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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 SACRAMENTO COUNTY RETIRED EMPLOYEES
10 ASSOCIATION (“SCREA”); BETTY PRESTWICH;
RUTHIE ROGERS; WARREN HARDING; JOHN
11 ABERNATHY; NATALIE REMSON; BETTY
FLORES; and all others similarly situated,

12 Plaintiffs,

13 v.

14 THE COUNTY OF SACRAMENTO,

15 Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF UNDER ARTICLE
I, SECTION 10 OF THE UNITED STATES
CONSTITUTION, AND THE FOURTEENTH
AMENDMENT TO THE UNITED STATES
CONSTITUTION THROUGH 42 U.S.C.
§1983 AND SUPPLEMENTAL STATE LAW
CLAIMS**

DEMAND FOR JURY TRIAL

16
17 **I. INTRODUCTION**

18 1. This is a class action for damages, and declaratory and injunctive relief against the
19 COUNTY OF SACRAMENTO sued under 42 U.S.C. § 1983, for violations of Plaintiffs’ federal
20 constitutional rights resulting from Defendant’s impermissible interference with a contract in violation of
21 the Contract Clauses contained in the federal and state constitutions and for violation of Plaintiffs’ right
22 to equal protection under the law in violation of the Equal Protection Clauses contained in the Fourteenth
23 Amendment to the United States Constitution and the California Constitution.

24 2. For at least twenty-three years and since 1980 the COUNTY OF SACRAMENTO,
25 directly or indirectly, through the Sacramento County Employee’ Retirement System (“SCERS”),
26 provided a medical insurance premium subsidy and dental insurance premium subsidy that assisted
27 County retirees with a substantial portion of their medical and dental insurance premiums, as long as the
28 retirees were eligible to receive it based on age and years of service. In 1993 the Sacramento County

1 Board of Supervisors began providing the subsidy by resolution and set the amount at the highest HMO
2 premium for non-Medicare eligible retirees. This remained the County's practice from 1993 through
3 2002. In 2003 the Board froze the subsidy at the 2002 amount, a maximum of \$244 each month for
4 medical insurance and a flat rate of \$25 each month for dental insurance premiums. In providing the
5 substantial health insurance subsidies the COUNTY made no distinction between its former employees
6 based on management or non-management status or representation or non-representation by a union.
7 This subsidy is and was critically important to retirees and represented, on average, a health insurance
8 offset of approximately \$3,000 per year, per retiree. For many County retirees it was the only way to
9 obtain quality, affordable health insurance coverage. The subsidy represented a substantial part of
10 retirees' pension, which as of 2009 averaged approximately \$30,000. For retirees, the subsidy paid by
11 the COUNTY was pre-income tax compensation giving the subsidy even greater value to the retirees.
12 The cost of the subsidy to the COUNTY OF SACRAMENTO was much less than its value to the retirees
13 because the COUNTY recouped approximately 80% of the subsidy through fee-supported programs and
14 through federal and state reimbursement programs.

15 3. In 2003 the Board of Supervisors changed its long-standing policy and practice of
16 providing a health insurance subsidy that was set at the amount of the highest HMO premium and
17 enacted legislation that capped the subsidy at the 2002 level: a maximum of \$244 each month for
18 medical insurance premiums and a flat \$25 each month issued for dental insurance premiums. The
19 subsidy remained fixed at this level from 2003 through 2010. In 2010 the health insurance subsidy was
20 reduced to a maximum of \$144 each month and the dental insurance premium was eliminated. As of
21 January 1, 2011, the subsidy was further reduced to a maximum of \$80.64 each month for medical
22 insurance. Despite the subsidy's long history as an established post-employment benefit, it had never
23 been put into writing. Nonetheless, County employees relied on statements made to them by the
24 COUNTY during recruitment, upon hiring and in planning for retirement that upon retirement they
25 would be entitled to the substantial health insurance subsidy for the duration of their retirement. County
26 employees also relied on the COUNTY'S long-standing policy and past practice of fully (or almost fully)
27 subsidizing retiree health care. County retirees understood the subsidy to be an element of employee
28 compensation.

1 4. In 2007 the Board of Supervisors enacted legislation to eliminate the subsidy altogether
2 for those employees who retired after May 31, 2007. The United Public Employees Local 1 (“UPE”),
3 representing approximately 1,400 county employees, filed a complaint with the California Public
4 Employment Relations Board (“PERB”), and was later joined by five other unions representing County
5 employees in various classifications who challenged the COUNTY’S unilateral elimination of the health
6 insurance premiums for those who retired after May 31, 2007. On June 30, 2009, the PERB issued its
7 decision. The PERB concluded that the health subsidy was a future retirement benefit, and as such, was
8 a mandatory subject of bargaining. To support its finding the PERB relied on United States Supreme
9 Court precedent that had held “the future retirement benefits of active workers *are part and parcel of*
10 *their overall compensation...*”. PERB found that while there was no stated obligation to continue the
11 insurance premium upon retirement, an obligation had been established by years of past practice. Indeed,
12 PERB expressly rejected the COUNTY’S argument that the subsidy was a gift and concluded that a
13 binding policy was established through a consistent course of conduct that is “historic and accepted
14 practice” – the subsidy had been in effect since at least 1980. The PERB also squarely rejected the
15 COUNTY’S argument that it could make the unilateral change based on its disclaimer, which states:
16 “this policy is effective solely for the calendar year 2007. It does not create any contractual, regulatory,
17 or other vested entitlement to present or future retirees.” PERB held that “the Retiree Medical and
18 Dental Insurance Program is an established past practice that provides a future benefit for current
19 employees.”¹ Thus, for those County employees who had retired, this benefit was vested and the
20 COUNTY was unable to alter it once its employees had retired because the subsidy constituted
21 compensation that had already been earned.

22 5. Based on its findings that the COUNTY had violated the Meyers-Milias-Brown Act
23 (“MMBA”) and failed to bargain in “good faith,” PERB ordered the COUNTY to rescind the unilateral
24 change and return to the status quo as it would have been had the policy not been implemented effective
25 June 1, 2007. PERB also ordered the COUNTY to make whole all of those who were impacted by the
26 unlawful change (post-June 1, 2007, retirees), plus pay interest at the legal rate.

27 _____
28 ¹ In March 2010, the California Third District Court of Appeals declined to review the PERB’s ruling.

1 6. The PERB ruling affected current employees who were represented by unions before
2 PERB who were employed at the time the change was implemented but who had retired after May 31,
3 2007. The ruling did not expressly apply to former County employees who had retired prior to the
4 change being implemented or those County employees who were not represented by a union at the
5 PERB. Several thousand retired County employees were either in unions which did not join in the PERB
6 litigation or who qualified as “unrepresented.”

7 7. In 2009 prior to the PERB’s ruling, the County Board of Supervisors enacted legislation²
8 to reduce the medical insurance subsidy to \$144 each month and to eliminate the dental subsidy effective
9 January 1, 2010, for those employees who had retired prior to June 1, 2007. This change represented a
10 substantial impairment of the contract (whether express or implied) that had guaranteed a substantial
11 health insurance subsidy off-set and thus gave rise to a cause of action for those retirees who were
12 affected by this change on January 1, 2010. Effective January 1, 2011, retirees began to receive a
13 maximum medical insurance subsidy of \$80.64 each month. Under the Contract Clauses of the federal
14 and state constitutions, public employers may not reduce or eliminate elements of a retired employee’s
15 compensation once that compensation has been earned. Retirement health benefits constitute elements of
16 compensation that are protected by the Contract Clauses as wages or pension benefits. An express
17 contract was made between the COUNTY and its employees through the promises the COUNTY made
18 to its employees during recruitment, during the hiring process and in the counseling it provided to
19 employees planning to retire that they were entitled to substantial health insurance subsidies upon
20 retirement for the duration of their retirement. Under well-settled rules of contract interpretation, the
21 COUNTY’S conduct – the twenty-three year policy (for union and non-union retirees alike) and its past
22 practice of providing a full or near full health insurance subsidy to its employees upon retirement –
23 created a contractual obligation, despite the fact that the obligation was not expressly included in a
24 written agreement. California and federal courts have enforced “implied” contract terms that arise from
25 parties’ course of dealing, and such implied terms stand on equal footing with express terms. The
26

27 ² The Board of Supervisors is empowered under State law to enact legislation in order to govern the County of
28 Sacramento.

1 subsidy at issue here is paradigmatic of the type of long-standing and established practice that must be
2 treated as an implied contractual obligation. When the Board of Supervisors enacted legislation that
3 drastically reduced the medical insurance subsidy from a maximum of \$244 each month with a \$25
4 dental insurance subsidy to a maximum of \$144 each month with no dental insurance subsidy, it
5 substantially impaired its contractual obligation to provide a substantial health insurance subsidies to
6 COUNTY employees who had retired prior to that enactment and gave rise to a cause of action.

7 8. After the PERB decision and the decision by the California Court of Appeal for the Third
8 District to decline review of the PERB decision, the County Board of Supervisors enacted legislation
9 restoring the maximum \$244 medical subsidy and the \$25 dental subsidy but, only for those retirees and
10 prospective retirees who were represented by unions before the PERB. The COUNTY, however, did not
11 restore the benefit to, or make whole those retirees who retired before June 1, 2007, and who, as of
12 January 1, 2010, began receiving a maximum medical insurance subsidy of \$144 each month without any
13 dental insurance subsidy. Nor was the subsidy restored to those who retired on or after June 1, 2007, and
14 now receive no medical or dental insurance subsidy whatsoever. The effect of the failure by the Board of
15 Supervisors to restore the subsidy to all County retirees is that now County retirees who worked side-by-
16 side but who were represented by different unions (or no union at all) and who retired at the same time
17 now receive benefits at substantially different amounts, and for those who retired after June 1, 2007, and
18 were not represented by a union before the PERB, no subsidy at all. For the first time, the COUNTY
19 created distinct classifications amongst its retirees (not based on age or length of service) absent any
20 rational basis or legitimate governmental interest. This violated retirees' right to equal protection of the
21 law and discriminated against those retirees who either were not members of a County union or who
22 were members of unions who did not join with the UPE and other unions in the PERB litigation. In 2010
23 the COUNTY enacted legislation that further reduced retirees' subsidy to a maximum off-set of \$80.64 a
24 month; this became effective January 1, 2011. In sum, there are now four distinct classes of County
25 retirees:

- 26 • Retirees who retired before June 1, 2007, and who were not represented by a union
27 before the PERB who are currently receiving a maximum health insurance subsidy off-
28 set of \$80.64 each month;

- 1 • Retirees who were informed in 2007 that they would need to retire on or before May 31,
2 2007, in order to be eligible to receive the health insurance subsidy and who did retire
3 prior to June 1, 2007, with the intent to remain eligible for the health insurance subsidy
4 for the duration of their retirement who are now receiving a maximum medical insurance
5 premium off-set of \$80.64 each month;
- 6 • Retirees who retired after May 31, 2007, who were not represented by a union before the
7 PERB and who are currently receiving no health or dental insurance subsidy off-set as a
8 result of changes enacted by the Sacramento County Board of Supervisors; and,
- 9 • Retirees who were represented by a union before the PERB who are receiving a
10 maximum medical insurance subsidy of \$244 each month with an additional \$25 subsidy
11 for dental insurance premiums plus 7% interest as a result of the PERB ruling.

12 9. Under the doctrine of equitable estoppel, Plaintiffs seek to estop the COUNTY from
13 denying representations it made to prospective employees, current employees, and prospective retirees
14 that promised a substantial health insurance premium off-set for County retirees (who met the eligibility
15 requirements of age and years of service) upon retirement for the duration of their retirement. The
16 COUNTY promised the health insurance subsidy to prospective employees during recruitment and upon
17 hiring. The COUNTY also promised the health insurance subsidy to those who were planning their
18 retirement. Furthermore, the COUNTY was aware of its long-standing policy and practice of providing
19 full or near full health insurance premium subsidies to its employees upon retirement and knew that
20 County employees reasonably relied upon the continuation of that subsidy, which they expected to
21 receive when they retired. Based on the promises it made and the twenty-three year practice of the
22 COUNTY, a contract between the COUNTY and its employees existed that entitled County retirees to
23 receive a fully funded or nearly fully funded health subsidy when they retired that would continue
24 throughout the duration of their retirement. To County retirees' detriment, they relied on the promises
25 made to them and on the COUNTY'S ongoing conduct and expected to receive this substantial subsidy
26 when determining when to retire and in making other decisions related to their retirement. In addition,
27 the COUNTY'S promise to its employees, now retired, created a reasonable expectation by the
28 COUNTY that such promise would induce action or forbearance by County employees (current retirees)

1 when they retired. This promise did in fact induce action and/or forbearance by County employees who
2 have since retired. The harm resulting from their reliance on the continuance of the subsidy can only be
3 avoided through the enforcement of that promise.

4 10. Plaintiff SACRAMENTO COUNTY RETIRED EMPLOYEES ASSOCIATION
5 (“SCREA”), a representative organization for County retirees (former County employees) presents
6 claims on behalf of all current Sacramento County retirees who fall into one or more of the four sub-
7 classes of plaintiffs. Plaintiffs BETTY PRESTWICH and RUTHIE ROGERS are members of proposed
8 sub-class one, which is comprised of County employees who retired prior to June 1, 2007, who were
9 aware of the COUNTY’S promises regarding entitlement to the health insurance subsidies upon
10 retirement and its long-standing policy and practice of providing a substantial health insurance premium
11 off-set to offset the cost of their health insurance premiums for the duration of their retirement and who
12 have had their subsidy drastically reduced from a maximum of \$244 each month for medical insurance
13 premiums and a flat \$25 each month for dental insurance premiums to a maximum of \$80.64 each month
14 for medical insurance premiums and no subsidy for dental insurance premiums in 2011. These plaintiffs
15 were also aware of the COUNTY’S past practice of regularly increasing the health insurance subsidy
16 when premiums rose or of maintaining the subsidy at the previous level, but never reducing the amount
17 of the premium off-set unless the health insurance premiums had also been reduced. Plaintiffs
18 WARREN HARDING and JOHN ABERNATHY are members of proposed sub-class two, which is
19 comprised of County employees who made the decision to retire before June 1, 2007, in order to remain
20 eligible to receive the health insurance premium subsidy for the duration of their retirement, because they
21 were informed that they must retire on or before May 31, 2007, in order to be entitled to the health
22 insurance subsidy. Plaintiffs HARDING and ABERNATHY currently receive a maximum health
23 insurance subsidy off-set of \$80.64 each month, which was originally set at a maximum of \$244 each
24 month for medical insurance premiums and \$25 a month for dental insurance premiums but was reduced
25 to a maximum of \$144 each month for medical insurance premiums in 2010 and subsequently reduced to
26 a maximum of \$80.64 each month for medical insurance premiums in 2011. When HARDING and
27 ABERNATHY made the decision to retire prior to June 1, 2007, in order to take advantage of the
28 insurance subsidy that they had expected to be entitled to upon retirement, they relied upon the

1 COUNTY'S promise to provide them with a substantial health insurance premium off-set for the
2 duration of their retirement when they retired. Plaintiffs ABERNATHY and HARDING were also aware
3 of the COUNTY'S past practice of providing retirees with a substantial health insurance premium
4 subsidy and they relied on the maximum subsidy of \$244 each month to offset medical insurance
5 premiums and a flat \$25 a month to offset dental insurance premiums in calculating whether they could
6 afford to retire. In addition, as a result of choosing to retire when they did in order to remain eligible for
7 the subsidies, plaintiffs HARDING and ABERNATHY'S pensions were lower than they would have
8 been had they remained employed with the COUNTY. Plaintiffs PRESTWICH, ROGERS, HARDING
9 and ABERNATHY are members of proposed sub-class three, which is comprised of County retirees who
10 retired prior to June 1, 2007, receive a maximum of \$80.64 each month to offset their medical insurance
11 premium, who do not receive anything to offset their dental insurance premiums and who assert a claim
12 for violation of their right to equal protection of the laws because the COUNTY, without a rational or
13 legitimate basis, provides retirees who were represented by a union before the PERB with a maximum
14 subsidy of \$244 each month to offset their medical insurance premium and \$25 each month to offset their
15 dental insurance premium. Plaintiffs NATALIE REMSON and BETTY FLORES are members of
16 proposed sub-class four, which is comprised of former County employees who were not represented by a
17 union before the PERB and who retired on or after June 1, 2007, and who currently receive no subsidy
18 for their insurance premiums. Plaintiffs REMSON and FLORES assert a claim for violation of their right
19 to equal protection under the law.

20 11. Defendant COUNTY, governed by the Board of Supervisors, violated the Contract
21 Clauses of the federal and state constitutions and County retirees' right to equal protection of the laws.
22 For these violations, Plaintiffs seek damages to make whole those County retirees who have had their
23 subsidy reduced to a maximum of \$80.64 each month and who have had their dental insurance subsidy
24 eliminated as well as damages for those retirees who retired after May 31, 2007, who have had their
25 health and dental insurance subsidy entirely eliminated.

26 12. Plaintiffs from sub-classes one through four seek an order on behalf of themselves and the
27 County retirees they represent declaring the existence of a contract (that vested upon their retirement)
28 which entitles them to a substantial health insurance premium off-set, and in any event no less than a

1 maximum medical insurance subsidy of \$244 each month and a dental insurance subsidy of \$25 each
2 month for the duration of their retirement. Plaintiffs seek an order declaring the COUNTY'S unilateral
3 reduction of the health subsidy to be an impermissible impairment of a contract in violation of the
4 Contract Clauses contained in the federal and California constitutions. Plaintiffs also seek an order
5 declaring the disparate treatment of retirees, whereby some had their subsidy restored and made whole
6 while others did not have the subsidy restored or made whole, a violation of their right to equal
7 protection.

8 13. Plaintiffs seek injunctive relief directing the Board of Supervisors to restore the medical
9 subsidy to a maximum of \$244 each month and the dental insurance subsidy to \$25 each month.
10 Plaintiffs also seek an order enjoining the Board of Supervisors from making any future reductions to the
11 health insurance subsidy for those County retirees whose right to the health subsidy vested upon
12 retirement.

13 II. JURISDICTION & VENUE

14 14. This action is brought under 42 U.S.C. § 1983 and 1988, and Article I, Section 10 of the
15 United States Constitution, and the Fourteenth Amendment to the United States Constitution.
16 Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343(a)(3).

17 15. The Court has supplemental jurisdiction over Plaintiffs' state claims under 28 U.S.C. §
18 1367(a).

19 16. Venue is proper in the United State District Court for the Eastern District of California
20 under 28 U.S.C. §1391(b). Plaintiffs and Defendant are located in the Eastern District of California and
21 all of the acts and/or omissions complained of herein have occurred or will occur in this District.

22 III. PARTIES

23 17. Plaintiff SCREA is a California nonprofit corporation representing former Sacramento
24 County employees regarding a wide range of issues, including retiree health benefits. SCREA's officers
25 and directors are volunteers who work in the interests of Sacramento County retirees. SCREA's
26 purposes include advocating for the interests of its members with respect to their pension and health
27 benefits, and disseminating information relating to those benefits. SCREA files this action in its
28 representative capacity for current County retirees (former County employees) who are comprised of

1 approximately 8,000 former County employees who have attained an average age of 68.5 years. The
2 retirees' annual pension is approximately \$30,459 annually or \$2,538 each month.

3 **A. Sub-Class One:**

4 18. Plaintiffs BETTY PRESTWICH and RUTHIE ROGERS, and all those similarly situated,
5 were, at all material times herein, employees of the COUNTY OF SACRAMENTO who were informed
6 and understood during their employment with the COUNTY that upon retirement they would receive the
7 substantial medical health insurance premium subsidies that other County retirees received upon
8 retirement. These plaintiffs, and all of those similarly situated, were also aware of the long-standing
9 practice of the COUNTY to provide a total or near total health insurance subsidy to its employees upon
10 retirement and plaintiffs understood as a condition of the terms of their employment with the County that
11 they would be entitled to the same subsidy upon retirement from County employment. These plaintiffs,
12 and all those similarly situated, had the contract between them and the County that provided them with a
13 full health insurance subsidy upon retirement substantially interfered with by the COUNTY in 2009
14 when the Board of Supervisors enacted legislation that reduced the subsidy from a maximum of \$244
15 each month for medical insurance premiums and a flat payment of \$25 each month for dental insurance
16 premiums to a maximum of \$144 each month for medical insurance premiums and the elimination of the
17 dental insurance premium. These plaintiffs, and those similarly situated, were harmed by this reduction.
18 These plaintiffs, and those similarly situated, relied on the information they were provided by the
19 COUNTY and the long-standing policy and practice of the COUNTY that provided a full or near full
20 health insurance subsidy to County retirees in making critical and fundamental decisions in continuing
21 their employment with County and in planning their retirement, including in determining when and how
22 to retire. Finally, these plaintiffs, and those similarly situated, have been subject to disparate treatment
23 without a legitimate or rationale basis in that their medical insurance premium subsidy for 2011 was
24 reduced to a maximum of \$80.64 each month while those County retirees whose union represented them
25 at the PERB continue to receive a maximum medical insurance premium subsidy of \$244 each month
26 and a \$25 payment for their dental insurance premium.

27 19. Plaintiff BETTY PRESTWICH is a resident of Sacramento and a current Sacramento
28 County retiree (former County employee) who was employed by the COUNTY from 1964 through 1997.

1 Ms. PRESTWICH was the Director of Personnel Management when she retired. When Ms.
2 PRESTWICH was employed with the COUNTY and upon making her decision to retire she was aware
3 of the COUNTY'S long-standing policy and practice of providing retirees with a full or near full health
4 insurance subsidy. Ms. PRESTWICH understood that she would receive the same benefit upon her
5 retirement. Ms. PRESTWICH did not seek employment in the private sector despite believing that she
6 could possibly earn more money there because of the retirement benefits she expected to receive by
7 continuing to work with the COUNTY, including the health insurance subsidy. In approximately 1989,
8 Ms. PRESTWICH applied for a position in the El Dorado County Welfare Department and based part of
9 her decision not to take that job on SACRAMENTO COUNTY'S retirement benefits including the health
10 insurance subsidy, which El Dorado did not offer. In planning when to retire Ms. PRESTWICH charted
11 her pension, the health insurance subsidy and her expected expenses. When Ms. PRESTWICH retired in
12 1997 she relied on receiving a full or near full health insurance subsidy for the duration of her retirement.
13 As a result of the reduction in the health insurance subsidy Ms. PRESTWICH is paying more for her
14 health insurance than she did prior to January 1, 2010. In fact, when Ms. PRESTWICH learned of the
15 reduction that would take effect in 2010, she changed health insurance plans and switched from Health
16 Net to Social Security First, which provides less comprehensive coverage than her former Health Net
17 plan. In January 2010, Ms. PRESTWICH began receiving a health insurance subsidy of \$144 each
18 month, until January 1, 2011, when she began receiving a maximum of \$80.64 each month, toward her
19 health insurance premium and no funds for her dental insurance premium. Ms. PRESTWICH has had to
20 pay for the difference in the premium coverage in order to remain medically insured.

21 20. Plaintiff RUTHIE ROGERS is a resident of Sacramento and a current Sacramento County
22 retiree (former County employee) who was employed by the COUNTY from 1980 through 1997. Ms.
23 ROGERS was a Youth Advocate in the COUNTY'S Department of Health and Human Services when
24 she retired. When Ms. ROGERS was employed with the COUNTY and made her decision to retire she
25 was aware of the COUNTY'S long-standing policy and practice of providing retirees with a full or near
26 full health insurance subsidy. Ms. ROGERS understood that she would receive the same benefit upon
27 her retirement. She had conversations with co-workers and supervisors about receiving the health
28 insurance subsidy as a retirement benefit and no one ever told her that retirees were not entitled to it.

1 During Ms. ROGER'S employment she suffered a serious, long-term injury and inquired with various
2 COUNTY officials about the health insurance retirement benefit. Ms. ROGERS was always informed
3 that she would be entitled to the health and dental subsidy upon her retirement. Prior to retiring Ms.
4 ROGERS met with COUNTY officials in charge of informing employees about retirement and she was
5 informed that she was entitled to the benefit upon retirement. Ms. ROGERS also attended a retirement
6 presentation seminar where the benefit was explained to her and others. During that presentation she was
7 informed that she was entitled to the health insurance subsidy upon retirement for the remainder of her
8 life. After becoming employed with the COUNTY, Ms. ROGERS did not seek employment elsewhere
9 because she knew that she was entitled to receive the retirement benefits for life, including the health
10 insurance subsidy. As of January 1, 2010, Ms. ROGERS began receiving a maximum of \$144 each
11 month and as of January 1, 2011, she receives a maximum of \$80.64 each month toward her health
12 insurance premium and no funds for her dental insurance premium. Ms. ROGERS has had to pay for the
13 difference in the premium coverage in order to remain medically insured.

14 **B. Sub-Class Two:**

15 21. Plaintiffs WARREN HARDING and JOHN ABERNATHY, and all those similarly
16 situated, were, at all material times herein, employees of the COUNTY OF SACRAMENTO who retired
17 prior to June 1, 2007, and were informed by the COUNTY (and had the express understanding) that if
18 they retired by May 31, 2007, they would be eligible to receive the substantial medical and dental
19 insurance premium offsets provided by the COUNTY for the duration of their retirement. In the first half
20 of 2007, plaintiffs WARREN HARDING, JOHN ABERNATHY, and all of those similarly situated,
21 were informed by the COUNTY that in order to be able to receive the health insurance premiums that
22 County retirees were receiving they were required to retire before June 1, 2007. These plaintiffs, and
23 those similarly situated, retired in order to be eligible for the subsidy even though they had initially
24 planned on working for an additional term of months or years prior to retiring. Retiring prematurely also
25 reduced the amount of the pension they would have received if they had continued working for the
26 COUNTY. Plaintiffs' decision to retire was based on factoring the benefit of retiring before June 1,
27 2007, (while retirees were receiving a maximum medical insurance premium offset of \$244 each month
28 and a \$25 dental insurance premium off-set) against working for an additional term of months or years

1 and not receiving any health insurance premium off-set. County retirees received the maximum monthly
2 \$244 medical insurance subsidy and \$25 monthly dental insurance subsidy from 2002 through 2009.

3 22. Plaintiff WARREN HARDING is a resident of Sacramento and a current Sacramento
4 County retiree (former County employee) who was continuously employed by the COUNTY from 1971
5 through May 31, 2007. Mr. HARDING worked in the Personnel Department for five years until
6 approximately 1976. While he was employed with the COUNTY, Mr. HARDING became the President
7 of the Data Processing Professional Association and remained President for five years until
8 approximately 2001. In approximately 2001, Mr. HARDING became President of the Management
9 Association. In his capacity as President of both organizations, employee benefits, including retirement
10 benefits and the health insurance subsidy, were key concerns of his constituents. During his time as
11 President he was never informed that the health insurance subsidy was anything less than a retirement
12 benefit that County employees were entitled to upon retirement. In the middle of May 2007, Mr.
13 HARDING read a document that had been sent to him about a resolution adopted by the Board of
14 Supervisors that eliminated the health insurance subsidy for any County employee who retired after May
15 31, 2007. Mr. HARDING, although he planned on working an additional five years so that he could
16 retire when his social security benefits fully matured at 66 years of age, retired on May 31, 2007, in order
17 to be eligible for the health insurance subsidy. Mr. HARDING understood that retiring before June 1,
18 2007, would entitle him to that benefit for the remainder of his life. Mr. HARDING retired prior to June
19 1, 2007, despite expecting to be promoted within the five years he had planned on continuing to work,
20 which would have increased the amount of his pension. Instead of remaining employed he retired
21 because he understood that the value of the health insurance subsidy for the duration of his retirement
22 could be more than any additional pension that he might receive. As of January 1, 2010, Mr. HARDING
23 began receiving \$144 each month toward his health insurance premium and no funds for his dental
24 insurance premium until January 1, 2011, when he began receiving a maximum of \$80.64 each month for
25 the health insurance subsidy and no funds to off set his dental insurance premium. Mr. HARDING has
26 had to pay for the difference in the premium coverage in order to remain medically insured.

27 23. Plaintiff JOHN ABERNATHY is a resident of SACRAMENTO and a current Sacramento
28 County retiree (former County employee) who was continuously employed by the COUNTY from 1990

1 through March 2007. Mr. ABERNATHY was employed as the Director of the County's Solid Waste
2 Department and maintained that position until he retired. When Mr. ABERNATHY was employed by
3 the COUNTY OF SACRAMENTO he was informed that he would be entitled to benefits upon his
4 retirement, including a pension and substantial health insurance premium subsidies for medical and
5 dental insurance. In early 2007, Mr. ABERNATHY was informed that the COUNTY was considering
6 eliminating the health insurance premium subsidy for those employees who retired after a certain date.
7 Because Mr. ABERNATHY'S wife had suffered a severe stroke that resulted in aphasia and apraxia he
8 was concerned about the loss of the health insurance subsidy retirement benefit. He attended a retirement
9 seminar conducted by the COUNTY with approximately 30 other employees in March 2007 where
10 retirement benefits were explained. Mr. ABERNATHY was informed that upon retirement he would be
11 entitled to the health insurance premium subsidy. Mr. ABERNATHY retired by the end of March 2007
12 in order to remain eligible for the health insurance subsidy for the duration of his retirement. During his
13 employment and at the time of his retirement, Mr. ABERNATHY was aware of the COUNTY'S past
14 practice of providing the health insurance subsidy to County retirees. He was also aware that the level of
15 the subsidy had to be negotiated but that the subsidy had been increased when premiums rose or that it
16 had remained at the same level and, in any event, that it had never been decreased. When determining
17 whether he could afford to retire and take advantage of the health insurance subsidy Mr. ABERNATHY
18 relied on the then current \$244 premium subsidy that was provided by the COUNTY in calculating his
19 ability to retire based on the COUNTY'S long-standing policy and past practice. He relied on the
20 subsidy remaining the same or being increased in making his decision to retire. Prior to retiring Mr.
21 ABERNATHY had planned to work until he attained the age of 62, this meant that he would have
22 worked a minimum of an additional three years, which would have added an additional 2.2% to his
23 pension for each of those years. After the monthly subsidy of \$80.64, Mr. ABERNATHY pays the
24 remainder of his health insurance premium in order to remain medically insured.

25 **C. Sub-Class Three:**

26 24. Plaintiffs PRESTWICH, ROGERS, HARDING and ABERNATHY are members of
27 proposed sub-class three, which is comprised of County retirees who retired prior to June 1, 2007, who
28 receive a maximum of \$80.64 each month to offset their medical insurance premium, who do not receive

1 anything to offset their dental insurance premiums and who assert a claim for violation of their right to
2 equal protection of the laws because the COUNTY, without a rational or legitimate basis, provides
3 retirees who were represented by a union before the PERB with a maximum subsidy of \$244 each month
4 to offset their medical insurance premium and \$25 each month to offset their dental insurance premium.

5 **D. Sub-Class Four:**

6 25. Plaintiff NATALIE REMSON who remained a County employee after June 1, 2007, was
7 not represented by a union that brought litigation before the PERB and has subsequently retired. Ms.
8 REMSON, and all of those similarly situated, currently receive no health or dental insurance subsidy
9 from the COUNTY. Plaintiff NATALIE REMSON is a resident of Sacramento and a current
10 Sacramento County retiree (former County employee) who was continuously employed by the COUNTY
11 from 1980 through March 5, 2010. Ms. REMSON was employed in the Department of Personnel
12 Services from the time she was hired until she retired in the position of a Senior Personnel Analyst. Ms.
13 REMSON was designated as a Tier 1 employee, which meant that she would receive the best retirement
14 benefits the COUNTY offered. Ms. REMSON was not represented by a union before the PERB
15 challenging the COUNTY'S unilateral elimination of the health insurance subsidy for employees who
16 retired after June 1, 2007, and, as a result, Ms. REMSON does not receive any health insurance subsidy
17 while County retirees who retired after June 1, 2007, but who were represented by their union before the
18 PERB currently receive a maximum of \$244 each month toward their medical insurance premium and
19 \$25 each month toward their dental insurance premium. Ms. REMSON pays for her health insurance
20 premiums without receiving any subsidy to off-set the costs.

21 26. Plaintiff BETTY FLORES began her service with the COUNTY in approximately 1989.
22 Ms. FLORES was hired as a steno clerk with the Planning Department. Ms. FLORES worked as a
23 secretary with the Water Quality Division of the Department of Public Works and eventually became an
24 executive secretary with the Office of Economic Development and Intergovernmental Affairs. Ms.
25 FLORES retired on June 7, 2010, after 21 years of service with the COUNTY. Ms. FLORES pays for
26 her health insurance premiums and currently receives no medical or dental insurance subsidy.

27 27. Defendant COUNTY OF SACRAMENTO ("COUNTY") is a California county and a
28 public agency as defined by Government Code § 3501(c) and an employer of public employees as

1 defined by Government Code § 3501(d). The COUNTY OF SACRAMENTO BOARD OF
2 SUPERVISORS (“the Board”) is sued herein as the COUNTY OF SACRAMENTO. The Board is the
3 governing body of the COUNTY OF SACRAMENTO. Under California state law and the County
4 Charter, the Board is empowered to adopt ordinances and appropriate funds, which includes the authority
5 to provide for the compensation of County employees. The County Charter does not authorize the Board
6 to make gifts to County employees or to former employees; it is only authorized to provide
7 compensation.

8 IV. FACTUAL ALLEGATIONS

9 28. Since at least 1980 the COUNTY has informed prospective employees during their
10 recruitment that some of the benefits they would receive upon retirement included medical and dental
11 insurance premium subsidies. In the hiring process prospective employees were informed that part of
12 their compensation package included receiving medical and dental insurance premium subsidies upon
13 retirement. By 1990 COUNTY employees, throughout their employment with the COUNTY, had been
14 aware of the COUNTY’S long-standing policy and practice of providing substantial medical and dental
15 insurance subsidies to retirees upon retirement for the duration of their retirement. Prior to March 2007,
16 County employees who were planning to retire were referred to the Personnel Department in order to
17 learn about the benefits they would receive upon retirement and counseling in order to assist them in
18 planning for retirement. Prior to 2003 County employees planning to retire were told that they were
19 entitled to receive medical and dental premium off-sets for the duration of their retirement and that the
20 off-sets were established in accordance with the most expensive non-Medicare health insurance plan’s
21 monthly premium amount. From 2003 through March 2007, County employees were informed that they
22 were entitled to receive medical and dental premium off-sets and that the off-sets were set a maximum of
23 \$244 each month for medical insurance premiums and \$25 each month for dental insurance premiums.
24 From March through May 2007 County employees were informed that in order to remain eligible for the
25 health insurance subsidies for the duration of their retirement they must retire no later than May 31, 2007.
26 County employees were told that if they retired before June 1, 2007, they would be entitled to the health
27 insurance subsidies but that if they retired on June 1, 2007, or later that they would not be entitled to
28 receive any health insurances subsidies.

1 29. In 1980, the COUNTY, directly or indirectly, provided a substantial health insurance off-
2 set for eligible County retirees who had been employed by the COUNTY through the Retiree Health
3 Insurance Program (“RHIP”)/ Retiree Medical and Dental Insurance Program (“RMDIP”), which paid
4 for the entire cost of medical and dental insurance premiums under approved health insurance plans,
5 hereinafter referred to as “the subsidy,” “subsidies,” or “off-set.”³ The health subsidies were tiered based
6 on number of years of service to the COUNTY with the maximum subsidy level determined by the cost
7 of the COUNTY’S highest non-Medicare HMO plan. From 1980 through 2002, it was the COUNTY’S
8 policy and practice to provide full or substantial off-set payments for retirees’ health insurance
9 premiums.⁴ In 2003 the COUNTY stopped fully subsidizing retirees’ medical and dental premiums and,
10 instead, capped the premium subsidy at the 2002 level, a maximum of \$244 a month for medical
11 premiums and \$25 a month for dental premiums.

12 30. Under California state law and the County Charter, the Board is empowered to adopt
13 ordinances and appropriate funds, which includes the authority to provide for the compensation of
14 County employees. The County Charter does not authorize the Board to make gifts to County employees
15 or to former employees; it is only authorized to provide compensation.

16 31. In 2004 the COUNTY subsequently instituted other restrictions and unilaterally revised
17 the eligibility criteria and eliminated the subsidies for retirees who had not achieved 10 years of
18 employment with the COUNTY and for retirees who were not participating in a COUNTY plan within
19 90 days of being employed with the COUNTY. On June 5, 2007, the COUNTY adopted its Retiree
20 Medical and Dental Insurance program for 2008 and eliminated the medical and dental insurance subsidy
21 in its entirety for any individual who retired after May 31, 2007. Numerous individuals retired prior to
22 May 31, 2007, just to insure their continued eligibility to receive the subsidy for the duration of their
23 retirement. In 2008 the COUNTY continued the medical and dental insurance subsidies at the 2002 level
24

25 ³ The County had a long-standing practice and policy of determining the amount of the insurance off-set by
26 establishing the amount of the off-set payment at the cost of the highest cost HMO medical plan that had at least 10% of
retirees enrolled in that program.

27 ⁴ In 1993, the subsidies began to be funded by “excess earnings” from the SCERS system, which was the funding
28 source until 2003. In 2003, the funding source changed and the COUNTY began to fund the program by charges allocated to
all COUNTY departments.

1 for all retirees who retired prior to June 1, 2007. Effective January 1, 2009, the COUNTY completely
2 eliminated the dental subsidy and cut the health subsidy by approximately 46% for eligible retirees so that
3 effective January 1, 2010, retirees only received a maximum subsidy of \$144 each month for medical
4 insurance premiums and no subsidy for dental insurance premiums. The subsidy reduction effective 2010
5 totaled \$6 million. However, the net savings to the COUNTY General Fund was less than 20% of this
6 amount because the COUNTY received partial reimbursements from a number of sources for these costs,
7 including state and federal grants. In 2010 the Board of Supervisors enacted legislation that further
8 reduced the subsidy by another 44% to a maximum of \$80.64 a month as of January 1, 2011.

9 32. On May 11, 2007, the United Public Employees Local 1 (“UPE”) filed an unfair labor
10 practice charge against the COUNTY with the Public Employment Relations Board (“PERB”). On June
11 11, 2007, the PERB issued a complaint against the COUNTY on behalf of UPE and alleged violation of
12 the Meyers-Milias-Brown Act (“MMBA”) (codified at California Government Code § 3500 *et seq.*)
13 which it alleged had occurred when the COUNTY eliminated the medical and dental insurance subsidy
14 for current employees without bargaining in “good faith.” Subsequently, five additional unions⁵ that
15 represented other bargaining units also filed unfair labor practice charges with the PERB. On June 30,
16 2009, after presentation of evidence and a hearing on the matter, PERB issued a decision and found that
17 the COUNTY violated the MMBA when it unilaterally changed the eligibility criteria for current
18 employees’ (future retirees) participation in the Retiree Health Insurance Program (“RHIP”)/Retiree
19 Medical and Dental Insurance Program (“RMDIP”) by discontinuing subsidies for medical and dental
20 insurance for employees retiring after June 1, 2007. PERB ordered the COUNTY to rescind the
21 unilateral change and to return to the status quo prior to its implementation effective June 1, 2007. PERB
22 also ordered the COUNTY to “make whole” anyone impacted by the unlawful change plus to pay
23 interest at the legal rate.

24 33. The COUNTY sought an appeal of the PERB ruling in the Third District Court of Appeal.
25 On March 11, 2010, the Court of Appeal declined to review the PERB decision. The COUNTY decided
26

27 ⁵ Teamsters Local 150, American Federation of State, County and Municipal Employees, Sacramento County
28 Professional Accountants Association, Sacramento County Attorney’s Association, and Service Employees International
Union 1021.

1 not to seek a hearing in the California Supreme Court.

2 34. In June 2010, after the PERB ruling, the COUNTY enacted legislation that restored
3 benefits at the 2002 level (a maximum medical insurance subsidy of \$244 each month and a flat \$25 a
4 month for dental premiums) only for those retirees and future retirees who were represented by unions at
5 the PERB. The COUNTY set a different (and lower) maximum insurance subsidy off-set for those who
6 were not represented by a union at the PERB. Retirees who retired for any reason on or before May 31,
7 2007, (and who had any form of disability retirement or worked for the COUNTY for at least 10 years in
8 SCERS-covered employment) were entitled to receive a maximum of \$144 each month and a \$25 flat fee
9 to off-set dental insurance premiums (depending on length of service between 10 and 25 years).
10 However, all retirees who retired after May 31, 2007, (and who had any form of disability retirement or
11 worked for the COUNTY for at least 10 years in SCERS-covered employment) who were represented by
12 the unions that brought unfair labor practice charges against the COUNTY before the PERB were
13 entitled to a maximum of \$244 each month for health insurance premiums and a flat \$25 each month for
14 dental insurance premiums (depending on length of service). Those COUNTY employees who retired
15 after May 31, 2007, had the health and dental insurance premium entirely eliminated.

16 35. In 2010 the COUNTY enacted additional legislation that further lowered the subsidy for
17 those retirees not represented by unions at the PERB effective 2011. As of January 1, 2011, all retirees
18 who retired after May 31, 2007, who were represented by the unions who brought unfair labor practice
19 charges against the COUNTY before the PERB will continue to receive a maximum of \$244 each month
20 (depending on length of service). However, effective January 1, 2011, those retirees who retired for any
21 reason on or before May 31, 2007, had their subsidy reduced to a maximum of \$80.64 each month
22 (depending on length of service). This change did not affect COUNTY employees who retired after May
23 31, 2007, because they continue to receive no health or dental insurance premium.

24 36. Thousands of retirees have been adversely impacted by the reductions of the health
25 insurance subsidy off-set.

26 V. CLASS ALLEGATIONS

27 37. Plaintiffs bring this action as a class action seeking to recover economic damages pursuant
28 to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiffs also bring this claim as a class action

1 seeking declaratory and injunctive relief on behalf of themselves and all others similarly situated,
2 pursuant to Rules 23(a), 23(b)(1)(B), and 23(b)(2) of the Federal Rules of Civil Procedure.

3 38. Plaintiff sub-class one consists of all former County employees and current County
4 retirees who retired before June 1, 2007, when the COUNTY was providing a substantial health subsidy
5 for medical and dental insurance premiums, who now receive a maximum health insurance subsidy of
6 \$80.64 for medical insurance premiums and no amount for dental insurance premiums. Plaintiff sub-
7 class two consists of those employees of the COUNTY OF SACRAMENTO who retired prior to June 1,
8 2007, and were informed by the COUNTY (and had the express understanding) that if they retired by
9 May 31, 2007, they would remain eligible to receive the substantial medical and dental insurance
10 premium offsets provided by the COUNTY, who now receive a maximum health insurance subsidy of
11 \$80.64 for medical insurance premiums and no amount for dental insurance premiums. Plaintiff sub-
12 class three consists of those County employees who retired prior to June 1, 2007, and receive a maximum
13 medical insurance subsidy of \$80.64 each month and no dental insurance subsidy in contrast to those
14 other employees who also retired, but who were represented by a union before the PERB, and who now
15 receive a maximum medical insurance subsidy of \$244 each month and a dental insurance subsidy of \$25
16 each month. Plaintiff sub-class four consists of those COUNTY employees who retired on or after June
17 1, 2007, and who receive no medical or dental insurance subsidies despite the fact that other employees
18 who also retired on or after June 1, 2007, but who were represented by a union before the PERB, now
19 receive a maximum medical insurance subsidy of \$244 each month and a dental insurance subsidy of \$25
20 each month. Plaintiffs are seeking damages and injunctive relief based upon their claims (a) that the
21 COUNTY unconstitutionally impaired a contract that entitled them to a full health subsidy (or, at
22 minimum, a medical insurance subsidy of \$244 each month and a dental insurance subsidy of \$25 each
23 month) upon retirement and (b) that defendant violated plaintiffs' right to equal protection of the law
24 when, absent a legitimate governmental interest, they created arbitrary classifications among retirees and
25 restored the \$244 maximum medical insurance subsidy and \$25 dental insurance subsidy only to those
26 retirees and for prospective retirees who were members of unions and whose union represented them at
27 PERB.

28 \\\

1 39. The plaintiffs also assert the doctrine of equitable estoppel and seek to estop the
2 COUNTY from denying the representations it made to County employees in recruitment and upon hiring
3 and in the information it provided when counseling employees about their entitlement to the health
4 subsidy benefit upon retirement, which were made with the intent of encouraging plaintiffs choosing to
5 become and remain employed with the COUNTY. To their detriment, plaintiffs relied on the promises
6 made to them by the COUNTY about their entitlement to the health insurance subsidy.

7 40. The class of Sacramento County retirees (approximately 8,000 individuals) who have
8 suffered harm due to the COUNTY'S conduct is so numerous that joinder of all members is impractical.
9 Plaintiffs believe that thousands of people have been subjected to defendant's unlawful conduct.

10 41. The named Plaintiffs' injuries arise from a set of facts and circumstances common to the
11 members of the class they seek to represent, and Plaintiffs' allegations herein raise common questions of
12 law and fact.

13 42. The common questions of fact include, but are not limited to:

- 14 a. whether the COUNTY provided its retirees with a full health insurance subsidy
15 off-set from 1980 through 2002;
- 16 b. whether the COUNTY provided its retirees with a substantial health insurance
17 subsidy off-set from 2003 through 2009;
- 18 c. whether from 1980 through 2009, the subsidy was provided without regard to
19 status such as management or non-management, or whether the retiree was an
20 employee who was represented or unrepresented by a union;
- 21 d. whether the COUNTY made representations during its recruitment of prospective
22 employees that they would be entitled to a health insurance subsidy upon
23 retirement that would remain for the duration of their retirement;
- 24 e. whether the COUNTY made representations to newly hired employees about their
25 compensation that included representations that they would be entitled to a health
26 insurance subsidy upon retirement that would remain for the duration of their
27 retirement;

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- 1 f. whether the COUNTY made representations to employees who were planning to
- 2 retire that they were entitled to receive the health insurance subsidy upon
- 3 retirement for the duration of their retirement;
- 4 g. whether a reasonable County employee would expect to receive a full health
- 5 insurance subsidy off-set upon retirement;
- 6 h. whether, upon planning for retirement, reasonable County employees would take
- 7 the full health subsidy into account when making decisions related to retirement,
- 8 including when to retire;
- 9 i. whether the COUNTY capped the full subsidy to a maximum of \$244 each month
- 10 and \$25 for dental insurance as of January 1, 2003;
- 11 j. whether, as of January 1, 2010, the COUNTY reduced the subsidy for pre-June 1,
- 12 2007, retirees to a maximum of \$144 each month for medical insurance and
- 13 provided no subsidy for dental insurance;
- 14 k. whether the COUNTY further reduced the subsidy for pre-June 1, 2007, retirees to
- 15 a maximum of \$80.64 each month effective January 1, 2011;
- 16 l. whether Plaintiffs were required to spend their own funds or greater funds on
- 17 health insurance premiums absent the full or near full subsidy;
- 18 m. whether the COUNTY Defendant created classifications amongst retirees
- 19 depending on whether they were represented by a union before the PERB;
- 20 n. whether the COUNTY restored the full subsidy to some retirees (those who were
- 21 represented by a union before the PERB) and not other retirees (those who were
- 22 not represented by a union before the PERB);
- 23 o. whether the COUNTY Defendant was aware that it had a policy of providing a
- 24 substantial or total health insurance subsidy to its retired employees for 23 years;
- 25 p. whether County employees did rely on the COUNTY Defendant's conduct to their
- 26 detriment;
- 27 q. whether the COUNTY made a promise to provide a substantial health subsidy to
- 28 Plaintiffs upon retirement that would last for the duration of their retirement; and,

1 r. whether the promise by the COUNTY to provide Plaintiffs with a substantial
2 health insurance subsidy for the duration of their retirement constituted a contract.

3 43. The common questions of law include, but are not limited to:

4 a. whether there was an implied contract between the COUNTY and its employees to
5 provide employees upon retirement with a full health insurance subsidy offset for
6 the duration of their retirement;

7 b. whether the health insurance subsidy offset provided to employees upon retirement
8 constituted deferred compensation;

9 c. whether the reduction of the medical insurance subsidy from a maximum of \$244
10 each month and a dental insurance subsidy of \$25 to a maximum of \$144 each
11 month for medical insurance and the elimination of the dental subsidy constituted
12 a substantial impairment to the contract;

13 d. whether the COUNTY defendant impaired the contractual right of Plaintiffs under
14 the United States and California Constitutions;

15 e. whether the COUNTY'S classification to determine the amount of the health
16 insurance subsidy that was based on whether a County retiree was represented by a
17 union before the PERB was an arbitrary classification without a legitimate
18 governmental interest; and,

19 f. whether plaintiffs' right to equal protection of the laws under the federal or
20 California Constitution was violated.

21 44. The claims of the representative parties are typical of the claims of the class members.

22 45. Plaintiffs are able to and will fairly and adequately protect the interests of class members.

23 46. The attorneys for Plaintiffs are experienced in civil litigation and in class action litigation
24 and will fairly and adequately represent the interests of the class.

25 47. This action is properly maintained as a class action because (a) the prosecution of separate
26 actions by individual members of the class would create the risk of adjudications which would, as a
27 practical matter, be dispositive of the interests of the other members or would substantially impair or
28 impede their ability to protect their interests; and/or (b) Defendant has acted and continue to act on

1 grounds generally applicable to the class, making final injunctive and declaratory relief appropriate.

2 48. The class representatives know of no conflict of interest among class members.

3 **VI. FIRST CAUSE OF ACTION**

4 **Violation of the Contract Clause of Article I, Section 10 of the United States
5 Constitution on Behalf of Plaintiffs and the Members of the Class**

6 49. Plaintiffs reallege and incorporate herein, as if stated in full, each and every allegation
7 contained in paragraphs 1 through 48 of the complaint.

8 50. At all relevant times, there existed a contract between the COUNTY and its employees
9 (now Plaintiff retirees) to provide a substantial health subsidy to its employees upon their retirement,
10 which constituted deferred compensation during the employment relationship that vested upon
11 retirement.

12 51. That contract was impermissibly impaired after the Defendant COUNTY through the
13 Board of Supervisors unilaterally reduced the health subsidy to a maximum of \$144 each month and
14 eliminated the dental subsidy because that resulted in a substantial impairment to the contract.

15 52. The reduction of the medical subsidy to a maximum of \$144 each month and the
16 elimination of the dental subsidy actually and proximately harmed Plaintiffs.

17 53. Wherefore, Plaintiffs pray for relief as hereunder appears.

18 **VII. SECOND CAUSE OF ACTION**

19 **Violation of the Contract Clause of Article I, Section 9 of the California Constitution
20 on Behalf of Plaintiffs and the Members of the Class**

21 54. Plaintiffs reallege and incorporate herein, as if stated in full, each and every allegation
22 contained in paragraphs 1 through 53 of the complaint.

23 55. At all relevant times, there existed a contract between the COUNTY and its employees
24 (now Plaintiff retirees) to provide a full health subsidy to its employees upon their retirement, which
25 constituted deferred compensation during the employment relationship that vested upon retirement.

26 56. That contract was impermissibly impaired after the Defendant COUNTY enacted
27 legislation that unilaterally reduced the health subsidy to a maximum of \$144 each month and eliminated
28 the dental subsidy because that resulted in a substantial impairment to the contract.

57. The reduction of the medical subsidy to a maximum of \$144 each month and the
elimination of the dental subsidy actually and proximately harmed Plaintiffs.

1 58. Wherefore, Plaintiffs pray for relief as hereunder appears.

2 **VIII. THIRD CAUSE OF ACTION**
3 **Violation of Fourteenth Amendment to the United States Constitution on Behalf of Plaintiffs and**
4 **the Members of the Class**

5 59. Plaintiffs reallege and incorporate herein, as if stated in full, each and every allegation
6 contained in paragraphs 1 through 58 of the complaint.

7 60. At all relevant times, the COUNTY treated similarly situated former employees
8 differently, absent a legitimate governmental interest, when it restored the medical subsidy to a
9 maximum of \$244 a month and the dental subsidy to \$25 a month for those County employees and/or
10 retirees who were represented at the PERB but not for those County employees or retirees who were not
11 represented at the PERB.

12 61. Defendant's above-described conduct violated Plaintiffs' right to equal treatment under
13 the law. The COUNTY'S disparate treatment of Plaintiffs actually and proximately caused, and will
14 continue to cause, economic harm, pain and suffering and severe emotional distress.

15 62. Wherefore, Plaintiffs pray for relief as hereunder appears.

16 **IX. FOURTH CAUSE OF ACTION**
17 **Violation of Article I, Section 7 of the California Constitution on Behalf of Plaintiffs and the**
18 **Members of the Class**

19 63. Plaintiffs reallege and incorporate herein, as if stated in full, each and every allegation
20 contained in paragraphs 1 through 62 of the complaint.

21 64. At all relevant times, the COUNTY treated similarly situated former employees
22 differently, absent a legitimate governmental interest, when it restored the medical subsidy to a
23 maximum of \$244 a month and the dental subsidy to \$25 a month for those County employees and/or
24 retirees who were represented at the PERB but not for those County employees or retirees who were not
25 represented at the PERB.

26 65. Defendant's above-described conduct violated Plaintiffs' right to equal treatment under
27 the law. The COUNTY'S disparate treatment of Plaintiffs actually and proximately caused, and will
28 continue to cause, economic harm, pain and suffering and severe emotional distress.

66. Wherefore, Plaintiffs pray for relief as hereunder appears.

X. PRAYER

WHEREFORE, each and every Plaintiff prays for judgment against Defendant, as follows:

1. For compensatory damages, including general and special damages;
2. For an award of interest, including pre-judgment interest, at the legal rate;
3. For certification of a class under F.R.C.P. 23(b)(1)(B) and (b)(2) and for injunctive and declaratory relief, including, but not limited to, an order directing Defendant to restore the full health subsidy to Plaintiffs (or alternatively, the subsidy of the \$244 maximum each month with the \$25 dental subsidy) and to maintain the subsidy at the level ordered for the duration of their retirement;
4. For an order that would estop the Defendant from denying the representations it made to prospective County employees and County employees that they were entitled to full or near full health insurance subsidies upon retirement for the duration of their retirement;
5. Injunctive and declaratory relief directing the COUNTY not to make any further reductions in the health subsidy;
6. For certification of a class under F.R.C.P. 23(b)(3); and
7. For costs of suit, attorneys' fees, and such other relief as the Court deems just and proper.

XI. JURY TRIAL DEMAND

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs, and all those they seek to represent.

DATED: February 8, 2011

Respectfully Submitted,

LAW OFFICE OF MARK E. MERIN

By: /s/ - W. Gordon Kaupp
W. Gordon Kaupp
Attorneys for Plaintiffs