

## Castle, Petersen & Krause, LLP

Trial Attorneys

### **Police Officers' Lawsuit against the City of San Diego, City Attorney and Other City Officials Survives Defendants' Latest Motion to Dismiss**

NEWPORT BEACH, Calif. March 19, 2007 – Castle, Petersen & Krause, LLP announced that on March 8, 2007, in the case of *Aaron, et al. v. Michael Aguirre, the City of San Diego, et al.*, the U.S. District Court for the Southern District of California issued an order regarding the Defendants' motions testing the viability of the allegations against the various defendants. The trial judge, Judge Marilyn L. Huff, found many claims were sufficient to proceed to trial and provided guidance to the firm as to other claims that need to be further developed to satisfy her concerns. Castle, Petersen & Krause, LLP will continue to vigorously prosecute those claims Judge Huff has found to be viable and will restate and re-file those claims that require amendment as allowed. The balance of the police officers' lawsuit remains intact. Shown below is a partial list of active claims, which exclude claims that are open to be restated and re-filed. Restated and re-filed claims will benefit from additional evidence only recently provided to the firm by the defendants.

Greg Petersen, Managing Partner of Castle Petersen & Krause, LLP, commented, "These motions are commonplace and through these motions the court determines and directs Plaintiffs where not proceed. It is not uncommon for experienced attorneys and equally experienced judges to disagree. The court's ruling, which narrows the scope of and simplifies the lawsuit, is welcome and in the best interest of our clients and all parties involved." Mr. Petersen added, "We are extremely pleased to finally have access to the facts contained within the City's long overdue 2003 annual report, which restates 66 items<sup>1</sup> from the City of San Diego's 'Official' 2002 Annual Report. The 2003 Report will be incorporated into our case and only serve to strengthen it. The City's 2003 annual report and newly discovered evidence contained in the 3.5 million documents that the City turned over in the eleventh hour after nearly two years of formal requests have changed the landscape of this matter to expand the City of San Diego's liability. The firm will move forward with this new evidence and continue to pursue our clients' claims vigorously."

Castle, Petersen & Krause, LLP first filed a single lawsuit in August of 2005 on behalf of the SDPOA and the individual members. The initial lawsuit included claims against the defendants related to the underfunding of the pension, mishandling of the police officers' pension contributions, retaliation against the officers for their Union's inability to reach a collective bargaining agreement with the City who entered in the negotiations in bad faith, improper closed-door meetings and other claims. Subsequently, the Court split the lawsuit into two cases, separating the claims of the SDPOA (*SDPOA v. Michael Aguirre, City of San Diego, et al.*) from those of the individuals (*Aaron, et al. v. Michael Aguirre, City of San Diego, et al.*). Judge Huff's Order on March 8<sup>th</sup> further clarifies and manages that separation. The order also removed some additional claims from the *Aaron* case. Generally speaking, Judge Huff determined that some claims are already properly included and addressed by the Union's litigation in *SDPOA v. Aguirre, City of San Diego, et al.* and should not be included in the claims of the individual officers' in the *Aaron* matter.

The *Aaron, et al. v. Michael Aguirre, City of San Diego, et al.* lawsuit has over sixteen hundred named plaintiffs, all current or former San Diego Police Officers, and currently includes claims for:

- I. Breach of Fiduciary Duty against the City of San Diego, City Council Defendants and City Official Defendants;

- II. Conversion against Michael Aguirre, the City, City Council Defendants and City Official Defendants; (“Conversion” is defined as: a civil wrong, in which one converts another's property to his/her own use, which is a fancy way of saying "steals."<sup>ii</sup>)
- III. Conversion of Trust against the City, City Council Defendants and City Official Defendants;
- IV. Fraud against the City, City Council Defendants and City Official Defendants;
- V. Breach of Contract against the City;
- VI. Breach of Trust against the City, City Council Defendants and City Official Defendants;
- VII. First Amendment Retaliation against the City;
- VIII. Contracts Clause Violations against Aguirre, the City, City Council Defendants and City Official Defendants;
- IX. Takings Clause Violations against Aguirre, the City, City Council Defendants and City Official Defendants;
- X. Violations of Procedural Due Process against Aguirre, the City, City Council Defendants and City Official Defendants;
- XI. Conspiracy to Violate Civil Rights against the City, City Council Defendants and City Official Defendants;
- XII. Violations of Public Policy per California Constitution against Aguirre, the City, City Council Defendants and City Official Defendants;
- XIII. Violations of Public Policy under the California Pension Protection Act of 1992 against the City, City Council Defendants and City Official Defendants;
- XIV. Violations of the Brown Act against the City and some City Council Defendants;

Note: This is only a partial list. This list does not include all of the active claims or those claims that are left open to be restated and re-filed.

The *SDPOA. v. Michael Aguirre, City of San Diego, et al.* lawsuit was filed on behalf of the San Diego Police Officers Association and currently includes claims against the defendants for:

- I. Breach of Fiduciary Duty against the City, City Council Defendants and City Official Defendants;
- II. Conversion against Aguirre, the City, City Council Defendants and City Official Defendants;
- III. Conversion of Trust against the City, City Council Defendants and City Official Defendants;
- IV. Fraud against the City, City Council Defendants and City Official Defendants;
- V. Breach of Contract against the City;
- VI. Breach of Trust against the City, City Council Defendants and City Official Defendants;
- VII. Conspiracy to Violate Civil Rights against Aguirre, the City, City Council Defendants and City Official Defendants;
- VIII. First Amendment Retaliation against the City;
- IX. Unconstitutional Impairment of Contracts against Aguirre, the City, City Council Defendants and City Official Defendants.
- X. Unconstitutional Takings against Aguirre, the City, City Council Defendants and City Official Defendants;
- XI. Interference with Contractual relations against Aguirre, the City and City Counsel;
- XII. California Labor Code Violations against the City, City Council Defendants and City Official Defendants;
- XIII. Violations of Public Policy per California Constitution against Aguirre, the City, City Council Defendants and City Official Defendants;

- XIV. Violations of the Meyers-Milias-Brown-Act against the City, City Council Defendants and City Official Defendants;
- XV. Violations of Public Policy under the California Pension Protection Act of 1992 against the City, City Council Defendants and City Official Defendants;
- XVI. Violations of the Brown Act against the City and some City Council Defendants;
- XVII. Violations of Public Policy against Aguirre, the City, City Council Defendants and City Official Defendants.

Note: This is only a partial list. This list does not include all of the active claims or those claims that are left open to be restated and re-filed.

### **About Castle, Petersen & Krause, LLP**

The law firm of Castle, Petersen & Krause, LLP specializes in litigating labor and employment law and business law matters. The firm's areas of focus within labor and employment include civil rights, labor relations, contract negotiations, disciplinary actions, FLSA, California labor law, discrimination, retaliation, wage and hour issues, and wrongful termination. Castle, Petersen & Krause, LLP has a near 30-year history of representing public and private industry employees and their associations in contract negotiations, disciplinary actions, civil rights claims, and class action lawsuits related to wage and hours matters. The firm also has a history of success in recovering overtime wages from public and private employers through FLSA class action litigation, including recent cases against the City of Los Angeles, numerous other public entities and companies in the hospitality and fitness industries. Additionally, Castle, Petersen & Krause, LLP provides its clients counsel in the areas of construction defect, intellectual property, product liability and first and third party insurance litigation, as well as personal injury claims. Castle, Petersen & Krause, LLP is headquartered in Newport Beach, California. More information on Castle, Petersen & Krause, LLP can be found at [www.cpk-law.com](http://www.cpk-law.com).

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<sup>i</sup> Source: Matthew T. Hall ; 2003 audit finally OK'd, San Diego Union Tribune March 17, 2007 Page A1.

<sup>ii</sup> Source: <http://dictionary.law.com/> n. a civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying "steals." Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft.

See also: theft

The definition of "Conversion" is included with the written permission of ALM.