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ENDORSED  
 FILED

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 S. VERA  
 Debra H. VERA, Clerk of the Superior Court  
 County of Santa Clara, California  
 By \_\_\_\_\_  
 Deputy Clerk

COUNT SERVICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS  
 13 ASSOCIATION,  
 14 Plaintiff,  
 15 v.  
 16 CITY OF SAN JOSE, BOARD OF  
 ADMINISTRATION FOR POLICE AND  
 17 FIRE RETIREMENT PLAN OF CITY OF  
 SAN JOSE, and DOES 1-10 inclusive,  
 18 Defendants.  
 19  
 20 AND RELATED CROSS-COMPLAINT  
 21 AND CONSOLIDATED ACTIONS.

Case No. 1-12-CV-225926  
 [Consolidated with Case Nos. 112CV225928,  
 112CV226570, 112CV226574, 112CV227864]  
 DEFENDANT AND CROSS-  
 COMPLAINANT CITY OF SAN JOSE'S  
 OPPOSITION TO SAN JOSE POLICE  
 OFFICERS' ASSOCIATION'S AND  
 AFSCME'S JOINDERS IN SUPPORT OF  
 MOTION TO STRIKE AND/OR DISMISS  
 CITY OF SAN JOSE'S MOTION FOR  
 SUMMARY ADJUDICATION  
 Date: March 15, 2013  
 Time: 9:00 a.m.  
 Dept: 8  
 Judge: Hon. Peter H. Kirwan  
 Complaint Filed: June 5, 2012  
 Trial Date: June 17, 2013

BY FAX

Case No. 1-12-CV-225926

CITY OF SAN JOSE'S OPPOSITION TO SIPOA'S JOINDER IN SUPPORT OF MOTION TO STRIKE

1 Plaintiffs San Jose Police Officers' Association ("POA") and AFSCME have filed last  
2 minute, procedurally improper Joinders in support of the Sapien, Harris, and Mukhar plaintiffs'  
3 Motion to Strike. Neither the POA nor AFSCME sought leave to file their Joinders on shortened  
4 time, and neither filed on the schedule set by the Court for the motion filed by the Sapien, Harris,  
5 and Mukhar plaintiffs. As a result, the Court should refuse to consider their Joinders.

6 To the extent the Court does consider them, the City incorporates herein its opposition to  
7 the Sapien, Harris, and Mukhar plaintiffs' Motion to Strike.

8 In their Joinders, both the POA and AFSCME indirectly acknowledge the Sapien, Harris,  
9 and Mukhar plaintiffs' failure to state the procedural basis for their "motion to strike a motion."

10 POA attempts to overcome this failure by pointing to Code of Civil Procedure section  
11 436(b) as the basis for the motion. That section permits the Court to strike matters from a  
12 pleading or strike a pleading in its entirety. But the POA neglects to mention that "pleading" is  
13 defined for purposes of the Code of Civil Procedure by sections 420 and 422.10, and the term does  
14 *not* include a motion.

15 AFSCME stretches even further to Code of Civil Procedure section 128, but then does not  
16 bother to explain how that section can authorize a "motion to strike a motion." Section 128  
17 provides no authority for the motion because it pertains to the Court's authority over conduct in  
18 the courtroom including sanctions for contempt.

19 Additionally, in its Joinder, the POA incorrectly accuses the City of citing an unpublished  
20 case in its Motion for Summary Adjudication. According to the POA, review was granted in  
21 *Garrett v. Howmedica Osteonics Corp.*, 211 Cal.App.4th 389 (2012), and that it is consequently  
22 unpublished. But the City has checked the dockets of the California Supreme Court and the  
23 Second Appellate District, and no review is indicated.

24 The POA's attempt to attack authority in the City's Motion for Summary Adjudication is  
25 telling; plaintiffs' motions to strike are nothing but their attempt to litigate the City's Motion for  
26 Summary Adjudication in pieces.<sup>1</sup> The Court should reject this.

27 \_\_\_\_\_  
28 <sup>1</sup> Indeed, the Court should not permit the POA and AFSCME to use their improper Joinders as  
(footnote continued)

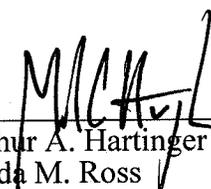
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Finally, the Joinders further illustrate that various plaintiffs claim that different sections of Measure B are illegal for different reasons. For example, in its Joinder, the POA argues Measure B not only violates vested contractual rights but also breaches its MOA. Because this case is consolidated for pretrial purposes, plaintiffs are contending that the City must move as to each and every one of these claims at the same time – an onerous burden at odds with the purposes of summary adjudication.

Because of the procedural impropriety of the POA’s and AFSCME’s Joinders, and because of the substantive reasons stated herein and in the City’s opposition to the Sapien, Harris, and Mukhar plaintiffs’ motion, the Court should deny both the Joinders and the Motion to Strike.

DATED: March 5, 2013

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\_\_\_\_\_ justifications for filing reply briefs. They had the chance to file on time and chose not to do so. They have waived the right to file reply briefs.



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AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1961 SAN JOSE  
POLICE AND FIRE DEPARTMENT RETIREMENT  
PLAN  
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1975 FEDERATED  
CITY EMPLOYEES' RETIREMENT PLAN  
(Santa Clara Superior Court Case Nos. 112CV226570  
and 112CV226574 )

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE FEDERATED CITY  
EMPLOYEES RETIREMENT PLAN  
(Santa Clara Superior Court Case No. 112CV227864)

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