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

12 SAN DIEGO POLICE OFFICERS')
13 ASSOCIATION,) CASE NO: 37-2009-00081659-CU-WM-CTL
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Plaintiff,)
v.)
CITY OF SAN DIEGO, and DOES 1 to 20,)
inclusive,)
Defendants.)

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

2. The City is a municipal corporation with all municipal powers, functions, rights, privileges and immunities authorized by the Constitution and laws of the State of California. The City is a "charter city" under Article XI of the California Constitution, which authorizes the organization of municipal corporations (cities) as either "general law cities" or "charter cities." 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*
21 *v. 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.”

1 (*Ibid.*, citing Gov. 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. 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. 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.

17 13. On or about January 26, 2007, the City significantly and adversely modified the
18 pension rights of police officers by unilaterally amending the City’s Earnings Code Document to
19 exclude Motorcycle Care Pay and Canine Care Pay. As a result of such amendment, the City has
20 underreported the Base Compensation of more than 100 police officers to the San Diego City
21 Employees Retirement System.

22 14. Any amendment of the Earnings Code Document was within the SDPOA’s scope
23 of representation under the MMBA.

24 15. The City amended the Earnings Code Document without first informing the
25 SDPOA as required by Government Code section 3504.5.

26 16. The City amended the Earnings Code Document without meeting and conferring
27 with the SDPOA as required by Government Code section 3505.

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1 **FIRST CAUSE OF ACTION FOR WRIT OF MANDATE**

2 **(Against the City and DOES 1-20)**

3 17. Plaintiff incorporates by reference and reallege paragraphs 1 through 16 as though
4 fully set forth herein.

5 18. Pursuant to Government Code section 3504.5, the City was required to inform the
6 SDPOA before unilaterally modifying the Base Compensation of police officers within the
7 SDPOA’s bargaining unit.

8 19. Pursuant to Government Code section 3505, the City was required to meet and
9 confer with the SDPOA prior unilaterally modifying the Base Compensation of police officers
10 within the SDPOA’s bargaining unit.

11 20. “[A] writ of mandate lies for an employee association to challenge a public
12 employer’s breach of its duti[ies] under the MMBA.” (*Santa Clara County Counsel Attorneys*
13 *Association v. Woodside* (1994) 7 Cal.4th 525, 541.)

14 21. Therefore, this Court should issue a peremptory writ of mandate voiding the
15 City’s unilateral amendment of the Earnings Code Document and requiring the City to take all
16 necessary steps to correctly report police officers’ Base Compensation to the San Diego City
17 Employees’ Retirement System.

18 22. The SDPOA is seeking neither money nor damages by this first amended
19 complaint.

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

21 1. Issue a peremptory writ of mandate voiding the City’s unilateral amendment of
22 the Earnings Code Document and requiring the City to take all necessary steps to correctly report
23 police officers’ Base Compensation to the San Diego City Employees’ Retirement System.

24 2. Award plaintiff the costs of suit herein;

25 3. Award such other and further relief as it deems necessary and proper.

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1 Dated: September 25, 2009

LAW OFFICE OF MICHAEL A. CONGER

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By: _____

Michael A. Conger
Attorney for Plaintiffs

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