Court of Appeal No.

EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE § 6103

IMMEDIATE STAY REQUESTED

IN THE

CALIFORNIA COURT OF APPEAL

THIRD APPELLATE DISTRICT

COUNTY OF PLACER,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER,

Respondent,

NOAH FREDERITO and
PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION,

Real Parties in Interest

APPEAL FROM MAY 17, 2022 ORDER OVERRULING DEMURRER OF
THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER, DEPT. 42,
THE HONORABLE MICHAEL W. JONES, PRESIDING (TEL. 916-408-6000)
SUPERIOR COURT CASE NO.: S-CV-0047770

PETITION FOR EXTRAORDINARY WRIT OF MANDATE, PROHIBITION, AND/OR OTHER APPROPRIATE RELIEF; REQUEST TO STAY ALL SUPERIOR COURT PROCEEDINGS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rule 8.208)

The undersigned counsel of record for Petitioner County of Placer certifies that no person or entity other than the parties to this proceeding have either (1) an ownership interest of 10 percent or more in any party that is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in California Rules of Court, Rule 8.208, subdivision (e)(2).

Executed this 13th day of June, in Sacramento, California.

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COUNTY OF PLACER

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INTRODUCTION

A. Why Writ Relief Should Be Granted

Petitioner County of Placer ("County") is forced to bring this petition for extraordinary relief to correct the superior court's failure to rule on purely legal questions applied to undisputed facts. Specifically, the superior court overruled the County's demurrer to Real Parties in Interest's civil action without considering the merits of the County's arguments or the supporting legal authorities, instead basing its ruling on a contrived procedural rule, misstating the County's legal argument, and failing to acknowledge two of the County's three grounds for demurrer. The superior court's order is also inconsistent on its face, evidencing a failure to properly consider and evaluate the issues at hand.

This writ petition arises from two acts of the Placer County Board of Supervisors ("Board") in September 2021: First, the Board amended Placer County Code Section 3.12.040, which purported to fix compensation for Placer County Sheriff's Deputies at a level equal to the average of equivalent classifications in neighboring counties. Second, the Board raised wages for Sheriff's Deputies beyond what the old ordinance would allow. Real Parties in Interest Placer County Deputy Sheriffs' Association and its President, Noah Frederito, (herein collectively "PCDSA") sued to overturn these actions, arguing that under Elections Code section 9125, the County could not amend Section 3.12.040 without voter approval because the ordinance codified a 1976 ballot initiative ("Measure F"). As a derivative claim, PCDSA also alleged that the County's subsequent wage increase therefore violated the un-amended version of Section 3.12.040. The County demurred.

There are three legal questions presented in this petition – the same three questions raised in the County's demurrer – all of which can be adjudicated on undisputed facts subject to judicial notice:

1. Whether Measure F unlawfully deprives the Placer County Board of Supervisors of its constitutional authority over compensation for County employees and deputies;
2. Whether Measure F conflicts with, and thus is preempted by, the requirements of the Meyers-Milias-Brown Act ("MMBA"); and
3. Whether conflicting provisions in the Placer County Charter, adopted by the voters in 1980, legally superseded Measure F.

An affirmative answer to <u>*just one*</u> of these three questions would defeat PCDSA's claims as a matter of law, and would entitle the County to a complete dismissal of the superior court action.

However, the superior court failed to make a substantive ruling on *any* of the County's legal arguments. For the County's constitutional argument, the superior court's order dismissed each and every appellate decision cited in the demurrer for the *sole reason* that those cases were not decided at the pleading stage. The superior court completely ignored both the substantive legal principles laid out in those cases and the fact that all material allegations in Real Parties' civil action necessary to decide the legal issues at hand are undisputed and subject to judicial notice. The superior court's order *does not even acknowledge* the County's two other separate and independent grounds for demurrer.

The superior court's complete abdication of responsibility is particularly striking in that the superior court took notice of, *but refused to apply*, a recently-published decision by the First District Court of Appeal – *Pacifica Firefighters' Association v. City of Pacifica* (Mar. 24, 2022) 76 Cal.App.5th 758 – that is dispositive of *both* the County's constitutional argument and the MMBA preemption issue.

Furthermore, the superior court's order is fundamentally inconsistent on its face: Although the superior court refused to rule on whether the County's amendment of Section 3.12.040 was valid, it nonetheless held that

Real Parties' cause of action for violation of Section 3.12.040 was "not viable against the current iteration of Section 3.12.040" because the relevant allegations "refer to a version of Section 3.12.040 that is no longer in effect." This patent inconsistency in the superior court's ruling is yet another indication that the superior court did not understand the issues presented and how they relate to each other. There are also indications in the superior court's order that it may have fundamentally misconstrued the County's demurrer as arguing that Elections Code section 9125 itself is unconstitutional. Both of these issues suggest that the superior court did not fully grasp the questions presented and failed to give due consideration to the County's arguments on demurrer.

Without intervention by this Court, the superior court's errors will force the County to spend time and resources litigating a matter that could have been promptly disposed of as a matter of law.

B. Why an Immediate Stay Should Issue

Real Parties in Interest's civil action contains a large number of allegations that go well beyond the scope of the narrow legal questions presented.[1] Petitioner anticipates that PCDSA will propound substantial discovery on Petitioner with regard to these allegations as a fishing expedition for collateral purposes, such as several administrative proceedings pending before the Public Employment Relations Board, to support PCDSA's public relations campaign with respect to the parties' ongoing labor negotiations, and to put economic pressure on the County.

---

[1] The County filed a motion to strike these irrelevant allegations. Except for a few particularly egregious statements, the superior court largely denied the motion, leaving a large number of irrelevant allegations subject to discovery. However, a proper ruling sustaining the County's demurrer on all counts would render the County's Motion to Strike entirely moot.

Allowing proceedings to continue in the superior court while this petition is pending will require County personnel to devote significant time and attention, as well as incur significant expenses in the form of attorney's fees, responding to discovery on a matter that the superior court should already have dismissed as a matter of law.

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION, OR OTHER APPROPRIATE RELIEF

The County of Placer ("County") hereby petitions this Court for a writ of mandate and/or prohibition, or other appropriate relief, directing respondent Placer County Superior Court to vacate its order overruling the County's demurrer and to enter a new order sustaining the County's demurrer to all causes of action without leave to amend.

To this end, Petitioner alleges:

Authenticity of Exhibits

1. All exhibits accompanying this Petition as Petitioner's Appendix ("PA") are true and correct copies of original documents on file with Respondent court, except **Exhibit 21** (reporter's transcript). The exhibits are incorporated by reference as though fully set forth in this petition and are contemporaneously filed in 4 volumes, the pages of which are numbered consecutively from page PA 001 through PA 835. The exhibits are identified on the Index of Exhibits. Page references to exhibits in this Petition are to the consecutive pagination of Petitioner's Appendix, in the format [Volume No.] PA [Page No].

Reporter's Transcript

2. A true and correct copy of the reporter's transcript of the April 7, 2022, hearing before the Honorable Michael W. Jones, regarding the County's demurrer and motion to strike, is included in Petitioner's Appendix as Exhibit 21. [V3 PA 603-629.]

Beneficial Interest of Petitioner; Capacities of Respondent and Real Parties in Interest

3. Petitioner County of Placer is the respondent in the civil action pending before the respondent court, *Placer County Deputy Sheriffs' Association and Noah Frederito v. County of Placer*, Placer County Superior Court, Case Number S-CV-0047770.

4. Respondent is the Superior Court of the State of California for the County of Placer, the Honorable Michael W. Jones, presiding, which entered the order challenged in this petition.

5. Placer County Deputy Sheriffs' Association and its President, Noah Frederito (herein collectively "PCDSA") are the petitioners in the civil action pending before the respondent court, and are named in this petition as Real Parties in Interest.

Timeliness of Petition

6. Oral argument on the County's demurrer and motion to strike was held on April 7, 2022, after which respondent court took the matter under submission. [Exhibit 22, V3 PA 631.] Nearly six weeks later, on May 17, 2022, the superior court issued an order overruling the County's demurrer on two counts, and sustaining it with leave to amend on one count. [Exhibit 23, V3 PA 633-638.] The superior court's order was filed on May 17, 2022, and notice was certified by the Clerk. This is the order challenged in this Petition.

7. Petitioner is filing this petition within 60 days after the date of the challenged order. (See *People v. Superior Court (Brent)* (1992) 2 Cal.App.4th 675, 682 ["Where there is otherwise no statutory authority or time limit in filing a writ, it must usually be filed within 60 days."].)

SUMMARY OF RELEVANT FACTS AND PROCEDURE

Measure F and the Election of 1976.

8. On November 2, 1976, the voters of Placer County voted to approve a local ballot initiative known as "Measure F." [Exhibit 2, V2 PA 184-185 (Amended Petition ("FAP") ¶ 5); Exhibit 7, V2 PA 402- 407 (judicially noticed election records).]

9. As it appeared on the ballot, Measure F read as follows:

> The Board of Supervisors shall, at least annually, determine the existing maximum salaries for the Nevada County Sheriff's Office, El Dorado County Sheriff's Office and Sacramento County Sheriff's Office for each class of position employed by said agencies.
>
> Effective January 1, 1977, and effective January 1st of each year thereafter the Board of Supervisors shall, during the month of January, determine the average salary for each class of position as set forth herein, and beginning the first pay period following January shall fix the average salary for each class of position in the Placer County Sheriff's Office at a level equal to the average of the salaries for the comparable positions in the Nevada County Sheriff's Office, El Dorado County Sheriff's Office and the Sacramento County Sheriff's Office.
>
> As used herein the term "comparable class of position" shall mean a group of positions substantially similar with respect to qualifications or duties or responsibilities using the following positions as guidelines:
>
> Undersheriff / Inspector / Corporal
> Captain / Sergeant / Deputy
> Lieutenant
>
> The provisions of this ordinance shall prevail over any otherwise conflicting provisions which may relate to salaries of county employees or officers who are not elected by popular vote.
>
> (It is proposed that the above ordinance be adopted by the Electors to insure that the employees of the Placer County Sheriff's Department shall have salaries comparable to the other competing law enforcement agencies surrounding Placer County.)

[Exhibit 7, V2 PA 404; see also Exhibit 2, V2 PA 184-185 (FAP ¶¶ 5-6).]

10. After the election, the County designated the initiative language as Section 14.3005 of the Placer County Code. Section 14.3005 was later renumbered and codified as Section 3.12.040 when the entire County Code was republished in 2000. [2]

The Election of 1980 and the Placer County Charter.

11. In 1980, the voters of Placer County enacted the Placer County Charter. [Exhibit 2, V2 PA 185 (FAP ¶ 7); Exhibit 7, V2 PA 408-418.] The Charter provides in relevant part as follows:

> **Section 102 Powers [of the County].**
>
> The county has and shall have all the powers which are now or may hereafter be provided by the Constitution and the laws of the State of California and by this Charter.
>
> **Section 103 Exercise of Powers.**
>
> The powers mentioned in the preceding section shall be exercised only by a Board of Supervisors or through agents and officers acting under its authority or authority conferred by law.
>
> **Section 301 [Powers And Duties Of The Board Of Supervisors] In General.**
>
> (a) The Board shall have all the jurisdiction and authority which now or which may hereafter be granted by the Constitution and the laws of the State of California or by this Charter.
>
> (b) It is the purpose of this Charter to allow the people of Placer County to have self government and home rule; silence in the Charter on a given subject does not relegate the county to compliance with the general law.
>
> **Section 302 Duties**
>
> The Board shall
>
> …
>
> (b) Provide, by ordinance for the number of assistants, deputies, clerks, and other persons to be employed from

[2] The official County Code and the County Charter are published online at https://qcode.us/codes/placercounty/.

> time to time in the several offices and institutions of the county, and for their compensation.
> …
> (d) Adopt the annual budget of the county.
>
> **Section 604 Continuation of Laws in Effect.**
>
> All laws of the county in effect at the effective date of this Charter shall continue in effect according to their terms unless contrary to the provisions of this Charter, or until repealed or modified pursuant to the authority of this Charter or the general law.

12. On September 14, 2021, the Board of Supervisors held a public hearing over a proposed ordinance that, among other things, would amend County Code section 3.12.040. [Exhibit 2, V2 PA 192 (FAP ¶ 64).]

13. At the same hearing, the Board also considered a separate ordinance that, if passed, would enact a wage increase for County employees in the Deputy Sheriffs bargaining unit above what the Measure F formula would provide. [Exhibit 2, V2 PA 192 (FAP ¶ 64).]

14. At the following Board of Supervisors meeting, on September 28, 2021, the Placer County Board of Supervisors duly passed both ordinances. [Exhibit 2, V2 PA 192-193 (FAP ¶¶ 66-67).]

15. Ordinance 6014-B amended County Code section 3.12.040, effective immediately, to read as follows:

> **<u>3.12.040 Salaries – All represented employees.</u>**
>
> Pursuant to Article XI, Sections 1, 3, and 4 of the California Constitution, Sections 302 and 604 of the Placer County Charter, adopted by the electorate on November 4, 1980, and California Government Code Sections 3504 and 3505, the Board of Supervisors shall negotiate and set compensation for all employees represented by PPEO, PCLEMA, and DSA.

[Exhibit 2, V2 PA 193 (FAP ¶ 67).]

16. Ordinance 6015-B implemented wage and benefits adjustments, providing wage increases of 1.09% for sheriffs' deputies and 1.41% for sergeants. [Exhibit 2, V2 PA 309 (FAP Exhibit J).]

Relevant Procedural History

17. PCDSA filed a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief on December 21, 2021. [Exhibit 1, V1 PA 005-177.] Petitioners filed an Amended Petition ("Amended Petition") on January 21, 2022. [Exhibit 2, V2 PA 183-348.] The Amended Petition alleges the following causes of action against the County: (1) Violation of Elections Code § 9125, by repealing County Code Section 3.12.040 without voter approval; (2) Violation of Placer County Code § 3.12.040, by imposing a wage adjustment that deviated from the formula previously set by that ordinance; and (3) a request for declaratory relief regarding the first two causes of action. [Exhibit 2, V2 PA 194-196 (FAP ¶¶ 76-93).]

18. On February 2, 2022, the County filed and served a notice of demurrer and demurrer to all three causes of action. [Exhibit 3, V2 PA 349-373.] The County concurrently filed a supporting request for judicial notice. [Exhibit 5, V2 PA 388-392.] The County also filed a motion to strike various portions of the Amended Petition the County believed to be irrelevant and improper. [Exhibit 4, V2 PA 374-387.] A hearing was scheduled for March 3, 2022, for both the demurrer and the motion to strike.

19. On February 17, 2022, the PCDSA filed their oppositions to the County's demurrer and motion to strike. [Exhibit 10, V2 PA 453-474; Exhibit 11, V3 PA 480-500.] The PCDSA concurrently filed a notice of errata as to the Amended Petition. [Exhibit 9, V2 PA 423-452.]

20. On February 24, 2022, the County filed reply briefs in support of its demurrer and motion to strike. [Exhibit 14, V3 PA 520-532; Exhibit 15, V3 PA 533-545.]

21. On March 2, 2022, respondent court continued the hearing on the County's demurrer and motion to strike until March 24, 2022. [Exhibit 17, V3 PA 558.]

22. On March 23, 2022, respondent court continued the hearing again, until April 7, 2022. [Exhibit 18, V3 PA 566.]

23. On March 29, 2022, the County filed a request for judicial notice of new authority in support of its demurrer. Specifically, the County requested that respondent court take judicial notice of the newly-issued decision by the Court of Appeal, First Appellate District, in *Pacifica Firefighters Association v. City of Pacifica* (Mar. 24, 2022) 76 Cal.App.5th 758 [2022 WL 871260] which was certified for publication and contained analysis relevant to the legal questions raised in the County's demurrer. [Exhibit 19, V3 PA 567-596.]

24. The superior court heard oral argument on April 7, 2022. After oral argument, the superior court took the matter under submission. [Exhibit 22, V3 PA 631.]

25. On May 17, 2022, respondent court issued a written order on the County's motions. [Exhibit 23, V3 PA 632-639.] The court granted both of the County's requests for judicial notice. [Exhibit 23, V3 PA 633.] The court overruled the County's demurrer as to the First Cause of Action (Violation of Elections Code § 9125) and Third Cause of Action (Declaratory Relief). [Exhibit 23, V3 PA 635-636.] The court sustained the demurrer to the Second Cause of Action (Violation of County Code § 3.12.040), but granted leave to amend.[3] [Exhibit 23, V3 PA 636.]

[3] The PCDSA filed a Second Amended Petition in the superior court on May 25, 2022. This petition challenges the superior court order that granted PCDSA leave to amend in the first place, and the relief requested in this petition would render the Second Amended Petition moot. The Second Amended Petition is therefore not relevant to the legal questions at issue in this petition.

BASIS FOR RELIEF

26. PCDSA's First Cause of Action asserts that the County's amendment of County Code Section 3.12.040 violated Elections Code Section 9125, based on the allegation that Section 3.12.040 codifies the 1976 ballot initiative known as Measure F. PCDSA's Second and Third Causes of Action are derivative of and entirely dependent on the First Cause of Action.

27. The County demurred that Measure F was not a valid and enforceable ballot measure, meaning that Section 3.12.040 (which mirrored its terms) was not subject to Elections Code Section 9125 and could be repealed or amended without voter approval. The County's argument was based on three separate and independent legal grounds.

28. First, the County argued that Measure F's mandatory wage-setting formula unlawfully deprives the Board of Supervisors of its constitutional authority – under Article XI, Section 1(b) of the California Constitution – to set County employee wages, and unlawfully delegates that authority to neighboring counties. [Exhibit 3, V2 PA 352 and 362-366.]

29. Second, the County argued that Measure F deprives both the County and PCDSA of their right under the MMBA to bargain over wages for County employees represented by the PCDSA, and that Measure F therefore is preempted by state law. [Exhibit 3, V2 PA 353 and 367-368.]

30. Third, the County argued that even assuming Measure F was valid when adopted in 1976, it was legally superseded when the voters of Placer County enacted the Placer County Charter in 1980 because the Charter specifically grants the Board of Supervisors the authority to set the compensation of County employees, and expressly supersedes any prior law that is inconsistent with the terms of the Charter. [Exhibit 3, V2 PA 353 and 368-369.]

31. The superior court overruled the County's demurrer to the First Cause of Action without due consideration of the County's arguments.

32. The superior court rejected the appellate decisions cited in support of the County's constitutional argument because those decisions "address challenges brought beyond the pleading stage." [Exhibit 23, V3 PA 635.] This ruling is based on legal error, as it applies a non-existent legal standard and fails to apply the legal principles derived from the County's cited authorities to the undisputed – and judicially noticeable – facts of this case.

33. The superior court's order also contains language suggesting the court misunderstood the County's constitutional argument, stating that "[t]he court cannot determine at this juncture that the claim for violations of Elections Code section 9125 is unconstitutional on the face of the pleading." [Exhibit 23, V3 PA 635.] The County never argued that an Elections Code section 9125 claim against the County would *itself* be unconstitutional. Rather, the County argued that the PCDSA failed to state a *prima facie* case for violation of Elections Code section 9125 because *the specific initiative referenced in the claim* was unconstitutional.

34. The superior court's order also entirely fails to acknowledge the County's arguments that Measure F was substantively preempted by the MMBA, or that it was superseded by the County Charter. [Exhibit 23, V3 PA 634-637.] These are separate and independent legal theories supporting the County's demurrer, and the failure to address these arguments at all is reversible error.

35. The County's demurrer and this petition raise significant questions of law relating to the proper scope of the electorate's initiative power, the interpretation of constitutional provisions regarding the authority of County Boards of Supervisors, and regarding the application and pre-emptive effect of statewide collective bargaining statutes.

36. Because the material facts necessary to adjudicate PCDSA's civil action are undisputed and subject to judicial notice, adjudication of these legal questions – one way or the other – will almost certainly result in a final disposition of the underlying civil action.

37. Absent immediate appellate review, the superior court's error will result in needless and significant expenditure of time and resources by the parties and the superior court.

JURISDICTION

38. Where, as here, the issue tendered can be decided on undisputed facts and is purely legal in nature, it calls for the court's independent appellate review. (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003; *American Internat. Group, Inc. v. Superior Court* (1991) 234 Cal. App. 3d 749, 755.)

ABSENCE OF OTHER REMEDIES

39. The County has no adequate legal remedy other than writ relief. (See C.C.P. § 904.1(a)(1) [interlocutory orders are not appealable].) Unless writ relief is granted, the County will be forced to expend time and resources defending against PCDSA's civil action, including responding to discovery on a broad range of collateral topics, when the matter could have been decided on the pleadings as a matter of law.

GROUNDS FOR AN IMMEDIATE STAY

40. The PCDSA's civil action contains a large number of allegations that go well beyond the scope of the narrow legal question presented by its cause of action.

41. Many of these allegations relate to administrative proceedings regarding allegations of unfair labor practices – by both the County and the PCDSA – currently pending before the Public Employment Relations Board ("PERB").

42. Petitioner anticipates that the DSA will propound substantial discovery on Petitioner with regard to these allegations as a fishing expedition for collateral purposes, including the referenced PERB proceedings, as well as to support the DSA's public relations campaign with respect to the parties' ongoing labor negotiations, and to put economic pressure on the County while negotiations continue.

43. Allowing proceedings to continue in the superior court while this petition is pending will require County personnel to devote significant time and attention, as well as incur significant expenses in the form of attorney's fees, litigating causes of action that should already have been dismissed as a matter of law.

44. A stay of proceedings in the superior court will also serve the interests of judicial economy by removing this matter from the superior court's docket while this petition is pending.

PRAYER FOR RELIEF

The County respectfully prays this Court:

1. Issue an immediate stay of further proceedings in Placer County Superior Court case no. S-CV-0047770, to remain in effect pending final disposition of this petition;

2. a. Issue a peremptory writ of mandate and/or prohibition in the first instance (Code Civ. Proc. §§ 1088, 1105), directing respondent court to vacate its order on the County's demurrer and to enter a new and different order sustaining the County's demurrer on all causes of action without leave to amend; or

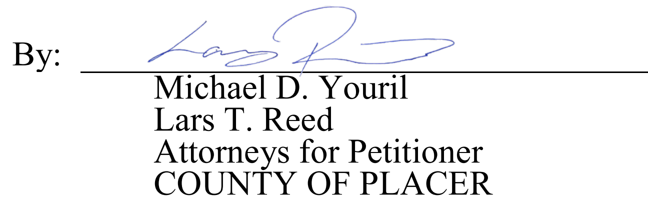
b. Issue an alternative writ directing respondent superior court to act as specified in paragraph 2(a) of this prayer, or to show cause why it should not be ordered to do so, and upon return to the alternative writ issue a peremptory writ as set forth in paragraph 2(a) of this prayer or such other extraordinary relief as is warranted.

3. Award Petitioner its costs pursuant to Rule 8.493 of the California Rules of Court.

4. Retain jurisdiction over this writ petition until the trial court complies with each and every directive issued by this Court.

5. Grant such other relief as may be just and proper in the determination and discretion of this Court.

Dated: June 13, 2022 LIEBERT CASSIDY WHITMORE



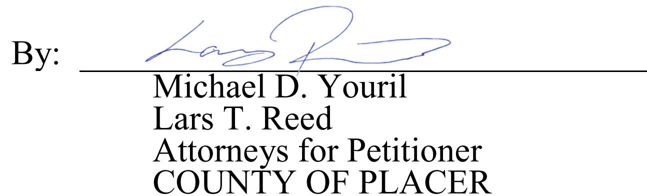
By: ______________________

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

VERIFICATION NOT REQUIRED

Code of Civil Procedure section 446 exempts public entities from the requirement of verifying pleadings. The weight of authority concludes this exemption applies to public agency petitions in appellate writ proceedings. *Los Angeles County Dep't of Children & Family Servs. v. Superior Court* (1998) 62 Cal.App.4th 1, 9 fn.7; *Murrieta Valley unified Sch. Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1221-23.

Dated: June 13, 2022 LIEBERT CASSIDY WHITMORE

By: 

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<u>MEMORANDUM OF POINTS AND AUTHORITIES</u>

I. <u>STANDARD OF REVIEW</u>

In the interest of judicial economy, a writ may issue to review an order overruling a demurrer where a "significant issue of law is raised, or resolution of the issue would result in a final disposition as to the petitioner." (*Audio Visual Servs. Group, Inc. v. Superior Court* (2015) 233 Cal.App.4th 481, 488; *Regents of Univ. of Cal. v. Superior Court* (2013) 220 Cal.App.4th 549, 558; *Boy Scouts of Am. Nat'l Found. v. Superior Court* (2012) 206 Cal.App.4th 428, 433.) The legal issue of preemption is "properly raised by demurrer and an order overruling a demurrer on that ground is properly reviewed by petition for a writ of mandate." (*Wells Fargo Bank v. Superior Court* (2008) 159 Cal.App.4th 381, 385.)

Because a demurrer tests the legal sufficiency of the complaint, an appellate court reviews an order on a demurrer de novo, exercising its independent judgment about whether the complaint states a cause of action. (*San Bernardino v. Superior Court* (2015) 239 Cal.App.4th 679, 683; *Audio Visual Servs. Group, Inc. v. Superior Court* (2015) 233 Cal.App.4th 481, 489; *Driscoll v. Superior Court* (2014) 223 Cal.App.4th 630, 636.)

II. <u>ARGUMENT</u>

A. <u>The Court Should Issue A Writ Of Mandate Because PCDSA's First Cause of Action Fails As A Matter Of Law Based on Undisputed Facts, and the Superior Court Erred in Overruling the County's Demurrer</u>

The First Cause of Action set forth in PCDSA's superior court petition – and the foundation for the following derivative claims – asserts that by amending County Code section 3.12.040, the County unlawfully repealed Measure F without voter approval, violating Elections Code section 9125. [Exhibit 2, V2 PA 194 (FAP ¶¶ 76-80).] The County demurred, arguing that this purported cause of action fails as a matter of

law for the simple reason that Measure F has never been legally valid and enforceable in the first place, or at least has been void since the adoption of the County Charter in 1980. [Exhibit 3, V2 PA 352-353 and 362-369.]

Specifically, Elections Code section 9125 prohibits the repeal or amendment of any "ordinance proposed by initiative petition" without a vote of the people, unless permitted by the original ordinance itself. However, if the original initiative was itself invalid, no voter approval is required to repeal or amend the ordinance. (See *Meldrim v. Board of Supervisors of Contra Costa County* (1976) 57 Cal. App.3d 341, 343 [ruling on a cause of action under former Elections Code section 3720, predecessor to the current Section 9125].) A *prima facie* cause of action under Elections Code Section 9125 must therefore allege that the respondent, without submission to the voters, repealed or amended a *valid* ballot initiative.

As explained in the County's demurrer, the PCDSA's complaint failed to meet this burden because Measure F is void and without legal effect for *multiple independent* reasons. Accordingly, when the Board of Supervisors amended Section 3.12.040 of the Placer County Code, it did little more than repeal an unenforceable "dead letter" ordinance.

As set forth in detail below, this conclusion follows from a straightforward application of existing law to undisputed facts,[4] hinging solely on statutory interpretation of the terms of Measure F. Therefore, the County's demurrer to the first cause of action should have been sustained without leave to amend. But in ruling on the County's demurrer, the

[4] On demurrer, factual allegations in the complaint are deemed true, but as explained in the County's demurrer, the material facts necessary to adjudicate the legal claims in the PCDSA's complaint are *actually* undisputed, and even subject to judicial notice.

superior court failed to actually address the County's substantive arguments. [Exhibit 23, V3 PA 634-637.] This is reversible legal error.

This Court has jurisdiction to review the County's arguments – and the legal sufficiency of the PCDSA's underlying civil action – de novo.

1. A Local Electorate's Right to Initiative Does Not Extend to Matters Where Authority Is "Delegated Exclusively" To the Local Governing Body

Although the local electorate's constitutional right to initiative and referendum is *generally* coextensive with the legislative power of the local governing body, "[a]uthority over certain matters … is 'delegated exclusively to the County's governing body, precluding the right to initiative and referendum.' " (*Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 38, [citing *DeVita v. City of Napa* (1995) 9 Cal.4th 763, 776].) "The presumption in favor of the right of initiative is rebuttable upon a clear showing that the Legislature intended 'to delegate the exercise of … authority exclusively to the governing body … .' " (*Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 833-34 [citing *DeVita*, *supra*, 9 Cal.4th at 776].)

This principle was most recently discussed in the Court of Appeal's decision in *Pacifica Firefighters' Association v. City of Pacifica* (Mar. 24, 2022) 76 Cal.App.5th 758 ("*Pacifica Firefighters*").[5] In that case, the First District Court of Appeal overturned a 1988 local ballot measure remarkably similar to the one at issue here (and coincidentally also designated as

[5] The *Pacifica Firefighters* decision was not discussed in the briefing, as the decision was issued after briefing was already completed. However, the superior court took judicial notice of the decision. [Exhibit 23, V3 PA 633.] The decision was also was discussed at length during oral argument. [Exhibit 21, V3 PA 610-621 (transcript).] In any event, because the legal sufficiency of a complaint subject to demurrer is reviewed de novo, this court is free to consider the *Pacifica Firefighters* decision.

"Measure F") because it effected an unlawful delegation of the local governing body's authority and – as discussed below – because it conflicted with the MMBA.

Under the terms of the City of Pacifica's Measure F, the City was required to submit any labor dispute with the City's firefighters to a "factfinding board" tasked with making non-binding recommendations on each disputed issue. (*Id.* at 761.) However, on the issue of salaries, Pacifica's Measure F was more specific, and – unless the parties agreed otherwise – required the City to adjust wages for the City's firefighters annually to a level "no less than" the average wage for firefighters in specific surrounding cities.[6] (*Id.* at 762.)

Ruling on a petition for writ of mandate seeking to enforce this ballot measure, the superior court found that Pacifica's Measure F constituted an unlawful delegation of power by the electorate because state general law – specifically Government Code section 36506 – vests the city council with exclusive authority to fix compensation for city employees, and that the measure was therefore unenforceable. (*Id.* at 765.) The First District Court of Appeal affirmed the trial court's reasoning:

> In specifically directing the 'city council' to 'fix the compensation of all appointive officers and employees' (§ 36506), the Legislature must have intended to avoid the disruption to city operations that could result if the electorate could require a general law city to pay its firefighters higher salaries than the city council deemed appropriate by requiring salaries no less than those in another jurisdiction.

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[6] The measure still required the issue of wages to be submitted to the factfinding board for a "non-binding" recommendation. However, the measure required any factfinding recommendation on wages to conform to the prevailing-wage formula, and separately required the City Council itself to conform to the prevailing-wage formula if it chose to reject the factfinding recommendation.

> We therefore agree with the trial court that Measure F is unenforceable as a usurpation of authority the Legislature granted exclusively to the city council.

(*Id.* at 771.)

The legal principle here is clear: Where state law gives a local governing body exclusive authority over an issue, that issue is no longer a valid subject of initiative by the local electorate.

2. The California Constitution and State General Law Both Give County Boards of Supervisors Exclusive Authority Over County Employee Compensation

The California Constitution grants the governing bodies of counties the exclusive authority to provide compensation for its employees. Article XI, Section 1(b) of the California Constitution provides: "The governing body [of the County] shall provide for the number, compensation, tenure, and appointment of employees." (Cal. Const., art. XI, § 1(b).) Under this constitutional provision, a county's right to set compensation for its employees trumps conflicting state laws. (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 640; *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276, 1290, as modified (Sept. 30, 2008).) For general law counties, this constitutional provision is mirrored in Government Code section 25300, which provides:

> The board of supervisors shall prescribe the compensation of all county officers, including the board of supervisors, and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be

> taken by resolution of the board of supervisors as well as by ordinance."[7]

When a California county adopts a charter, additional constitutional provisions similarly reserve compensation-setting authority for the county's governing body. (Cal. Const., art. XI, §§ 3(a), 4(f).) However, Article XI, Section 1's specific assignment of wage-setting authority to the board of supervisors applies to all counties, not just charter counties. (*Curcini*, *supra*, 164 Cal.App.4th at 640 [citing *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285].) While Placer County is *currently* a charter county, having adopted a county charter in 1980, it was a general law county in 1976 when Measure F appeared on the ballot.

Because of the Constitution's very specific grant of authority, the California Supreme Court has held that a county cannot be compelled to delegate this authority. For example, in *County of Riverside v. Superior Court*, the California Supreme Court struck down legislation requiring local agencies to submit economic issues to binding arbitration, noting that "[t]he constitutional language is quite clear and quite specific: the *county*, not the state, not someone else, shall provide for the compensation of its employees." (*County of Riverside*, *supra*, 30 Cal.4th at 285 [emphasis in original].) The Court held that state law can regulate the *process* for fixing wages, but the statute in question was substantive because it would permit a body other than the county's governing body to set wages. (*Id.* at 289.) Similarly, the Court held that while a county's governing body can delegate

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[7] Apart from the sub-clause regarding compensation for members of the board itself, which was added by Assembly Bill 428 (2021) the current version of the statute has remained unchanged since its enactment in 1974.

its own wage-setting power, the constitution's specific grant of authority was a clear limitation on the state's law-making authority.[8] (*Id.* at 289-90.)

Subsequently, in *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 332, the Court of Appeal struck down an amended version of the same arbitration statute struck down in *County of Riverside*. The amended provision would have allowed the board of supervisors to reject an arbitration decision by a unanimous vote, but absent a unanimous vote of the board, the arbitration decision would be final and binding. (*Id.* at 333-34.) Nevertheless, even this amended statute failed constitutional scrutiny because it reduced the board's authority to a mere veto power, meaning the arbitrator's decision would become binding even with no legislative action at all. (*Id.* at 347-48.) Accordingly, the court held that the statute substantially impinged on the board's authority to set compensation for county employees, and therefore conflicted with the Constitution's reservation of this power to local governments.

3. Measure F Unlawfully Deprives the Board of its Constitutional Authority to Set Wages and Delegates It to Neighboring Counties

The language of Measure F as it appeared on the ballot in 1976 directed the County Board of Supervisors to annually "fix the average salary for each class of position in the Placer County Sheriff's Office at a level equal to the average of the salaries for the comparable positions in the Nevada County Sheriff's Office, El Dorado County Sheriff's Office and the Sacramento County Sheriff's Office." [Exhibit 7, V2 PA 404.] In other words, Measure F would "fix" or set the wages of County employees with

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[8] *County of Riverside* addressed an act of the Legislature, but it is well-established that the people's right of initiative is also one aspect of the overall law-making authority of the state, alongside the legislative power vested in the Legislature. (*County of Riverside*, *supra*, 30 Cal.4th at 284.)

reference to a specific extrinsic fact: the average compensation level at neighboring agencies whose terms of employment are outside the control of the Board of Supervisors, leaving effectively no discretion to the Board of Supervisors. Accordingly, Measure F impermissibly infringes on the Board of Supervisors' constitutional authority to provide for the compensation of County employees. (Cal. Const., art. XI, § 1, subd. (b).)

Notably, comparing Placer County's Measure F to the initiative invalidated in *Pacifica Firefighters*, it is clear that Placer County's measure would leave the Board of Supervisors with *even less* discretion. The Pacifica initiative left open the possibility that the City could enact a salary *higher* than the prevailing wage formula, and allowed the City and the firefighters' union to mutually agree to deviate from that formula. Placer County's Measure F gives no such leeway; it precludes any deviation from the formula, however slight, and even precludes bargaining over wages.

Meldrim v. Board of Supervisors of Contra Costa County (1976) 57 Cal. App.3d 341 ("*Meldrim*") is also instructive on the facts of this case. In *Meldrim*, a taxpayer brought suit to invalidate a 1974 ordinance passed by the Contra Costa County Board of Supervisors that set salaries for members of the Board at $14,282.80 per year. (*Id.* at 343.) The taxpayer argued that the 1974 ordinance unlawfully repealed a 1972 ballot initiative that fixed the salaries at $13,200 per year. (*Ibid.*) The trial judge hearing the case ruled that the 1972 initiative itself was unconstitutional and that the 1974 ordinance was therefore valid; the Court of Appeal affirmed the judgment. (*Ibid.*) Specifically, the Court of Appeal in *Meldrim* held that the California Constitution, Article XI, Section 1, did not simply add the authority to set salaries to the general powers of counties, "but, instead, it specifically gave that power to the governing bodies themselves." (*Id.* at 343-44.) The court

explained that "[i]f the [1972] initiative were held to be applicable, the *voters* could *prescribe* the compensation, in contradiction to the provision that the *governing body* shall do so." (*Id.* at 344 [emphasis in original].)

Jahr v. Casebeer (1999) 70 Cal.App.4th 1250 ("*Jahr*") is similarly instructive. In *Jahr*, the County Counsel for Shasta County sought a judicial declaration that a proposed initiative – which would directly amend the County ordinance setting compensation for members of the Board of Supervisors – was unconstitutional. Specifically, the initiative at issue would require the Board to set compensation for its members – both immediately and annually thereafter – at a level not to exceed the base pay of a member of the Redding City Council. (*Jahr*, *supra*, 70 Cal.App.4th at 1253.) The Court of Appeal reaffirmed the reasoning from the *Meldrim* decision, and held that Article XI, Section 1, unambiguously gives compensation-setting authority solely to the "governing body," meaning the Board of Supervisors, and not the voters. (*Id.* at 1254-55.)

Although both *Jahr* and *Meldrim* concerned salaries for members of the Board of Supervisors, the same reasoning applies to the Board's authority to set employee wages. The very same constitutional provision – Article XI, Section 1, subdivision (b) – specifically assigns both powers to the "governing body" of each county, not the "county" or the "voters." Similarly, Government Code section 25300 expressly assigns both powers to the "board of supervisors."

Just like the ballot initiative invalidated in *Meldrim,* the proposed initiative struck down in *Jahr*, and the initiative invalidated in *Pacifica Firefighters*, Measure F would deprive the Board of Supervisors of its constitutional and statutory wage-setting authority by fixing compensation to an external benchmark outside the Board's control. Similar to the

arbitration statute struck down (twice) in *County of Riverside* and *County of Sonoma*, Measure F would unlawfully delegate the authority to determine wages for Placer County employees to a body – or three bodies, in this case – other than the governing body of Placer County.

Totten v. Board of Supervisors (2006) 139 Cal.App.4th 826, also provides analogous support for the County's demurrer. In that case, the Court of Appeal ruled that an initiative ordinance establishing a minimum annual budget for Ventura County's public safety agencies was constitutionally invalid. The court held that Government Code sections 2900-2903 expressly delegate authority over the budget of general law counties to each county's board of supervisors, giving rise to a strong inference that the Legislature intended to preclude the electorate from exercising authority over the adoption of a County budget. (*Totten*, *supra*, 139 Cal.App.4th at 839.) The court also noted that applying the initiative process to county public safety budgets would seriously impair the board's essential ability to manage the county's financial affairs. (*Id.* at 840.) Although Measure F does not directly fix the County's public safety budget, it nonetheless substantially restricts the Board's ability to determine the Sheriff's Office budget by taking the largest determining factor – deputy wages – out of the Board's hands.

For each and all of the reasons discussed above, Measure F is on its face unconstitutional, void, and unenforceable. Given that *Meldrim* was decided years before Measure F appeared on the ballot, Measure F has in fact been void from the very beginning.

This legal question was squarely presented to the superior court through the County's demurrer [Exhibit 3, V2 PA 352 and 362-366] and the court's judicial notice of the *Pacifica Firefighters* decision. [Exhibit 23, V3 PA 633.] This is also a pure legal question that hinges solely on statutory interpretation of the text of Measure F; there are no material

disputed facts that need to be explored through discovery or an evidentiary hearing. Accordingly, the superior court's refusal to address the County's argument substantively was reversible error, and this Court should issue a writ of mandate to correct it.

4. Measure F is Unenforceable Because It Is Preempted by the MMBA

Independent of Measure F's conflict with the state constitution and Government Code section 25300, Measure F is also void and unenforceable because it directly conflicts with the MMBA. It is well established that acts of the Legislature can preclude the right of initiative. "In matters of statewide concern, the state may if it chooses preempt the entire field to the exclusion of all local control. If the state chooses instead to grant some measure of local control and autonomy, it has authority to impose procedural restrictions on the exercise of the power granted, including the authority to bar the exercise of the initiative and referendum." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 511.)

In analyzing the applicability of the MMBA, the Supreme Court of California has repeatedly held that although local agencies have *substantive* authority over the amount paid to employees, the *procedures* set by the MMBA are a matter of statewide concern and preempt contradictory local procedures. (*Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765, 781 [citing *Int'l Brotherhood of Elec. Workers v. City of Gridley* (1983) 34 Cal.3d 191, 202]; *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 601.) Similarly, in *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553, 557, the Court of Appeal held that although fixing compensation is a municipal function, "local legislation may not conflict

with statutes such as MMBA which are intended to regulate the entire field of labor relations of affected public employees throughout the state." (*San Leandro Police Officers Assn.*, *supra*, 55 Cal.App.3d at 557.)

Thus, any local ordinances relating to the setting of employee wages must preserve the "centerpiece" of the MMBA, which "mandates that the governing body undertake negotiations with employee representatives … with the objective of reaching agreement on matters within the scope of representation." (*Voters for Responsible Ret.*, *supra*, 8 Cal.4th at 781.) In other words, the MMBA preempts local procedures that would restrict or foreclose salary negotiations.

The *Pacifica Firefighters* decision also addresses one specific aspect of this issue. As discussed above, in the event the City of Pacifica did not reach a labor agreement with its firefighters and the City Council chose to reject the factfinding board's recommendation, Pacifica's ballot initiative would have required the City to set wages at least as high as the prevailing wage in the region. (*Pacifica Firefighters*, *supra*, 76 Cal.App.5th at 762.) The Court of Appeal held that this provision unlawfully precluded the city council from exercising its right under Government Code section 3505.7 to impose its last, best, and final offer if negotiations reached impasse. (*Id*. at 775.)

As discussed above, and as outlined in the Petition, Placer County's Measure F would require the County to fix wages for Sheriff's Office employees at a level exactly equal to the average wage for comparable positions in neighboring counties. Just like the initiative in *Pacifica Firefighters*, Measure F would prevent the County from exercising its right to impose its last, best, and final offer after an impasse in negotiations. But Measure F conflicts with the MMBA at an even more fundamental level, as it would leave no room for *either* party to even try to negotiate wages. If valid, Measure F would prohibit the parties from implementing wage

increases that deviate in any way from the formula set by the ballot initiative, *even if* the parties had a negotiated agreement regarding the increase. Moreover, by prescribing employee wages – the central portion of employees' total negotiable compensation and benefits package – Measure F would necessarily also severely curtail the range of economically feasible compromises on *other* issues within the scope of representation.

In short, Measure F directly conflicts with the very core purpose of the MMBA. By setting a fixed formula for setting deputies' wages every year in perpetuity, it would remove wages from the scope of bargaining by declaring it non-negotiable,[9] causing the parties' bargaining procedure to fundamentally deviate from the process mandated under the MMBA.

As with the County's constitutional argument, this legal question was squarely presented to the superior court through the County's demurrer [Exhibit 3, V2 PA 353 and 367-368] and the court's judicial notice of the *Pacifica Firefighters* decision. [Exhibit 23, V3 PA 633.] It, too, is a pure legal question that hinges solely on statutory interpretation, and it stands separate and independent from the County's constitutional argument. Nevertheless, not only did the superior court fail to address the substance of this argument, the court's order *fails to so much as acknowledge the issue*; at no point does the court's order ever even mention the MMBA or the parties' respective rights and duties to engage in collective bargaining. [Exhibit 23, V3 PA 634-637.]

The superior court's failure to address the County's argument was reversible error, and this Court should issue a writ of mandate to correct it.

[9] Indeed, the PCDSA have repeatedly alleged that, under the terms of Measure F, even *proposing* a wage increase inconsistent with its formula would be unlawful. (Amended Petition ¶¶ 31, 42.)

5. Measure F was Superseded, With Voter Approval, by the 1980 Enactment of the County Charter

For each of the reasons discussed above, Measure F has been invalid and unenforceable since the moment it appeared on the ballot. But assuming (for the sake of argument only) that some aspect of Measure F was initially enforceable, it was legally superseded as of 1980 when the voters of Placer County enacted a County Charter.

Upon the enactment of the Placer County Charter, any preexisting laws remained in effect, "unless contrary to the provisions of this charter." (Placer County Charter, § 604; *see also* Cal. Const. art. XI, § 3, subd. (a) ["County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith."].) Section 103 of the Charter provides that the powers conferred on the County by the constitution, state law, and the charter itself "*shall be exercised only by a Board of Supervisors* or through agents and officers acting under its authority or authority conferred by law." (Emphasis added.) Section 302 of the Charter specifically gives the Board of Supervisors authority to provide for the compensation of County employees. Absent ambiguity, the court must "presume that the voters intend[ed] the meaning apparent on the face of an initiative measure, and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037, citing *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543.)

There is no indication in the Charter that its grant of authority was intended to vest the Board of Supervisors with only a limited right to make compensation decisions, subject to partial exceptions for specific employee classifications; to the contrary, the Charter's language is a broad and unambiguous grant of authority to the Board to "provide, by ordinance, for

the number of assistants, *deputies*, clerks, and other persons to be employed from time to time in the several offices and institutions of the county, *and for their compensation*." (Placer County Charter, § 302, subd. (b) [emphasis added].) Thus, to the extent Measure F had any legal effect in the first place, its wage-setting formula was inconsistent with the 1980 charter enactment's broad grant of wage-setting authority to the Board of Supervisors. Between these two inconsistent provisions, the voter-approved County Charter takes precedence. (Placer County Charter, § 604; Cal. Const. art. XI, § 3, subd. (a).) Accordingly, to the extent Measure F was ever valid, it was legally superseded and repealed – with the voter approval required by Elections Code section 9125 – when Placer County voters enacted the County Charter.

Once again, the County's demurrer clearly briefed this issue to the superior court. [Exhibit 3, V2 PA 353 and 368-369.] It is a question of pure statutory interpretation based on the language of Measure F and the language of the County Charter. Nevertheless, the superior court failed to acknowledge the issue in ruling on the County's demurrer; the court's order does not even mention the County Charter. [Exhibit 23, V3 PA 634-637.] This failure to address the County's substantive argument is reversible error.

6. Conclusion

For the reasons discussed above, Measure F was void and unenforceable *at least* as early as 1980, meaning the Board of Supervisors had no obligation to seek voter approval before amending County Code section 3.12.040. All three of the above arguments were briefed to the superior court as part of the County's demurrer, but the superior court refused to engage substantively with any of them. The superior court

therefore committed legal error in overruling the County's demurrer to the First Cause of Action, and this court should issue a writ of mandate to correct the superior court's mistake.

B. **The Court Should Issue a Writ of Mandate Because PCDSA's Second Cause of Action Is Entirely Derivative of the First, and Granting Leave to Amend Was Abuse of Discretion**

In their superior court action, the PCDSA's Second Cause of Action alleged that the County violated County Code section 3.12.040. [Exhibit 2, V2 PA 195 (FAP ¶¶ 81-86).] Specifically, the PCDSA argued, on the assumption that the County's amendment to Section 3.12.040 violated Elections Code 9125 and was therefore void, that the County had a ministerial duty to implement wage increases only in accordance with the Measure F formula. [Exhibit 2, V2 PA 195 (FAP ¶¶ 84-85).]

This cause of action is on its face derivative of PCDSA's First Cause of Action: Whether the County's wage adjustment violated the prior version of Section 3.12.040 depends entirely on whether that version of the ordinance was still in effect at the time the County made the wage adjustment. This question in turn depends entirely on whether the County's amendment of Section 3.12.040 was legally effective, which depends entirely on whether Section 3.12.040 was subject to the protections of Elections Code section 9125.

If the County were to prevail on *any one* of its legal arguments why Measure F was already void and unenforceable, it means the County had the legal authority to amend Section 3.12.040, which means the County had no duty to follow the terms of the prior version of the ordinance, which would mean the PCDSA's Second Cause of Action fails as a matter of law.

The superior court clearly recognized as much, holding that the referenced version of Section 3.12.040 was "no longer in effect" and that the PCDSA's Second Cause of Action was therefore "not viable against the current iteration of Section 3.12.040." [Exhibit 23, V3 PA 636 (Court order p. 4, lines 19-21).] Although the superior court's ruling on this point is inconsistent with its simultaneous (and improper) refusal to rule on the substantive question of whether the County validly amended Section 3.12.040 in the first place, the superior court actually reached the correct conclusion. For all the reasons discussed above, the County did have the authority to amend Section 3.12.040, and the County's demurrer to the Second Cause of Action was properly sustained.

Where the superior court erred, however, is in granting the PCDSA leave to amend. [Exhibit 23, V3 PA 636 (Court order p. 4, lines 23-28).] Although courts typically take a liberal view toward amending a complaint where there is a reasonable possibility of curing its defects, it is well established that if the facts are not in dispute, no liability exists under substantive law, and amendment would be futile, leave to amend should be denied. (*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 535; *Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436; *Schonfeldt v. State of Calif.* (1998) 61 Cal.App.4th 1462, 1465.)

In order to sustain the County's demurrer to the Second Cause of Action, the superior court had to – and did – find that the restrictive prior version of Placer County Code section 3.12.040 was no longer in effect because it had been repealed or amended. [Exhibit 23, V3 PA 636 (Court order p. 4, lines 19-21).] With that finding, the PCDSA's Second Cause of Action fails not due to a lack of specific factual allegations, but as a matter of law. There are no factual circumstances under which the County could violate an ordinance that was no longer in effect, and thus no factual allegations that could be added by amendment that would cure the defect.

For this reason, it was abuse of discretion for the superior court to grant the PCDSA leave to amend its Second Cause of Action. The County's demurrer was properly sustained; leave to amend is futile, and this court should issue a writ of mandate to direct the superior court to rescind its prior order and issue a new order sustaining the County's demurrer without leave to amend.

C. **The Court should Issue a Writ of Mandate Because the Third Cause of Action is Entirely Derivative of the First and Second, and The Superior Court Erred in Overruling the County's Demurrer**

A declaratory relief claim is subject to general demurrer where it is "wholly derivative" of a substantive claim that is invalid as a matter of law. (*Ball v. FleetBoston Fin'l Corp.* (2008) 164 Cal. App. 4th 794, 800.)

The Third Cause of Action in PCDSA's superior court petition seeks a judicial declaration that the County's amendment of Section 3.12.040 violated Elections Code section 9125, and a judicial declaration that the County violated Section 3.12.040 when it enacted a wage increase greater than the Measure F formula would allow. [Exhibit 2, V2 PA 195-196 (FAP ¶¶ 87-93).] The County therefore demurred on the grounds that this claim is wholly derivative of the First and Second Causes of Action: No additional facts are alleged, no independent legal questions are raised; Petitioners merely seek judicial declarations adjudicating their First and Second Causes of Action. [Exhibit 3, V2 PA 371.] And for each and all of the reasons set forth above, the First and Second Causes of Action are invalid as a matter of law and incapable of cure by amendment.

Accordingly, the County's demurrer to the Third Cause of Action should have been sustained without leave to amend alongside the First and Second Causes of Action, and the superior court erred in overruling the County's demurrer.

This court should therefore issue a writ of mandate directing the superior court to rescind its prior order and issue a new one sustaining the Third Cause of Action without leave to amend. Alternatively – but to much the same effect – this Court could issue a writ of mandate directing the superior court to issue a judicial declaration that the County's amendment of Section 3.12.040 and the subsequent enacted wage increase were lawful and proper.

Either way, this court should issue a writ of mandate or other appropriate relief correcting the superior court's error.

III. <u>CONCLUSION</u>

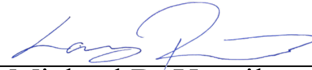
The County demurred to PCDSA's First Cause of Action on three separate, independent grounds, all purely legal questions based on undisputed facts and straightforward statutory interpretation. The County also demurred to the Second and Third Causes of Action as derivative of the First. The superior court failed to properly consider the County's arguments, deflecting one argument on contrived procedural grounds and neglecting the other two entirely. For each and all of the reasons discussed above, the PCDSA's First Cause of Action fails as a matter of law, and the Second and Third Causes of Action fail alongside it.

Because the defects in the PCDSA's causes of action are pure issues of law and are incapable of cure by amendment, the County's demurrer should have been sustained on all counts without leave to amend. The superior court erred in overruling the County's demurrer to the First and Third Causes of Action, and abused its discretion in granting leave to amend the Second. This Court should correct the superior court's error by issuing a peremptory writ of mandate that directs the superior court (1) to rescind its prior order, (2) to issue a new order sustaining the County's

demurrer in its entirety without leave to amend, and (3) to dismiss PCDSA's entire civil action with prejudice.

Respectfully submitted,

Dated: June 13, 2022 LIEBERT CASSIDY WHITMORE

By: 

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COUNTY OF PLACER

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204, Rule 8.490)

The undersigned counsel of record hereby certifies pursuant to California Rules of Court, Rule 8.204 and Rule 8.490, the City's brief being filed has been produced using 13-point roman type and contains 10,497 words, inclusive of the tables of contents and authorities and this certificate.

Executed this 13th day of June, in Sacramento, California.

Michael D. Youril
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COUNTY OF PLACER

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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Sacramento, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On **June 13, 2022,** I served the foregoing document(s) described as **PETITION FOR EXTRAORDINARY WRIT OF MANDATE, PROHIBITION, AND/OR OTHER APPROPRIATE RELIEF; REQUEST TO STAY ALL SUPERIOR COURT PROCEEDINGS** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David Mastagni
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Roseville, CA 95678

☑ **(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 Sacramento, 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 lsossaman@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 **June 13, 2022**, at Sacramento, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Lauren Sossaman