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COURT SERVICES

8 Attorneys for City of San Jose

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 SAN JOSE RETIRED EMPLOYEES
ASSOCIATION, HOWARD E. FLEMING,
12 DONALD S. MACRAE, FRANCES J.
OLSON, GARY J. RICHERT and
13 ROSALINDA NAVARRO,

14 Plaintiffs/Petitioners,

15 v.

16 CITY OF SAN JOSE; DOES 1 through 50,
inclusive,

17 Defendants/Respondents.

18 BOARD OF ADMINISTRATION FOR THE
19 FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM,

20 Real Party in Interest.
21

Case No. 112CV233660

**[PROPOSED] ORDER GRANTING
DEMURRER AND IN THE
ALTERNATIVE MOTION TO STRIKE
BY THE CITY OF SAN JOSE**

Date: January 17, 2012
Time: 9:00 a.m.
Dept: 2

BY FAX

Action Filed: October 5, 2012
Trial Date: None Set

22 This matter came on regularly for hearing on January 17, 2013 before the Honorable
23 Patricia M. Lucas, Judge of the Superior Court of California, County of Santa Clara. Arthur
24 Hartinger and Linda M. Ross appeared on behalf of the Defendants City of San Jose. Stephen
25 Silver appeared on behalf of the San Jose Retired Employees Association, Howard E. Fleming,
26 Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro.

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2007974

**[PROPOSED] ORDER GRANTING DEMURRER AND IN THE ALTERNATIVE MOTION TO STRIKE
BY THE CITY OF SAN JOSE**

1 The Court, having considered all papers filed in support and in opposition, and oral
2 arguments, hereby GRANTS Defendant's demurrer to the entire Complaint, and to each cause of
3 action, under Code of Civil Procedure Section 430.10 because the Complaint lacks ripeness and
4 accordingly does not state facts sufficient to constitute a cause of action. The demurrer is granted
5 without leave to replead.

6 In the alternative the Court hereby ORDERS that the following portions of Plaintiffs'
7 complaint shall be stricken under Code of Civil Procedure Sections 435 and 436(a) because these
8 allegations lack ripeness and accordingly do not state facts sufficient to constitute the basis for a
9 cause of action. The motion to strike is granted without leave to replead.

10 1. Plaintiffs' First Cause of Action for Injunctive Relief

- 11 • Count I – Violation of the Contract Clause of the California Constitution
12 (Article I, Section 9)
 - 13 ▪ The allegations based on Section 1504-A: "Reservation of Voter
14 Authority" contained in Paragraphs 28-30 are ordered stricken from the
15 Complaint.
 - 16 ▪ The allegations based on Section 1510-A of Measure B: "Emergency
17 Measures to Contain Retiree Cost of Living Adjustments" contained in
18 Paragraphs 22-23, 30 are ordered stricken from the Complaint.
 - 19 ▪ The allegations based on Section 1511-A: "Supplemental Payments to
20 Retirees" contained in Paragraphs 24-25, 30 are ordered stricken from
21 the Complaint.
 - 22 ▪ The allegations based on Reservation of Rights Clause in Section
23 1512-A: "Retiree Healthcare" contained in Paragraphs 26-27 are
24 ordered stricken from the Complaint)
- 25 • Count II – Taking Without Just Compensation in Violation of the California
26 Constitution (Article I, Section 19)
 - 27 ▪ The allegations based on Section 1504-A: "Reservation of Voter
28 Authority" contained in Paragraphs 35-36 are ordered stricken from the
Complaint)
 - The allegations based on Section 1510-A of Measure B: "Emergency
Measures to Contain Retiree Cost of Living Adjustments" contained in
Paragraphs 35-36 are ordered stricken from the Complaint).
 - The allegations based on Section 1511-A: "Supplemental Payments to
Retirees" contained in Paragraphs ¶¶ 35-36 are ordered stricken from
the Complaint.
 - The allegations based on Reservation of Rights Clause in Section 1512-

1 A: "Retiree Healthcare" contained in Paragraphs 35-36 are ordered
2 stricken from the Complaint.

- 3 • Count III – Deprivation of Property Without Due Process of Law in Violation
4 of the California Constitution (Article I, Section 19)
 - 5 ▪ The allegations based based on Section 1504-A: "Reservation of Voter
6 Authority," contained in Paragraphs 41-42 are ordered stricken from the
7 Complaint.
 - 8 ▪ The allegations based on Section 1510-A of Measure B: "Emergency
9 Measures to Contain Retiree Cost of Living Adjustments," contained in
10 Paragraphs 41-42 are ordered stricken from the Complaint.
 - 11 ▪ The allegations based on Section 1511-A: "Supplemental Payments to
12 Retirees," contained in Paragraphs 41-42 are ordered stricken from the
13 Complaint.
 - 14 ▪ The allegations based on Reservation of Rights Clause in Section 1512-
15 A: "Retiree Healthcare," contained in Paragraphs 41-42 are ordered
16 stricken from the Complaint.
- 17 • Count IV – Violation of Separation of Powers under the California Constitution
18 (Article III, Section 3) – based on Section 1515-A: "Severability" paragraphs
19 47-48 are ordered stricken from the Complaint.
- 20 • Count V – Violation of California Pension Protection Act (Article XVI, Section
21 17) – based on Section 1513-A: "Actuarial Soundness" paragraphs 53-59 are
22 ordered stricken from the Complaint.

23 2. Plaintiffs' Second Cause of Action for Declaratory Relief

- 24 • The allegations based on Section 1504-A: "Reservation of Voter Authority,"
25 contained in Paragraphs 61-62 are ordered stricken from the Complaint.
- 26 • The allegations based on Section 1510-A of Measure B: "Emergency Measures
27 to Contain Retiree Cost of Living Adjustments," contained in Paragraphs 61-62
28 are ordered stricken from the Complaint.
- The allegations based on Section 1511-A: "Supplemental Payments to
Retirees," contained in Paragraphs 61-62 are ordered stricken from the
Complaint.
- The allegations based on Reservation of Rights Clause in Section 1512-A:
"Retiree Healthcare," contained in Paragraphs 61-62 are ordered stricken from
the Complaint.
- The allegations based on Section 1515-A: "Severability," contained in
Paragraphs 61-62 are ordered stricken from the Complaint.
- The allegations based on Section 1513-A: "Actuarial Soundness," contained in
Paragraphs 61-62 are ordered stricken from the Complaint,

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3. Plaintiffs' Third Cause of Action for Petition for Writ of Mandate based on Section 1513-A: "Actuarial Soundness" Paragraphs 63-69 are ordered stricken from the Complaint.

DATED: _____, 2013

JUDGE OF THE SUPERIOR COURT

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 633 W. 5th Street, Suite 1700, Los Angeles, CA 90071.

On November 21, 2012, I served true copies of the following document(s) described as **[PROPOSED] ORDER GRANTING DEMURRER AND IN THE ALTERNATIVE MOTION TO STRIKE BY THE CITY OF SAN JOSE** on the interested parties in this action as follows:

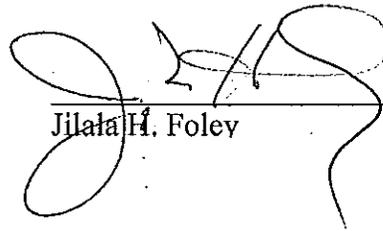
Stephen H. Silver, Esq.
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Attorneys for Plaintiffs/Petitioners
San Jose Retired Employees Association,
Howard E. Fleming, Donald S. Macrae, Frances
J. Olson, Gary J. Richert and Rosalinda Navarro

BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the office of the addressee(s)

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

Executed on November 21, 2012, at Oakland, California.



Jilala H. Foley