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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

RETIRED EMPLOYEES ASSOCIATION OF ORANGE COUNTY, INC., Plaintiff, vs. COUNTY OF ORANGE, Defendant.	Case No. __________ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This action arises under Article 1, §10 of, and the Fifth and Fourteenth Amendments to, the United States Constitution. This Court has jurisdiction over the state-law claims asserted herein pursuant to 28 U.S.C. § 1367(a), because those claims arise from the same occurrences as Plaintiff's federal claims.

2. Plaintiff brings this action for declaratory and injunctive relief to prevent Defendant County of Orange ("the County") from implementing changes to its retired employee health benefit program, which changes are prohibited by federal and state law. The thousands of retired Orange County employees on whose behalf Plaintiff brings this action ("County Retirees") will suffer severe harm if the County's proposed actions are allowed to go forward.

Specifically, County Retirees will be forced either to pay *much* higher health insurance premium rates than they were promised, or accept a much lower level of coverage, or in some cases surrender their insurance coverage entirely.

3. This is a matter of urgency. The County intends to make the proposed illegal changes effective January 1, 2008, and County Retirees will very soon be forced to make health care coverage decisions based on these illegal changes, beginning in November 2007. County Retirees are at risk of losing health benefits on which they and their families rely, or alternatively being forced to spend hundreds of additional dollars per month to maintain their coverage, rendering them unable to cover other critical expenses.

4. Judicial intervention is required because, unlike current employees, who can and in fact did protect their health insurance benefits through their respective collective bargaining units, County Retirees had no meaningful voice, let alone leverage, in the process by which the County unilaterally removed a vested benefit from them. Indeed, it is no coincidence that the County decided to "balance its books" with respect to a systemic and county-wide health insurance financing problem on the backs of the one group that was *least* able to defend its interests. Accordingly, Plaintiff respectfully asks that this Court declare the proposed changes unlawful and enjoin their implementation.

PARTIES

5. Plaintiff REAOC is a California nonprofit corporation representing over 4,600 Orange County Employees Retirement System ("OCERS") retirees and their spouses regarding a wide range of issues, including retiree health benefits. REAOC's officers and directors are volunteers who work in the interests of OCERS retirees. REAOC's purposes include advocating for the interests of its members with respect to their pension and health benefits, and disseminating information relating to those benefits and legislative actions relating thereto.

6. REAOC and its members have engaged in research, study, public education and (very limited) discussion with the County regarding the proposal of the Orange County Board of Supervisors (the "Board") to alter retiree health benefits. Members of REAOC are retired employees of Orange County who depend on the health benefits provided by the County and are

interested in those health benefits and any changes thereto. REAOC and its members are beneficially interested in ensuring that the County provides retirees the health benefits to which they are entitled and on which they depend to care for themselves and their families. REAOC's members will suffer substantial injury if the County is allowed to complete the implementation of its proposed changes to the retirement health benefit.

7. Defendant County of Orange ("County") is a political subdivision of the State of California, duly authorized and existing under the laws of, and by virtue of the Constitution and laws of the State of California. The County maintains a health benefits system for current and retired Orange County employees, through self-funded plans and contracts with third party insurers.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter because one or more of Plaintiff's claims arises under federal law and Plaintiff's state-law claims arise from the same transactions or occurrences as the federal claims. The Court has personal jurisdiction over the County because the County resides and conducts business in this judicial district and this action arises from the County's conduct occurring here.

9. Venue is proper in this district and this division because the County is located in this district and division.

GENERAL ALLEGATIONS

10. Under its collective bargaining agreements, the County pays a large percentage (75%-95%) of the health insurance premiums for its current, active employees. By contrast, once an employee retires, the County makes a fixed-dollar contribution to each retiree's monthly premium (called the Retiree Medical Grant)—an amount equal to the retirees' years of employment with the County multiplied by approximately $17. For example, the County will pay $340 per month toward the health insurance premium for a retiree with 20 years of service. The retiree is required to pay the balance of the premium out of pocket. The Retiree Medical Grant remains fixed, regardless of whether the retirees' premiums increase or decrease.

11. For decades, current Orange County employees have been "pooled" with retired Orange County employees for purposes of health insurance coverage and premium rate-setting. Because retirees typically require more health care services than current employees, this pooling had the effect of reducing retirees' premiums and increasing their coverage (as compared to what their coverage and premiums would have been had they been treated as a distinct group). In this Complaint, Plaintiff will refer to this arrangement as the retirees' "Pooling Benefit." The Pooling Benefit has allowed County Retirees to pay less out-of-pocket for their premiums, or secure more coverage, or some combination of both, than if they were treated as a separate group.

12. During the time of their active employment, County Retirees consented to this arrangement because of their expectation that they, in turn, would receive the Pooling Benefit upon *their* retirement. Further, County Retirees (and in many cases their spouses) have relied on the County's practice of pooling, and the implied promise that it would continue, when they made important decisions regarding employment and health insurance arrangements, including the critical decision of *when* they could afford to retire.

13. Despite County Retirees' reasonable reliance on the Pooling Benefit, and despite admitting (in a June 2006 presentation regarding retiree health benefits) that the retiree health benefit plan—which included the Pooling Benefit—was a "lifetime benefit," in September 2006 the County began removing that benefit unilaterally. The County's purpose in making this drastic change was to address a systemic and county-wide problem with healthcare finance, a problem that was exacerbated by the County's own decision in 2004 (widely criticized at the time as fiscally irresponsible) to offer an enhanced retirement benefit package to current employees. The cost of that change turned out to be much higher than predicted. By splitting the pool, the County will see enormous cost savings by paying much lower health insurance premiums for current employees. At the same time, the County's contribution to retired employees' health insurance premiums will remain fixed, under the Retiree Medical Grant formula ([$17] x [years of service]).

14. During one meeting in June 2006, the Board received a Staff Report trumpeting the fact that this draconian measure would "be favorably received by the financial markets and rating agencies." Absent from the discussion was any acknowledgement of the extreme burden it would place on retired employees.

15. On September 5, 2006, the Board held a meeting to discuss retiree insurance premium funding. County Retirees were given only a few days' notice of that meeting, and at the meeting the Board refused to give meaningful consideration to County Retirees' arguments. Instead, the Board simply announced that on September 12, 2006 it would adopt memoranda of understanding ("MOUs") "restructuring" the Retiree Medical Program. On September 12, 2006 the Board approved a resolution to "split the pool" and create different premium pools for active and retired employees. On August 14, 2007, and again on September 11, 2007, the Board began implementing the pool-splitting decision by approving contracts with medical insurance carriers and changes to the County's self-funded insurance plans, which changes reflected separate premium pools for active and retired employees.

16. According to the County's own estimate, by eliminating the Pooling Benefit it will save over $10 million per year. Current employees also benefit from the change, because they will pay lower healthcare premiums and because the County "paid back" some if its healthcare insurance premium savings to current employees through wage and other concessions when it negotiated its most recent labor contracts.

17. The *only* group that will lose in this new arrangement is the County Retirees, who had no formal voice in the County's deliberations and *no* bargaining power to protect their interests, because they are not represented by bargaining units. Indeed, County Retirees are being forced to bear nearly the entire cost of the County's efforts to balance the books with respect to health care—the $10 million annual savings to the County comes at a $10 million increased annual expense to County Retirees. Current estimates are that County Retirees' premiums will increase on average by $161 per month (on average a 40% increase). Many retirees will see a premium increase of nearly 100%. Some will be forced to pay an additional *$900 per month*. Further, in many cases County Retirees and their families will enjoy fewer

benefits for these much higher premiums. County Retirees received no offsetting benefits or other compensation from the County to make up for the Pooling Benefit that was taken from them.

18. The County's "solution" to its fiscal challenge shifts the burden of a county-wide and systemic medical insurance finance problem onto the group that is least able to shoulder it. A large percentage of County Retirees and their families have a difficult time making ends meet under the current arrangement; their fixed and limited incomes simply cannot sustain the heavy *additional* burden that the County's plan forces them to bear. Further, County Retirees are by and large older and have more existing health problems than current employees. As a result of these "pre-existing conditions," they are unable to secure alternative coverage, either by obtaining new employment or by going "into the market" to obtain their own insurance. In short, County Retirees and their families cannot get by without the health coverage they bargained for and depended on to get them through their retirement years.

19. Splitting the pool is not only unfair and detrimental to County Retirees and their families, it is also unlawful. The Pooling Benefit vested when County Retirees, during their active employment, paid higher rates to the benefit of previous retirees, *and* when they made important decisions in reasonable reliance on the County's decades-long practice and implied promise that the Pooling Benefit would continue during their retirement years. As such, the Board acted illegally by voting to withdraw the Pooling Benefit unilaterally.

20. Lacking any formal voice in the decision-making process and lacking any bargaining power vis a vis the County, County Retirees have no recourse other than to seek judicial protection of their rights to the Pooling Benefit. This suit seeks this Court's ruling requiring the Board to revoke its approvals of (1) the September 12, 2006 resolution approving the new retiree medical benefit plan that removed the Pooling Benefit, and (2) any self-insured contracts and contracts with insurance carriers implementing the new plan, including the resolutions of August 14, 2007 and September 11, 2007. This suit also seeks a preliminary injunction protecting retirees from imposition of this new plan during the pendency of this suit.

21. As REAOC representatives and numerous County Retirees testified, elimination of the Pooling Benefit will catastrophically affect County Retirees and their families by drastically increasing their health insurance premiums, in many cases as much as doubling monthly premiums. As one affected retiree testified:

> Please please don't have them increase my rates, I am 62 years of age and single with no spouse and no other means of health insurance. Because of my age, I am not entitled to Medicare coverage, and I make under $25,000 from my annual retirement allowance. What am I to do? My health is pretty good so I don't milk money from the system.
>
> Being on my own do you think for one minute I would have retired knowing this fear is now being thrown into my face especially when I was promised the current premium rates when I left? With a lot of smiles and good-lucks from the retirement system and [Orange County]?
>
> I worked 16 years as a single mother with good recommendations and good attendance [at work] and have tried very hard to do what's right.

22. Plaintiff has no plain, speedy, or adequate remedy at law, in that unless this Court grants injunctive relief, the County's actions will result in irreparable harm to the County Retirees. Many of the County Retirees will lose their health benefits because they will no longer be able to afford them. Others will have no choice but to accept inadequate and overpriced health insurance. No remedy other than an injunction against the implementation of this illegal proposed change could adequately compensate County Retirees for this harm.

23. A current controversy exists as to, among other things, whether the County may unilaterally remove a vested health benefit of County Retirees, and if so, whether the County must compensate County Retirees for the withdrawal of that vested benefit.

FIRST CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

25. The Pooling Benefit was an integral part of the total compensation for which County Retirees bargained, and in exchange for which they performed services as active employees of the County. County Retirees have performed their duties under these contracts. The County is legally bound to continue to provide that benefit, or in the alternative provide

compensation to County Retirees equal to the value of that benefit. By failing to do so, the County is in breach of its agreements with the County Retirees.

SECOND CAUSE OF ACTION
(Promissory Estoppel)

26. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

27. County Retirees were promised health benefits, including the Pooling Benefit, throughout their retirement years. They reasonably and detrimentally relied on this promise, for example, when making such critical decisions as whether to remain employed with the County or take other employment, and whether to take advantage of health benefits available to and through their respective spouses' employers. The County knew or should have known that County Retirees would rely on the Pooling Benefit in making these decisions. As such, the County is estopped from removing that benefit now and is required to continue to provide it to County Retirees.

THIRD CAUSE OF ACTION
(Due Process – U.S. Constitution & 42 U.S.C. § 1983)

28. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

29. County Retirees have a vested property right in the Pooling Benefit, by virtue of (1) the County's promise to provide those benefits after retirement in exchange for services the retirees rendered during their active employment; (2) the retirees' reasonable, detrimental reliance on the County's promise to provide the Pooling Benefit as part of the their total compensation; and (3) the retirees' payments, during their active employment, of higher premiums to reduce the premiums of the then-existing pool of retirees.

30. In addition, the Pooling Benefit is a form of deferred compensation. Indeed, the County often referred to the Pooling Benefit as part of the County employees' global compensation "package" during negotiations with employee bargaining units.

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

FOURTH CAUSE OF ACTION
(Due Process – California Constitution)

32. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

33. County Retirees have a vested property right in the Pooling Benefit, by virtue of (1) the County's promise to provide those benefits after retirement in exchange for services the retirees rendered during their active employment; (2) the retirees' reasonable, detrimental reliance on the County's promise to provide the Pooling Benefit as part of the their total compensation; and (3) the retirees' payments, during their active employment, of higher premiums to reduce the premiums of the then-existing pool of retirees.

34. In addition, the Pooling Benefit is a form of deferred compensation. Indeed, the County often referred to the Pooling Benefit as part of the County employees' global compensation "package" during negotiations with employee bargaining units. Under Article I, 7 of the California Constitution, the County may not take away this vested property right without compensating County Retirees for the value that it represents.

FIFTH CAUSE OF ACTION
(Impairment of Contract – U.S. Constitution)

35. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

36. Because County Retirees had contractual rights to the Pooling Benefit, the County resolutions removing that benefit, without offsetting that removal with other benefits or advantages, unlawfully impair a contractual obligation, in violation of Article I, §10 of the United States Constitution.

SIXTH CAUSE OF ACTION

(Impairment of Contract – California Constitution)

37. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

38. Because County Retirees had contractual rights to the Pooling Benefit, the County resolutions removing that benefit, without offsetting that removal with other benefits or advantages, unlawfully impair a contractual obligation, in violation of Article I, §9 of the California Constitution.

SEVENTH CAUSE OF ACTION

(Violation of Cal. Const. Art. XVI, Sec. 17)

39. Plaintiff incorporates by reference all paragraphs set forth above as though fully set forth herein.

40. In taking the actions described above, the County violated Article XVI, section 17 of the California Constitution (the California Pension Protection Act of 1992) by, among other things, unilaterally removing vested retiree health benefits without compensating County Retirees and breaching its duty to act in the interest of all County beneficiaries—*i.e.*, current *and* retired employees.

PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

1. For a temporary, preliminary and permanent injunction prohibiting the County from implementing the changes to the medical benefit system that effectuated the removal of the Pooling Benefit (including, but not limited to, Resolution Number 06-185 and subsequent related resolutions adopted on August 14, 2007 and September 11, 2007 which approved medical insurance plans that reflected the removal of the Pooling Benefit).

2. For a judicial declaration under 28 U.S.C. § 2201 (The Declaratory Relief Act) that the County Retirees have a vested property interest in the Pooling Benefit and that the County's proposed changes eliminating the Pooling Benefit are unlawful.

4. For an award of reasonable attorney's fees under California Civil Code § 1021.5; California Government Code §§ 800 and 31536; 42 U.S.C. §1983, and any other statute or rule of law authorizing such an award;

5. For costs of suit incurred herein.

6. For such other relief as the Court may deem proper.

Dated: November 05, 2007

Respectfully Submitted,

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