 acts, omissions and conduct of Respondent.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **Standing**

16 8. Petitioner's causes of action, and each of them, are barred on the ground that
17 Petitioner lacks standing, in whole or in part, to assert the claims alleged in the Petition.

18 **NINTH AFFIRMATIVE DEFENSE**

19 **Statute of Limitations**

20 9. Petitioner's claims, and each of them, are barred by any and all applicable statute
21 of limitations.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **Laches**

24 10. The Petition and each and every purported claim therein are barred by the doctrine
25 of laches.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 **Nonjoinder of Necessary Parties**

28 11. Petitioner has failed to join all necessary parties to the action.

Liebert Cassidy Whitmore
A Professional Law Corporation
550 West C Street, Suite 620
San Diego, California 92101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWELFTH AFFIRMATIVE DEFENSE

Failure to Exhaust Administrative and Judicial Remedies

12. Petitioner failed to comply with its obligation to pursue any and all administrative and judicial remedies through to completion regarding all injuries allegedly suffered and therefore Petitioner is not entitled to any relief based thereon.

THIRTEENTH AFFIRMATIVE DEFENSE

No Duty Owed

13. Respondent has fully performed any and all contractual, statutory and other duties that may be or have been owed to Petitioner, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

Excused

14. Petitioner, its agents or attorneys, have expressly, impliedly, or by operation of law excused Respondent from all obligations, if any, relating to the subject of the Petition and each and every claim therein alleged.

FIFTEENTH AFFIRMATIVE DEFENSE

Qualified Privilege

15. Any and all acts alleged to have been committed by Respondent were qualifiedly privileged as they were acts done by government officials in good faith and within the scope of their authority.

SIXTEENTH AFFIRMATIVE DEFENSE

No Attorney's Fees

16. Petitioner failed to allege sufficient facts to support an award of attorney's fees and costs against Respondent on any basis.

SEVENTEENTH AFFIRMATIVE DEFENSE

Good Faith

17. The Petition, and each and every cause of action contained therein, is barred, in whole or in part because any actions taken with respect to Petitioner were based on an honest, reasonable, good faith belief in the facts as known and understood at that time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTEENTH AFFIRMATIVE DEFENSE

Adequate Remedy at Law

18. Petitioner is not entitled to a writ of mandate on the grounds that it has adequate legal remedies as there exist plain, speedy, and adequate alternative remedies at law.

NINETEENTH AFFIRMATIVE DEFENSE

Ripeness

19. Petitioner’s claims are barred on the grounds that they are premature and not ripe for adjudication.

TWENTIETH AFFIRMATIVE DEFENSE

Privileges and Immunities

20. Petitioner’s causes of action, and each of them, are barred by the privileges and immunities applicable to public agencies and employees, including but without limitation California Government Code sections 815, 815.2, 815.6, 818, 818.2, 818.8, 820.4, 820.2, 820.6, 820.8, 821, and 822.2.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Failure to Mitigate Damages

21. Petitioner is barred from recovery herein, in whole, or in part, by reason of its failure to mitigate damages, and those damages, if any, must be reduced by Petitioner’s failure to mitigate those damages.

TWENTY-SECOND AFFIRMATIVE DEFENSE

After-Acquired Evidence

22. The Petition is limited or subject to an absolute bar as to Petitioner’s claims and as to recoverable damages based on after-acquired evidence Respondent has presently and/or may acquire during the course of this litigation.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Abrogation

23. Petitioner is not entitled to the relief requested on the ground that it would abrogate the County’s municipal and police powers granted by the California and United States

1 Constitution, the laws of the State of California, and the County's Charter.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 **Res Judicata/Collateral Estoppel**

4 24. The Petition and all causes of action alleged therein are barred by the doctrine of
5 res judicata/collateral estoppel.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 **Claims Barred by Contract**

8 25. Without admitting that Petitioner sustained any damages or detriment, or that
9 Respondent is liable to Petitioner in any manner whatsoever for any of the purported causes of
10 action in the Petition, Respondent alleges that Petitioner's claims are barred by the express terms
11 of the contract with Respondent.

12 WHEREFORE, Respondent prays as follows

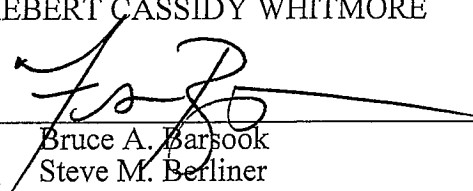
- 13 1. That Petitioner take nothing by reason of this action;
- 14 2. That the court deny Petitioner's Petition for Writ of Mandate;
- 15 3. For costs of suit;
- 16 4. For reasonable attorney's fees; and
- 17 5. For such other and further relief as the court may deem just and proper.

18 Dated: April 24, 2013

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

20 By: _____


 Bruce A. Barsook
 Steve M. Berliner
 Frances E. Rogers
 Attorneys for Respondents COUNTY
 OF ORANGE; BOARD OF
 SUPERVISORS OF THE COUNTY
 OF ORANGE

Liebert Cassidy Whitmore
 A Professional Law Corporation
 550 West C Street, Suite 620
 San Diego, California 92101

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: **550 West C Street, Suite 620, San Diego, California 92101.**

On April 25, 2013, I served the foregoing document(s) described as **ANSWER TO PETITION FOR WRIT OF MANDATE** in the manner checked below on all interested parties in this action addressed as follows:

Marianne Reinhold
Kent Morizawa
REICH, ADELL & CVITAN
2670 N. Main Street, Suite 300
Santa Ana, CA 92705
Facsimile: 714.834.0762

- (BY U.S. MAIL)** I am “readily 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 at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FACSIMILE)** I am personally and readily familiar with the business practice of Liebert Cassidy Whitmore for collection and processing of document(s) to be transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number 619.446-0015 to the facsimile number(s) listed above. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.
- (BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.
- (BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore’s electronic mail system from ptucker@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY PERSONAL DELIVERY)** I delivered the above document(s) by hand to the addressee listed above.

Liebert Cassidy Whitmore
A Professional Law Corporation
550 West C Street, Suite 620
San Diego, California 92101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Executed on **April 25, 2013**, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Phyllis Tucker