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October 20, 2016

Chief Justice and Honorable Members of the Supreme Court
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Re: *Amicus Curiae* Letter In Support of Petition for Review in Case No. S237460
Marin Assn. of Public Employees v. Marin County Employees' Retirement
Assn. (1st DCA 2016) 2 Cal.App.5th 674

Dear Chief Justice and Associate Justices of the Supreme Court:

This *amicus curiae* letter is submitted under the authority of California Rules of Court rule 8.500(g) on behalf of the San Diego Municipal Employees Association (SDMEA) in support of the Petition for Review in the above-captioned matter (hereinafter "*MAPE*"). SDMEA is the exclusive bargaining representative on behalf of several thousand employees in the City of San Diego who fill positions in the Professional, Supervisory, Technical and Administrative Support and Field Service bargaining units.

SDMEA joins in and will not repeat the important legal analysis already presented to this Court in the Petition for Review and in multiple *amicus curiae* letters supporting the grant of review. SDMEA writes to emphasize how the *MAPE* decision, if left unreviewed, will severely and negatively impact public sector collective bargaining under the Meyers-Milius-Brown Act, Government Code sections 3500-3511, which has fostered communication and the peaceful resolution of employment disputes since its enactment in 1968.¹ For the reasons explained below, the *MAPE* decision's destruction of vested, Constitutionally-protected, individual pension rights will disrupt the good faith bargaining efforts of exclusive bargaining representatives like SDMEA and lead inevitably to pension-

¹ The same detrimental impact will occur under California's other public sector bargaining laws.

related litigation throughout California which will further burden our courts while weakening collective bargaining as an effective means of resolving employment-related disputes. Public employers and public sector unions will be paralyzed in their efforts to find common ground for agreement when fiscal challenges confront them. Judges, and then Justices, will be asked to determine the “reasonableness” of each pension benefit reduction – measured how and against what standard, no one presently knows.

SDMEA and the City of San Diego have successfully bargained a series of collective bargaining agreements over the past nearly five decades. Regardless of any difficulties associated with these good faith bargaining efforts (and there have been plenty), SDMEA and the City have *always* agreed that pension benefits under the City’s defined benefit pension plan administered by the San Diego City Employees Retirement System (SDCERS) are a form of deferred compensation which vest upon acceptance of employment and are earned as the employee renders service. (See *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-53.) SDMEA and the City have also always agreed that contractual vested pension rights inure to the benefit of individual employees and enjoy constitutional protection such that SDMEA may *not* permissibly bargain to reduce or eliminate these benefits to achieve other bargaining goals. (See *Gibson v. City of San Diego* (1945) 25 Cal.2d 930, 937 [statutory pension provisions become part of contemplated compensation for services and thus a part of contract of employment itself]; *Abbott v. City of San Diego* (1958) 165 Cal.App.2d 511 [benefits subsequently obtained by other employees cannot operate to offset detriments imposed on those with existing pension rights].) In common parlance, each payday, a public employer issues each employee covered by a defined benefit pension plan a paycheck together with an “IOU” for the deferred compensation to be paid upon retirement if conditions of eligibility are satisfied.

With these well-established and agreed-upon principles in mind, SDMEA and the City have sought collectively-bargained solutions during good and bad fiscal times which honor these individual vested rights. Accordingly, economic concessions have been made to improve the City’s fiscal position while preserving these vested rights – including bargained-for agreements to accept reductions in other forms of compensation and to endure years of frozen “pensionable” compensation to avoid an increase in pension liabilities. SDMEA has also bargained changes in the City’s defined benefit pension plan for *new* hires who, unlike existing employees, would be in a position to make an informed judgment whether to accept employment with the City on the terms offered.

In short, the entire collective bargaining process in the City of San Diego for decades – and certainly since the great recession – has been informed and influenced by an established legal framework, i.e., economic concessions could be demanded by the City and approved by employees through collective bargaining and contract ratification processes so long as vested, Constitutionally-protected pension benefits remained sacrosanct.

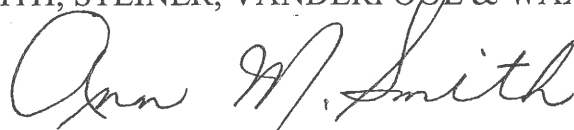
While the particular type of “affected payments” at issue in *MAPE* are *not* included as “compensation earnable” under the City’s defined benefit pension plan, the decision’s startling new notion that defined benefit pensions may be changed or reduced at any time before retirement to what *somebody* considers “reasonable,” completely destroys the Constitutionally-protected status of the defined benefit pensions SDMEA-represented employees have earned and continue to earn during their public service to the City’s residents. *MAPE* presently stands as an open invitation to the City of San Diego to propose to SDMEA – and then impose on represented employees – detrimental changes in heretofore vested pension benefits for cost-savings purposes despite the economic hardships these employees have endured to preserve those vested benefits over the past decade.

Thus, if the remarkable and ill-considered notion now announced in *MAPE* remains published law in California, the entire public sector collective bargaining and litigation landscape will be detrimentally altered. Public employers will face political pressure to demand concessions at the bargaining table related to individually vested defined benefit pensions. In fulfilling their duty of fair representation under the MMBA or equivalent statutes, public sector unions will be hamstrung in their ability to be effective bargaining representatives because groups of employees with heretofore vested pension benefits will be pitted against those with different benefits or differing priorities regarding the preservation of those benefits depending on their age or career plans. Bargaining representatives throughout the public sector will be paralyzed in their ability to find common ground for agreement with public employers when demands to concede vested pension benefits are inevitably made in reliance on *MAPE* and in defiance of contrary precedent.

SDMEA joins Petitioners and other *amici* in urging this Court to grant review in order to restore the certainty associated with this previously well-established area of California law which has guided and informed innumerable transactions in public sector collective bargaining for nearly five decades. In the alternative, for the reasons described above, SDMEA urges this Court to issue an order depublishing the *MAPE* decision.

Sincerely,

SMITH, STEINER, VANDERPOOL & WAX, APC



ANN M. SMITH [SBN 120733]

Attorneys for San Diego Municipal Employees
Association

PROOF OF SERVICE

Marin Association of Public Employees, et al. v. Marin County Employees' Retirement Association; Board of Retirement of the Marin County Employees Association and State of California
California Supreme Court Case No. S237460
[Court of Appeal, First Appellate District, Division 2
Case No. A139610]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 West A Street, Suite 320, San Diego, California 92101.

On October 20, 2016, I served the foregoing document described as **AMICUS LETTER IN SUPPORT OF PETITION FOR REVIEW** on the parties in said cause (listed below) by enclosing a true copy thereof in sealed envelopes, and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. The envelope or package was placed in the mail at San Diego, California.

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Marin Ass'n of Public Employees et al.
v. Marin County Employees Retirement Ass'n.
 California Supreme Court Case No. S237460

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<p>Retirement Board of the Marin County Employees' Retirement Association: Defendant and Respondent</p>	<p>Ashley Kathleen Dunning Nossaman LLP 50 California Street, 34th Floor San Francisco, CA 94111 Tel: (415) 398-3600</p>

Marin Ass'n of Public Employees et al.
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Executed on October 20, 2016, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Elizabeth Diaz

