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ROBERT E. KALUNIAN
Acting County Counsel

November 13, 2009

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

**RE: County Counsel Annual Litigation Report –
Fiscal Year 2008-2009**

Dear Supervisors:

On October 30, 2009, under separate cover, the Annual Litigation Report for Fiscal Year 2008-2009 ("FY 2008-2009"), was submitted to your Board. The Annual Litigation Report provided a comprehensive, confidential discussion regarding litigation expenditures for FY 2008-2009.

The enclosed County Counsel Annual Litigation Cost Report ("Cost Report") provides a brief summary of the FY 2008-2009 Annual Litigation Report. The Cost Report is a public document and will be posted on the County Counsel website.

If you have any questions regarding this report, please contact me at (213) 974-1762.

Very truly yours,

ROBERT E. KALUNIAN
Acting County Counsel

By

STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:

ROBERT E. KALUNIAN
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SHE:mag
Enclosure

c: William T Fujioka, Chief Executive Officer
Sachi A. Hamai, Executive Officer, Board of Supervisors
Wendy L. Watanabe, Auditor-Controller

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2008-2009**

I. Overview

After a significant decline in the previous fiscal year to \$89 million, litigation costs in Fiscal Year 2008-2009 ("FY 2008-2009") rose slightly above the \$100 million mark. While numerous factors brought about this increase, the most critical included: (1) substantial prior fiscal year obligations, (2) an inordinate number of large settlements, (3) a long-deferred increase in outside counsel billing rates, (4) the inclusion of additional case management work as part of in-house counsel fees, and (5) a steadily increasing number of new lawsuits brought against the County. In FY 2008-2009, attorney fees and costs totaled \$49.5 million and settlements and judgments were \$54.55 million. The number of new lawsuits rose to 812 – a three year high. Finally, the County recovered nearly \$66 million and secured a stream of revenue for the next 45 years valued at \$400 million through its litigation efforts in FY 2008-2009.

II. Attorney Fees & Costs

Attorney fees and costs, including both outside and in-house, were up 13 percent over last fiscal year and totaled \$49,528,926. This amount was two percent less than was paid in Fiscal Year 2006-2007 ("FY 2006-2007").

Outside or Contract Counsel fees and costs paid in FY 2008-2009 were \$35,903,832. This was 14 percent, or \$4.5 million, more than was paid last fiscal year. The primary factor contributing to this increase was an adjustment made to the hourly rates of outside panel counsel which resulted in a \$2.4 million increase in outside attorney fees this fiscal year. Panel counsel had not received a rate increase in 14 years and a 2007 survey showed that they were considerably below comparable public entity market rates. The rate increase process was begun in 2007 and implemented on August 1, 2008. Unlike outside counsel attorney *fees*, outside *costs* declined by 15 percent, from \$5.4 million to \$4.7 million. In the absence of the rate increase, the amount paid in outside fees and costs in FY 2008-2009 was *the lowest in the last nine fiscal years*, except for last fiscal year.

In-House or County Counsel litigation fees and costs billed during FY 2008-2009 were \$13,625,094. For the first time, an entire year's time spent by in-house attorneys overseeing litigation monitored by Third-Party Administrators ("TPA") and managing non-TPA cases was included in in-house attorney fees. This amount totaled \$2.55 million and was the primary factor in the increase of in-house attorney fees this fiscal year. In-house *costs* declined by nearly \$750,000, or 48 percent, as compared to last fiscal year. In the absence of the additional first-time oversight fees and the cost-

of-living increases received by in-house counsel during the last three fiscal years, in-house fees and costs in FY 2008-2009 were *the lowest since they were first tracked in Fiscal Year 2003-2004*.

III. Payment of Judgments and Settlements

The total amount of judgments and settlements paid in FY 2008-2009 was \$54,551,103. This was 20 percent more than the amount paid last fiscal year, 8 percent more than was paid in FY 2006-2007, and was the most paid in judgments and settlements in the last six fiscal years. Of the \$54.55 million paid this fiscal year, \$14.4 million was paid in *judgments* and \$40.2 million was paid in *settlements*.

Four of the County's continuing obligations, paid in the form of *judgments*, totaled \$10.76 million. These "continuing" judgments, a 1978 Court Injunction (*Rutherford* - \$622,500), a 1993 Consent Decree (*Bouman* - \$4.6 million), a 2002 Monitoring Agreement (*Katie A.* - \$288,000) and a 2006 verdict (*Marroquin* - \$5.25 million), combined to make up 75 percent of all judgments paid this fiscal year. The remaining \$3.6 million paid in judgments was the result of several adverse verdicts rendered or entered against the County this fiscal year. These included two verdicts involving allegations of excessive force and two employment cases. No judgments were entered against the County this fiscal year which will result in future County obligations.

The *settlements* paid in FY 2008-2009 totaled \$40.2 million. Settlements involving only three departments, the Department of Health Services, the Sheriff's Department, and the Probation Department, combined to account for \$33 million, or over 80 percent of all settlements paid this fiscal year. There were 172 settlements approved this fiscal year – down from the 238 approved in FY 2006-2007 and the 192 approved last fiscal year. Although there were fewer settlements this fiscal year, the settlements were larger than in prior years. Nine settlements in excess of one million dollars were approved this fiscal year as compared to only three such settlements last fiscal year. The four largest settlements totaled nearly \$18 million. These settlements included *Amande* (\$7 million – juvenile ward attacked and rendered quadriplegic), *Perez* (\$4.5 million – infant sustained brain damage during delivery), *Rodriguez/Prado* (\$3.25 million – misdiagnosis and failure to treat resulting in death), and *Tirado* (\$3.2 million – sexual assault by Sheriff's deputy).

The total settlement amount does *not* include a utility user tax refund paid to class action members in *Ornoz* and a reimbursement to providers for mental health services provided to the County in *Enki*. Neither *Ornoz* nor *Enki* can be considered conventional litigation. The inclusion of the amounts paid in these matters would only obscure a meaningful comparative analysis of the amounts paid in contested County litigation.

Oronoz involved a class action to block the collection of a utility user tax which had been collected by the County since 1993. The validity of the tax was the subject of several conflicting judicial opinions and remained uncertain until the *Oronoz* settlement. As part of the settlement, the County agreed to refund a portion of the utility user tax collected by the County between 2004 and 2008. The payment included the establishment of a \$65 million fund to reimburse class members for a portion of the taxes paid, as well as the creation of a \$10 million fund to be used in the unincorporated areas of the County for various social services. These refunds were made from a special Chief Executive Office Reserve Account, which was funded by utility user taxes and set aside to refund such taxes.

The providers in the *Enki* case claimed that they were not paid for health services which they provided to the County because of problems with the County's processing system. The County did not dispute receiving the services, but claimed that the delay in reimbursement was the combined responsibility of the County, the providers, the State, and the designer of the County's processing system. After the County made partial payments to several of the providers, the parties engaged in a collaborative claiming process which resulted in the providers being paid \$10.5 million, which included a cash payment of \$5.8 million and the forgiveness by the County of advances to the providers of approximately \$4.7 million. The State contributed \$3 million. Although the settlement amounts of these two cases are not included in the amount of paid settlements in this report, all attorney fees and costs expended on both cases since their inception have been reported.

IV. New Cases

New actions against the County have been steadily increasing over the last three fiscal years. There were 812 new cases filed against the County during this fiscal year, and new cases rose 10 percent during each of the last two fiscal years. In the last six fiscal years, there was only one Fiscal Year 2005-2006 in which more cases (850) were filed against the County than in this fiscal year. The most significant increase this fiscal year occurred in the area of law enforcement – up 20 percent over last fiscal year. Year-over-year increases in new cases also occurred in dangerous condition, employment, and auto liability cases. After three years of steady decline, medical malpractice cases also increased this fiscal year. Nearly one-third of all new cases involved the Sheriff's Department. The Department of Public Works, the Department of Health Services, and the Treasurer and Tax Collector each accounted for 10 to 12 percent of the new cases filed against the County in FY 2008-2009.

V. Trials

The County tried 22 cases in FY 2008-2009 – down from the 25 tried in Fiscal Year 2007-2008 ("FY 2007-2008"). This was consistent with a decrease in overall trial activity during the last several years throughout California, including

Los Angeles County, according to a recently published judicial statistical survey (*2008 Court Statistics Report by the Judicial Council of California, Administrative Office of the Courts*). The County prevailed in 15 of the trials, winning two excessive force cases (*Mayshack* and *Macias*), as well as two employment cases involving racial discrimination (*Hammond* and *Hines*).

The largest verdict rendered *against* the County this fiscal year (*Jaimes*) involved a Sheriff's deputy who was a member of a group at the Century Sheriff's Station known as the Regulators. The deputy alleged that, during an investigation of the group, he was discriminated against when he was referred to as a member of the "Mexican Mafia." The jury found for the deputy and awarded him \$386,005. Following the trial, the court awarded the deputy \$759,442 in attorney fees and costs. A second significant verdict against the County was rendered in another employment action. In that action, a former employee of the Executive Office of the Board of Supervisors alleged that she had been transferred to a lesser position in violation of the California Family Rights Act. A jury returned a verdict of \$356,000 in her favor. The court later awarded the plaintiff in that case \$250,309 in attorney fees and costs.

The number of cases tried this fiscal year does not include trials and hearings involving writs of mandamus and prohibition. During FY 2008-2009, seven such matters involving the County proceeded to trial or final hearing. The County prevailed in six of these matters, the most significant of which involved the protection of past County tax revenue of \$16.5 million and future revenues of approximately \$150 million over the next 40 years.

VI. Appellate Decisions

In FY 2008-2009, final appellate decisions were rendered in 65 cases involving the County – down from 74 last fiscal year. Although down slightly from last fiscal year, the County enjoyed a 77 percent success rate regarding such cases.

VII. Recoveries

The County recovered nearly \$66 million and secured a stream of revenue for the next 45 years (presently valued at \$400 million) through its litigation efforts in FY 2008-2009. An action against the Los Angeles Department of Water and Power for electrical service overcharges and another against the Community Redevelopment Agency of the City of Los Angeles to invalidate the City Center and Central Industrial redevelopment projects yielded recoveries of \$32.3 million and \$26.4 million, respectively. The *City Center* action also secured a County stream of revenue for the next 45 years, presently valued at \$400 million. Other actions by the County which resulted in significant recoveries included a challenge of California Assembly Bill 138 and State Mandates (\$3.6 million), and an action against NME Hospitals, Inc. in which the County recovered \$3 million.