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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERTIO, Petitioners, vs. COUNTY OF PLACER Defendants.	Case No.: S-CV-0047770 **PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITES IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION** Date: January 26, 2023 Time: 8:30 a.m. Department: 3

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I. INTRODUCTION

Petitioners Placer County Deputy Sheriffs' Association ("PCDSA") and Noah Frederito (collectively "Petitioners") oppose Respondent County of Placer's ("Respondent" or "County") Motion for Summary Judgment ("MSJ" or "Motion").

Respondent's evolving legal justifications for circumventing the Placer County voters in repealing Measure F are a charade. As late as September 2020, the Placer County Board of Supervisors ("Board") publicly attested to the validity of Measure F. In response to an Unfair Labor Practice Charge ("UPC") over a salary proposal which violated Placer County Code section 3.12.040, the County asserted for the first time in 44 years that Measure F was unconstitutional from its inception and repealed Placer County Code Section 3.12.040. Respondent's MSJ should be denied because it ignores disputed facts in order to pigeonhole factually and legally distinguishable authorities.

First, the 1976 approval of Measure F was a constitutional exercise of Article II, section 11 initiative powers reserved to the people and coextensive with the legislative authority of the Board of Supervisors. The California Supreme Court unequivocally held that no categorical prohibition on voter initiatives involving local employee compensation exists. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Ca1.4th 765, 776-777 (*Voters*).) Respondent overly relies upon *Pacifica Firefighters Association v. City of Pacifica* (2022) 76 Cal.App.5th 758 (*Pacifica*) despite material differences in the statutory grant of power to general law cities and general law counties. Government Code section 36506 directs city councils to "fix" compensation. However, both Government Code section 25300 and Article XI, section l(b) of the California Constitution empower board of supervisors to "prescribe" certain items, but only to "provide for" employee compensation. While directives to "fix" or "prescribe" have been deemed non-delegable, the use of the term "provide" indicates authorization to delegate. (*County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 669 (*Madera*).) Thus, Measure F was a lawful delegation to the County voter from its inception.

Secondly, in 1980, the Board of Supervisors, and each Board until the present, construed Measure F's annual base salary adjustment as consistent with the Board's general power to

provide compensation for its employees. These determinations are entitled to a presumption of validity. Base salaries and total compensation are not the same. Currently, Measure F base salaries comprise only about half of deputies' overall compensation and 74% of their cash compensation. Historically, the County has negotiated or imposed changes in PCDSA members' compensation while compiling with Measure F. In the early 2000s, after the voters twice rejected the repeal of Measure F, the County submitted "salary" proposals guaranteeing increases of at least 5% annually by providing additional non-salary cash payments in excess of Measure F. Additionally, during the 2008 recession, the County reduced cash compensation without violating Measure F. Respondent failed to produce any evidence disputing the fact that Measure F does not prevent the County's from determining compensation or the safety budget.

Third, like its delegation analysis, *Pacifica's* Meyers-Milias-Brown Act ("MMBA") analysis has no application to this action. Respondent continues to ignore important factual distinctions between the respective initiatives as well as Supreme Court precedent harmonizing direct democracy and the MMBA. Unlike *Pacifica*, Measure F does not alter the MMBA factfinding criteria, nor does it require Respondent to "impose" salary adjustments at the conclusion of factfinding. Rather, Measure F provides an automatic annual adjustment regardless of the status of negotiations or factfinding.

Finally, Respondent overstates the scope of *Pacifica. Pacifica* does not preclude any voter initiative within the ambit of the MMBA, rather the terms of the initiative must be compared to the allegedly conflicting provisions of the MMBA. No such conflict exists here. A sweeping ruling to the contrary would directly contradict higher authority from our Supreme Court expressly harmonizing the reserved initiative powers of the voters and the bargaining obligations of the MMBA.

In sum, Respondent's MSJ hinges on factually distinguishable authorities and inapplicable statutes. As such, the MSJ should be denied in its entirety.

II. FACTUAL BACKGROUND

On November 2, 1976, a ballot initiative entitled "Placer County Sheriff's Salaries Ordinance Initiative" appeared on the Placer County general election ballot as "Measure F."

(Respondent's Undisputed Material Fact ("UMF") 1.) Measure F stated that the Board of Supervisors shall, at least annually, determine the existing maximum salaries for each class of position in the Nevada County Sheriff's Office, the El Dorado County Sheriff's Office, and the Sacramento County Sheriff's Office. (UMF 3-5.) Prior to placing Measure F on the ballot, the County did not request to meet and confer over the PCDSA's request to submit Measure F to the electorate as an initiative, nor did it request to meet and confer over the terms of the proposed initiative. (Petitioners' Additional Material Facts ("AMF") 2-3.) The County did not submit an opposition to Measure F, and County Counsel at the time did not raise any concerns over its legality. (AMF 4-5.) In fact, the County Counsel provided an impartial analysis of Measure F, which stated in part: "Under state law, the Board of Supervisors is directed to provide for the compensation of all county employees. In addition, state law requires that the Board of Supervisors meet and confer with all employees in good faith prior to setting changes or making changes in compensation…Instead, there would, as to those salaries be substituted a formula approach tied to salaries paid in the Counties of Nevada, El Dorado, and Sacramento for comparable classes of position." (AMF 8-9.)

The voters passed Measure F, and it was later codified in Placer County Code section 3.12.040. (UMF 2; AMF 36-37.) Under Measure F, deputies and sergeants received annual base salary adjustments that were not subject to the fact-finding impasse procedure. (AMF 10.) Prior to September 21, 2021, deputies and sergeants automatically received a salary adjustment every February as determined by the Measure F formula, regardless of the status of negotiations. (AMF 11.)

In 1980, the voters established the Placer County Charter, which is now codified in the County Code. (UMF 42.) Charter section 302(b) provides that the "Board shall 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." (UMF 47.) Section 604 provides "all laws of the county in effect at the County Code section effective date of this Charter shall continue in effect according to their terms unless contrary to the provisions of this Charter." (UMF 48.) Section 607(a) provides "[t]he electors of the county

may by majority vote and pursuant to general law … [e]xercise the powers of initiative and referendum." (AMF 1.)

Between 1977 and 2020, the County adhered to the Measure F formula in setting the salaries for Sheriff's deputies and sergeants. (AMF 31.) During this 44-year time period, the County affirmed and ratified Measure F multiple times through the adoption and modifications of Placer County Code section 3.12.040. (AMF 32.) The County and the PCDSA also historically incorporated the Measure F formula into their labor agreements. (AMF 41.)

Prior to 2020, the County consistently construed Measure F's salary setting provisions as harmonious with the Charter's general grant of authority to the Board to provide for compensation. (AMF 15.) The County's representatives consistently represented to the PCDSA and the public that Measure F was binding on the County and that the County could not negotiate base salaries that deviated from Measure F, even when both parties desired to do so. (AMF 16-18.) For example, in 2003, the then County CEO wrote an editorial in which she stated "[t]he public may not be aware that the county must adhere to the voter-approved Proposition F measure that sets salaries… The county is unable to change the Proposition F formula. Only the voters of Placer County can do that." (AMF 19.)

In 2002, both the County and PCDSA wanted to negotiate a base salary that deviated from the Measure F formula. (AMF 21.) However, the County's representatives informed the PCDSA that the Measure F formula set the base salary. (AMF 22.) Subsequently, the PCDSA and the County met and conferred over submitting a ballot initiative to the voters to repeal Measure F. (AMF 20.) In 2002, County agreed to place "Measure R" on the ballot asking the voters whether to repeal Measure F. (AMF 23.) The County informed the voters that "[a] 'NO' vote on this measure is a vote to retain the existing ordinance." (AMF 24.) Measure R did not pass, and as a result in 2006, the County placed Measure A on the ballot once again seeking to repeal Measure F. (AMF 25-28.) The voters rejected Measure A. (AMF 29-30.)

Because Measure F only provides for PCDSA members' base salaries, the County and the PCDSA have consistently negotiated compensation in addition to these base salaries. (AMF 42-44.) The total compensation the County provides PCDSA members includes base salaries,

additional cash compensations based on education, assignment, shifts, pension contributions, and insurances and benefits. (AMF 43.) Measure F's base salary makes up about 74% of deputies' cash compensation and only about half of their total compensation. (AMF 46-47.) Thus, the County can negotiate adjustments to PCDSA members' total cash compensation without deviating from Measure F. (AMF 48-49.) For example, in or around 2009, the County was able to reduce PCDSA members' total cash compensation without deviating from Measure F by reducing its Employer Paid Member Contribution ("EPMC") paid to CalPERS on behalf of members and reducing incentive pays. (AMF 52.) On the other hand, in the early 2000s, the County was able to negotiate cash compensation increases that exceed Measure F by offering incentive pays that all or nearly all PCDSA members received. (AMF 51.) In fact, the County has admitted that it would not want to reduce the overall cash compensation paid to deputies and sergeants to the floor set by Measure F because the County would not be able to hire or retain deputies. (AMF 76.)

The PCDSA and the County were parties to a Memorandum of Understanding ("MOU") that expired June 30, 2018. (UMF 21.) The PCDSA and the County incorporated the requirements of Measure F into this MOU. (UMF 23.) On July 21, 2020, the County provided the PCDSA with a Last, Best, and Final Offer ("LBFO"). (AMF 81.) The County's last, best final offer included raises that temporarily exceeded the Measure F salary formula by seven percent (7%). The proposal would effectively freeze any salary adjustment for PCDSA members until the Measure F salary determination had increased at least seven percent. (AMF 81.) On August 27, 2020, the County declared impasse. (AMF 82.)

Prior to declaring impasse on August 27, 2020, no County representative had ever asserted Measure F was invalid or unenforceable. (AMF 83, 85-87.) On or about September 12, 2020, the County published a document on its website asserting Measure F was valid but only established the "minimum salary of various law enforcement positions," and claimed that "[t]he voters have also given the Board of Supervisors the authority to negotiate higher salaries." (AMF 83.) On September 24, 2020, the PCDSA filed a UPC with the Public Employment Relations Board ("PERB") alleging the County acted in bad faith by insisting to impasse over a number of

illegal proposals, including a salary proposal which violated Measure F. (AMF 89.) On October 26, 2020, the County filed a position statement in response to the allegations in the UPC. For the first time in writing, the County's position statement claimed Measure F was "unconstitutional" and that it has been "void" under its Charter for 40 years. (AMF 90.)

On December 8, 2020, the County presented the PCDSA with a new package proposal. The salary term of that proposal, completely disregard section 3.12.040 by removing the formula from the MOU, and instead, providing fixed wage increase amounts for three years. (AMF 91.) This proposal exceeded the Measure F salary adjustment in 2021. (AMF 92.) This was the first County proposal that completely removed and disregarded Measure F. (AMF 91.)

In March of 2021, the PCDSA and the County participated in factfinding proceedings pursuant to Government Code § 3505.4. (AMF 93.) On September 28, 2021, The Board of Supervisors adopted Ordinance 6104-B effectively amending County Code section 3.12.040 to repeal the Measure F formula. (AMF 94.) On September 28, 2021, the Board also adopted Resolution 6105-B, increasing deputy and sergeant salaries by 1.09% and 1.41%, respectively, above the amount set by Measure F in February of 2021. (AMF 95.) The Board adopted Ordinance 6104-B and 6105-B without placing the repeal of the voter-enacted Measure F on the ballot. (AMF 96.)

III. LEGAL STANDARD

Summary judgment or adjudication is only appropriate when no material issue of fact exists and where the record establishes as a matter of law that a cause of action asserted cannot prevail. (See Code Civ. Proc., § 437c(c); *Avila v. Standard Oil Co*. (1985) 167 Cal.App.3d 441, 446.) Further, summary adjudication cannot be used to adjudicate partial issues, but rather "shall be granted only if it completely disposes of a cause of action." (Code Civ. Proc., § 437c(c).)

The burden is on the moving party to "conclusively negate" a necessary element of the nonmoving party's case or demonstrate "that under no hypothesis is there a material issue of fact" that would "require a reasonable trier of fact not to find any underlying material fact more likely than not." (*Saelzler v. Advanced Group 400* (1993) 6 Cal.4th 666, 673-674; *Aguilar v. Atlantic Richfield Co*. (2001) 35 Cal.4th 826, 851 (*Aguilar*).) The moving party must "present

evidence, and not simply point out through argument, that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar, supra*, at p. 854; *Pisaro v. Brantley* (1996) 42 Cal.App.4th 1591, 1601.) This burden-shifting statute requires the Court to strictly construe the Respondent's papers, while liberally construing the Petitioners' papers, resolving "all doubts" against the Respondent and viewing all the evidence and all the inferences in the light most favorable to the Petitioners. (*Aguilar, supra,* at p. 843; *Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 20; *Eagle Oil & Ref. Co. v. Prentice* (1942) 19 Cal.2d 553, 556 ["The summary judgment procedure, inasmuch as it denies the right of the adverse party to a trial, is drastic and should be used with caution."].)

IV. ARGUMENT

A. Respondent's MSJ Should be Denied as to the First Cause of Action.

1. Measure F Is Not Preempted by Article XI, Section 1(b) of the California Constitution or Government Code Section 25300.

a. Measure F Does Not Conflict with the Constitution.

Placer County voters had the power under Article II, Section 11 of the California Constitution to pass Measure F in 1976. Our Supreme Court has repeatedly recognized the vital democratic function of the reserved, not granted, right of the people to adopt or reject local ordinances through initiative in a manner that is co-extensive with the legislative power of the local governing body. (*City of Morgan Hill v. Bushey* (2018) 5 Ca1.5th 1068, 1078-1079 (*Morgan Hill*).) In so doing, the Court has rejected the County's core argument that Article XI, Section 1(b) precludes any voter initiatives involving employee compensation. (*Kugler v. Yocum* (1968) 69 Ca1.2d 371, 374 (*Kugler*); *Voters, supra,* 8 Ca1.4th at pp. 776-777.)

Setting salaries is a legislative, not administrative power of the Board. (*Collins v. City & County of S.F.* (1952) 112 Cal.App.2d 719, 730.) Courts presume that "absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors ... are subject to initiative and referendum." (*Voters, supra,* 8 Cal.4th at p. 777.) Accordingly, "the initiative power must be liberally construed to promote the democratic process." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501 (*Eu*).) It is the court's "solemn duty to

jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Ibid*.) As with statutes adopted by the Legislature, "all presumptions favor the validity of initiative measures and *mere doubts as to validity are insufficient*; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814 [emphasis added].)

Respondent's argument that the California Constitution did not give the Placer County voters initiative power over employee compensation in 1976 is based on a fundamental misunderstanding of two appellate court cases: *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341 (*Meldrim*) and *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250 (*Jahr*). *Meldrim* and *Jahr* interpret one sentence in Article XI, Section 1(b) which only governs Board of Supervisors compensation, opposed to employee compensation, and therefore has no bearing on this case. Section 1(b) states in relevant part:

> Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

In *Meldrim* and *Jahr*, the voters wanted to pass an initiative setting the compensation of the board of supervisors. The appellate courts interpreted the first sentence in Article XI, Section 1(b) to mean on subjects of *board of supervisors'* compensation, the voters only possess the right to referendum, not initiative. The courts reasoned that the Legislature's inclusion of the term "referendum" indicated that the Legislature intended to foreclose the right to initiative as to supervisors' compensation.

Board of Supervisors' compensation was set by the Legislature until the enactment of a 1970 Constitutional Amendment granting the governing body the power to set their own compensation, subject to referendum, which added the first sentence in Section 1(b). (*Voters, supra,* 8 Cal.4th at p. 776.) "The amendment did not affect *employee* compensation, which had been and remained a matter of local concern." (*Ibid.* [emphasis added].) The sentence addressing

employee compensation does not contain the referendum language *Meldrim* is predicated upon. As our Supreme Court aptly stated, "[i]n sum, article XI, section 1(b), by itself, neither guarantees nor restricts the right to review, by voter referendum, a board of supervisors' decisions regarding compensation of county employees." (*Ibid.*) *Meldrim* does not support the conclusion that a provision granting legislative power to the Board preempts any initiative powers reserved to the people under Article II, Section 11. Thus, to the extent *Meldrim* remains good law, it is inapplicable.

The County's claim that Measure F was invalid from inception is based on a fatally flawed interpretation of Section 1(b) as prohibiting initiative powers over employee compensation. Our Supreme Court unequivocally foreclosed that argument in *Voters*, which broadly supports initiative powers over local employee compensation, so long as the initiative process comports with the safeguards of the MMBA:

> If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it. Thus, we will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors—*including local employee compensation decisions*—are subject to initiative and referendum.

(*Voters, supra,* 8 Cal.4th at pp. 776–777 [citations omitted, emphasis added].)

As Justice Kennard explained in her concurrence, Section 1(b) merely enshrined the referendum right regarding supervisor compensation separate from the general right of initiative and referendum in Article II, Section 11. (*Id.* at pp. 789-790.) Thus, the 1970 amendment of Section 1(b) did not alter the power of local voter initiatives relating to employee compensation. (*Ibid.*)

Jahr distinguished initiatives governing supervisors' compensation from those involving county employees' compensation, holding *Voters* approval of employee compensation initiatives addressed "the ambiguity in the last sentence of article XI, section 1(b)—which contains no mention of referendum or initiative powers," whereas the sentence "expressly refer[ing] to the referendum power … escapes the claim of ambiguity raised in *Voters*." (*Jahr, supra,* 70 Cal.App.4th at p. 1257.) As such, *Meldrim* and *Jahr* provide no authority for the claim that the

second sentence of Section 1(b) prohibits Measure F. Rather, county employee compensation has long been a legislative power coextensive with the voters' initiative power guaranteed by Article II, Section 11.

Furthermore, a careful examination of Section l(b) shows that its drafters empowered the governing bodies of counties to "prescribe" certain items and to "provide for" others. The Constitution "uniformly uses the word 'prescribe' when the intention is that the named authority must itself exercise the function described; in other words, it imposes a nondelegable duty. The more general term 'provide' is used when it is intended not to require action by the named authority itself; in other words, it permits the delegation of the function to others." (*Madera, supra,* 39 Cal.App.3d at p. 669, fn. 3; see also 70 Ops.Cal.Atty.Gen. 227 (1987).)

Here, the second sentence of Section 1(b) requires the governing body of each county to "prescribe" the compensation of its members. The third sentence authorizes the Legislature or the governing body to "provide for" additional officers, whose compensation "shall be prescribed by the governing body." However, the word "prescribe" does not appear at all in the final sentence which relates to compensating county employees like those represented by the PCDSA. Instead, it states that the "governing body shall provide for the… compensation… of employees." The decision to utilize totally different words, "provide for," in relation to the compensation for county employees immediately after they had used the word "prescribe" in connection with the compensation for board members and county officers clearly establishes that a different meaning was intended for the last sentence. (*Madera, supra,* at pp. 669-670.)

In short, Respondent's assertion that Section 1(b) categorically bars voter initiatives regarding compensation of County employees does not comport with the Supreme Court precedent in *Voters* or with the basic principles of statutory interpretation. Rather, by using the term "provide for" the County permits delegation of the authority over compensation to the voters through the initiative process.

b. Measure F Does Not Improperly Delegate Legislative Authority.

Respondent's argument that Measure F is an unconstitutional delegation of the Board's authority is specious and its reliance on *Sonoma County Organization of Public Employees v.*

County of Sonoma (2009) 173 Cal.App.4th 332 (*Sonoma*) and *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278 (*Riverside*) is misplaced. *Sonoma* and *Riverside* did not address whether a *county* or county voters can enact a local wage ordinance. Rather, they held that the *State* cannot usurp the county's authority. Because the determination of wages is a matter of local concern, the State cannot dictate employee compensation for cities and counties by imposing interest arbitration. The *Riverside* Court "emphasize[d] that the issue is not whether a county may voluntarily submit compensation issues to arbitration, i.e., whether the county may delegate its own authority, but whether the *Legislature* may compel a county to submit to arbitration involuntarily." (*Riverside*, *supra*, 30 Cal.4th at p. 284 [emphasis added].)

In fact, the Supreme Court allowed the local voter initiative to delegate to an arbitrator the power to determine employee compensation in *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 622, fn. 13 (*Vallejo*). The Court flatly rejected the argument that submission of economic issues to binding arbitration constitutes an unconstitutional delegation of legislative power, where the *local electors* enacted the interest arbitration provisions through initiative powers. (*Ibid*.) The Court held "there is no unlawful delegation of legislative power" where the voters of the City of Vallejo delegated to a board of arbitrators the power to render a final and binding decision in labor negotiation disputes. (*Ibid.*) Measure F is far more modest than the interest arbitration provisions in *Vallejo* which extended to total employee compensation. (*Ibid.*) The Court recently affirmed *Vallejo* again, noting the existence of "substantial precedent rejecting similar nondelegation challenges to compulsory interest arbitration in the public employment context." (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1149.)

Here, the voters enacted a defined formula for annually adjusting base pay to maintain the local average. Measure F does not delegate powers to a third party, nor set overall compensation, rather the Board of Supervisors retains broad discretion to set working conditions and total compensation. (AMF 49, 73-75, 79.) As of 2020, the Board chose to set overall compensation of DSA members about 26% above Measure F base salaries. (AMF 47.) As "cases are not authority for propositions not considered," *Riverside and Sonoma* are not relevant.

(*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 374.) They did not address local initiative powers. Respondent's comparison of Measure F to interest arbitration initiatives actually undercuts its delegation argument.

c. Government Code Section 25300 Does Not Conflict with Measure F.

Pacifica has no relevance to the Board's ability to delegate its authority under Government Code section 25300 because the statutory language at issue in *Pacifica* is materially different than the statutory language at issue here. *Pacifica* construed Government Code section 36506, which states that "the city council *shall fix* the compensation of all appointive officers and employees." (Emphasis added.) However, Government Code section 25300 states "[t]he 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." (Emphasis added.) The latter mirrors the language in Section 1(b) of the Constitution which states "[t]he governing body *shall provide for* the number, compensation, tenure, and appointment of employees." (Emphasis added.)

"Provide" and "fix" have different and distinct meanings. (*Madera, supra,* 39 Cal.App.3d at p. 669.) "Provide" indicates the power is delegable, while "prescribe" indicates that it is not. (*Ibid.*) "Prescribe" and "fix" are synonymous. "The word 'fix' means to determine, to assign precisely, to make definite and settled. To *fix compensation is to prescribe* a rule or rate by which it is to be determined." (*Woodcock v. Dick* (1950) 36 Cal.2d 146, 148-149 [internal citations omitted, emphasis added].) Just as "prescribe" and "provide" mean something different, so do "fix" and "provide." Because this crucial difference in statutory language, *Pacifica*'s reasoning has no application to Government Code section 25300.

Section 25300 mirrors the language in the Constitution, not that in section 36506. The plain language in section 25300 indicates that the power of the Board to "provide for" employee compensation may be delegated to the voters. (*Madera, supra,* 39 Cal.App.3d at p. 669.) Because Respondent has not cited any authority for its argument that the use of the term "provide for" in section 25300 has the same meaning as "fix" in section 36506, it has not met its burden.

Furthermore, Respondent's untrue claim that Measure F restricts the County's overall

budget, or public safety budget, is not supported by any evidence. *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826 (*Totten*) is irrelevant. The appellate court in *Totten* determined that a voter initiative which set the future annual budgets for public safety agencies was incompatible with Government Code sections 29000–29009 grant of authority to the board of supervisors to determine the county's budget. (*Id.* at pp. 839-840.) Measure F does not interfere with the Board's authority to set budgets under these code sections. In fact, Measure F has no cognizable impact on County budgets. The County admits that it would never set deputies' salaries at the minimum required by Measure F. (AMF 76.) Measure F requirements make up about 74% of deputies' cash compensation and only about half of their total compensation. (AMF 46-47.) Measure F primarily determines what portion of the cash compensation must be labeled as salary. Further, Respondent's unsupported assertions that Measure F restricts Respondent's ability to set its budget are disputed facts, precluding summary judgment.

2. Measure F Does Not Conflict with Statutory Impasse Procedures.

Once again, the County's reliance on *Pacifica* is misplaced because the *Pacifica* initiative is materially distinguishable from Measure F. The *Pacifica* initiative established fact finding criteria and procedures which conflicted with Government Code section 3505.4. (*Pacifica, supra,* 76 Cal.App.5th at pp. 761-762.) Section 3505.4(d)(5),(7) requires total compensation paid to PCDSA members and similar employees in comparable jurisdictions to be considered as a factor during fact finding proceedings. Section 3505.4(d)(2) requires consideration of local ordinances, such as Placer County Code section 3.12.040.

Government Code section 3505.7, which details impasse procedures, does not require the employer to impose terms after the factfinding process. The *Pacifica* initiative, however, required the city council to impose a minimum salary after factfinding only if the parties failed to reach an agreement. (*Pacifica, supra,* 76 Cal.App.5th at p. 763.) The *Pacifica* court's reasoning focused on the conflict between the factfinding and imposition requirements of the initiative versus the corresponding requirements in the MMBA. (*Pacifica, supra,* 76 Cal.App.5th at pp. 774-775.) In fact, the court limited the scope of its MMBA preemption analysis to the enactment of A.B. 646, which established the mandatory factfinding process. The court suggested that but

for the adoption of A.B. 646, the initiative would not have been preempted by the MMBA. (*Id.* at p. 775.)

Here, Measure F comports with the factfinding criteria in section 3505.4 as demonstrated by the parties' factfinding proceedings completed in the Spring of 2021. (AMF 93.) Similarly, Measure F does not require imposition of any terms at the conclusion of fact finding. Rather, annual salary adjustments are made every February as determined by the Measure F formula, *regardless of the status of negotiations.* (AMF 11.)

Further, Measure F is distinguishable from the *Pacifica* initiative in that it requires wage increases to occur annually, resulting in consistent moderate salary increases and eliminating the possibility that the County will be suddenly forced to pay enormous raises. Part of the court's concern in *Pacifica* was the unanticipated implementation of the salary formula only when the parties could not reach a contract. This resulted in the parties going years without implementing an adjustment under the initiative, and would have resulted in an unanticipated increase, over 21% in one year, with massive unexpected economic consequences on the city. (*Pacifica, supra,* 76 Cal.App.5th at p. 741.) Because Measure F automatically takes affect each year and is tied to the salaries of local agencies, it provides regular and moderate adjustments, not the sudden, unanticipated increases the court was concerned with in *Pacifica.*

Measure F is akin to the ordinance in *Kugler v. Yocum* (1968) 69 Cal.2d 371, 382, which fixed firefighters' salaries in Alhambra based on the pay in surrounding municipalities. Here, as in *Kugler,* Measure F "contains built-in and automatic protections that serve as safeguards" by tethering annual salaries to the annual salary of surrounding agencies. (See *Ibid.* ["Los Angeles is no more anxious to pay its firemen exorbitant compensation than is Alhambra. Los Angeles as an employer will be motivated to avoid the incurrence of an excessive wage scale; the interplay of competitive economic forces and bargaining power will tend to settle the wages at a realistic level."].) In fact, the County admits it would never want to set compensation at less than the salary set by the Measure F formula, as doing so would impair its ability to recruit and retain qualifying law enforcement personnel. (AMF 76.) Thus, unlike *Pacifica,* Measure F will not impose unexpected or unmanageable costs on the County.

Moreover, Respondent overstates the scope of *Pacifica* as barring any voter initiatives that limit the employer's ability to impose its LBFO. Respondent's expansive reading is incompatible with the Supreme Court precedent in *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 and *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591. Respondent asks the Court to overturn nearly 40 years of precedent holding that matters within the scope of representation may be the subject matter of a voter initiative, so long as the MMBA meet and confer obligations are first met. (See *Seal Beach, supra,* 36 Cal.3d 591; *Boling, supra,* 5 Cal.5th 898.)

The court in *Pacifica* cited the adoption of A.B. 646, but focused on the initiatives' mandate to impose terms after impasse procedures fail. An agency's right to impose does not remove all matters within the scope of representation from the ambit of Article II, Section 11. The right to impose or not impose has long preceded A.B. 646, which limited that right by elevating factfinding from a discretionary impasse process to a statewide mandate and renumbered the statutory authority to impose from section 3505.4 to 3505.7. (See Gov. Code, § 3505.4 prior to A.B. 646 amendments; see also Legis. Counsel's Dig., Assem. Bill No. 1852 (1999–2000 Reg. Sess.); *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4th 64, 78.) Accordingly, A.B. 646 does not justify the deviation from long standing Supreme Court precedent holding that matters within the scope of representation may be the subject matter of a voter initiative if the employer's meet and confer obligations are first met. To the extent the County argues *Pacifica* overturned these precedents, such interpretation must be rejected.

3. Measure F Does Not Conflict with the MMBA's Meet and Confer Obligations.

The County's argument that section 3.12.040 is preempted by the parties' mutual obligation to meet and confer pursuant to Government Code section 3505 is unreasonable and should not be given any weight. The MMBA does not forbid the passage of initiatives related to wages, hours, or working conditions, it merely requires the governing body and the union meet and confer prior to placing such initiatives on the ballot. (See, e.g., *Boling, supra,* 5 Cal.5th 898

[MMBA required the city to meet and confer with the union prior to placing an initiative on the ballot which would have reduced employee pensions]; *Seal Beach, supra,* 36 Cal.3d 591 [MMBA's requirement that the city council meet and confer with the unions prior to enacting charter amendments related to the penalty for strikes did not conflict with city council's constitutional authority.].) The California Supreme Court has held that "without an unambiguous indication that a provision's purpose was to constrain the initiative power, we will not construe it to impose such limitations." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 945–946.) Further, the MMBA itself confirms that nothing in the statute "shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies." (Gov. Code, § 3500.) In *Boling,* the California Supreme Court held the city could have submitted an initiative to the voters to reduce employees' pensions, which is deferred compensation, but for the city's failure to first meet and confer with the union over the initiative. (*Boling, supra,* 5 Cal.5th at p. 915.) Thus, to the extent Respondent urges the Court to extend *Pacifica* to bar any voter initiatives on matters within the scope of representation, Supreme Court precedent to the contrary must prevail.

In *Seal Beach,* our Supreme Court repudiated the County's argument, reasoning, "if meeting and conferring on charter amendments is an illegal limitation on the city council's power, why is the same not true of *any ordinance* which affects 'terms and conditions of public employment?'" (*Seal Beach, supra,* 36 Cal.3d at p. 601, fn. 12 [emphasis added].) The Court noted that "[i]t is a truism that few legal rights are so 'absolute and untrammeled' that they can never be subjected to peaceful coexistence with other rules." (*Id.* at p. 598.) Thus, the Court harmonized the meet-and-confer obligation with the democratic initiative process, finding that while "the meet-and-confer requirement is an essential component of the state's legislative scheme for regulating the city's employment practice…. the burden on the city's democratic functions is minimal." (*Id.* at p. 599.)

Respondent's citation to *Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492 (*Huntington*) is disingenuous. In *Huntington*, the appellate court invalidated a provision of the city's Employer-Employee Relations Resolution which

removed police officers' work schedules from the scope of bargaining because the provision was in direct conflict with the MMBA. (*Id.* at pp. 503-505.) In *Seal Beach*, the Supreme Court distinguished the charter amendment at issue—which merely dealt with a bargainable topic—from the resolution in *Huntington* which purported to exclude a mandatory subject of bargaining from the MMBA's coverage. (*Seal Beach, supra,* 36 Cal.3d at p. 601.) The Court stated that unlike the resolution in *Huntington*, there was no actual conflict between the charter amendment and the MMBA. Thus, the Court found that the "meet-and-confer requirement of section 3505 is compatible with the city council's constitutional power to propose charter amendments." (*Ibid.*)

Because the MMBA imposes a mutual right to meet and confer over the subjects within the scope of representation, even the employer can demand to bargain over union proposed voter initiatives. (Gov. Code, § 3505.) Relying on *Seal Beach, DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236, held that the union was required to bargain with the County prior to placing an initiative on the ballot that created binding interest arbitration. The appellate court recognized that "the electoral process and the MMBA can coexist." (*Id.* at p. 257.) Therefore, the court held that "the MMBA authorized the County's discussion of binding interest arbitration at the bargaining table, even though the subject was presented as a proposed voter initiative, not as a contract clause." (*Id.* at p. 258.)

Here, in or around 1976, PCDSA representatives submitted a petition to the County to submit the Measure F formula to the electorate via an initiative. The County had a right to meet and confer over the terms of the initiative as well as the request to submit it to the voters. The County is presumed to have met and conferred over Measure F or waived its right to do so.[1] (AMF 2-3; see Evid. Code, § 664; see also *Walker v. Los Angeles Cnty.* (1961) 55 Cal. 2d 626, 636.) Thus, both parties satisfied their obligations under the MMBA in 1976 and any argument that Measure F conflicts with the MMBA's meet and confer obligation is unfounded.

4. Measure F Is Not Incompatible with the Charter.

The enactment of the Charter in 1980 did not void Measure F, as its base salary formula

[1] Respondent will likely argue the Board was obligated to submit Measure F to the voters after receiving the petition, but that does not preclude its right to meet and confer. (*See Boling, supra,* 5 Cal.5th at p. 915.)

is compatible with the Board's authority under the Charter to provide for employee compensation. Measure F merely establishes a base salary. Between 1977 and 2020, the County and the PCDSA have negotiated non-salary pays and benefits so that by 2020 the base salary set by Measure F was on average only about half of total compensation and 74% of cash compensation. (AMF 44-47.) For example, since at least 2015, in addition to base salary set by Measure F, the County has provided PCDSA members cash compensation in the form of incentives such as longevity pay (10% of base salary), night shift differential (7.5% of base pay), P.O.S.T. certificate incentives (12% to 15% of base salary), among others. (AMF 54- 72.) The County has always had the discretion to negotiate or impose modifications of these cash, and non-cash, compensation items without violating Measure F. (AMF 73.) The County was also free to either submit Measure F to the voters for a fourth time to either modify or repeal it.

Charter section 604 provides that "all laws of the county in effect at the County Code section effective date of this Charter shall continue in effect according to their terms unless contrary to the provisions of this Charter." (UMF 48.) Thus, when the Charter was passed in 1980, the Board presumably made a determination as to what laws carried over and what laws were contrary to the Charter. The 1980 Board correctly deemed Measure F as compatible with the Board's power to provide compensation. The Board's determination 43 years ago is presumed to have been regularly performed and has been ratified by every Board until 2020. (See Evid. Code, § 664; see also *Walker v. Los Angeles Cnty.* (1961) 55 Cal. 2d 626, 636.)

In sum, the fact that the parties' have managed to negotiate compensation well above Measure F for over forty years demonstrates that the 1980 Board correctly deemed Measure F as compatible with the Board's power to provide compensation.

B. <u>Respondent's MSJ Should be Denied as to the Second Cause of Action.</u>

Because Respondent entirely failed to address the allegations in the second cause of action, it cannot meet its burden for summary adjudication. Respondent's motion cursorily asserts that the second cause of action is entirely derivative of the first. This assertion ignores all the facts and legal theories raised in the second cause of action, which additionally alleges that even if the 1976 enactment of Measure F was invalid, 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. Because Respondent has failed to address these arguments in their entirety, it has not met its burden for summary adjudication.

Further, Respondent's Motion should be denied on the merits because the Placer County Charter provides an additional source of initiative power for the 2002 and 2006 votes to affirm and retain Measure F. Any alleged defects regarding the 1976 enactment of Measure F were cured by the 2002 and 2006 initiative elections to retain it. Because section 3.12.040 has been incorporated into labor agreements adopted by the Board, section 3.12.040 was valid in 2002 and 2006, minimally based upon the post 1980 Board action to ratify the section.

Between 1977 and 2021, the County and the PCDSA historically incorporated the Measure F formula in their labor agreements, and the County affirmed Measure F multiple times through the adoption of, and modifications to, Section 3.12.040. (AMF 32, 41.) Thus, at the very least Section 3.12.040 was validly enacted through Board of Supervisors resolutions pursuant to the Board's authority to set compensation under Charter section 302. (See UMF 47.)

Moreover, the voters affirmed section 3.12.040 twice after the enactment of the Charter and after the ordinance had been subsequently affirmed by the Board. In 2002, the County agreed to place "Measure R" on the ballot seeking to repeal Measure F. (AMF 23.) The County's impartial analysis on the ballot described a "no" vote as follows: "A "NO" vote on this Measure is a vote to retain the existing ordinance." (AMF 24.) Because Measure R did not pass in 2002, the County and the PCDSA placed "Measure A" on the ballot again seeking to repeal Measure F. (AMF 25-28.) Measure A's attempt to repeal Measure F was also rejected by the voters. (AMF 29-30.) Thus, 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.

The implied and self-enacting provisions of the California Constitution protecting the initiative and referendum process provide a separate and independent basis for requiring a vote of the people before repealing Section 3.12.040. (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 571 ["The courts may properly devise procedures necessary to protect the power."].) In the context of a referendum vote, our Supreme Court held "[s]ince its inception, the right of the

people to express their collective will through the power of the referendum has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure." (*Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 678.) The protection of the referendum process should be equally applied to initiative powers here. Since the electorate twice voted to retain the base salary formula for PCDSA members, this court should prohibit the County from nullifying the will of the voters by repealing the same ordinance they voted not to repeal.

Here, the County seeks to accomplish by Board action the very repeal of section 3.12.040 that the voters twice rejected. Presumably, the County understands the voters support for section 3.12.040 and acted unilaterally to evade their judgment. The nullification of the voters was accomplished in bad faith as retaliation to PCDSA filing a PERB charge to challenge its proposals which violated Measure F.

In sum, following its original enactment, Measure F was carried over by the Board with the enactment of the Charter, affirmed twice by the voters, and continuously adopted and implemented by the Board for over 40 years. Even if the original 1976 initiative was invalid, it has since been lawfully adopted by the Board and the voters.

V. CONCLUSION

Based on the foregoing, Petitioners respectfully request Respondent's MSJ be denied.

Dated: January 12, 2023

Respectfully Submitted,

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