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 10 CITY OF SAN DIEGO

11 STATE OF CALIFORNIA

12 PUBLIC EMPLOYMENT RELATIONS BOARD

13 DEPUTY CITY ATTORNEYS	) Case No. LA-E-752-M
14 ASSOCAITION,	
15 Charging Party,	
16 v.	
17 CITY OF SAN DIEGO,	
18 Respondent.	

**RESPONDENT CITY OF SAN DIEGO'S  
 ANSWER TO CHARGING PARTY'S  
 COMPLAINT REGARDING UNFAIR  
 PRACTICE CHARGE**

19 Without waiving its right to assert that the Public Employment Relations Board (PERB)  
 20 has now vested exclusive jurisdiction over this matter in San Diego Superior Court and that  
 21 PERB is disqualified from hearing this matter because it is probable that the City cannot get a  
 22 fair and impartial trial, pursuant to California Code of Regulations, title 8, section 32644,  
 23 Respondent City of San Diego (City or Respondent) answers the Complaint in the  
 24 above-captioned case as follows:

- 25 1. In answer to the allegations in Paragraph 1, Respondent admits the allegations.
- 26 2. In answer to the allegations in Paragraph 2, Respondent admits the allegations.
- 27 3. In answer to the allegations in Paragraph 3, Respondent denies each and every
- 28 allegation in said paragraph.



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IV

Charging Party cannot establish a prima facie case of denial of Charging Party’s right to represent bargaining unit employees in violation of Government Code section 3503 and committing an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(b).

V

Respondent has not made a determination of policy or course of conduct, within the meaning of Government Code section 3505, related to the CPR Initiative.

VI

Respondent’s Governing Body or designated representatives, within the meaning of Government Code section 3505, the San Diego Charter, and City Council Policy 300-06, have not enacted unilateral changes in terms and conditions of employment.

VII

PERB lacks jurisdiction to hear matters involving the California Constitution and California Elections Code, which mandate placement of a proposal to amend a city charter by citizen initiative before the electorate when certain requirements are met.

VIII

PERB lacks jurisdiction to hear this matter because of the filing of *Complaint for Injunctive Relief; Verified Petition for Writ of Mandate, in San Diego Superior Court, Public Employment Relations Board v. City of San Diego, San Diego Superior Court Case No. 37-2012-00092205-CU-MC-CTL*, in that the San Diego Superior Court now has jurisdiction to resolve any legal or factual issues, via an evidentiary hearing if need be, in this matter.

IX

It appears probable, based on the filing of *Complaint for Injunctive Relief; Verified Petition for Writ of Mandate, in San Diego Superior Court, Public Employment Relations Board v. City of San Diego, San Diego Superior Court Case No. 37-2012-00092205-CU-MC-CTL*, that, by reason of prejudice of the PERB Board and Office of General Counsel, that a fair and impartial consideration of the above-captioned case cannot be had before PERB.

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X

The City is being denied procedural due process in the above-captioned case.

XI

PERB is estopped from bringing this action on behalf of Charging Party.

XII

PERB is prejudicing the City by requiring the City to adjudicate the same issues in two forums, through PERB's administrative process and in court proceedings, presenting the danger of inconsistent rulings and unnecessary expenditure of resources.

XIII

Charging Party is barred by laches.

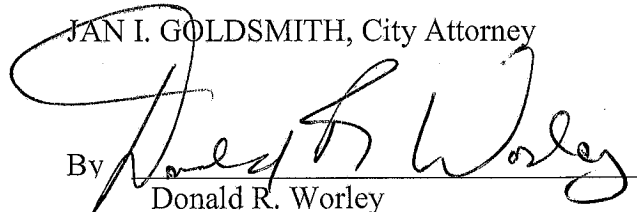
XIV

Respondent is entitled to express its views on employment-related matters over which it has legitimate concerns in order to facilitate full and knowledgeable debate.

WHEREFORE, Respondent prays judgment as follows:

1. Charging Party takes nothing by its Complaint.
2. Respondent recovers its fees and costs of suit incurred herein; and
3. PERB awards such other relief as it deems just and proper.

Dated: March 22, 2012

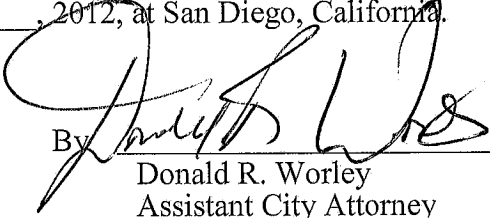
JAN I. GOLDSMITH, City Attorney  
  
 By \_\_\_\_\_  
 Donald R. Worley  
 Assistant City Attorney

Attorneys for Respondent  
CITY OF SAN DIEGO

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I, as agent and attorney for Respondent City of San Diego, declare under penalty of perjury that this Answer is true and complete to the best of my knowledge and belief, and this declaration was executed on March 22, 2012, at San Diego, California.

By   
Donald R. Worley  
Assistant City Attorney

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**PROOF OF SERVICE**

***Deputy City Attorneys Association of San Diego v. City of San Diego***  
**Unfair Practice Charge No. LA-CE-752-M**

I declare that I am a resident of or employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the below-entitled action. The name and address of my residence or business is Office of the City Attorney, Civil Division, 1200 Third Avenue, Suite 1620, San Diego, CA 92101.

On **Thursday, March 22, 2012**, I served **RESPONDENT CITY OF SAN DIEGO'S ANSWER TO CHARGING PARTY'S COMPLAINT REGARDING UNFAIR PRACTICE CHARGE** on the parties listed below:

- Placing a true copy of the above-named document in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- Personal delivery;
- Facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).
- Electronic transmission in accordance with the requirements of PERB Regulation 32135.

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Email: [SChadwick@sandiego.gov](mailto:SChadwick@sandiego.gov)  
***Via Electronic Mail and Personal Service***

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **Thursday, March 22, 2012**, at San Diego, California.

CINDY McNARY

Print Name

Cindy McNary

Signature