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ELECTRONICALLY FILED
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County of San Diego
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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

5 Attorneys for Defendants
6 CITY OF SAN DIEGO AND ITS CITY COUNCIL

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

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – HALL OF JUSTICE**

10
11 THE PEOPLE OF THE STATE OF) Case No. 37-2019-00051308-CU-MC-CTL
CALIFORNIA *ex rel.* SAN DIEGO)
12 MUNICIPAL EMPLOYEES ASSOCIATION,) **DEFENDANTS CITY OF SAN DIEGO**
SAN DIEGO CITY FIREFIGHTERS LOCAL) **AND ITS CITY COUNCIL'S ANSWER**
13 145, IAFF, AFL-CIO, AFSCME LOCAL 127,) **TO PLAINTIFFS' VERIFIED**
AFL-CIO AND DEPUTY CITY ATTORNEYS) **COMPLAINT IN *QUO WARRANTO***
14 ASSOCIATION OF SAN DIEGO,)
15 Plaintiffs,) **[IMAGED FILE]**
16 v.) Dept.: 75
Judge: Hon. Richard E. L. Strauss
17 CITY OF SAN DIEGO AND ITS CITY) Action Date: September 27, 2019
COUNCIL,) Trial Date: None Set
18 Defendants.)
19

20 Defendants CITY OF SAN DIEGO and its CITY COUNCIL (collectively "City") hereby
21 answer the Verified Complaint in *Quo Warranto* (Complaint) filed by Plaintiffs THE PEOPLE
22 OF THE STATE OF CALIFORNIA *ex rel.* SAN DIEGO MUNICIPAL EMPLOYEES
23 ASSOCIATION, SAN DIEGO CITY FIREFIGHTERS LOCAL 145, IAFF, AFL-CIO,
24 AFSCME LOCAL 127, AFL-CIO and DEPUTY CITY ATTORNEYS ASSOCIATION OF
25 SAN DIEGO (collectively "Plaintiff-Relators") as follows:

26 **Introduction**

27 1. Answering Paragraph 1 of the Complaint, City responds as follows: The
28 allegations contained in the first sentence constitute Plaintiff-Relators' characterization of their

1 lawsuit and/or legal conclusions to which no response is required. City admits the allegation
2 contained in the second sentence.

3 2. The allegations contained in Paragraph 2 of the Complaint constitute Plaintiff-
4 Relators' characterization of their lawsuit, legal arguments, and/or legal conclusions to which no
5 response is required.

6 3. The allegations contained in Paragraph 3 of the Complaint constitute Plaintiff-
7 Relators' characterization of their lawsuit, legal arguments, and/or legal conclusions to which no
8 response is required.

9 4. Answering Paragraph 4 of the Complaint, City responds as follows: City admits
10 the allegation contained in the first sentence. The allegations contained in the second sentence
11 constitute Plaintiff-Relators' characterization of their lawsuit, legal arguments, and/or legal
12 conclusions to which no response is required. To the extent the second sentence describes,
13 characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such legal
14 authorities and/or opinions speak for themselves.

15 5. The allegations in Paragraph 5 of the Complaint constitute Plaintiff-Relators'
16 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
17 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
18 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
19 themselves.

20 **A Dispositive Determination Requiring Invalidation**
21 **of City's Proposition B Charter Amendments**
22 **Has Been Made By the California Supreme Court**

23 6. The allegations in Paragraph 6 of the Complaint constitute Plaintiff-Relators'
24 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
25 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
26 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
27 themselves.

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1 7. Answering Paragraph 7 of the Complaint, the City responds as follows: City
2 admits that *Boling v. Public Employment Relations Board*, 5 Cal. 5th 898 (2018) (*Boling I*)
3 reversed the Court of Appeal opinion in *Boling v. Public Employment Relations Board*, 10 Cal.
4 App. 5th 853 (2017). The remainder of the paragraph describes, characterizes, summarizes,
5 quotes, and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak
6 for themselves.

7 8. Answering Paragraph 8 of the Complaint, the City responds as follows: City
8 admits that by unanimous opinion the *Boling I* California Supreme Court reversed the Court of
9 Appeal *Boling v. Public Employment Relations Board*, 10 Cal. App. 5th 853 (2017) opinion in
10 favor of Plaintiff-Relators on their unfair practice charges. The remainder of the paragraph
11 describes, characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such
12 legal authorities and/or opinions speak for themselves.

13 9. Paragraph 9 of the Complaint describes, characterizes, summarizes, quotes, and/or
14 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
15 themselves.

16 10. The allegations in Paragraph 10 of the Complaint constitute Plaintiff-Relators'
17 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
18 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
19 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
20 themselves.

21 11. City admits the allegations contained in Paragraph 11 of the Complaint.

22 12. Answering Paragraph 12 of the Complaint, City responds as follows: City admits
23 that the Fourth District Court of Appeal upheld PERB's remedial "cease and desist" and "make-
24 whole" orders with modifications in *Boling v. Public Employment Relations Board v. City of San*
25 *Diego*, 33 Cal. App. 5th 376 (2019) (*Boling II*). Plaintiff-Relators' reference to Exhibit 6 is
26 vague, ambiguous, and unintelligible as City is unaware of any Exhibit, beyond the August 15,
27 2019, Letter Opinion No. 19-404 attached to Plaintiff-Relators' Complaint. City admits *Boling*
28 *II* upheld the PERB order quoted in the second sentence without modification. The remainder of

1 paragraph constitutes Plaintiff-Relators' characterization of their lawsuit, legal arguments, and/or
2 legal conclusions to which no response is required. To the extent the paragraph describes,
3 characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such legal
4 authorities and/or opinions speak for themselves.

5 13. The allegations in Paragraph 13 of the Complaint constitute Plaintiff-Relators'
6 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
7 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
8 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
9 themselves.

10 14. Answering Paragraph 14 of the Complaint, City responds as follows: City admits
11 that after the Proposition B charter amendments took effect, pursuant to the amendments, City
12 employees newly hired on or after July 20, 2012, except sworn police officers, are not able to
13 participate in the City's defined benefit pension plan. The remaining allegations in the paragraph
14 constitute Plaintiff-Relators' characterization of their lawsuit, legal arguments, and/or legal
15 conclusions to which no response is required.

16 15. The allegations in Paragraph 15 of the Complaint constitute Plaintiff-Relators'
17 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
18 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
19 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
20 themselves.

21 16. The allegations in Paragraph 16 of the Complaint constitute Plaintiff-Relators'
22 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
23 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
24 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
25 themselves.

26 **Parties**

27 17. City admits the allegations contained in Paragraph 17 of the Complaint.

28 18. City admits the allegations contained in Paragraph 18 of the Complaint.

1 19. Answering Paragraph 19 of the Complaint, City responds as follows: City admits
2 the allegations contained in the first and third sentences. Answering the second sentence, City
3 admits that the Plaintiff-Relators are the exclusive bargaining representatives for the City
4 employees they represent who provide services to the City's residents.

5 20. City admits the allegations contained in Paragraph 20 of the Complaint.

6 **City's MMBA Obligations**

7 21. The allegations in Paragraph 21 of the Complaint constitute Plaintiff-Relators'
8 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
9 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
10 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
11 themselves.

12 22. The allegations in Paragraph 22 of the Complaint constitute Plaintiff-Relators'
13 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
14 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
15 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
16 themselves.

17 23. Assuming the phrase "[a]t all relevant times" refers to relevant times prior to the
18 effective date of Proposition B, City admits the allegations contained in Paragraph 23 of the
19 Complaint.

20 24. The allegations in Paragraph 24 of the Complaint constitute Plaintiff-Relators'
21 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
22 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
23 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
24 themselves.

25 25. The allegations in Paragraph 25 of the Complaint constitute Plaintiff-Relators'
26 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
27 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
28 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for

1 themselves.

2 26. City admits the allegation contained in Paragraph 26. However, to the extent the
3 paragraph describes, characterizes, summarizes, quotes, and/or cites legal authorities and/or
4 opinions, such legal authorities and/or opinions speak for themselves.

5 27. The allegations in Paragraph 27 of the Complaint constitute Plaintiff-Relators'
6 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
7 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
8 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
9 themselves.

10 **Procedural Irregularity When Presenting Proposition B Charter Amendment to Voters**

11 28. Answering Paragraph 28 of the Complaint, City responds as follows: City admits
12 the allegations contained in the first sentence. As to the second sentence, City admits that there
13 were existing MOUs with Plaintiff-Relators establishing terms and conditions at the time O-
14 20127 was adopted and Proposition B was placed on the ballot. City also admits that Proposition
15 B eliminated defined benefit pensions administered by the San Diego City Employees'
16 Retirement System (SDCERS) for all new City Officials and employees, except police officers,
17 substituting a defined contribution 401(k)-type plan. Except as expressly admitted herein, City
18 denies any and all remain allegations.

19 29. City admits the allegations contained in Paragraph 29 of the Complaint.

20 30. City admits the allegations contained in Paragraph 30 of the Complaint.

21 31. The allegations in Paragraph 31 of the Complaint constitute Plaintiff-Relators'
22 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
23 is required.

24 **Unfair Practice Proceedings Before Public Employment Relations Board (PERB)**

25 32. City admits the allegations contained in Paragraph 32 of the Complaint.

26 33. City admits the allegations contained in Paragraph 33 of the Complaint.

27 34. Answering Paragraph 34 of the Complaint, City responds as follows: City admits
28 that on June 19, 2012, after Proposition B had been approved by the voters, the Fourth District

1 Court of Appeal granted Plaintiff-Relator San Diego Municipal Employees Association's
2 petition for writ of mandate, after briefing and oral argument, and ordered a stay of PERB
3 proceedings lifted so that PERB could exercise its exclusive initial jurisdiction to hear and decide
4 Plaintiff-Relators' unfair practice complaints seeking to invalidate Proposition B because they
5 alleged the City manipulated the citizen-initiative process to insulate the City from the meet and
6 confer process. The remaining allegations in the paragraph constitute Plaintiff-Relators'
7 characterization of their lawsuit, legal argument, and/or legal conclusions to which no response
8 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
9 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
10 themselves.

11 35. City admits the allegations contained in Paragraph 35 of the Complaint.

12 36. Answering Paragraph 36 of the Complaint, City responds as follows: City admits
13 the allegations contained in the first sentence. To the extent the remainder of the paragraph
14 describes, characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such
15 legal authorities and/or opinions speak for themselves.

16 37. Paragraph 37 of the Complaint describes, characterizes, summarizes, quotes,
17 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
18 themselves.

19 38. Paragraph 38 of the Complaint describes, characterizes, summarizes, quotes,
20 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
21 themselves.

22 39. City admits the allegations contained in Paragraph 39 of the Complaint.

23 40. Answering Paragraph 40 of the Complaint, City responds as follows: City admits
24 the allegations contained in the first sentence. The remainder of the paragraph describes,
25 characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such legal
26 authorities and/or opinions speak for themselves.

27 41. Paragraph 41 of the Complaint describes, characterizes, summarizes, quotes,
28 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for

1 themselves.

2 42. Paragraph 42 of the Complaint describes, characterizes, summarizes, quotes,
3 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
4 themselves.

5 43. Paragraph 43 of the Complaint describes, characterizes, summarizes, quotes,
6 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
7 themselves.

8 44. Paragraph 44 of the Complaint describes, characterizes, summarizes, quotes,
9 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
10 themselves.

11 45. Paragraph 45 of the Complaint describes, characterizes, summarizes, quotes,
12 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
13 themselves.

14 46. Paragraph 46 of the Complaint describes, characterizes, summarizes, quotes,
15 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
16 themselves.

17 47. Paragraph 47 of the Complaint describes, characterizes, summarizes, quotes,
18 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
19 themselves.

20 48. Paragraph 48 of the Complaint describes, characterizes, summarizes, quotes,
21 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
22 themselves.

23 49. Paragraph 49 of the Complaint describes, characterizes, summarizes, quotes,
24 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
25 themselves.

26 50. Paragraph 50 of the Complaint describes, characterizes, summarizes, quotes,
27 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
28 themselves.

1 51. Paragraph 51 of the Complaint describes, characterizes, summarizes, quotes,
2 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
3 themselves.

4 52. Paragraph 52 of the Complaint describes, characterizes, summarizes, quotes,
5 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
6 themselves.

7 53. Paragraph 53 of the Complaint describes, characterizes, summarizes, quotes,
8 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
9 themselves.

10 54. City admits the allegations contained in Paragraph 54 of the Complaint.

11 **On Review, A Unanimous California Supreme Court Upheld PERB's Decision**

12 55. City admits the allegations contained in Paragraph 55 of the Complaint.

13 56. Answering Paragraph 56 of the Complaint, City responds as follows: City admits
14 the allegations contained in the first sentence. The remainder of the paragraph describes,
15 characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such legal
16 authorities and/or opinions speak for themselves.

17 57. City admits the allegations contained in Paragraph 57 of the Complaint.

18 **PERB's Factual Findings Are Conclusive**

19 58. Paragraph 58 of the Complaint describes, characterizes, summarizes, quotes,
20 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
21 themselves.

22 59. Paragraph 59 of the Complaint describes, characterizes, summarizes, quotes,
23 and/or cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
24 themselves.

25 60. The allegations in Paragraph 60 of the Complaint constitute Plaintiff-Relators'
26 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
27 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or

28 \ \ \

1 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
2 themselves.

3 **Court's Must Defer to PERB's Administrative Competence**

4 **When Assuring A Remedy For Violation of the MMBA Effectuates State Policy**

5 61. City admits the allegations contained in Paragraph 61 of the Complaint.

6 62. The allegations in Paragraph 62 of the Complaint constitute Plaintiff-Relators'
7 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
8 is required. To the extent the paragraph describes, characterizes, summarizes, quotes, and/or
9 cites legal authorities and/or opinions, such legal authorities and/or opinions speak for
10 themselves.

11 63. Answering Paragraph 63 of the Complaint, City responds as follows: City admits
12 the allegations contained in the first sentence. The remaining allegations in the paragraph
13 constitute Plaintiff-Relators' characterization of their lawsuit, legal arguments, and/or legal
14 conclusions to which no response is required. To the extent the paragraph describes,
15 characterizes, summarizes, quotes, and/or cites legal authorities and/or opinions, such legal
16 authorities and/or opinions speak for themselves.

17 64. The allegations in Paragraph 64 of the Complaint constitute Plaintiff-Relators'
18 characterization of their lawsuit, legal arguments, and/or legal conclusions to which no response
19 is required.

20 **Prayer**

21 65. Answering the Prayer, City admits Plaintiff-Relators are entitled to a judgment
22 determining that the **Proposition B charter amendments added to the San Diego City Charter**
23 **effective July 20, 2012, are invalid, null and void and of no legal effect.** City also admits
24 Plaintiff-Relators are entitled to issuance of a judicial writ in *quo warranto* under California
25 Code of Civil Procedure section 803 commanding the Defendant City and its City Council to
26 take all necessary steps to comply a Court judgment striking the invalid provisions of Proposition

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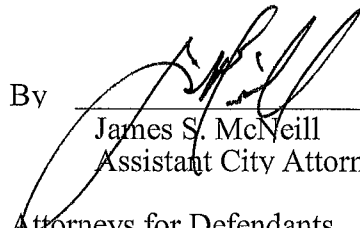
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B from its charter and conforming all subsequent enactments accordingly. Except as expressly admitted, City denies Plaintiff-Relators are entitled to any further relief.

Dated: November 13, 2019

MARA W. ELLIOTT, City Attorney

By



James S. McNeill
Assistant City Attorney

Attorneys for Defendants
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COUNCIL

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6 CITY OF SAN DIEGO AND ITS CITY COUNCIL

7 **DECLARATION OF**
8 **SERVICE**

Case Name: *The People of the State of California, et al.*
v. City of San Diego, et al.
Case No. 37-2019-00051308-CU-MC-CTL
Judge: Hon. Richard E. L. Strauss /Dept. 75
[IMAGED FILE]

10 I, the undersigned declare that I am, and was at the time of service of the papers herein
11 referred to, over the age of eighteen years and not a party to the action; and I am employed in the
12 County of San Diego, California, in which county the within-mentioned service occurred. My
business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

13 I served the following document(s):

- 14 • **DEFENDANTS CITY OF SAN DIEGO AND ITS CITY COUNCIL'S**
15 **ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT IN *QUO***
WARRANTO

16 on the following interested parties in this action as follows:

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Attorneys for Intervenors
*April Boling, T.J. Zane & Steven
Williams*

18
19 [] **(BY MAIL)** I served the individual named by placing the documents in a sealed
envelope. I then placed it for collection and mailing with the United States Postal Service
20 this same day, at my address shown above, following ordinary business practices.

21 I further declare that I am readily familiar with the business' practice for collection and
processing of correspondence for mailing with the United States Postal Service; and that
22 the correspondence shall be deposited with the United States Postal Service this same day
in the ordinary course of business.

23 [XX] **(BY EMAIL)** Pursuant to agreement between the parties, I served the above listed
documents by transmitting via email to the internet address listed above. I did not receive
24 within a reasonable period of time after the transmission any electronic message or other
indication that the transmission was unsuccessful.

25
26 [] **(BY ELECTRONIC SERVICE)** By submitting an electronic version of the
document(s) to One Legal, LLC through the user interface at www.onelegal.com. [CCP
27 § 1010.6]
28

1 [] **(BY FAX)** On _____, I transmitted the above-described document by
2 facsimile machine to the listed fax number. The transmission originated from facsimile
3 phone number (619) 533-5856 and was reported as complete and without error. The
facsimile machine properly issued a transmission report, a copy of which is attached
hereto. [CCP section 1013(e); CRC Rule 2008].

4 [] **(BY OVERNIGHT DELIVERY)** I caused the envelope(s) to be delivered overnight
5 via an overnight delivery service in lieu of delivery by mail to the addressee(s).
[CCP section 1013]

6 [] **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal
7 service on this date, _____, **as to the law office of** _____
8 _____ at the address indicated above. A certificate of service signed
by Nationwide Legal will be filed with the Court upon request. [CCP § 1011]

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed on this **18th** day of **November 2019**, at San Diego,
11 California.

12
13
14 
15 _____
16 Marci Bailey
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