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December 14, 2011

Via E-Filing

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Retired Employees Association of Orange County, Inc. v. County of Orange*
Ninth Circuit Case No. 09-56026; District Court Case No. 8:07 -cv-01301-AG

Dear Ms. Dwyer:

In accordance with this Court's order of December 1, 2011 in the above entitled case, on behalf of appellee County of Orange, we submit the following letter for distribution to the panel.

The County of Orange submits that a remand to the district court, subject to appellate review, is appropriate under the circumstances of this case. This will enable the district court to confirm that the record is complete, and to adjudicate the appellant's claims in light of the California Supreme Court's recent decision. *See Scheehle v. Justices of Supreme Court of State of Arizona*, 315 F3d 1191, 1191 (9th Cir. 2003) (remand to district court after question answered by Arizona Supreme Court, where appeal had been from summary judgment); *Myers v. Philip Morris Cos., Inc.*, 307 F3d 921, 921 (9th Cir. 2002) (remand to district court after question answered by California Supreme Court, where appeal had been from district court's ruling on a 12(b)(6) motion to dismiss).

Respectfully submitted,

/s/ Arthur A. Hartinger

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/EF system.

I certify that all participants in the case are registered CM/EC users and that service will be accomplished by the appellate CM/ECF system.

/s/ Kathy Thomas

Kathy Thomas