

1 JONATHAN V. HOLTZMAN (SBN 99795)
RANDY E. RIDDLE (SBN 121788)
2 DAVID E. KAHN (SBN 98128)
ALBERT S. YANG (SBN 281265)
3 RENNE SLOAN HOLTZMAN SAKAI LLP
350 Sansome Street, Suite 300
4 San Francisco, CA 94104
Telephone: (415) 678-3800
5 Facsimile: (415) 678-3838

6 Attorneys for Respondent
CITY OF SAN JOSE
7

8
9 BEFORE THE ATTORNEY GENERAL
10 OF THE STATE OF CALIFORNIA

11 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

12
13 Plaintiff-Relator,

14 vs.

15 CITY OF SAN JOSE, and CITY OF SAN
JOSE CITY COUNCIL

16 Defendants.
17

Case No.:

EXEMPT FROM FEES (GOV. CODE § 6103)

**STATEMENT OF UNDISPUTED FACTS IN
OPPOSITION TO SJPOA'S APPLICATION
FOR LEAVE TO SUE IN *QUO WARRANTO***

18 The following statement of undisputed facts is drawn from the San Jose Police Officers'
19 Association's (SJPOA) Verified Statement of Facts in Support of Application for Leave to Sue in *Quo*
20 *Warranto* (SJPOA Statement of Facts) and the Declaration of Alex Gurza in Opposition to SJPOA's
21 Application for Leave to Sue in *Quo Warranto* (Gurza Decl.). The facts stated below represent points in
22 which the parties' pleadings in this case are in agreement, and/or points which the parties have not
23 disputed in related proceedings.

24 1. In early 2011, the City and SJPOA discussed changes to retirement benefits as a part of
25 ongoing negotiations over the parties' overall memorandum of understanding (MOU). [Gurza Decl.

26 ¶ 4.]
27
28

1 2. In an effort to reach an agreement on a successor contract, on June 3, 2011, the parties
2 agreed to side-letter “re-opener” agreements on several issues, including retirement and pension reform.
3 [Gurza Decl. ¶¶ 5-7; SJPOA Statement of Facts ¶ 8, Exh. 4.]

4 3. Under the retirement re-opener agreement, either party could request continued
5 negotiations over retirement reform issues during the life of the MOU. [Gurza Decl. ¶ 7; SJPOA
6 Statement of Facts ¶ 8, Exh 4.]

7 4. The retirement re-opener contained a deadline after which, if the parties had not reached
8 an agreement, SJPOA would have the option of accepting a specified lower level of retirement benefits
9 for current employees to voluntarily elect. [Gurza Decl. ¶ 8; SJPOA Statement of Facts ¶ 9, Exh 4.]

10 5. This deadline was extended on multiple occasions by agreement of the parties. [Gurza
11 Decl. ¶ 8.]

12 6. On May 13, 2011, Mayor Chuck Reed and several councilmembers issued a
13 memorandum regarding “Fiscal Reforms,” which recommended that the City Council approve a ballot
14 measure addressing retirement benefits for new and current employees. [Gurza Decl. ¶ 9; SJPOA
15 Statement of Facts ¶ 5, Exh 2.]

16 7. On May 24, 2011, the City Council approved the Mayor’s recommendation and directed
17 City staff to draft a proposed ballot measure and contact City unions to bargain over such a ballot
18 measure. [Gurza Decl. ¶ 10, Exh. A; SJPOA Statement of Facts ¶ 5, Exh 2.]

19 8. On June 20, 2011, the parties met to begin negotiations over retirement benefits. The
20 discussion included the City Council’s direction regarding the ballot measure. The parties agreed to a
21 “Pledge of Cooperation and Agreement Upon a Framework for Retirement Reform and Related Ballot
22 Measure Negotiations” (Framework). [Gurza Decl. ¶¶ 13-14; SJPOA Statement of Facts ¶ 10, Exh 5.]

23 9. The Framework stated that negotiations would complete by October 31, 2011, and that if
24 the parties had not reached agreement by that date, that they would proceed to impasse procedures. The
25 Framework also stated that “Charter Section 1111 [providing for interest arbitration as an impasse
26 procedure] shall not apply to bargaining over ballot measures.” Finally, the Framework stated that “the
27 Council may, pursuant to its constitutional authority, place charter amendments on the ballot regarding
28

1 retirement at the conclusion of these negotiations and mediation.” [Gurza Decl. ¶ 14; SJPOA Statement
2 of Facts ¶ 10, Exh 5.]

3 10. On July 6, 2011, the City provided SJPOA with a draft ballot measure that would modify
4 retirement benefits by, *inter alia*: 1) establishing parameters for a second tier retirement benefit for new
5 employees; 2) creating a voluntary “opt in” program for current employees; 3) increasing employee
6 contributions for those who choose to remain in the current level of benefits, and 4) requiring voter
7 approval of any changes to pension benefits. [Gurza Decl. ¶ 16; SJPOA Statement of Facts ¶ 12, Exh 6.]

8 11. Between June 20, 2011 and October 31, 2011, the parties met for thirteen (13)
9 negotiation sessions on retirement reform proposals, including the City’s proposed ballot measure.
10 [Gurza Decl. ¶ 15, Exh. C; SJPOA Statement of Facts, ¶ 14.]

11 12. During this time, the City provided SJPOA with a number of revised ballot measures in
12 response to comments received from SJPOA, from other unions, and from the public. In particular, the
13 City provided revised language on September 9, October 5, October 20, and October 27, 2011. [Gurza
14 Decl. ¶ 16; SJPOA Statement of Facts ¶¶ 14b, 19.]

15 13. During this time, SJPOA, in conjunction with IAFF, provided several proposals on
16 retirement benefits. SJPOA provided proposals on September 27 and October 24, 2011 [Gurza Decl.
17 ¶ 17, Exh. D; SJPOA Statement of Facts ¶¶ 14a, Exh. 7]

18 14. On October 31, 2011, the parties reached impasse and proceeded to mediation, pursuant
19 to the terms of the Framework. [Gurza Decl. ¶ 18, Exh. E.]

20 15. On November 15 and 16, 2011, the parties participated in mediation to discuss retirement
21 reform but did not reach an agreement. [Gurza Decl. ¶ 19; SJPOA Statement of Facts ¶ 17.]

22 16. During mediation, in an attempt to reach an agreement, the City offered a number of
23 concessions. Specifically, the City proposed improving the opt-in benefit formula from 1.5% to 2.0%,
24 decreasing the minimum retirement age for members of SJPOA and IAFF, Local 230 from age 60 to age
25 57, and increasing the COLA from a maximum of 1.0% to a maximum of 1.5%. These concessions did
26 not result in an agreement. [Gurza Decl. ¶ 20]

27 17. On November 11 and 18, 2011, SJPOA provided additional proposals regarding
28 retirement benefits. SJPOA’s November 11, 2011 proposal included benefits under the CalPERS

1 system, which the City had previously rejected as an option. SJPOA's November 18, 2011 proposal
2 abandoned the move to CalPERS and, for the first time, included the proposal to effectuate changes by
3 ballot measure. [Gurza Decl. ¶ 17, Exh. D; SJPOA Statement of Facts ¶¶ 15, Exhs. 10 & 11.]

4 18. On November 22, 2011, the City provided a revised draft ballot measure, which
5 incorporated the concessions it made during mediation. [Gurza Decl. ¶ 21; SJPOA Statement of Facts
6 ¶¶ 19-20, Exh. 13.]

7 19. The City informed SJPOA that the City Council would consider placing the revised
8 measure on the March 2012 ballot at its December 6, 2011 meeting. [Gurza Decl. ¶ 21; SJPOA
9 Statement of Facts ¶ 20.]

10 20. On December 1, 2011, SJPOA provided an additional proposal. [Gurza Decl. ¶ 17, Exh.
11 D; SJPOA Statement of Facts ¶ 21, Exh. 14.]

12 21. On December 5, 2011, several unions wrote to the Mayor and City Council indicating
13 that agreement on retirement reform would be possible with additional time and a second attempt at
14 mediation. Several unions also made comments to this effect during the City Council meeting on
15 December 6, 2011. [Gurza Decl. ¶¶ 22-23, Exh. F.]

16 22. On December 6, 2011, the City Council adopted Resolution 76087, which placed a
17 measure dated December 5, 2011 on the June 2012 ballot. The ballot measure dated December 5, 2011
18 is substantially similar to the measure provided to SJPOA on November 22, 2011. [Gurza Decl. ¶ 23,
19 Exh. G; SJPOA Statement of Facts ¶ 26.]

20 23. Although the City Council originally intended to place the measure on the March 2012
21 ballot, the Council delayed the election to June 2012 to provide time for additional mediation in
22 accordance with the unions' request. The Council further directed staff to engage all unions in
23 additional mediation. [Gurza Decl. ¶ 23, Exh. G; SJPOA Statement of Facts ¶ 26, Exh. 16.]

24 24. On December 13, 2011, SJPOA sent the City a letter asserting that the parties were not at
25 impasse and requesting the "resumption of bargaining." [SJPOA Statement of Facts ¶ 27, Exh. 17.]

26 25. The parties met on two occasions, in late December 2011 and early January 2012 prior to
27 engaging in renewed mediation. [Gurza Decl. ¶ 24; SJPOA Statement of Facts ¶ 28.]
28

1 26. Eventually, the parties agreed to engage in mediation. At the request of SJPOA, and at
2 substantial cost to both parties, the parties retained an independent mediator, rather than Paul Roose,
3 Supervisor of the State Mediation and Conciliation Service, who had previously served as the parties'
4 mediator. [Gurza Decl. ¶ 24; SJPOA Statement of Facts, Exh. 17.]

5 27. The parties engaged in mediation on January 17, January 18, February 6 and February 10,
6 2012. [Gurza Decl. ¶ 24.]

7 28. Once again, in an effort to reach agreement, the City offered a number of concessions in
8 mediation. Specifically, on February 10, 2012, the City proposed postponing the additional retirement
9 contributions for current employees remaining at the current level of benefits for one year, delaying the
10 phase out of certain benefit features for employees choosing to opt into a lower level of benefits and
11 improving the Tier 2, new employee benefit formula from 1.5% to 2.0%, and increasing the COLA from
12 a maximum of 1.0% to a maximum of 1.5%. Once again the parties were unable to reach agreement.
13 [Gurza Decl. ¶ 25.]

14 29. Once again, despite the lack of an agreement during mediation, the City incorporated its
15 concessions into a post-mediation revision of the proposed ballot measure. [Gurza Decl. ¶ 26; SJPOA
16 Statement of Facts ¶¶ 30-31.]

17 30. The City transmitted this revised measure to SJPOA on February 21, 2012, indicating
18 that the City Council would vote, at its March 6, 2012 meeting, on whether to replace the December 6,
19 2011 draft with the February 21, 2012 draft for the June 2012 ballot. [Gurza Decl. ¶ 26; SJPOA
20 Statement of Facts ¶ 30-31.]

21 31. On February 24, 2012, SJPOA sent a letter to the City asserting that the Union "had no
22 opportunity to bargain about this new ballot language," and requesting that the City "meet and confer"
23 with the Union over the February 21, 2012 draft. [Gurza Decl. ¶ 27; SJPOA Statement of Facts ¶ 33,
24 Exh. 22.]

25 32. On March 2, 2012, IAFF and SJPOA sent a letter to the City transmitting a revised
26 proposal on retirement benefits. The proposal once again involved a shift to the CalPERS system. The
27 proposal included a higher level of maximum benefit for the opt-in tier compared to SJPOA's previous
28 proposal. [Gurza Decl. ¶ 28; SJPOA Statement of Facts ¶ 36, Exh. 25.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

33. On March 5, 2012, the City rejected SJPOA's March 2 proposal and provided a lengthy explanation for its rejection. [SJPOA Statement of Facts ¶ 38, Exh. 27.]

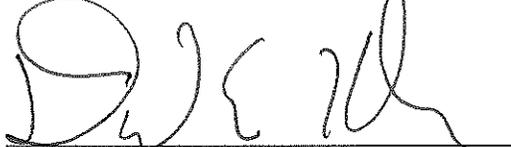
34. On March 6, 2012, after nine months of negotiation and twenty-one (21) meetings with the SJPOA on retirement and pension reform, the City Council voted to place Measure B on the June 5, 2012 ballot. [Gurza Decl. ¶ 29, Exh. H; SJPOA Statement of Facts ¶ 39.]

35. On June 5, 2012, San Jose Voters adopted Measure B by a margin of 69.58% to 30.42%. [Gurza Decl. ¶ 31.]

36. On June 5, 2012, pursuant to direction from the City Council, the City filed a declaratory relief action in the Northern District of California, case number 5:12-CV-02904-LHK, seeking a judicial determination of Measure B's substantive validity. [Gurza Decl. ¶ 30.]

Dated: July 6, 2012

RENNE SLOAN HOLTZMAN SAKAI LLP

By: 

Jonathan V. Holtzman
Randy E. Riddle
David E. Kahn
Albert S. Yang
Attorney for Defendant
CITY OF SAN JOSE

CERTIFICATE OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104.

On July 6, 2012, I served the following document(s) by the method indicated below:

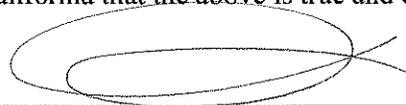
SEPARATE STATEMENT IN OPPOSITION TO SJPOA'S APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO; SHOWING OF GOOD CAUSE WHY LEAVE TO SUE SHOULD NOT BE GRANTED

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by transmitting via facsimile on this date from the fax number (415) 678-3838 the document(s) listed above to the fax number(s) set forth below. The transmission was reported complete and without error. The transmitting fax machine complies with Cal. R. Ct. 2003(3)
- by electronic transmission via e-mail attachment (agreed by the parties served in this matter)

Gregg McLean Adam, SBN 203436
Jonathan Yank, SBN 215495
Jennifer S. Stoughton, SBN 238309
CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery St, Suite 400
San Francisco, CA 94104
Telephone: (415) 989.5900
Facsimile: (415) 989.0932
Email: gadam@cbmlaw.com
jyank@cbmlaw.com
jstoughton@cbmlaw.com

Attorneys for Petitioner SAN JOSE POLICE
OFFICERS' ASSOCIATION

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
Executed on July 6, 2012, at San Francisco, California.



Rochelle Redmayne

Certificate of Service

SEPARATE STATEMENT IN OPPOSITION TO SIPOA'S APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO;
SHOWING OF GOOD CAUSE WHY LEAVE TO SUE SHOULD NOT BE GRANTED