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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**07/18/2016 at 10:11:48 AM**  
Clerk of the Superior Court  
By Lee McAlister, Deputy Clerk

Attorney for Plaintiffs

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

10 GREGG GOODMAN, LARRY LEIBER,  
11 and GREG OLSON,

Plaintiffs,

v.

13 SAN DIEGO CITY EMPLOYEES'  
14 RETIREMENT SYSTEM, and DOES 1-10,  
15 Inclusive,

Defendants.

CASE NO.: 37-2016-00024265-CU-BC-CTL

COMPLAINT FOR BREACH OF  
CONTRACT

17 \_\_\_\_\_  
18 1. Each plaintiff is a current or former employee of the City of San Diego ("City"),  
19 and a beneficiary of a pension trust fund administered by defendant San Diego City Employees'  
20 Retirement System ("SDCERS"). Each of the plaintiffs entered into a valid written contract,  
21 written by SDCERS, that allowed the plaintiffs to purchase pension service credits from the City  
22 in cost neutral manner.

23 2. Venue is proper in San Diego because the defendants committed the wrongs  
24 alleged in San Diego.

25 3. Defendant SDCERS is a public employees' retirement system operating under  
26 section 17 of article XVI of the California Constitution, San Diego City Charter sections 141  
27 through 149, and San Diego Municipal Code Section 24.0100, et seq. Pursuant to Charter  
28 section 144, SDCERS is managed by its Board of Administration.

1           4.       The true names or capacities, whether individual, corporate, associate, or  
2 otherwise, of defendants DOES 1 to 10, inclusive, are unknown to plaintiffs, who therefore sue  
3 said defendants by such fictitious names.

4           5.       Plaintiffs are informed and believe and thereon allege that the defendants  
5 designated herein as DOES are responsible in some manner for the events and happenings herein  
6 referred to, and caused injury and damages proximately thereby to plaintiffs as herein alleged.  
7 Plaintiffs will seek leave of court to amend this complaint to set forth the true names and  
8 capacities of such named defendants when their identities become known to them.

9           6.       Plaintiffs are informed and believe and thereon allege that each defendant named  
10 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,  
11 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the  
12 other defendants, and was at all times acting within the course and scope of his, her, or its  
13 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or  
14 co-conspirator, and with the same authorization, consent, permission or ratification of each of the  
15 other defendants.

16                                   **FACTUAL ALLEGATIONS**

17                                   **SDCERS Owes Plaintiffs Fiduciary Duties**

18           7.       As the trustee of the plaintiffs' pensions, SDCERS owes each plaintiff fiduciary  
19 duties. (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1102; *Hittle v. Santa Barbara County*  
20 *Employees Retirement Association* (*Hittle*) (1985) 39 Cal.3d 374, 392-393.)

21           8.       "The retirement board of a public pension or retirement system [has] the sole and  
22 exclusive fiduciary responsibility over the assets of the public pension or retirement system. The  
23 retirement board . . . also ha[s] sole and exclusive responsibility to administer the system in a  
24 manner that will assure prompt delivery of benefits and related services to the participants and  
25 their beneficiaries. The assets of a public pension or retirement system are trust funds and [must]  
26 be held for the exclusive purposes of providing benefits to participants in the pension or  
27 retirement system and their beneficiaries and defraying reasonable expenses of administering the  
28 system." (Cal. Const., art. XVI, § 17, subd. (a), italics added.)

1           9.       “The members of the retirement board of a public pension or retirement system  
2 [must] discharge their duties with respect to the system with the care, skill, prudence, and  
3 diligence under the circumstances then prevailing that a prudent person acting in a like capacity  
4 and familiar with these matters would use in the conduct of an enterprise of a like character and  
5 with like aims.” (Cal. Const., art. XVI, § 17, subd. (c).)

6           10.       “A retirement board’s duty to its participants and their beneficiaries . . . take[s]  
7 precedence over any other duty.” (Cal. Const., art. XVI, § 17, subd. (b).)

8           11.       A City employee’s pension is generally determined by multiplying (a) years of  
9 employment (often referred to as “service credits”), (b) the highest compensation earned by the  
10 employee in any one-year period, and (c) a retirement factor determined by ordinance.

11           12.       In 1993 the City established the purchase of service credit program (“PSC”) to  
12 allow employees to purchase service credits for periods of actual service or authorized leaves of  
13 absence that were otherwise ineligible for service credits. Such categories of service eligible for  
14 purchase were employment probationary periods, part-time service, military services, and  
15 approved leaves of absence, among others. The PSC program was administered by SDCERS.

16           13.       In 1997 the City, by ordinance, expanded the PSC program to allow the purchase  
17 of service credits for periods that were not actually worked, up to 5 years. The 1997 ordinance  
18 adopted by the City permitting employees to purchase up to five years of service credit provided  
19 that “the cost [of such service] purchased . . . is the amount the [SDCERS’] Board determines to  
20 be the employee and employer cost of that . . . service.”

21           14.       The City adopted and expanded the PSC program because, according a July 30,  
22 2010 sworn declaration by the City’s Chief Operating Officer, Jay Goldstone, the City has a  
23 “legitimate and overriding business interest in attracting and retaining qualified public employees  
24 so as to maintain a qualified, cost-effective public work force[,]” and “[a]dopting and  
25 maintaining pension benefits . . . achieve this goal by awarding competitive pension benefits to  
26 experienced employees.”

27           15.       When the City modified the PSC program in 1997, SDCERS’ actuary advised the  
28 board that a two-tiered rate structure—15 percent of current annual compensation for general

1 member employees and 26 percent of current annual compensation for safety member  
2 employees—would be sufficient to meet the requirement that the purchase price for service  
3 credits paid by employees be equivalent to the sum of the employer and employee cost.

4 16. At its March 1997 meeting, the SDCERS' board, which has a majority of  
5 members appointed by the Mayor (City Charter, § 144), approved the rates for general and safety  
6 members. City employees were then permitted to purchase service credits at the rates the board  
7 established.

8 17. The City had actual knowledge of the rates set by SDCERS and made no  
9 objection to those rates, or to SDCERS' "average price" PSC rate structure. Indeed, SDCERS  
10 board members appointed by the City voted in favor of such a structure.

11 18. In 2000 (safety and general members) and in 2002 (general members), the City  
12 retroactively increased the retirement factor used to compute its employees' pensions. This  
13 caused an increase in the value, and therefore the cost, of a year of purchased service credit under  
14 the PSC program. At a SDCERS board meeting in July 2002, SDCERS retirement administrator  
15 commented that the current PSC rate structure might therefore be insufficient to fund a year of  
16 purchased service credit.

17 19. In August 2002 the SDCERS board directed its actuary to evaluate whether the  
18 PSC rate structure set in 1997 reflected the current cost of the benefit.

19 20. The actuary completed his study in August 2003 and recommended to the board  
20 that the rates for a year of service credit be adjusted upwards to 27 percent of current annual  
21 compensation for general member employees and 37 percent of current annual compensation for  
22 safety member employees. As discussed below in paragraph 24, the actuary's calculation  
23 regarding safety members was erroneous, because at 26 percent of current annual compensation,  
24 safety members were already paying more than the full cost for their purchase of service credits  
25 under the 1997 PSC rates. Before August 15, 2003, SDCERS had entered into 346 safety  
26 member PSC contracts, and those beneficiaries had overpaid a total of \$293,616 for those years  
27 of credit purchased.

28 21. At a meeting on August 15, 2003, the SDCERS board discussed the actuary's

1 study and recommendation, and voted to adopt the new PSC rates. However, SDCERS delayed  
2 implementation of any increase in the rates for 60 days in order to notify its members of the rate  
3 increase and allow employees to purchase service credits at existing rates before the increase  
4 took effect.

5 22. After that meeting, SDCERS and the City notified all City employees that PSC  
6 purchase applications received by SDCERS before November 1, 2003, would be priced  
7 according to the old rates—15 percent current annual compensation for general member  
8 employees and 26 percent current annual compensation for safety member employees. This  
9 period, from August 15, 2003, through October 31, 2003, is referred to as “the window period.”

10 23. In 2007, SDCERS asked its new actuary, which had replaced SDCERS previous  
11 actuary, to study the PSC program since inception and report to the SDCERS board whether the  
12 program had historically been administered in a cost neutral manner, i.e., had SDCERS  
13 accurately charged employees an appropriate amount for the service credits purchased under the  
14 PSC program.

15 24. The new actuary prepared a report dated August 14, 2007. In that report, he  
16 concluded that the SDCERS board had, under the previous PSC pricing structure developed by  
17 the prior actuary, charged an insufficient amount for the service credits purchased by general  
18 members during the window period. However, that same report confirmed that the 2003 increase  
19 in the safety member PSC rate to 37 percent of annual compensation caused safety members to  
20 overpay by \$1,047,024 during the window period and \$1,637,409 thereafter. In other words,  
21 SDCERS was told that it was not administering the PSC program for safety members in a cost  
22 neutral manner *and was actually overcharging safety members.*

23 25. After SDCERS lost a lawsuit filed by the City related to undercharging general  
24 members for purchased service credits (*City v. SDCERS*, San Diego Superior Court Case No. 37-  
25 2007-00081912), SDCERS refused to perform the window-period PSC contracts it had written,  
26 reasoning that it had no authority to administer the PSC program in a manner that was not cost  
27 neutral to the City.

28 26. Nevertheless, despite its actual knowledge that the plaintiffs (and other safety

1 members) had actually overpaid for their window-period service credits (i.e., those service  
2 credits were sold at a price that was better than cost neutral to the City), SDCERS refused to  
3 honor the plaintiffs' contracts.

4 27. Although the Government Claims Act does not apply to the claims made in this  
5 complaint (Gov. Code, §§ 905, subds. (c), (f)), plaintiffs have nevertheless complied by timely  
6 filing claims which have been rejected by SDCERS.

7 **FIRST CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 **AGAINST SDCERS AND DOES 1-10**

10 28. Plaintiffs incorporate paragraphs 1-27 as if fully set forth here.

11 29. From 2003 through 2005, the plaintiffs entered into identically-worded contracts  
12 for the purchase of service credits.

13 30. A copy of one of those identically-worded contracts is attached at Exhibit A and  
14 incorporated herein by reference.

15 31. The plaintiffs performed all of their obligations under those contracts, including  
16 paying the full price calculated by SDCERS to purchase service credits under those contracts.

17 32. Unlike other contracts SDCERS entered into during the window period, the  
18 plaintiffs paid more for these contracts than required to make them cost neutral to the City.

19 33. Defendants breached these contracts by failing to perform them, without  
20 justification.

21 34. As a result of defendants' breach, the plaintiffs are entitled to the benefit of the  
22 bargain of those contracts and have them enforced as written, and/or for consequential damages.

23 WHEREFORE, plaintiffs pray for judgment as follows:

- 24 1. for damages according to proof;
- 25 2. for prejudgment interest;
- 26 3. for attorney fees;
- 27 4. for costs of suit; and
- 28 5. for such other and further relief as the court deems just and proper.

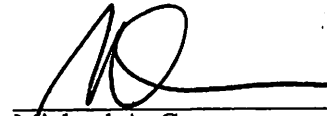
1 Dated: July 14, 2016

LAW OFFICE OF MICHAEL A. CONGER

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By:



Michael A. Conger  
Attorney for Plaintiffs

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5 Jury trial demanded.

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