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8 SHERIFFS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 ASSOCIATION OF ORANGE COUNTY
12 DEPUTY SHERIFFS,

13 Plaintiff/Petitioner,

14 v.

15 SHERIFF-CORONER SANDRA
16 HUTCHENS, Orange County Sheriff-
17 Coroner; COUNTY OF ORANGE, State
18 of California; ORANGE COUNTY
19 SHERIFF'S DEPARTMENT; BOARD
20 OF SUPERVISORS, County of Orange;
21 DOES 1 through 10, inclusive,

22 Defendants/Respondents.

Case No.:

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT**

23 Comes now Plaintiff/Petitioner Association of Orange County Deputy Sheriffs ("AOCDS
24 or "Petitioner") and seeks injunctive relief, declaratory relief, and mandamus to enforce its rights
25 under the Meyers-Milias-Brown Act, Government Code Sections 3500 *et. seq.* ("MMBA").

26 Petitioner alleges as follows:

27 **I. FIRST CAUSE OF ACTION FOR VIOLATION OF
28 GOVERNMENT CODE SECTION 3505.**

[BROUGHT AGAINST ALL DEFENDANTS]

1. AOCDS is a recognized employee organization as that term is used in the
MMBA and is comprised of employees of the Orange County Sheriff's Department holding the
rank of Deputy Sheriff Trainee, Deputy Sheriff I, Deputy Sheriff II, Investigator and Sergeant,
extra help deputies and certain investigators and extra help investigators employees of the Office

1 of the Orange County District Attorney. The County of Orange (“County”) has formally
2 recognized AOCDS as the employee organization that represents the Peace Officer and
3 Supervising Peace Officer Bargaining Units composed of those Sheriff’s Department employees
4 holding the rank of Deputy Sheriff Trainee, Deputy I, Deputy II, Investigator, and Sergeant,
5 extra help deputies and investigators and extra help investigators of the Office of the Orange
6 County District Attorney. As the recognized employee organization, AOCDS has the right and
7 obligation to represent those bargaining unit employees in their employment relations with their
8 employer, County.

9 2. Respondent County is a political subdivision of the State of California, organized
10 and existing under the laws of the State of California. Respondent County is a public agency as
11 that term is used in Government Code Section 3500, et seq. Respondent County has as two of its
12 constituent departments a County Executive Officer and a Human Resources Department that
13 includes an Employee Relations Division. The County Executive Officer and the Human
14 Resources Department represent Respondent County and Respondent Board of Supervisors
15 (“Board”) in employee relations matters.

16 3. Respondent Sheriff-Coroner Sandra Hutchens (“Hutchens”) is the elected Sheriff
17 of the County of Orange. Sheriff Hutchens is charged by law with the administration of
18 personnel policies and practices in the Sheriff’s Department in accordance with California
19 Government Code.

20 4. Respondent Orange County Sheriff’s Department (“Department”) is a department
21 of the County of Orange.

22 5. Respondent Board of the County of Orange is comprised of the duly elected
23 officials charged by law with determining and implementing policies for personnel employed by
24 Respondent County in accordance with the law and in particular, Government Code Sections
25 3500, et seq.

26 6. Petitioner is ignorant of the true names and capacities of Respondents sued herein
27 as DOES 1 through 10, inclusive, and therefore sues these Respondents by such fictitious names.
28

1 Petitioner is informed and believes, and thereon alleges that each of the fictitiously named
2 Respondents is in some way responsible for the wrongs suffered by Petitioner as herein alleged.

3 7. Whenever in this petition and complaint reference is made to "Respondents, and
4 each of them," such allegations shall be deemed to mean the acts of Respondents acting
5 individually, jointly, and/or severally.

6 8. Petitioner is informed and believes and thereon alleges that at all times herein
7 mentioned, each of the Respondents was the agent, servant, employee, co-venturer and co-
8 conspirator of each of the remaining Respondents, and was at all times mentioned herein acting
9 within the course, scope, purpose, consent, knowledge, ratification, and authorization of such
10 agency, employment, joint venture and conspiracy.

11 9. The Orange County Central Men's Jail ("CMJ") is an unsafe working
12 environment for Petitioner's members. The CMJ is also an unsafe housing location for the
13 violent, hardened criminals AOCDS members are now tasked with incarcerating, and it poses a
14 serious safety risk to the public AOCDS members are sworn to protect.

15 10. Many of these grave security concerns regarding the CMJ have been brought to
16 the attention of Sheriff's management over the last several years. Those concerns were either
17 immediately dismissed or deliberately ignored.

18 11. Additional safety concerns were recently brought to the attention of AOCDS in
19 the wake of the January 22, 2016, inmate escape.

20 12. Given the severity of these safety concerns, AOCDS is compelled to take legal
21 action in an attempt to remedy the current situation to restore a safe and appropriate working
22 environment at the CMJ for its members.

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1 13. Opened in 1967, the CMJ is a linear-style jail designed to house mainly
2 misdemeanor county inmates. In recent years, due to the passage of AB 109 (Public Safety
3 Realignment) and Prop 47, which reduced many nonviolent offenses from felonies to
4 misdemeanors, the County jail facilities have been transformed into a state prison environment.¹

5 14. Petitioner is informed and therefore believes inmate on inmate assaults and
6 assaults on staff have become more commonplace and more severe and there has been an
7 increasing amount of contraband being brought into the jail.

8 15. Petitioner is informed and therefore believes that the CMJ houses roughly 1,000
9 inmates, the majority of which have either been convicted of felony charges or are awaiting trial
10 on felony charges. Many of the inmates currently housed at the CMJ have served sentences both
11 in County jails and in State prison and have connections to known criminal enterprises.

12 16. Petitioner is informed and therefore believes the classification of inmates has
13 changed dramatically since AB109 was implemented.² The lowest level criminals are classified
14 as “white-banders.” Classification is based on a combination of factors including prior criminal
15 history, nature of current criminal charges, gang affiliation, flight risk, race and sexual
16 orientation. With lower level offenders being pushed out of the County jail system altogether,
17 the threshold for what constitutes a white-bander has been raised. Flexing the classification of
18 white-banders to expand the number of inmates who are classified as white-banders allows more
19 dangerous inmates to be housed anywhere, including dormitory style tanks.
20

21 _____
22 ¹ Attached as Exhibit A is a true and correct copy of the Bill Text for AB-109 Criminal justice alignment. Attached
23 as Exhibit B is a true and correct copy of the Orange County Register article entitled “County jails morphing to
24 ‘felony prisons’?”. Attached as Exhibit C is a true and correct copy of the Orange County Register article entitled
25 “O.C. jails become more dangerous, violent, officials report”. Attached as Exhibit D is a true and correct copy of
26 Proposition 47, Official Title and Summary, prepared by the Attorney General.

27 ² Attached as Exhibit E is a true and correct copy of the Orange County Register article entitled “O.C. jail escapee
28 avoided deportation to Vietnam for more than 15 years”.

1 17. The three inmates who escaped from the CMJ on January 22, 2016 were Bac
2 Duong, Hossein Nayeri and Jonathan Tieu. Duong, Nayeri and Tieu had all been classified as
3 white-banders and were housed in Mod F, tank 28 which is a dormitory style housing area for 68
4 inmates.

5 18. According to press reports, Duong, who has Vietnamese gang affiliations, has a
6 long criminal history with felony convictions for drugs and burglary. He has served time in State
7 prison and was awaiting trial on an attempted murder charge at the time of escape.

8 19. According to press reports, Nayeri fled to Iran to avoid being arrested in
9 connection for the kidnap and torture of a Newport Beach marijuana dispensary owner who, in
10 2012, was burned, beaten, shocked with a stun gun, and left bleeding in the desert after his penis
11 was severed. He was extradited to Orange County to face felony charges of kidnapping, torture,
12 aggravated mayhem and burglary. He also jumped bail after a 2005 accident in which he drove
13 drunk, rolled a car and killed his friend in the fiery crash. He was subsequently captured and
14 extradited back to Orange County.³

15 20. According to press reports, Tieu was awaiting a re-trial on murder and attempted
16 murder for a gang-related attack. He is a documented member of a Vietnamese gang.⁴

17 21. AOCDS believes the fact that Nayeri, Duong and Tieu were all housed together in
18 a 68-man dorm given their histories, affiliations, and current charges is clearly evidence of the
19 ever increasingly dangerous jail environment.

20 22. Petitioner is informed and therefore believes the changing corrections
21 environment can also be evidenced by the kinds of inmates assigned to inmate work crews, an
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24 ³ Attached as Exhibit F is a true and correct copy of the CNN article entitled "Two remaining California escapees
25 sought in San Francisco". Attached as Exhibit G is a true and correct copy of the Nation & World article entitled
26 "'Mastermind' of California jail escape has long past".

27 ⁴ Attached as Exhibit H is a true and correct copy of a CNN article entitled "Who are the inmates that escaped a
28 California prison?".

1 assignment reserved for sentenced inmates. Ranging from painters to kitchen workers, these
2 crews are now made up of primarily violent felons; the majority of the inmates who staff the
3 CMJ paint crew are convicted murderers. Inmate workers are housed in a “worker tank” and are
4 allowed to move around the CMJ and through the tunnel to the Intake/Release Center (“IRC”)
5 unaccompanied. Inmate workers have access to sharp tools such as kitchen knives.

6 23. The concerns over inmate access to knives and other sharp instruments were
7 documented in the 2008 audit of Orange County’s jails by independent auditor Crout & Sida
8 Criminal Justice Consultants, Inc.⁵ The Crout & Sida audit brought to light many jail
9 deficiencies including woefully outdated technology and inadequate sworn staffing levels.
10 AOCDS echoed those concerns and has continued to express those concerns.

11 24. AOCDS believes that given the fact the Crout & Sida report predates both AB
12 109 and Prop. 47, the audit and its recommendations are now woefully outdated given the
13 current jail population. The Crout & Sida audit made recommendations which were important in
14 2008 and are even more important today.

15 25. “We believe that adding custody staff in the jails is the most immediate, essential
16 and expeditious step that can be taken to reduce the level of violence in the Orange County
17 Jails,” the 2008 audit stated. “We urge that increasing staffing be acted upon swiftly.”
18 Crout & Sida recommended adding an additional 454.65 custody personnel.

19 26. The Sheriff’s Department ignored the staffing recommendations, replacing the
20 most experienced deputies in the jails with civilian Correctional Services Assistants (CSAs).
21 CSAs began working in the jails in January 2010. The Sheriff publicly announced a jail staffing
22 target of 35% civilians and 65% sworn personnel.

23 27. CSAs are not allowed to have direct inmate contact. Prior to the introduction of
24 CSAs into the jails, guard stations at the CMJ were manned by Deputy IIs, the highest rank of
25 Deputy. Deputy IIs were able to utilize their extensive training and experience to “run” their jail
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28 ⁵ Attached as Exhibit I is a true and correct copy of the Crout & Sida Orange County jail assessment project.

1 floors according to the Custody and Corrections Operations Manual (“CCOM”) guidelines.
2 Their rank allowed them to direct other Deputies to conduct inmate searches and recognize
3 suspicious and potentially dangerous behavior. Non-sworn CSAs have now replaced Deputy IIs
4 in the locked-down guard stations. The security of the jail floors has been relinquished to lesser
5 trained, lesser experienced CSAs.

6 28. The minimum hiring and background qualifications to become a CSA are far
7 lower than the minimum hiring and background qualifications to become a Deputy Sheriff.
8 CSAs receive just 10 weeks of training compared to the 6-month training-stress academy
9 Sheriff’s deputies attend.

10 29. Lesser-trained CSAs continued to replace more experienced, highly trained
11 Deputy IIs while AB 109 and Prop 47 were transforming the CMJ population into something
12 more violent and dangerous. The Department has eliminated all designated Deputy II positions
13 from the entire jail system.

14 30. The linear layout of the CMJ makes it incredibly difficult to supervise inmate
15 activity. Instead of having a camera multi-view screen, Deputies must scroll through the various
16 camera angles on one monitor. Cameras are not pointed inside the housing tanks, further
17 exacerbating the already difficult task of monitoring inmate activity inside the tank. In addition
18 to the inherent logistical challenges, there is little consequence for inmates constructing barriers
19 of jail-issued sheets and towels known as “ratlines” to obscure Deputies’ view of inmate bunks.
20 This has become an increasingly common problem due to the fact that State prisoners who are
21 serving long sentences at the CMJ know there will be little or no consequence for violating this
22 jail rule. The sanctions available to the Deputies are not serious enough to discourage this
23 behavior by the more serious offenders.

24 31. In February 2015, AOCDS members became so concerned that inmate counts
25 were being conducted contrary to Department policy and endangering officer safety that an
26 internal Department memo was drafted to be distributed to all staff at the Central Men’s Jail.
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1 The memo was intended to serve as a reminder that inmate counts are to be conducted in
2 accordance with Department policy.

3 32. Instead of distributing the memo to jail staff, Lt. Noel Dela Llana emailed the
4 Sergeants in both the Central Men's Jail and the Women's Jail on February 24, 2015, addressing
5 the failure to conduct inmate counts at the Central Men's Jail in accordance with official
6 Department policy as laid out in the CCOM.⁶

7 33. Lt. Dela Llana's email, which was released by the Department to the media
8 following a Public Records Act Request, stated in pertinent part:

9 *"The CCOM states that both the Module and Statistical Body count require an actual physical*
10 *body count to (sic) conducted by the deputy. It was discovered that this was not a common*
11 *practice in the CMJ and has not been done this way for many years. After discussions it was*
12 *determined that we will continue to conduct the counts as we have been doing in the past. The*
13 *CCOM will either be changed to reflect the way the count is being conducted now or a*
14 *decision will be made to adapt to the current CCOM county policy."*

15 34. It is the understanding of AOCDS that the directive to ignore official Department
16 policy came directly from Capt. Chris Wilson who had command of the CMJ and Women's Jail.
17 At this time, it is unknown whether Capt. Wilson's Commander, the Assistant Sheriff, the
18 Undersheriff or the Sheriff herself were aware of the directive or whether they approved it.
19 Discovery will be conducted to ascertain more information.

20 35. The safety and security of the men and women who work in the jails, the inmates
21 and the public depend on official policies and procedures being followed. It is unconscionable
22 that Capt. Wilson appears to have abdicated his sworn responsibility to ensure the safety and
23 security of the CMJ by allowing official Department policy to be deliberately and willfully
24 ignored. This directive essentially nullified every official Department policy on inmate counts
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28 ⁶ A true and correct copy of the email is attached hereto as Exhibit J.

1 and allowed for the jail facility to function for at least a year – including during this recent jail
2 escape – in contradiction to the official written policy on inmate counts.

3 36. It is the understanding of AOCDS that previous attempts to voice concerns by
4 AOCDS members, regarding the failure to conduct inmate counts in accordance with official
5 written Department policy, received push back from jail management with the justification that
6 “this is the way we have always done it.”

7 37. Cpt. Wilson’s directive to ignore official Department policy may have played a
8 role in the horrific consequences on Friday, January 22, 2016. January 22, 2016, was the first
9 shift change of 2016. It was also the first day of a new sworn staffing reduction on Shift 2, also
10 known as the Night Shift. Shift 2 covers 18:30 to 07:00 hours. Deputy staffing on Shift 2 was
11 reduced by nearly 22% from January 21, 2016, to January 22, 2016.

12 38. Petitioner is informed and therefore believes as part of the ongoing staffing
13 reduction on Shift 2 Deputy positions which had been previously assigned to the roof of the CMJ
14 were no longer assigned to the roof. No jail staff was assigned to the roof on Shift 2 on January
15 22, 2016.

16 39. Petitioner has withheld specific staffing levels out of concern for security in the
17 jail and the safety of our members.

18 40. Petitioner is informed and therefore believes that with reduced staffing, Deputies
19 on the night shift, which began on January 22, 2016, and ended on January 23, 2016, had to
20 respond to: 1. a fight which resulted in a Deputy breaking his hand; 2. the discovery of the
21 escape of three inmates and subsequent manhunt; and 3. an in-custody death.

22 41. Petitioner is informed and therefore believes the Deputy who broke his hand
23 refused to go to the hospital because staffing levels were inadequate to deal with three major
24 incidents.

25 42. Petitioner is informed and therefore believes three Deputies were dedicated to
26 preserving the crime scene of the in-custody death and dealing with investigators from the
27 District Attorney’s Office.
28

1 43. Petitioner is informed and therefore believes that the staffing at CMJ was so
2 depleted on January 22, 2016, that the combination of three major events on a single shift
3 diverted Deputies at the CMJ away from their normally assigned duties, and the workload was
4 such that Deputies were diverted from other nearby jail facilities to provide assistance.

5 44. AOCDS recently learned that Shift 2 staffing was also reduced in the fall of 2015,
6 including the removal of roof deputies. It is the understanding of AOCDS that AOCDS
7 members voiced their concerns to jail management regarding the impact of staffing reductions on
8 officer safety and specifically the removal of roof deputies. AOCDS has been told repeatedly by
9 its members that they do not feel the staffing at the CMJ is adequate to ensure the safety of staff,
10 the inmates and the public.

11 45. Petitioner is informed and therefore believes reduced staffing has also resulted in
12 a reduction in random sweeps and searches of inmate housing locations, thereby hamstringing
13 Deputies from locating contraband and potentially preventing violent attacks. Staffing levels
14 have also significantly reduced or completely eliminated daily plumbing tunnel checks.

15 46. Petitioner is informed and therefore believes that non-sworn CSAs are responsible
16 for monitoring all people coming in and out of the CMJ, including Deputies, jail staff, medical
17 personnel and contractors. Petitioner is informed and therefore believes that contractors,
18 including construction workers, are subject only to limited background checks and do not submit
19 to an inventory of their equipment prior to entering the CMJ or exiting the facility. Petitioner is
20 informed and therefore believes construction equipment has been inadvertently left behind by
21 contractors inside the CMJ in areas easily accessible by inmates.

22 47. Petitioner is informed and therefore believes that Sawzall blades were discovered
23 on two separate occasions in inmate housing locations just weeks prior to the January 22, 2016
24 inmate escape. Petitioner is informed and therefore believes that some of the Deputies who
25 worked in CMJ during that timeframe were unaware of the discovery of these dangerous and
26 potentially deadly weapons.
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1 48. The outdated design of the CMJ forces inmates to go to services such as medical
2 and dental care instead of those services being brought to the inmates (as they are in more
3 modern jail facilities). The immense amount of movement which must take place each and every
4 day to ensure the inmates are sufficiently cared for makes this an incredibly difficult task and
5 should necessitate more staffing.

6 49. Feeding the inmates allows for the largest amount of inmates to be relocated into
7 close proximity with each other, a situation which provides opportunities for inmates to attack
8 other inmates and for inmates to attack staff. It is the understanding of AOCDS that inmate
9 attacks on staff and inmate attacks on other inmates have become more frequent and more
10 severe. More frequent and more severe attacks have caused the further reduction of available
11 staff at the CMJ with Deputies being diverted to the hospital to secure injured inmates or staff.

12 50. Petitioner is informed and therefore believes inmates receive two hot meals a day
13 in the Chow Hall in addition to a sack meal. Nearly 1,000 inmates are fed in an hour. Deputies
14 supervise inmates while they are in the Chow Hall. The number of Deputies supervising roughly
15 175 inmates inside the Chow Hall at a time is significantly below acceptable staffing levels and
16 presents a serious safety risk to inmates and staff. In addition to the inmates inside the Chow
17 Hall, roughly 400 additional inmates are in the hallway outside the Chow Hall and are supervised
18 by an inadequate number of Deputies, creating a serious safety risk for both staff and inmates.
19 Petitioner has withheld specific staffing levels out of concern for security in the jail and the
20 safety of our members.

21 51. Due to the security level of the inmates housed in Orange County jails and the
22 need to divert larger numbers of staff from other assignments during Chow Hall to supervise the
23 inmates, the 2008 Crout & Sida report recommended reducing the number of hot meals to once a
24 day. This recommendation would reduce the mass movement of inmates by a third and is
25 consistent with many local corrections systems in California. To Petitioner's knowledge, this
26 recommendation has not been adopted.
27
28

1 52. Petitioner is informed and therefore believes Deputies must rely heavily on
2 communicating with their partners to ensure their safety as well as the safety of other inmates.
3 An immense challenge to this is the lack of working batteries to run PAC sets, radios vital for
4 communication between staff. It is the understanding of AOCDS that batteries routinely have a
5 green light indicating they are fully charged when they are taken off of charging stations only to
6 fail to make even a single radio transmission.

7 53. Petitioner is informed and therefore believes this creates an extremely serious
8 safety risk for Deputies who are tasked with walking through tanks populated with violent
9 inmates without the ability to call for emergency backup. Non-sworn CSAs, who staff locked
10 down guard positions, have routinely been seen tossing one dead radio battery after another aside
11 while trying to use one of the several radios in the guard station.

12 54. Petitioner is informed and therefore believes the battery situation has become so
13 dire at the CMJ that Deputies have left the CMJ to go to the IRC to swap out dead PAC batteries
14 for functioning ones. Knowing that the Department-issued radios cannot be relied on in an
15 emergency, Deputies have adapted to relying on communications akin to the inmates they
16 supervise. Jingling keys and pounding footsteps are cause for alarm for Deputies, indicating a
17 Deputy is in a hurry somewhere and may need assistance. The lack of reliable communication
18 inside the CMJ does not go unnoticed by inmates.

19 55. It is the understanding of AOCDS that this extremely serious safety issue has
20 been broached by AOCDS members to jail management. The problem has yet to be rectified.

21 56. The reduction in staffing has manifested itself such that Deputies are continuing
22 to do more with less, forcing staff to cut corners in order to make the system run. Despite the
23 significant challenges, Deputies manage to do their jobs day after day at the risk of their own
24 personal safety, the safety of other inmates and the safety of the public. This is unacceptable.

25 57. Immediate action must be taken to ensure the safety of jail staff, the inmates and
26 the public.
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1 58. Respondents' unilateral reduction of staff, discussed above, violated the MMBA's
2 duty to bargain. The duty to bargain is set forth within Government Code section 3505 of the
3 MMBA which provides that: "The governing body of a public agency, or such boards,
4 commissions, administrative officers or other representatives as may be properly designated by
5 law or by such governing body, shall meet and confer in good faith regarding wages, hours, and
6 other terms and conditions of employment with representatives of such recognized employee
7 organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such
8 presentations as are made by the employee organization on behalf of its members prior to
9 arriving at a determination of policy or course of action. 'Meet and confer in good faith' means
10 that a public agency, or such representatives as it may designate, and representatives of
11 recognized employee organizations, shall have the mutual obligation personally to meet and
12 confer promptly upon request by either party and continue for a reasonable period of time in
13 order to exchange freely information, opinions, and proposals, and to endeavor to reach
14 agreement on matters within the scope of representation prior to the adoption by the public
15 agency of its final budget for the ensuing year. The process should include adequate time for the
16 resolution of impasses where specific procedures for such resolution are contained in local rule,
17 regulation, or ordinance, or when such procedures are utilized by mutual consent."

18 59. The duty to bargain requires both labor and management to refrain from taking
19 any unilateral action that would effectuate a change in a mandatory subject of bargaining until
20 each side has given the other side notice and an adequate opportunity to bargain and, if
21 bargaining is requested, until they have reached an agreement or reached impasse and have
22 exhausted any mandatory impasse resolution procedures. (*PERB v. Modesto City Schools Dist.*
23 (1982) 136 Cal. App.3d 881, 900, following *NLRB v. Katz* (1962) 369 U.S. 736, 745.) Any
24 unilateral change in a mandatory subject of bargaining before reaching agreement or impasse is a
25 violation of the duty to bargain in good faith because it is tantamount to a refusal to bargain.
26 (*Id.*)

27 60. The duty to bargain applies to all subjects within the scope of representation. In
28 the instant matter, the staffing reduction impacted work load and safety. The California Supreme

1 Court has concluded that to the extent a staffing decision concerns questions of work load and
2 safety, it is negotiable and within the scope of representation. (*Fire Fighters Union v. City of*
3 *Vallejo* (1974) 12 Cal.3d 608.)

4 61. Notwithstanding, Respondents made the decision to reduce staff and implemented
5 that decision without providing AOCDS with notice and an adequate opportunity to bargain. As
6 such, Respondents' unilateral reduction of staff on or about January 22, 2016, and the effects
7 arising from the implementation of the decision to reduce staff, altered a matter within the scope
8 of representation in violation of the MMBA.

9 62. In addition, AOCDS and the County have shared a collective bargaining
10 relationship for many years wherein they have negotiated and entered into written public sector
11 labor agreements or Memoranda of Understanding ("MOU"), regarding the wages, hours, and
12 other terms and conditions of employment for those individuals employed by the County as
13 members of the Peace Officer and Supervising Peace Officer bargaining units. The MOUs
14 between the parties were entered into pursuant to the MMBA.⁷

15 63. Article XXIII of the MOU is a so-called zipper clause entitled "Modification and
16 Waiver" which states: "Except as specifically provided herein, it is agreed and understood that
17 the parties hereto reserve the right, only upon mutual agreement, to negotiate with respect to any
18 subject or matter covered herein or with respect to any other matter within the scope of
19 representation during the term of the Memorandum of Understanding." Where, as here, the
20 MOU contains a zipper clause, the County cannot bargain or alter the status quo without
21 AOCDS's consent. Respondents did not request AOCDS's consent prior to altering the status
22 quo, and AOCDS did not give its consent to bargain or to alter the status quo.

23 64. The zipper clause zipped up the MOU and prohibited the parties from making any
24 unilateral changes to the status quo. A zipper clause has the effect of incorporating all possible
25 topics of bargaining (both those actually discussed and those neither discussed nor contemplated
26 during bargaining) into the MOU. (*United Autoworkers v. NLRB*, 756F.2d 175, 179-180.) As a
27

28 ⁷ A true and correct copy of the 2012-2016 MOU is attached hereto as Exhibit K.

1 result, with the inclusion of a zipper clause, neither party can require the other to bargain over
2 any mandatory subject, nor unilaterally implement a change in the status quo concerning a
3 mandatory subject. (*Id.*) Put another way, matters cannot be bargained, and they cannot be
4 changed, absent consent. (*The Mead Corporation* (1995) 318 NLRB 201, 202.)

5 65. Because the decision to reduce staff and the effects of the decision were
6 mandatory subjects of bargaining, the zipper clause precluded the County from: (1) requiring
7 AOCDS to bargain, and (2) unilaterally implementing a change in the status quo concerning the
8 subject. (*United Autoworkers v. NLRB*, 756F.2d 175, 179-180.)

9 66. PERB has held that, during the life of a contract, a zipper clause forecloses further
10 requests to negotiate regarding any negotiable matters, including those not previously
11 considered. (*Cupertino Union School District* (1993) PERB Dec. No. 987, pp. 192, 193.) Thus,
12 a union may rely on a zipper clause to refuse to negotiate a mid-contract change in contract
13 language at the employer's request. (*Fountain Valley Elementary School District* (1987) PERB
14 Dec. No. 625, pp. 635-636.) Similarly, an employer may not rely on a zipper clause as
15 permission to make unilateral changes in policy affecting terms and conditions of employment.
16 (*Los Angeles Community College District* (1982) PERB Dec. No. 252, p. 926.)

17 **COUNT ONE**

18 **INJUNCTIVE RELIEF**

19 67. Petitioner, by this reference, incorporates each and every paragraph set forth
20 above in their entirety herein.

21 68. Petitioner seeks permanent injunctive relief to prevent further harm caused by
22 Respondents' violation of the MMBA. Specifically, Petitioner seeks an injunction compelling
23 Respondents to return staffing levels to the status quo prior to the unilateral change. Restoration
24 of the status quo ante is the normal remedy for a unilateral change when an employer creates a
25 new work condition without fulfilling its bargaining obligation with the exclusive representative.
26 (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 824.)

27 69. Petitioner has no other plain, speedy or adequate remedy at law, other than the relief
28 sought by this petition and complaint.

1 comply with the provisions of the MMBA and return staffing levels to the status quo prior to
2 unilateral change.

3 82. Petitioner is entitled to attorney's fees pursuant to Code of Civil Procedure section
4 1021.5.

5 **PRAYER**

6 WHEREFORE, Petitioner prays for judgment against Respondents, and each of them, as
7 follows:

8 FIRST CAUSE OF ACTION

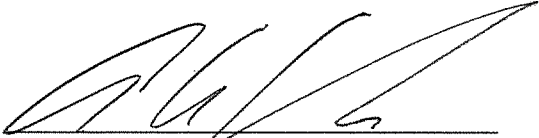
- 9 1. Count 1: That this Court issue a permanent injunction compelling Respondents
- 10 to return staffing levels to the status quo prior to the unilateral change.
- 11 2. Count 2: That this Court issue a declaration that Respondents' actions
- 12 constitute a violation of the MMBA.
- 13 3. Count 3: That this Court issue a Writ of Mandate commanding Respondents,
- 14 and each of them, to comply with the provisions of the MMBA and return
- 15 staffing levels to the status quo prior to unilateral change.

16 AS TO ALL CAUSES OF ACTION AND ALL COUNTS

- 17 1. Attorney's fees in accordance with Code of Civil Procedure Section 1021.5;
- 18 2. Costs of suit incurred herein; and
- 19 3. Such other and further relief as this court deems just and proper.

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22
23 Dated: February 11, 2016

OLINS RIVIERE COATES & BAGULA, LLP

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27 Adam Chaikin, Esq.,
28 Attorneys for Plaintiff/Petitioner, ASSOCIATION
OF ORANGE COUNTY DEPUTY SHERIFFS

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VERIFICATION

STATE OF CALIFORNIA

COUNTY OF ORANGE

I am the President of the Association of Orange County Deputy Sheriffs, and a party to this action personally. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT and know its contents. I am informed and believe that the matters in it are true and on that ground allege that they are true.

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

Executed on February¹¹, 2016, at Santa Ana, California.



AOCDS President Tom Dominguez