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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE

12 ORANGE COUNTY ATTORNEYS
13 ASSOCIATION,

14 Petitioner,

15 vs.

16 COUNTY OF ORANGE; BOARD OF
17 SUPERVISORS OF THE COUNTY OF
18 ORANGE,

19 Respondents.

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

) **PETITIONER'S EVIDENTIARY**
) **OBJECTIONS IN OPPOSITION TO**
) **DECLARATION OF MITCH TEVLIN**

) **[Civ. Proc. Code § 1085]**

) Date: February 14, 2014
) Time: 1:30 p.m.
) Dept.: C25

Petitioner ORANGE COUNTY ATTORNEYS ASSOCIATION hereby objects to those portions of the Declaration of Mitch Tevlin in Support of Respondents' Opposition to the Petition for Writ of Mandate ("Tevlin Decl."), identified in the below table.

Tevlin Decl. Citation	Objection	Ruling
<p>5. Employees have a retirement benefit formula which is used to calculate the employee's basic pension benefit once he or she retires. The benefit formula is expressed as a maximum percentage of final compensation at a specified age of retirement. For example, "2.7% at 55" means that the employee will receive a maximum retirement benefit of 2.7% of final compensation at a retirement age of 55 or older taking into account the number of years of service credit the employee has when he or she retires.</p>	<ul style="list-style-type: none"> ▪ This testimony lacks foundation and personal knowledge, particularly with respect to the source of the identified formulas, Evid. Code §§ 403, 702(a). ▪ This testimony contains inadmissible hearsay regarding the formulas used for calculation of retirement benefits, Evid. Code § 1200. ▪ This testimony contains improper conclusions and opinions regarding the formulas applicable to OCAA members, not underlying factual evidence. 	<p>Sustained _____</p> <p>Overruled _____</p>
<p>6. . . . OCAA are a class of employees who share the same retirement benefit formulas.</p>	<ul style="list-style-type: none"> ▪ This testimony lacks foundation and personal knowledge, Evid. Code §§ 403, 702(a). 	<p>Sustained _____</p> <p>Overruled _____</p>

	<ul style="list-style-type: none"> This testimony contains improper conclusions and opinions regarding the formulas applicable to OCAA members, not underlying factual evidence. 	
<p>8. In the 2004-2007 memorandum of understanding between the County and OCAA, the parties agreed to implement a new enhanced retirement formula of 2.7% at 55 for OCAA employees (“New Formula”) effective July 1, 2005. This New Formula provides a higher retirement benefit for OCAA employees than the retirement formulas they previously had, 2.6% at age 62 (for employees hired on or before September 20, 1979) and 2.9% at 65 (for employees hired on or after September 21, 1979) (“Old Formulas”).</p> <p>..</p>	<ul style="list-style-type: none"> This testimony contains inadmissible hearsay regarding the content of the 2004-2007 MOU, Evid. Code § 1200. 	<p>Sustained _____</p> <p>Overruled _____</p>
<p>10. Attached hereto as Exhibit D is a true and correct copy of the Agenda Staff Report recommending approval of the 2004-2007 OCAA MOU and implementation of the New Formula.</p>	<ul style="list-style-type: none"> This testimony is irrelevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the 	<p>Sustained _____</p> <p>Overruled _____</p>

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	<p>determination of the action. Evid. Code § 210.</p> <ul style="list-style-type: none"> ▪ The Agenda Staff Report is submitted to contradict or add to the terms of a written contract, the 2004-2007 MOU, in violation of the parol evidence rule. Cov. Code § 1625; Code Civ. Proc. § 1856. ▪ This testimony contains inadmissible hearsay regarding the contents of the Agenda Staff Report, to the extent that Respondents rely upon Tevlin to authenticate this document, as Tevlin has not indicated that he was at the table or in any way involved in the contents discussed therein, Evid. Code § 1200. 	
<p>11. The New Formula results in the following additional costs: (1) a higher normal employee member contribution; (2) a higher normal employer</p>	<ul style="list-style-type: none"> ▪ This testimony contains improper conclusions and opinions regarding the formulas applicable to 	<p>Sustained _____ Overruled _____</p>

<p>1 contribution; and (3) an underfunded 2 "past service liability" contribution 3 because the New Formula applies 4 retroactively to service previously 5 performed by employees prior to the 6 implementation of the New Formula.</p>	<p>OCAA members, not underlying factual evidence.</p>	
<p>7 12. The 2004-2007 and 2007-2011 8 MOUs require OCAA employees to 9 pay a "Reverse Pick-Up" contribution 10 equal to: (1) the difference between the 11 County's employer contribution to fund 12 the Old Formulas and the employer 13 contribution to fund the New Formula; 14 and (2) the cost to the County to pay for 15 the "past service liability." (See Article 16 XXII Section 1.F. to Exhibits B and C 17 attached hereto.)</p>	<ul style="list-style-type: none"> ▪ This testimony contains inadmissible hearsay regarding the content of the 2004-2007 and 2007-2011 MOUs, Evid. Code § 1200. ▪ This testimony contains improper conclusions and opinions regarding the formulas applicable to OCAA members, not underlying factual evidence. 	<p>Sustained _____ Overruled _____</p>
<p>19 13. Prior to the 2004-2007 MOU and 20 the implementation of the New 21 Formulas, the County was picking-up 22 the full amount of employee member 23 contributions to fund their Old 24 Formulas. In the 2004-2007 MOU, the 25 County agreed to continue the pick-up 26 of a portion of the employee member 27 contribution rate equal to what the</p>	<ul style="list-style-type: none"> ▪ This testimony lacks foundation and personal knowledge regarding contributions prior to the 2004-2007 MOU, Evid. Code §§ 403, 702(a). ▪ This testimony contains improper conclusions and opinions regarding the 	<p>Sustained _____ Overruled _____</p>

EVIDENTIARY OBJECTIONS

<p>1 employee contribution would be under 2 the Old Formulas. The County also 3 picked-up the employee contribution 4 needed for full reserve funding of the 5 cost-of-living adjustments for retirees 6 (“COLA”). These are collectively 7 referred to as the “County Pick-Up.” If 8 the County does not pick-up these 9 items, they become the responsibility of 10 the employees to pay. (See Article 11 XXII Section 1.G. to Exhibit B attached 12 hereto.) 13 14 15 16</p>	<p>contractual contribution obligations prior to the 2004- 2007 MOU and the employees’ payment obligation in the absence of a pick-up, not underlying factual evidence.</p> <ul style="list-style-type: none"> ▪ This testimony contains inadmissible hearsay regarding the contractual contribution obligations prior to the 2004-2007 MOU and regarding the content of the 2004-2007 MOU, Evid. Code § 1200. 	
<p>17 16. Since May 2007, OCAA and the 18 County agreed that the methodology for 19 determining the Reverse Pick-Up 20 would be the “relative ratio 21 methodology.” . . . 22 23 24 25 26 27 28</p>	<ul style="list-style-type: none"> ▪ This testimony contains inadmissible hearsay regarding the agreement in place between the County and the OCAA since May 2007, Evid. Code § 1200. ▪ This testimony contains improper conclusions and opinions regarding the agreement in place between the County and the OCAA 	<p>Sustained _____ Overruled _____</p>

EVIDENTIARY OBJECTIONS

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	since May 2007, not underlying factual evidence.	
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Respectfully submitted,

Dated: February 6, 2014

REICH, ADELL & CVITAN
A Professional Law Corporation

By: Marianne Reinhold

MARIANNE REINHOLD
Attorneys for Petitioner
SAN BERNARDINO COUNTY PUBLIC
ATTORNEYS ASSOCIATION

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

STATE OF CALIFORNIA, COUNTY OF ORANGE

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

On February 6, 2014, I served the document described as **PETITIONER'S EVIDENTIARY OBJECTIONS IN OPPOSITION TO DECLARATION OF MITCH TEVLIN**. I served the document on the persons below, as follows:

Bruce A. Barsook
Steve M. Berliner
Frances E. Rogers
LIEBERT CASSIDY WHITMORE
550 West C Street, Suite 620
San Diego, CA 92101
Tel: (619) 481-5900
Fax: (619) 446-0015
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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 February 6, 2014, at Santa Ana, California.



RITA A. POLLARD

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