No. C096398

EXEMPT FROM FILING FEES PURSUANT TO GOV. CODE § 6103

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

PETITIONER'S REPLY TO REAL PARTIES IN INTEREST'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE, PROHIBITION, AND/OR OTHER APPROPRIATE RELIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

State Cases

State Statutes

I. INTRODUCTION

In their Preliminary Opposition, the Real Parties in Interest ("RPI") raise a number of misleading arguments for why this Court should summarily deny the County's petition. The RPI mischaracterize the superior court proceedings in a transparent attempt to avoid judicial consideration of how the Court of Appeal's published decision in *Pacifica Firefighters Association v. City of Pacifica* (2022) 76 Cal.App.5th 758 affects the disputed ballot initiative in this case, feigning surprise that the County's petition cites the case and the statutory provisions discussed therein, even though these issues were argued – *by both parties* – during oral argument and the case was specifically cited in the superior court's ruling on the County's demurrer. Indeed, the RPI appear to be so desperate to avoid consideration of the *Pacifica Firefighters* case that they present this court with blatant falsehoods in order to discredit the County's legal counsel. The RPI also rely heavily on several appellate decisions whose holdings they either misapply or deliberately mischaracterize. This Court should disregard RPI's arguments in their entirety.

II. ARGUMENT

A. THE COUNTY HAS NO ADEQUATE REMEDY AT LAW AND FACES IRREPARABLE INJURY ABSENT WRIT RELIEF FROM THIS COURT

The Preliminary Opposition asserts that this Court should summarily deny the County's petition because the County will have "an adequate remedy in the normal course of litigation" and that no irreparable injury will occur if expedited writ relief is denied. These assertions fail to recognize the extraordinary circumstances of this case.

First, the very purpose of a demurrer is to challenge the legal sufficiency of a complaint based on the assumption that all material facts in the original complaint are true. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,

318.) If there is no liability as a matter of law, the demurring party is entitled to a ruling on the merits and an immediate dismissal of the case, rather than being forced to litigate unmeritorious claims. (*Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.) Here, as explained in the County's petition, the superior court not only ruled incorrectly, it entirely failed to address the merits of the County's arguments, *even with* the assumption that all material facts were true as alleged. As such, the superior court's error deprived the County of the entire benefit of the demurrer process.

The legal disputes underlying this case have continuing and ongoing effects on the County and the RPI. As indicated in the RPI's Second Amended Petition ("SAP"), the question whether the County is legally required to implement wage adjustments according to the Measure F formula (with or without negotiated agreement) came to a head a second time in February of 2022, after the County filed its demurrer: The County is seeking to meet and confer over potential wage increases, while the RPI assert they were entitled to another automatic wage adjustment outside the bargaining process. [Exh. 24, V4 PA 656 (¶¶ 71-72).] In other words, while a proper ruling on the merits of the County's demurrer (one way or the other) would have allowed the parties to return to the bargaining table from a joint starting point, the superior court's failure to make a clear legal ruling on undisputed facts is instead having an *ongoing* destabilizing effect on the parties' labor relations. The delay inherent in the normal course of litigation and appeal will only exacerbate these problems, resulting in ongoing and increasing hardship. It is therefore imperative that this matter be resolved as expeditiously as possible, something that can only be achieved with immediate appellate review. Writ relief is appropriate where a trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case. (*Babb v. Super.Ct. (Huntington)* (1971) 3

Cal.3d 841, 851; *Schweiger v. Super.Ct. (Bonds)* (1970) 3 Cal.3d 507, 517.)

Similarly, subsequent to the superior court's incomplete ruling on the County's demurrer, the RPI amended their pleading to add, as a new alleged violation, that the County is required to adjust deputies' salaries annually each February in perpetuity, and that it failed to do so in February 2022. [Exh. 24, V4 PA 656 (¶¶ 71-72), PA 660 (¶ 109).] The RPI have also filed a government tort claim with the County raising the same allegation. A complete ruling on the legal questions raised in the County's demurrer would have mooted these additional claims if the County prevailed. Accordingly, the superior court's failure to make a clear legal ruling on undisputed facts is resulting in the County being exposed to the expense and effort of litigation on multiple fronts.

Moreover, the dispute at hand is not an isolated dispute over compensation between private parties. This case concerns the constitutional and statutory authority of the Placer County Board of Supervisors to provide for the compensation of sworn peace officers in the County's employ and to set the County budget, with potential public finance impacts in the millions of dollars. This case also concerns the statutory rights of County peace officers to negotiate their compensation. These are legal questions of widespread interest and constitutional importance. Numerous public agencies throughout the State of California have similar salary-setting ballot measures on the books, and an appellate decision on these issues will provide clarity and stability to public sector labor relations statewide. Writ relief is appropriate where the issue tendered is of widespread interest (*Brandt v. Super.Ct. (Standard Ins. Co.)* (1985) 37 Cal.3d 813, 816; *Corbett v. Super.Ct. (Bank of America, N.A.)* (2002) 101 Cal.App.4th 649, 657) or where it presents a significant issue of first impression. (*Noe v. Super.Ct. (Levy Premium Foodservice Limited Partnership)* (2015) 237 Cal.App.4th 316, 325; *Los Angeles Gay & Lesbian*

Ctr. v. Super.Ct. (Bomersheim) (2011) 194 Cal.App.4th 288, 300; *Pugliese v. Super.Ct. (Pugliese)* (2007) 146 Cal.App.4th 1444, 1448.)

Second, the allegations raised in the RPI's superior court petition make it clear that if the superior court proceedings proceed without a proper ruling on the County's demurrer, it is very likely to result in prolonged and excessive discovery – or discovery disputes – over matters that are entirely collateral to the causes of action alleged. The RPI's actual claims seek a ruling that Measure F is enforceable as written, a question that can be decided based entirely on judicially noticeable facts as a matter of statutory interpretation. But even so, the RPI raise collateral assertions regarding statements by various current and former County officials over a span of four decades, as well as regarding the County's conduct during labor negotiations. [Exh. 24, V4 PA 648-654.] Discovery regarding the former is likely to be extremely contentious and costly, as well as to involve complex questions of privilege; the latter is a transparent effort to open the door for RPI to go on a discovery fishing expedition to support their case in administrative proceedings currently pending before PERB. A proper ruling by the superior court would have rendered the former moot and would have appropriately limited the RPI to litigating their administrative charges in an administrative forum.

Finally, to the extent the RPI are arguing that *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765 ("*Voters*") precludes the application of *Pacifica Firefighters* to this case, the RPI are alleging a direct conflict between lines of appellate cases. (Preliminary Opposition, pp. 23-24.) This is in itself a significant issue of first impression, and the existence of conflicting lines of cases is another factor militating in favor of immediate appellate review. (*Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 16.)

For each and all of the foregoing reasons, the County submits that it

has no adequate remedy at law for the superior court's failure to rule on the substance of its demurrer, that it will be substantially prejudiced absent immediate appellate review of the superior court's ruling, and that writ relief is appropriate.

B. REAL PARTIES IN INTEREST MISCHARACTERIZE THE SUPERIOR COURT PROCEEDINGS, APPELLATE CASE LAW, AND BASIC FACTS

A substantial portion of the Preliminary Opposition is dedicated to the RPI's argument that the County's petition on appeal raises new legal theories not brought before the superior court. To reach this conclusion, the RPI blatantly mischaracterize the County's legal arguments, misrepresent the proceedings that took place in the superior court, and mischaracterize the holdings of various appellate decisions to construct a veneer of something that resembles a genuine legal argument. As discussed in further detail below, the RPI's arguments are disingenuous at best.

Tellingly, the RPI's lack of candor carries through to even relatively inconsequential matters. In a footnote on page 22 of the Preliminary Opposition, the RPI assert that "[t]he same law firm that represents the County in this case represented the city in *Pacifica* [*Firefighters*]." This is demonstrably false: As shown in the Court of Appeal's decision – which is both a matter of public record and part of the record in this very case [Exh. 19, V3 PA 596] – the City of Pacifica was represented not by Liebert Cassidy Whitmore (who represent the County in this case) but by three attorneys from another law firm. This blatant disregard for factual accuracy in the Preliminary Opposition – which will be further evident in the sections that follow – raises serious concerns about the credibility of RPI's representations and arguments.

1. All of The Legal Issues Raised in the County's Petition Were Brought Before the Superior Court

The RPI argue at length that the instant petition raises new legal arguments that the RPI claim were not raised before the superior court. The RPI cite to numerous authorities that a party may not raise for the first time on appeal issues that were not raised at the superior court level.

This argument is entirely disingenuous and fails for the simple reason that the County *did* raise all of the arguments in its petition at the superior court level, either in written briefing or during oral argument.

In its demurrer, the County argued that Measure F infringed on legislative authority "delegated exclusively to the governing body" and that it was therefore an invalid exercise of the electorate's initiative power under *DeVita v. City of Napa* (1995) 9 Cal.4th 763, 776; *Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 38; and – by analogy – *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 833-34. [Exh. 3, V2 PA 363-366.] Specifically, the County's demurrer cited to Article XI, Section 1(b) of the California Constitution as evidence that legislative authority over County employee compensation has been exclusively delegated to the County's governing body, the Board of Supervisors. [Exh. 3, V2 PA 363.] At oral argument, the County noted that the *Pacifica Firefighters* case applies that same rule – that exclusive delegation of legislative authority to a local governing body precludes the right of initiative – to the specific context of public employee compensation. [Exh. 21, V3 PA 610-611.] The County also argued that the statute evidencing such delegation for cities discussed in the *Pacifica Firefighters* case (Gov. Code § 36506) is virtually identical to both the equivalent statute for Counties (Gov. Code § 25300) and the constitutional provision previously cited in the County's original demurrer. [Exh. 21, V3 PA 615-617.]

The County's demurrer also argued that Measure F is preempted by

state law because its provisions are fundamentally inconsistent with the collective bargaining procedures mandated by the Meyers-Milias-Brown Act ("MMBA") and "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." [Exh. 3, V2 PA 367-368.]

The *Pacifica Firefighters* case similarly addressed the issue of MMBA preemption over a ballot initiative governing public employee compensation. However, because the Pacifica initiative was limited to the context of impasse resolution – as it did allow a negotiated deviation from its formula – the *Pacifica Firefighters* decision only addresses MMBA preemption in the specific context of the MMBA's impasse procedures. (*Pacifica Firefighters*, *supra*, 76 Cal.App.5th at 774.)

As with the constitutional argument, the parties specifically addressed the applicability of the *Pacifica Firefighters* decision during oral argument before the superior court. The RPI argued – much like they do in their preliminary opposition – that the *Pacifica Firefighters* decision was inapplicable because it addressed an ordinance that was specifically connected with the MMBA fact-finding process and determined what would happen after the fact-finding process occurred. [Exh. 21, V3 PA 614-615.] In reply, the County acknowledged that the ordinance in *Pacifica Firefighters* only applied in the limited scenario of impasse without agreement, but noted that Measure F applies in that same scenario *and more*, meaning that it interferes with the MMBA-mandated process *at least* as much. [Exh. 21, V3 PA 616-617.] The County also noted that the specific events of this case – as alleged in the RPI's original petition – fall squarely within the holding of *Pacifica Firefighters*: the parties did go through fact-finding, did come to an impasse, never reached agreement, and the RPI's core claim is that on these facts Measure F dictates what salary

level the County must provide. [Exh. 21, V3 PA 617-618.]

The County's discussion of the MMBA's impasse procedures in its current petition is therefore not a new argument; the County already argued in its demurrer that Measure F conflicts with *the entirety* of the MMBA. The impasse procedures just happen to be a specific aspect of that argument that has since been discussed in a published Court of Appeal case.

Recognizing that the *Pacifica Firefighters* case and the specific statutory provisions discussed there had not been addressed in the written briefing because the case was decided after briefing, the County offered to submit supplemental briefing to the superior court on those specific issues. [Exh. 21, V3 PA 618.] The superior court did not request supplemental briefing but took the matter under submission, and subsequently issued its order without further input from the parties. In so doing, the superior court clearly indicated that it felt these authorities had been adequately addressed. [Exh. 21, V3 PA 621; Exh. 23, V3 PA 632-639.]

Moreover, given that the superior court not only took judicial notice of the *Pacifica Firefighters* decision, but also directly cited it in its final ruling, there can be no serious dispute that the impact of that case was an issue specifically raised with the superior court, even if the superior court failed to properly consider the case.

At no point during or after oral argument did the RPI ever object in the trial court to the County's arguments regarding *Pacifica Firefighters*, regarding Government Code section 25300, or regarding Government Code Section 3505.7. [Exh. 21, V3 PA 602-622.] To the contrary, counsel for the RPI directly engaged with the County's substantive arguments on these issues, clearly indicating that they were fully informed and prepared to argue these issues on the merits. [Exh. 21, V3 PA 613-614.] Given that *both parties* engaged in substantive argument on these issues during oral argument, it is misleading and bordering on duplicitous for the RPI to now

argue to this Court that these issues were not raised before the superior court.

To the extent the RPI object to judicial consideration of these issues because they were not specifically addressed *in the written briefing*, those objections should have been raised with the superior court, not raised for the first time on appeal. By the very standard the RPI promote in their Preliminary Opposition, they are precluded from raising those objections for the first time before this Court. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1065-66 [a party may not raise for the first time on appeal an issue not raised before the trial court].)

2. The Preliminary Opposition Relies on Several Appellate Decisions Whose Holdings It Seriously Mischaracterizes

Beyond the blatant mischaracterizations of facts discussed above, the Preliminary Opposition relies heavily on several appellate decisions that the RPIs vehemently claim precludes the County's arguments, specifically *Voters*, *supra*, 8 Cal.4th 765; *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 ("*Boling*"); and *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 ("*Seal Beach*"). However, for each of these three decisions, the RPI blatantly misrepresent their holdings and relevance in order to support their arguments.

a. The RPI Mischaracterize *Voters*

With respect to *Voters*, the RPI appear to argue that the California Supreme Court has conclusively held that Article XI, Section 1(b) does not restrict in any way the electorate's right to legislate local employee compensation by initiative. (Preliminary Opposition at p. 23.) This is reading far too much into the Court's decision in *Voters.* As the Fourth District Court of Appeal has already noted, "[t]he Supreme Court [in *Voters*] was focused on whether employee compensation was subject to

referendum, not whether [compensation setting] could be accomplished through initiative." (*Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 702.) The only discussion in *Voters* regarding Article XI, Section 1(b) specifically concerns the referendum power: The respondent argued that the specific language that county supervisor compensation is subject to referendum implied that other compensation decisions were not; the appellant argued that legislative history showed a clear intent to subject employee compensation decisions to referendum; the Court rejected both arguments, concluding that Section 1(b) neither guarantees nor restricts the right to referendum over employee compensation. (*Id.* at 648-651.)

Other than collective references to the electorate's "initiative and referendum powers," *Voters* never actually addresses the scope of the initiative power specifically. (E.g. *id.* at 652.) Several subsequent court decisions have expressly rejected the suggestion that initiative and referendum powers are always coextensive. (E.g. *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1259; *Center for Community Action*, *supra*, 26 Cal.App.5th at 706.) Of these, *Jahr v. Casebeer* recognized the decision in *Voters*, and still reaffirmed the holding in *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341 that Section 1(b)'s delegation of compensation-setting authority to a county's governing body precludes legislation by initiative.

The various broad statements in *Voters* about the general scope of the initiative power are at best *dicta*. They have no bearing on whether the specific assignment of compensation-setting authority to the Board of Supervisors precludes legislation by initiative. "An opinion is not authority for propositions not considered." (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.)

b. The RPI Misapply *Boling* and *Seal Beach*

The RPI argue, as they did during oral argument, that the only restriction relevant to ballot measures that affect public employment is the requirement under *Boling* and *Seal Beach* that a public agency meet and confer with labor organizations before placing a measure affecting negotiable subjects on the ballot. (Preliminary Opposition at p. 25.) At best, this argument misses the point; at worst, it is deliberately misleading.

Boling and *Seal Beach* addressed the specific question whether the MMBA's mandated process of requiring an agency to meet and confer over changes to negotiable subjects extends to a city's decision to sponsor – officially or unofficially – a charter amendment measure that affects negotiable subjects. In both cases, the courts concluded that it did, thus precluding public agencies from using the initiative process as an end-run around the meet-and-confer requirement.

But this is an entirely different question from the one presented here. This case presents the question – as did *Pacifica Firefighters* – whether a ballot measure that *substantively* conflicts with the MMBA's mandatory process is preempted by the MMBA. The RPI's superior court petition alleges that *the substance* of Measure F entitles PCDSA members to annual wage adjustments in perpetuity according to a specific formula, that it prohibits the County from implementing wage increases that deviate from that formula, and that it prohibits *both parties* from meeting and conferring over a proposed deviation from the formula. Whether or not the language of Measure F was negotiated prior to its submission to the voters in 1976, the alleged requirement of annual ongoing wage adjustments in perpetuity without *any* room for negotiation is itself an end-run around the MMBA's mandatory meet-and-confer process, and is clearly inconsistent with state law. This Court should entirely disregard the RPI's arguments arising from their clear misapplication of *Boling* and *Seal Beach*.

C. THE SECOND AMENDED PETITION SHOWS THAT THE DEFECTS IN THE SECOND CAUSE OF ACTION WERE NOT CAPABLE OF CURE BY AMENDMENT

The superior court sustained the County's demurrer to RPI's Second Cause of Action on the grounds that it alleged a violation of Placer County Code section 3.12.040 and that the cited ordinance that was no longer in effect. The superior court granted leave to amend, and in their SAP, the RPI allege that the prior version of Section 3.12.040 was entitled to constitutional protection under *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, because (1) subsequent to the adoption of the County Charter, the voters of Placer County rejected ballot measures in 2002 and 2006 seeking to repeal the ordinance and (2) the County's Board of Supervisors adopted various ordinances or ratified labor contracts over the years that "affirmed" Section 3.12.040. These amended legal theories are entirely incoherent.

With regard to the failed ballot measures, the SAP argues that "the 2002 and 2006 votes to retain Measure F are a proper exercise of initiative powers, which can only be repealed by a subsequent initiative." [Exh. 24, V4 PA 658.] However, *neither Measure R nor Measure A were initiatives at all.* Neither measure was an ordinance enacted through a petition and signature-gathering process; rather, both were placed on the ballot directly by a resolution of the Board of Supervisors at the request of the PCDSA. [Exh. 24, V4 PA 667-668 (SAP Exhibit A), PA 675-676 (SAP Exhibit C).] Moreover, a *failed* ballot measure – initiative or otherwise – has no legal effect whatsoever. Whatever the legal status of Measure F was at the time of each repeal attempt, a failed ballot measure does not – and cannot – affect that status in the slightest. Accordingly, as a matter of law, the 2002 and 2006 ballot measures were not even an *attempted* exercise of initiative powers, nor an actual exercise of power of any kind, and could not possibly support a claim for constitutional protection.

As for the allegations that the Board of Supervisors itself somehow "affirmed" Measure F by enacting an ordinary ordinance or ratifying a labor contract, those actions are similarly not exercises of the electorate's initiative power and not subject to constitutional protections. Tellingly, the RPI omit any mention of these frivolous allegations in their Preliminary Opposition, tacitly acknowledging that there is no substance behind them.

Assuming that these amendments were RPI's best effort at stating a valid cause of action, then far from showing a reasonable possibility to cure the original defect, these amendments show exactly the opposite. They clearly demonstrate that granting leave to amend was futile and should have been denied.

III. CONCLUSION

For the foregoing reasons, the Court should disregard the misleading arguments in Real Parties in Interests' Preliminary Opposition and should grant the County's Petition on the grounds and for the reasons outlined in the County's original petition.

Dated: July 5, 2022 LIEBERT CASSIDY WHITMORE

By: _____

Michael D. Youril
Lars T. Reed
Attorneys for Petitioner
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 4,449 words, inclusive of the tables of contents and authorities and this certificate.

Executed this 5th day of July, in Sacramento, California.

Michael D. Youril
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Attorneys for Petitioner
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 **July 5, 2022,** I served the foregoing document(s) described as **PETITIONER'S REPLY TO REAL PARTIES IN INTEREST'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE, PROHIBITION, AND/OR OTHER APPROPRIATE RELIEF** in the manner checked below on all interested parties in this action addressed as follows:

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☑ **(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 **July 5, 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