

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael D. Youril, Bar No. 285591
myouril@lcwlegal.com
Lars T. Reed, Bar No. 318807
lreed@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704
Telephone: 559.256.7800
Facsimile: 559.449.4535

Attorneys for Respondent COUNTY OF PLACER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

PLACER COUNTY DEPUTY
SHERIFFS' ASSOCIATION and NOAH
FREDERITO,

Petitioners,

v.

COUNTY OF PLACER,

Respondent.

Case No.: S-CV-0047770

**RESPONDENT'S REPLY TO PETITIONER'S
OPPOSITION TO RESPONDENT'S MOTION
TO STRIKE**

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
02/24/2022 at 09:39:15 PM
By: Olivia C Lucatuorto
Deputy Clerk

1 **I. INTRODUCTION**

2 The County moved to strike various portions of the Petition for the simple reason that – in
3 addition to facts relevant to their causes of action – Petitioners include a large amount of
4 unnecessary factual allegations. The causes of action alleged are that the County violated
5 Elections Code section 9125 by repealing County Code section 3.12.040 and violated that same
6 ordinance by imposing salary increases on DSA members above what the ordinance would
7 provide. These claims ultimately boil down to whether or not Section 3.12.040 reflects a valid
8 and enforceable initiative ordinance. Petitioners’ extraneous allegations about bargaining history,
9 failed ballot measures, the parties’ motivations, and other topics are neither relevant nor pertinent
10 to Petitioners’ causes of action, and serve only to confuse the issues at hand by raising a host of
11 tangential grievances. The arguments in Petitioners’ Opposition to the Motion to Strike merely
12 confirm that the disputed allegations are irrelevant to Petitioners’ causes of action. This Court
13 should grant the County’s motion to strike in its entirety in order to focus the pleadings on the
14 pertinent factual allegations, which will facilitate a prompt adjudication on the merits of the case.

15 **II. ARGUMENT**

16 **A. THE COUNTY COMPLIED WITH ITS STATUTORY OBLIGATION TO**
17 **MEET AND CONFER OVER ITS MOTION TO STRIKE.**

18 The Opposition alleges that the County failed to make a good faith attempt to meet and
19 confer over its motion to strike. Petitioners’ discussion is replete with blatant misrepresentations
20 of the parties’ meet and confer efforts. For instance, Petitioners describe the telephone call
21 between the parties’ counsel on January 12, 2022, as a “very brief conversation.” In fact, the
22 phone call lasted just under an hour. (Declaration of Lars Reed in Support of Reply [“Reed
23 Decl.”] ¶ 3.) During the nearly hour-long conversation, the parties’ counsel engaged in extended
24 discussion regarding the County’s concern that each one of the disputed paragraphs were
25 irrelevant to the legal questions raised by the Petition. (Reed Decl. ¶¶ 5-6.) Petitioners’ counsel
26 proposed various theories of relevance – the same ones described in the Opposition – and the
27 County’s counsel explained why each asserted theory of relevance was unrelated to the causes of
28 action set forth in the Petition. (*Ibid.*) The parties’ counsel spoke again on January 28, 2022, after

1 Petitioners filed their amended petition. (Reed Decl. ¶ 8.) Given that the vast majority of the
2 remaining disputed paragraphs were entirely unchanged, neither party’s counsel had anything
3 new to add and the second phone call was significantly shorter. (Reed Decl. ¶¶ 9-10.) Although
4 the parties did not reach an informal resolution, both parties’ counsel engaged in a serious effort
5 to discuss the objections, comparing viewpoints, and deliberating. (Reed Decl. ¶ 11.)

6 **B. THE MATERIAL THE COUNTY SEEKS TO STRIKE IS IRRELEVANT.**

7 **1. Petitioners’ general theories of relevance are inapplicable.**

8 **a. Attorneys’ fees**

9 The Opposition asserts that each and every challenged paragraph is relevant to a request
10 for attorneys’ fees. However, this is not a reason for keeping the disputed allegations *in the*
11 *pleadings*; a motion for attorney fees is incidental to the cause of action and can rely on evidence
12 outside the merits of the case (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576-77;
13 *Active Properties, LLC v. Cabrera* (2016) 6 Cal.App.5th Supp. 6, 14-15.). Moreover, the majority
14 of the challenged paragraphs appear to allege a failure to negotiate in good faith, which falls
15 within the exclusive jurisdiction of the Public Employment Relations Board (“PERB”). As stated
16 in paragraph 42 of the Petition, the DSA already has a pending unfair practice charge regarding
17 these issues. The assertion that their irrelevant allegations were included to support a claim for
18 fees thus indicates that Petitioners are improperly conflating their Elections Code claim with their
19 pending UPC in an attempt to get a court order for fees if they cannot get one from PERB.

20 **b. Damages**

21 For each and every challenged paragraph, the Opposition asserts that the disputed
22 allegations are relevant to damages. However, the Opposition never provides any further
23 explanation of *how* these allegations are relevant to the calculation of potential damages; it
24 merely states that they are. Moreover, the Petition itself makes it abundantly clear that Petitioners
25 have in fact suffered no damages at all. The Petition challenges two specific County actions: The
26 repeal of an ordinance, which does not by itself have any direct effect on compensation; and the
27 imposition of salary raises that *exceed* what the ordinance would have allowed. (See Petition,
28 Exhibits H and J.) In other words, according to the Petition, the challenged County actions have

1 resulted in Petitioner Frederito and other deputies represented by the DSA receiving *more* money,
2 not less. Moreover, several of the challenged paragraphs relate *solely* to compensation setting for
3 County employees not represented by Petitioners, and thus have no conceivable relevance to any
4 potential award of damages to Petitioners.

5 **c. “Credibility determinations”**

6 The Opposition asserts for a number of the challenged paragraphs that the disputed
7 allegations are relevant to “credibility determinations.” As stated in the County’s Motion to
8 Strike, this case presents a handful of questions of law: Whether Measure F was a valid ballot
9 initiative in 1976, whether it was legally superseded by the County Charter, whether the County
10 had legal authority to repeal County Code section 3.12.040 in September of 2021, and whether
11 the County had legal authority to subsequently impose pay raises greater than the Measure F
12 salary formula would provide. All of these are questions of law that can be resolved on the basis
13 of undisputed facts subject to judicial notice. Accordingly, no party’s credibility is at issue in this
14 case, and vague references to “credibility determinations” is insufficient to establish that the
15 challenged paragraphs have any relevance to Petitioners’ causes of action.

16 **2. The specific theories of relevance for each disputed paragraph are all**
17 **unrelated to the causes of action raised in the Petition.**

18 **a. Paragraphs 12, 14, 15**

19 The Opposition states that Paragraphs 12, 14, and 15, which concern failed ballot
20 measures attempting to repeal Placer County Code section 3.12.040 in 2002 and 2006 – which the
21 County put on the ballot at the DSA’s request (See Petition, Exhibits A and C, as corrected by
22 Petitioners’ Notice of Errata filed February 17, 2022) – “are relevant to the County’s claim that
23 Measure F was eliminated by enactment of the Charter” and are relevant to establishing that
24 Measure F could not be repealed without voter approval. The Opposition also states that the
25 County’s request for judicial notice regarding the results of the 1976 and 1980 elections are a
26 “tacit admission that the facts set forth in the Petition are relevant.” These assertions are
27 bordering on nonsensical.

28 As a matter of law, a *failed* ballot measure has no legal effect whatsoever, and thus could

1 not possibly be relevant to determining whether the County had authority to repeal
2 Section 3.12.040 without submitting the question to the voters. The County requested judicial
3 notice of two ballot measures that *actually passed*: Measure F, which is the subject of the lawsuit,
4 and the County Charter, which forms one of the grounds for the County’s demurrer and defense.
5 While the County does not dispute that the 2002 and 2006 elections are subject to judicial notice,
6 the County vigorously disputes their relevance as stated above. These allegations also have no
7 conceivable relevance to the amount of any potential damages.

8 **b. Paragraphs 10, 11, 13, 30, and 38-41**

9 The Opposition states that Paragraphs 10, 11, 13, 30, and 38-41, which contain allegations
10 about representations and public statements allegedly made by County representatives, are
11 relevant “evidence of voter intent when voting for or against Measure F.” Given that none of the
12 alleged statements took place prior to the 1976 election, when voters actually voted on Measure
13 F, the County assumes the Petitioners are referring to voter intent when voting for or against the
14 failed repeal efforts. But again, given that the repeal efforts failed and have no legal effect
15 whatsoever, the voters’ intent is similarly irrelevant to anything.

16 Petitioners also claim that these paragraphs are “relevant to show that between 1980 and
17 2003 county officials have construed [County Code Section] 3.12.040 as compatible with the
18 Charter.” The only possible relevance to how County officials have construed or represented
19 Measure F in the past is as an argument that prior representations (or misrepresentations), now
20 estop the County from asserting the legal position that Measure F is void and superseded by the
21 County Charter. That argument fails as a matter of law: mistaken statements about a legal
22 proposition cannot create an estoppel, and estoppel may not be invoked to contravene
23 constitutional or statutory limitations. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th
24 1298, 1315; *Longshore v. County of Ventura* (1979) 25 Cal. 3d 14, 28.)

25 For these reasons, these paragraphs are irrelevant to Petitioners’ causes of action. They
26 also have no conceivable relevance to the amount of any potential damages.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. Paragraph 16

The Opposition states that Paragraph 16 is relevant to establishing “the DSA’s position as it relates to collective bargaining regarding Measure F and section 3.12.040” and that it is relevant “that the County only construed Measure F as in conflict with the Charter when the DSA would not submit to the County’s demands that the DSA subvert the will of Placer County voters.” None of this is relevant to the Petitioners’ causes of action. Whether Measure F was a valid ballot initiative is a question of law; whether the County had the authority to repeal the County ordinance containing Measure F’s salary formula is a question of law; whether the County had legal authority to impose pay raises greater than that salary formula is a question of law. Neither the DSA’s bargaining position nor the timing of when the County first raised the issue that the Charter and Measure F were incompatible are relevant to a determination of any one of those questions. They also have no conceivable relevance to the amount of any potential damages.

d. Paragraphs 17-19 and 21

The Opposition states that Paragraphs 17-19 and 21, which contain allegations of the parties’ past practice of working around the restrictions of Measure F without ever addressing the issue of whether those restrictions were legally valid, are relevant to showing that “the parties interpreted Measure F in a consistent manner and shows a course of conduct of both parties regarding their understanding of Measure F.” Unless this is asserting an estoppel argument – which would fail as a matter of law for the reasons set forth above – there is no conceivable way this is relevant to determining whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, or whether the County had legal authority to impose pay raises greater than the Measure F salary formula.

The Opposition also states that these paragraphs are relevant to “credibility determinations, including the position of the parties in collective bargaining over time.” As stated above, Petitioners’ causes of action raise only legal questions that can be adjudicated on the basis of undisputed facts subject to judicial notice; No party’s credibility is at issue in this case. These allegations also have no conceivable relevance to the amount of any potential damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

e. Paragraph 20

The Opposition states that Paragraph 20, which concerns a prior amendment to County Code section 3.12.040 that did not affect the salary-setting formula for deputy sheriffs is relevant on the grounds that “were section 3.12.040 negated by the Charter, the County would have no need to amend the code section.” This assertion is more nonsense. The County’s position is that Measure F (the ballot initiative) was superseded by the County Charter, and that Placer County Code section 3.12.040 (an ordinance mirroring its terms) was therefore a normal County ordinance subject to repeal or amendment without voter approval. Accordingly, the County’s prior – and unchallenged – amendment of that ordinance is not relevant to determining whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, or whether the County had legal authority to impose pay raises greater than the Measure F salary formula. This paragraph also has no conceivable relevance to the amount of any potential damages, particularly given that it does not relate to compensation for DSA members generally or Petitioner Frederito specifically.

f. Paragraphs 22 and 23

The Opposition asserts that Paragraphs 22 and 23, which 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 are relevant because “allegations made upon information and belief are decidedly appropriate at the complaint stage” and that they are relevant to “whether the County knew it did not have the legal authority to repeal Measure F unilaterally.” The County does not dispute that allegations made upon information and belief are appropriate *when relevant*; however, whether (or when) the County “knew” or believed anything about its authority to repeal Section 3.12.040 or lack thereof is entirely irrelevant to the Petitioners’ causes of action. The Petition raises the legal questions whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, and whether the County had legal authority to impose pay raises greater than the Measure F salary formula. All of these are questions of law that can be

1 resolved on the basis of undisputed facts subject to judicial notice; neither party’s knowledge or
2 motives are in any way pertinent to a determination of these questions. These allegations also
3 have no conceivable relevance to the amount of any potential damages.

4 **g. Paragraph 24**

5 The Opposition asserts that Paragraph 24, which concerns the County’s policy for
6 determining compensation for members of the County Board of Supervisors, using a similar
7 formula to the one specified in Measure F, “is relevant to show the County’s position on the
8 legality of Measure F over time.” This assertion is yet more nonsense. No party to this case has
9 ever made the argument that Measure F’s salary formula in and of itself is unlawful; the question
10 at hand is whether a ballot initiative can *force* the County to utilize that formula and force *both*
11 parties to forgo negotiations over compensation. Given that there is no allegation that the County
12 is *required* to use this formula for members of the County Board of Supervisors, and given that
13 Supervisors have no collective bargaining rights under the Meyers-Milias-Brown Act or any other
14 law, the County’s use of this or any other salary setting formula for Supervisors has no
15 conceivable relevance to the legal questions at hand: whether Measure F was a valid ballot
16 initiative in 1976, whether it was legally superseded by the County Charter, whether the County
17 had legal authority to repeal County Code section 3.12.040, and whether the County had legal
18 authority to impose pay raises for deputy sheriffs greater than the Measure F salary formula. This
19 paragraph also has no conceivable relevance to the amount of any potential damages, particularly
20 given that it relates solely to compensation for members of the Board of Supervisors.

21 **h. Paragraphs 25-34, 47-48, and 52-53**

22 The Opposition states that Paragraphs 25-34, 47-48, and 52-53, which concern the party’s
23 collective bargaining from 2018 through a declaration of impasse, are “relevant because they
24 demonstrate the County’s position upon which Petitioners relied during collective bargaining and
25 negotiations.” But the parties’ conduct during collective bargaining, including the extent to which
26 the Petitioners may have relied on the County’s statements about its own position, are equally
27 irrelevant to Petitioners’ causes of action. It appears the Petitioners are attempting to raise
28 allegations of bad faith bargaining conduct, which are not relevant to a determination of the

1 alleged violation of Elections Code 9125, and which would fall under the exclusive initial
2 jurisdiction of the Public Employment Relations Board. Accordingly, these allegations are
3 improper and should be stricken.

4 The Opposition also states these paragraphs are “relevant to the amount of discretion the
5 Board of Supervisors retains over setting compensation.” This statement is inconsistent with the
6 core of the Petitioners’ second cause of action, which asserts that the County had no discretion
7 whatsoever to deviate from Measure F’s salary-setting formula. The extent to which the County
8 may have had discretion to provide benefits other than salary is irrelevant to the determination of
9 whether Measure F’s prescriptive formula for setting salaries was constitutionally invalid when
10 the voters approved it in 1976, or whether it was superseded by the County Charter in 1980, and
11 is therefore irrelevant to whether the County had legal authority to amend Section 3.12.040 in
12 2021 or to subsequently impose pay raises greater than what Measure F would allow. These
13 allegations also have no conceivable relevance to the amount of any potential damages.

14 **i. Paragraphs 35-37 and 58-63**

15 The Opposition states that Paragraphs 35-37 and 58-63, which concern a statutory
16 factfinding proceeding the parties participated in, is “inherently relevant to the dispute as the
17 factfinding process thoroughly developed the background of the dispute, and examined the legal
18 positions of both parties” and that the factfinding report is judicially noticeable. But given that a
19 factfinding report issued pursuant to the MMBA is advisory only (Gov. Code, § 3505.5) the
20 report’s “examination” of the parties’ legal positions has no legal significance and is due no
21 deference from this Court. And once again, the actual causes of action raised in the Petition are
22 purely legal questions that can be adjudicated based on undisputed facts are subject to judicial
23 notice. As such, allegations regarding the factfinding process and report are irrelevant to a judicial
24 determination of whether the County had authority to amend County Code Section 3.12.040 or to
25 impose salary increases greater than the Measure F formula would provide. These allegations also
26 have no conceivable relevance to the amount of any potential damages.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

j. Paragraphs 42-45

The Opposition states that Paragraphs 42-45, which concern the DSA’s unfair labor practice charge currently pending before PERB, are relevant “because they demonstrate the County’s position upon which Petitioners relied during collective bargaining and negotiations.” But again, unless the DSA is asserting an estoppel argument (which fails as a matter of law because the County cannot be estopped from asserting a legal position with respect to constitutional or statutory law) or a claim of bad faith bargaining (which is subject to the exclusive initial jurisdiction of PERB) the County’s stated position and any reliance the Petitioners may have had on such statements are simply not relevant. The actual causes of action in the Petition raise only purely legal questions that can be adjudicated on the basis of a small set of undisputed facts that are subject to judicial notice. These allegations also have no conceivable relevance to the amount of any potential damages.

k. Paragraphs 46 and 49-50

Paragraphs 46 and 49-50 consist of unsupported speculation about the County’s motives for making negotiation proposals. The Opposition asserts that “[t]he County’s motives for its repeatedly changing position on the legality and validity of Measure F are relevant to demonstrate the County’s position over time, and to assist the Court in making credibility determinations.” But once again, the County’s position over time is irrelevant: Whether the County in fact had authority to amend Section 3.12.040 in September 2021 is a question of law, as is whether the County had authority to impose pay raises greater than what Measure F would provide. And these legal questions can be determined entirely from undisputed facts subject to judicial notice, so no party’s credibility is at issue or in any way relevant. These allegations also have no conceivable relevance to the amount of any potential damages.

l. Paragraph 51

The Opposition states that Paragraph 51, which concerns the County’s negotiations with another bargaining unit and subsequent implementation of salary changes for that bargaining unit, is relevant because “[t]he impact that the County’s meandering position on Measure F has on collective bargaining units within the County is the precise subject matter of this dispute.” This

1 statement is telling, as the Petitioners are clearly describing an allegation that the County's
2 actions constituted a failure to negotiate in good faith, which would fall within PERB's exclusive
3 initial jurisdiction. The actual subject matter of *this dispute* is whether the County's amendment
4 of County Code section 3.12.040 violated Elections Code section 9125, or whether the County
5 had the authority to subsequently impose a greater salary increase than the Measure F formula
6 would provide. This paragraph also has no conceivable relevance to the amount of any potential
7 damages, given that it relates solely to salary changes for another bargaining unit.

8 **m. Paragraphs 54-57**

9 The Opposition states that Paragraphs 54-57, which concern the County's attempts to
10 meet and confer over the proposed repeal of Section 3.12.040, "are relevant because they
11 demonstrate the County's position upon which Petitioners relied during collective bargaining and
12 negotiations" and that they are "relevant to credibility determinations." Once again, unless the
13 DSA is asserting an estoppel argument (which fails as a matter of law because the County cannot
14 be estopped from asserting a legal position with respect to constitutional or statutory law) or a
15 claim of bad faith bargaining (which is subject to the exclusive initial jurisdiction of PERB) the
16 County's stated position and any reliance the Petitioners may have had on such statements are
17 simply not relevant. The actual causes of action in the Petition raise only purely legal questions
18 that can be adjudicated on the basis of a small set of undisputed facts that are subject to judicial
19 notice, such that no party's credibility is actually at issue. These allegations also have no
20 conceivable relevance to the amount of any potential damages.

21 **III. CONCLUSION**

22 For the foregoing reasons, this Court should grant in its entirety Respondent's Motion to
23 Strike Portions of the Petition, without leave to amend.

24 Dated: February 24, 2022

LIEBERT CASSIDY WHITMORE

25
26 By: 

Michael D. Youril

Lars T. Reed

Attorneys for Respondent COUNTY OF PLACER

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

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

On **February 24, 2022**, I served the foregoing document(s) described as **RESPONDENT'S REPLY TO PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David E. Mastagni
Taylor Davies-Mahaffey
Mastagni Holstedt, APC
1912 I Street
Sacramento, California 95811
email: davidm@mastagni.com
tdavies-mahaffey@mastagni.com

- (BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from cdewey@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **February 24, 2022**, at Fresno, California.

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



Constance Dewey