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5 Attorney for Plaintiff San Diego Police Officers' Association

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

10 SAN DIEGO POLICE OFFICERS' ASSOCIATION,)	CASE NO:
)	37-2009-00081659-CU-WM-CTL
11 Plaintiff,)	
12 v.)	COMPLAINT FOR WRIT OF
13 CITY OF SAN DIEGO, and DOES 1 to 20,)	MANDATE AND DECLARATORY
14 inclusive,)	RELIEF
15 Defendants.)	

17 1. Plaintiff San Diego Police Officers Association ("SDPOA") is a mutual benefit
18 corporation organized and doing business as a State of California sanctioned employee
19 organization representing police officers holding the rank of lieutenant and below who are
20 employed by the City of San Diego ("City"). The scope of the SDPOA's representation of San
21 Diego Police officers in negotiating labor-management agreements, and the City's duty to meet
22 and confer in good faith, are set forth in the Meyers-Milias-Brown Act ("MMBA"). (Gov. Code,
23 §§ 3500-3510.)

24 2. The City is a municipal corporation with all municipal powers, functions, rights,
25 privileges and immunities authorized by the Constitution and laws of the State of California. The
26 City is a "charter city" under Article XI of the California Constitution, which authorizes the
27 organization of municipal corporations (cities) as either "general law cities" or "charter cities."
28 The City is authorized to enact ordinances consistent with its charter and is required to adhere to

1 its own ordinances.

2 3. The true names or capacities, whether individual, corporate, associate, or
3 otherwise, of defendants DOES 1 to 20, inclusive, are unknown to plaintiff, who therefore sues
4 said defendants by such fictitious names.

5 4. Plaintiff is informed and believes and thereon alleges that each of the defendants
6 designated herein as a DOE is responsible in some manner for the events and happenings herein
7 referred to and caused injury and damages as herein alleged. Plaintiff will seek leave of court to
8 amend this complaint, if necessary, to set forth the true names and capacities of such named
9 defendants when their identities become known to it.

10 5. Plaintiff is informed and believes and thereon alleges that each defendant named
11 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,
12 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the
13 other defendants and was at all times acting within the course and scope of his, her, or its
14 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
15 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
16 other defendants.

17 6. "In 1961, the Legislature enacted the George Brown Act (Stats. 1961, ch. 1964,
18 pp. 4141-4143), which for the first time recognized the rights of state and local public employees
19 to organize and to have their representatives meet and confer with their public agency employers
20 over wages and working conditions." (*Coachella Valley Mosquito and Vector Control District v.*
21 *California Public Employment Relations Board* ("Coachella") (2005) 35 Cal.4th 1072, 1083.)

22 7. "In 1968, the Legislature went a step further by enacting the MMBA (Stats. 1968,
23 ch. 1390, pp. 2725-2729), which 'authorized labor and management representatives not only to
24 confer but to enter into written agreements for presentation to the governing body of a municipal
25 government or other local public agency.'" (*Coachella, supra*, 35 Cal.4th at p. 1084.)

26 8. "The MMBA imposes on local public entities a duty to meet and confer in good
27 faith with representatives of recognized employee organizations, in order to reach binding
28 agreements governing wages, hours, and working conditions of the agencies' employees." (*Ibid.*,

1 citing Gov't Code, § 3505.)

2 9. "To effect [its] goals the [MMBA] . . . obligates employers to bargain with
3 employee representatives about matters that fall within the 'scope of representation.'"

4 (*Claremont Police Officers Association v. City of Claremont* (2006) 39 Cal.4th 623, 630, citing
5 Gov't Code, §§ 3504.5, 3505.)

6 10. "The scope of representation . . . include[s] all matters relating to employment
7 conditions and employer-employee relations, including, but not limited to, wages, hours, and
8 other terms and conditions of employment" (Gov't Code, § 3504.)

9 11. "The duty to bargain requires the public agency to refrain from making unilateral
10 changes in employees' wages and working conditions until the employer and employee
11 association have bargained to impasse" (*City of Fresno v. People ex rel. Fresno*
12 *Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82, 99, quoting *Santa Clara County*
13 *Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 537.)

14 12. In 1927, the City established a defined benefit pension plan to provide retirement,
15 disability, death, and retiree health benefits to City employees, including the police officers
16 represented by the SDPOA and their beneficiaries ("the retirement plan").

17 13. Pursuant to the San Diego City Charter, Article IX, sections 141 through 148.1,
18 Article X, section 1, and the San Diego Municipal Code section 24.0100, *et seq.*, each of the
19 police officers represented by the SDPOA makes contributions to the retirement plan, and the
20 City makes substantially equal contributions on their behalf which are considered "additional
21 elements of compensation."

22 14. The amount of benefits paid to these police officers at retirement depends on
23 several factors, including the officer's "Final Compensation." (San Diego Municipal Code, §§
24 24.0403, 24.0103.)

25 15. "Final Compensation" is defined as "the Base Compensation for the highest one
26 year period during membership in the Retirement System." (San Diego Municipal Code, §
27 24.0103.)

28 16. "Base Compensation" as defined in San Diego Municipal Code, section 24.0103,

1 as amended effective July 1, 2000, provides: “[a] complete listing of included and excluded items
2 of compensation or remuneration is memorialized in a document entitled ‘Earnings Codes
3 Included in Retirement Base Compensation[’] [the Earnings Codes Document], which is
4 prepared annually and which shall be kept on file in the Office of the City Clerk, and also
5 maintained by the City Manager, the City Auditor and the Personnel Director.”

6 17. In exchange for particular duties performed by numerous police officers for more
7 than the past decade, they have each been paid either “Motorcycle Care Pay” or “Canine Care
8 Pay.”

9 18. Both Motorcycle Care Pay and Canine Care Pay were listed in the Earnings Code
10 Document which was effective on July 1, 2000. They were also both listed in at least two
11 Earnings Code Documents published before July 1, 2000, and at least five Earnings Code
12 Documents since July 1, 2000. Both Motorcycle Care Pay and Canine Care Pay were listed as
13 included in “retirement base earnings” in these Earnings Code Documents because they were
14 “classified as ‘negotiated specialty add-ons’ and are included in retirement base earnings because
15 all employees performing that class of work during ordinary work hours on a consistent basis
16 earn them at the same rate of pay.”

17 19. On or about January 26, 2007, the City unilaterally changed the Earnings Code
18 Document to exclude Motorcycle Care Pay and Canine Care Pay from Base Compensation, and
19 therefore exclude a substantial portion of many police officers’ compensation from the
20 calculations on which their retirement allowances will be based, thereby substantially reducing
21 their pensions.

22 21. The City’s unilateral change to the Earnings Code Document in order to exclude
23 Motorcycle Care Pay and Canine Care Pay was within the SDPOA’s scope of representation of
24 the affected police officers.

25 22. The City unilaterally changed the Earnings Code Document and excluded
26 Motorcycle Care Pay and Canine Care Pay without informing the SDPOA as required by
27 Government Code section 3504.5.

28 23. The City unilaterally changed the Earnings Code Document and excluded

1 Motorcycle Care Pay and Canine Care Pay without meeting and conferring with the SDPOA as
2 required by Government Code section 3505.

3 **FIRST CAUSE OF ACTION FOR A WRIT OF MANDATE**

4 **(Against the City and DOES 1-10)**

5 24. Plaintiff incorporates by reference and reallege paragraphs 1 through 23 as though
6 fully set forth herein.

7 25. Pursuant to Government Code section 3504.5, the City was required to inform the
8 SDPOA before attempting to changed the Earnings Code Document to exclude Motorcycle Care
9 Pay and Canine Care Pay.

10 26. Pursuant to Government Code section 3505, the City was required to meet and
11 confer with the SDPOA prior to the City's unilateral change to the Earnings Code Document in
12 order to exclude Motorcycle Care Pay and Canine Care Pay.

13 27. There are no administrative remedies available to plaintiffs to compel the relief
14 sought herein. Therefore, plaintiff has exhausted all available administrative remedies, including
15 efforts by its president and attorney to resolve this matter without the necessity of litigation.

16 28. Plaintiff has no plain, speedy or adequate remedy at law.

17 29. Unless the City is mandated by this Court to invalidate the January 2007 Earnings
18 Code Document and take all necessary steps to correctly report police officers Base
19 Compensation to the San Diego City Employees' Retirement System, the City will not do so.

20 30. The City's amendment of the Earnings Code Document without complying with
21 the MMBA constituted an abuse of any discretion it had to change the Base Compensation of the
22 plaintiff's members.

23 31. Therefore, this Court should issue a peremptory writ of mandate directing the City
24 to immediately amend the 2007 Earnings Code Document to include Motorcycle Care Pay and
25 Canine Care Pay in Base Compensation, and take all necessary steps to correctly report police
26 officers' Base Compensation to the San Diego City Employees' Retirement System.

27 32. The action, if successful, would enforce an important right affecting the public
28 interest, and would confer significant benefits, pecuniary and nonpecuniary, on the general

1 public and a large class of persons. Private enforcement is necessary and has placed a
2 disproportionate financial burden on the plaintiff in relation to its stake in the matter. Plaintiff is
3 therefore entitled to an award of attorney fees under Code of Civil Procedure section 1021.5 and
4 the equitable, private attorney general doctrine.

5 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

6 **(Against the City and DOES 11-20)**

7 33. Plaintiff incorporates by reference and reallege paragraphs 1 through 23 as though
8 fully set forth herein.

9 34. An actual and justiciable controversy has arisen, and now exists, between the
10 SDPOA, on the one hand, and the City, on the other hand, as to whether the City's unilateral
11 exclusion of Motorcycle Care Pay and Canine Care Pay from Base Compensation in the January
12 2007 Earnings Code Document—which resulted in a reduction of plaintiffs' pensions—is legally
13 effective.

14 35. The City contends that its January 2007 reduction in police officer pensions was
15 lawful despite its violations of Government Code section 3504.5 and 3505.

16 36. The SDPOA contends to the contrary that the City may not unilaterally reduce
17 police officers' pensions without compliance with the MMBA.

18 37. Pursuant to Code of Civil Procedure section 1060, plaintiff desires a judicial
19 determination that the City's January 2007 change to the Earnings Code Document was unlawful.

20 38. Such a judicial determination is necessary and appropriate at this time so that the
21 parties can ascertain their respective rights and duties.

22 39. There are no administrative remedies available to plaintiffs to compel the relief
23 sought herein. Therefore, plaintiff has exhausted all available administrative remedies, including
24 efforts by its president and attorney to resolve this matter without the necessity of litigation.

25 40. Plaintiff has no plain, speedy or adequate remedy at law.

26 41. The action, if successful, would enforce an important right affecting the public
27 interest, and would confer significant benefits, pecuniary and nonpecuniary, on the general
28 public and a large class of persons. Private enforcement is necessary and has placed a


1 disproportionate financial burden on the plaintiff in relation to its stake in the matter. Plaintiff is
2 therefore entitled to an award of attorney fees under Code of Civil Procedure section 1021.5 and
3 the equitable, private attorney general doctrine.

4 **WHEREFORE, plaintiff prays that, following a duly noticed hearing, the Court:**

- 5 1. Issue a peremptory writ of mandate directing the City to immediately amend the
6 2007 Earnings Code Document to include Motorcycle Care Pay and Canine Care Pay in Base
7 Compensation, and take all necessary steps to correctly report police officers' Base
8 Compensation to the San Diego City Employees' Retirement System;
- 9 2. Render a judicial determination that the City's January, 2007 change to the
10 Earnings Code Document was unlawful;
- 11 3. Award plaintiff the costs of suit herein;
- 12 4. Award plaintiff reasonable attorney fees; and
- 13 5. Award such other and further relief as it deems necessary and proper.

14
15 Dated: January 14, 2009

LAW OFFICE OF MICHAEL A. CONGER

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17 By: 
18 Michael A. Conger
19 Attorney for Plaintiffs

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