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Exempt from fees per Gov't code 6103
To the benefit of the City of San Diego

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CITY OF SAN DIEGO
8

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
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11 SAN DIEGO POLICE OFFICERS' ASSOCIATION,)	Case No. 37-2009-00081659-CU-WM-CTL
)	
12 Plaintiffs,	)	DEFENDANT CITY OF SAN DIEGO'S
	)	POINTS AND AUTHORITIES IN
13	)	SUPPORT OF ITS DEMURRER TO
	)	PLAINTIFF'S WRIT OF MANDATE
14 v.	)	AND DECLARATORY RELIEF
)	
)	
15 CITY OF SAN DIEGO, and DOES 1 to 20,	)	I/C Judge: Hon. Judith Hayes
16 inclusive,	)	Date: TBD
	)	Time: TBD
17 Defendants.	)	Dept.: 68
	)	Complaint filed: January 14, 2009
18	)	Trial: Not Set

19 I.

20 **STATEMENT OF FACTS**

21 The San Diego Police Officers Association ("SDPOA") seeks to increase some of their
22 members future pensions through this action. Specifically, SDPOA members who are officers in
23 either the motorcycle division or the canine division and who receive overtime pay for extra
24 duties performed by officers in these divisions argue that the removal of these categories of
25 payments in the City of San Diego's ("City") Earnings Code Document reduces their future
26 pensions. (Complaint ¶¶ 34-36.) SDPOA claims that City removed these categories of payments
27 from pensionable compensation without first meeting and conferring with SDPOA in violation of
28 the Meyers-Milias-Brown Act ("MMBA"). (Complaint ¶ 22.)

1 A SDPOA member's ultimate pension retirement payment is based on each officer's final
2 compensation paid by City. (Complaint ¶14). Final compensation is defined as "the Base
3 Compensation for the highest one year period during membership in the Retirement System."
4 (Complaint ¶ 15.) San Diego Municipal Code section 24.0103 defines base compensation by
5 referencing a document that specifically includes and excludes categories of payments from base
6 compensation. (Complaint ¶ 16).

7 Motorcycle care pay and canine care pay were listed in the Earnings Code Document as
8 being included in base compensation from July 1, 2000 and for five successive Earning Codes
9 Documents published since July 1, 2000. (Complaint ¶ 18). On January 26, 2007, the City
10 unilaterally changed the Earnings Code Document then in effect and moved motorcycle care pay
11 and canine care pay from the included in the base compensation category to the excluded from
12 base compensation category. (Complaint ¶ 19). SDPOA claims that the City's action was
13 against the law and resulted in reducing certain of its members' pensions. (Complaint ¶ 36).

14 II.

15 LEGAL ARGUMENT

16 A. **Enabling Authority for Demurrer**

17 City demurs to SDPOA's complaint pursuant to Code of Civ. Proc. section 430.10(e).
18 Code of Civ. Proc. section 430.10(e) provides that a party against whom a complaint has been
19 filed may demur to the complaint on the grounds that the pleading fails to state facts sufficient to
20 constitute a cause of action.

21 B. **Even Though the Complaint is Styled as a Writ of Mandate and Declaratory Relief 22 Action, Plaintiff Really Seeks Monetary Damages, and therefore, Needs to Comply 23 with the Government Tort Claims Act**

24 Under the Government Claims Act ("Claims Act"), formerly known as the Tort Claims
25 Act (see *City of Stockton v. Superior Court of Sacramento County* (2007) 42 Cal. 4th 730, 741-
26 742), no suit for "money or damages" may be brought against a public entity until a written
27 claim has been presented to the public entity and the claim either has been acted upon or is
28 deemed to have been rejected. (Gov. Code sections 905 and 945.4.) A suit for "money or

1 damages” includes all actions where the plaintiff is seeking monetary relief, regardless whether
2 the action is founded in “tort, contract or some other theory.” (*Baines Pickwick Ltd. v. City of*
3 *Los Angeles* (1999) 72 Cal.App.4th 298, 307; *Loehr v. Ventura County Community College Dist.*
4 (1983) 147 Cal.App.3d 1071, 1079.) Therefore, the claims requirement is not limited to just tort
5 actions. This is why the California Supreme Court recently renamed the Tort Claims Act to the
6 Government Claims Act. (*City of Stockton, supra*, 42 Cal. 4th at 741-742.)

7 The purpose of the notice requirements is to ensure prompt claims investigation and
8 possible settlement, enable the public entity to make appropriate fiscal adjustments, and provide
9 the opportunity to avoid future liability by taking remedial steps to prevent a reoccurrence.

10 (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 709; *Baines Pickwick Ltd. v. City of Los*
11 *Angeles, supra*, 72 Cal.App.4th at 303.) “Failure to allege facts demonstrating or excusing
12 compliance with the claim presentation requirement subjects a claim against a public entity to a
13 demurrer for failure to state a cause of action.” (*State of California v. Superior Court (Bodde)*
14 (2004) 32 Cal.4th 1234, 1239.)

15 Where a claim is not timely filed, an action for money or damages against a public entity
16 is barred. (*Adler v. Los Angeles Unified School District* (1979) 98 Cal. App. 3d 280, 286.) The
17 deadlines for filing a claim against a public entity are mandatory and require strict compliance.
18 (*Edington v. San Diego County* (1981) 118 Cal. App. 3d 39, 45.) Plaintiff is obligated to allege a
19 timely claim for money or damages was filed with the public entity in the complaint or petition.
20 (*Toscano v. Los Angeles* (1979) 92 Cal. App. 3d 775, 776.)

21 In this instant action, SDPOA has not alleged facts demonstrating compliance or
22 excusing compliance with the claim presentation requirement of the Claims Act and on this basis
23 alone, City’s Demurrer should be sustained.

24 **C. No Exception to the Claim Filing Requirements Exists for Actions Based on**
25 **Violation of the Meyers-Milias-Brown Act**

26 No exception to the claim filing requirement exists for actions brought under the MMBA.
27 (*See San Leandro Police Officers Ass’n v. City of San Leandro* (1976) 55 Cal.App.3d 553,
28 Claims Act applied to alleged breach of MMBA statutory duties.) In fact, since SDPOA seeks to

1 increase future pensions for some of its members which will require City to expend money, a
2 claim was required to be presented to City prior to this action being initiated. (See Complaint ¶
3 36).

4 The Claims Act generally applies to claims for money or damages, and not to actions for
5 declaratory relief. However, the label on a complaint is not determinative. It is the substance or
6 gravamen of the action that controls, not the form of the action or relief demanded. (*Edwards v.*
7 *Fresno Community Hospital* (1974) 38 Cal.App.3d 702, 704; *Giffen v. United Transportation*
8 *Union* (1987) 190 Cal.App.3d 1359, 1362.) Therefore, the exception for declaratory relief
9 actions does not apply where the demand for non-monetary relief is merely incidental or
10 ancillary to a prayer for damages. (*Loehr v. Ventura County Community College Dist., supra,*
11 147 Cal.App.3d at 1081.)

12 According to Gov. Code section 905, a plaintiff must present a timely government tort
13 claim as a prerequisite to alleging a cause of action “for money or damages against local public
14 entities....” The purpose of the Claims Act is to give the public entity an opportunity to
15 investigate and evaluate its potential liability. (*Fall River Joint Unified School Dist. v. Superior*
16 *Court* (1988) 206 Cal.App.3d 431, 435.) SDPOA’s cause of action for alleged breach of a
17 statutory duty, to wit, failing to meet and confer pursuant to the Meyers-Milias-Brown Act
18 before changing City’s Earnings Code Document falls within the scope of the Claims Act, as it
19 was pleaded against a public entity and seeks money or damages. (See *Loehr v. Ventura County*
20 *Community College Dist.* (1983) 147 Cal.App.3d 1071, 1079, although the Claims Act does not
21 define the term “money or damages,” the term “is comprehensive in scope and includes tort
22 claims arising out of negligence, nuisance, **breach of statutory duties**, and intentional wrongs.”
23 [emphasis added].)

24 In this action, the primary goal is monetary relief in the form of payment of public funds,
25 and the ground for such recovery is the alleged malfeasance of the City; therefore, a claim is
26 required to have been filed with the City. A review of Plaintiff’s Complaint supports this
27 assertion. SDPOA alleges that City’s removal of the motorcycle and canine care pay from the
28 list of included compensation items for purposes of calculating ones pension has “reduce[d]

1 police officers' pensions." (Complaint ¶ 36). This is because SDPOA alleges that unilateral
2 removal of the motorcycle care pay and canine care pay changes the Base Compensation of the
3 SDPOA's members that is reported to the City's retirement system. (Complaint ¶¶ 29-31.)
4 SDPOA, in their prayer, requests that this Court issue a peremptory writ of mandate directing
5 City to amend the 2007 Earnings Code Document to include motorcycle and canine care pay in
6 base compensation. A writ issued as requested would result in City having to immediately pay
7 monetary funds into the pension fund on behalf of each plaintiff. Finally, Plaintiffs' prayer
8 requests costs of suit and attorney fees, both potential expenditures of City monetary funds.
9 (Complaint Prayer ¶¶ 3-4.)

10 In as much as the primary purpose of SDPOA's Complaint is to increase the pensions of
11 certain of their members which would require City to immediately make larger pension
12 contributions on their behalf to the pension fund, this action is a suit for money, and as such, an
13 allegation that Plaintiffs have complied with the Claims Act is required as no exception to the
14 filing requirement exists

15 **D. Gov't Code Section 905(f) Does Not Excuse SDPOA From Filing a Claim as a**
16 **Prerequisite to the Filing of this Action**

17 SDPOA may argue that the exception codified in Gov. Code section 905(f) relieves them
18 of the requirement of filing a claim as a prerequisite to the filing of this action. Gov. Code
19 section 905(f) exempts "[a]pplications or claims for money or benefits under any public
20 retirement or pension system" from the claim filing requirements. However, as SDPOA's
21 complaint makes clear, their claim is based on an alleged breach of the MMBA. Accordingly,
22 the exception contained in Gov. Code section 905(f) is not applicable.

23 If SDPOA tries to rely on Gov. Code section 905(f) anyways, that reliance will be
24 misplaced. This is because the limited exceptions set forth in Gov. Code section 905 have, for
25 the most part, been narrowly construed. (*Hanson v. Garden Grove Unified School Dist.* (1982)
26 129 Cal.App.3d 942, 946.) Specifically, with regard to Gov. Code section 905(f), that exemption
27 is limited to benefits earned *during the course of employment.* (*Hanson v. Garden Grove*
28

1 *Unified School Dist., supra.*, at 948; see also *Baillargeon v. Department of Water & Power*
2 (1977) 69 Cal.App.3d 670, 681.)

3 Here, SDPOA, on behalf of an undefined number of its members, is asking for
4 prospective damages, not for damages related to benefits earned as a result of work already
5 performed in the course of their employment. Specifically, SDPOA argues that the removal of
6 the motorcycle care pay and canine care pay in January 2007 will result in reduced future
7 pensions. (Complaint ¶ 36). In other words, Plaintiffs do not seek to re-compute their pension
8 calculations for work performed prior to January 2007, but for all work since January 2007 to the
9 time SDPOA members retire in the future. That being the case, the exemption of Gov. Code
10 section 905(f) is inapplicable.

11 Finally, SDPOA does not seek damages for itself. Rather, SDPOA seeks damages for
12 some of its members. Therefore, the exception contained in Gov. Code section 905(f) is not
13 applicable because SDPOA is not a member of City's retirement plan and is not entitled to a
14 pension. Therefore, SDPOA cannot make "[a]pplications or claims for money or benefits under"
15 City's "public retirement or pension system." (See Gov. Code section 905(f).)

16 **E. Public Policy Requires the Application of the Tort Claims Act to SDPOA's Claims**

17 The public policy underlying the Claims Act also supports City's assertion that SDPOA
18 has made claims which should be subject to the Claims Act. The policy underlying the claims
19 statutes is to afford prompt notice of claims to governmental entities. (*Minsky v. City of Los*
20 *Angeles* (1974) 11 Cal. 3d 113, 123.) Prompt notice is important, in part, because it allows the
21 governmental entity to engage in "informed fiscal planning in light of prospective liabilities."
22 (*Id.*) Here, if SDPOA's requested relief is granted, the financial impact on City would amount to
23 hundreds of thousands of dollars, if not millions of dollars. Had SDPOA timely filed a claim
24 pursuant to the Claims Act back in 2007, when they allege the Earnings Code Document was
25 illegally changed, or at the very least when City and certain members of the SDPOA were
26 litigating the issue before this very Court in *Sloan v. City of San Diego*, San Diego Superior
27 Court case number GIC848641, filed June 6, 2005, and *Lopez v. City of San Diego*, San Diego
28 Superior Court case number GIC869054, filed July 13, 2006, City would not be subject to such a

1 liability without the time to plan for it. Instead, SDPOA chose to wait until after the *Sloan* and
2 *Lopez* matters were resolved, then file a brand new lawsuit on a corollary issue related to the
3 same subject matter of the *Sloan* and *Lopez* cases. This is exactly the type of claim that the
4 Claims Act was designed to prevent.

5 III.

6 LEAVE TO AMEND

7 California public entity liability is governed by the tort claims statutes. The Claims Act
8 (Government Code sections 810, *et seq.*) defines the substantive liability of public entities and
9 employees and delineates the procedural requirements entailed in maintaining a suit against
10 them. General statutes of limitation provided in the Code of Civil Procedure do not apply to
11 claims against public entities: “An action against a public entity upon a cause of action for which
12 a claim is required to be presented . . . must be commenced within the time provided in Section
13 945.6 of the Government Code.” (Code of Civil Procedure section 342). “Suits against public
14 entities are governed by the specific statute of limitations provided in the Government Code,
15 rather than the statute of limitations which applies to private defendants.” (*Martell v. Antelope*
16 *Valley Hospital Medical Center*, 67 Cal. App. 4th 978, 981 (1998), citing *Dominguez v. City of*
17 *Alhambra*, 118 Cal. App. 3d 237, 244 (1981)).

18 Pursuant to the Claims Act, a public entity may be sued for damages only if a claim is
19 first presented to the public entity no later than six months after the accrual of the cause of
20 action. (Gov. Code sections 911.2 and 945.4.) If the claim is denied, Plaintiff must file a lawsuit
21 within six months after the denial of the claim. (Government Code section 945.6).

22 SDPOA alleges that the action giving rise to this lawsuit took place on or about January
23 27, 2007, to wit, the changing of the Earnings Code Document. (Complaint ¶ 19). SDPOA did
24 not file a claim nor did it allege that it had in its Complaint. SDPOA is now time barred from
25 filing a claim. Because over six months has elapsed from the time SDPOA itself acknowledges
26 that their cause of action accrued, pursuant to Government Code section 945.6, SDPOA is now
27 beyond the time to file a claim. Accordingly, leave to amend should not be granted.

28 IV.


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CONCLUSION

Based on the foregoing, Defendant City of San Diego respectfully requests that its demurrer be sustained without leave to amend.

Dated: March 9, 2009

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By 

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