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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 CITY OF SAN DIEGO,)	CASE NO: 37-2009-00086499-CU-PT-CTL
12)	
13 Petitioner and Plaintiff,	)	SAN DIEGO POLICE OFFICERS
14 v.	)	ASSOCIATION INCORPORATED'S
15 SAN DIEGO POLICE OFFICERS	)	PRELIMINARY RESPONSE TO
16 ASSOCIATION INCORPORATED,	)	CITY OF SAN DIEGO'S
17 and DOES 1 to 100, inclusive,	)	CHALLENGE TO ITS OWN DROP-
18	)	CREATING ORDINANCE
19 Respondent and Defendant.	)	Date: June 25, 2009
20	)	Time: 9:00 a.m.
21	)	Judge: Hon. David B. Oberholtzer
22	)	Dept: C-67
23	)	Action Filed: April 1, 2009
24)	

25 Respondent and Defendant San Diego Police Officers Association Incorporated
26 ("SDPOA") files this preliminary response to the City of San Diego's ("City") recent challenge
27 to its own DROP-creating ordinance because the City's claim that Ordinance number O-18385 is
28 invalid has already been adjudicated against the City. The City is barred by the rule against
splitting a cause of action from again asserting its own DROP-creating ordinance is invalid.

In both the City's Opposition to SDPOA's Cross-Petition for Writ of Mandate (pp. 2:16-
20, 3:1-7:3, 24:1-26:7) and the City's Opposition to SDPOA's Application for Preliminary
Injunction (pp. 6:27-7:3), the City contends that DROP was never duly enacted in 1997, and
therefore no vote is required to change its terms now.

In litigation the City filed on January 27, 2005, the City also contended the ordinance

1 which created DROP, Ordinance number O-18385, as well as other ordinances, were “void
2 because they violate Government Code section 1090 and the debt limit laws.” (Final Ruling on
3 Motions for Summary Judgment [etc.], attached at Exhibit 18 to the accompanying Request for
4 Judicial Notice in Support of SDPOA’s Preliminary Response (“Supp. RJN, Exh. 18”), p. 2:19-
5 20.) The Court stated: “[t]he City admits the ordinances in question were enacted by the city
6 council, but disputes the legality of the ordinances on grounds that they are void as a matter of
7 law because they were enacted in violation of Government Code section 1090 and the debt limit
8 laws.” (Supp. RJN, Exh. 18, p. 3:12-14.)

9 The San Diego County Superior Court, The Honorable Jeffrey B. Barton presiding, ruled
10 against the City and entered judgment, ruling:

11 “SDCERS has no authority to refuse to pay benefits established by the
12 ordinances adopted by the city council. (Charter, art IX, *passim*.) All
13 benefits at issue here are paid pursuant to ordinances adopted by the city
14 council and approved by the members. (SDCERS’ UMF Nos. 60-69,
15 75.⁽¹⁾) Each of the contested ordinances was adopted by the city
16 council. . . . [A]s the administrator of the benefits, SDCERS has no
17 authority to refuse to follow the law established by municipal ordinance.
18 (See Charter §§ 141, 143, 144, 145, 145.1; see also, *Lockyer v. City and*
19 *County of San Francisco* (2004) 33 Cal.4th 1055, 1104-1105.) Thus,
20 SDCERS is obligated by law to pay the pension benefits according to the
21 provisions of the contested ordinances.” (Supp. RJN, Exh. 18, pp. 3:25-
22 4:8.)

23 “[A]ll claims based on the same cause of action must be decided in a single suit; if not
24 brought initially, they may not be raised at a later date.” (*Mycogen Corp. v. Monsanto Co.*
25 (2002) 28 Cal.4th 888, 897.) A party may not engage in “piecemeal litigation by splitting a
26 single cause of action or relitigation of the same cause of action on a different legal theory or for
27 different relief.” (*Ibid.*, quoting *Weikel v. TCW Realty Fund II Holding Co.* (1997) 55
28 Cal.App.4th 1234, 1245; 4 Witkin, Cal. Procedure (5th ed. 2008) § 45, p. 108-109 [a single cause
of action cannot be split], and cases cited therein.) Here, the City is simply raising a different
legal theory to invalidate its own ordinance.

1 SDCERS’ opening and reply separate statements are attached at Supp. RJN, Exhs.
19-20, respectively. Ordinance number O-18385 was among the ordinances the City was seeking
to invalidate. (Supp. RJN, Exh. 19, SDCERS’ Separate Statement of Undisputed Material Facts
[etc.], p. 2:9.)

1 If the Court desires more briefing on the City's belated Charter section 143.1 argument,²
2 the SDPOA will present such briefing. Additionally, counsel for the SDPOA has been informed
3 by counsel for SDCERS that SDCERS will seek to intervene if the City's contention that
4 Ordinance number O-18385 is invalid is relitigated by this Court.

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6 Dated: June 23, 2009

LAW OFFICE OF MICHAEL A. CONGER

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8 By: 

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10 Attorney for San Diego Police Officers
11 Association Incorporated
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² See, e.g., SDCERS' responses to the City's Charter section 143.1 contention, Notice of Lodgment in Support of SDPOA's Preliminary Response, Exhs. 38-39.