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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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Clerk of the Superior Court

SEP 05 2014

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7 *Exempt from filing fee under Cal. Gov't Code § 6103*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10
11 SAN DIEGO COUNTY EMPLOYEES
12 RETIREMENT ASSOCIATION,

13 Plaintiff,

14 v.

15 COUNTY OF SAN DIEGO, and DOES 1
through 10,

16 Defendants.

Case No. **37-2014-00030113-CU-MC-CTL**

**COMPLAINT FOR DECLARATORY
RELIEF**

"VIA FAX"

17
18 Plaintiff alleges as follows:

19 **THE PARTIES**

20 1. Plaintiff San Diego County Employees Retirement Association ("SDCERA") is a
21 public retirement system organized and existing under the County Employees Retirement Law of
22 1937, Cal. Gov't Code §§ 31450 *et seq.* ("CERL"). Since its formation effective July 1, 1939,
23 SDCERA has existed for the benefit of active, deferred, and retired general and safety employees
24 of the County of San Diego ("County") and other participating employers. SDCERA currently
25 has over 39,000 members, including over 17,500 active members, almost 5,000 deferred
26 members, and over 16,500 retired members. SDCERA collects pension contributions from the
27 participating employers and employees, provides member communication, education, and other
28 member services, administers and pays pension benefits and certain ancillary benefits, supervises

1 investment of trust funds currently in excess of \$10 billion, and performs such other work as is
2 necessary to conduct its business.

3 2. SDCERA is a separate and independent public entity from the County and the
4 other participating employers. SDCERA is governed by an independent nine-member Board of
5 Retirement, consisting of four members elected by SDCERA's members (two active general
6 member representatives, one active safety member representative, and one retired member
7 representative), four members appointed by the County Board of Supervisors, and the sitting
8 County Treasurer-Tax Collector. Cal. Gov't Code § 31520.1(a). CERL provides that "the
9 management of the system is vested in the board of retirement." Cal. Gov't Code § 31520.
10 Under the California Constitution, the Board of Retirement has "plenary authority and fiduciary
11 responsibility for . . . administration of the system." Cal. Const., art. XVI, § 17. This authority
12 exists "[n]otwithstanding any other provisions of law or this Constitution to the contrary." *Id.*
13 The Constitution further states that the Board of Retirement has the "sole and exclusive
14 responsibility to administer the system." Cal. Const., art. XVI, § 17(a).

15 3. Under the ultimate supervision and control of the Board of Retirement, SDCERA
16 has an internal staff of approximately 80 employees. These employees implement the directions,
17 decisions, and policies of the Board of Retirement in furtherance of its fiduciary duties.

18 4. Defendant County of San Diego is a California political subdivision existing under
19 the Constitution and statutes of the State of California. The County is governed by its elected
20 Board of Supervisors.

21 5. The identities of defendants named herein as Does 1 through 10, inclusive, are
22 currently unknown to SDCERA, and therefore such defendants are sued by fictitious names.
23 SDCERA is informed and believes and thereon alleges that the fictitiously named defendants
24 have a legal interest in this matter. If and when the identities of such defendants, or any of them,
25 are discovered, SDCERA will amend this complaint to state their true names and capacities.

26 **JURISDICTION AND VENUE**

27 6. This matter is within the general jurisdiction of this Court.

28 7. Venue is appropriate in this Court under California Code of Civil Procedure

1 section 394(a), which provides that an action, such as this one, against a county may be brought
2 in that county.

3 **SUMMARY**

4 8. This action concerns the Board of Retirement's authority under CERL and the
5 Constitution to set the compensation of SDCERA's employees. SDCERA contends that the
6 Board of Retirement has compensation-setting authority as part of its "plenary authority and
7 fiduciary responsibility" and "sole and exclusive responsibility" for the administration of the
8 system. Cal. Const., art. XVI, §§ 17, 17(a). SDCERA further contends that the Board of
9 Retirement cannot effectively administer the system and perform its fiduciary duties without this
10 authority. However, the County asserts that its Board of Supervisors has the authority to set the
11 compensation of SDCERA's employees. SDCERA, through its Board of Retirement, staff, and
12 counsel, and the County, through its Board of Supervisors, staff, and counsel, have had extensive
13 discussions about the issue, but the parties have been unable to resolve their differing views. The
14 Board of Supervisors continues to assert and exercise the power to set the compensation of all of
15 SDCERA's employees over SDCERA's objection. SDCERA, therefore, files this Complaint for
16 Declaratory Relief to obtain a declaration from this Court to resolve this important governance
17 issue.

18 **RELEVANT CERL PROVISIONS**

19 9. Under CERL, SDCERA's Board of Retirement has the express authority and
20 responsibility to appoint and manage SDCERA's personnel.

21 10. Section 31520 provides that "the management of the retirement system is vested in
22 the board of retirement." Section 31522.1 provides that the Board of Retirement "may appoint
23 such administrative, technical, and clerical staff personnel as are required to accomplish the
24 necessary work of the board[]." Section 31522.1 further provides that this staff shall be
25 appointed "from eligible lists created in accordance with the civil service or merit system rules"
26 of the County. Section 31522.1 also provides that, "[t]he personnel shall be county employees
27 and shall be subject to the county civil service or merit system rules and shall be included in the
28 salary ordinance or resolution adopted by the board of supervisors for the compensation of county

1 officers and employees.” Pursuant to Section 31522.1, SDCERA has appointed and employs
2 approximately 75 administrative, technical, and clerical staff.

3 11. Section 31522.2, which has been made operative as to SDCERA by resolution of
4 the Board of Supervisors, provides that the Board of Retirement “may elect to appoint an
5 administrator.” Section 31522.1 further provides that “the administrator shall not be subject to
6 county civil service or merit system rules.” Section 31522.2 also provides that the administrator
7 “shall be a county employee and the position of administrator shall be included in the salary
8 ordinance or salary resolution adopted by the board of supervisors for the compensation of county
9 officers and employees.” Section 31522.2 states that the administrator “shall be directed by, shall
10 serve at the pleasure of, and may be dismissed at the will of,” the Board of Retirement. Pursuant
11 to Section 31522.2, the Board of Retirement has appointed a Chief Executive Officer.

12 12. Section 31522.3 provides that the Board of Retirement “may elect to appoint
13 assistant administrators and chief investment officers.” Section 31522.3 further provides that
14 these employees “shall not be subject to county charter, civil service, or merit system rules.”
15 Section 31522.3 also provides that these employees “shall be county employees and shall be
16 included in the salary ordinance or salary resolution adopted by the board of supervisors for the
17 compensation of county officers and employees.” Section 31522.3 states that these employees
18 “shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of,” the
19 Board of Retirement. While SDCERA does not currently employ a chief investment officer,
20 SDCERA employs, pursuant to Section 31522.3, assistant administrators, including a Chief
21 Operating Officer and a Director of Member Services.

22 13. Taken together, all of SDCERA’s approximately 80 employees are appointed
23 pursuant to Sections 31522.1, 31522.2, and 31522.3.

24 14. Section 31580.2 provides that the Board of Retirement has the authority to budget
25 and pay for SDCERA’s employees as an expense of administering the system. Section 31580.2
26 further provides that the expenses of administering the system “shall be charged against the
27 earning of the retirement fund.” Pursuant to Section 31580.2, the salaries of all SDCERA
28 employees are paid from and charged against SDCERA’s own funds.

1 employer contributions thereto, and defraying reasonable expenses of administering the system.”
2 This language also appears in CERL. *See* Cal. Gov’t Code §31595(a).

3 20. Article XVI, section 17(c) provides that the members of the Board of Retirement
4 “shall discharge their duties with respect to the system with the care, skill, prudence, and
5 diligence under the circumstances then prevailing that a prudent person acting in a like capacity
6 and familiar with these matters would use in the conduct of an enterprise of a like character and
7 with like aims.” *See* also Cal. Gov’t Code 31595(b).

8 21. Under article XVI, section 17, the “plenary authority” and “sole and exclusive
9 responsibility” of the Board of Retirement over the administration of the system, including the
10 system’s “expenses,” is given constitutional dimension. The Constitution is express in
11 recognizing that this authority exists “[n]otwithstanding any other provisions of law or this
12 Constitution to the contrary.”

13 22. Taken together, these words give the Board of Retirement the broadest possible
14 authority over the administration of the retirement system in the exercise of its fiduciary duties.
15 The constitutional language resolves any perceived ambiguity in the structure and wording of
16 CERL in favor of the Board of Retirement’s authority in all matters of administration, including
17 compensation-setting for SDCERA’s employees.

18 23. The Board of Retirement cannot effectively and prudently exercise its plenary and
19 exclusive authority over the administration of the system and fulfill its fiduciary duties under the
20 Constitution if it does not have compensation-setting authority. The Board of Retirement’s
21 authority and duties are implemented in large part through the selection, retention, evaluation, and
22 management of SDCERA’s employees as the face of the organization and the instrumentalities
23 through which the Board interfaces with the world and accomplishes its objectives. By exercising
24 compensation-setting authority, the Board of Supervisors deprives the Board of Retirement of an
25 important part of its constitutional power.

26 **THE PARTIES HAVE AN ACTUAL CONTROVERSY REQUIRING**
27 **RESOLUTION BY THIS COURT**

28 24. An actual controversy now exists between SDCERA and the County with respect

1 to compensation-setting authority for SDCERA's employees.

2 25. On the one hand, SDCERA contends that the Board of Retirement has the
3 authority, under the provisions of CERL and the California Constitution, to set the compensation
4 for all of SDCERA's employees and that the Board of Supervisors is required, as a purely
5 ministerial act, to incorporate whatever compensation is decided by the Board of Retirement into
6 the County's compensation ordinance.

7 26. On the other hand, the County contends that the Board of Supervisors has the
8 unfettered authority to set the compensation of all of SDCERA's employees and is free to
9 disregard the decisions of the Board of Retirement with respect to compensation. In fact, the
10 County has refused to implement decisions of the Board of Retirement as to the amount of
11 compensation for various of SDCERA's employees.

12 27. SDCERA desires a judicial determination by this Court as to the Board of
13 Retirement's compensation-setting authority under CERL and the Constitution.

14 28. A judicial determination by this Court is necessary and appropriate at this time so
15 that the parties will know the extent of and can implement their compensation-setting authority
16 under CERL and the Constitution with respect to SDCERA's employees.

17 WHEREFORE, SDCERA prays for judgment as follows:

18 1. For a declaration that, under CERL and the California Constitution, the Board of
19 Retirement has the authority to set the compensation of all of SDCERA's employees and that the
20 Board of Supervisors is required, as a ministerial act, to incorporate the Board of Retirement's
21 compensation decisions into the County's compensation ordinance;

22 2. For costs of suit; and

23 3. For such other relief as the Court deems just and proper.

24 DATED: September 5, 2014

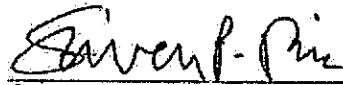
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By: 

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