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Attorneys for Respondent COUNTY OF PLACER  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF PLACER**

10 **PLACER COUNTY DEPUTY**  
11 **SHERIFFS' ASSOCIATION and NOAH**  
12 **FREDERITO,**

Petitioners,

v.

14 **COUNTY OF PLACER,**

15 Respondent.  
16

Case No.: S-CV-0047770

Complaint Filed: December 21, 2021

**RESPONDENT'S NOTICE OF MOTION AND  
MOTION TO STRIKE PORTIONS OF  
PETITIONERS' AMENDED VERIFIED  
PETITION FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY RELIEF**

Date: March 3, 2022  
Time: 8:30 a.m.  
Dept.: 42

(\*Exempt from filing fees pursuant to Gov.  
Code, § 6103.)

19  
20  
21 TO PETITIONERS AND THEIR ATTORNEY OF RECORD:

22 PLEASE TAKE NOTICE that on March 3, 2022, at 8:30 a.m., or as soon thereafter as the  
23 matter may be heard in Department 42 of the above-entitled Court, located at 10820 Justice  
24 Center Drive, Roseville, California, Respondent County of Placer (hereinafter "Respondent" or  
25 "County") will and hereby does move to strike parts of the Amended Verified Petition for Writ of  
26 Mandate and Complaint for Declaratory Relief ("Petition") filed by Petitioners Placer County  
27 Deputy Sheriffs' Association (hereinafter "DSA") and Noah Frederito (collectively hereinafter  
28

1 “Petitioners”) on the grounds set forth in the attached Motion to Strike and Memorandum of  
2 Points and Authorities.

3 This Motion to Strike is based on this Notice; the Memorandum of Points and Authorities;  
4 the Declaration of Lars T. Reed (“Reed Decl.”) and Request for Judicial Notice filed and served  
5 concurrently herewith; all pleadings, papers, and records on file herein; and any such further  
6 matters on evidence that may be presented at or before the hearing.

7 **Statutory Meet & Confer**

8 Pursuant to Code of Civil Procedure section 435.5, and Local Rule 20.2.1, counsel for the  
9 parties have met and conferred by telephone regarding the grounds for the County’s Motion to  
10 Strike. The parties were not able reach an agreement resolving the objections raised in the  
11 County’s Motion to Strike. (Reed Decl. at ¶¶ 3-9.)

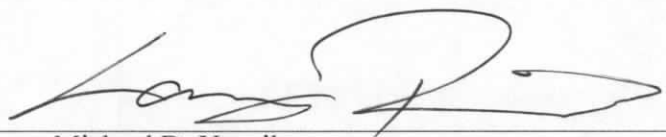
12 **Local Rule 20.2.3 Notice**

13 Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on the  
14 court day before the hearing. The tentative ruling will be available after 12:00 noon as an audio  
15 recording accessible at (916) 408-6480; the tentative ruling will also be available at the court’s  
16 website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on the  
17 matter and no hearing will be held unless oral argument is timely requested or the tentative ruling  
18 indicates otherwise. Requests for oral argument must be made by calling (916) 408-6481 no later  
19 than 4:00 p.m. on the court day prior to the hearing.

20  
21 Dated: February 2, 2022

LIEBERT CASSIDY WHITMORE

22  
23  
24 By:

  
25 Michael D. Youril  
26 Lars T. Reed  
27 Attorneys for Respondent  
28 COUNTY OF PLACER

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MOTION TO STRIKE

Defendants' Motion to Strike is made pursuant to Code of Civil Procedure sections 435 and 436, and on the grounds that the following portions of the Petition are irrelevant, improper, or not filed in conformity with the laws of this state:

1. Paragraphs 10 through 63, inclusive (page 4, line 1, through page 10, line 10).

Dated: February 2, 2022

LIEBERT CASSIDY WHITMORE

By:



Michael D. Youril  
Lars T. Reed  
Attorneys for Respondent  
COUNTY OF PLACER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 21, 2021, Petitioners Placer County Deputy Sheriffs’ Association (“DSA”) and Noah Frederito (“Frederito”) (collectively, “Petitioners”) filed a Verified Petition for Writ of  
4 Mandate and Complaint for Declaratory Relief against Respondent County of Placer (“County”  
5 or “Respondent”). On January 21, 2022, Petitioners filed an Amended Petition. Petitioners bring  
6 the following causes of action against the County: (1) Violation of Elections Code § 9125;  
7 (2) Violation of Placer County Code § 3.12.040; and (3) Request for Declaratory Relief.  
8

9 Petitioners’ claims arise from the actions of the County Board of Supervisors at two  
10 meetings in September of 2021. In short, Petitioners argue that the Board’s amendment of County  
11 Code section 3.12.040 – a County ordinance that mirrored the salary-setting terms of a 1976  
12 ballot initiative known as “Measure F” – violated the Elections Code because the County did not  
13 seek prior voter approval. Petitioners also claim – on the apparent assumption that the repeal was  
14 unlawful and the old ordinance was still in effect – that the Board’s subsequent imposition of pay  
15 raises for deputy sheriffs violated the County ordinance.

16 In addition to facts relevant to these causes of action, Petitioners include a plethora of  
17 additional and extraneous allegations that include: extensive description of the parties’ bargaining  
18 history; details regarding the parties’ most recent collective bargaining and subsequent impasse  
19 resolution proceedings the parties engaged in pursuant to the Meyers-Milias-Brown Act;  
20 extensive history regarding the DSA’s own past efforts to repeal the salary-setting ordinance; and  
21 unsupported conjecture on the part of the Petitioners. The Court should strike these extraneous  
22 allegations, which are irrelevant and improper because they are not pertinent to Petitioners’  
23 causes of action.<sup>1</sup> These allegations serve only to confuse the issues at hand by introducing  
24 factual assertions that have no bearing on the legal questions presented by the Petition, while also  
25 portraying the County in an unflattering light. Striking these allegations would facilitate a prompt  
26 adjudication on the merits of this case by focusing the pleadings on only relevant facts.

27 \_\_\_\_\_  
28 <sup>1</sup> The County notes that the County’s demurrer, filed concurrently herewith, could render moot this motion to strike.

1 **II. ARGUMENT**

2 **A. THE COURT MAY STRIKE PORTIONS OF THE COMPLAINT THAT**  
3 **ARE IRRELEVANT, FALSE, IMPROPER, OR NOT FILED IN**  
4 **CONFORMITY WITH THE LAWS OF THIS STATE**

5 Code of Civil Procedure section 436 allows the Court to strike any irrelevant, false or  
6 improper matter asserted in any pleading or to strike any part of a pleading that is not drawn or  
7 filed in conformity with the laws of this state. The grounds for the motion to strike must appear  
8 on the face of the pleading under attack or from a matter that is subject to judicial notice. (Code  
9 Civ. Proc. § 437, subd. (a).)

10 “Irrelevant matter” includes any allegation that is not essential to the statement of a claim  
11 or defense, or an allegation that is neither pertinent to nor supported by an otherwise sufficient  
12 claim or defense. (Code Civ. Proc. § 431.10.) Similarly, the term “relevant” as used in the  
13 California Evidence Code refers to evidence “having any tendency in reason to prove or disprove  
14 any disputed fact that is of consequence to the determination of the action.” (Evid. Code § 210.)

15 **B. ALLEGATIONS AND REFERENCES TO EVENTS THAT ARE NOT**  
16 **PERTINENT TO PETITIONERS’ CAUSES OF ACTION MUST BE**  
17 **STRICKEN BECAUSE THEY ARE IRRELEVANT**

18 The bulk of the Petition consists of factual allegations, arguments, and conjecture that is  
19 simply not relevant to resolution of this case. Petitioners assert two substantive causes of relief  
20 (plus a derivative request for declaratory relief): First, Petitioners allege that the County’s repeal  
21 of County Code section 3.12.040 without voter approval violated Elections Code section 9125.  
22 Second, Petitioners allege that the County ordinance enacting changes to deputy sheriffs’  
23 compensation violated County Code section 3.12.040. Both of these causes of action can be  
24 adjudicated on a very simple set of facts that are essentially undisputed.

25 Specifically, the only facts relevant to adjudication of Petitioners’ Elections Code claim –  
26 including consideration of the County’s defenses<sup>2</sup> – are as follows: (1) the enactment of Measure

27 \_\_\_\_\_  
28 <sup>2</sup> The County’s substantive opposition to the legal merits of Petitioners’ causes of action are set forth in the County’s demurrer, which is filed concurrently herewith.

1 F in 1976 and the specific language of the ballot measure; (2) the County’s subsequent  
2 codification of Measure F’s salary-setting formula in the County Code at Section 3.12.040, (3) the  
3 enactment of the Placer County Charter in 1980 and the language of the Charter; and (4) the  
4 County’s repeal and replacement of Section 3.12.040 on September 28, 2021. As for Petitioners’  
5 claim that the County violated County Code section 3.12.040, that cause of action is entirely  
6 dependent on a ruling that the County’s repeal of section 3.12.040 was unlawful; assuming  
7 *arguendo* that Petitioners prevail on that argument, the only additional fact required to adjudicate  
8 the claim is the fact that on September 28, 2021, *after* voting to repeal Section 3.12.040, the  
9 Board of Supervisors voted to impose a salary increase that was higher than the Measure F salary  
10 formula would have prescribed.

11           These necessary facts are addressed by paragraphs 1-9 and 64-75 of the Petition. By  
12 contrast, paragraphs 10-63 of the Petition are entirely irrelevant. More than simply being  
13 *unnecessary* to evaluating Petitioners’ legal claims, the facts alleged in paragraphs 10-63 of the  
14 Petition have no probative value whatsoever to the causes of action raised in the petition. As  
15 outlined in further detail below, these additional allegations are not essential to the statement of  
16 Petitioners’ claims, are neither pertinent to nor supported by an otherwise sufficient claim, and  
17 have no tendency to prove or disprove any factual questions actually material to their action.

18           The County acknowledges that these 64 paragraphs cover a range of different subjects.  
19 For the sake of facilitating a thorough assessment of their relevance, the following sections set  
20 forth the County’s objections to the Petitioners’ extraneous allegations, grouped by subject.  
21 However, the County reiterates that the same underlying objection applies to each and every one  
22 of the paragraphs the County seeks to strike: They are all entirely irrelevant to the legal questions  
23 at hand and serve little purpose other than to portray the County in an unflattering light and  
24 confuse the factual record before the Court.

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**1. Prior representations or public statements by the County are not relevant to whether the County had the legal authority to repeal Section 3.12.040.**

Paragraphs 10, 11, 13, 30, and 38-41 of the Petition contain allegations regarding prior representations and public statements allegedly made by County representatives regarding the validity and legal status of Measure F. Whether or not the alleged statements were made – or whether or not the Petition accurately describes them – representations and statements by County officials are not relevant to determining: (1) whether the County in fact had the legal authority to repeal Section 3.12.040; or (2) whether the County’s subsequent pay raise was lawful.

**2. Prior initiative attempts to repeal Measure F are not relevant to whether Measure F was legally valid in the first place.**

Paragraphs 12, 14, and 15 of the Petition contain allegations about prior (failed) ballot initiatives attempting to repeal Placer County Code section 3.12.040. Even assuming these allegations are accurate, a vote of the electorate *not* to repeal an ordinance has no probative value in determining whether the original ordinance was valid and enforceable, or whether the County had the legal authority to repeal it. These allegations are similarly not relevant to determining whether the County’s imposed pay raise was lawful.

**3. The DSA’s subjective motivations are not relevant to whether the County had the legal authority to repeal Section 3.12.040.**

Paragraph 16 simply alleges that the DSA “accepted the judgement of the voters” with respect to its failed attempt to repeal Section 3.12.040 in 2006. As a private, non-governmental entity, the DSA’s decision to forgo further attempts to repeal Section 3.12.040 – for any reason – is entirely irrelevant to whether that ordinance reflected a valid and enforceable ballot initiative in the first place or whether the County had the legal authority to repeal Section 3.12.040, and is similarly irrelevant to whether the County’s subsequent pay raise was lawful.

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**4. The parties’ past practice of wage increases is not relevant to whether the County had the legal authority to repeal Section 3.12.040 or unilaterally impose pay raises.**

Paragraphs 17-19 and paragraph 21 of the Petition contain allegations regarding the parties’ past practice of enacting salary increases consistent with Measure F. The California Constitution and the Placer County Charter both give the County Board of Supervisors broad discretion to set compensation for County employees, subject to collective bargaining pursuant to the Meyers-Milias-Brown Act. (Cal. Const., art. XI, §§ 1 & 4; Placer County Charter § 302). Allegations that the County in fact provided pay increases consistent with the formula specified by Section 3.12.040 – either unilaterally or by agreement with the DSA – have no probative value in determining whether a ballot initiative *compelling* those raises is legally valid. Accordingly, those allegations are not relevant to determining whether the County had the legal authority to repeal Section 3.12.040, or whether the subsequent pay raise was lawful.

**5. Prior unchallenged amendments to Section 3.12.040 are not relevant to whether the County had the legal authority to repeal that ordinance.**

Paragraph 20 of the Petition contains allegations regarding a prior amendment to County Code section 3.12.040 that did not affect the salary-setting formula for deputy sheriffs. The Petition does not allege that either the DSA or any other party ever challenged the validity of that prior amendment to the ordinance, nor that any court or administrative body have ever ruled on its validity. As such, the mere fact that the ordinance was previously amended has no probative value to determining whether Measure F was a valid and enforceable ballot initiative in the first place, or whether the County had the legal authority to repeal Section 3.12.040. It is similarly irrelevant to determining whether the County’s subsequent imposition of pay raises was lawful.

**6. Unsupported speculation about the County’s motives is not relevant to whether the County had the legal authority to repeal Section 3.12.040.**

Paragraphs 22 and 23 of the Petition consist of unsupported speculation regarding the County’s motives for repealing Section 3.12.040 and the County’s legal position regarding its authority to do so. Even assuming, for the sake of argument only, that Petitioners’ speculation is



1 accurate, neither the County’s motives nor the County’s legal position with respect to the repeal  
2 of Section 3.12.040 are probative of whether the County in fact had the authority to repeal the  
3 ordinance, nor are they relevant to whether the County’s imposed pay raise was lawful.

4 **7. The County’s practices regarding compensation for members of the**  
5 **Board of Supervisors are not relevant to whether the County had the**  
6 **legal authority to repeal Section 3.12.040.**

7 Paragraph 24 concerns the County’s policy for determining compensation for members of  
8 the County Board of Supervisors. Both the state constitution and the County Charter give the  
9 Board of Supervisors broad discretion in setting compensation for members of the Board itself.  
10 (Cal. Const., art. XI, § 1; Placer County Charter § 302.) Moreover, Measure F does not even  
11 purport to affect compensation for members of the Board of Supervisors. (Petition at ¶ 5;  
12 County’s Request for Judicial Notice, Exhibit B.) Accordingly, whatever policy the County may  
13 have for setting compensation for Board members is simply not relevant to determining whether  
14 the County had the authority to repeal Section 3.12.040, nor whether the County’s subsequent  
15 imposition of pay raises was lawful.

16 **8. The parties’ collective bargaining history is not relevant to whether the**  
17 **County had the legal authority to repeal Section 3.12.040.**

18 Paragraphs 25-34, 47-48, and 52-53 of the Petition contain allegations regarding the  
19 parties’ most recent collective bargaining negotiations beginning in 2018 and leading up to a  
20 declaration of impasse. Again, the California Constitution and the Placer County Charter both  
21 give the County Board of Supervisors broad discretion to set compensation for County  
22 employees, subject to collective bargaining pursuant to the Meyers-Milias-Brown Act. (Cal.  
23 Const., art. XI, §§ 1 & 4; Placer County Charter § 302; Gov. Code § 3500 *et seq.*). Whatever the  
24 parties’ prior bargaining history, including whether the parties’ past practice was consistent with  
25 the Measure F formula, or whether the parties ever proposed eliminating the Measure F formula,  
26 the parties’ negotiations are simply not relevant to determining whether the County had the legal  
27 authority to repeal Section 3.12.040. They are also not relevant to determining whether the  
28 County’s imposed pay raise was lawful.

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**9. The parties’ participation in statutory impasse resolution factfinding procedures is not relevant to whether the County had the legal authority to repeal Section 3.12.040.**

Paragraphs 35-37 and 58-63 contain allegations regarding a statutory factfinding proceeding the parties participated in following the negotiation impasse. A factfinding is an impasse resolution procedure, conducted pursuant to the Meyers-Milias-Brown Act, resulting in a report containing recommended terms of settlement – which are advisory only – in order to facilitate a negotiated agreement between the parties. (Gov. Code § 3505.4; Gov. Code § 3505.5.)

The parties’ participation in this process, and any advisory recommendations resulting from the process, are not relevant to determining the legal question of whether the County had authority to repeal Section 3.12.040, or whether the County’s subsequent pay raise was lawful.

**10. The procedural history of an administrative proceeding pending before PERB is not relevant to whether the County had the legal authority to repeal Section 3.12.040.**

Paragraphs 42-45 of the Petition contain allegations regarding the DSA’s filing of an unfair practice charge before the Public Employment Relations Board (“PERB”) and the County’s response. PERB has jurisdiction over the administration and enforcement of California’s public sector labor relations laws. (See *San Diego Municipal Employees Assn. v. Superior Court* (2012) 206 Cal.App.4th 1447, 1456; Gov. Code § 3509.) But PERB’s authority is limited to what is “reasonably necessary to effectuate the administrative agency’s primary, legitimate regulatory purposes.” (*City of San Diego* (2015) PERB Decision No. 2464-M, p. 42, [quoting *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 359.]

Accordingly, PERB does *not* have jurisdiction over alleged violations of the Elections Code, alleged violations of voter-enacted ballot initiatives, alleged violations of the Placer County Code, nor alleged violations of the electorate’s constitutional right to initiative. (See also *Los Angeles Unified School District* (1990) PERB Decision No. 835 [PERB has no authority to enforce constitutional protections].) As such, allegations regarding administrative proceedings currently pending before PERB have no probative value to whether the County had the legal

1 authority to repeal Section 3.12.040, nor to whether the County’s subsequent pay raise was  
2 lawful.

3 **11. Unsupported speculation about the County’s motives in making**  
4 **negotiation proposals is not relevant to whether the County had the**  
5 **legal authority to repeal Section 3.12.040.**

6 Paragraph 46 and paragraphs 49-50 consist of further unsupported speculation regarding  
7 the County’s motives. Specifically, the County’s motives for making certain proposals during  
8 collective bargaining. Again, even assuming for the sake of argument that Petitioners’ speculation  
9 is accurate, the County’s motives are simply not probative to whether the County had authority to  
10 repeal Section 3.12.040, nor to the derivative question of whether the County’s imposition of pay  
11 raises was lawful.

12 **12. The County’s negotiations with another bargaining unit are not**  
13 **relevant to whether the County had the legal authority to repeal**  
14 **Section 3.12.040.**

15 Paragraph 51 of the Petition contains allegations regarding the County’s negotiations with  
16 another County bargaining unit and subsequent implementation of salary changes for that  
17 bargaining unit. As discussed in sections 7 and 8 above, neither collective bargaining history nor  
18 the parties’ past practices for implementing pay raises are relevant to the legal questions at issue  
19 in this case: whether the County had the legal authority to repeal Section 3.12.040, and whether  
20 the County’s subsequent imposed pay raise for DSA-represented employees was lawful.

21 **13. The County’s efforts to meet and confer over the proposed repeal of**  
22 **Section 3.12.040 are not relevant to whether the County had the legal**  
23 **authority to repeal that ordinance.**

24 Paragraphs 54-57 of the Petition contain allegations regarding the County’s attempts to  
25 meet and confer with the DSA over its proposed repeal of Section 3.12.040. The Petition does not  
26 allege a cause of action for failure to meet and confer or a cause of action for bargaining in bad  
27 faith. Nor would such causes of action be proper, given that PERB has exclusive initial  
28 jurisdiction over alleged violations of the Meyers-Milias-Brown Act. (Gov. Code § 3509.)

1 Whether or not the County had an obligation under the MMBA to meet and confer over the  
2 proposed repeal of Section 3.12.040, the County's efforts to engage in bargaining are not relevant  
3 to whether the County had the underlying authority to execute the proposed repeal (with or  
4 without negotiated agreement). Accordingly, they are also not relevant to whether the County's  
5 imposed pay raise was lawful.

6 **C. LEAVE TO AMEND WOULD BE FUTILE AND SHOULD BE DENIED**

7 Although the courts have adopted a liberal policy in favor of allowing amendments to  
8 defective pleadings, leave to amend is still only proper where the defect in question is "capable of  
9 cure." (See *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.) Here, the portions of the  
10 Petition the County seeks to strike are not merely defective for some technical procedural reason  
11 such as an untimely filing or omission of counsel's signature; rather, the challenged allegations  
12 relate to factual matters that are entirely irrelevant to the legal causes of actions set forth in the  
13 Petition. Accordingly, there is no reasonable possibility that the challenged portions of the  
14 Petition could be amended to cure their defect, and the court should grant the County's motion to  
15 strike without leave to amend the stricken portions.<sup>3</sup>


16 **III. CONCLUSION**

17 For the foregoing reasons, this Court should grant in its entirety Respondent's motion to  
18 strike portions of the Petition, without leave to amend the stricken portions.

19 Dated: February 2, 2022

LIEBERT CASSIDY WHITMORE

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21  
22 By:

  
23 Michael D. Youril  
24 Lars T. Reed  
25 Attorneys for Respondent  
26 COUNTY OF PLACER

26 <sup>3</sup> The County also notes that it is not seeking to strike the operative causes of action or the factual  
27 allegations that are actually relevant thereto. Thus, unless the Court *also* sustains the County's  
28 demurrer, granting the County's motion to strike in full without leave to amend would *not*  
constitute a "drastic step which leads to complete termination of the pleader's action." (See  
*Vaccaro, supra*, 63 Cal.App.4th at 768.)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF PLACER**

3 I am employed in the County of Fresno, State of California. I am over the age of 18 and  
4 not a party to the within action; my business address is: **5250 N. Palm Ave., Suite 310, Fresno,**  
5 **CA 93704.**

6 On **February 2, 2022**, I served the foregoing document(s) described as  
7 **RESPONDENT’S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF**  
8 **PETITIONERS’ AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND**  
9 **COMPLAINT FOR DECLARATORY RELIEF** in the manner checked below on all interested  
10 parties in this action addressed as follows:

11 David E. Mastagni  
12 Taylor Davies-Mahaffey  
13 Mastagni Holstedt, APC  
14 1912 I Street  
15 Sacramento, California 95811  
16 email: davidm@mastagni.com  
17 tdavies-mahaffey@mastagni.com

18  **(BY U.S. MAIL)** I am “readily familiar” with the firm’s practice of collection and  
19 processing correspondence for mailing. Under that practice it would be deposited with  
20 the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno,  
21 California, in the ordinary course of business. I am aware that on motion of the party  
22 served, service is presumed invalid if postal cancellation date or postage meter date is  
23 more than one day after date of deposit for mailing in affidavit.

24 Executed on **February 2, 2022**, at Sacramento, California.

25 I declare under penalty of perjury under the laws of the State of California that the  
26 foregoing is true and correct.

27   
28 \_\_\_\_\_  
Constance Dewey