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6 CITY OF SAN DIEGO

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CITY OF SAN DIEGO, CA

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 FAXED

11 CITY OF SAN DIEGO,

Case No. 37-2009-00086499-CU-PT-CTL

12 Petitioner and Plaintiff,

13 v.

14 SAN DIEGO POLICE OFFICERS
ASSOCIATION INCORPORATED,
15 DOES 1 through 100

PETITION FOR WRIT OF MANDATE
(Cal. Civ. Proc. Code § 1085); AND,
COMPLAINT FOR DECLARATORY
RELIEF (Cal. Civ. Proc. Code § 1060)

16 Respondent and Defendant

17
18 Petitioner and Plaintiff, CITY OF SAN DIEGO ("City") respectfully represents and
19 alleges as follows against Respondent and Defendant, SAN DIEGO POLICE OFFICERS
20 ASSOCIATION INCORPORATED, ("POA") and DOES 1 THROUGH 100 as follows:

21 NATURE OF ACTION

22 1. This action arises from the refusal of POA to meet and confer with the City
23 regarding the City's proposal to eliminate an employment benefit, known as the Deferred
24 Retirement Option Program, ("DROP").

25 2. The City is faced with the challenge of resolving a budget deficit for the next fiscal
26 year, 2010-2011, that could be as high as \$60 million. Additionally, the City is facing a funding
27 gap in its pension system that has grown to \$2 billion due to investment returns. The City has
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COPY

1 identified the unfunded pension liability as well as the costs related to employee benefits as issues
2 requiring immediate resolution to restore financial strength to the City and the Retirement System
3 Trust Fund. To meet this challenge, the City has embarked on a reform effort that includes the
4 implementation of cost-cutting measures, benefit adjustments, and benefit controls.

5 3. A key element of the City's overall reform process is the elimination of DROP for
6 those active employees who have not already enrolled in the program. DROP affords employees
7 the right to remain employed, receiving all rights and benefits of full-time employment, while
8 also collecting full pension benefits.

9 4. Commonly referred to as "double-dipping," other major public employee pension
10 systems in California such as the California Public Employees Retirement System (CalPERS),
11 and the State Teachers Employee Retirement System (CalSTRS) already prohibit, or limit such an
12 opportunity for members of their retirement systems.

13 5. The City has presented its proposal to eliminate DROP to POA, and has demanded
14 POA meet and confer with the City regarding its proposal. As a benefit of employment, DROP is
15 a mandatory subject of bargaining under applicable labor relations laws. However, POA has
16 consistently refused to meet and confer with the City regarding the proposal, thereby impeding
17 the City's efforts to move forward with its reform process in an efficient manner.

18 6. POA's refusal to bargain with the City has resulted in deadlock at the bargaining
19 table during the last three successive rounds of collective bargaining, including negotiations over
20 the current contract that is set to expire on **June 30, 2009** at 12:00 a.m.

21 7. Unless and until the dispute over whether POA has a duty to meet and confer with
22 the City regarding the proposed elimination of DROP for active employees is resolved, the
23 deadlock will continue, undermining the City's ability to address a critical element of the City's
24 reform program.

25 8. In accordance with the City Council's responsibilities to uphold the law and
26 protect the interests of the City's taxpayers, this mandamus and declaratory relief action seeks a
27 judicial determination of the parties' rights and responsibilities to bargain the City's proposal to
28 eliminate DROP. The City seeks an order compelling POA to meet and confer with the City. The

1 City also seeks a judicial declaration that DROP is a term and condition of employment within
2 the mandatory scope of bargaining, that POA has a mandatory duty to meet and confer with the
3 City, and that POA's failure to do so is a *per se* violation of its obligations under the applicable
4 Meyers-Milias-Brown Act (the "MMBA"). (Cal. Gov. Code §§ 3500, et. seq.)

5 *Petitioner and Plaintiff*

6 9. The City of San Diego, is a municipal corporation with all the municipal powers,
7 functions, rights, privileges and immunities authorized by the Constitution and the laws of the
8 State of California. (City of San Diego Charter ("Charter"), art. I, § I.)

9 10. The City is a charter city under Article IX of the California Constitution and is
10 empowered to exercise exclusive authority over all municipal affairs, with such authority limited
11 only to the extent provided in the City's Charter. (Cal.Const., art. IX §§ 2(a), 3(a).) Under Article
12 IX, the City has the power to make and enforce all ordinances and regulations with respect to
13 municipal affairs. (Cal.Const. art. IX, § 5(a).) Charter provisions have the effect of legislative
14 enactments and charter city ordinances and regulations regarding municipal affairs prevail over
15 state laws covering the same issues.

16 11. The City currently operates under a "Strong Mayor" form of governance.
17 (Charter, art. XV, §250.) Under this form of governance, all executive authority, power and
18 responsibility is vested in the Mayor. (Charter, art. XV, §260(b).) In addition, the Mayor is
19 recognized as the official head of the City, serves as chief executive officer, and has the power
20 and duty to execute and enforce all laws, ordinances, and policies of the City. (Charter, art. XV,
21 §265.)

22 12. All legislative powers of the City (except those reserved to the people by the
23 Charter and the California Constitution) are vested in the City Council ("the Council"), subject to
24 the Mayor's veto powers. (Charter, art. XV, §§ 270, 280.) The Council is composed of eight full-
25 time Council members who serve for staggered four-year terms: eight Council members who
26 represent the City's eight districts. (Charter, art. XV, § 270.)

27 13. The Council of the City ("City Council") is authorized and empowered by the
28 Charter, Article IX, section 141, to establish a retirement system for compensated public officers

1 and employees, and has done so by adoption of Ordinances codified in San Diego's Municipal
2 Code ("SDMC") sections 24.0100, et seq.

3 14. The City is a "public agency" under the MMBA. (Cal. Gov. Code § 3501(c).)

4 15. Pursuant to Government Code section 3507, the City has adopted reasonable rules
5 and regulations for the administration of employer-employee relations. (City Council Policy No.
6 300-06.) (Exhibit "A.")

7 ***Defendant and Respondent San Diego Police Officers Association Incorporated***

8 16. The San Diego Police Officers Association Incorporated ("POA") is, and was at all
9 times relevant to this action, a mutual benefit corporation organized and doing business as a
10 sanctioned police union under the laws of the State of California, subject to the court's power to
11 compel compliance with a legal duty under Code of Civil Procedure section 1085. (Cal. Civ.
12 Proc. Code § 1085.)

13 17. The POA is a "recognized employee organization" within the meaning of the
14 MMBA. (Cal. Gov. Code §§3501(b); 3503.).

15 18. The POA is the certified exclusive bargaining representative for all current
16 employees in the San Diego Police Department employed in positions with the classification of
17 Police Recruit, Police Officer I, Police Officer II, Police Officer III, Police Detective, Police
18 Agent, Police Sergeant, Police Lieutenant, and Community Relations Assistant to the Police
19 Chief. Article 2 of the 2008 POA MOU provides:

20 Management formally recognizes the P.O.A. as the exclusive
21 representative for all employees in the Police Unit. This Memorandum
22 applies to all classifications listed below except as the units may be
amended in accordance with the City's Employer-Employee Relations
Policy.

23 (Article 2 of the Memorandum of Understanding by and between the City of San Diego and the
24 San Diego Police Officers Association, made and entered into on July 1, 2008, ("POA MOU")
25 Exhibit B.').

26 19. The POA has the exclusive right and duty to represent all employees in the unit
27 regarding matters within the scope of representation which includes all matters relating to
28 employment conditions and employer/employee relations including (but not limited to) wages,

1 hours, and other terms and conditions of employment as provided for and defined by the MMBA.
2 Article 6 of the POA MOU specifies the scope of representation of the POA:

3 The scope of representation of the Police Officer's Association shall
4 include all matters relating to employment conditions and
5 employer/employee relations including (but not limited to) wages, hours,
6 and other terms and conditions of employment as provided for and defined
7 by the Meyers-Milias-Brown Act, Section 3500, et seq., California
8 Government Code.

9 (Cal. Gov. Code §§ 3503-04; Article 6, POA MOU.)

10 20. The POA has the capacity to be sued under California Code of Civil Procedure,
11 Section 369.5(a).

12 JURISDICTION

13 21. Section 1085 of the Code of Civil Procedure empowers this Court to order POA to
14 comply with its mandatory duties under the MMBA.

15 22. Section 1060 of the California Code of Civil Procedure, empowers this Court to
16 make a binding declaration of the parties' right and duties, and the declaration shall have full
17 force of a final judgment.

18 23. The POA is exempt from the jurisdiction of the Public Employment Relations
19 Board. (Cal. Gov. Code § 3511.)

20 24. Additionally, POA has acknowledged the City's right to seek a resolution of this
21 dispute through a civil action for declaratory relief, or other civil causes of action deemed
22 appropriate by the City. (POA MOU, Article 44, § 12.)

23 25. Accordingly, and based on the facts stated in this Complaint, this Court has
24 jurisdiction to grant the declaratory relief and issue the writ of mandate compelling POA to meet
25 and confer with the City as sought in this action.

26 VENUE

27 26. Venue is proper in this Court as the events giving rise to the claims set forth in this
28 Complaint occurred in the City of San Diego, San Diego County, California.

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GENERAL ALLEGATIONS

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The Deferred Retirement Option Program

3 27. DROP is a benefit offered to active employees who are eligible to retire under the
4 City Employees' Retirement System, ("SDCERS"). Recognized as an 'alternative method of
5 benefit accrual,' DROP provides employees, who have reached retirement age, the right to
6 continue working, and to enjoy all rights and benefits of employment, while also collecting
7 pension benefits.

8 28. The City implemented DROP following collective bargaining negotiations
9 between the City and its labor unions in 1997. Since 1997, the basic terms and conditions of the
10 DROP program have been set forth in each successive MOU between the City and the unions,
11 including the current MOU between the City and POA that is set to expire on June 30, 2009.
12 (POA MOU, Art. 45, § 6.)

13 29. The City established DROP, effective April 1, 1997, through a series of
14 ordinances. DROP is codified in the City's Municipal Code. (S.D. Muni. Code § 24.1401, et
15 seq., Exhibit "C.")

16 30. To participate in DROP, an employee must meet the age and service eligibility
17 requirements for retirement under the SDCERS. (S.D. Muni. Code §24.1402(a).) Offered as a
18 benefit of employment, the employee must elect DROP while still an active employee. (S.D.
19 Muni. Code §24.1402(a).)

20 31. Further, to participate in the program, the employee must also make a series of
21 voluntary and irrevocable decisions, including the designation of a specific period of time to
22 participate in DROP, not to exceed 60 months, and an agreement to leave City employment on or
23 before the end of the employee's DROP participation period. (S.D. Muni. Code §24.1402(b).)
24 Once a DROP participant completes the designated DROP participation period, the employee's
25 employment with the City is over and the employee is retired from City employment.

26 32. While the employee participates in DROP, the employee continues to earn a full
27 salary and benefits available to active employees, and, except as modified by DROP, has "all the
28 rights, privileges and benefits, and is subject to all other terms and conditions of employment,

1 including the City Flexible Benefits Plan". (S.D. Muni. Code §24.1409.) For the POA, members
2 are also eligible to receive disability retirements while participating in DROP. (S.D. Muni. Code
3 §24.1403(b)(4).)

4 33. In addition receiving a regular bi-weekly paycheck and other rights and benefits of
5 employment, the employee also earns a series of additional benefits, including *the payment of the*
6 *employee's service retirement allowance*, a 3.05% employee and employee pre-tax contribution
7 on the salary the employee earns while in DROP, supplemental benefits, and cost of living
8 adjustments, all of which earn interest. (S.D. Muni. Code §24.1404.) These benefits are accrued
9 and accounted for in a separate account that is established for the DROP participant, known as the
10 DROP Participation Account. (S.D. Muni. Code §24.1404.).

11 34. When an employee elects to enter DROP, SDCERS treats the employee as retired
12 and the employee's participation in DROP does not result in the accrual of additional pension
13 benefits. The employee's service retirement allowance is frozen and SDCERS calculates the
14 service retirement allowance based on the age, creditable service, final compensation, and the
15 selected retirement option of the employee on the day the employee enters DROP. (S.D. Muni.
16 Code §24.1402(4).) Although the DROP participant receives service retirement payments, during
17 the DROP participation period, SDCERS makes the payments into the DROP Participation
18 Account. Further, the employee and employer are no longer required to make contributions to the
19 retirement plan. (S.D. Muni. Code §24.1405(1).)

20 35. When the employee completes the DROP participation period and the employee
21 actually retires, the DROP Participation Account becomes immediately available to the retiree.
22 (S.D. Muni. Code §24.1407(a), (b).) The retiree may receive all of the additional benefits accrued
23 during the DROP Participation Period in a lump sum or in monthly payments, or some other
24 actuarially equivalent form approved by the retirement board. (S.D. Muni. Code §24.1407(a),
25 (b).) The retiree also starts to receive the service retirement allowance payments directly.

26 36. Although DROP is intended to be cost neutral under Municipal Code section
27 24.1401(b), the City is informed and believes that the program is not, and that the elimination of
28 DROP will bring about significant cost savings. The City is informed and believes that if the City

1 eliminates DROP, effective July 1, 2009, the City's Annual Retirement Contribution ("ARC")
2 will be reduced by \$16 million in FY11 and by \$22.5 million in FY12. Further, by July 1, 2012,
3 the UAAL will be reduced between \$250 million and \$350 million.

4 ***POA's Obligation To Meet and Confer With The City***

5 37. The City is a public employer and the POA is an employee organization within the
6 meaning of the MMBA. (Cal. Gov. Code §§ 3500, et. seq.)

7 38. Pursuant to Government Code section 3507, the City has adopted reasonable rules
8 and regulations for the administration of employer-employee relations and "to provide procedures
9 for meeting and conferring in good faith with Recognized Employee Organizations regarding
10 matters that directly affect and primarily involve wages, hours and other terms and conditions of
11 employment of employee in appropriate units and that are not preempted by Federal and State law
12 or the City Charter." (City Council Policy No. 300-06, Section I(A.) (Exhibit "A")

13 39. The POA and the City have a negotiated MOU which has been in effect since July
14 1, 2008. (POA MOU.)

15 40. The current MOU between the City and the POA covers DROP and makes DROP
16 available for the term of the MOU. (POA MOU, Art. 43, § 6(D).) The 2008-09 POA MOU is set
17 to expire by its own terms on June 30, 2009 at 12:00 a.m.

18 41. The City has an obligation to give written notice of any proposed ordinance, rule,
19 resolution, or regulation directly relating to matters within the scope of representation to POA and
20 give POA an opportunity to meet with the agency. (Cal. Gov. Code § 3504.5.)

21 42. The City and POA have a mutual obligation to meet and confer in good faith
22 promptly upon request by either party on matters regarding wages, hours, and other terms and
23 conditions of employment. (Cal. Gov. Code § 3505.)

24 ***POA's Refusal To Meet And Confer With The City***

25 43. The City's proposal to eliminate DROP is a matter within the scope of
26 representation under the MMBA, which includes, wages, hours and other terms and conditions of
27 employment. (Cal. Gov. Code §§ 3504-05.) DROP involves wages and other key terms and
28

1 conditions of employment, including method of benefit accrual, eligibility for benefit accrual, and
2 length of participation. (S.D. Muni. Code §§ 24.1400, et. seq.)

3 44. The City has proposed modifications to DROP, including its elimination, during
4 the past several rounds of collective bargaining with POA.

5 45. During the 2005 negotiations with all five unions, the parties reached agreement to
6 eliminate DROP for all future hires. However, POA refused to bargain the terms and conditions
7 of DROP for current employees.

8 46. During the 2008 contract negotiations with POA, the City proposed the
9 elimination of DROP for all active employees hired on or before July 1, 2005, who had not
10 already opted to participate in DROP. However, the parties were unable to reach any agreement
11 as the parties deadlocked over whether DROP was a proper subject of bargaining.

12 47. Recognizing the disputed status of DROP would likely continue to impede future
13 negotiations, the 2008-09 MOU between the City and POA acknowledged the City's right to
14 institute litigation, at the appropriate time, to secure a determination of the parties' rights and
15 obligations regarding the negotiability of DROP. (POA MOU, Article 44, § 12.)

16 ***The Current Deadlock***

17 48. The City is currently engaged in a new round of contract negotiations with the
18 POA over a contract that will expire on **June 30, 2009 at 12:00 a.m.**

19 49. During the contract negotiations regarding the successor to the 2008-09 MOU that
20 is set to expire on June 30, 2009, the City notified POA of its desire to eliminate DROP.

21 50. On or about **March 4, 2009**, the City provided a list of core issues and negotiation
22 proposals to the POA, which included a proposal to eliminate DROP, and requested POA meet
23 and confer with the City. The City proposed the elimination of DROP for all current employees,
24 estimating the elimination of the program would result in savings to the City's ARC between
25 2.5% - 3.5% of covered payroll, or \$16 million – 22.5 million in the City's ARC by 2012.

26 51. The City has insisted, and continues to insist, that POA has an obligation to meet
27 and confer with the City regarding the proposed elimination of DROP. The POA has continued
28 to resist the City's demand and has refused to meet and confer with the City regarding DROP.

1 (c) Whether DROP, which affords employees the right to remain employed
2 while collecting pension benefits, is a term and condition of employment within the scope
3 of representation under the MMBA.

4 68. A judicial declaration is necessary and appropriate at this time under the
5 circumstances in order that the City may ascertain its rights and duties and break the deadlock
6 that is preventing the parties from bargaining over the future of the DROP and impeding the
7 City's ability to implement much needed reforms.

8 69. There are no administrative remedies available to the City to compel the relief
9 sought herein. Therefore, the City has exhausted all available administrative remedies.

10 70. The City has no plain, speedy or adequate remedy at law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, the City prays for judgment against Respondent and Defendant POA as
13 follows:

14 1. That the court issue a peremptory writ of mandate in the first instance
15 directing POA to comply with its obligations under the MMBA, including, but not limited to:

16 a. Directing POA to meet and confer with the City regarding the
17 City's proposal to eliminate DROP;

18 2. For a judicial declaration regarding the rights and obligations of the parties,
19 including, but not limited to:

20 a. POA has a legal obligation to meet and confer with the City
21 regarding the City's proposal to eliminate DROP;

22 b. The refusal of POA to meet and confer with the City regarding its
23 proposal to eliminate DROP is a *per se* violation of its obligation under the
24 MMBA; and,

25 c. DROP, which affords employees right to remain employed, while
26 collecting pension benefits, is a term and condition of employment within the
27 scope of representation under the MMBA.


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- 3. For costs of suit and attorneys' fees incurred herein; and
- 4. For such other and further relief as the court may deem proper.

Dated: April 1, 2009

Burke, Williams & Sorensen, LLP
Daphne M. Anneet
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By: 
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CITY OF SAN DIEGO

