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2 TAYLOR DAVIES-MAHAFFEY, ESQ. (SBN 327673)
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3 **MASTAGNI HOLSTEDT**
4 *A Professional Corporation*
1912 "I" Street
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Telephone: (916) 446-4692
6 Facsimile: (916) 447-4614

7 Attorneys for Petitioners
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF PLACER
11

12 PLACER COUNTY DEPUTY SHERIFFS') Case No.: S-CV-0047770
13 ASSOCIATION and NOAH FREDERITO,)
14) **DECLARATION OF DAVID E.**
Petitioners,) **MASTAGNI IN SUPPORT OF**
15 vs.) **PETITIONERS' OPPOSITION TO**
16) **RESPONDENT'S MOTION TO STRIKE**
COUNTY OF PLACER,)
17 Respondent.)
_____)

18 I, David E. Mastagni Declare:

19 1. I am an attorney, duly licensed to practice law within the State of California,
20 employed as a Partner at Mastagni Holstedt, A.P.C., the attorneys of record for Petitioners the
21 Placer County Sheriff's Deputy Association and Noah Frederito ("Petitioners") in the above-
22 captioned matter.

23 2. I have personal knowledge of the following facts. If called and sworn as a witness,
24 I could and would testify to the following:

25 3. On December 21, 2021, Petitioners filed a Petition for Writ of Mandate in Placer
26 County Superior Court, requesting Declaratory and other relief regarding the County of Placer's
27 ("Respondent") unilateral repeal of Placer County Code section 3.12.040, which codifies Measure
28 F.

1 4. On January 7, 2022, I was contacted by Respondent’s counsel, Michael Youril, via
2 an email regarding his intention to demur to the Petition for Writ of Mandate and to move to strike
3 paragraphs 10-80 of the Petition for Writ of Mandate. The only basis for the motion to strike stated
4 was, “[m]ost of the above is irrelevant to the pending matter and primarily involves matters that
5 are still pending before the PERB Board.” A true and correct copy of the January 7, 2022 email is
6 attached hereto as Exhibit 1.

7 5. On January 12, 2022, at 9:30 a.m., Taylor Davies-Mahaffey and I met and
8 conferred with Mr. Youril and Lars Reed by telephone. During our very brief conversation,
9 Respondent’s counsel restated they intended to move to strike paragraphs 1-80 from the Petition.
10 Initially, opposing counsel asserted the paragraphs at issue were relevant to my client’s PERB
11 Charge alleging bad faith bargaining and other unfair labor practices. I explained that while the
12 actions before PERB involved some overlapping factual circumstances, the legal cause of action
13 and relief were distinct. I further informed Mr. Youril that the relevance of the 70 paragraphs he
14 identified varied by subject matter and relevance to this action. I offered examples, pointing out
15 that some paragraphs dealt with the parties bargaining over measure F and overall compensation,
16 other dealt with subsequent voter initiatives to retain Measure F, other dealt with the County’s
17 inconsistent interpretations of Measure F and misrepresentations. I also explained that the
18 allegations had multiple and varied relevance, including the legal theories and the remedies.
19 Regarding remedies, I explained that impacts of the County’s actions and their arbitrariness are
20 relevant to fee liability. He suggested that allegations related to attorney fee liability did not need
21 to be included in the Petition.

22 6. I repeatedly invited him to discuss each allegation at issue so we could properly
23 confer over its relevance and advised him that it was not feasible to adequately meet and confer
24 over 70 paragraphs of the Petition collectively. I advised that my client was willing to amend the
25 Petition if he could articulate individualized grounds for each allegation he desired to strike. I
26 advised that insisting on conferring over all 70 paragraphs collectively, would waste judicial
27 resources and spike the litigation costs as the individualized consideration would end up being
28 briefed. Respondent’s counsel consistently declined to discuss the relevance of the individual

1 paragraphs. As an alternative, I also suggested Respondent limit the number of paragraphs it
2 sought to strike to make the meet and confer discussions more fruitful. Respondent's counsel
3 declined those offers as well.

4 7. On January 13, 2022, I wrote a letter to Mr. Youril memorializing our January 12,
5 2022 telephone call. I reiterated to Mr. Youril that we could go through the Petition paragraph by
6 paragraph to discuss the relevance of each. I further reiterated that were Respondent to reduce the
7 number of paragraphs it sought to strike, the meet and confer discussions would be more efficient.
8 Respondent declined to reduce the amount of material it sought to strike, or to go over the specific
9 allegations it contended were irrelevant. A true and correct copy of the January 13 letter is attached
10 hereto as Exhibit 2. A true and correct copy of the email correspondence between counsel
11 regarding the motion to strike is attached hereto as Exhibit 3.

12 8. In the spirit of cooperation and the hope of avoiding the expenses associated with
13 a motion to strike, Petitioners filed an Amended Petition on January 21, 2022, unilaterally
14 removing some of the disputed material. None of the amendments were agreed upon during the
15 meet and confer call.

16 9. On January 28, 2022, I briefly spoke with Respondent's counsel regarding the
17 Amended Petition. Mr. Youril summarily advised that his position regarding the motion to strike
18 was unchanged and there was nothing further to discuss. I again offered to meaningfully discuss
19 the relevance of each allegation he intended to strike, but he again declined meet and confer over
20 the allegations with any specificity.

21 10. On February 2, 2022, without meaningfully meeting and conferring in good faith
22 over the allegations at issue in the Amended Petition, Respondent filed their Motion to Strike the
23 Amended Petition and Demurrer to the Amended Petition.

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

DATED: February 17, 2022

Respectfully Submitted:
MASTAGNI HOLSTEDT, APC



DAVID E. MASTAGNI, ESQ.
Attorney at Law

EXHIBIT 1

Jessica Delgado

From: Michael D. Youril <MYOURIL@lcwlegal.com>
Sent: Friday, January 7, 2022 4:10 PM
To: David E. Mastagni; Taylor Davies-Mahaffey
Cc: Che I. Johnson; Lars T. Reed
Subject: Placer County/DSA
Attachments: Placer County DSA Writ w_o exhibits.PDF

CAUTION: External Email.

Good afternoon Taylor and David,

I am writing to meet and confer regarding the attached writ petition. The County intends to file a motion to strike and a demurrer. Can you please let me know some times Monday, Tuesday, or Wednesday that either of you are available for a call?

The grounds for the demurrer should be relatively well defined at this point, as they have been discussed extensively as part of negotiations and the PERB proceedings. Measure F is legally ineffective. Specifically, the primary grounds for the demurrer are that the California Constitution provides the governing body of a county exclusive authority to set compensation. (Cal. Const., art. XI, § 1(b).) The County Charter provision cited in Paragraph 7 of the writ of mandate supersedes Measure F and provides similar authority to the County BOS to set compensation. The exclusive authority of the governing body of a county to set compensation has been affirmed several times. (See e.g., *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296; *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322.) There are several other similar cases.

In addition, Measure F is preempted by the MMBA. (See e.g., *Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765.)

Accordingly, the County's repeal and replacement of County Code section 3.12.040, and its actions in adjusting compensation for DSA members, were lawful and well within the County's authority.

The County will also move to strike the following provisions:

- Paragraphs 10-80.

Most of the above is irrelevant to the pending matter and primarily involves matters that are still pending before the PERB Board.

As noted above, please let me know your availability Monday, Tuesday, or Wednesday for a call.

Thank you,

Michael

Michael Youril | Partner

LCW LIEBERT CASSIDY WHITMORE
5250 North Palm Avenue, Suite 310
Fresno, CA 93704
direct: 559.256.7813 | fax: 559.449.4535
myouril@lcwlegal.com | [bio](#) | [website](#)

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EXHIBIT 2

DAVID P. MASTAGNI
JOHN R. HOLSTEDT
CRAIG E. JOHNSON
BRIAN A. DIXON
STEVEN W. WELTY
STUART C. WOO
DAVID F. MASTAGNI
RICHARD J. ROMANSKI
PHILIP R. MASTAGNI
KATHLEEN N. MASTAGNI STORM
SEAN D. HOWELL
WILLIAM P. CREGER
SEAN D. CURRIN
DANIEL L. OSIER
KENNETH E. BACON
GRANT A. WINTER
JOSHUA A. OLANDER
HOWARD A. LIBERMAN
ZEBULON J. DAVIS
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KIMBERLY A. VELAZQUEZ
JOSEPH A. HOPFMANN
MICHAEL P. R. REED
ANISH K. SINGH
JOEL M. WEINSTEIN
TAYLOR DAVIES-MAHAFFEY
NATHAN SENDEROVICH
SAMUEL S. SIAVOSHI
BEHNAM M. PARVINIAN
CARLY M. MORAN
CLARISSA MEDRANO
CHRISTOPHER J. WALSH
BYRON G. DANELL
CHRISTINA D. ALON
DAVID E. SNAPP
DENNISE S. HENDERSON
MONTANA MASSONE
SUCHETA ROY

January 13, 2022

Via Electronic & U.S. Mail

Michael Youril
Lars Reed
Liebert Cassidy Whitmore
5250 North Palm Ave, Ste 310
Fresno, California 93704
E-Mail: myouril@lcwlegal.com
lreed@lcwlegal.com

**Re: *Placer County Deputy Sheriffs' Assoc. v. County of Placer;*
*Meet and Confer over the County's Demurrer and Motion to Strike***

Dear Mr. Youril:

The purpose of this letter is to summarize our conversation during the parties' meet and confer session on January 12, 2022. On January 7, you informed our office via email that the County intended to file a demurrer and a motion to strike paragraphs 10-80 of the Complaint. We participated in a telephonic meet and confer session on January 12 at 9:30 am.

During the meet and confer, you expressed concerns that paragraphs 10-80 were not relevant to the legal questions raised by the complaint. We stated that the relevance of each of the 70 paragraphs varied based on subject matter. We repeatedly offered to go through each paragraph one by one and discuss the relevance with you. You declined these offers. As stated during our meeting, discussing the allegations in broad strokes does not allow consideration of the differences in subject matter and areas of relevance. We also suggested that you limit the paragraphs you wished to strike so we could more efficiently and thoroughly discuss each one. You again declined to do so.

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David E. Mastagni to Michael Youril
Meet and Confer over the County's Demurrer and Motion to Strike
January 13, 2022
Page 2 of 2

In conclusion, we also suggested that proceeding just with the demurrer would be a more efficient and less costly method of adjudicating the legal questions.

Sincerely,
MASTAGNI HOLSTEDT, A.P.C.



DAVID E. MASTAGNI
Attorney at Law

DEM/jd

cc: Che Johnson

EXHIBIT 3

Jessica Delgado

From: Taylor Davies-Mahaffey
Sent: Tuesday, January 18, 2022 7:11 PM
To: Michael D. Youril; David E. Mastagni
Cc: Lars T. Reed; Che I. Johnson; Jessica Delgado
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

March 3rd works for us.

Taylor Davies-Mahaffey | Associate

 MASTAGNI HOLSTEDT, A.P.C.

Labor and Employment Department

1912 I Street, Sacramento, CA 95811

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From: Michael D. Youril <MYOURIL@lcwlegal.com>
Sent: Tuesday, January 18, 2022 5:16 PM
To: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>
Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

CAUTION: External Email.

They only hear motions on Thursday, so next available is March 3, if the Court has availability.

From: David E. Mastagni <davidm@mastagni.com>
Sent: Tuesday, January 18, 2022 3:19 PM
To: Michael D. Youril <MYOURIL@lcwlegal.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>
Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

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Michael,

As I previously indicated, we are willing to meet and confer individually over each of the 70 paragraphs you seek to strike. However, your insistence on meeting and conferring over the relevancy of 70 separate paragraphs of the complaint collectively is not feasible or reasonable. The allegations identified cover a variety of factually allegations

relevant to the underlying legal claims, including the meaning, intent and historical interpretation of Measure F, the meaning, intent and historical interpretation of the relevant sections of the County Charter, the meaning and distinction between salary and compensation, and the requested remedy. As you know, Petitioners seek a make whole remedy, as well as fees and costs of suit. The County's ever changing public representations, statements against interest, and interpretations of Measure F and the Charter are directly relevant to its potential liability for fees and costs. For example, fees are available under Government Code section 800 based upon the "arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity." The allegations are also relevant to Petitioners' claims that this action, if successful, will vindicate an important public right and confer a significant benefit on a large class of persons, i.e. the rights and will of the voters, and should be paid by the County in the interests of justice. (See, CCP 1021.5.)

Additionally, I am unavailable on February 24, 2022. Can you please provide alternative hearing dates.

Sincerely,

David

David E. Mastagni | Partner

 **MASTAGNI HOLSTEDT, A.P.C.**

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From: Michael D. Youril <MYOURIL@lcwlegal.com>

Sent: Friday, January 14, 2022 1:32 PM

To: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>

Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>

Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

CAUTION: External Email.

Good afternoon David and Taylor,

Following-up on your attached January 13, 2022 letter, the County's position remains that the only questions for resolution in the writ are (1) whether the County was required to follow Election Code section 9125, and (2) whether the County's imposition of terms was valid. The second question depends entirely on the answer to the first question. Both of our clients have an interest in knowing the outcome of the Elections Code question and it is properly determined by a court. However, neither party needs significant facts to frame that question for resolution. The only facts relevant to your causes of action are Measure F, the County's repeal of the ordinance codifying it, and the County's implementation of new compensation terms.

I disagree that past practice or non-binding interpretations by various individuals are relevant to the outcome of the legal question. I certainly do not believe the facts concerning negotiations that are currently before PERB are relevant to that question. The Complaint includes headings such as, "Contract Negotiations and Impasse," "The County's Improper Conduct During Factfinding Proceedings," etc. Those issues are clearly within the scope of the unfair practice charge

your office filed with PERB and have no relevance to the legal question at issue before the court. Our concern is that if the County does not move to strike those provisions, and if the demurrer were overruled, then the scope of the writ proceedings would be greatly expanded and include matters that are squarely within the scope of the unfair practice. This would basically result in litigation in dual forums, which would be very inefficient for both of our clients.

The County submits that it would be less costly and more efficient for the parties to proceed on the legal question, which would initially only require the demurrer. The legal question can be decided based on the first 9 paragraphs and 81 onward. If you are willing to reconsider, please let me know by Tuesday, January 18, 2022, otherwise I will assume we continue to disagree.

The County has reserved February 24, 2022 at 8:30 am as the date for the demurrer and motion to strike. Let me know immediately if there is a conflict.

Thank you,

Michael

From: Jessica Delgado <idelgado@mastagni.com>

Sent: Thursday, January 13, 2022 4:39 PM

To: Michael D. Youril <MYOURIL@lcwlegal.com>; Lars T. Reed <lreed@lcwlegal.com>

Cc: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>

Subject: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

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Good Afternoon,

Please see the attached correspondence from attorney David E. Mastagni. A copy will follow by mail.

Thank you,

Jessica Delgado | Paralegal

 **MASTAGNI HOLSTEDT, A.P.C.**

Labor and Employment Department

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1 **PROOF OF SERVICE**

2 SHORT TITLE OF CASE: *Placer County DSA, et al. vs. County of Placer*

3 I am a citizen of the United States and a resident of the County of Sacramento. I am over
4 the age of 18 years and am not a party to the within action. My business address is 1912 I Street,
Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

5 On **February 17, 2022**, I served the below-described document(s) by the following means
6 of service:

7 **X BY OVERNIGHT DELIVERY [C.C.P. §§1013(c) & (d)]:**

8 I enclosed the below-described documents in a sealed envelope/package provided by an
9 overnight delivery carrier and addressed to the persons as set forth below. I placed the
envelope/package for collection and overnight delivery at the overnight delivery carrier's office
or regularly utilized drop box; and

10 **X BY ELECTRONIC SERVICE [C.C.P. §1010.6(a)]:**

11 Based on a court order or an agreement of the parties to accept electronic service, I caused a
12 .pdf version of the below-described documents to be sent to the persons at the electronic mail
addresses set forth below.

13 NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

- 14 • **DECLARATION OF DAVID E. MASTAGNI IN SUPPORT OF PETITIONERS'
15 OPPOSITION TO RESPONDENT'S MOTION TO STRIKE**

16 ADDRESSES OF SERVICE:

<p>17 Michael Youril myouril@lcwlegal.com 18 Lars Reed lreed@lcwlegal.com 19 Liebert Cassidy Whitmore 20 5250 North Palm Ave, Ste 310 Fresno, CA 93704</p>	
--	--

22 I declare under penalty of perjury, under the laws of the State of California, that the
23 foregoing is true and correct and was executed on **February 17, 2022**, at Sacramento, California.

24 _____
25 Jessica Delgado
26
27
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