COUNTY OF LOS ANGELES

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October 3, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Supplemental Annual Report of County Counsel on Litigation Cost Management for FY 2006-2007

Dear Supervisors:

Attached for your consideration is a supplement to the Annual Report of County Counsel on Litigation Cost Management FY 2006-2007 submitted to your Board on June 11, 2007.

The initial Annual Report was submitted in response to the request of your Board for a report on the litigation cost management performance of County Counsel during Fiscal Year 2006-2007. It provided information regarding the first three quarters of Fiscal Year 2006-2007, as well as projections for the remainder of the fiscal year. The purpose of this Supplemental Annual Report is to provide your Board with the final results for Fiscal Year 2006-2007, including fourth quarter information.

On October 1, 2007, under separate cover, the Fourth Quarter (April 1, 2007 - June 2007) and Fiscal Year 2006-2007 Litigation Report was submitted to your Board. That report provides a comprehensive, confidential discussion regarding litigation expenditures for the Fourth Quarter and for Fiscal Year 2006- 2007.

If you have questions concerning this matter, please contact me.

Very truly yours,

RAYMOND G. FORTNER, JR.
County Counsel

By
STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:

RAYMOND G. FORTNER, JR.
County Counsel

SHE:jb

Attachment

c: William T Fujioka
Chief Executive Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors

J. Tyler McCauley
Auditor-Controller

Supplemental Annual Report of County Counsel on Litigation Cost Management for FY 2006-2007

I. ATTORNEY FEES AND COSTS

Attorney fees and costs paid to outside counsel and billed by County Counsel for litigated matters in Fiscal Year 2006-2007 ("FY 2007") were $50,296,003. This was 6% more than the fees and costs paid in Fiscal Year 2005-2006 ("FY 2006"), and 6% more than the average annual amount paid during the preceding three fiscal years.

Outside counsel or contract firm fees and costs for FY 2007 remained the same as in FY 2006-2007 and were less than those paid in Fiscal Year 2003-2004 ("FY 2004") and Fiscal Year 2004-2005 ("FY 2005"). In-house fees and costs increased from $12.6 million in FY 2006 to $15 million in FY 2007. The overall 6% increase in attorneys' fees and costs which occurred in FY 2007 was attributable to the increase in in-house fees and costs.

Since FY 2005, outside law firm *fees* have steadily declined. The outside fees were approximately $32.4 million in FY 2005, $30.7 million in FY 2006, and $29.7 million in FY 2007. An increase in outside counsel *costs* from $4.4 million in FY 2006 to $5.5 million in FY 2007 was the reason the combined outside fees and costs have remained the same for the last two fiscal years.

County Counsel fees and costs billed to the departments in litigated matters have been increasing since FY 2004. This is consistent with the increase in litigated cases in the last two fiscal, years and in-house services replacing some of those previously provided by outside counsel. The increase in in-house fees is also attributable to upward adjustments of in-house billing rates brought about by annual increases in salaries and employee benefits.

II. SETTLEMENTS - APPROVED AND PAID

A. Approved

The Settlements Approved category is a "real time" accounting of all settlements that were actually approved by the Board of Supervisors, County Claims Board, and County Counsel during FY 2007. Settlements Approved accounts for each settlement at the time it is approved, rather than when the settlement amount is paid.

During FY 2007, 238 settlements in the amount of $36,318,122 received final approval. Ten settlements in excess of $1 million contributed to more than one-half of the total amount of settlements approved in FY 2007. These settlements were:

Ochoa	$2,355,392	Medical malpractice
Sprinkle	$2,500,000	Arboretum tram accident
Lopez	$1,800,000	Sexual assault by Deputy Sheriff
Beas	$2,800,000	Beating by other jail inmates
Sandoval	$1,750,000	Vehicle accident
Davis	$1,800,000	Medical malpractice
Montes	$2,337,500	Vehicle accident
Schlock	$1,500,000	Medical malpractice
Molina	$1,755,000	Medical malpractice - Infant death
Cochran	$1,000,000	Wrongful death - Murdered in-mate

The total amount of settlements in FY 2007 of $36,318,122 is nearly the same amount of settlements reported in FY 2006. However, in order to provide a more precise and consistent picture of settlements occurring within a particular period, the method for recognizing settlements was modified at the beginning of FY 2007 to reflect only those settlements which had been *approved* by the Board of Supervisors, Claims Board or County Counsel within the designated period. This was a departure from the criteria used prior to FY 2007, in which cases were included based on a tentative or "handshake" date. As a result of this change, the approved settlements in FY 2007 included five cases which had been previously reported in the FY 2006 Fourth Quarter and Annual Litigation Report. Although the inclusion of these cases in both years inflated the total amount of settlements reported in FY 2007 from $33,045,622 to $36,318,122, the change will provide a more precise and consistent picture of settlements in the future.

B. Settlements Paid

The total amount paid for settlements and judgments in FY 2007 was $50,476,305. This was the amount *actually* paid for settlements *and* judgments in FY 2007. The amount was 20% more than the average annual amount paid for settlements and judgments during the preceding five fiscal years and 32% more than was paid in settlements and judgments in FY 2006.

Although this amount provides an accurate accounting of the payment of all judgments and settlements actually paid in a particular time frame, it does *not* necessarily reflect when a settlement was approved by the Board of Supervisors or County Claims Board. As a result, some settlements, particularly those involving significant amounts which are paid over the course of several years, may not be reflected in the "settlements paid" category for years after the settlement has been approved. The total amount of judgments and settlements actually paid in FY 2007 includes approximately $11.7 million paid as a result of numerous settlements and a consent decree which all occurred in prior fiscal years. This $11.7 million includes over $7

million which resulted from the settlement of two cases after adverse verdicts (*Tucker* and *Ramirez*) in FY 2006, and a $2.5 million payment for plaintiffs' attorneys' fees pursuant to a consent decree in *Bouman v. Baca* which was entered more than a decade ago.

III. TRIALS

The County had a successful year in trial - it prevailed in 15 of 24 cases. It tried approximately a third fewer cases than it did in FY 2005 (39) and FY 2006 (38).

The County received five defense verdicts in a variety of cases, including law enforcement, employment and medical malpractice. The County obtained two dismissals during trial. It also received a "tentative decision" in an action against the Department of Water and Power for electrical service overcharges. In *Barakat v. Los Angeles Department of Water and Power*, the Court tentatively awarded the various public entity plaintiffs $223.8 million. The County's share is projected to be approximately $45 million, less a number of deductions which will reduce that amount by approximately 20%. The decision is not yet final and the Department of Water and Power has indicated that it will appeal if the matter is not settled prior to a final decision.

Three cases were settled during trial, the largest was a medical malpractice case which settled for $750,000. The other cases settled were a highway design case for $215,000 and an employment case for $250,000.

Six plaintiffs obtained verdicts against the County during FY 2007. The two largest verdicts ($400,000 and $300,000) occurred in medical malpractice cases. The County has appealed the $400,000 verdict and it has made a motion to reduce the $300,000 verdict. The other four verdicts resulted in final judgments and included an award of $248,000 in a trip and fall case, $156,000 in a Sheriff's assault case, $2,251 in an automobile case, and $300 in a Department of Children and Family Services case in which the Court assessed attorneys' fees of $40,000 against the County. The total of the four final judgments entered against the County in FY 2007 was $590,695.

In FY 2007, the County spent approximately $4.85 million in the defense of the 24 cases it took to trial - approximately 10% of its total fees and costs paid in FY 2007.

IV. APPELLATE DECISIONS

In FY 2007, 45 appellate courts rendered decisions regarding County cases. The County prevailed in 41. This 90% success rate compared favorably to an 84% success rate in 43 decisions issued during FY 2006 and a 77% success rate in 47 decisions issued during FY 2005.

The most significant unfavorable appellate decision involved a claim by *Northrop Grumman* for a property tax refund. *Northrop Grumman* contended that the assessed property was subject to a security interest by the federal government and was therefore immune from

California property tax. *Northrop Grumman* prevailed and the County was ordered to refund $4.5 million in property tax.

In FY 2007, the County spent $1.55 million, approximately 3% of its total fees and costs, on appellate matters.

V. NEW CASES

There were 670 new cases filed against the County in FY 2007. This was 21% fewer new cases than was received by the County in FY 2006 and 5% fewer than received in FY 2005. However, new cases continued to exceed the number of cases which were dismissed, settled, or proceeded to trial in the last two fiscal years. There was a net increase of cases in FY 2006 of approximately 250 and a similar increase of 100 in FY 2007.

In FY 2007, there was a 55% reduction in new cases filed against the Department of Children and Family Services and a 40% reduction in new cases filed against the Sheriff's Department as compared to FY 2006. Similarly, the Department of Health Services and the Department of Public Works each experienced a 27% reduction in new cases as compared with FY 2006. New employment cases declined by approximately 20% since FY 2006 and new medical malpractice cases remained about the same as last fiscal year.

VI. DISMISSALS

In FY 2007, there were 261 dismissals. These cases were terminated at the trial court level without any County liability and were generally the result of a voluntary dismissal by plaintiff (often prompted by motion or other action by the County), or a favorable ruling on a County motion, such as a demurrer, motion to dismiss or summary judgment. There were 12% fewer dismissals in FY 2007 than in FY 2006. The number of dismissals in FY 2007 did not represent a significant departure from prior years.

VII. CIVIL SERVICES CASES

In FY 2007, 52 cases, which were handled or overseen by County Counsel, were filed with the Civil Service Commission. All were resolved at the Commission level. The Commission upheld the employment action taken by the County department in 25 cases, nearly one-half of the cases. Nineteen, or approximately one-third of the cases, were resolved through settlement. The final eight cases resulted in a recission or a reduction of a discharge or suspension.

VIII. RECOVERIES

In FY 2007, the County had nine significant recoveries (in excess of $20,000) totaling $1,469,342. These recoveries included approximately $719,000 in attorneys' fees and

costs, $300,000 in property taxes, $171,000 in medi-cal program payments, and $151,000 in restitution from unlawful conduct from several property developers.

In addition to the tentative decision in *Barakat v. Los Angeles Department of Water and Power*, the County concluded a settlement in FY 2007 which will also result in a payment of another significant amount to the County in the future. This second significant future recovery involves the *Microsoft Class Action*. This was an anti-trust action brought by numerous public entities against *Microsoft* for overcharging on various products. On April 17, 2007, the action was settled and Los Angeles County will receive $3,653,126. The County has already been reimbursed for a portion of its attorneys' fees and costs in the amount of $189,000 – this amount has been included in the FY 2007 total recoveries. It is anticipated that the County will receive additional reimbursement for attorneys' fees and costs and payment of the settlement amount in the near future.