

1 **MICHAEL A. CONGER, ESQUIRE (State Bar No. 147882)**
2 **LAW OFFICE OF MICHAEL A. CONGER**

3 16236 San Dieguito Road, Suite 4-14

4 **Mailing:** P.O. Box 9374

5 Rancho Santa Fe, California 92067

6 Telephone: (858) 759-0200

7 Facsimile: (858) 759-1906

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CIVIL BUSINESS OFFICE
CENTRAL DIVISION

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SAN DIEGO COUNTY, CA

8 Attorneys for Plaintiffs Christopher Ellis, Bradley D. Elow,
9 Robert Finch and Howard LaBore individually, and on
10 behalf of all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 CHRISTOPHER ELLIS, BRADLEY D. ELOW,)
14 ROBERT FINCH and HOWARD LaBORE,)
15 individually, and on behalf of all others similarly)
16 situated,)

17 Plaintiffs,)

18 v.)

19 JACKSON, DeMARCO, TIDUS &)
20 PECKENPAUGH, A LAW CORPORATION,)
21 GREGORY GLENN PETERSEN, an individual,)
22 CHRISTOPHER D. NISSEN, an individual,)
23 BRADLEY MATHEWS, an individual,)
24 STEPHENEY R. WINDSOR, an individual,)
25 MICHAEL ANTHONY JENKINS, an individual,)
26 and DOES 1-50,)

27 Defendants.)

CASE NO:

37-2010-00086284-CU-PN-CTL

CLASS ACTION
COMPLAINT FOR ATTORNEY
MALPRACTICE

28 **THIS IS A CLASS ACTION LAWSUIT.**

1. This is a class action lawsuit brought by the plaintiffs Christopher Ellis, Bradley D. Elow, Robert Finch, and Howard LaBore, employees of the City of San Diego ("City"). The plaintiffs bring this suit on their own behalf and for all those others similarly situated. The definition of the class is set forth in paragraph 24 of this complaint.

2. This class action is brought pursuant to section 382 of the California Code of Civil Procedure. The monetary damages sought by the plaintiffs, both individually and on behalf of the class, exceed the minimum jurisdictional limits of the Superior Court.

1 3. Venue is proper in San Diego because the defendants performed the legal services
2 at issue in the City of San Diego, California. Thus, at all times alleged in this complaint the
3 malpractice by each defendant was committed in San Diego.

4 4. Defendant JACKSON, DeMARCO, TIDUS & PECKENPAUGH, A LAW
5 CORPORATION, is a law firm doing business in San Diego, California and other parts of
6 California.

7 5. Defendant GREGORY GLENN PETERSEN, is an attorney doing business in San
8 Diego, California and other parts of California.

9 6. Defendant CHRISTOPHER D. NISSEN, is an attorney doing business in San
10 Diego, California and other parts of California.

11 7. Defendant BRADLEY MATHEWS, is an attorney doing business in San Diego,
12 California and other parts of California.

13 8. Defendant STEPHENEY R. WINDSOR, is an attorney doing business in San
14 Diego, California and other parts of California.

15 9. Defendant MICHAEL ANTHONY JENKINS, is an attorney doing business in
16 San Diego, California and other parts of California.

17 10. The true names or capacities, whether individual, corporate, associate, or
18 otherwise, of defendants DOES 1 to 50, inclusive, are unknown to plaintiffs, who therefore sue
19 said defendants by such fictitious names.

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

25 12. Plaintiffs are informed and believe and thereon allege that each defendant named
26 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,
27 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the
28 other defendants, and was at all times acting within the course and scope of his, her, or its

1 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
2 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
3 other defendants.

4 FACTUAL ALLEGATIONS

5 13. Plaintiffs are police officers employed by the City of San Diego ("City").

6 14. In 2005 and 2006, the plaintiffs, and approximately 1,800 of their fellow officers,
7 retained the defendants to handle a legal matter related to the implementation by the City of a
8 last, best, and final offer ("LBFO") on the San Diego Police Officers Association ("SDPOA"),
9 the recognized bargaining agent for the plaintiffs with the City under the Meyers-Milias-Brown
10 Act (Gov. Code, § 3500, et seq.).

11 15. The defendant attorneys filed litigation on behalf of the plaintiffs, approximately
12 1,800 of their fellow police officers, and on behalf of the SDPOA.

13 16. The defendant attorneys agreed to represent the plaintiffs and approximately 1,800
14 of their fellow police officers on precisely the same terms and conditions.

15 17. One of the claims prosecuted by the defendant attorneys in a common action
16 involved the City's imposition of eligibility requirements for SDPOA members, including the
17 plaintiffs, for health insurance after retirement ("retiree health").

18 18. In the common action, the defendant attorneys took the legal position that,
19 because retiree health was a vested benefit, it could not be unilaterally modified by the City, and
20 the City's imposition of the LBFO was unconstitutional.

21 19. In the common action, the defendant attorneys failed to investigate, discover,
22 present, and argue available factual evidence and legal precedent which would have established
23 that, in fact, retiree health was a vested benefit which the City could not unilaterally impair.

24 20. As a result of the negligence of the defendant attorneys in bringing and in poorly
25 prosecuting the retiree health issue, the United States District Court for the Southern District of
26 California and the United States Court of Appeals for the Ninth Circuit ruled that retiree health
27 benefits are not vested.

28 21. Relying on those legal rulings, the City recently substantially reduced the retiree

1 health benefit by imposing a cap of \$8,880 per year for any SDPOA member retiring after July 1,
2 2009.

3 22. As the result of the negligence by the defendant attorneys, plaintiffs and
4 approximately 1,800 of their similarly-situated fellow officers have already sustained damages in
5 excess of \$142 million.

6 **CLASS ACTION ALLEGATIONS**

7 23. This action is brought under California Code of Civil Procedure section 382.

8 24. The plaintiff class consists of present and former SDPOA members who were
9 clients of the attorney defendants and who were adversely affected by the defendant attorneys'
10 failure to investigate, discover, present, and argue available factual evidence and legal precedent
11 which would have established that, in fact, retiree health was a vested benefit which the City
12 could not unilaterally impair.

13 25. This action is brought and is maintained properly as a class action under Code of
14 Civil Procedure section 382 because:

15 (a) The questions and issues of law and fact raised herein are of a
16 common and general interest affecting the class;

17 (b) The plaintiff class is estimated to contain in excess of 1,800
18 individuals and it is impractical to bring all members of the class
19 individually before the court;

20 (c) The questions of law or fact common to the class are substantially
21 similar and predominate over those questions that affect individual
22 members. These common questions include:

23 (i) What is the nature and extent of the duties that were owed
24 by the defendant attorneys to members of the class?

25 (ii) Did various acts and omissions of the defendants breach
26 their duties to the class?

27 (iii) Were the acts and omissions of the defendants below the
28 legal standard of care?

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- (iv) Did defendants' negligence cause damages to members of the class?
- (v) What is the proper method of calculating damages caused by defendants' negligence?
- (vi) Is the plaintiff class entitled to prejudgment interest?
- (vii) What are the proper in limine rulings and evidentiary rulings?

- (d) The claims of the representative plaintiffs are typical of those of the class;
- (e) The representative plaintiffs will fairly and adequately protect the interests of the class, have no interests which conflict with the class, and have retained attorneys experienced in the prosecution of class and multi-plaintiff litigation to represent the class herein;
- (f) The prosecution of separate actions by individual members of the class will create a risk of: (1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants; or (2) adjudications with respect some individual members which would, as a practical matter, be dispositive of the interest of the other members not parties to the adjudications; or (3) adjudications which would substantially impair or impede the ability of individual members to protect their interests;
- (g) A plaintiff class action is superior to other available methods for the fair and efficient adjudication of the claims presented in this complaint, and will prevent the undue financial, administrative and procedural burdens on the parties and on this Court which individual litigations would impose.

26. Proof of a common or single practice or factual pattern, of which the named

1 plaintiffs' experiences are representative, will establish the right of each of the members of the
2 plaintiff class to recover on the causes of actions herein alleged.

3 27. All of the plaintiffs were subject to a systematic course and pattern of practice and
4 were thereby treated by the defendants in a similar manner, as is specifically alleged elsewhere in
5 this complaint.

6 28. The plaintiff class is entitled in common to a specific fund with respect to the
7 monies paid by or on the behalf of the plaintiff class to the defendants for services in connection
8 with the legal representation of plaintiff class. The plaintiff class is entitled in common to
9 damages for which the defendants are liable. This action is brought for the benefit of the entire
10 class and will result in the creation of a common fund. The representative plaintiffs will expend
11 efforts and expense to prevail in this action from which other plaintiffs and members of the class
12 will derive benefits.

13 CAUSE OF ACTION

14 FOR ATTORNEY MALPRACTICE

15 29. Plaintiffs restate the previous paragraphs of this complaint as if fully set forth
16 here.

17 30. As attorneys for plaintiffs and approximately 1,800 similarly-situated police
18 officers, the defendant attorneys owed a duty to use reasonable care and to discharge their
19 obligations competently.

20 31. The defendant attorneys breached their duties to the plaintiffs and approximately
21 1,800 similarly-situated police officers in several respects, including but not limited to:

22 (a) failing to properly advise the plaintiffs and approximately 1,800
23 similarly-situated police officers regarding the retiree health
24 litigation;

25 (b) failing to conduct an adequate investigation on the issue of
26 retiree health before raising it as a claim in the litigation;

27 (c) failing to conduct adequate discovery on the issue of retiree health
28 once it had been raised in the litigation;

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- (d) failing to competently present available factual evidence and legal precedent which would have established that, in fact, retiree health was a vested benefit which the City could not unilaterally impair;
- (e) failing to competently argue available factual evidence and legal precedent which would have established that, in fact, retiree health was a vested benefit which the City could not unilaterally impair;
- (f) failing to request voluntary dismissal of the retiree health issue prior to suffering an adverse judgment after it had become clear that insufficient evidence and argument had been presented to have any chance of prevailing on the issue;
- (g) concealing (a) through (f), above, while continuing to represent and charge fees to the plaintiffs and approximately 1,800 similarly-situated police officers.


32. The conduct of the defendant attorneys described above caused the plaintiffs and approximately 1,800 similarly-situated police officers to sustain damages.

WHEREFORE, plaintiffs and others similarly situated pray for judgment as follows:

- 1. For general damages according to proof;
- 2. For special damages according to proof;
- 3. For costs of suit herein incurred;
- 4. For such other and further relief as the court deems just and proper.

Dated: February 24, 2010

LAW OFFICE OF MICHAEL A. CONGER

By: 
 Michael A. Conger
 Attorney for Plaintiffs, both individually and on behalf of those similarly situated

Jury trial demanded.