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February 23, 2009

By Facsimile {707-565-3778} and U.S. Mail

Sonoma County Board of Supervisors
Sonoma County Administration Building
575 Administration Drive
Suite 116
Santa Rosa, CA 95403

RE: Sonoma County Association of Retired Employees

Dear Board of Supervisors:

I am sending this letter on behalf of the Sonoma County Association of Retired Employees ("SCARE") to notify you of Sonoma County retirees' unequivocal legal right to continued post-retirement health insurance coverage. SCARE has filed a claim under Government Code Section 910 et seq. (the "claim") on February 23, 2009, against Sonoma County ("the County"). A copy of the claim is attached. If the County and SCARE agree to engage in interest based bargaining with mutually agreeable terms, including that the County will delay implementation of the changes to the medical contribution system discussed below, then SCARE will forbear from filing suit. While SCARE prefers to engage in interested based bargaining with the County, SCARE is filing this claim in order to protect its rights in the event that the negotiations either do not come to fruition or fail.

In summary, current retirees, as well as active employees, would be found by a court to have vested contractual and, therefore, constitutional rights to retiree medical benefits. As discussed further in the claim, there are two sources of these vested contractual and constitutional rights: (1) the County's long-standing practice of promising and providing lifetime retiree health benefits, as evidenced by over forty years of Board of Supervisors Resolutions, testimony of former County Human Resources Managers, letters from the County, and the County's provision of retiree medical benefits; and (2) the County's acknowledged long-standing "tie" arrangement that links the health insurance benefits of retired employees with the benefits of active

Unrepresented Administrative Management (“SCAMC”) employees.¹ Like the retirees, those current County employees who have already worked for at least 10 years and those who have not, but eventually will do so, have vested rights as a matter of contract.

As discussed in more detail in the claim, our analysis in these regards is based on California court decisions which have held that government employees have contractual rights to retirement benefits and that the California Constitution prohibits modification of such contractual rights. Recent decisions in other states similarly support the retirees’ vested rights. The case law permits modifications in benefits only if any reductions are accompanied by offsetting improvements.

As you know, despite these vested rights, the County amended Salary Resolution No. 95-0926 in two ways. First, on August 19, 2008, the County amended the provision of health and welfare benefits for, among others, the Board of Supervisors, SCAMC and retirees historically tied to administrative management. Among other changes, the County changed its contribution for medical coverage to a flat monthly contribution of up to \$500 per month effective June 2, 2009, with a five year phase-in period (“flat medical contribution system”). Second, on September 16, 2008, the County approved a concurrent amendment to the same Salary Resolution that provides a cash allowance of \$3.45 per pay status hour, approximately \$600/month, for all individuals affected by the \$500 flat medical coverage *except* the retirees historically tied to administrative management (“\$600 pay increase”). This second change is effective May 19, 2009.

The flat medical contribution system violates the retirees’ contractual and constitutional rights to lifetime medical benefits and violates the retirees’ rights to receive the same medical benefits as SCAMC employees. These changes will have a devastating impact on the retirees, many of whom are elderly individuals who live on fixed incomes and will be required to pay hundreds or thousands of additional dollars a month toward their medical premiums. In addition, while the County now professes to have upheld the tie agreement, it is obvious that the County’s arrangement is a sham that cheats its retirees out of their earned compensation.

The County’s actions will not stand up in a court of law. The retirees are entitled to rescission of the County’s changes to their medical coverage. Alternatively, at a minimum, the retirees are entitled to the same medical benefits as SCAMC - a full \$1100 per month.

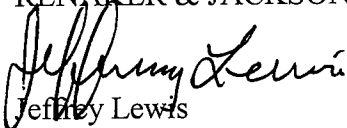
¹ In addition, some Sonoma County retirees may have additional contractual rights under memoranda of understanding (“MOUs”) between the County and the unions they were members of when they retired. This claim, however, seeks to ensure a minimum benefit level for all retirees and does not in any way alter the rights and responsibilities of the individuals with additional rights under a union contract.

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Please feel free to call me if you have any questions or would like to discuss this matter.

Sincerely,

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON, P.C.

By 
Jeffrey Lewis

cc: SCARE

County of Sonoma Claim Form
Further explanation of SCARE's claim

Sonoma County retirees (the "retirees"), as well as active employees, have vested contractual and, therefore, constitutional rights to continued post-retirement health insurance coverage.¹ Due to explicit promises and decades of practice, the retirees have a vested right to full and meaningful coverage of their retiree medical premiums. At a minimum, the retirees are entitled to the benefits of the long-standing "tie" agreement, which entitles them to the same medical benefits as the active Unrepresented Administrative Management ("SCAMC") employees.

The Sonoma County Board of Supervisors (the "BOS" or "County") adopted a new flat medical contribution system in August, 2008, and will implement the plan in June, 2009. This plan violates the County's contractual and constitutional obligations to provide the retirees with medical coverage in perpetuity and to uphold the historical "tie" between retirees and SCAMC.

I. BACKGROUND

As discussed in greater detail below, the County has provided retiree medical benefits for all retirees since at least 1964. *See* BOS Resolution No. 9751-1, 6/22/1964. In 1985, retiree representatives and the County agreed to a "tie" arrangement that linked, for at least some retirees, retiree health benefits to the benefits of current SCAMC employees. Pursuant to that agreement, affected retirees would pay the same premiums as current active SCAMC employees, and the County would provide the same benefits to the retirees as it provided to those active SCAMC employees. *See* Letter from Kenneth Couch, Employee Relations Manager, to Bill Focha, President, Sonoma County Deputy Sheriff's Association (May 17, 2007), at 2, 5, 6 ("Couch letter"), attached hereto as Exhibit 1. Until August, 2008, this agreement was followed by the County.

Despite the retirees' vested rights, on August 19, 2008, the County amended the provision of health and welfare benefits for, among others, the Board of Supervisors, SCAMC, and retirees whose medical benefits are tied to administrative management. Among other things, the County changed its contribution for medical coverage to a flat monthly contribution of up to \$500 per month effective June 2, 2009, with a five year phase-in period ("flat medical contribution system"). *See* County of Sonoma Board of Supervisors Meeting Minutes (August 19, 2008) ("BOS Minutes, 8/19/08"), attached hereto as Exhibit 2, at 21-23; County of Sonoma Agenda Item Summary Report (August 19, 2008) ("BOS Summary Report, 8/19/08"), attached hereto as

¹ Some Sonoma County retirees may have additional contractual rights under memoranda of understanding ("MOUs") between the County and the unions they were members of when they retired. This claim seeks to ensure a minimum benefit level for all retirees but does not in any way alter the rights and responsibilities of the individuals with additional rights under a union contract.

Exhibit 3, at 1-2. In addition, on September 16, 2008, the County passed a concurrent resolution that awarded a cash allowance of \$3.45 per pay status hour, approximately \$600/month, for all individuals affected by the \$500 flat medical coverage *except* the retirees historically tied to administrative management (“\$600 pay increase”). See County of Sonoma Board of Supervisors Meeting Minutes (September 16, 2008) (“BOS Minutes, 9/16/08”), attached hereto as Exhibit 4, at 30; County of Sonoma Agenda Item Summary Report (September 16, 2008) (“BOS Summary Report, 9/16/08”), attached hereto as Exhibit 5. The \$600 pay increase is effective May 19, 2009.

As discussed below, these changes violate the County’s contractual obligations to its retirees by both failing to provide the current level of health coverage or its equivalent, and by breaking the tie between the retirees and SCAMC employees. The County’s wholesale changes to its medical contribution system will have a devastating impact on the retirees, many of whom are elderly individuals who live on fixed incomes and will be required to pay hundreds or thousands of additional dollars a month toward their medical premiums. For example, 62% of the retirees receive pensions of \$2000 or less a month and 31% receive \$1000 or less a month. Many will have to spend large portions of their monthly income on medical premiums and others will have to choose between medical care and other necessities.

To uphold its contractual obligations in full, the County is obligated to rescind its changes to the retirees’ medical coverage and reinstate the County’s previous policy. Alternatively, at a very minimum, the retirees are entitled to the same medical benefits as SCAMC - \$1100 per month.

II. CALIFORNIA CASE LAW STRONGLY FAVORS VESTING OF PUBLIC EMPLOYEE RETIREMENT BENEFITS; ATTEMPTS TO MODIFY SUCH VESTED RIGHTS HAVE BEEN HELD TO VIOLATE THE CALIFORNIA CONSTITUTION

Under the common law, a contract may be formed even in the absence of one fully integrated document. California courts have consistently found that public employees who render services based on the understanding that they will receive retirement benefits in the future have vested contractual rights to such benefits. “California is firmly committed to the proposition that these rights are contractual; that they are ‘vested’ in the sense that the lawmakers’ power to alter them after they have been earned is quite limited.” *Cal. Ass’n of Prof’l Scientists v. Schwarzenegger*, 137 Cal. App. 4th 37, 383 (2006) (quoting *Lyon v. Flournoy*, 271 Cal. App. 2d 774, 779 (1969)). As explained below, any attempt to terminate such vested rights not only violates the contract, but also violates the California Constitution.

A. The Promise of Benefits Creates a Binding Contract and a Vested Right.

Under California law, retirement benefits that induce an employee's services to the employer over a significant period of time are vested contractual rights. Once vested, these rights may not be altered.

The leading case addressing retirement benefit vesting is *Claypool v. Wilson*, 4 Cal. App. 4th 646 (1992). In that case, the court stated that "a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity." 4 Cal. App. 4th at 611. See also *Wallace v. City of Fresno*, 42 Cal. 2d 180, 183 (1954) ("[Vested pension rights] cannot be constitutionally abolished by subsequent changes in the law.").

The contractual basis for the pension right is the exchange of an employee's services for the right offered by statute, ordinance, or MOU. *Claypool* at 662. See also *American Fed'n of Teachers v. Oakland Unified Sch. Dist.*, 251 Cal. App. 2d 91, 97 (1967). Rules and regulations promulgated by a governing board are integral parts of a public employee's contract. *Goddard v. S. Bay Union High Sch. Dist.*, 79 Cal. App. 3d 98, 105-06 (1978).

In *Thorning v. Hollister School District*, 11 Cal. App. 4th 1598 (1992), the court found that retired board members had vested rights to health benefits provided by the school district and that suspension of the benefit payments gave rise to a claim for deprivation of constitutional rights. *Id.* at 1609-10. The policy at issue stated that the district would pay all premiums for current and retired board members. *Id.* at 1607. Two years later, the district inserted a discretionary clause, attempting to confer on itself discretion to eliminate such benefits. *Id.* However, the court held that the new language could not be applied to those who already had vested rights. *Id.* at 1606.

The *Thorning* court used a two-pronged test to determine if benefits were a vested part of compensation, rather than merely gratuitous. Under that test, if the benefit is (1) a practice over a long period of time and (2) a significant inducement or incentive for employees, then the benefit is fundamental, and thus a "maturing emolument for continued service." *Id.* at 1605-07 (quoting *Cal. League of City Employee Ass'ns v. Palos Verdes Library Dist.*, 87 Cal. App. 3d 135, 150 (1978)).

Similarly, government employees' vested rights to benefits (wage increases, vacations, and sabbaticals based on longevity) were upheld in *California League*, 87 Cal. App. 3d at 135. "For the employee who has invested substantial time towards [a] . . . promised benefit[,] the withdrawal of it constitutes a denial of expected compensation." *Id.* at 138 (quoting the opinion of the trial court). Termination of expected benefits therefore "penalizes the employee who has contributed continuous service in anticipation of receiving the promised consideration, and allows the . . . [employer] to reap the advantage of continued . . . service that it intended to induce, without ever fulfilling its declared and implicit obligation." *Id.* The court held that it would be "grossly unfair" for the governmental employer "to eliminate such benefits and reap the

rewards of such long-time service without payment of an important element of compensation for such service.” *Id.* at 140.

Moreover, contractual rights created by an MOU are binding contractual rights. *See Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 304 (1979) (“[T]he agreements between . . . [local entities and employees] are binding contracts.”) The Washington State Supreme Court, in *Navlet v. Port of Seattle*, 194 P.3d 221 (Wash. 2008), recently held that retirement benefits conferred through collective bargaining are compensation for years of service and are therefore vested at the time they are created. *Navlet*, 194 P.3d at 233. The court explained that an employer “cannot expect to accept the benefit of continued service from its employees while reserving the right not to compensate those employees once it has received the full benefit of their service.” *Id.* at 237. To do so “would effectively negate the compensatory nature of the deferred benefit altogether,” even if there is a provision in the agreement that reserves discretionary rights to the employer. *Id.* at 235, 237. In addition, the court held that the promise of benefits does not lapse with time unless there is an express durational limit in the agreement. *Id.* at 237.

Here, as discussed in Section III below, the County has a long-standing policy of providing retiree health benefits, as evidenced by many documents, by the testimony of retirees, including former Human Resources and other management employees, by BOS resolutions, and by MOUs. The promise of such benefits has been a significant inducement for employees’ continued service and, thus, retiree health benefits are “fundamental” and vested.² In addition, the contracts between the County and the retirees contain no durational limit. Therefore, the retirees have a vested right to their present medical benefits (or the equivalent) in perpetuity or, alternatively, a vested right to receive the same benefits as SCAMC in perpetuity.

B. The Promise of Benefits Creates Constitutional Rights.

The United States Constitution prohibits a state from passing any law impairing the obligation of contracts. U.S. Const. Art. I § 10, cl. 1. The California Constitution has a parallel clause that guarantees a “law impairing the obligation of contracts may not be passed.” Cal.

² The rights of employees with fewer than ten years of County employment are also protected. In *Claypool*, the court stated, “A public employee’s pension constitutes an element of compensation, and a vested contractual right to pension benefits that *accrues upon acceptance of employment.*” 4 Cal. App. 4th at 661 (quoting *Betts v. Bd. Of Admin.*, 21 Cal. 3d 859, 863-64 (1978)) (emphasis added). Thus, any employee of the County who has accepted employment and/or has continued employment based on the understanding that upon reaching ten years of service, would earn the right to continued medical benefits upon future retirement. *See also Cal. League of City Employee Ass’ns v. Palos Verdes Library Dist.*, 87 Cal. App. 3d 135, 139 (1978) (explaining that an employee begins earning pension rights from the day he starts employment).

Const. Art. 1, § 9. As a result, where employee or retiree rights to retiree health coverage are vested according to contract law, it is unconstitutional to modify those rights. *See Claypool; Wallace; County of Sonoma*, 23 Cal. 3d at 311 (1979) (overturning part of a statute that invalidated agreements granting cost-of-living wage increases to public employees because it violated both the California and federal Constitutions).

Here, as discussed in Sections II and III, the retirees' rights to retiree health coverage are vested according to contract law and thus under the California and United States Constitutions as well. The extent of these rights is addressed in Section IV.

III. THE EVIDENCE CLEARLY ESTABLISHES THE EXISTENCE OF ONE OR MORE BINDING CONTRACTS

A. Evidence of Promise to Pay All, or Substantially All, of the Retirees' Medical Premiums.

Since at least 1964, the County has provided retiree health benefits for employees. *See* BOS Resolution No. 9751-1, Jun. 22, 1964. Since that time, numerous BOS resolutions have confirmed the right to such benefits. *See e.g.* BOS Resolution Nos. 10292-1 (1964), 11118-1 (1964), 15584 (1966), 93-1767 (1993), 01-1402 (2001), 05-0441 (2005), 05-1039 (2005); Ordinance Nos. 5055 (1997), and 5179 (1999). In addition, the County has included retiree health benefit information in Salary Resolutions specifically applicable to unrepresented employees, which function in a similar way to the MOUs for union employees. *See, e.g.*, Excerpts of Sonoma County Salary Resolution 95-0926 (May 1, 2006), Secs. 2.3, 15.6, attached hereto as Exhibit 6.

The County's policy of providing retiree medical benefits has been well known to its employees throughout the forty-five year period. The County has performed on its promises by consistently paying such benefits. The County is therefore contractually obligated to provide retiree medical benefits.

In addition, as evidenced by numerous historical documents, the County promised, and is therefore obligated, to pay *all*, or substantially all, of the retirees' medical premiums. For example, a 1965 letter from then-Chairman of the Board of Supervisors, Arthur Ruonavaara, states that "[a]ll employees and retired employees choosing to be covered [by the County's medical plan] will have the *entire premium* paid by the County." *See* Arthur Ruonavaara Letter, attached hereto as Exhibit 7 (emphasis added). In a County job posting dated March 23, 1973, the "employee benefits" include the promise that "[u]pon retirement, the County will continue to

pay your health insurance premium.”³ See 1973 Job Posting at 2, attached hereto as Exhibit 8. A County Personnel Department communication, received by a County employee who applied for the March 23, 1973 posting, Exhibit 8, states that the applicant passed his employment examination and was placed on the employment list. See Personnel Department Communication Re: 1973 Job Posting, attached hereto as Exhibit 9. This communication sets forth the benefits of Sonoma County employment, which include the promise that the “County pays your *full share* of an excellent Medical Group Insurance plan (including major medical coverage) and, upon retirement, *continues to pay this cost.*” *Id.* at 2 (emphasis added). It also states that the employee may include his dependents in the health insurance plan “at a very reasonable rate.” *Id.* In addition, members of SCARE, who were themselves the County Administrators, Personnel Directors, and other staff who were responsible for these policies, will testify that they were promised that the County would pay all, or substantially all, of their medical premiums.

Furthermore, the County’s promises to pay retiree medical benefits did not contain any limitation on the duration of such benefits. Instead, the County promised the retirees *lifetime* benefits.

Thus, there is overwhelming evidence that the County promised the retirees that it would cover all, or substantially all, of the cost of lifetime medical benefits. The retirees therefore have a contractual and constitutional right to such lifetime medical benefits.

B. Evidence Related to the “Tie.”

In addition to the evidence establishing the County’s promises to provide lifetime retiree health benefits and the uncontroverted fact that it has provided such benefits, there is a wealth of evidence detailing a 1985 “tie” agreement. This agreement constitutes a binding contract with regard to the vested benefits of at least those retirees who were unrepresented by a union during their employment with the County. Specifically, the tie agreement guarantees that retirees will receive the same health benefits as current active SCAMC employees. The County has unequivocally confirmed this policy in a number of communications.⁴

In recent letters, proposed resolutions, and even testimony by County witnesses in several proceedings, the County and its representatives have repeatedly confirmed the existence of the tie between retirees and SCAMC. In the BOS Summary Report, 8/19/08, the County described the

³ This exact same language is used in another Sonoma County job posting dated April 14, 1982. See 1982 Job Posting at 2, attached hereto as Exhibit 10.

⁴ In early 2008, the County appeared to challenge the existence of the “tie” agreement. However, as is clear from numerous recent County communications, it has entirely retreated from that position.

retirees affected by the flat medical contribution system as those “whose medical benefit contributions, directly or through a 23 year past practice, are the ‘same as’ unrepresented administrative management employees.” See Exhibit 3, BOS Summary Report, 8/19/08, at 1. In recent arbitration proceedings between the County and the Deputy Sheriffs Association, Mike Chrystal, a former County employee and County Administrator, testified on behalf of the County. See Testimony of Mike Chrystal on behalf of Sonoma County (Feb. 4, 2008) (“Chrystal Test.’y 2/4/08”), attached hereto as Exhibit 11. Chrystal explained that it was a longstanding County practice for retirees to receive the same contributions as SCAMC employees and that this practice was formalized in the mid-1980s. See *id.* at 108-11. The County, in a letter responding to a grievance from the Deputy Sheriffs, explained: “Since 1985, the County’s retirees have paid the same premiums and have received the same benefit *as do active County Administrative Management employees.*” Couch Letter, Exhibit 1, at 5 (emphasis in original).⁵

A letter dated January 31, 2001, from Maureen Latimer, then-President of SCARE, to Mike Chrystal, County administrator, also detailed the “tie” as follows:

County retirees pay the same premium payment for health care coverage as do active County Administrative Management employees. This arrangement dates back to 1985 when retirees gave up no cost lifetime health benefits in return for a reduced premium payment for spouses and eligible dependents. At that time, the agreement was made between the County and its retirees that, in perpetuity, assured retirees that they were tied to Administrative Management employees for purposes of health care benefits, providing retirees with the same benefits under the County Health Plan and the same premium rates as Administrative Management employees.

Letter from Maureen Latimer, then-President, SCARE to Mike Chrystal, County Administrator (Jan. 31, 2001), attached hereto as Exhibit 12. In Chrystal’s testimony in the Deputy Sheriff’s arbitration he reviewed this letter and recalled that it was, in part, to “remind me or remind the County that there was this longstanding tie between retirees and administrative management for health benefits.” See Exh. 11, Chrystal Test.’y 2/4/08 at 112.

In a recent letter to Ann Goodrich, current County Director of Human Resources, Richard Gearhart, echoed Ms. Latimer’s statements, reporting that when he was County Human Resources Director, he verbally communicated the “tie” policy on several occasions. Letter from Richard Gearhart, President, SCARE to Ann Goodrich, County Director of Human Resources, 2/16/07, attached hereto as Exhibit 13.

While he was Human Resources Director, Ray Myers sent an e-mail to County

⁵ In the same paragraph, Mr. Couch also cites the year of the agreement as 1989. This appears to be a typographical error.

administrators recounting the 1985 agreement. E-Mail from Ray Myers, Director of Human Resources, County, to Joanne Sidwell and Marcia Chadbourne, County Administrators (Mar. 8, 2004, 20:15 PST), attached hereto as Exhibit 14. In the e-mail, he described current retirees and employees as “vested under the retirement plan.” Myers remembers a modification that accompanied the agreement -- employees and retirees would no longer pay premiums, but would be subject to co-payments and deductibles for the first time. *Id.* However, the retirees “understood the value of a higher stop loss” and were “very supportive” of the agreement. *Id.*⁶

The negotiation of and agreement to the “tie arrangement” are significant in several ways. First, they make it clear that the County recognized that it had a pre-existing obligation to pay the full cost of retiree medical benefits; i.e., the County recognized that its obligation could only be modified by agreement with the retirees. Second, despite the 1985 modifications, the County remained obligated to provide the “richest . . . best benefit package” to its retirees. *See* “Chrystal Test.’y, 2/4/08, Exhibit 11, at 110:12-19. Thus, under the “tie” agreement the County recognized that even if it negotiated changes to retiree medical benefits, the retirees were entitled to, at a minimum, the best coverage offered by the County. Third, even if there had been no pre-existing binding contractual obligation, the tie arrangement would in and of itself give rise to such an obligation.

In short, there is overwhelming evidence of the “tie” agreement, which the County concedes, and that assessment confirms or establishes a contractual right to, at a minimum, the same level of benefits as those provided to SCAMC.

IV. THE COUNTY’S AMENDMENTS TO RETIREES’ MEDICAL BENEFITS ARE UNCONSTITUTIONAL AND VIOLATE THEIR VESTED CONTRACTUAL RIGHTS

Despite the retirees’ clear vested rights, the County amended Salary Resolution No. 95-0926 in August, 2008, to cap its contributions at \$500/month for both retirees and SCAMC. Shortly thereafter, the County passed a concurrent resolution that provided SCAMC, but not the retirees, a cash allowance of approximately \$600/month. These changes violate the retirees’ contractual and constitutional rights to their current medical coverage or its equivalent.

A. The Flat Medical Contribution System Violates the Retirees’ Vested Rights to Full Retirement Health Benefits.

⁶ This agreement is a good illustration of a situation that would probably pass the *Allen-Betts* test, discussed below, regarding the narrow category of allowable modifications to vested benefits. While retirees and future retirees were disadvantaged by the advent of co-payments and deductibles, there was a concomitant advantage to them in the elimination of premiums.

As explained in Section II, above, California case law strongly establishes that retirement benefits are vested where, as here, there is evidence of an employer's long-standing practice of providing such benefits coupled with clear promises of lifetime benefits. This coverage may not be terminated or significantly altered by the County.

For nearly a half-century, the County has promised, as a condition of employment, that it would provide its employees with retiree medical benefits. This agreement was not limited in duration or scope. Instead, the retirees will testify that they were induced to work for the County by the County's promise of lifetime retiree medical benefits. Some retirees did so for their entire careers.

The flat contribution system is a complete departure from past practice and violates the retirees' vested rights. Currently, the County pays 85% of the lowest cost health plan and the retirees pay the remainder, if any. For example, under the County Health Plan #2, the County pays up to \$1,641.16 per month and retirees enrolled in this plan pay \$289.62 per month. The flat contribution system drastically shifts current and future medical costs to the retirees. Under the newly-adopted plan, the County will pay a maximum of \$500 per month after the five year phase-in period. The remainder of the premium cost will be shifted to the retirees. In the example above, even without any medflation over the next five years, retirees will have to pay up to \$1,141/month out of pocket. Assuming medflation at the rate used by the County in its actuarial studies, these same retirees enrolled in the County Health Plan #2 will have to pay up to \$2,469.49 per month at the end of the five year phase-in period.

Thus, the retirees did not plan to, nor are they able to, pay hundreds or thousands of additional dollars each month for medical care. The retirees will testify that they carefully planned during their careers so that they, and their families, would be cared for when they retired. Most of the retirees live on fixed incomes and have little to no wage-earning capacity. In fact, by SCARE's approximation, 31% of the retirees receive pensions of \$1000 or less a month, 62% of the retirees receive \$2000 or less a month, and 80% of the retirees receive \$3,000 or less a month.

The retirees, some of them County employees for their entire careers, will be greatly harmed by the County's new medical plan. For example, one 63 year-old retiree will have to pay 20% of his total income toward his health care premium, which will impact his ability to purchase food and other essentials. In ten years, the County proposal would require another retiree to pay 74% of his monthly income toward medical premiums, leaving him very little for other essentials. Yet another retiree's medical cost under the new plan will be \$400 more than his net monthly income. Those retirees who may still be able to work say they will be forced to seek employment to pay the increased medical costs under the flat contribution system.

These are not isolated cases; rather they illustrate the devastating impact of the wholesale

change the County is imposing on retirees who worked for the County for years on the promise of fully-paid retiree medical benefits. The retirees are entitled to the bargain that they entered into upon rendering their years of service to the benefit of the County. To uphold its contractual obligations in full, the County is obligated to rescind its changes to the retirees' medical coverage and reinstate the County's previous policy. Any future modifications to that policy must include advantages to offset disadvantages, as discussed in Section IV-C, below.

B. The Flat Medical Contribution System Violates the Retirees' Vested Right to Receive, at a Minimum, the Same Benefits as SCAMC Employees.

Alternatively, as discussed in Section III-B, the "tie" agreement provides an alternate measure of the vested rights of retirees who were unrepresented while they were active employees, and for any union retirees whose MOUs might not fully establish more favorable vested rights. The County's profession that the new arrangement upholds the "tie" is bogus and will not be upheld by a court of law.

The \$600 pay increase for SCAMC employees, but not retirees, is intended, and has the effect of, compensating active employees for their out-of-pocket medical expenses under the County's new flat medical contribution plan. It was devised at the same time as the flat medical contribution system and will be implemented at the same time as the flat contribution system. In April, 2008, the County proposed the two changes to SCAMC as a package. *See* County Proposal, April 22, 2008, attached hereto as Exhibit 15. At that time, the County titled the proposed cash increase, which at that time was \$500, its "Initial Proposal on Retiree Cash Allowance" and set the implementation date for "the full pay period closest to June 1, 2009. *Id.* at 6. The two were eventually passed as concurrent resolutions in August and September, 2008. *See* BOS Minutes, 8/19/08, Exhibit 2; BOS Minutes, 9/16/08, Exhibit 4. The County's attempts to argue that the two resolutions, the flat medical contribution system and the \$600 increase, are unrelated is revisionist history. This argument will be unavailing in court, especially after we obtain discovery on the documents and transactions that led to the adoption of the amendments.

In fact, in the County's own description of the \$600 pay increase, it admitted that the \$600 pay increase is designed to fix its outdated medical contribution system. *See* BOS Summary Report, 9/16/08, Exhibit 5, at 2. While the County carefully edited out any explicit recommendation that employees use the \$600 pay increase to pay for medical premiums, this was clearly both its intent and effect.

Now, instead of paying a fixed percentage of retirees' and SCAMC employees' premiums, the County provides SCAMC employees with up to \$1100 to spend on medical premiums. The retirees only receive up to \$500 a month. The County's actions violate the tie agreement that links the retirees' medical benefits to the SCAMC employees. In addition, the County's professed observance of the tie is a sham that any court will see through.

C. Allowable Modifications of Benefits.

Under the *Claypool* line of cases, discussed above, the County may only modify retiree health benefits to a limited extent. In *California League*, the court described these limitations:

[P]ension cases have adopted the principle that vested contractual rights may be modified in order to maintain the flexibility and integrity of the pension system. To be sustained as reasonable, such modifications must ‘bear some material relation to the theory of a pension system and its successful operation, and changes in a . . . plan which result in disadvantage must be accompanied by comparable new advantages.’⁷

Cal. League, 87 Cal. App. 3d at 140 (quoting *Allen*, 45 Cal. 2d at 131) (emphasis added).

Here, the County’s planned amendments to retiree medical benefits will not be sustained as reasonable because, among other things, the disadvantages are not accompanied by new comparable advantages. Rather, the County made the unilateral decision to convert retirees’ medical benefits to a flat contribution system, which shifts costs such as the inflation of medical costs, to the retirees who live on fixed incomes. The County has offered no comparable advantage to retirees to compensate them for their future losses under the new plan.

V. CONCLUSION

Given the case law providing for the constitutionally protected vesting of contractual rights to retirement benefits and the facts here – the long history of providing benefits, the BOS resolutions, the MOUs, and the “tie” arrangement – the County may not terminate or modify retiree medical benefits for current retirees or for currently active employees. Alternately, based on the same case law, the County must provide the same medical benefits to retirees as it does to active SCAMC employees. The retirees are entitled to rescission of the County’s changes to their medical coverage. Alternatively, at a minimum, the retirees are entitled to the same medical benefits as SCAMC - a full \$1100 per month. Failure on the County’s part to do so will result in immediate litigation. However, if the County agrees to interest based bargaining with SCARE and the union coalition, and, among other things, delays the implementation of the flat medical contribution system discussed above, then SCARE may forbear from filing suit. While SCARE prefers to engage in interested based bargaining with the County, SCARE is filing this claim in order to protect its rights in the event that the negotiations either do not come to fruition or fail.

⁷ This formula is often referred to as the “*Allen-Betts* reasonableness test.” *Valdes v. Cory*, 139 Cal. App. 3d 773, 784 (1983).