

**ITEM 11**  
**FINAL STAFF ANALYSIS**  
**PROPOSED STATEWIDE COST ESTIMATE**

Code of Civil Procedure  
Sections 1299.2, 1299.3, 1299.4, subdivision (b),  
1299.5, subdivision (a), 1299.6, subdivision (a),  
1299.8 and 1299.9, subdivision (b)  
Statutes 2000, Chapter 906

*Binding Arbitration*  
01-TC-07

County of Napa, Claimant

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**EXECUTIVE SUMMARY**

If the Commission adopts Item 6, the Proposed Parameters and Guidelines for this program, then staff recommends the adoption of Item 11, the Proposed Statewide Cost Estimate of \$211,317 for this program.

**Background**

The test claim statutes in their entirety were declared unconstitutional by the California Supreme Court on April 21, 2003, as violating portions of article XI of the California Constitution. The basis for the decision is that the statutes (1) deprived the county of its authority to provide for the compensation of its employees as guaranteed in article XI, section 1, subdivision (b); and (2) delegate to a private body the power to interfere with local agency financial affairs and to perform a municipal function, as prohibited in article XI, section 11, subdivision (a). However, before this decision, only one county implemented the new program.

**Commission's Decision**

On March 29, 2007, the Commission on State Mandates (Commission) reconsidered the Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law. The Commission adopted a new decision and approved reimbursement for the following state-mandated activities pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:

- a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
- b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
- c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
- d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
- e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
- f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).<sup>1</sup>
- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).<sup>2</sup>
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).<sup>3</sup>

### **Proposed Parameters and Guidelines**

The proposed parameters and guidelines for this program are also on this agenda. If adopted, the State Controller's Office will issue claiming instructions within 60 days; and one eligible claimant may file reimbursement claims. The original claimant, City of Palos Verdes, did not incur actual costs but filed the test claim based on estimated costs. The County of Napa joined the claim as a co-claimant and alleged increased actual costs incurred during the period of reimbursement, January 1, 2001 through April 20, 2003. (Throughout this test claim proceeding, we have identified only one county that is an eligible claimant.)

### **Proposed Statewide Cost Estimate**

On May 21, 2008, the Commission staff issued a Proposed Statewide Cost Estimate of \$10,000.<sup>4</sup> The estimate was based on a declaration filed with the Commission on January 24, 2007. In that declaration, Deputy County Counsel Jacqueline M. Gong declared under penalty of perjury, that:

The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.<sup>5</sup>

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<sup>1</sup> Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

<sup>2</sup> Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

<sup>3</sup> Incorporating by reference Code of Civil Procedure section 1283.05.

<sup>4</sup> See Exhibit A, Draft Staff Analysis, Proposed Statewide Cost Estimate

<sup>5</sup> See Exhibit A, Request to Join as Co-Test Claimant by County of Napa, filed on January 24, 2007, Declaration of Jacqueline M. Gong, Paragraph 6.

To prepare the draft staff analysis and proposed statewide cost estimate, staff made the following assumptions regarding the statewide cost estimate for this program:

- There will be only one eligible claimant, County of Napa.
- The actual full cost of the County of Napa’s interest arbitration process is yet to be determined. However, there is a declaration to support a statewide estimate in the amount of \$ 10,000.

**Comments Filed by the Department of Finance and the County of Napa**

On June 3, 2008, the Department of Finance filed comments in support of the Proposed Statewide Cost Estimate of \$10,000.<sup>6</sup> On June 4, 2008, the County of Napa filed a new declaration in support of amending the statewide cost estimate to \$213,317.<sup>7</sup>

The declaration of Jacqueline M. Gong, Deputy County Counsel of Napa, declared that the “actual, full cost of the County’s interest arbitration process is yet to be determined. However, I have reviewed documentation that generally identifies staff and time spent in the arbitration process....” Ms. Gong describes the County’s summary of Estimated Staff Time and Costs as an “approximation of the staff time and related costs for conducting the arbitration.” This summary is excerpted below.

Employee Class	Hours	Productive Hourly Rate <sup>8</sup>	Contract Services	Total
Deputy County Counsel	250	\$83.33		\$20,833.33
Human Resources Director	150	\$80.87		\$12,130.50
Principal HR Analyst	20	\$63.49		\$1,269.78
Benefits Administrator	15	\$58.75		\$ 173.23
Legal Secretary	5	\$34.65		\$857.27
Asst. CEO	15	\$85.73		\$1,285.95
Auditor-Controller	5	\$88.60		\$443.02
CEO Analyst	5	\$64.88		\$324.39
Outside Counsel			\$ 126,000	
Expert Witnesses			\$ 50,000	
		Totals	\$176,000	\$37,317.47
Total Estimated Cost	\$213,317	(rounded up to \$215,000)		

<sup>6</sup> See Exhibit B.

<sup>7</sup> See Exhibit C.

<sup>8</sup> This rate includes administrative overhead in support of the staff position.

Footnote 2 of this declaration further explains:

The county retained outside counsel for the arbitration. The services were provided pursuant to Napa County Agreement No. 4489 and the First Amendment to this Agreement .... The contract provided for a maximum amount of \$172,000 for compensation and expenses, including the retention of experts and consultants. In addition, County directly retained one expert witness/consultant to address retirement benefit costs. The estimate of \$176,000 for costs of outside counsel and expert witnesses is based upon a review of documentation relating to invoices paid by the County.

The county also prepared a chart of county staff and others who participated in various reimbursable arbitration activities, based on the proposed parameters and guidelines as modified by claimant and staff and set for hearing on June 26, 2008.<sup>9</sup>

Staff reviewed the contract for retention of outside legal counsel. In Exhibit A, Scope of Work, the contract authorized legal representation in “court proceedings.” Since litigation costs are not reimbursable, staff e-mailed Ms. Gong to request clarification.

Ms. Gong responded:

Our outside counsel did not appear on behalf of or represent the County in any court proceedings. I believe the agreement language regarding court proceedings was included in the event there were potential disputes regarding the scope or application of Code of Civil Procedure Section 1299 et. seq. as the arbitration progressed. Early on, the union initially filed a motion to compel arbitration which I handled on behalf of the County; the County’s position was that the motion was without merit and that it had not refused to arbitrate and had in fact proceeded with selection of our arbitration panel member. I did have outside counsel review my pleadings on the motion to compel arbitration, but counsel’s billing time in reviewing the pleadings is interspersed with time preparing for the arbitration (strategizing/calling the neutral arbitrator/preparing for the preliminary meeting with the arbitration panel); the time is not clearly separated out. The motion was held in abeyance pending the parties proceeding with arbitration and ultimately dismissed. A rough, ballpark estimate of outside counsel’s time on the motion to compel arbitration (consultation- review of pleadings- strategizing about discussions with the neutral arbitrator) amounts to approximately \$2000 (10 hours of attorney time at \$200/hour) and that is probably generous.<sup>10</sup>

Since costs for litigation are not reimbursable, county’s estimated cost of \$213,317 is reduced by \$2,000.

Thus, based on staff’s review of the County’s new declaration, supporting evidence, and clarification of costs for litigation, staff revises the proposed statewide cost estimate to \$211,317.

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<sup>9</sup> See Exhibit C.

<sup>10</sup> See Exhibit D.

## **Revised Assumptions**

- There will be only one eligible claimant, County of Napa.
- The actual one-time full cost of the County of Napa's interest arbitration process is yet to be determined. However, a declaration by Deputy County Counsel Jacqueline Gong supports a statewide cost estimate in the amount of \$ 211,317.
- Actual amount to be claimed may be higher than the estimated amount of \$211,317.
- If the County of Napa's actual reimbursement claim is audited by the State Controller, the amount claimed may be reduced.

## **Conclusion**

Staff recommends that the Commission adopt a statewide cost estimate of \$211,317 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

# Attachment 1

## Updated Chronology: Collective Bargaining Process, Mediation, and Binding Arbitration

July 2000	Napa County begins collective bargaining process with Deputy Sheriff's Association.
November, December, January, February	Mediation – four occasions
Jan. 1, 2001 Jan. 16, 2001	PERIOD OF REIMBURSEMENT BEGINS During mediation, the DSA requested economic issues be submitted to binding arbitration.
	County consulted with other agencies; the County's Human Resources Director met with legal counsel.
Feb. 20, 2001	Last day of mediation ... County designated its Human Resources Director as its partisan panel member; DSA designated its panel member.
	Discussions between the County's Human Resources Director and legal counsel, the County planned its approach in participating in the joint selection of the neutral arbitrator.
March 2001	County and DSA jointly designated impartial chairperson. <i>Napa County contracts with Curiale Dellaverson Hirschfeld Kelly &amp; Kramer, LLP to represent County, as counsel of record in binding interest arbitration between the County and the Napa County Deputy Sheriffs' Association pursuant to California Code of Civil Procedure Section 1299 et seq. (\$122,000)</i>
April 17, 2001	Parties met with arbitration panel. <ul style="list-style-type: none"> <li>• Identified the disputed economic issues.</li> <li>• Established hearing timetable for exchange of requested information, exhibits, witness lists.</li> <li>• Agreed on hearing dates.</li> </ul> Parties settled on two economic proposals on retirement and dental benefits.
April 17 – May 22	Parties conducted discovery and exchanged documents as agreed to with the arbitration panel: Responses to discovery requests involved staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. County also incurred costs for legal counsel, both

	<p>in-house and retained outside counsel.</p> <p>County searched for and retained expert witnesses to analyze the fiscal impact of proposed economic issues on the County and its ability to pay, as well as to study the comparability of the County's economic proposals to similarly situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	5 days before hearing, parties submitted last best final offer from negotiations.
May 22, 2001	<p>Parties participated in hearing – 3-days.</p> <p>Legal counsel, staff, expert and general witnesses.</p>
	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
	Panel selects the party's last best offer on each disputed economic issue that most nearly adheres to specified factors under CCP 1299.6.
September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p> <p><i>County amends contract with Curiale Dellaverson Hirschfeld Kelly &amp; Kraemer, LLP, by increasing maximum amount by \$50,000.</i></p>