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

11 SAN DIEGO POLICE OFFICERS' )  
12 ASSOCIATION, )  
13 )  
14 Plaintiff, )  
15 )  
16 v. )  
17 CITY OF SAN DIEGO, and DOES 1 to 20, )  
18 inclusive, )  
19 Defendants. )

CASE NO: 37-2009-00081659-CU-WM-CTL

MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
CITY OF SAN DIEGO'S  
DEMURRER TO PLAINTIFF'S  
WRIT OF MANDATE AND  
DECLARATORY RELIEF

Date: May 22, 2009  
Time: 10:30 a.m.  
Judge: Hon. Judith F. Hayes  
Dept: C-68  
Complaint Filed: January 14, 2009

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1 **I. INTRODUCTION**

2       Soon after this Court entered a judgment in *Sloan, et al. v. City of San Diego*,<sup>1</sup> the City of  
3 San Diego (“City”) sought to undermine the Court’s ruling by unilaterally changing the Earnings  
4 Code Document which was at issue in that case. The Court of Appeal rejected the City’s  
5 maneuver, stating:

6               “In this case, the statement that the prior designation of canine care pay  
7               was a ‘mistake’ is inconsistent with the evidence, and appears to be solely  
8               an attempt to overturn the trial court’s factual finding to achieve a  
              favorable result for the City.” (RJN, Exh. 2, Slip Opinion, January 29,  
              208, p. 17.)

9 The Court did not reach the issue regarding the validity of the City’s change to the Earnings Code  
10 Document.

11       In this litigation, the San Diego Police Officers Association (“SDPOA”) challenges the  
12 validity of the City’s unilateral change to the Earnings Code Document. The SDPOA seeks a  
13 writ of mandate and declaratory relief invalidating that change because the City failed to comply  
14 with two provisions of the Meyers-Milias-Brown Act requiring notice by the City of such  
15 proposed changes and a requirement that the City “meet and confer” before implementing such  
16 changes.

17       The City demurs on the sole ground that the SDPOA failed to first comply with the  
18 Government Claims Act. However, because the SDPOA does not seek money or damages,  
19 compliance with the Claims Act was not required. Alternatively, two statutory exemptions  
20 apply. Even if that were not so, the SDPOA substantially complied with the claim-filing  
21 requirement. Therefore, the City’s demurrer should be overruled.

22 **II. A GENERAL DEMURRER TESTS THE LEGAL SUFFICIENCY**  
23 **OF THE FACTUAL ALLEGATIONS IN A COMPLAINT TO**  
24 **STATE A CAUSE OF ACTION.**

25       “A demurrer tests the legal sufficiency of factual allegations in a complaint. [Citation.]”  
26 (*Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162,  
27 1168, quoting *Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 42-43.) In

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28       <sup>1</sup> A copy of the Court’s June 12, 2006 Ruling After Hearing is attached as Exhibit 1  
to the accompanying Request for Judicial Notice (“RJN”).

1 ruling on demurrers, the court must “treat[] the demurrer as admitting all facts properly pleaded.”  
2 (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967; *Fox v. Ethicon Endo-Surgery, Inc.*  
3 (2005) 35 Cal.4th 797, 810.) “[I]t is error for a trial court to sustain a demurrer when the plaintiff  
4 has stated a cause of action under any possible legal theory.” (*Aubry, supra; Fox, supra.*) “And  
5 it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows  
6 there is a reasonable possibility any defect identified by the defendant can be cured by  
7 amendment.” (*Aubry, supra; Fox, supra.*)

8  
9 **III. THIS IS AN ACTION FOR DECLARATORY RELIEF AND A WRIT  
10 OF MANDATE BROUGHT BY THE SDPOA TO ENFORCE ITS  
11 COLLECTIVE BARGAINING RIGHTS UNDER THE  
12 MEYERS-MILIAS-BROWN ACT (“MMBA”).**

11 The SDPOA is a mutual benefit corporation organized and doing business as a State of  
12 California sanctioned employee organization representing police officers holding the rank of  
13 lieutenant and below who are employed by the City. (Complaint, ¶ 1.<sup>2</sup>) The scope of the  
14 SDPOA’s representation of San Diego police officers in negotiating labor-management  
15 agreements, and the City’s duty to meet and confer in good faith, are set forth in the Meyers-  
16 Milias-Brown Act (“MMBA”).<sup>3</sup> (Gov. Code, §§ 3500-3510.)

17 “To effect [its] goals the [MMBA] . . . obligates employers to bargain with employee  
18 representatives about matters that fall within the ‘scope of representation.’” (Complaint, ¶ 9,  
19 quoting *Claremont Police Officers Association v. City of Claremont* (2006) 39 Cal.4th 623, 630;  
20 Gov. Code, §§ 3504.5, 3505.) “The scope of representation . . . include[s] all matters relating to  
21 employment conditions and employer-employee relations, including, but not limited to, wages,  
22 hours, and other terms and conditions of employment . . . .” (Complaint, ¶ 10, quoting Gov.  
23 Code, § 3504.) “The duty to bargain requires the public agency to refrain from making  
24

25  
26 <sup>2</sup> The City concedes this point in another lawsuit it recently filed against the  
27 SDPOA. (See RJN, Exh 3, City’s Petition for Writ of Mandate, Case No. 37-2009-00086499  
28 (“City’s Petition”), ¶ 18.)

<sup>3</sup> RJN, Exh. 3, City’s Petition, ¶¶ 19, 42 [“The City and [SD]POA have a mutual  
obligation to meet and confer in good faith”].

1 unilateral changes in employees' wages and working conditions until the employer and employee  
2 association have bargained to impasse . . . .” (Complaint, ¶ 11, quoting *City of Fresno v. People*  
3 *ex rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82, 99, quoting *Santa Clara*  
4 *County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 537.)

5 In 1927, the City established a defined benefit pension plan to provide retirement,  
6 disability, death, and retiree health benefits to City employees, including the police officers  
7 represented by the SDPOA and their beneficiaries (“the retirement plan”). (Complaint, ¶ 12.)  
8 Pursuant to the San Diego City Charter, Article IX, sections 141 through 148.1, Article X,  
9 section 1, and the San Diego Municipal Code section 24.0100, *et seq.*, each of the police officers  
10 represented by the SDPOA makes contributions to the retirement plan, and the City makes  
11 substantially equal contributions on their behalf which are considered “additional elements of  
12 compensation.” (Complaint, ¶ 13.)

13 The amount of retirement benefits paid to these police officers at retirement depends on  
14 several factors, including the officer’s “Final Compensation.” (Complaint, ¶ 12, citing San  
15 Diego Municipal Code, §§ 24.0403, 24.0103.) “Final Compensation” is defined as “the Base  
16 Compensation for the highest one year period during membership in the Retirement System.”  
17 (Complaint, ¶ 15, citing San Diego Municipal Code, § 24.0103.) “Base Compensation” is  
18 defined in San Diego Municipal Code, section 24.0103, as amended effective July 1, 2000,  
19 provides: “[a] complete listing of included and excluded items of compensation or remuneration  
20 is memorialized in a document entitled ‘Earnings Codes Included in Retirement Base  
21 Compensation[’] [the Earnings Codes Document], which is prepared annually and which shall be  
22 kept on file in the Office of the City Clerk, and also maintained by the City Manager, the City  
23 Auditor and the Personnel Director.” (Complaint, ¶ 16.)

24 In exchange for particular duties performed by numerous police officers for more than the  
25 past decade, they have each been paid either “Motorcycle Care Pay” or “Canine Care Pay.”  
26 (Complaint, ¶ 17.) Both Motorcycle Care Pay and Canine Care Pay were listed in the Earnings  
27 Code Document which was effective on July 1, 2000. (Complaint, ¶ 18.) They were also both  
28 listed in at least two Earnings Code Documents published before July 1, 2000, and at least five



1 Earnings Code Documents since July 1, 2000. (*Ibid.*) Both Motorcycle Care Pay and Canine  
2 Care Pay were listed as included in “retirement base earnings” in these Earnings Code  
3 Documents because they were “classified as ‘negotiated specialty add-ons’ and are included in  
4 retirement base earnings because all employees performing that class of work during ordinary  
5 work hours on a consistent basis earn them at the same rate of pay.” (*Ibid.*)

6 Generally, pensions are within the scope of SDPOA’s representation of its members.  
7 (Complaint, ¶¶ 12-18; RJN, Exh. 3, City’s Petition, ¶ 43 [“City’s proposal to eliminate [a pension  
8 benefit] is a matter within the scope of [the SDPOA’s] representation under the MMBA”].) “The  
9 City has an obligation to give written notice of any proposed ordinance, rule, resolution, or  
10 regulation directly relating to matters within the scope of representation to [SD]POA and give  
11 [SD]POA an opportunity to meet with the [City].” (RJN, Exh. 3, City’s Petition, ¶ 41, citing  
12 Gov. Code, § 3504.5.)

13 Nevertheless, on or about January 26, 2007, the City unilaterally changed the Earnings  
14 Code Document to exclude Motorcycle Care Pay and Canine Care Pay from Base Compensation,  
15 and therefore to exclude a substantial portion of many police officers’ compensation from the  
16 calculations on which their retirement allowances will be based, thereby substantially reducing  
17 their pensions. (Complaint, ¶ 20.) The City’s unilateral change to the Earnings Code Document  
18 in order to exclude Motorcycle Care Pay and Canine Care Pay was within the SDPOA’s scope of  
19 representation of the affected police officers. (Complaint, ¶ 21.) The City unilaterally changed  
20 the Earnings Code Document and excluded Motorcycle Care Pay and Canine Care Pay without  
21 informing the SDPOA as required by Government Code section 3504.5 (Complaint, ¶ 22), or  
22 meeting and conferring with the SDPOA, as required by Government Code section 3505  
23 (Complaint, ¶ 23).

24 On January 14, 2009, the SDPOA filed this action. The SDPOA seeks a writ of mandate  
25 and declaratory relief. In its writ of mandate claim, the SDPOA requests the Court to “issue a  
26 peremptory writ of mandate directing the City to immediately amend the 2007 Earnings Code  
27 Document to include Motorcycle Care Pay and Canine Care Pay in Base Compensation and take  
28 all necessary steps to correctly report police officers’ Base Compensation to the San Diego City

1 Employees' Retirement System." (Complaint, ¶ 31.) In its declaratory relief action, brought  
2 "[p]ursuant to Code of Civil Procedure section 1060, [the SDPOA seeks] a judicial determination  
3 that the City's January 2007 change to the Earnings Code Document was unlawful." (Complaint,  
4 ¶ 37.) The SDPOA, which itself receives no pension from the City and is not a City employee,  
5 does not seek any monetary damages under any theory.

6 **IV. BECAUSE THIS IS NOT AN ACTION FOR "MONEY OR DAMAGES"**  
7 **(GOV. CODE, § 905), THE GOVERNMENT CLAIMS ACT IS**  
8 **INAPPLICABLE.**

8 The City contends that the SDPOA's complaint should be dismissed because the SDPOA  
9 did not comply with the Government Claims Act. (City's Memorandum, pp. 2:21-5:14, 6:16-  
10 7:4.) The City is incorrect, because the SDPOA's Complaint seeks only declaratory and  
11 injunctive relief and does not seek money or damages.

12 **A. The Complaint Does Not Seek "Money or Damages"**

- 13 1. *Because, as the City notes, the SDPOA is not entitled to*  
14 *a pension, this lawsuit seeks only the enforcement of*  
15 *collective bargaining rights under the MMBA; it is not*  
16 *a suit for "money" or tort "damages" or contract*  
17 *"damages" owed to the SDPOA.*

16 "The Claims Act generally applies only to claims for money or damages, and not to  
17 actions for declaratory relief." (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 782.)  
18 "The claims statutes do 'not impose . . . any requirements for non-pecuniary actions, such as  
19 those seeking injunctive, specific, or declaratory relief.'" (*Minsky v. City of Los Angeles* (1974)  
20 11 Cal.3d 113, 121, footnote & italics omitted.) Mandamus actions seeking to compel  
21 performance of a mandatory duty, statutory duty, or ministerial act are not subject to the Claims  
22 Act if they do not seek money or damages. (*Board of Administration v. Wilson* (1997) 52  
23 Cal.App.4th 1109, 1125-1126 [mandamus action to enforce mandatory duty regarding future  
24 funding of retirement system was not one for money or damages]; *County of Sacramento v.*  
25 *Lackner* (1979) 97 Cal.App.3d 576, 587-588 [mandamus action to compel state to disburse funds  
26 in the manner provided by Medi-Cal statutes was not one for money or damages, but to compel  
27 by ministerial act the release of funds]; *Forde v. Cory* (1977) 66 Cal.App.3d 434, 436-438  
28 [mandamus proceeding to compel state officer to pay lump sum death benefit on behalf of judge

1 who died before retirement was a suit to compel performance of express statutory duty, not a  
2 money action, and thus was exempt from the claim-filing requirement].)

3 The City concedes that the “SDPOA does not seek damages for itself.” (City’s  
4 Memorandum, p. 6:11.) The City attempts to evade well-established law contradicting its  
5 position by claiming: “[r]ather, [the] SDPOA seeks damages for some of its members.” (City’s  
6 Memorandum, p. 6:11-12.) Notably, the City does not cite to the SDPOA’s complaint, because  
7 the City’s argument is not supported by the complaint, which seeks no damages whatsoever.  
8 Here, the SDPOA simply seeks to invalidate the City’s unilateral modification to the Earnings  
9 Code Document because it was done without informing the SDPOA as required by Government  
10 Code section 3504.5 (Complaint, ¶ 22), and without meeting and conferring with the SDPOA as  
11 required by Government Code section 3505 (Complaint, ¶ 23).

12 The City cites *San Leandro Police Officers Ass’n v. City of San Leandro* (1976) 55  
13 Cal.App.3d 553, for the proposition that the Claims Act applies to claims brought pursuant to the  
14 MMBA. (City’s Memorandum, p. 3:26-28.) However, a close reading of that case demonstrates  
15 it actually supports the SDPOA’s position that the Claims Act does not apply. In that case the  
16 trial court entered judgment in favor of the City of San Leandro “on the causes of action seeking  
17 damages.” (*Id.* at p. 558.) The Court of Appeal held that was proper. (*Id.* at p. 559.) However,  
18 the Court of Appeal left intact the portion of the judgment which issued a “writ [of mandate]  
19 requiring the city council of the City of San Leandro to enact legislation with retroactive effect  
20 granting individual respondents the benefits of a three percent salary and benefits program . . . .”  
21 (*Id.* at pp. 556-558.)

22 “The city council remains free to extend or eliminate the management  
23 incentive program, but it may not discriminate among its employees for  
24 exercising their rights under the Meyers-Milias-Brown Act. It was proper  
25 to compel by means of a writ of mandate action to correct the existing  
26 unlawful practice.” (*Id.* at p. 558.)

27 **2. *A prayer for attorney fees or costs by a plaintiff does not***  
28 ***trigger the claim-filing requirement of the Government***  
***Claims Act.***

The City next contends that the SDPOA’s complaint should be viewed as seeking  
damages because “[p]laintiff’s prayer requests costs and attorney fees, both potential

1 expenditures of City monetary funds.” (City’s Memorandum, p. 5:7-9.) However, the City is  
2 barred by the doctrine of collateral estoppel from relitigating this issue, because this precise issue  
3 was decided against the City in *Zucchet v. City of San Diego* (2007) 2007 WL 3089723, \*10, fn.  
4 16.<sup>4</sup>)

5 In *Zucchet*, the Court of Appeal rejected the City’s contention that the plaintiffs (former  
6 Mayor Richard Murphy and former City Council members Michael Zucchet and Ralph Inzuza)  
7 “were required to file a claim under the Tort Claims Act [citations] as a prerequisite to obtaining  
8 a declaration that the City is obligated to defend them under [Government] Code section 995.”  
9 (*Id.* at p. 10.) In *Zucchet*, the City raised the identical argument it raises here—that the plaintiff’s  
10 request for attorney fees and costs constitutes a claim for money or damages requiring  
11 presentation of a claim under the Claims Act. The Court squarely rejected the City’s argument.  
12 (*Id.* at p. 10, fn. 16.)

13 The res judicata doctrine encompasses claim preclusion (called res judicata) which  
14 precludes relitigation of a cause of action finally resolved in a prior proceeding, and issue  
15 preclusion (called collateral estoppel) which precludes relitigation of an issue necessarily decided  
16 in a prior proceeding on a different cause of action. (*Vandenberg v. Superior Court* (1999) 21  
17 Cal.4th 815, 828-829.) To invoke collateral estoppel, the issue in the present action must be  
18 identical to the one litigated in the prior proceeding; the prior proceeding must have resulted in a  
19 final judgment on the merits; and the party against whom the doctrine is being asserted must  
20 have been a party or in privity with a party to the prior proceeding. (*People v. Barragan* (2004)  
21 32 Cal.4th 236, 253.) Here, because all three elements are met, the City is barred by the doctrine  
22 of collateral estoppel from relitigating the issue of whether a claim for attorney fees and costs  
23 triggers the claim-filing requirement of the Government Claims Act.

24 Even if the City were not barred by the doctrine of collateral estoppel, the City’s  
25

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26 <sup>4</sup> Although *Zucchet* is an unpublished opinion, pursuant to rule 8.1115(b)(1) of the  
27 California Rules of Court, the SDPOA may cite *Zucchet* “[w]hen the opinion is relevant under  
28 the doctrines of law of the case, res judicata, or collateral estoppel.” The Fourth District Court of  
Appeal’s opinion in *Zucchet* is attached to the accompanying Request for Judicial Notice as  
Exhibit 4.

1 contention that the SDPOA's request for attorney fees and costs should be rejected. The City's  
2 reasoning would render every lawsuit against a public entity subject to the Government Claims  
3 Act. The prevailing party is always entitled to costs. (Code Civ. Proc., §1032, subd. (b).)  
4 Similarly, all public interest litigation would need to comply with the claim-filing requirement,  
5 even if no money or damages were sought, because the public-interest-plaintiff, if successful,  
6 would seek attorney fees under Code of Civil Procedure 1021.5. Moreover, the SDPOA's claims  
7 for attorney fees and costs are dependent on success. Because those claims have not yet even  
8 accrued, no claim could be made. (Gov. Code, § 901.)

9  
10 **V. EVEN IF THIS ACTION TO ENFORCE THE "MEET AND CONFER"**  
11 **REQUIREMENT OF THE MMBA WERE AN ACTION FOR**  
12 **"MONEY OR DAMAGES," IT WOULD BE EXEMPT FROM THE**  
13 **REQUIREMENTS OF THE GOVERNMENT CLAIMS ACT.**

14 Government Code section 905 provides 13 exceptions to the claims-filing requirement of  
15 the Government Claims Act. Even if the SDPOA's complaint sought money or damages, which  
16 it does not, at least two statutory exceptions apply.

17 **A. Subdivision (c) of Government Code Section 905, Which the City**  
18 **Has Overlooked, Exempts "Claims by Public Employees for Fees,**  
19 **Salaries, Wages, Mileage or Other Expenses and Allowances."**

20 Government Code section 905, subdivision (c), completely overlooked by the City,  
21 provides an exception for: "Claims by public employees for fees, salaries, wages, mileage, or  
22 other expenses and allowances." Even if, as the City contends, "the primary goal [of the  
23 complaint] is monetary relief in the form of payment of public funds," as the City contends  
24 (City's Memorandum, p. 4:24), the exception of section 905, subdivision (c) applies. (*Longshore*  
25 *v. County of Ventura* (1979) 25 Cal.3d 14, 22 [because claim "essentially seeks recognition of a  
26 right to compensation for services performed as a county employee," claim falls within exception  
27 of section 905, subdivision (c)]; *Adler v. Los Angeles Unified School Dist.* (1979) 98 Cal.App.3d  
28 280, 287 [claim for disability pay constituted an allowance within meaning of the subdivision].)

A long line of California authorities supports the concept that pension benefits are a  
component of a public employee's compensation. "A public employee's pension constitutes an  
element of compensation, and a vested contractual right to pension benefits accrues upon

1 acceptance of employment.” (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863<sup>5</sup>; *State*  
2 *ex rel. Pension Obligation Bond Comm. v. All Persons Interested [etc.]* (2007) 152 Cal.App.4th  
3 1386, 1405-1406 [“a long line of California decisions establishes that a public employee’s  
4 pension constitutes an element of compensation”].) “Earned benefits are deferred  
5 compensation . . . .” (*Carman v. Alvord, supra*, 31 Cal.3d at p. 325, citing *Olson v. Cory* (1980)  
6 27 Cal.3d 532, 540.)

7 Thus, even looking beyond the injunctive and declaratory relief sought—enforcement of  
8 the MMBA—because the compensation pay items at issue, canine care pay and motorcycle care  
9 pay, involve claims for salaries, wages, or other allowances, the exemption of section 905,  
10 subdivision (c) applies.

11 **B. Subdivision (f) of Government Code Section 905 Exempts “Claims**  
12 **for Money or Benefits Under Any Public Retirement or Pension**  
13 **System.”**

14 Government Code section 905, subdivision (f), provides an exemption for “[a]pplications  
15 or claims for money or benefits under any public retirement or pension system.” The City  
16 contends this exception does not apply because the exception “is limited to benefits earned  
17 during the course of employment.” (City’s Memorandum, p. 5:26-27, boldface and italics  
18 omitted.) Then, citing paragraph 36 of the SDPOA’s complaint, City contends that the “SDPOA,  
19 on behalf of an undefined number of its members, is asking for prospective damages [because]  
20 removal of the motorcycle care pay and canine care pay in January 2007 will result in reduced

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21 <sup>5</sup> “Such pension right may not be destroyed, once vested, without impairing a  
22 contractual obligation of the employing public entity.” (*Ibid.*, italics added, citing *Kern v. City of*  
23 *Long Beach* (1947) 29 Cal.2d 848, 852-853.) “[P]ublic employment gives rise to certain  
24 obligations which are protected by the contract clause of the Constitution . . . . [Citation.] Such  
25 obligations include pension rights.” (*California Association of Professional Scientists v.*  
26 *Schwarzenegger* (2006) 137 Cal.App.4th 371, 375-376, quoting *San Bernardino Public*  
27 *Employees Assn. v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1221.) “By entering public  
28 service an employee obtains a vested contractual right to earn a pension on terms substantially  
equivalent to those then offered by the employer.” (*Schwarzenegger* at p. 376, quoting *Carman*  
*v. Alford* (1982) 31 Cal.3d 318, 325.) “Pensions are a government obligation of great  
importance. They help induce faithful public service and provide agreed subsistence to retired  
public servants who have fulfilled their employment contracts.” (*Carman, supra*, at p. 325, fn. 4,  
citing *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 351.)

1 future pensions.” (City’s Memorandum, p. 6:3-7.) The City’s position misstates the SDPOA’s  
2 complaint, even if the Government Claims Act applied.

3 Paragraph 36 of the SDPOA’s complaint states: “The SDPOA contends to the contrary  
4 that the City may not unilaterally reduce police officers’ pensions without compliance with the  
5 MMBA.” This allegation in no manner identifies the time period in which SDPOA members  
6 might be affected. Any members who retired after June 30, 2006, the effective date of the City’s  
7 unilateral change in the Earnings Code Document, would have claims for benefits already earned,  
8 to which the exemption of section 905, subdivision (f), would apply. And canine care pay and  
9 motorcycle care pay are paid during the course of employment in any event. Therefore, the  
10 City’s argument that the exemption contained in section 905, subdivision (f), is inapplicable  
11 should be rejected, even if the Court concludes that the SDPOA is making a claim for money or  
12 damages (which it is not).

13 **VI. EVEN IF A GOVERNMENT CLAIM WERE REQUIRED, THE**  
14 **RESPONDENTS’ BRIEF IN *SLOAN* SATISFIED THE CLAIM-FILING**  
**REQUIREMENT.**

15 In any event, the SDPOA substantially complied with the Claims Act by raising the City’s  
16 MMBA violation in the Respondents’ Brief filed in the *Sloan, et al. v. City of San Diego* appeal.  
17 (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38 [substantial compliance with  
18 Claims Act sufficient]; (RJN, Exh. 5, pp. 43-44 [City violated MMBA by changing earnings  
19 code document without meeting and conferring with respondents’ union, the SDPOA].) That  
20 Respondents’ Brief contained all of the required information. (Gov. Code, § 910.) And, the  
21 Respondents’ Brief fulfilled the four purposes of the Claims Act: (1) providing the City with  
22 sufficient information to allow it to thoroughly investigate the matter; (2) facilitating settlement  
23 of meritorious claims; (3) enabling fiscal planning; and (4) avoidance of similar liability in the  
24 future. (*TrafficSchool Online, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742.)

25 **VII. CONCLUSION**

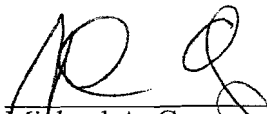
26 The SDPOA is not making a claim for money or damages. Under established law, the  
27 Government Claims Act does not apply. The City’s demurrer should be overruled.

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Dated: May 11, 2009

**LAW OFFICE OF MICHAEL A. CONGER**

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