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April 29, 2013

**Via Email – jcoffey@perb.ca.gov**

James Coffey  
Regional Attorney  
Public Employment Relations Board  
1031 – 18<sup>th</sup> Street  
Sacramento, California 95811-4124

Re: Orange County Attorneys Association v. County of Orange  
Unfair Practice Charge No. LA-CE-814-M

Dear Mr. Coffey:

Charging Party Orange County Attorneys Association (OCAA) hereby attaches its Amended Statement of Charge that was inadvertently not included with the Amended Unfair Practice Charge (form) and Exhibits to the Charge sent via overnight mail on Friday, April 26, 2013. I sincerely apologize for the inconvenience. A Proof of Service is also attached.

Please contact our office if you have any questions.

Sincerely,



Rita A. Pollard,  
Legal Assistant to Marianne Reinhold  
Of REICH, ADELL & CVITAN

/rp  
Enclosure

cc: PERB, Los Angeles Regional Office (via facsimile)  
Karen Davis, OCAA (via email)  
Mark R. Howe, County of Orange (via email)  
Steve Danley, County of Orange (via facsimile)  
Bruce A. Barsook, Chief Negotiator, County of Orange (via email)

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**AMENDED STATEMENT OF CHARGE**

During the six months preceding this Unfair Practice Charge, the County of Orange, by its own actions, those of its agents, and others in concert with the County, has failed to bargain in good faith with Charging Party Orange County Attorneys Association as required by the Meyers-Milias-Brown Act and has engaged in an ongoing pattern of bad faith bargaining as evidenced by the following:

**[JURISDICTION AND BACKGROUND]**

1. Charging Party Orange County Attorneys Association (hereinafter "OCAA"), is an employee organization within the meaning of Government Code Section 3501(a).

2. Respondent County of Orange (hereinafter "County") is a public agency within the meaning of Government Code Section 3501(c).

3. OCAA and the County are parties to a memorandum of understanding (hereinafter "MOU"). By its own terms, the MOU expired on June 16, 2011. A true and correct copy of the MOU is attached hereto as Exhibit A.

4. At all relevant times herein, the County has recognized OCAA as the exclusive representative of an appropriate unit of employees within the meaning of Government Code Section 3501. This unit is comprised of members in the offices of the County's District Attorney, Child Support Services, Public Defender, Alternate Defender, Associate Defender and County Counsel.

**[BARGAINING HISTORY]**

5. OCAA and the County commenced negotiations for a successor MOU on May 13, 2011 with the County submitting its initial set of proposals to OCAA on that date. A true and correct copy of the County's May 13, 2011 proposal is attached hereto as Exhibit B. At that time,

1 some of the main concessions sought by the County were that unit members would receive no  
2 general salary increases over the term of the next MOU and that the members of the bargaining unit  
3 would begin making or "pick up" what are generally termed "employee contributions" to the Orange  
4 County Employee Retirement System (OCERS) to fund a portion of the bargaining unit members'  
5 pensions. Pursuant to a County proposal in 2002, for several prior MOUs between the parties, the  
6 County had in each MOU agreed to be responsible for making the employee contributions to  
7 OCERS to fund the bargaining unit members' pensions.

8         6. After receiving the County's initial proposal, the parties met for several bargaining  
9 sessions and exchanged proposals and were working toward reaching an agreement including on the  
10 salary and retirement contribution issues. The County's lead negotiator during this time was Carl  
11 Crown, Director of Human Resources for the County. On July 22, 2011, the County submitted a  
12 proposal indicating that if the parties could agree upon a new retirement formula for new employees,  
13 the County was proposing that "the employee's pick up of their full retirement contribution... would  
14 be phased in over the two year term of the contract." The County also indicated in bargaining  
15 sessions during the summer of 2011 that it would be willing to consider increases to unit member  
16 salaries if OCAA could point to corresponding increases in revenue or cost savings to offset the cost  
17 for any salary increases.

18         7. On August 12, 2011, OCAA submitted a proposal indicating that it would agree to  
19 the terms of the County's July 22, 2011 proposal regarding employee retirement contributions if the  
20 phase in took place over a three year period subject to the parties also reaching agreement on unit  
21 member salary increases. OCAA also submitted a proposal containing several cost savings  
22 elements including modification of the salary placement of incoming attorneys (resulting in a lower  
23 starting salary for newly hired attorneys) and other modifications to the salary range of the members  
24 of the bargaining unit which were aimed at achieving a cost savings thereby offsetting the increased  
25 cost to the County of increasing some unit members' salaries.

26         8. On September 7, 2011, the County announced to OCAA that it was unilaterally  
27 suspending bargaining with OCAA. OCAA expressed concern about the County suspending  
28 bargaining at that time and asserted its desire to continue bargaining in light of recent progress being

1 made at the bargaining table.

2 9. On April 27, 2012, the County and OCAA met again for bargaining for the first time  
3 after the County had unilaterally suspended bargaining in August of 2011. Crown was no longer  
4 the lead negotiator for the County and rather than responding to OCAA's August 12, 2011 proposal,  
5 the last proposal exchanged between the parties, the County's new lead negotiator, Bruce Barsook,  
6 presented OCAA with a document entitled "County's Initial Proposal". This proposal did not  
7 acknowledge any of the proposals previously exchanged between the parties from the start of  
8 bargaining on May 13, 2011 through suspension of bargaining in August, 2011. A true and correct  
9 copy of the County's April 27, 2012 proposal is attached hereto as Exhibit C.

10 10. The County's April 27, 2012 proposal included demands for many of the same  
11 concessions as the County's first bargaining proposal provided to OCAA on May 13, 2011,  
12 including those dealing with unit member salaries and retirement contributions. However, the April  
13 27, 2012 proposal also included a number of brand new items, including but not limited to: (a)  
14 elimination of seniority as a factor in determining order of layoff; (b) use of advisory arbitration  
15 instead of binding arbitration in discipline cases; (c) implementation of new health plan cost  
16 reduction measures; (d) changes in determination of premium pay; (e) changes in calculation of  
17 merit pay increases; (f) elimination of Workers' Compensation Supplemental Pay; and (g) changes  
18 to reimbursements for work-related expenditures. The County's April 27, 2012 proposal also did  
19 not reflect the parties' prior agreement to a phase in of the unit members assuming responsibility for  
20 making the employee contributions to fund pensions.

21 11. After some brief discussion regarding the new demands and concessions set forth in  
22 the County's April 27, 2012 proposal, the parties focused on the issues of unit member salaries and  
23 employees assuming responsibility for making employee contributions toward pensions.

24 12. With regard to retirement contributions, the County's position on April 27, 2012 was  
25 the same as it was on May 13, 2011--that unit members must immediately begin making the  
26 employee contributions to their retirement accounts. As it did the first time the parties bargained  
27 over this issue in 2011, the County again moved away from this position and indicated verbally at  
28 the bargaining table its willingness to phase in over the term of the next MOU the requirement that

1 unit members pay their own contributions.

2 13. With regard to unit member salaries, the County's initial position on April 27, 2012  
3 was also the same as it was on May 13, 2011--that it could not agree to any general salary increases.  
4 As it did the first time the parties bargained over this issue in 2011, the County again moved away  
5 from this position and indicated that it would consider increases to unit member salaries if OCAA  
6 could point to corresponding revenue or cost savings to pay for those increases. Accordingly,  
7 OCAA again made proposals highlighting ways in which the County could reallocate funds or  
8 restructure existing liabilities to pay for salary increases and also proposed making any salary  
9 increases depend on increased revenues from increased property and sales tax. The last formal  
10 proposal made by OCAA regarding an agreement to base increases in salary on increased revenues  
11 was provided by OCAA to the County on August 17, 2012. OCAA did not receive any formal  
12 responses to these proposals.

13 14. Despite the apparent potential for the parties reaching an agreement through  
14 continuing discussions regarding unit member salaries and retirement contributions, and before any  
15 further discussion on previously tabled issues, the County presented its last, best, and final offer  
16 (hereafter, "First Final Offer") to OCAA on August 24, 2012. The County did not submit any new  
17 formal proposals between April 27, 2012 and its First Final Offer. A true and correct copy of the  
18 First Final Offer is attached hereto as Exhibit D.

19 15. The terms of the First Final Offer are identical in all significant respects to the  
20 County's April 27, 2012 proposal and do not reflect any progress made by the parties since the  
21 County submitted that proposal. Furthermore, the First Final Offer does not include the actual  
22 proposed contract language regarding key provisions first introduced in the April 27, 2012 proposal,  
23 including: (a) elimination of final and binding arbitration for unit member discipline; (b) seniority  
24 considerations in the event of unit member layoff; (c) premium pay; and (d) Workers Compensation  
25 Supplementary Pay. The County gave OCAA a deadline of September 12, 2012 to accept the First  
26 Final Offer.

27 16. OCAA did not accept the First Final Offer and the County declared impasse on  
28 September 13, 2012. *OCAA challenged the existence of a bona fide impasse, and engaged in the*

1 *statutory impasse procedures in good faith but under protest.*

2       17.     *On January 1, 2013, the Public Employees Pension Reform Act (hereinafter ,*  
3 *“PEPRA”) went into effect. PEPRA set forth certain restrictions on the manner in which public*  
4 *employers could determine the amount that employees are required to contribute to their retirement*  
5 *account. Relevant here are three sections: (1) Government Code Section 31631, which prohibits a*  
6 *County from requiring employees to pay employee or employer contributions unless agreed to in an*  
7 *MOU; (2) Government Code Section 31678.3, which prohibits a County from requiring employees*  
8 *to pay an additional contribution for purposes of funding the “2.7% at 55” retirement benefit*  
9 *unless agreed to in an MOU; and (3) Government Code Section 7522.30, which prohibits the*  
10 *County from contributing to the retirement plans of nonrepresented and managerial employees at a*  
11 *greater rate than it contributes to the retirement plans of represented employees.*

12       18.     *OCAA notified the County that unilateral imposition of the provisions in the*  
13 *County’s First Final Offer with regard to employee retirement contributions would violate*  
14 *Government Code Sections 31631, 31678.3, and 7522.30. Despite this, the County did not alter its*  
15 *First Final Offer after PEPRA’s effective date to make it consistent with the law.*

16       19.     *On or about January 25, 2013, after the parties had participated in a fact finding*  
17 *proceeding, the County presented OCAA with deal points representing a new final offer (“Second*  
18 *Final Offer”) that differed in significant respects from the previously presented First Final Offer*  
19 *presented to OCAA on or about August 24, 2012. The County requested that OCAA conduct a*  
20 *membership vote on the Second Final Offer. On or about February 13, 2013, OCAA’s membership*  
21 *rejected the Second Final Offer.*

22       20.     *On March 5, 2013, the County’s Board of Supervisors passed and enacted*  
23 *Resolution 13-015, unilaterally imposing the terms and conditions of the County’s First Final Offer*  
24 *without modification on all employees in the Attorney Unit. A true and correct copy of Resolution*  
25 *13-015 is attached hereto as Exhibit E.*

26  
27                   **[FAILURE TO BARGAIN IN GOOD FAITH]**  
28

1           21.     Charging party restates by reference the allegations made in Paragraphs 1 through 20,  
2 inclusive, as though fully set forth herein.

3           22.     At all times relevant herein, the County has engaged in a pattern and practice of  
4 conduct which evidences the subjective intent not to enter into any agreement with OCAA as  
5 evidenced by, but not limited to, the following conduct:

- 6           a.     The County's unilateral suspension of bargaining on August 12, 2011 and the  
7                 resulting eight month delay in bargaining;
- 8           b.     Since returning to the bargaining table on April 27, 2012, the County's: (i)  
9                 failure to acknowledge any progress made by the parties between May 13,  
10                2011 to August 12, 2011; (ii) submission of an "Initial Proposal" after almost  
11                a prior year of bargaining had in fact taken place between the parties; and (iii)  
12                use of a new lead negotiator;
- 13          c.     The County's regressive bargaining with regard to the issues of unit member  
14                 salaries and retirement contributions;
- 15          d.     The County's ongoing failure to address and respond to OCAA's proposals  
16                 regarding salary increases after inviting OCAA to make such proposals;
- 17          e.     Prior to introducing its Final Offer, the County's failure to adequately bargain  
18                 over new issues first introduced in its April 27, 2012 proposal;
- 19          f.     The County's failure to provide OCAA with specific contract language  
20                 regarding several proposals in its Final Offer, thereby preventing OCAA from  
21                 fully considering the various proposals and informing its members about the  
22                 specific terms of the First Final Offer or Second Final Offer;
- 23          g.     The County's maintenance of a pre-determined and inflexible position, as  
24                 evidenced by comparing its April 27, 2012 initial proposal and its First Final  
25                 Offer, as well the Second Final Offer extended to OCAA on January 25,  
26                 2013; *and*
- 27          h.     *The County's failure to modify its First Final Offer or its Second Final Offer*  
28                 *to conform to the requirements of the recently-enacted PEPR.*





1                    *restore* the status quo ante with respect to all matters within the scope of  
2                    representation, *and make all members of the bargaining unit whole for any monetary*  
3                    *losses resulting from the County's unilateral change in the terms and conditions of*  
4                    *employment.*

5 C.    Issue an order to retain continuing jurisdiction of this charge until such time as PERB shall  
6           find that the County has fully and completely complied with PERB's order in this unfair  
7           practice charge.

8 D.    Award OCAA its costs and disbursements in bringing this charge, including but not limited  
9           to: reasonable attorneys' fees, expert and lay witness costs, and other expenses incurred.

10 E.    Grant such other and further legal and equitable relief as justice may require.

1 **PROOF OF SERVICE**  
2 (Code Civ. Proc. § 1013a(3))

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of 18 and  
5 not a party of the within action; my business address is 2670 North Main Street, Suite 300, Santa  
6 Ana, CA 92705.

7 On **April 29, 2013**, I served the document described as **(Amended) STATEMENT OF  
8 CHARGE (UPC No. LA-CE-814-M)** on the interested parties in this action by placing a true copy  
9 thereof enclosed in a sealed envelope addressed as follows:

10 Directed to:

11 James Coffey, Regional Attorney  
12 Public Employment Relations Board  
13 Sacramento Regional Office  
14 1031 - 18th Street  
15 Sacramento, CA 95811-4124  
16 Telephone: (916) 327-7242  
17 Facsimile: (916) 327-6377  
18 [jcoffey@perb.ca.gov](mailto:jcoffey@perb.ca.gov)  
19 (VIA EMAIL)

20 Copies sent to:

21 Public Employment Relations Board  
22 Los Angeles Regional Office  
23 700 N. Central Ave., Suite 200  
24 Glendale, CA 91203-3219  
25 Telephone: (818) 551-2822  
26 Facsimile: (818) 551-2820  
27 (VIA FACSIMILE)

Karen Davis  
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**BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of 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 an affidavit.

**BY OVERNIGHT COURIER:** I sent such document(s) on the above date, by overnight delivery with postage thereon fully prepaid at Santa Ana, California.

**BY FAX:** I sent such document by use of facsimile machine telephone number (714) 834-0762. The facsimile cover sheet and confirmation are attached hereto indicating the recipient's facsimile number and time of transmission pursuant to California Rules of Court Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.

**BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be delivered by hand to the above addressee.

**BY EMAIL:** I caused to be sent such document by use of email to the email addressee above. Such document was scanned and emailed to such recipient.

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

Executed on **April 29, 2013**, at Santa Ana, California.



Rita A. Pollard