

FAKED

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ENDORSED FILED

Clerk of the Superior Court

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By J. Abueg
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7 Attorneys for Petitioner
8 VALLEJO POLICE OFFICERS ASSOCIATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SOLANO

11
12 VALLEJO POLICE OFFICERS ASSOCIATION,

13 Petitioner,

14 v.

15 CITY OF VALLEJO AND DOES I THROUGH
16 X, INCLUSIVE,

17 Respondents.
18

Case #

FCS 042492

19 VERIFIED PETITIONER FOR WRIT OF
20 MANDATE, DECLARATORY RELIEF, AND
21 INJUNCTIVE RELIEF

[Code Civ. Proc. § 1286.2]

ASSIGNED TO
22 JUDGE MICHAEL MATTICE
23 FOR ALL PURPOSES

24 Petitioner Vallejo Police Officers Association alleges as follows:

25 INTRODUCTION

26 1. Petitioner Vallejo Police Officers' Association ("VPOA" or "Association") seeks a writ
27 of mandate and injunctive relief directed to Respondent City of Vallejo ("City") commanding the City
28 to comply with the duty to bargain in good faith mandated by the Meyers-Milias-Brown Act
("MMBA"), Government Code section 3500 *et seq.* Petitioner also seeks a declaration from the Court
that the City may not impair vested and constitutionally protected employee benefits or otherwise
impair certain contractual rights and obligations inuring to the benefit of VPOA members.

2. Respondent's premature declaration of impasse in contract negotiations with the VPOA
and the City's presentation of a last, best and final offer on September 19, 2013 violated the duty to

1 bargain in good faith. Petitioner seeks to compel Respondent to rescind its premature declaration of
2 impasse and its last, best and final offer. Petitioner also seeks to compel Respondent to bargain in
3 good faith for a successor memorandum of understanding (“MOU”) governing the wages, hours, and
4 other terms and conditions of employment for VPOA members. Finally, Petitioner seeks to compel
5 Respondent to rescind all proposals that unlawfully discriminate against and interfere with the rights of
6 Petitioner and its individual members in violation of the statutory protections afforded by the MMBA.

7 3. Petitioner seeks declaratory relief finding that Respondent’s last, best and final offer, if
8 unilaterally implemented, would unconstitutionally impair the vested retirement medical benefits of
9 active VPOA members; a defined benefit that provides each of Petitioner’s members with lifetime
10 medical premium payments through the California Public Employees Retirement System
11 (“CalPERS”), governed by the Public Employees’ Medical and Hospital Care Act (“PEMHCA”).
12 Pursuant to the terms of the parties’ arbitration award in 1988, the current and prior memoranda of
13 understanding in effect since at least 1988, and numerous resolutions approved by the voting members
14 of the City Council, Petitioner’s members have a constitutionally protected right to receive medical
15 premium payments in the amount necessary to pay the entire cost of the members’ retirement medical
16 premiums among the array of pooled plans offered by CalPERS up to the value of the Kaiser
17 healthplan. (*Retired Employees’ Association of Orange County v. County of Orange* (2011) 52 Cal.4th
18 1171; *Int’l Bhd. v. City of Redding* (2012) 210 Cal. App. 4th 1114, reh’g denied (Nov. 30, 2012),
19 review denied (Jan. 16, 2013); *Requa v. The Regents of the Univ. of California* (2012) 213 Cal. App.
20 4th 213).

21 4. Petitioner seeks declaratory relief finding that Respondent’s last, best and final offer, if
22 unilaterally implemented, would unconstitutionally impair the vested contractual retirement benefits of
23 VPOA members by eliminating the payout of accrued sick leave for Petitioner’s members hired prior
24 to February 1, 2009. Pursuant to the terms of collective bargaining agreements dating back to at least
25 1980, Petitioner’s members have enjoyed the right to accrue sick leave that can be converted to cash
26 upon separation from employment; a form of deferred compensation. Petitioner’s members have a
27 constitutionally protected right to cash out sick leave that accrued prior to the time of their separation
28 from employment and to continue accruing sick leave in the manner provided in the Supplemental

1 Agreement between the parties dated January 28, 2009. (*Kern v. City of Long Beach*, (1947) 29 Cal.2d
2 848,853, 856; *California League of City Employee Associations v. Palos Verdes Library Dist.* (1978)
3 87 Cal.App.3d 135; *see also Marsille v. City of Santa Ana* (1976) 64 Cal.App.3d 764).

4 5. Petitioner seeks declaratory relief finding that the City's last, best and final offer, if
5 unilaterally implemented, would violate the express terms of a binding, enforceable contractual
6 agreement between the City and the VPOA by voiding Respondent's debt obligation to issue payment
7 to Petitioner in the amount of \$333,334 on July 1, 2014.

8 THE PARTIES

9 6. Petitioner is and at all relevant times was the recognized employee organization within
10 the meaning of Government Code section 3501(b) representing sworn officers, corporals, sergeants,
11 lieutenants, and captains employed by Respondent in the Vallejo Police Department ("Department").
12 The VPOA is the exclusive representative in matters relating to its members' wages, hours and other
13 terms and conditions of employment and brings this action in its representative capacity.

14 7. Respondent is and at all relevant times was a municipal corporation constituted and
15 operating as a charter city pursuant to the laws of the State of California. Respondent is a "public
16 agency" as defined in Government Code section 3501(c). Respondent is the employer of each of
17 Petitioner's members and is subject to the mandates of the MMBA and Article I section 9 of the
18 California Constitution.

19 8. Respondents Doe I through Doe X, inclusive, are named in this Petition under fictitious
20 names. Their true names and capacities are unknown to Petitioners. When their true names and
21 capacities are ascertained, Petitioners will amend this Petition by inserting their true names and
22 capacities.

23 THE STATUTORILY ESTABLISHED COLLECTIVE BARGAINING 24 RELATIONSHIP BETWEEN THE PARTIES

25 9. Employment relations between the City and the VPOA are governed by the MMBA.
26 The MMBA's express purpose is "to promote full communication between public employers and their
27 employees by providing a reasonable method of resolving disputes regarding wages, hours, and other
28 terms and conditions of employment between public employers and public employee organizations."

1 (Gov. Code § 3500).¹

2 10. In accordance with Government Code section 3502, public employees:

3 shall have the right to form, join, and participate in the activities of
4 employee organizations of their own choosing for the purpose of
5 representation on all matters of employer-employee relations.

6 11. To ensure public employees are able to exercise their rights to the fullest extent
7 possible, Government Code section 3506 provides:

8 Public agencies ... shall not interfere with, intimidate, restrain, coerce
9 or discriminate against public employees because of their exercise of
10 their rights under Section 3502.

11 12. California Code of Regulations, title 8, section 32603(a) provides that it shall be an
12 unfair labor practice for any public agency to "Interfere with, intimidate, restrain, coerce or
13 discriminate against public employees because of their exercise of rights guaranteed by Government
14 Code section 3502 or by any local rule adopted pursuant to Government Code section 3507."

15 13. Government Code section 3503 further establishes that "[r]ecognized employee
16 organizations shall have the right to represent their members in their employment relations with public
17 agencies." (Gov. Code § 3503).

18 14. California Code of Regulations, title 8, section 32603(b) provides that it shall be an
19 unfair labor practice for any public agency to "[d]eny to employee organizations rights guaranteed to
20 them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5 or by any
21 local rule adopted pursuant to Government Code section 3507."

22 15. The duty to bargain in good faith with a recognized employee representative is
23 generally set forth in Government Code section 3505, which states that public employers such as
24 Respondent:

25
26 ¹ The language of the MMBA is patterned closely upon analogous provisions of the National Labor Relations Act
27 ("NLRA"). (See 29 U.S.C. §§ 141 *et seq.*) It is therefore appropriate to look to federal law for guidance in interpreting the
28 provisions of the state statute. (*Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382,
391; *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 616). Similarly, decisions interpreting similar provisions
of other California labor statutes are also persuasive. (*County Sanitation Dist. No. 2 v. Los Angeles County Employees'*
Assn. (1985) 38 Cal.3d 564, 572-573).

1 shall meet and confer in good faith regarding wages, hours, and other
2 terms and conditions of employment with representatives of such
3 recognized employee organizations ... and shall consider fully such
4 presentations as are made by the employee organization on behalf of its
members prior to arriving at a determination of policy or course of
action.

5 Thereafter, section 3505 defines "meet and confer in good faith" to mean:

6 that a public agency ... and representatives of recognized employee
7 organizations, shall have the mutual obligation personally to meet and
8 confer promptly upon request by either party and continue for a
9 reasonable period of time in order to exchange freely information,
opinions, and proposals, and to endeavor to reach agreement on matters
within the scope of representation prior

10 (emphasis added).

11 16. California Code of Regulations, title 8, section 32603(c) provides that it shall be an
12 unfair labor practice for a public agency to "[r]efuse or fail to meet and confer in good faith with an
13 exclusive representative as required by Government Code section 3505 or any local rule adopted
14 pursuant to Government Code section 3507."

15 17. In the event the parties' good faith efforts to reach agreement prove ineffective and
16 further negotiations would be futile, either party to the negotiations can declare an impasse. (*Gulf*
17 *States Mfg. Inc. v. N.L.R.B.*, 704 F.2d 1390, 1398-99 (5th Cir. 1983)). Once a party declares impasse,
18 the MMBA provides specific parameters as to the timing and procedures designed to facilitate an
19 amicable resolution. (Government Code §§ 3505.4, 3505.5, 3505.7). However, it is well established
20 that:

21 Anything that creates a new possibility of fruitful discussion (even if it
22 does not create a likelihood of agreement) breaks an impasse: a strike
23 may; so may bargaining concessions, implied or explicit; the mere
24 passage of time may also be relevant, *Jeffery-De Witt, supra* (one month
since last bargaining session); *Transport Co., supra* (seven months since
last bargaining session)

25 (*Gulf States Mfg. Inc.*, 704 F.2d 1399 (5th Cir. 1983) (citations omitted); *Kit Manufacturing Co., Inc.*
26 *and Sheet Metal Workers Int'l Assn., Local 213, AFL-CIO* (1962) 138 NLRB 1290 (changed
27 circumstances include the employer's improved financial status)).

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RESPONDENT'S BANKRUPTCY

18. In 2008, the City and the VPOA were parties to a MOU with a term expiring June 30, 2010 (the MOU between the parties is also referred to as the "Labor Agreement" between the City and the VPOA). A true and correct copy of the Labor Agreement, including all supplemental agreements, is attached hereto as Exhibit 1 and incorporated by reference. On or about May 6, 2008, the City Council authorized proceedings pursuant to Chapter 9 of the U.S. Bankruptcy Code. Thereafter, a bankruptcy petition was filed on or about May 23, 2008. On or about September 5, 2008, the Bankruptcy Court ruled that the City was eligible for bankruptcy.

19. On January 27, 2009, City Manager Joseph Tanner, Assistant City Manager Craig Whittom, and Consultant/Negotiator Sandy Salerno, submitted a "Council Communication" to the Mayor and members of the City Council entitled "Consideration of Resolution Approving Supplemental Agreement between City of Vallejo and the Vallejo Police Officers Association". A true and correct copy of the Council Communication is attached hereto as Exhibit 2 and incorporated by reference. Notably, the Council Communication established the following concerns in supporting a settlement between the City and the VPOA referred to as a Supplemental Agreement:

1. Police service to residents is arguably the most important service the City provides. It is the foundation to quality of life and future investment in the community.
2. The current demand nation-wide for police officers is very high, and many cities in the Bay Area are experiencing high vacancy levels. . . .
3. Vallejo has significantly fewer officers per capita than other cities with comparable work environments. For instance, according to the 2007 Uniform Crime report (the most recent available data), Vallejo has 1.24 officers per 1,000 citizens, while Richmond had 1.57 officers and Oakland had 1.82 officers. In addition, the police force has been reduced from approximately 145 officers in late 2007 to approximately 114 today. Vallejo officers have less officer support and more limited capital resources with which to conduct their job. In light of the City of Vallejo's continuing worsening revenue environment, staffing may well be further reduced in the future.
4. Without a compensation program that is comparable to that in other Bay Area cities, Vallejo will likely attract fewer and less qualified candidates, and may lose existing qualified officers to other

1 municipalities. A scenario in which the City pays below market salary
2 and benefits for police officers could expose the City to higher liability
3 risk and diminished service.

4 Exhibit 2 at p. 4.

5 20. On January 28, 2009, the City and the VPOA executed the Supplemental Agreement
6 modifying select terms of the pre-existing Labor Agreement and establishing additional terms by and
7 between the parties. A true and correct copy of the Supplemental Agreement is attached hereto as
8 Exhibit 3 and incorporated by reference.

9 21. The purpose of the Supplemental Agreement was to modify the terms of the then-
10 prevailing MOU (including the parties' supplemental agreements), as well as the City's unilaterally-
11 adopted changes to compensation and benefits implemented during or in connection with its Chapter 9
12 bankruptcy case.

13 22. The introductory paragraph of the Supplemental Agreement explicitly stated that "[t]he
14 new term of the agreement and supplemental shall be from July 1, 2000 through June 30, 2012."
15 Further, the Supplemental Agreement provided:

16 All other terms and conditions in the Pre-existing Labor Agreement,
17 including any supplemental agreements, whether or not listed above, and
18 any side letters to the Pre-existing Labor Agreement or the supplemental
19 agreements except the Pendency Plan shall remain in full force and
20 effect unless modified by this Supplemental Agreement.

21 Exhibit 3 at p. 1.

22 23. The Supplemental Agreement set forth three terms which Petitioner seeks to uphold
23 pursuant to this petition.

24 24. Section 5 of the Supplemental Agreement provided the following modification to the
25 VPOA's sick leave accrual, providing Petitioner's members with a "non-revocable" election to
26 participate in one of two defined benefit plans:

27 **5. Sick Leave Cashout.** Delete and Replace Section 20.A: SICK LEAVE

28 **A. Sick Leave Accrual**

1. Upon satisfactory completion of six (6) months of full-time service
by any regular employee hired on or after February 1, 2009, his/her
record shall be credited with ninety (90) hours sick leave. Thereafter,

1 the employee shall be credit with fifteen (15) additional hours sick leave
2 for each additional full month of employment up to a maximum of one
3 hundred-eighty (180) hours in each consecutive twelve month period.
4 Employees hired on or after February 1, 2009 cannot participate in the
5 Sick Leave Buy-Back provision described in C, below. All accumulated
6 sick leave shall apply towards retirement service credit pursuant to
7 subsection E, below.

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9
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11 2. Employees hired before February 1, 2009 shall be credited with ten (10)
12 hours sick leave for each additional full month of employment to a
13 maximum of one hundred-twenty (120) hours in each consecutive twelve
14 (12) month period, unless they make an election pursuant to subsection
15 (a) below.

16 a. An employee hired before February 1, 2009 may choose from the
17 following two (2) options.

18 i. Maintain existing sick leave accrual/cash out policy as it
19 existed prior to this supplemental agreement (i.e., 10 hours
20 accrual per month with option to cash out per C below); or

21 ii. Freeze his/her existing bank subject to the cash out policy
22 existing prior to this supplemental agreement and increase sick
23 leave accrual from ten (10) hours to fifteen (15) hours sick
24 leave for each additional full month of employment.

25 a. Upon selection of this option any sick leave used will be
26 deducted from the new accrual bank. If there are not
27 sufficient hours in the new bank the frozen bank will have
28 the hours deducted from it.

29 b. If an employee chooses to increase sick leave credit from
30 ten (10) hours to fifteen (15) hours, the employee cannot
31 utilize any hours earned after exercising this option to
32 participate in the Sick Leave Buy-Back provision in C,
33 below. Any hours earned prior to exercising the option
34 remain eligible for the Sick Leave Buy-Back. All non-
35 cashed out sick leave hours (whether accumulated before
36 or after exercising the option) may be applied towards
37 retirement service credit pursuant to subsection E, below.
38 **[Note: Subsection E is part of the pre-existing Labor
Agreement and is not reproduced herein.]**

39 b. An employee hired before February 1, 2009 may elect to freeze
40 his or her existing sick leave bank and increase his or her sick
41 leave accrual pursuant to Section a, above during the period
42 between February 1 and February 14, inclusive, each year

1 (“election period”). The election shall be made on a form
2 provided by the Department of Human Resources and shall be
3 submitted to the Department of Human Resources during the
4 Department’s regular business hours during the election period.
5 The election will become effective the first full pay period after
6 March 1 of that year. An election made pursuant to this section
7 shall be non-revocable and all future sick leave hours earned will
8 be subject to the restrictions in subsection a.ii, above.

9
10 25. Section 6 of the Supplemental Agreement provided the following modification to the
11 VPOA’s medical benefits for both active employees and retirees/annuitants:
12

- 13 1. The City shall provide to all eligible employees, retiree-
14 annuitants, and dependents, the PERS Health Benefits Program
15 subject to the following restrictions.
- 16 2. Effective January 1, 2010 and thereafter, the City’s direct
17 PEMHCA contribution of medical premiums for employees and
18 eligible dependents shall be the full premium cost of the chosen
19 medical plan offered through PERS Health Plan Services
20 Division, not to exceed the Kaiser Bay Area / Sacramento Area
21 rate for each level of participation – single, single plus one
22 dependent, single plus two or more dependents. . . .
- 23 3. For employees hired on or before February 1, 2009, the City will
24 contribute the same amount towards eligible retiree-annuitants’
25 PEMHCA medical premiums as it contributes towards the
26 PEMHCA medical premiums for current VPOA bargaining unit
27 employees. For example, if the City’s direct PEMHCA
28 contribution is capped at the Kaiser Bay Area / Sacramento Area
rate for each level of participation, the City will pay up to that
same amount for eligible retirees at each level of participation.
4. With respect to retiree-annuitants hired on or after February 1,
2009, any benefit in excess of the PEMHCA statutory minimum
will require ten (10) years of City of Vallejo service. Any
employee hired before such date shall not be subject to the
vesting requirement. This vesting requirement shall not apply to
any employee who is granted a disability retirement. The benefit
once vested will be the same as for retiree-annuitants hired before
February 1, 2009 (i.e., the same as the amount of the City’s
PEMHCA contribution for current VPOA bargaining unit
employees).

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1 26. Section 10 of the Supplemental Agreement provided additional terms separate and apart
2 from the pre-existing Labor Agreements. Relevant to this Petition, the Supplemental Agreement
3 provided the following settlement payment to the VPOA:

4 **10. Payment in Lieu of Bankruptcy Claim; Agreement on Allowance, Voting and**
5 **Satisfaction of Bankruptcy Claims.** Add Section 50: PAYMENT IN LIEU OF
6 BANKRUPTCY CLAIM AND MEANS OF SATISFYING CLAIMS UNDER CHAPTER
7 9 BANKRUPTCY

8 A. The City shall pay to the VPOA for the benefit of its members \$333,333 on July 1,
9 2012; \$333,333 on July 1, 2013; and \$333,334 on July 1, 2014 (the "Required
10 Payments") whether or not the City's Chapter 9 bankruptcy is dismissed or results
11 in a confirmed plan of arrangement, all in compensation for the modification of
12 VPOA salaries hereunder and under the Pendency Plan prior to the adoption of this
13 Agreement.

14 27. Despite maintaining broad authority under the protections of bankruptcy, Respondent
15 recognized and preserved the right of VPOA members to enjoy fully paid retirement healthcare
16 benefits; recognized and preserved the right of VPOA members hired prior to February 1, 2009 to be
17 paid for accrued sick leave upon separation; preserved the rate at which they accrue sick leave and
18 provided cash payments for active VPOA members.

19 28. On November 17, 2009, the City Council of Respondent passed Resolution No. 09-275
20 N.C. that provided in relevant part:

21 contribution for health care premiums for each employee or annuitant
22 shall be the amount necessary to pay the full cost of his/her enrollment
23 including the enrollment of his/her eligible dependents in a health
24 benefits plan up to a maximum of the Kaiser Bay Area ("North") basic
25 plan rate for each level of coverage, i.e., employee only, employee plus
26 one dependent, and employee plus two or more dependents per month,
27 plus administrative fees and Contingency Reserve Fund Assessments;

28 A true and correct copy of Resolution No. 09-275 N.C. is attached hereto as Exhibit 4 and incorporated
29 by reference.

30 **LABOR RELATIONS BETWEEN THE PARTIES FOLLOWING RESPONDENT'S**
31 **EMERGENCE FROM BANKRUPTCY**

32 29. Although the term of the Supplemental Agreement was originally set to expire on June
33 30, 2012, Section 8 of the Supplemental Agreement provided:

1 This Agreement shall remain in full force and effect through June 30,
2 2012, and from year-to-year thereafter, unless either party shall have
3 given written notice to the other of its desire to amend or terminate the
4 Agreement not less than six (6) months prior to June 30, 2012, or any
subsequent anniversary date of the Agreement.

5 As neither the City nor the VPOA provided notice to negotiate a successor MOU within the
6 notification period provided in Section 8, the Supplemental Agreement continued for an additional
7 year, expiring on June 30, 2013.

8 **NEGOTIATIONS FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING**

9 30. Despite the cautionary advice provided by City Manager Joseph Tanner and Assistant
10 City Manager Craig Whitton on January 27, 2009, at the time the parties commenced formal
11 negotiations for a successor MOU on or about January 7, 2013, the Department's sworn staffing had
12 eroded to approximately 83 employees.

13 31. Following Respondent's bankruptcy, the Department was unable to recruit qualified
14 applicants to serve in the capacity of sworn police officers. As a result, the City has reduced the
15 standards required of prospective applicants. Even with reduced minimum standards and numerous
16 vacancies, the Department has been unable to hire a sufficient number of sworn personnel to keep pace
17 with the attrition of existing personnel.

18 32. Despite the precipitous decline in sworn staffing, the City's Budget for FY 12/13
19 authorized 98 sworn personnel; an increase of five (5) sworn positions as compared to the City's FY
20 11/12 Budget. A true and correct copy of relevant portions of Respondent's FY 12/13 Budget is
21 attached hereto as Exhibit 5 and incorporated by reference. Accordingly, in FY 12/13, the City
22 overstated the size of the Department by approximately 15 sworn employees, resulting in a
23 corresponding 15% overstatement of police personnel costs.

24 33. Even with the continuous decline in police staffing and an inability to recruit qualified
25 personnel – and the corresponding decline in police services to the citizens of Vallejo – the City's
26 Budget for FY 13/14 authorized 106 sworn personnel, thereby continuing to artificially overstate the
27 costs attributable to police personnel. A true and correct copy of relevant portions of Respondent's FY
28 13/14 Budget is attached hereto as Exhibit 6 and incorporated by reference.

1 34. At the start of negotiations, the City advised that it sought substantial concessions from
2 the VPOA. In support of its position, representatives for the City advised that the City budget included
3 a “structural deficit” of \$5.2 million. Respondent’s bargaining representatives further advised that
4 despite the existence of three (3) other bargaining units and numerous unrepresented employees, the
5 City’s intention was to extract \$4.2 – \$4.5 million in concessions from Petitioner; at least 81% of the
6 total value of all concessions sought by the City.

7 35. In response to the City’s demand, on or about June 13, 2013, the VPOA asserted that
8 the City artificially inflated its “structural deficit” by the addition of twenty-three *budgeted* but *vacant*
9 sworn positions – resulting in an approximate \$6.2 million overstatement of Petitioner’s salaries and
10 benefits. Further, the VPOA advised representatives for the City that the “structural deficit” did not
11 constitute an actual deficit, but a knowingly false estimate of costs used to undermine Petitioner’s
12 position relative to labor negotiations. Petitioner further advised that the City’s proposals would result
13 in an exodus of existing sworn personnel and further undermine Respondent’s ability to recruit
14 qualified personnel. As a result, Petitioner cautioned that Respondent’s actions would unnecessarily
15 perpetuate the unsafe working conditions for VPOA members while exposing the officers and the
16 public they serve to the unnecessary risk of injury and death due to increasing violence.

17 36. Representatives for the City advised that regardless of the devastating impact on
18 Petitioner’s members who are expected to find alternative employment, or the impact on Respondent’s
19 ability to hire qualified individuals to provide law enforcement services, the City would not seek
20 significant concessions from the other bargaining units. Further, Respondent’s representatives advised
21 that the basis for allocating the vast majority of the City’s supposed “structural deficit” to the VPOA
22 was to protect members of the City’s other labor unions who were viewed as more cooperative
23 following Respondent’s bankruptcy in 2008. Respondent then advised of its desire to recoup
24 additional concessions that it could have sought from the VPOA back in 2009.

25 37. On or about June 13, 2013, Petitioner advised Respondent that the Respondent’s
26 revenue forecasts were unreasonably conservative. Based upon the Petitioner’s analysis and the
27 undisputed inflation of Petitioner’s costs in the City’s FY 13/14 Budget documents, Petitioner
28 demanded that Respondent reconsider its economic proposals.

1 38. On or about July 18, 2013, the VPOA submitted a Comprehensive Economic Proposal
2 to the City whereby Petitioner's members would agree to certain concessions proposed by the City.

3 39. In the following two months, the City failed to respond to Petitioner's July 18, 2013
4 proposal. During that time, the VPOA became aware that a member of Respondent's City Council
5 may have a legal conflict of interest in voting on the wage and benefit proposals offered to Petitioner
6 in bargaining for a successor MOU.

7 40. On or about September 17, 2013, counsel for Petitioner sent correspondence to Vallejo
8 City Attorney Claudia Quintana citing the conflict of interest arising from the involvement of
9 Councilmember Stephanie Gomes in negotiations between Respondent and the VPOA.
10 Councilmember Gomes is married to an individual who retired from the City of Vallejo (a non-VPOA
11 represented position) and whose benefits could be impacted by the wages and benefits granted to
12 Petitioner. A true and correct copy of Petitioner's September 17, 2013 correspondence is attached
13 hereto as Exhibit 7 and incorporated by reference. As Councilmember Gomes' participation is
14 prohibited by both Government Code section 1090 (*see Carson Redevelopment Agency v. Padilla*
15 (2006) 140 Cal.App.4th 1323, 1330 ("The evil to be thwarted by section 1090 is easily identified: If a
16 public official is pulled in one direction by his financial interest and in another direction by his official
17 duties, his judgment cannot and should not be trusted, even if he attempts impartiality.")) and the
18 Political Reform Act (Government Code § 81000 *et seq.*), Petitioner demanded that Gomes be
19 removed from a position of influence in negotiations with the VPOA and other City employee
20 organizations.

21 41. On or about September 19, 2013, two (2) months after receiving Petitioner's
22 Comprehensive Economic Proposal, but only two (2) days after receiving Petitioner's correspondence
23 concerning Councilmember Gomes, Respondent's Chief Negotiator, Austris Rungis, sent
24 correspondence to the VPOA providing the City's last, best and final offer and simultaneously
25 declaring impasse in negotiations between the City and the VPOA. A true and correct copy of Rungis'
26 September 19, 2013 correspondence is attached hereto as Exhibit 8 and incorporated by reference. A
27 true and correct copy of the City's September 19, 2013 proposal is attached hereto as Exhibit 9 and
28 incorporated by reference.

1 42. Although the parties had not met for formal negotiations for over two months, Rungis'
2 letter stated: "*we have no illusions that this proposal will result in an agreement.*" Exhibit 8 (emphasis
3 added).

4 43. Respondent's last, best and final offer includes terms that would reduce some VPOA
5 members' annual taxable income by more than \$25,000 (e.g., 5% salary reduction [Exhibit 9 at p.8];
6 elimination of longevity pay [Exhibit 9 at pp. 8-9]; additional 3.4% salary reduction [Exhibit 9 at p.29-
7 30]; reduced health care benefits for active employees [Exhibit 9 at p.25]).

8 44. Respondent's last, best and final offer also proposed to diminish VPOA members'
9 defined retirement medical benefit by eliminating terms that require the City to pay for medical
10 premiums among the array of plans offered by CalPERS, and instead providing each of Petitioner's
11 members with a flat-dollar contribution of \$300 per month in retirement. Significantly, Respondent's
12 proposal would not satisfy the City's contractual obligation to provide each of Petitioner's member's
13 medical premium payments in an amount necessary to pay the entire cost of the member's retirement
14 medical premium among the array of pooled plans offered by CalPERS each year.

15 45. Respondent's last, best and final offer further proposed to eliminate the "non-
16 revocable" Sick Leave Buy Back terms included in the Labor Agreements between the parties – and
17 accrued by Petitioner's members – since at least 1980. Exhibit 9 at p. 22-23. Respondent's proposal
18 also purports to void the right of Petitioner's members to accrue additional sick leave under the
19 irrevocable terms of the Supplemental Agreement, by reducing the rate at which members accrued sick
20 leave. Exhibit 9 at p. 21. Although Respondent previously proposed that the changes to sick leave
21 benefits would only "apply to new officers hired after July 1, 2013", the last, best and final offer
22 applied the significantly reduced benefit to active VPOA members as well as future employees. A true
23 and correct copy of the Respondent's revised proposal from February 19, 2013 is attached hereto as
24 Exhibit 10 and incorporated by reference.

25 46. Respondent's last, best and final offer further proposed to void the final \$333,334
26 payment provided in the Supplemental Agreement dated January 28, 2009. Exhibit 9 at p. 45.
27 Respondent agreed to this payment as a means of satisfying Petitioner's claims under Bankruptcy, and
28 contractually obligated itself to issue payment to Petitioner on or before July 1, 2014. Accordingly,

1 Respondent's last, best and final offer seeks to unilaterally rescind an enforceable contractual
2 obligation voluntarily agreed to by Respondent's elected officials following the City's bankruptcy.

3 47. Respondent's last, best and final offer further includes a "poison pill" whereby
4 Petitioner's members suffer greater economic harm by rejecting the City's proposal, as Section 25.D
5 provides:

6 **In addition to the full employee share, all bargaining unit employees**
7 **shall also contribute an additional 3.4% towards their PERS**
8 **retirement benefit. In the event the parties cannot agree to this**
9 **additional contribution, all bargaining unit members will have their**
10 **salaries reduced by 3.4%.**

11 Exhibit 9 at p. 29-30 (emphasis in original). As employee contributions towards their pensions are
12 deducted on a pre-tax basis, and do not adversely affect an employee's overtime compensation, an
13 employee's compensation for collateral assignments (which are generally paid as a percentage of base
14 pay), or an employee's prospective pension benefits, the economic harm suffered as a result of a 3.4%
15 pension contribution is significantly less than a 3.4% wage reduction.

16 48. Respondent's last, best and final offer further proposed to eliminate Section 33 of the
17 existing MOU entitled "Existing Benefits". Representatives for Respondent have provided no reason
18 or purpose for this proposal which terminates all past-practices between the parties established over
19 decades of labor-relations, and thus, diminishing rights and benefits of Petitioner and its members.
20 Section 33 currently provides:

21 All existing benefits presently enjoyed by employees within the unit
22 represented by the Association shall remain in full force and effect
23 during the life of this Agreement, except as they may be amended by this
24 Agreement.

25 Exhibit 1 at p. 38. Respondent's proposal further identifies the City's intent to eliminate the long-
26 standing rights of Petitioner. As proposed, Section 41, entitled Term of the Agreement, is revised to
27 include the following:

28 **Except as otherwise specifically provided herein, this Memorandum**
of Understanding fully and completely incorporates the
understanding of the parties hereto and constitutes the sole and
entire agreement between the parties on any and all matters subject

1 to meeting and conferring. To the extent items previously found in
2 past practice, side letters, or the previous Memorandum of
3 Understanding are not incorporated into this Memorandum of
4 Understanding, they are not considered a part of this Memorandum
5 of Understanding and are repudiated. Continuance of working
6 conditions and practices not specifically authorized by General
7 Orders, or by ordinance or resolution of the City Council is not
8 guaranteed by this Memorandum of Understanding.

9 Exhibit 9 at p. 44 (emphasis in original).

10 49. Respondent's last, best and final offer further omits material provisions without
11 explanation or citation governing the wages, hours, and working conditions between Respondent and
12 Petitioner's members. Petitioner's proposed elimination of the existing Section 33 and proposed
13 addition to Section 41 (*see* Paragraph 48, above) would result in the elimination of additional rights,
14 benefits and privileges beyond those specified in Respondent's last, best and final offer. For example,
15 Respondent's last, best and final offer omits the "Management Pay Incentive" established pursuant to
16 the June 14, 2006 Supplemental Agreement that provides members employed as Police Captains with
17 120 hours of pay at the employee's base hourly rate; a benefit equal to more than \$9,500 for a top-step
18 Police Captain. Further, the Respondent's proposal omits the overtime provision for Police Captains
19 established pursuant to the June 14, 2006 Supplemental Agreement whereby Police Captains are
20 eligible to receive overtime pay for assignments that are directly charged to a third party. *Compare*
21 Exhibit 1 and Exhibit 9.

22 50. In response to Respondent's declaration of impasse, Petitioner sent correspondence to
23 Respondent on October 1, 2013 asserting that the City prematurely declared impasse, as the parties had
24 not met for a significant period of time, and Respondent acknowledged a positive change in economic
25 circumstances; events that individually break an impasse (should one have existed). A true and correct
26 copy of Respondent's October 1, 2013 correspondence is attached hereto as Exhibit 11 and
27 incorporated by reference. Petitioner further noted that Respondent's last, best and final offer included
28 illegal terms that would unlawfully violate at least two vested rights of VPOA members (retirement
medical benefits and sick leave buy back), and impair the enforceable terms of the Supplement
Agreement, thus precluding the parties from reaching an agreement. Petitioner further noted that

1 Respondent's last, best and final offer contained regressive terms that provided further evidence of
2 Respondent's bad faith.

3 51. On or about October 3, 2013, Vallejo City Attorney Quintana responded to Petitioner's
4 September 17, 2013 correspondence concerning Councilmember Gomes' conflict of interest.
5 Quintana's response was non-substantive, stating only that the City would consider the matter and
6 provide a formal response by October 18, 2013. A true and correct copy of Quintana's October 3,
7 2013 correspondence is attached hereto as Exhibit 12 and incorporated by reference. Demonstrating
8 Respondent's apathy for Councilmember Gomes' conflict of interest, Respondent's suggested October
9 18, 2013 deadline coincides with Petitioner's deadline to exercise its right to non-binding fact-finding
10 pursuant to Government Code section 3505.4.

11 52. On or about October 11, 2013, VPOA President Mat Mustard filed a complaint with the
12 Fair Political Practices Commission ("FPPC") due to Councilmember Gomes' continued involvement
13 in negotiations between Respondent and Petitioner in violation of the Political Reform Act. A true and
14 correct copy of the FPPC Complaint is attached hereto as Exhibit 13 and incorporated by reference.

15 **THE CITY'S VERIFICATION OF PETITIONER'S ALLEGATIONS OF ECONOMIC**
16 **MISREPRESENTATIONS**

17 53. In Respondent's September 19, 2013 declaration of impasse, the City confirmed the
18 position of the VPOA that the City's poor financial condition was overstated. Specifically, the City's
19 Chief negotiator stated, "[t]he improvements in the City's proposal reflect the discussions of the
20 parties over the past year, *as well as improvements in the City's financial condition* during that
21 period." Exhibit 8 (emphasis added).

22 54. The significance of Respondent's reoccurring manipulation of the City budget
23 (Paragraphs 32 - 33) is evidenced by the City Manager's October 8, 2013 recommendation to the City
24 Council to redistribute \$2.5 million of the City's FY 13/14 Budget that was intended for previously
25 budgeted police officer salaries and benefits. A true and correct copy of relevant portions of the
26 Vallejo Council Agenda for October 8, 2013 is attached hereto as Exhibit 14 and incorporated by
27 reference. Specifically, Keen states:

28 The recommended Fiscal Year 2013-14 budget adjustment will

1 *reallocate \$2,500,000 in Measure B funds available due to unfilled*
2 *Police Department positions by transferring \$200,000 to the Police Cadet*
3 *Program; transferring \$110,000 to a Fire Department project to install in-*
4 *car computers and a patient care records system; transferring \$150,000 as*
5 *City contribution to the Mare Island Fund for North Mare Island security;*
6 *and transferring the remaining \$2,040,000 to a Public Works street*
7 *maintenance project.*

8 Exhibit 14 (emphasis added)

9 55. In light of Respondent's documented financial improvements, the City has
10 independently established a record confirming that the parties are not at impasse.

11 **VESTED DEFINED MEDICAL BENEFITS PROVIDED TO PETITIONER'S MEMBERS**
12 **UPON RETIREMENT**

13 56. Respondent has long provided medical benefits for retired members of the VPOA. *See*
14 *e.g. Exhibit 15 (Resolution No. 79-264 N.C. (renewal agreement by and between the City of Vallejo*
15 *and Kaiser Foundation Health Plan, Inc., providing for a health plan for retired employees of the City*
16 *of Vallejo effective through June 30, 1980)); Exhibit 16 (Resolution No. 78-358 N.C. (renewal*
17 *agreement by and between the City of Vallejo and Kaiser Foundation Health Plan, Inc., providing for a*
18 *health plan for retired employees of the City of Vallejo effective through June 30, 1979)). Although*
19 *retirees were once obligated to incur the costs of their retirement medical premiums, the City*
20 *negotiated favorable rates with the Kaiser Foundation on behalf its retirees.*

21 57. In negotiating terms for a successor agreement to the 1984-1988 MOU between the City
22 and the VPOA, the parties were unable to reach an agreement relative to the healthcare benefits to be
23 provided to VPOA retirees. In submitting the matter to final and binding arbitration, Arbitrator Bonnie
24 Bogue ruled in favor of Petitioner's proposal to have the City provide fully paid retirement medical
25 benefits to retirees, noting the following:

26 The Association's rationale for its proposal is to avoid any discrimination
27 between current and future retirees implied in the City's proposal
28 (assuming that the City would elect not to provide current retirees the
 \$75 reimbursement it proposes for future retirees). It also argues for
 equality between retirees and current employees in that *both classes*
 should receive a contribution [to] cover the actual cost of a basic health
 plan, rather than requiring retirees to pay the difference between \$75
 and the cost of the PORAC plan.

1 Exhibit 17 at p.29-30 (emphasis added). A true and correct copy of Bogue's arbitration award is
2 attached hereto as Exhibit 17 and incorporated by reference.

3 58. Arbitrator Bogue's July 18, 1988, award further distinguished the benefit awarded to
4 the VPOA vis-à-vis the City's other bargaining units:

5 *Since the City is not seeking parity between units on its proposal, the*
6 *only argument in favor of its proposal is to minimize the cost of this new*
7 *benefit. However, since the difference in cost between the two proposals*
8 *is relatively minor (\$11 a month per retiree) the Association's rationale*
to provide retirees, like employees, with enough contribution to provide
a fully paid, basic plan is the more persuasive.

9 Exhibit 17 at p. 30 (emphasis added).

10 59. On August 9, 1988, following negotiations with Petitioner, Respondent's elected City
11 Council passed Resolution No. 88-486 N.C. whereby the City elected to be subject to the PEMHCA
12 with respect to members of the VPOA. A true and correct copy of Resolution No. 88-486 N.C. is
13 attached hereto as Exhibit 18 and incorporated by reference. Resolution No. 88-486 N.C. provided in
14 pertinent part that:

15 *BE IT FURTHER RESOLVED, that the employer's contribution for*
16 *each annuitant shall be the amount necessary to pay the cost of his/her*
17 *enrollment, including the enrollment of his/her family members, in a*
health benefits plan up to a maximum of \$86.81 per month;

18 Exhibit 18 (emphasis added).

19 60. Since electing to participate in PEMHCA, the City has continuously provided retired
20 VPOA members with fully paid retirement medical premiums at each level of participation (i.e.,
21 employee only, employee plus one dependent, or employee plus two or more dependents). (See e.g.,
22 Resolution No. 96-438 N.C. (November 19, 1996) (providing that the City's retirement healthcare
23 contribution for retirees of the VPOA "shall be the amount necessary to pay the full cost of his/her
24 enrollment, including the enrollment of his/her family members in a health benefits plan")). A true
25 and correct copy of Resolution No. 96-438 N.C. is attached hereto as Exhibit 19 and incorporated by
26 reference. See e.g., Council Communication dated November 19, 1996 recommending Resolution
27 "setting the PEMCA [sic] contribution rates equal to the rates for the fire members and a contribution
28 increase of 10% annually for police retiree annuitants." A true and correct copy of the Council

1 Communication dated November 19, 1996 is attached hereto as Exhibit 20 and incorporated by
2 reference. As noted in the 2000-2005 MOU (and continuing pursuant to the parties' Supplemental
3 Agreements prior to the Respondent's bankruptcy), the parties negotiated an enhanced defined
4 retirement medical benefit to take effect January 1, 1997:

5 The City's existing health program for retiree-annuitants shall continue
6 through December 31, 1996. Effective January 1, 1997, City's
7 contribution for eligible police retiree-annuitants shall be the same as the
8 current City of Vallejo Fire retiree-annuitants. Also, effective January 1,
9 1997, police retiree-annuitant basic and supplemental contribution rates
for subsequent years will be increased by 10% per year pursuant to the
Government Code.

10 Exhibit 1 at p. 28.

11 Accordingly, VPOA members have continuously been provided retirement medical benefits that
12 required the City to provide the entire cost of the monthly premiums from among the plan options
13 provided through CalPERS/PEMHCA.

14 61. Recognizing the significant value of the retirement medical benefits provided to its
15 sworn personnel, Respondent utilized its retirement medical benefit as an effective tool to recruit and
16 retain qualified personnel in a highly competitive market. Further, Petitioner's members have
17 reasonably relied upon this benefit in planning for their respective retirements.

18 62. Thus, commencing at the time of their employment and continuing throughout their
19 careers, to include the benefits added since their date of hire, Petitioner's members acquired a vested
20 right to a defined retirement medical benefit whereby the City would provide the entire cost of certain
21 healthcare premiums upon retirement.

22 **PETITIONER'S MEMBERS' VESTED RIGHT TO BE COMPENSATED FOR ACCRUED**
23 **SICK LEAVE UPON SEPARATION FROM EMPLOYMENT**

24 63. The City of Vallejo has consistently provided VPOA members with the ability to accrue
25 sick leave benefits. For more than 30 years, in order to discourage the use of accrued sick leave,
26 Respondent has negotiated terms and conditions of employment that reward employees for performing
27 work while suffering from illness or injury (and in lieu of caring for ailing family members) by
28 providing a deferred compensation plan whereby the City agreed to buy back accrued sick leave at the

1 time of a member's separation from employment.

2 64. In the 1980-1982 MOU between the parties, Section 20.C provided:

3 Sick Leave Buy-Back. After fifteen (15) or more years of continuous
4 service, any employee who retires, resigns, dies or is laid off by City
5 action, shall be paid for one-half of any accumulated sick leave pay, at
6 his or her regular straight time rate of pay, subject to a maximum of sixty
(60) eight-hour days, or 480 hours, said payment to be made to the
employee or his/her designated beneficiary.

7 A true and correct copy of the VPOA MOU 1980-1982 MOU is attached hereto as Exhibit 21 and
8 incorporated by reference.

9 65. In the 1982-1984 MOU between the parties, the Sick Leave Buy Back benefit provided
10 in Section 20.C was enhanced to provide:

11 Sick Leave Buy-Back. After fifteen (15) or more years of continuous
12 service, any employee who retires, resigns, dies or is laid off by City
13 action, shall be paid for one-half of any accumulated sick leave pay, at
14 his or her regular straight time rate of pay, subject to a maximum of
sixty-five (65) eight-hour days, or 520 hours, said payment to be made to
the employee or his/her designated beneficiary.

15 A true and correct copy of the VPOA MOU 1982-1984 MOU is attached hereto as Exhibit 22 and
16 incorporated by reference. This benefit continued without modification in the 1984-1988 MOU
17 between the parties. A true and correct copy of the 1984-1988 MOU is attached hereto as Exhibit 23
18 and incorporated by reference.

19 66. In the 2000-2005 MOU between the parties (and continuing through the Respondent's
20 bankruptcy), the Sick Leave Buy Back benefit provided in Section 20.C was enhanced again to
21 provide:

22 Sick Leave Buy-Back. After ten (10) or more years of continuous
23 service, any employee who retires, resigns, dies or is laid off by City
24 action, shall be paid for one-half (1/2) of any accumulated sick leave pay,
25 at his/her regular straight time rate of pay, said payment to be made to
the employee or his/her designated beneficiary. The ten (10) year
minimum shall be waived in the event of a work-related disability
retirement.

26 Exhibit 1.

27 67. Thus, Petitioner's members acquired a vested right to the benefits in effect at the time
28 of their commencement of employment and the benefits added since their commencement of

1 employment. In reliance upon this contractual benefit, Petitioner's members have performed work
2 while suffering from illness or injury (and in lieu of caring for ailing family members) rather than
3 utilizing accrued sick leave. Petitioner's members have already accrued paid sick leave benefits, a
4 form of deferred compensation, the value of which cannot be forfeited, taken, or otherwise eliminated
5 by Respondent.

6
7 **FIRST CAUSE OF ACTION**

8 **Violation of Meyers-Milias-Brown Act**
9 **(Writ of Mandate, CCP section 1085)**

10 68. Petitioner realleges and incorporates the allegations contained in paragraphs 1 through
11 67, inclusive, as though fully set forth herein.

12 69. The MMBA imposes a duty upon Respondent to bargain in good faith with Petitioner
13 for a successor MOU setting for the wages, hours and other terms and conditions of employment for
14 VPOA members and to refrain from engaging in actions intended to frustrate the parties' ability to
15 reach agreement.

16 70. The MMBA also imposes a duty upon Respondent to restrain itself from engaging in
17 conduct that interferes, intimidates, restrains, coerces or discriminates against public employees
18 because of their exercise of their collective bargaining rights.

19 71. Respondent is similarly precluded from engaging in conduct that denies employee
20 organizations such as the VPOA from representing their members in employment relations with the
21 City, or otherwise enjoying rights guaranteed to them by Government Code sections 3503, 3504.5,
22 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5.

23 72. Respondent has a clear, present and ministerial duty to comply with the MMBA's
24 requirement to bargain with Petitioner in good faith and to refrain from engaging in conduct that
25 discriminates against and interferes with the rights of Petitioner and its individual members.

26 73. Respondent has at all times been able to comply with the MMBA's requirement to
27 bargain with Petitioner in good faith. Despite Petitioner's request that Respondent fulfill its duty to
28 bargain in good faith, Respondent has failed and refused, and continues to fail and refuse, to comply
with the MMBA's requirement to bargain with Petitioner in good faith.

1 74. Respondent has at all times been able to comply with the MMBA's requirements
2 prohibiting conduct that discriminates against and interferes with the rights of Petitioner and its
3 individual members. Despite Petitioner's request that Respondent fulfill its duty to respect the
4 statutory rights of Petitioner and its individual members, Respondent has failed and refused, and
5 continues to fail and refuse, to comply with the MMBA's requirements.

6 75. Petitioner has a beneficial interest in the issuance of a writ of mandate in order to obtain
7 Respondent's compliance with the MMBA in that Petitioner's primary purpose is to engage in the
8 collective bargaining process with Respondent for the benefit of its members pursuant to the
9 requirements of the MMBA.

10 76. Petitioner and its members have suffered, and will continue to suffer, great and
11 irreparable harm as a result of Respondent's failure and refusal to perform the duties described above.

12 77. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law, other
13 than the relief sought herein, in that monetary damages are inadequate to compensate for the loss of
14 collective bargaining rights.

15 78. Petitioner is not required to exhaust any administrative remedies before initiating this
16 judicial proceeding.

17 79. Respondent has engaged in bad faith bargaining prohibited by the MMBA by
18 submitting predictably unacceptable proposals, which not only seek unconscionable economic
19 concessions from Petitioner's members, but require Petitioner to forfeit long-established rights and
20 authority recognized by the parties.

21 80. Respondent has engaged in bad faith bargaining prohibited by the MMBA by relying
22 upon knowingly false cost estimates used to undermine Petitioner's position relative to labor
23 negotiations.

24 81. Respondent has engaged in bad faith bargaining prohibited by the MMBA by proposing
25 terms that seek to impair the vested rights of Petitioner's members in violation of Article I, Section 9
26 of the California Constitution.

27 82. Respondent has engaged in bad faith bargaining prohibited by the MMBA by proposing
28 terms that seek to unilaterally relieve Respondent of contractual obligations under the terms of the

1 Supplemental Agreement dated January 28, 2009.

2 83. Respondent has engaged in bad faith bargaining by including regressive terms that
3 result in economic harm to Petitioner's members relative to active members' sick leave benefits, as
4 Respondent originally proposed that such reduced benefits would only to apply to future employees.

5 84. Respondent has engaged in bad faith bargaining by proposing regressive terms that
6 result in economic harm to Petitioner's members in the event they reject Respondent's last, best and
7 final offer.

8 85. Respondent has engaged in bad faith bargaining by purposefully omitting any reference
9 to material terms of the existing MOU that are subject to revocation pursuant to the terms of its last,
10 best and final offer to the Petitioner.

11 86. Respondent has engaged in bad faith bargaining by prematurely declaring impasse after
12 failing to meet with Petitioner or respond to Petitioner's July 17, 2013 proposal for more than two
13 months.

14 87. Respondent has engaged in bad faith bargaining by prematurely declaring impasse
15 while explicitly acknowledging a significant improvement in the City's economic circumstances that
16 were not acknowledged during negotiations, thus precluding the parties from utilizing that information
17 in preparing their respective proposals.

18 88. Respondent has engaged in bad faith bargaining by declaring impasse in negotiations
19 with Petitioner in response to Petitioner's demand that the City recognize the conflict of interest
20 maintained by Councilmember Gomes who stands to reap economic benefits by reducing the salaries
21 and benefits of VPOA members.

22 89. Respondent has engaged in discriminatory and interfering conduct by proposing terms
23 that would require Petitioner's members to suffer a disproportionate share of concessions due to a
24 perceived lack of cooperation. Respondent has expressed its intention to protect members of the City's
25 other labor unions that it viewed as being more cooperative.

26 90. Respondent has engaged in discriminatory and interfering conduct by declaring impasse
27 in negotiations with the VPOA as a direct consequence of Petitioner's expressed concern relative to
28 Councilmember Gomes' conflict of interest in participating in negotiations with the Petitioner.

1 91. Respondent's explicit desire to extract greater concessions from Petitioner as a result of
2 the VPOA's perceived lack of cooperation is inherently destructive to employee rights and is likely to
3 discourage union membership and concerted activity. Respondent's tactics were intended to interfere
4 with and discriminate against VPOA-represented employees by reason of their decision to participate
5 in the activities of a labor organization, particularly one viewed as being less cooperative than other
6 employee organizations.

7 92. Respondent's conduct has purposefully frustrated and undermined negotiations with
8 Petitioner, thereby preventing the parties from reaching an agreement on the terms for a successor
9 memorandum of understanding.

10 WHEREFORE, Petitioner prays for the relief set forth below.

11 **SECOND CAUSE OF ACTION**

12 **Impairment of Vested, Constitutionally Protected Right**
13 **(Declaratory Relief, CCP § 1060)**

14 93. Petitioner realleges and incorporates the allegations contained in paragraphs 1 through
15 92, inclusive, as though fully set forth herein.

16 94. A dispute has arisen and an actual controversy exists between Petitioner and
17 Respondent with respect to the following:

18 95. Article I, Section 9 of the California Constitution provides that a "law impairing the
19 obligation of contracts may not be passed."

20 96. The arbitration award issued by Arbitrator Bonnie Bogue, the subsequent Labor
21 Agreements between Petitioner and Respondent, and the resolutions voted on by Respondent's elected
22 officials establish Petitioner's members' vested, constitutionally protected right to receive a defined
23 retirement medical benefit of City-paid healthcare premiums equal to the cost of the Kaiser healthplan.

24 97. Petitioner's members have at all times justifiably relied on Respondent's
25 representations and promises to provide a defined medical benefit upon their retirement whereby the
26 City would provide the full cost of the member's healthcare premiums. Petitioner's members have
27 relied on Respondent's promises, contracts, and policies as an inducement to remain employed with
28 Respondent until they retire and have reasonably relied upon Respondent's promises, contracts, and

1 policies in planning their individual retirements.

2 98. The City has a mandatory duty to provide Petitioner's members with a fully-paid
3 retirement medical benefit in the manner promised them during their employment and to act in
4 accordance with their members' vested, constitutionally protected rights.

5 99. As evidenced by Respondent's declaration of impasse and last, best and final offer,
6 Respondent claims the right to unilaterally void VPOA members' vested rights in that the City asserts
7 that VPOA members will no longer be entitled to a defined benefit of fully-paid retirement medical
8 premiums; Petitioner denies that Respondent can eliminate or reduce its members' vested rights to a
9 defined benefit of fully-paid retirement medical premiums absent terms providing a comparable new
10 advantage to offset the disadvantage from the changes set forth in Respondent's proposal.

11 100. Respondent has proposed no comparable new advantage to offset the disadvantage from
12 the changes set forth in its proposal.

13 WHEREFORE, Petitioner prays for the relief set forth below.

14 **THIRD CAUSE OF ACTION**

15 **Impairment of Vested, Constitutionally Protected Right**
16 **(Declaratory Relief, CCP § 1060)**

17 101. Petitioner realleges and incorporates the allegations contained in paragraphs 1 through
18 100, inclusive, as though fully set forth herein.

19 102. A dispute has arisen and an actual controversy exists between Petitioner and
20 Respondent with respect to the following:

21 103. The memoranda of understanding between Petitioner and Respondent dating back to at
22 least 1980 have provided Petitioner's members an opportunity to accrue sick leave and to thereafter
23 receive compensation for their accrued leave upon separation from employment; a form of deferred
24 compensation.

25 104. The Supplemental Agreement entered into by the parties on January 28, 2009, further
26 confirmed the permanent nature of this benefit in that it provided to members employed prior to
27 February 1, 2009 an opportunity each year to voluntarily freeze their existing benefits and accrue
28 prospective sick leave benefits in a newly defined manner. However, the Supplemental Agreement

1 noted that an individual's election to convert to the new sick leave benefit was "irrevocable".

2 105. As evidenced by Respondent's last, best and final offer, Respondent claims the right to
3 compel Petitioner's members to forfeit their accrued sick leave benefits, and their "irrevocable" right
4 to accrue future benefits in the manner agreed upon in the Supplemental Agreement; Petitioner denies
5 that Respondent can eliminate or reduce its members' vested right to be compensated for accrued sick
6 leave at the time of their separation absent terms providing a comparable new advantage to offset the
7 disadvantage from the changes set forth in Respondent's proposal.

8 106. Petitioner's members have at all times justifiably relied on Respondent's
9 representations and promises to provide the Sick Leave Buy-Back benefit as established in the
10 applicable memoranda of understanding.

11 107. Petitioner's members have relied on Respondent's promises and policies in utilizing
12 their respective sick leave benefits throughout their careers, thus fulfilling the requirements to be
13 entitled to a sick leave payout upon the maturation of the benefit, and are thus entitled to a payout of
14 their accrued sick leave at the time of their respective separations from employment.

15 108. Respondent has proposed no comparable new advantage to offset the disadvantage from
16 the changes set forth in its proposal.

17 WHEREFORE, Petitioner prays for the relief set forth below.

18 **FOURTH CAUSE OF ACTION**

19 **Anticipated Breach of Contract**
20 **(Declaratory Relief, CCP § 1060)**

21 109. Petitioner realleges and incorporates the allegations contained in paragraphs 1 through
22 108, inclusive, as though fully set forth herein.

23 110. A dispute has arisen and an actual controversy exists between Petitioner and
24 Respondent with respect to the following:

25 111. Article I, Section 9 of the California Constitution provides that a "law impairing the
26 obligation of contracts may not be passed."

27 112. The Supplemental Agreement between the parties explicitly states that "The City shall
28 pay to the VPOA for the benefit of its members \$333,333 on July 1, 2013; \$333,333 on July 1, 2013;

1 and \$333,334 on July 1, 2014”

2 113. By its last, best and final offer, the City has expressed its intention to unilaterally
3 eliminate its contractual obligation to Petitioner by vacating the final installment of the payment in
4 satisfaction of the bankruptcy claims. Petitioner denies that Respondent may deny or otherwise
5 eliminate its contractual obligation to Petitioner.

6 WHEREFORE, Petitioner prays for the relief set forth below.

7 **FIFTH CAUSE OF ACTION**

8 **Injunction to Maintain Status Quo and Prevent Irreparable Harm**
9 **(Injunctive Relief, CCP §§ 526, 527)**

10 114. Petitioner realleges and incorporates the allegations contained in paragraphs 1 through
11 113, inclusive, as though fully set forth herein.

12 115. Petitioner requests that the Court issue an injunction prohibiting the City from
13 unilaterally implementing any changes to the wages, hours, and other terms and conditions of
14 employment for VPOA members until the Court has been fully briefed on the merits of this action and
15 issues a decision.

16 116. Petitioner is informed and believes and alleges on that basis that there are a significant
17 number of active members who are confronted with the possibility that they will lose, on average,
18 approximately \$25,000 per year and an even greater amount in the form of lost retirement benefits as a
19 result of the City’s last, best and final offer. As a result, those active members are now contemplating
20 separating from employment in order to pursue alternative employment opportunities.

21 117. Petitioners are informed and believe that a sudden reduction in the Vallejo Police
22 Department workforce as a result of early retirements and employee personnel actions (e.g., voluntary
23 resignation) will impair the City’s ability to maintain essential services and expose remaining VPOA
24 members to unreasonable risks of harm in the course of fulfilling their duties.

25 118. Petitioner and its members have no adequate remedy at law for the injuries and
26 uncertainty threatened by a depleted workforce.

27 119. Injunctive relief is also necessary to preserve the status quo pending the determination
28 of the merits of this action. Preservation of the status quo will not harm Respondent as it has

1 acknowledged that it will be unable to fill even the existing vacancies within the Department. Thus,
2 Respondent will simply be required to maintain its historic practice until such time as the Court makes
3 a decision on the merits of this Petition after a full presentation by all parties, and after which
4 employees can make rational, measured decisions about their future.

5 WHEREFORE, Petitioner prays for the relief set forth below.

6
7 **PRAYER**

8 Petitioner respectfully requests that the court enter judgment for Petitioner and against
9 Respondent, its agents, and employees as follows:

10 1. Issue a peremptory writ of mandate in the first instance commanding Respondent
11 immediately to comply with the requirements of the MMBA by:

- 12 a. Rescinding the declaration of impasse and its last, best and final offer, and
13 directing Respondent to commence good faith negotiations with Petitioner to
14 establish terms for a successor MOU governing the wages, hours, and other terms
15 and conditions of employment for VPOA members; and
16 b. Refraining from discriminating against and interfering with the rights of Petitioner
17 and its individual members to engage in collective bargaining activities, or;

18 2. Issue an alternative writ of mandate in the first instance commanding Respondent to
19 take the actions set forth in paragraph 1 of this prayer or show cause why they should not be so
20 commanded, and thereafter issue a peremptory writ of mandate commanding Respondent to take the
21 actions set forth in paragraph 1 of this prayer;

22 3. For a declaration that:

- 23 a. Petitioner's members possess a vested constitutional right to a defined retirement
24 medical benefit that provides Petitioner's members an amount necessary to pay the
25 entire cost of the member's retirement medical premium up to the cost of the
26 Kaiser health plan. In accepting an offer of employment pursuant to the terms
27 establishing retirement benefits that existed at the commencement of their
28 employment, and continuing employment pursuant to the terms providing

1 additional retirement benefits, Petitioner's members have reasonably relied on
2 Respondent's promises and contractual agreements, both express and implied, to
3 pay for the cost of medical premium payments upon the member's retirement.
4 Respondent is required to continue the above benefit to Petitioner's members
5 without reduction unless a benefit of comparable value is provided.

6 b. Petitioner's members hired prior to February 1, 2009 possess a vested
7 constitutional right to be paid for accrued but unused sick leave at the time of their
8 separation from employment pursuant to the terms set forth in the 2000-2005 MOU
9 and the ensuing Supplemental Agreements. Petitioner's members hired prior to
10 February 1, 2009 further possess a vested constitutional right to continue to accrue
11 sick leave benefits in the manner established in the Supplemental Agreement, as
12 each member has made an "irrevocable" election to receive benefits in a manner
13 described therein. Respondent has provided Petitioner's members with a form of
14 deferred compensation to discourage the use of accrued sick leave, a benefit that
15 Petitioner's members have reasonably relied upon in the performance of their
16 duties. Petitioner's members have accepted and accrued benefits possessing an
17 ascertainable value which Respondent is required to continue unless and until
18 Respondent provides a benefit of comparable value.

19 c. Respondent's last, best and final offer impermissibly proposes to violate the
20 express terms of a binding, enforceable contractual agreement between the City and
21 the VPOA by voiding Respondent's debt obligation to issue payment to Petitioner
22 in the amount of \$333,334 on July 1, 2014.

23 4. A preliminary injunction prohibiting Respondent from unilaterally implementing any
24 changes to the existing wages, hours, and other terms and conditions of employment for VPOA
25 members until the Court has been fully briefed on the merits of this action and issues a decision;

26 5. For an award of attorneys fees as permitted by law and Section 12 of the January 28,
27 2009 Supplemental Agreement;

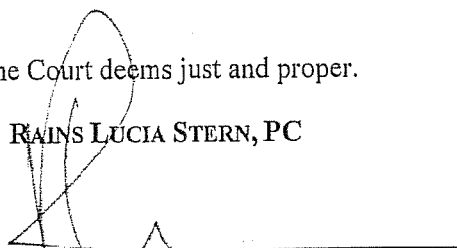
28 6. For costs of suit incurred in this action; and

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7. For such other and further relief as the Court deems just and proper.

Dated: October 15, 2013

RAINS LUCIA STERN, PC



By: Rockhe Lucia, Jr. Attorneys for
Petitioner Vallejo POA

VERIFICATION

1
2 I, Mathew Mustard, declare as follows:

3 1. I am the President of the Vallejo Police Officers Association.

4 2. I am familiar with the facts in the above-titled matter, and if necessary, I would be able
5 to offer true and accurate testimony regarding the same.

6 3. I verify each and every paragraph of the above-stated pleading as true and correct based
7 upon my personal knowledge of the above-referenced events, except where alleged by reference to
8 historical documentation provided in the attached exhibits, and if called upon to testify hereto, I could
9 and would do so competently.

10 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
11 declaration is true and correct to the best of my knowledge, and if called upon to testify thereto, I could
12 and would competently do so.

13
14 Executed on October 15, 2013 in Vallejo, California.

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17 Mathew Mustard
18 President, Vallejo Police Officers Association
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INDEX OF EXHIBITS

- Exhibit 1 2000-2010 Labor Agreements
- Exhibit 2 Council Communication dated January 27, 2009
- Exhibit 3 2009-2012 Supplemental Agreement
- Exhibit 4 Resolution No. 09-275 N.C
- Exhibit 5 FY 12/13 Budget
- Exhibit 6 FY 13/14 Budget
- Exhibit 7 Fishburne Letter dated September 17, 2013
- Exhibit 8 Rungis Impasse Letter dated September 19, 2013
- Exhibit 9 City Last, Best and Final Offer
- Exhibit 10 City Proposal from February 19, 2013
- Exhibit 11 Lucia Letter dated October 1, 2013
- Exhibit 12 Quintana Letter dated October 3, 2013
- Exhibit 13 FPPC Complaint
- Exhibit 14 Council Agenda for October 8, 2013
- Exhibit 15 Resolution No. 79-264 N.C
- Exhibit 16 Resolution No. 78-358 N.C.
- Exhibit 17 Bonnie Bogue Arbitration Award
- Exhibit 18 Resolution No. 88-486 N.C.
- Exhibit 19 Resolution No. 96-438 N.C.
- Exhibit 20 Council Communication dated November 19, 1996
- Exhibit 21 80-82 Memorandum of Understanding
- Exhibit 22 82-84 Memorandum of Understanding
- Exhibit 23 84-88 Memorandum of Understanding