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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9 SAN FRANCISCO POLICE OFFICERS’
10 ASSOCIATION,
11 Plaintiff and Petitioner,
12 v.
13 SAN FRANCISCO POLICE COMMISSION,
CITY AND COUNTY OF SAN
14 FRANCISCO, TONEY CHAPLIN, in his
official capacity as interim Chief of Police of
15 the San Francisco Police Department; and
DOES 1 – 10 Inclusive,
16 Defendants and Respondents.
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Case No.
**SAN FRANCISCO POLICE OFFICERS’
ASSOCIATION’S COMPLAINT FOR**
**(1) TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION CCP
§ 1281.8;**
**(2) TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION CCP §
527;**
and VERIFIED PETITION:
**(3) TO COMPEL ARBITRATION CCP
§ 1281 et seq.;**
**(4) FOR A WRIT OF ORDINARY
MANDAMUS CCP § 1085;**

21
22 **Introduction, Use of Force Discussions, and Summary of the
Two Bases Asserted for a TRO and Preliminary Injunction**

23 1. Plaintiff and Petitioner SAN FRANCISCO POLICE OFFICERS’ ASSOCIATION
24 (“Plaintiff” or the “POA”) files suit to determine and protect the collective bargaining rights of the
25 approximately 2300 police officers it represents, all of whom are employed by Defendant and
26 Respondent CITY AND COUNTY OF SAN FRANCISCO (“CCSF”).
27 2. Since July, the POA and representatives of Defendant and Respondent SAN
28 FRANCISCO POLICE COMMISSION (the “Commission”) and CCSF, specifically its

1 DEPARTMENT OF HUMAN RESOURCES (“DHR”), have been meeting and conferring as
2 required by state law and the city charter over proposed changes to the Use of Force policy of the
3 San Francisco Police Department (“SFPD”).

4 3. On October 21, 2016, the Commission and DHR abruptly declared that the parties
5 were at an impasse in their bargaining. They have refused to meet and confer further with
6 Plaintiff. At that time, the POA had outstanding issues concerning training and shooting at
7 moving vehicles, and the Commission had newly introduced a proposal regarding conducted
8 electrical weapons or “Tasers.”

9 4. In an October 24, 2016 letter, the POA disputed the Commission’s declaration of
10 impasse, arguing that it was premature. The POA further argued that even if the declaration of
11 impasse was legitimate, the City was still obligated to exhaust impasse resolution procedures
12 under the city charter and state law.

13 5. Respondents did not respond. So, on October 27, 2016, the POA filed a Step IV
14 grievance and demand for expedited arbitration under its Memorandum of Understanding
15 (“MOU”) with CCSF, asserting that the Commission committed unfair labor practices during the
16 meet and confer process. The grievance contends that the Commission prematurely declared
17 impasse and failed to bargain in good faith by refusing to memorialize in written agreement form
18 concessions it made verbally about the right of police officers to use lethal force when confronted
19 with moving vehicles that pose a threat to the life of the officer or members of the public.

20 6. On December 7, 2016, the POA and the representatives of the Commission held a
21 further meeting. The Commission’s negotiators refused to acknowledge that the meeting broke
22 the impasse they had declared. They refused to discuss further the unresolved issue of shooting at
23 moving vehicles or to consider a new proposal from the POA concerning Tasers. Nonetheless, the
24 POA passed a proposal concerning training, and the parties did reach agreement on that issue.

25 7. CCSF has failed to respond to the October 27, 2016 grievance. Furthermore,
26 neither the Commission nor DHR will acknowledge that the Commission has any obligation to
27 exhaust impasse resolution procedures prior to implementing the revised Use of Force policy.

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1 13. Defendant Toney Chaplin (“Chaplin”) is the duly appointed Interim Police Chief of
2 the SFPD.

3 14. The true names and capacities of defendants designated as DOES 1 through 10,
4 inclusive, are presently unknown to Plaintiff and are sued under such fictitious names. Plaintiff
5 will amend its Complaint to add the true names and capacities of said DOE defendants when the
6 same are ascertained. Plaintiff is informed and believes and on that basis alleges that each of the
7 defendants designated as DOE is responsible in some manner for the actions alleged herein and is
8 subject to the orders or relief requested by Plaintiff.

9 15. The POA is the recognized employee organization for multiple sworn
10 classifications of SFPD employees pursuant to Government Code section 3501. It is an
11 unincorporated association and it brings this action on behalf of itself and its members to enforce
12 their collective bargaining and labor agreement rights, having standing to do so under the
13 associational standing doctrine. (*Allee v. Medrano* (1974) 416 U.S. 802; *Professional Firefighters*
14 *v. City of Los Angeles* (1963) 60 Cal.2d 276.)

15 16. Employment relations between CCSF and its police officers are governed by the
16 Meyers-Milias-Brown Act (the “MMBA”), Government Code section 3500, *et seq.*, the city
17 charter and the current memorandum of understanding (“MOU”) between CCSF and the POA.
18 The MOU has been ratified by both parties and is effective through June 30, 2018.

19 17. The MMBA, the city charter, and the MOU all require that CCSF and its agencies
20 provide their employees with an opportunity to negotiate over changes in working conditions.
21 Employers must meet and confer in good faith and complete any applicable impasse resolution
22 procedures *before* implementing any changes in working conditions. (See, e.g., Charter § A8.590-
23 5; Gov’t Code §§ 3504.5(a), 3505; MOU § 4.A., 4.D.)

24 **Grievance Procedure**

25 18. The MOU contains a grievance and arbitration procedure that culminates in final
26 and binding arbitration for disputes between the City and POA regarding the “interpretation and
27 application” of the MOU. The grievance procedure also contains an expedited arbitration clause,
28 which the parties may jointly agree to use.

1 **Venue and Jurisdiction**

2 19. This Court has jurisdiction over this matter pursuant to Code of Civil Procedure
3 sections 1060 and 1085.

4 20. Venue in this Court is proper pursuant to Code of Civil Procedure section 394.

5 **FIRST CAUSE OF ACTION**

6 **(Injunctive Relief Pending Arbitration CCP § 1281.8)**

7 21. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 20
8 as if fully set forth herein.

9 22. Plaintiff has sought final and binding arbitration under the MOU over the alleged
10 violation of its collective bargaining rights described in paragraphs 2 through 6. One remedy
11 sought by the POA through its grievance is a return to the bargaining table. If the Commission is
12 permitted to unilaterally implement the revised Use of Force policy, the POA’s ability to meet and
13 confer meaningfully over the changes in working conditions contained within the policy will be
14 irreparably harmed.

15 23. Code of Civil Procedure section 1281.8(b) expressly provides relief to protect the
16 right of a party to secure the ruling of an arbitrator:

17 *(b) A party to an arbitration agreement may file in the court in the county in*
18 *which an arbitration proceeding is pending, or if an arbitration proceeding has*
19 *not commenced, in any proper court, an application for a provisional remedy*
20 *in connection with an arbitrable controversy, but only upon the ground that*
21 *the award to which the applicant may be entitled may be rendered ineffectual*
22 *without provisional relief. The application shall be accompanied by a complaint*
or by copies of the demand for arbitration and any response thereto. If
accompanied by a complaint, the application shall also be accompanied by a
statement stating whether the party is or is not reserving the party's right to
arbitration. [Emphasis added.]

23 24. A “provisional remedy” under Code of Civil Procedure section 1281(b) includes a
24 temporary restraining order and a preliminary injunction issued pursuant to Code of Civil
25 Procedure section 527. (Code of Civ. Proc. § 1281.8(a)(3).)

26 25. The POA has a right under section 4.C of its MOU to meet and confer on behalf of
27 its members over changes to working conditions such as the new Use of Force policy. The POA
28 has alleged in its grievance that the Commission has failed to fulfill its meet and confer

1 obligations. The Commission's potential implementation of the new policy without providing the
2 POA with a full opportunity to meet and confer threatens to irreparably harm represented police
3 officers.

4 26. There are two levels of harm: the first to the officers; the second to the process.

5 27. With respect to the harm to officers, the changes in the Use of Force policy will
6 subject police officers to life-threatening physical danger. The most obvious example, and the one
7 of the two outstanding issues in the negotiations (the other being Tasers), is the Commission's
8 desire to prevent officers from shooting at suspects in moving vehicles under any circumstances,
9 with the solitary exception of situations where a suspect is firing at officers from the vehicle. The
10 current language of the Commission's proposal has no exception to this rule, even in exceptional
11 circumstances.

12 28. During the negotiations, the POA has made multiple proposals that would allow
13 police officers to shoot at moving vehicles in exceptional circumstances. It has cited the recent
14 incidents in Nice, France and Ohio State University, where moving vehicles were used as weapons
15 to kill and maim civilians, as examples of the reality of modern police work.

16 29. Police Commission, DHR and SFPD representatives at those negotiations have all
17 acknowledged *verbally* that police officers *can* use lethal force in such circumstances; *however*,
18 *the Commission refuses to reduce this verbal agreement to a bilateral written agreement, as*
19 *required by the MMBA (Gov't Code section 3505).* This unfair labor practice charge is part of the
20 POA's October 27, 2016 grievance.

21 30. This issue remained outstanding when the Commission declared impasse on
22 October 21, 2016, and the Commission has refused to accept any further proposals from the POA.
23 The Commission now asserts that it has no obligation to negotiate over the parts of its policy that
24 pertain to shooting at moving vehicles.

25 31. With respect to the harm to the process, the Commission intends to deprive its
26 police officers of their opportunity to meet and confer fully about how they are to deal with the
27 threat of moving vehicles being used as weapons, including how police officers exercise their own
28 right to self-defense under the federal and state constitutions, statutory law and the common law,

1 and their obligation to defend members of the public. Such harm caused by the deprivation of the
2 right to negotiate, once inflicted, cannot be reversed. The input during the meet and confer
3 process by the very officers who are responsible for carrying out the policies in question is vital to
4 the ultimate success of SFPD's law enforcement obligations.

5 32. Furthermore, Defendants' unilateral decision to bypass the grievance and
6 arbitration procedures of the MOU and the impasse resolution procedures will undermine the
7 POA's role as the collective bargaining representative of the police officers and its standing before
8 its members. Effective law enforcement depends upon the maintenance of stable employer-
9 employee relations between public safety employees and their employers. By their unilateral
10 actions, defendants threaten the very basis of the collective bargaining process.

11 33. Labor Code section 1126 also provides that "a breach of such collective bargaining
12 agreement by any party thereto shall be subject to the same remedies, including injunctive relief,
13 as are available on other contracts in the courts of this State."

14 WHEREFORE, Plaintiff prays for relief, as hereinafter set forth.

15 **SECOND CAUSE OF ACTION**

16 **(Injunctive Relief Pending Completion of Impasse Resolution Procedures CCP § 527)**

17 34. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 33
18 as if fully set forth herein.

19 35. The city charter provides impasse resolution procedures in sections A8.590-1
20 through A8.590-7. Section A8.590-5(a) requires that:

21 *[D]isputes or controversies pertaining to wages, hours, benefits or terms and*
22 *conditions of employment which remain unresolved after good faith*
23 *negotiations between the City and County of San Francisco, its departments,*
24 *boards and commissions and a recognized employee organization representing*
25 *... Police Officers ... shall be submitted to a three-member Board of*
Arbitrators upon the declaration of an impasse either by the authorized
representative of the City and County of San Francisco or by the recognized
employee organization involved in the dispute.

26 36. Section A8.590-5(a) requires that the declaration of impasse by the Commission, if
27 it survives the POA's grievance (see paragraph 5), must be submitted to a three-member Board of
28 Arbitrators.

1 37. The Charter exempts some disputes from submission to a Board of Arbitrators
2 upon a declaration of impasse, but only: (1) crowd control policies; (2) disciplinary procedures; or
3 (3) matters pertaining to a consent decree or anti-discrimination laws, ordinances or regulations.
4 (Charter section A8.590-5(g).)

5 38. None of the exceptions in Section A8.590-5(g) apply to the impasse over the Use of
6 Force policy.

7 39. Section 4.D of the MOU also provides that “[i]f no agreement is reached” in meet
8 and confer matters, “the matter shall, at the request of either party, be resolved pursuant to the
9 impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7.” The only
10 additional exception to the agreement to arbitrate, beyond what exists in Charter section A8.590-
11 5(g), is for “staffing matters.”

12 40. Separate and apart from CCSF’s and the Commission’s obligations under the city
13 charter, they have obligations under the MMBA. Government Code sections 3505.4 to 3505.7
14 provide for fact-finding as an impasse resolution procedure for collective bargaining disputes.
15 Recent decisions of the Public Employment Relations Board and Courts of Appeal for the Fourth
16 District Court of Appeal confirm that section 3505.4 to 3505.7 apply to impact or effects
17 bargaining over matters that involve the exercise of managerial prerogatives. These rulings are
18 important, because even if the Commission and CCSF are correct that a Use of Force policy is an
19 exercise of management prerogative, the Commission still has an obligation to negotiate the
20 impacts of the new policy on working conditions, including through the completion of impasse
21 resolution procedures.

22 41. Section 3505.5(e) excludes charter cities (like CCSF) from Government Code
23 sections 3505.4 to 3505.7 but only if the matter is covered by interest arbitration, such as Section
24 A8.590-5. Thus, even if Respondents persuade the Court that the impasse over use of force is not
25 subject to Charter section A8.590.5(a), they are still required to comply with Government Code
26 sections 3505.4 to 3505.7. (Conversely, if Charter section A8.590.5(a) applies to the dispute,
27 Respondents would not have to comply with Government Code sections 3505.4 to 3505.7.)
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1 **FOURTH CAUSE OF ACTION**

2 **(Petition for Writ of Ordinary Mandamus CCP § 1085 –**
3 **Mandatory Duty to Complete Impasse Resolution Procedures)**

4 48. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 47
5 as if fully set forth herein.

6 49. CCSF and the Commission are required to comply with Charter section A8.590
7 prior to implementing any changes in working conditions that affect San Francisco police officers.
8 The revisions to the SFPD Use of Force policy create numerous changes in working conditions
9 that have been the subject of negotiations since July. On October 21, 2016, the Commission
10 declared impasse and has refused to conduct any further negotiations with the POA. Even if the
11 Commission succeeds in defeating the POA’s grievance and establishes that the declaration of
12 impasse was valid, Plaintiff contends it must exhaust impasse resolution procedures before
13 implementing the revised Use of Force policy.

14 50. And even if this Court concluded that the impasse resolution procedures in the
15 Charter do not apply to this declaration of impasse, Plaintiff contends that the impasse resolution
16 procedures in Government Code sections 3505.4 to 3505.7 apply.

17 51. Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of the
18 law other than the issuance by this Court of the requested writ of mandamus.

19 52. Plaintiff has a beneficial interest in Respondents’ compliance with their mandatory
20 duties under the Charter section A8.590 and Government Code sections 3505.4 to 3505.7.

21 Plaintiff will suffer damages if Respondents do not comply with said mandatory duties.

22 WHEREFORE, Plaintiff prays for relief, as hereinafter set forth.

23 **Prayer**

24 1. That the Court issue a Temporary Restraining Order and Preliminary Injunction
25 enjoining and restraining defendants, and each of them, their agents, servants, employees,
26 representatives and all person acting in concert or participating with them, from proceeding with
27 implementation of the Commission’s revised Use of Force policy until the determination of the
28

1 POA's October 27, 2016 Step IV grievance and the determination of Plaintiff's Petition for
2 Ordinary Writ of Mandamus;

3 2. For an order compelling arbitration of the POA's October 27, 2016 Step IV
4 grievance;

5 3. For an order requiring the Commission, upon the confirmation of the validity of a
6 state of impasse in the meet and confer negotiations over the changes in the Use of Force policy,
7 to comply with either the impasse resolution procedures under the city charter or the impasse
8 resolution procedures under the Meyers-Milias-Brown Act.

9 4. For attorneys' fees and costs incurred in bringing this action; and

10 5. For such other and further relief as the Court deems just and proper.

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12 Dated: December 20, 2016

MESSING ADAM & JASMINE LLP

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By _____
Gregg McLean Adam
Attorneys for San Francisco Police Officers'
Association

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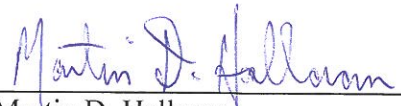
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VERIFICATION

I, Martin D. Halloran, am the President of the San Francisco Police Officers' Association, the Petitioner in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Petition to Compel Arbitration and for a Writ of Ordinary Mandamus, and know the contents thereof. The same is true of my own knowledge except as to those matters alleged on information and belief and as to those matters, I believe them to be true.

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

Executed on December 19, 2016, in San Francisco, California.



Martin D. Halloran