

1 Marleen L. Sacks, SBN 161388
2 Oakland, CA

3 In Pro Per
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5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF ALAMEDA
8

9 MARLEEN L. SACKS,
10 Petitioner,
11 v.
12 CITY OF OAKLAND,
13 Respondent

CASE NO.
**PETITION FOR WRIT OF MANDATE
[Code Civ. Proc., § 1085] AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF (Code Civ.
Proc. 1060 and 527)**

JUDGE:
DATE:
TIME:
DEPT:

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17 TO THE ABOVE COURT:

18 Petitioner, Marleen L. Sacks (hereinafter “Petitioner”), a taxpayer, petitions this Court for
19 a peremptory writ of mandate under Code of Civil Procedure Section 1085, declaratory and
20 injunctive relief, directed to the City of Oakland, for the following relief: directing the City to
21 halt any efforts to implement Resolution No. 81104, a proposal to expend \$7.7 million of Measure
22 Y funds, as approved by the City Council on March 4, 2008, for general police recruiting, training
23 and equipment; directing the City to identify funds for the proposed police recruiting and training
24 from the City’s general fund; directing the City to comply with Measure Y by bringing its police
25 force staff up to a level of 802 officers, including the 63 designated “problem solving officers” no
26 later than December, 2008; directing the City to comply with Measure Y by ceasing to utilize
27 Measure Y funds for non-Measure Y purposes, such as human resources technicians and assigning
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1 Measure Y officers to non-Measure Y duties; directing the City to reimburse to the taxpayers of
2 approximately \$60 million illegally collected for the three years the police force dropped below
3 the minimum required (739); directing the City to reimburse the Measure Y fund for all Measure
4 Y funds taken to fund purposes not authorized by Measure Y; directing the City to halt the
5 collection of any future Measure Y taxes until such time as the police force reaches the level of
6 802 officers, including the 63 designated “problem solving officers,” as explicitly called for in the
7 text of Measure Y.

8 1. Petitioner is and at all times mentioned herein was an Oakland resident,
9 homeowner, and taxpayer, and as such, is beneficially interested in this action. Petitioner’s
10 purpose for bringing this action is to protect the interests and welfare of the taxpayers and citizens
11 of the City of Oakland. Petitioner seeks in particular to prevent the continued and worsening
12 illegal expenditures of Measure Y funds.

13 2. Petitioner has a present and beneficial right to Respondent City’s full compliance
14 with the law. Petitioner has owned a home in Oakland since 1999. She has paid the Measure Y
15 parcel tax since 2005.

16 3. The City of Oakland is, and at all times mentioned herein was, a municipal
17 corporation organized pursuant to the laws of the State of California, located in the Counties of
18 Alameda. The Superior Court has jurisdiction over this action pursuant to Government Code
19 Section 11350(a); and venue is proper in Alameda County pursuant to Code of Civil Procedure
20 393(b).

21 4. The City submitted a proposal for a special tax to the voters on the November 2,
22 2004 ballot. The proposal was known as “Measure Y” or the “Violence Prevention and
23 Neighborhood Safety Initiative.” Measure Y was co-written by City Councilmember Jean Quan
24 and Councilmember Ignacio De La Fuente. At the time the proposal was drafted, the City’s
25 police force was approximately 739 officers.

26 5. In advocating for the passage of Measure Y, Quan published and widely
27 disseminated literature that specifically indicated that Measure Y “guarantees 63 additional
28 officers above [the] current budget of 739. Specifically, one per beat in every neighborhood, plus

1 additional school/truancy officers, police for domestic violence, child abuse, and crime/drug hot
2 spots.” The document goes on to provide that: “Measure Y adds 63 additional police officers and
3 mandates that they are assigned to community policing and violence prevention duties....”

4 6. A September 2004 publication of the City referenced “Additional Programs and
5 Services” as including “63 sworn police officers, bringing total sworn strength to 802.” In the
6 City’s “Frequently Asked Questions” on its internet home page the City advertised: “The measure
7 will add 63 sworn police officers...bringing the total strength of the department to 802 sworn
8 officers.” In answering the question: “How do we know the money will be spent on these
9 programs?” the City responded that Measure Y had “safeguards” to ensure that “the City will
10 maintain a baseline of 739 police officers in addition to the 63 new officers....”

11 7. On October 20, 2004, Councilmember Danny Wan distributed an e-mail to a Police
12 Service Area 4 Yahoo group promising that Measure Y: “Guarantees a minimum of 802 officers
13 citywide each year....”

14 8. Carlos Plazola, then an aide to council president Ignacio De La Fuente, issued a
15 flyer in response to critics of Measure Y, who argued that the language regarding the
16 “appropriation” of funds for the officers was not sufficiently clear: “If Measure Y passes,
17 Oakland WILL hire 63 more police officers for a total of 802....The idea that Oakland would
18 collect \$9.5 million dollars per year for additional police officers, money it can only use for hiring
19 additional officers, and then not spend it, is not only a lie, it is simply ridiculous. Don’t buy the
20 lies!”

21 9. In order to fund the proposed expansion in police and violence prevention, Measure
22 Y provided for parcel taxes in the amount of \$88.00 per parcel, and also called for a parking tax
23 surcharge.

24 10. Measure Y was passed with over a 2/3 majority vote, as required, in November,
25 2004. In none of the years since passage of Measure Y has the City fulfilled its promise of
26 maintaining a “minimum of 739 sworn officers....” Indeed, at present, the number of sworn
27 officers is still below 739 officers.

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1 11. The City began collecting the Measure Y taxes on January 1, 1005. Under
2 Measure Y, the City collects an additional approximately \$19 million annually.

3 12. The text of Measure Y provides, in Part I, Section 1(B), in relevant part: “Because
4 the proceeds of the tax will be deposited in a special fund restricted for the services and programs
5 specified herein, the tax is a special tax.”

6 13. The text of Measure Y provides, in Part I, Section 3, “Use of Proceeds” in relevant
7 part: “The tax proceeds raised by this ordinance may only be used as part of the following
8 integrated program of violence prevention and public safety intervention, in accordance with the
9 following specific purposes: (1) Community and Neighborhood Policing: Hire and maintain at
10 least a total of 63 police officers assigned to the following community-policing objectives: (a)
11 Neighborhood beat officers: each community policing beat shall have at least one neighborhood
12 officer assigned solely to serve the residents of that beat to provide consistent contact and
13 familiarity between residents and officers, continuity in problem solving and basic availability of
14 police response in each neighborhood...(e) training in community-policing techniques,
15 establishing police-social services referrals and equipping officers provided in this paragraph, the
16 total costs of which shall not exceed \$500,000 in any fiscal year that this ordinance is in effect.”

17 14. The text of Measure Y provides, in Part II, Section 2 (“Special Fund”): “All funds
18 collected by the City from the taxes imposed by this ordinance shall be deposited into a special
19 fund in the City treasury and appropriated and expended only for the purposes authorized by this
20 ordinance.”

21 15. The text of Measure Y provides, in Part II, Section 4 (“Minimum Police Staffing
22 Prerequisite at Fiscal Year 03-04 Level”): “No tax authorized by this Ordinance may be collected
23 in any year that the appropriation for staffing of sworn uniformed police officers is at a level lower
24 than the amount necessary to maintain the number of uniformed officers employed by the City of
25 Oakland for the fiscal year 2003-04 (739).”

26 16. The City Attorney’s summary of Measure Y, contained in the voter information
27 pamphlet, specifically provided that the Measure would fund the hiring and maintaining of “an
28 **additional** 63 police officers above the currently budgeted 739 officers.” (Emphasis added).

1 17. The summary prepared by the City Auditor, published in the voter information
2 pamphlet, provides that the funds will be used “To hire 63 officers assigned to Community and
3 Neighborhood Policing...”

4 18. The Argument submitted in favor of Measure Y in the voter information pamphlet
5 provided in relevant part: “Measure Y is a smart, fiscally responsible plan that funds the
6 expansion of effective violence prevention programs and *increases* the number of police officers
7 in Oakland neighborhoods....Measure Y will decrease violent crime by adding *at least* one
8 community policing officer in each neighborhood beat, and expand specialized teams focused on
9 violence crime, drug dealing and gang activities....” (Emphasis added).

10 19. The Rebuttal to the Arguments against Measure Y in the voter information
11 pamphlet provided in relevant part that: “Measure Y has been carefully crafted to fund BOTH
12 effective violence prevention programs AND *expand the number of police officers*....Measure Y
13 *will increase* the number of officers that target the most violent crime....” (Emphasis added).

14 20. Following passage of Measure Y, the size of the police force did not increase.

15 21. The City Council voted to continue collecting Measure Y taxes during the 2005/06
16 fiscal year, despite that the police force was still under 739 officers, and was nowhere near the
17 promised 802 officers.

18 22. The City Council voted to continue collecting Measure Y during the 2006/07 fiscal
19 year, despite the fact that the police force was barely over 700 officers. As of March, 2008, there
20 are 731 officers, lower than the number that existed when Measure Y was passed.

21 23. Except for a few days in August 2007, staffing of the police department has been
22 lower than when Measure Y was written for every day of the last two and half years.

23 24. The text of Measure Y, provides, in Part I, Section 2, Paragraph 3: “Due to budget
24 constraints, the City’s police department is staffed at a level significantly lower than cities of
25 similar size in the United States.“ The City’s current police staffing ratio is approximately 18
26 officers per 10,000 residents. This is far below virtually every major city in the United States,
27 including San Francisco (with 29 officers), Boston (with 34), Detroit (39) and Baltimore (49).

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1 25. Despite the funds made available to the Police Department and the promises
2 specifically made by Measure Y, crime in Oakland has gotten worse, not better. According to the
3 “Hartnett Report,” commissioned by the Police Department, “Violent crime in the city spiked
4 upward in 2006. As of December 12, homicides had risen to 144 from 83 in the previous year for
5 an increase of 73 percent. Robberies were up 30 percent to a total of 3,635, or more than ten
6 robberies a day. The totals for homicide and robbery are the highest in more than ten years and
7 the total for overall violent crime is the highest since 1997. Overall, in 2006, the number of
8 violent crimes reported to police represented an increase of 20.8 percent.

9 26. The Harnett Report also stated: “By the standards of many other American police
10 departments, Oakland, with an authorized strength of 802 (including Measure Y officers who have
11 yet to be hired) is understaffed to serve a population of more than 400,000, fielding fewer than 20
12 officers per 10,000 residents. In contrast, New York City fields more than 40 officers per 10,000
13 residents and Washington D.C. fields about 60.”

14 27. The Hartnett Report specifically documented the Police Department’s attrition and
15 recruitment problems, noting: “The Criminal Investigations Division has lost 13 personnel in the
16 past two years without any replacements. The Department has only 10 homicide investigators and
17 only seven robbery investigators, or less than one robbery investigator for every 500 robberies
18 reported in 2006. Recruiting qualified police officer applicants and retaining them throughout the
19 training process is proving increasingly difficult.

20 28. Lastly, the Harnett Report emphasizes that the 63 officers authorized under
21 Measure Y “may be used only in the community policing roles specified by the Measure....The
22 Measure Y resources have been committed before they have been hired. They cannot be used to
23 shore up patrol or investigations....”

24 29. Approximately one month after taking office, newly elected Mayor Ron Dellums
25 stated that he was launching a “major reorganization” of the police department. Dellums, along
26 with Chief Wayne Tucker, announced that all of the graduates of the next two Oakland Police
27 Academies would be sent directly to patrol duty, rather than having some of them assigned as
28 Measure Y “Problem Solving Officers” (PSOs.) Councilwoman Jean Quan, co-author of Measure

1 Y, publicly stated that as a result of this action, hiring of Measure Y officers “will be held back for
2 eight months.”

3 30. As of April, 2007, only 17 police beats were staffed with dedicated Measure Y
4 PSOs. An additional 14 beats were staffed by general fund PSOs. The remaining 26 beats lacked
5 a dedicated PSO.

6 31. Part 2, Section 3 of Measure Y calls for oversight of Measure Y by an Oversight
7 Committee. The Oversight Committee commissioned RAND to evaluate the effectiveness of
8 Measure Y, and RAND published its first working paper, “Measure Y in Action,” in November,
9 2007. The working paper was later finalized into a “Technical Report” and formally presented to
10 the Oversight Committee in the spring of 2008. On Page 19 of the final Report, RAND
11 unequivocally noted that “Measure Y requires OPD to hire at least 63 additional community
12 policing officers....” On Page 20, the RAND Report noted at as of December 31, 2006, there
13 were 713 sworn officers, “11 percent under its allocated level...” In addition, by the end of 2006,
14 only 20 Measure Y officers had been deployed, and only 25 of the 57 beats in Oakland had a
15 dedicated PSO. (Page 28.)

16 32. Because only a fraction of the Measure Y PSO positions have actually been filled,
17 and because the City continues to collect the full amount of the Measure Y tax, the unspent funds
18 have been accumulating, and currently total more than \$ 17 million. During the over three years
19 since Measure Y was implemented, unspent Measure Y funds have been used on general
20 recruitment, academy training, administration, and other purposes not authorized by Measure Y.
21 According to the RAND Report, the intended use of the unspent funds was to cover unanticipated
22 increased costs of maintaining the PSO positions. (RAND Report at p. 28).

23 33. Overall, the RAND Report noted the City’s dismal track record in successfully
24 implementing the PSO component of Measure Y, noting inadequate staffing, increased crime, lack
25 of coordination, lack of PSO stability, and recruitment. On page 18, RAND concluded that all
26 stakeholders “hold the city (collectively) responsible for not delivering the 57 PSOs as required by
27 Measure Y. The answer to the question of whether the substance of community policing is
28 delivered as mandated also appears to be, “Not yet....there is not one PSO per beat as the

1 legislation required, and ...OPD has directed PSOs to work on assignments that pulled them out of
2 their designated beats (e.g., patrol, robbery task forces, pooled problem-solving teams).

3 34. On Page 21, RAND noted that "OPD deployed the officers to patrol so that they
4 could respond to calls for service one shift per week, or 25 percent of their weekly time, from
5 April 1, 2006 through January 31, 2007. In addition, OPD loaned four PSOs to patrol for six
6 weeks in early 2006. (OPD also loaned the three PSO sergeants to patrol from April 29, to July
7 21, 2006....Just after the PSOs were taken off patrol one day per week, they were assigned to
8 work on robbery suppression one day per week throughout OPD's service area...NSCs reported
9 that PSOs are pulled out of their beats up to the equivalent of about two shifts per week."

10 35. General recruitment of officers involves advertising and placing recruits in training
11 academies. The academies have a very low success rate. In addition, according to the RAND
12 Report, the Police Department "reports a high attrition rate due largely to Baby Boomer
13 retirements" and because of a "statewide crisis" in police officer recruitment and retirement.

14 36. Crime continued in the City at an alarming rate in 2007. Oakland finished 2007
15 with 127 homicides, the second highest total in 12 years.

16 37. As of January, 2008, 36 officer positions were funded by Measure Y, including six
17 sergeants and 30 officers. As of April, 2008, 40 positions are funded by Measure Y, and the
18 remaining 23 positions are still vacant.

19 38. On August 9, 2007, a community meeting was organized by the Montclair Safety
20 and Improvement Council. The meeting was for the purpose of having community members
21 posed questions to representatives of the police department about Measure Y and address other
22 crime related concerns. At the meeting, Deputy Chief Kozicki stated that of the 12 police
23 academies that have been conducted since the passage of Measure Y, 152 candidates graduated,
24 and only 20 were assigned to Measure Y positions.

25 39. Despite the continued failure to provide each beat with a dedicated PSO, as
26 required by Measure Y, the City began taking the funds that should have been used for police
27 staffing and applying them to generalized recruiting and other unauthorized purposes. On January
28 18, 2008, the City Administrator's office prepared a memo entitled: "Report on City of Oakland's

1 Staff Positions Paid by Measure Y Funds.“ In that memo, the City disclosed that the Finance and
2 Management Agency dedicates a portion of five staff positions to “accelerated police recruitment
3 and testing activities. The Measure Y Fund is charged 40% of the costs for each positions.” To
4 date, the Finance and Management Agency has received \$489,609 in Measure Y funds for three
5 Human Resources Analysts and two Human Resources technicians. \$299,864 of this amount was
6 for 2007/08, and \$189,745 was from the prior year’s budget.

7 40. In a March 4, 2008 memo from the Police Department to Deborah Edgerly, City
8 Administrator, the Police Department admitted that “Measure Y supports 40% of the costs
9 associated with the hiring, training, and recruiting of police officers in keeping with the
10 Department’s deployment strategy that 40% of graduates will be deployed to Measure Y positions.
11 The Department did not deploy to Measure Y positions with graduates from the 158th or 159th
12 academies. Funds expended from Measure Y for the 158th and 159th academies have been
13 quantified; however, they have yet to be transferred to another funding source. City staff is
14 currently identifying a viable alternative funding source to address this matter.”

15 41. In fact, no officers are ever assigned to Measure Y positions from recent
16 academies, since the City only deploys veteran officers, not new recruits. However, the City
17 justifies using Measure Y funds because new recruits are used to fill the spots vacated by veteran
18 officers when they are deployed to Measure Y positions. (RAND Report p. 20).

19 42. There is no legal or mathematical justification for allocating Measure Y funds to
20 human resources analysts and technicians, or to recruitment and academy training, particularly in
21 this percentage, and particularly given that out of twelve police academies through August, 2007,
22 only 21 officers were deployed to Measure Y positions, and 152 candidates graduated. This is far
23 less than 40%. Moreover, in the above referenced March 4 document, the police department
24 candidly admitted that it has taken Measure Y funds in an unjustifiable manner and failed to
25 reimburse Measure Y. The amount equaling 40% of the total cost for recruitment and training
26 illegally taken from Measure Y funds is unknown to Petitioner at this time.

27 43. The RAND Report reveals that the Police Department “has directed PSOs to work
28 on assignments that pulled them out of their designated beats (e.g., patrol, robbery task forces,

1 pooled problem-solving teams...OPD deployed the officers to patrol so that they could respond to
2 calls for service one shift per week, or 25 percent of their weekly time, from April 1, 2006 through
3 January 31, 2007. In addition, OPD loaned four PSOs to patrol for six weeks in early 2006.
4 (OPD also loaned the three PSO sergeants to patrol from April 29, to July 21, 2006...Just after
5 the PSOs were taken off patrol one day per week, they were assigned to work on robbery
6 suppression one day per week throughout OPD's service area...NSCs reported that PSOs are
7 pulled out of their beats up to the equivalent of about two shifts per week." Even though Measure
8 Y funds these officers, the City has never reimbursed the Measure Y fund for the percentage of
9 funds used for non-Measure Y purposes.

10 44. The Oakland City Council and Mayor Ron Dellums continued to downplay the
11 importance of police staffing until, in January, 2008, a 10-year old boy was shot and paralyzed
12 while attending a piano lesson at the top of Piedmont Avenue. After public outcry about the
13 deplorable state of crime in the City, City leaders felt compelled to jump into action and cobbled
14 together an ill-conceived plan to rob the unspent Measure Y funds from the taxpayers to use it as a
15 slush fund to pour into general police recruitment.

16 45. On February 19, 2008, the Mayor's Office, Police Department and Finance and
17 Management Agency submitted a proposal to increase general recruitment efforts, acknowledging
18 the City's "deplorable" crime problem and ongoing police staffing problems. The "2008
19 Augmented Police Recruitment Program" ("Recruitment Program") was clearly designed to
20 increase generalized police staffing, and not specifically tailored to staff the still vacant Measure
21 Y PSO positions. As stated, the proposal "aims to achieve four overall goals: increase the pool of
22 applicants and number of new Police Officer Trainees (POT); Increase the success rate of POTs in
23 the academy; Field more fully trained and qualified police officers on the streets of Oakland; and
24 Grow Oakland's own pool of qualified applicants for the future."

25 46. The specific elements of the Recruitment Program were as follows: (1)
26 Significantly expand marketing communication strategies - Cost: \$1,500,000; (2) Significantly
27 expand targeted recruitment drives in high yield markets" - Cost: \$200,777; (3) Expedite the
28 application and selection processes - cost: \$1,248,950; (4) Run concurrent police academies -

1 cost: \$3,341,002; (5) Increase success rate of POTS - cost: \$100,000; (6) Increasing number of
2 field training officers - cost: \$290,000; growing Oakland's own pool of applicants - cost:
3 \$379,000.

4 47. The Recruitment Program would "authorize the transfer of \$7,722,339 from the
5 existing Measure Y funds....Sufficient funding is available in the Measure Y Fund Balance for
6 Police Services....Currently, the Measure Y Police Services Fund Balance totals over \$17
7 million."

8 48. Without legal analysis, the Recruitment Program claimed that the transfer of the
9 unused funds was an appropriate use of Measure Y funds, because "hiring and recruitment" of
10 officers is authorized under Measure Y, and because "the transfer of Measure Y resources to hire
11 and recruit new officers is necessary to attain the augmented policing services intended by
12 Measure Y." The Recruitment Program undertook no exploration of other sources for the funds,
13 such as cutting the general budget in other areas (e.g. numerous police officers and managers
14 earning over \$100,000 in overtime alone, the City Manager's excessive salary), nor did the
15 proposal address the fact that Measure Y authorizes funds only for the 63 PSOs, not for
16 generalized recruitment or hiring.

17 49. While the Recruitment Program did not contain a legal analysis of using Measure
18 Y funds in such a manner, the City Attorney had prepared a legal opinion on the matter, dated
19 February 7, 2008. The conclusion of the City Attorney was that the City may use Measure Y
20 funds "to pay for the recruitment and associated costs for hiring police officers so long as the
21 officers are assigned to one of the four community policing objectives stated in Measure Y. To
22 the extent that any Measure Y funds advanced for recruitment are used for the hiring of non-
23 Measure Y officers, the General Fund must reimburse the Measure Y Fund for the equitable and
24 proportionate costs of the recruitment of the non-Measure Y officers."

25 50. In reaching its legal conclusion, the City Attorney opined that "recruitment, testing
26 and academy education are essential steps in the process of hiring an Oakland police officer."
27 However, the legal opinion failed to include any analysis of the actual intent of Measure Y, nor
28 did it contain any analysis of statutory or legislative interpretation, and the fact that the words

1 “recruitment, testing and academy education” were used nowhere in the text of Measure Y. Nor
2 did it acknowledge that no new recruits are placed in Measure Y positions; the only officers
3 placed in such positions are veteran officers.

4 51. The legal opinion also failed to include any discussion of how it would ever be
5 logistically possible to separate out funds used to recruit and train Measure Y officers versus
6 other officers, nor was there any acknowledgement of the fact that the City’s practice had been to
7 place only experienced officers into Measure Y positions.

8 52. Lastly, the legal opinion failed to include any discussion of the legality of the City
9 “borrowing” money from Measure Y funds for general recruiting, and then “reimbursing” the
10 Measure Y fund for spending that turned out not to be authorized under Measure Y.

11 53. Assuming there are approximately 23 vacant Measure Y positions, and that the
12 \$7.7 million would be used to fund only recruitment and training for those positions, this amounts
13 to approximately \$335,000 per officer, solely for recruitment and training. This number is
14 patently absurd and unbelievable, and it is therefore obvious that the amount of money requested
15 was for generalized recruitment.

16 54. On February 21, 2008, Petitioner wrote to the Mayor’s Office and City Attorney
17 and asked for clarification of the legal opinion on the issues noted above.

18 55. On February 25, 2008, the Recruitment Program was brought to the Oversight
19 Committee for discussion. At the meeting, Chief Tucker reported that as of that date, there were
20 still only 732 sworn officers. When asked why none of the recruitment expenses were going to be
21 covered by the General Fund, the City Administrator justified taking Measure Y funds by
22 claiming that in the future, Measure Y would run out of money and the General Fund would have
23 to subsidize Measure Y.

24 56. After much debate, the Measure Y Oversight Committee voted eight to one to
25 reject the funding component of the Recruitment Program and have the Mayor and Police
26 Department return with a specific breakdown identifying which amounts would come from
27 Measure Y and which from the General Fund.

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1 57. On March 3, 2008, the City Attorney issued a supplemental legal opinion in
2 response to Petitioner’s February 21, 2008 correspondence. In that legal opinion, the City
3 Attorney clarified that Measure Y would not permit the City to “borrow” funds from Measure Y to
4 cover generalized recruitment and training. In response to the inquiry over how it would be
5 possible to separate out recruiting and training costs for Measure Y officers versus other officers,
6 the City Attorney noted that this was an “accounting and auditing issue.”

7 58. On March 4, 2008, the Recruitment Program was brought back to the City Council
8 for action. Councilwoman Desley Brooks questioned the proposal, noting: “It’s about the public
9 trust....we continue to abuse the public trust in terms of Measure Y. There were promises made
10 when Measure Y was passed about what all was going to happen and here we are today and none
11 of those things have happened.”

12 59. At the meeting, City Manager Deborah Edgerly was questioned about previous
13 illegal raids on Measure Y funds, which she justified by claiming that the City had promised the
14 subsequent academies would devote all graduates to Measure Y positions. When asked whether
15 that promise had been fulfilled, she admitted that it had not, and stated that the City had not
16 “found the money” to reimburse Measure Y.

17 60. City Councilwoman Jane Brunner also questioned the legitimacy of the proposal,
18 noting that it was “fudging a little” because there was no way that every position funded by the
19 proposal would be a Measure Y position.

20 61. Lenore Anderson, Mayor Dellums’ Public Safety Director, claimed that it would be
21 appropriate to devote only Measure Y funds to the proposal, because if it turned out that if any
22 non-Measure Y officers ended up being hired, the General Fund would pay for those positions.
23 This was in complete disregard of the City Attorney’s supplemental opinion that clearly stated that
24 the City was not allowed to “borrow” funds from Measure Y to cover generalized recruitment and
25 training.

26 62. Despite the vote of the Oversight Committee demanding more specifics on the
27 issue of the breakdown of general fund officers versus Measure Y officers, and despite the
28 misgivings voiced by members of the City Council as stated above, the City Council voted

1 unanimously to approve the Recruitment Program, taking \$7.7 million, that should have been
2 spent for dedicated Measure Y officer salaries since 2005. The Resolution acknowledged that the
3 \$7.7 was for generalized recruitment and training, and simply noted that “to the extent that any
4 Measure Y funds advanced for the recruitment are used for the hiring of non-Measure Y officers,
5 the General Fund shall reimburse the Measure Y fund for the equitable and proportionate
6 costs....”

7 63. The Resolution included no mathematical explanation of why it could or would
8 cost \$7.7 million to recruit a total of 23 officers, when that original \$7.7 million amount was not
9 based on the calculations of hiring Measure Y officers, but rather was based on calculations of
10 necessary general recruitment.

11 64. On March 13, 2008, Petitioner wrote to the City Administrator to request the
12 annual reports for 2004 through the present, as required by Government Code section 50075.3.
13 The City Administrator responded that there were no annual reports, except for the RAND Report,
14 submitted to the City Council on March 4, 2008.

15 FIRST CAUSE OF ACTION

16 (Petition for Writ of Mandate for Violation of The Provisions of Measure Y)

17 65. Petitioner hereby realleges and incorporates paragraphs 1 through 64 inclusive.
18 The facts alleged above state multiple and clear violations of the terms of Measure Y, including:

19 66. A. The terms of the Measure specifically provided that the tax could
20 not be collected in any year that the number of sworn officers was below 739. The number of
21 sworn officers has been below 739 in every year since the implementation of Measure Y.

22 B. The terms of Measure Y clearly call of the hiring of 63 additional officers. Four
23 years later, less than half of those officers have been hired.

24 C. The terms of Measure Y only authorize funding for hiring and maintenance of
25 Measure Y officers. They do not authorize funding for advertising, recruitment, training or police
26 academy expenses. Nor do they authorize funding for administrative positions such as human
27 resources technicians or analysts. Therefore, Measure Y funds may not be used for such purposes.
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1 confer a substantial benefit upon the public by protecting the public from the illegal expenditure of
2 public funds.

3 WHEREFORE, Petitioner prays the following relief:

4 1. For the Court to issue a peremptory writ of mandate requiring Respondent City of
5 Oakland to prevent implementation of the Recruitment Program;

6 2. For the Court to issue a peremptory writ of mandate to halt any further collection of
7 Measure Y funds until and unless the conditions outlined in Measure Y are satisfied, to wit, the
8 full complement of 63 Measure Y officers, and 803 officers total, have been hired, with only 63
9 officers funded through Measure Y, and the rest through the General Fund;

10 3. For the Court to issue a peremptory writ of mandate requiring Respondent City to
11 reimburse the Measure Y fund for any previous illegal expenditures, including, but not limited to,
12 expenditures for human resources technicians and duties performed by Measure Y officers not
13 related to Measure Y, and for generalized recruitment and academy training.

14 4. For the Court to issue a peremptory writ of mandate requiring Respondent City to
15 reimburse Oakland taxpayers for the Measure Y taxes in every year that the sworn police force
16 was below 739 officers;

17 5. For the Court to issue a peremptory writ of mandate requiring Respondent to comply with
18 the requirements of Government Code sections 50075.1 and 50075.3

19 6. For temporary and permanent injunctive relief prohibiting Respondent City from
20 implementing the Recruitment Program;

21 7. For declaratory relief as requested herein;

22 8. For attorneys' fees and costs of this suit pursuant to Government Code § 800 and Code of
23 Civil Procedure § 1021.5; and

24 9. For such other and further relief as the Court may deem just and proper.

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