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8 Attorneys for Defendants and
Cross-Complainants City of San José
9 and Debra Figone, in her official capacity

ENDORSED
FILED
FEB -7 2013
By DAVID H. YAMAMOTO
Chief Executive Officer
Superior Court of CA County of Santa Clara
L. Barajas DEPUTY

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

13 **SAN JOSÉ POLICE OFFICERS**
ASSOCIATION,
14
15 **Plaintiff,**
16 **v.**
17 **CITY OF SAN JOSÉ, BOARD OF**
ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
18 **SAN JOSÉ, and DOES 1-10 inclusive.,**
19 **Defendants.**
20
21 **AND RELATED CROSS-COMPLAINT**
AND CONSOLIDATED ACTIONS.
22

Case No. 1-12-CV-225926
[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]
NOTICE OF MOTION AND MOTION BY
DEFENDANTS' AND CROSS-
COMPLAINANT'S FOR SUMMARY
ADJUDICATION OF ISSUES
Date: April 23, 2013
Time: 9:00 a.m.
Dept.: 8
Complaint Filed: June 6, 2012
Trial Date: None Set

23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**
24
25 **PLEASE TAKE NOTICE** that on April 23, 2013, at 9:00 a.m. in the Law and Motion
26 Department of the above-entitled Court, or as soon thereafter as the matter may be heard,
27 Defendants **CITY OF SAN JOSÉ** and **DEBRA FIGONE** ("Defendants") will and hereby do move
28 for summary adjudication with respect to Plaintiffs' complaints in these consolidated actions:

1 *San Francisco Police Officers Association v. City of San José*, Case No. 1-12-CV-225926
2 (“SJPOA”); *American Federation of State, County, and Municipal Employees, Local 101 v. City*
3 *of San José*, Case No. 1-12-CV-227864 (“AFSCME”); *Sapien v. City of San José and Debra*
4 *Figone in her official capacity*, Case No. 1-12-CV-22598 (“Sapien”); *Harris v. City of San Jose*
5 *and Debra Figone in her official capacity*, Case No. 1-12-CV-226570 (“Harris”); *Mukhar v. City*
6 *of San José and Debra Figone in her official capacity*, Case No. 1-12-CV 226574 (“Mukhar”).

7 Defendants move pursuant to California Code of Civil Procedure section 437c (a) and (f).
8 This motion is brought on the grounds that there is no triable issue as to any material fact and that
9 the following causes of action with respect to San José Charter Sections 1506-A, 1512-A and
10 1511-A fail as a matter of law: violation of the state and federal contracts clauses, violation of
11 state and federal takings clauses, violation of state and federal due process, and violation of
12 promissory and equitable, as described below.

13 Defendants’ motion for summary adjudication will be based on this Notice and Motion, the
14 accompanying Memorandum of Points and Authorities, the accompanying Request For Judicial
15 Notice in Support of Defendants’ Motion for Summary Adjudication of Issues, the Declaration of
16 Alex Gurza, all other pleadings and papers on file in this action, and such other and further
17 argument and matters subject to judicial notice as shall be received by the Court at the time of the
18 hearing.

19 Defendants’ motion is made on the following grounds (which will be more fully set forth
20 in the accompanying Memorandum of Points and Authorities and Separate Statement of
21 Undisputed Facts which will be filed consistent with the requirements in California Code of Civil
22 Procedure section 437c):

23 **PLAINTIFFS’ CONSOLIDATED COMPLAINTS**

24 1. **Unconstitutional Impairment of Contract, California Constitution Article I, Section 9**
25 (*SJPOA* first cause of action, *AFSCME* first cause of action, *Sapien* second cause of action,
26 *Harris* second cause of action, *Mukhar* second cause of action.)

27 A. *San José Charter Section 1506-A (Employee Additional Pension Contributions)*

28 There is no triable issue as to any material fact and Defendants are entitled to judgment as

1 a matter of law that San José Charter Section 1506-A does not violate Article I, Section 9 of the
2 California Constitution and does not breach any duty by Defendants to Plaintiffs.

3 ***B. San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

4 There is no triable issue as to any material fact and Defendants are entitled to judgment as
5 a matter of law that San José Charter Section 1512-A does not violate Article I, Section 9 of the
6 California Constitution and does not breach any duty by Defendants to Plaintiffs.

7 ***C. San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve)***

8 There is no triable issue as to any material fact and Defendants are entitled to judgment as
9 a matter of law that San José Charter Section 1511-A does not violate Article I, Section 9 of the
10 California Constitution and does not breach any duty by Defendants to Plaintiffs.

11 **2. Unconstitutional Taking of Private Property, California Constitution Article 19,
12 Section 9**

13 (*SJPOA* second cause of action, *AFSCME* third cause of action, *Sapien* fourth cause of
14 action, *Harris* fourth cause of action, *Mukhar* fourth cause of action.)

15 ***A. San José Charter Section 1506-A (Employee Additional Pension Contributions)***

16 There is no triable issue as to any material fact and Defendants are entitled to judgment as
17 a matter of law that San José Charter Section 1506-A does not violate Article 19 of the California
18 Constitution and does not breach any duty by Defendants to Plaintiffs.

19 ***B. San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

20 There is no triable issue as to any material fact and Defendants are entitled to judgment as
21 a matter of law that San José Charter Section 1512-A does not violate Article 19 of the California
22 Constitution and does not breach any duty by Defendants to Plaintiffs.

23 ***C. San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve)***

24 There is no triable issue as to any material fact and Defendants are entitled to judgment as
25 a matter of law that San José Charter Section 1511-A does not violate Article 19 of the California
26 Constitution and does not breach any duty by Defendants to Plaintiffs.

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1 **3. Unconstitutional Taking of Private Property Without Due Process, California**
2 **Constitution Article I, Section 7**

3 (SJPOA third cause of action, AFSCME fourth cause of action, Sapien third cause of
4 action, Harris third cause of action, Mukhar third cause of action.)

5 **A. *San José Charter Section 1506-A (Employee Additional Pension Contributions)***

6 There is no triable issue as to any material fact and Defendants are entitled to judgment as
7 a matter of law that San José Charter Section 1506-A does not violate Article I, Section 7 of the
8 California Constitution and does not breach any duty by Defendants to Plaintiffs.

9 **B. *San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

10 There is no triable issue as to any material fact and Defendants are entitled to judgment as
11 a matter of law that San José Charter Section 1512-A does not violate Article I, Section 7 of the
12 California Constitution and does not breach any duty by Defendants to Plaintiffs.

13 **C. *San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve) Causes***
14 ***of Action***

15 There is no triable issue as to any material fact and Defendants are entitled to judgment as
16 a matter of law that San José Charter Section 1511-A does not violate Article I, Section 7 of the
17 California Constitution and does not breach any duty by Defendants to Plaintiffs.

18 **4. Promissory and Equitable Estoppel**

19 (AFSCME eighth cause of action.)

20 **A. *San José Charter Section 1506-A (Employee Additional Pension Contributions)***

21 There is no triable issue as to any material fact and Defendants are entitled to judgment as
22 a matter of law that San José Charter Section 1506-A is not a violation of promissory or equitable
23 estoppel and does not breach any duty by Defendants to Plaintiff.

24 **B. *San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

25 There is no triable issue as to any material fact and Defendants are entitled to judgment as
26 a matter of law that San José Charter Section 1512-A is not a violation of promissory or equitable
27 estoppel and does not violate and does not breach any duty by Defendants to Plaintiff.

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1 C. *San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve)*

2 There is no triable issue as to any material fact and Defendants are entitled to judgment as
3 a matter of law that San José Charter Section 1511-A is not a violation of promissory or equitable
4 estoppel and does not breach any duty by Defendants to Plaintiff.

5 **CITY OF SAN JOSÉ'S CROSS-COMPLAINT FOR DECLARATORY RELIEF.**

6 **5. Impairment of Contract, United States Constitution, Article I, Section 10.**

7 (City's first cause of action)

8 A. *San José Charter Section 1506-A (Employee Additional Pension Contributions)*

9 There is no triable issue as to any material fact and Cross-complainant City is entitled to
10 judgment as a matter of law that San José Charter Section 1506-A does not violate Article I,
11 Section 10 of the United States Constitution and does not breach any duty by Defendant to
12 Plaintiffs.

13 B. *San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)*

14 There is no triable issue as to any material fact and Cross-complainant City is entitled to
15 judgment as a matter of law that San José Charter Section 1512-A does not violate Article I,
16 Section 10 of the United States Constitution and does not breach any duty by Defendant to
17 Plaintiffs.

18 C. *San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve) Causes*
19 *of Action*

20 There is no triable issue as to any material fact and Cross-complainant City is entitled to
21 judgment as a matter of law that San José Charter Section 1511-A does not violate Article I,
22 Section 10 of the United States Constitution and does not breach any duty by Defendants to
23 Plaintiffs.

24 **6. Unconstitutional Taking of Private Property, United States Constitution, 5th and 14th**
25 **Amendments.**

26 (City's second cause of action)

27 A. *San José Charter Section 1506-A (Employee Additional Pension Contributions)*

28 There is no triable issue as to any material fact and Cross-complainant City is entitled to

1 judgment as a matter of law that San José Charter Section 1506-A does not violate the 5th or 14th
2 amendments to the United States Constitution and does not breach any duty by Defendant to
3 Plaintiffs.

4 ***B. San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

5 There is no triable issue as to any material fact and Cross-complainant City is entitled to
6 judgment as a matter of law that San José Charter Section 1512-A does not violate the 5th or 14th
7 amendments to the United States Constitution and does not breach any duty by Defendant to
8 Plaintiffs.

9 ***C. San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve) Causes***
10 ***of Action***

11 There is no triable issue as to any material fact and Cross-complainant City is entitled to
12 judgment as a matter of law that San José Charter Section 1511-A does not violate the 5th or 14th
13 amendments to the United States Constitution and does not breach any duty by Defendant to
14 Plaintiffs.

15 **7. Unconstitutional Violation of Due Process, United States Constitution, 5th and 14th**
16 **Amendments.**

17 (City's third cause of action)

18 ***A. San José Charter Section 1506-A (Employee Additional Pension Contributions)***

19 There is no triable issue as to any material fact and Cross-complainant City is entitled to
20 judgment as a matter of law that San José Charter Section 1506-A does not violate the 5th or 14th
21 amendments to the United States Constitution and does not breach any duty by Defendant to
22 Plaintiffs.

23 ***B. San José Charter Section 1512-A (Employee Retiree Healthcare Contributions)***

24 There is no triable issue as to any material fact and Cross-complainant City is entitled to
25 judgment as a matter of law that San José Charter Section 1512-A does not violate the 5th or 14th
26 amendments to the United States Constitution and does not breach any duty by Defendant to
27 Plaintiffs.

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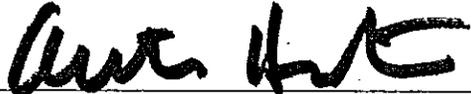
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C. *San José Charter Section 1511-A (Supplemental Retiree Benefit Reserve)*

There is no triable issue as to any material fact and Cross-complainant City is entitled to judgment as a matter of law that San José Charter Section 1511-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs.

DATED: February 7, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 
Arthur A. Hartinger
Attorneys for Defendants
City of San Jose and Debra Figone in her official capacity as City Manager

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