

CIVIL SERVICE DIVISION
SAN DIEGO COUNTY, CA

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SAN DIEGO COUNTY, CA

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EMPLOYEES' RETIREMENT SYSTEM
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 SAN DIEGO CITY EMPLOYEES'
11 RETIREMENT SYSTEM, by and through its
Board of Administration,
12
13 Plaintiff,

) Case No.: **GIC 851286**
)
) COMPLAINT FOR DECLARATORY RELIEF
) (Cal. Code Civ. Proc. § 1060)
)

14 vs.

15 THE CITY OF SAN DIEGO and
16 DOES 1-100, inclusive,
17 Defendants.

) Unlimited Civil Case
)
)
)

18
19 Plaintiff SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM ("SDCERS") by
20 and through its Board of Administration ("the Board") alleges as follows:

21 1. SDCERS is a public employee retirement system established pursuant to San
22 Diego City Charter ("the Charter"), Article IX, sections 141, 144 and 146, for the purpose of
23 administering the City of San Diego's Retirement System ("the System").

24 2. SDCERS is an entity legally independent from the City, and is empowered to
25 sue and be sued in its own name.

26 3. Defendant City of San Diego ("the City") is a municipal entity established by
27 charter pursuant to California Constitution, Article XI, section 3.
28

COPY

1 4. Defendants DOES 1 through 100 are sued herein under fictitious names. The
2 true names and capacities of these DOE Defendants are unknown to SDCERS at this time.
3 SDCERS will amend this Complaint by inserting their true names and capacities after they
4 have been discovered and identified by SDCERS. Each of the fictitiously named Defendants
5 is responsible in some manner for the acts, omissions, conduct and occurrences herein
6 alleged.

7 5. At all times mentioned herein, each Defendant was the agent, or employee, or
8 otherwise exercised some form of authority, direction or control over the remaining
9 Defendants and, in acting or failing to act as alleged in this Complaint, each Defendant was
10 acting within the course and scope of its agency or employment and with the knowledge and
11 consent and under the direction and control of each of the remaining Defendants.

12 6. The Council of the City ("City Council") is authorized and empowered by the
13 Charter, Article IX, section 141, to establish a retirement system for compensated public
14 officers and employees, and has done so by adoption of Ordinances codified in San Diego
15 Municipal Code ("SDMC") sections 24.0100, et seq.

16 7. Pursuant to Charter, Article IX, section 144, SDCERS is managed by a Board of
17 Administration, which consists of seven Board members appointed by the Mayor and
18 approved by the City Council, one police safety member elected by the active police safety
19 members, one fire safety member elected by the active fire safety members, two general
20 members elected by the active general members, one retired member elected by the retired
21 members, and one City management employee in the administrative service to serve at the
22 pleasure of the City Manager, selected from the following: City Manager, City Treasurer,
23 Deputy or Assistant City Manager, or person in a similar position who reports to the City
24 Manager.

25 8. Pursuant to Charter, Article IX, section 144, the Board has exclusive control of
26 the administration and investment of such funds as are established for the Retirement
27 System.
28

1 9 All monies contributed by City employees, or appropriated by the City Council,
2 pursuant to Charter, Article IX, section 145, are placed in a special fund in the City Treasury
3 called "the City Employees' Retirement Fund," which is established as a trust fund to be held
4 and used only for the purpose of carrying out the provisions of Charter, Article IX, and may
5 not be merged with any other funds of the City. No payments may be made from the City
6 Employees' Retirement Fund except upon the Board's order.

7 10. Pursuant to California Constitution, Article XVI, section 17, the Board is vested
8 with sole and exclusive fiduciary responsibility over the assets of the Retirement System.

9 11. Pursuant to California Constitution, Article XVI, section 17, the Board is vested
10 with sole and exclusive responsibility to administer the Retirement System in a manner that
11 will assure prompt delivery of benefits and related services to the participants and their
12 beneficiaries.

13 12. Pursuant to California Constitution, Article XVI, section 17, the Board must
14 discharge its fiduciary duties solely in the interests of, and for the exclusive purpose of
15 providing benefits to the Retirement System's participants and their beneficiaries, minimizing
16 employer contributions thereto, and defraying reasonable expenses of administering the
17 Retirement System.

18 13. Pursuant to California Constitution, Article XVI, section 17, the Board's duty to
19 the Retirement System's participants and their beneficiaries takes precedence over any other
20 duty, including any duty it may owe to its plan sponsors.

21 14. Pursuant to Charter, Article IX, sections 144 and 146, the City Council has the
22 sole authority to establish the retirement benefits available under the System ("City Pension
23 Benefit Ordinances").

24 15. Pursuant to Charter, Article, IX, section 144, the Board has the sole authority to
25 manage the System and to determine the rights and benefits under the System.

26 16. Pursuant to Charter, Article IX, section 141, all City Pension Benefit Ordinances
27 under which the Board has provided, and continues to provide, benefits to those of its
28 members who are retired City employees and their beneficiaries ("City Retirement Benefits")

1 were approved and adopted by majority vote of the City Council before SDCERS
2 commenced provision of such City Retirement Benefits.

3 17. Pursuant to Charter, Article IX, section 143.1, all City Pension Benefit
4 Ordinances under which the Board has provided, and continues to provide, City Retirement
5 Benefits were properly ratified by majority vote of the appropriate members of SDCERS
6 before SDCERS commenced provision of City Retirement Benefits pursuant to such City
7 Pension Benefit Ordinances.

8 18. Pursuant to Charter, Article V, section 40, all City Pension Benefit Ordinances
9 under which the Board has provided, and continues to provide, City Retirement Benefits were
10 approved as to form and legality by the Office of the San Diego City Attorney before
11 SDCERS commenced provision of such City Retirement Benefits.

12 19. Pursuant to Charter, Article V, section 39, all City Pension Benefit Ordinances
13 under which the Board has provided, and continues to provide, City Retirement Benefits were
14 certified in writing for payment by the City to SDCERS of necessary contributions under
15 Charter, Article IX, section 143, by the Office of the San Diego City Auditor before SDCERS
16 commenced provision of such City Retirement Benefits.

17 20. In reliance on the actions of the City Council, SDCERS members, City Attorney,
18 and City Auditor, as described in paragraphs 16 through 19, supra, and pursuant to all City
19 Pension Benefit Ordinances approved and adopted thereunder, SDCERS has paid, and
20 continues to pay, any and all City Retirement Benefits required by such City Pension Benefit
21 Ordinances.

22 21. On or about April 8, 2005, San Diego City Attorney Michael J. Aguirre
23 ("Aguirre") issued "Interim Report No. 3 regarding Violations of State and Local Laws As
24 Related to the SDCERS Pension Fund" ("Interim Report No. 3"). Aguirre asserted in Interim
25 Report No. 3 that some or all of the City Retirement Benefits payable under certain City
26 Pension Benefit Ordinances are "illegal and void" and therefore no further payments of such
27 benefits should be authorized for payment by SDCERS.
28

1 22. On or about June 17, 2005, Aguirre issued a Memorandum to City Auditor and
2 Comptroller John Torell ("Torell"), copied to SDCERS' Retirement Administrator and General
3 Counsel, ("the June 17 Memo") directing Torell to "instruct" SDCERS not to pay the following
4 retirement benefits which Aguirre asserted are illegal (collectively: "the Contested Benefits"):

5 (a) "Any retirement benefit based on the 1996 increase of the retirement
6 factor from 1.45% to 2.00%";

7 (b) "Any retirement benefit based on the 2002 increase of the retirement
8 factor from 2.00% to 2.50%";

9 (c) "Any retirement benefit that exceeded the 90% retirement allowance
10 cap";

11 (d) "Any retirement benefit based on the Deferred Retirement Option Plan
12 (DROP)";

13 (e) "Any retirement benefit based on a member's Union salary and City
14 salary";

15 (f) "Any retirement benefit based on a Purchase of Service Credit that was
16 purchased by a member at a rate that was not actuarially neutral";

17 (g) "Any retirement benefit that became vested by way of Purchase of
18 Service Credits rather than 10 years of actual service";

19 (h) "Any retirement benefit based on the Legislative Officers Retirement Plan
20 (LORP)"; and

21 (i) "Any retirement benefit based on the Executive Officers Retirement Plan
22 (EORP)."

23 23. Aguirre has publicly declared that in taking the actions described in paragraphs
24 21 and 22, supra, he has acted in his capacity as an authorized agent of the City of San
25 Diego pursuant to Charter, Article V, section 40.

26 24. Pursuant to its duties under the California Constitution and the Charter, the
27 Board has a fiduciary duty to seek a judicial determination of the legality of payment of
28 retirement benefits to its members upon reasonable notice that the legality of such benefits is

1 disputed. Therefore, the Board has filed this declaratory relief action for the express purpose
2 of discharging its fiduciary duty to all of its members and their beneficiaries to determine the
3 legality of the Contested Benefits.

4 25. Prior to July 7, 2005, no legal action was brought by any party to contest the
5 legality of any City Pension Benefit Ordinance under which SDCERS has paid, and continues
6 to pay, City Retirement Benefits. At no time up to and including July 7, 2005, was the
7 limitations period governing such legal action tolled for any reason. In filing this declaratory
8 relief action, SDCERS does not waive, and instead expressly reserves, its right to assert any
9 and all legal and equitable grounds in support of the relief sought in this action.

10 26. On July 22, 2005, the Board authorized the filing of this lawsuit by majority vote.

11 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

12 **(Against All Defendants and DOES 1-10)**

13 27. SDCERS incorporates by reference and realleges paragraphs 1 through 26 as
14 though fully set forth herein.

15 28. An actual and justiciable controversy has arisen, and now exists, between
16 SDCERS and the defendant, as to whether the City Retirement Benefits which SDCERS has
17 paid, and continues to pay, pursuant to the actions alleged in paragraphs 16 through 19,
18 supra, and pursuant to all City Pension Benefit Ordinances approved and adopted
19 thereunder, can properly and legally be paid to those SDCERS members who are retired City
20 employees and their beneficiaries.

21 29. SDCERS contends it has properly and legally paid, and continues to properly
22 and legally pay, the City Retirement Benefits, including, but not limited to, the Contested
23 Benefits, all of which were enacted pursuant to the actions alleged in paragraphs 16 through
24 19, supra, and pursuant to all City Pension Benefit Ordinances approved and adopted
25 thereunder.

1 30. Defendant contends the Contested Benefits are illegal and void, and therefore
2 that SDCERS cannot properly and legally pay any or all of the Contested Benefits to those of
3 its members who are retired City employees or their beneficiaries.

4 31. Pursuant to California Code of Civil Procedure section 1060, SDCERS desires
5 a judicial determination that it may properly and legally pay all of the Contested Benefits
6 enacted pursuant to the actions alleged in paragraphs 16 through 19, supra, and pursuant to
7 all City Pension Benefit Ordinances approved and adopted thereunder.

8 32. This judicial determination is necessary and appropriate at this time so that the
9 parties can ascertain their respective rights and duties.

10 33. There are no administrative remedies available to SDCERS to compel the relief
11 sought herein. Therefore, SDCERS has exhausted all available administrative remedies.

12 34. SDCERS has no plain, speedy or adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, SDCERS prays that:

15 35. Following a duly noticed hearing, this Court render a judicial determination on
16 SDCERS' First Cause of Action that SDCERS may properly and legally pay all City
17 Retirement Benefits, including, but not limited to, the Contested Benefits, as enacted
18 pursuant to the actions alleged in paragraphs 16 through 19, supra, and pursuant to all City
19 Pension Benefit Ordinances approved and adopted thereunder.

20 36. For attorney's fees as authorized by law.

21 37. For costs of suit incurred in this action.

22 38. For such other and further relief as the Court deems proper.

23 DATED: July 26, 2005

SELTZER CAPLAN McMAHON VITEK

24 By: 

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26 Christine M. LaPinta, Esq.

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28 EMPLOYEES' RETIREMENT SYSTEM