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Complainants City of San José
9 and Debra Figone, in her official capacity

(ENDORSED)
FILED
L. Barajas
FEB 27 2013
DAVID H. BARAJAS
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

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

12 SAN JOSÉ POLICE OFFICERS
13 ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSÉ, BOARD OF
17 ADMINISTRATION FOR POLICE AND
18 FIRE RETIREMENT PLAN OF CITY OF
SAN JOSÉ, and DOES 1-10 inclusive.,

19 Defendants.

20 AND RELATED CROSS-COMPLAINT
21 AND CONSOLIDATED ACTIONS.

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
DEFENDANTS' AND CROSS-
COMPLAINANT'S MOTION FOR
SUMMARY ADJUDICATION

Date: April 23, 2013
Time: 9:00 a.m.
Dept.: 8

Complaint Filed: June 6, 2012
Trial Date: None Set

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CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961,	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A"). 	
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or</i></p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p data-bbox="358 306 899 380"><i>establish a new or different plan or plans for all or any officers or employees."</i></p> <p data-bbox="358 449 667 485"><u>Supporting Evidence:</u></p> <ul data-bbox="415 499 834 573" style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p data-bbox="297 642 870 747">6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p data-bbox="354 768 889 1566"><i>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</i></p> <p data-bbox="354 1640 659 1675"><u>Supporting Evidence:</u></p> <ul data-bbox="407 1692 834 1766" style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p data-bbox="284 1835 886 1942">7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees,</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>except as otherwise provided in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>8. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p>	

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<p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the</p>	

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<p>POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of 	

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<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none"> • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue No. 1-B: San José Charter §1512-A (Employee Retiree Healthcare**
 2 **Contributions)**

3 There is no triable issue as to any material fact and Defendants are entitled to summary
 4 adjudication as a matter of law that San José Charter Section 1512-A does not violate Article I,
 5 Section 9 of the California Constitution and does not breach any duty by Defendants to Plaintiffs.
 6 The City Charter may require employees to make contributions towards unfunded liabilities to pay
 7 for their retiree healthcare. Plaintiffs have no vested right to the City paying all unfunded
 8 liabilities for retiree healthcare.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>11 23. San José Charter Section 1512-A states:</p> <p>12 "Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."</p> <p>13</p> <p>14</p> <p>15 <u>Supporting Evidence:</u></p> <p>16 • RJN, Exh. B.</p>	
<p>18 24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p>19</p> <p>20</p> <p>21 <u>Supporting Evidence:</u></p> <p>22 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>25. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X). 	
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees. ”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	
<p>30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <ul style="list-style-type: none"> --Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association. <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶ 39, Exhs. 21, 39, 40, 41. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	

1 **Issue No. 1-C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1511-A does not violate Article I,
4 Section 9 of the California Constitution and does not breach any duty by Defendants to Plaintiffs.
5 The Supplemental Benefit Reserve was a discretionary retirement benefit. Plaintiffs have no
6 vested right to the continuation of or payments from the Supplemental Benefit Reserve.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9 42. Section 1511-A ("Supplemental 10 Payments to Retirees") of Measure B 11 states: 12 The Supplemental Retiree Benefit 13 Reserve ("SRBR" shall be discontinued, 14 and the assets returned to the appropriate 15 retirement trust fund. Any supplemental 16 payments to retirees in addition to the 17 benefits authorized herein shall not be 18 funded from plan assets. 19 <u>Supporting Evidence:</u> 20 21 • RJN, Exh. B.	
22 43. On or around April 12, 1960, the voters 23 ratified Proposition A, which amended 24 the San José Charter to include Section 25 78b. 26 <u>Supporting Evidence:</u> 27 28 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 44. Former San José Charter Section 78b</p> <p>4 stated:</p> <p>5 “Anything in Section 78a of the Charter</p> <p>6 to the contrary notwithstanding, the</p> <p>7 Council in its discretion may at any</p> <p>8 time, or from time to time, by ordinance,</p> <p>9 amend or otherwise change the</p> <p>10 retirement plan established by said</p> <p>11 Section 78a or any retirement plan or</p> <p>12 plans established pursuant to said</p> <p>13 Section 78a, or adopt or established a</p> <p>14 new or different plan or plans for</p> <p>15 eligible members of the police or fire</p> <p>16 department of the City of San José ” ...</p> <p>17 “all as the Council may deem proper and</p> <p>18 subject to such conditions, restrictions,</p> <p>19 limitations, terms and other provisions</p> <p>20 as the Council may deem proper;...”</p> <p>21</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X). 	
<p>22 45. The ballot argument in favor of</p> <p>23 Proposition A stated:</p> <p>24 “THIS AMENDMENT GIVES</p> <p>25 DISCRETIONARY POWERS TO THE</p> <p>26 CITY COUNCIL! It is good</p> <p>27 government to allow the City Council to</p> <p>28 be responsible for investigating</p> <p>problems and deciding how to solve</p> <p>them. [¶] THIS AMENDMENT IS</p> <p>SIMPLE! Leave all the technical details</p> <p>up to your City Council. They have a</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)] 	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

1 2. Unconstitutional Taking Of Private Property, California Constitution Article
 2 19, Section 9

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

5 Issue 2A: San José Charter §1506-A (Employee Additional Pension Contributions)

6 There is no triable issue as to any material fact and Defendants are entitled to summary
 7 adjudication as a matter of law that San José Charter Section 1506-A does not violate Article 19
 8 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City
 9 Charter may require employees to pay additional pension contributions to defray pension plan
 10 unfunded liabilities. Plaintiffs have no property interest in the City paying for all pension plan
 11 unfunded liabilities.

<p>12 Moving Party's Undisputed Material 13 Facts and Supporting Evidence</p>	<p> Opposing Party's Response and Supporting Evidence</p>
<p>14 1. Section 1506-A ("Current Employees") of Measure B states:</p> <p>15 (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>16 (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>17 (c) The starting date for an employee's</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 compensation adjustment under this</p> <p>2 Section shall be June 23, 2013,</p> <p>3 regardless of whether the VEP has been</p> <p>4 implemented. If the VEP has not been</p> <p>5 implemented or any reason, the</p> <p>6 compensation adjustments shall apply to</p> <p>7 all Current Employees.</p> <p>8 (d) The compensation adjustment through</p> <p>9 additional employee contributions for</p> <p>10 Current Employees shall be calculated</p> <p>11 separately for employees in the Police</p> <p>12 and Fire Department Retirement Plan</p> <p>13 and employees in the Federated City</p> <p>14 Employees' Retirement System.</p> <p>15 (e) The compensation adjustment shall be</p> <p>16 treated in the same manner as any other</p> <p>17 employee contributions. Accordingly,</p> <p>18 the voters intend these additional</p> <p>19 payments to be made on a pre-tax basis</p> <p>20 through payroll deductions pursuant to</p> <p>21 applicable Internal Revenue Code</p> <p>22 Sections. The additional contributions</p> <p>23 shall be subject to withdrawal, return</p> <p>24 and redeposit in the same manner as any</p> <p>25 other employee contributions.</p> <p>26 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 27 • Defendant's Request for 28 Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>23 2: On or around April 12, 1960, the voters</p> <p>24 ratified Proposition A, which amended</p> <p>25 the San José Charter to include Section</p> <p>26 78b.</p> <p>27 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 28 • RJN, Exh. E (California Assembly Concurrent 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE</p>	

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<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 CITY COUNCIL! It is good</p> <p>4 government to allow the City Council to</p> <p>5 be responsible for investigating</p> <p>6 problems and deciding how to solve</p> <p>7 them. [¶] THIS AMENDMENT IS</p> <p>8 SIMPLE! Leave all the technical details</p> <p>9 up to your City Council. They have a</p> <p>10 staff to assist them including a very</p> <p>11 capable City Attorney."</p> <p>12</p> <p>13 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 14 • RJN, Exh. F (Ballot Pamphlet 15 for Charter Amendment -- 16 Proposition A, to be submitted 17 to the Electors of the City of 18 San José , April 12, 1960, 19 including "Argument in Favor 20 of Proposition A"). 	
<p>21 5. As adopted by the voters in 1965, the</p> <p>22 San José City Charter states at Section</p> <p>23 1500:</p> <p>24</p> <p>25 Except as hereinafter otherwise</p> <p>26 provided, the Council shall provide, by</p> <p>27 ordinance or ordinances, for the creation,</p> <p>28 establishment and maintenance of a</p> <p>retirement plan or plans for all officers</p> <p>and employees of the City. Such plan or</p> <p>plans need not be the same for all</p> <p>officers and employees. <i>Subject to other</i></p> <p><i>provisions of this Article, the Council</i></p> <p><i>may at any time, or from time to time,</i></p> <p><i>amend or otherwise change any</i></p> <p><i>retirement plan or plans or adopt or</i></p> <p><i>establish a new or different plan or</i></p> <p><i>plans for all or any officers or</i></p> <p><i>employees."</i></p> <p>29</p> <p>30 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 31 • RJN, Exh. G (1965 Charter) 32 (emphasis added). 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>8. City Charter section 602 states: "The following acts of the Council shall be by</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <ul style="list-style-type: none"> • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>--Association of Legal Professionals (ALP).</p> <p>--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11. 	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11,	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
15, 17, 23, 25, 29.	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	
21. For Federated employees, the Municipal	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue 2B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1512-A does not violate Article 19 of
4 the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City
5 Charter may require employees to make contributions towards unfunded liabilities to pay for their
6 retiree healthcare. Plaintiffs have no property interest in the City paying all unfunded liabilities
7 for retiree healthcare.

8 Moving Party's Undisputed Material 9 Facts and Supporting Evidence	8 Opposing Party's Response and 9 Supporting Evidence
10 23. San José Charter Section 1512-A states: 11 "Existing and new employees must 12 contribute a minimum of 50% of the cost 13 of retiree healthcare, including both 14 normal cost and unfunded liabilities." 15 <u>Supporting Evidence:</u> 16 <ul style="list-style-type: none">17 • RJN, Exh. B.	
17 24. On or around April 12, 1960, the voters 18 ratified Proposition A, which amended 19 the San José Charter to include Section 20 78b. 21 <u>Supporting Evidence:</u> 22 <ul style="list-style-type: none">23 • RJN, Exh. E (California 24 Assembly Concurrent 25 Resolution No. 17, adopted in 26 Assembly January 18, 1961, 27 approving amendment of 28 Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 25. Former San José Charter Section 78b 4 stated: 5 "Anything in Section 78a of the Charter 6 to the contrary notwithstanding, the 7 Council in its discretion may at any 8 time, or from time to time, by ordinance, 9 amend or otherwise change the 10 retirement plan established by said 11 Section 78a or any retirement plan or 12 plans established pursuant to said 13 Section 78a, or adopt or established a 14 new or different plan or plans for 15 eligible members of the police or fire 16 department of the City of San José " ... 17 "all as the Council may deem proper and 18 subject to such conditions, restrictions, 19 limitations, terms and other provisions 20 as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>22 26. The ballot argument in favor of 23 Proposition A stated: 24 "THIS AMENDMENT GIVES 25 DISCRETIONARY POWERS TO THE 26 CITY COUNCIL! It is good 27 government to allow the City Council to 28 be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney.”</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment -- Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3 <u>Supporting Evidence:</u></p> <p>4 • RJN, Exh. A</p>	
<p>5 31. City Charter section 1500 states:</p> <p>6 "Except as hereinafter otherwise</p> <p>7 provided, the Council shall provide, by</p> <p>8 ordinance or ordinances, for the creation;</p> <p>9 establishment and maintenance of a</p> <p>10 retirement plan or plans for all officers</p> <p>11 and employees of the City."</p> <p>12 <u>Supporting Evidence:</u></p> <p>13 • RJN, Exh. A</p>	
<p>13 32. The City Council has enacted some</p> <p>14 ordinances implementing Measure B.</p> <p>15 <u>Supporting Evidence:</u></p> <p>16 • Gurza Decl, Exhs. 54, 55</p> <p>17 (Federated, Police and Fire</p> <p>18 Ordinances).</p>	
<p>19 33. Municipal Code §3.28.385(C) provides:</p> <p>20 "Contributions for other medical benefits</p> <p>21 shall be made by the City and the</p> <p>22 members in the ratio of one-to-one."</p> <p>23 <u>Supporting Evidence:</u></p> <p>24 • RJN, Exh. C.</p>	
<p>25 34. Municipal Code §3.36.575(D) provides:</p> <p>26 "Contributions for other benefits</p> <p>27 provided through the medical benefits</p> <p>28 account shall be made by the city and the</p> <p> members on the ratio of one-to-one."</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D.	
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶¶ 39, Exhs. 21, 39, 40, 41.	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	

1 Issue 2C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1511-A does not violate Article 19
4 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The
5 Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no property
6 right to the continuation of or payments from the Supplemental Retiree Benefit Reserve.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9 42. Section 1511-A ("Supplemental 10 Payments to Retirees") of Measure B states: 11 The Supplemental Retiree Benefit 12 Reserve ("SRBR" shall be discontinued, 13 and the assets returned to the appropriate 14 retirement trust fund. Any supplemental 15 payments to retirees in addition to the 16 benefits authorized herein shall not be 17 funded from plan assets. <u>Supporting Evidence:</u> <ul style="list-style-type: none">• RJN, Exh. B.	
18 43. On or around April 12, 1960, the voters 19 ratified Proposition A, which amended 20 the San José Charter to include Section 21 78b. <u>Supporting Evidence:</u> <ul style="list-style-type: none">• RJN, Exh. E (California 22 Assembly Concurrent 23 Resolution No. 17, adopted in 24 Assembly January 18, 1961, 25 approving amendment of 26 Charter of San José to include 27 Section 78b ("Discretionary 28 Powers of Council Respecting Retirement") of Article X).	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>44. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X). 	
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 staff to assist them including a very</p> <p>2 capable City Attorney.”</p> <p>3</p> <p>4</p> <p>5 <u>Supporting Evidence:</u></p> <p>6 • RJN, Exh. F (Ballot Pamphlet</p> <p>7 for Charter Amendment –</p> <p>8 Proposition A, to be submitted</p> <p>9 to the Electors of the City of</p> <p>San José , April 12, 1960,</p> <p>including “Argument in Favor</p> <p>of Proposition A”).</p>	
<p>10 46. As adopted by the voters in 1965, the</p> <p>11 San José City Charter states at Section</p> <p>12 1500:</p> <p>13 Except as hereinafter otherwise</p> <p>14 provided, the Council shall provide, by</p> <p>15 ordinance or ordinances, for the creation,</p> <p>16 establishment and maintenance of a</p> <p>17 retirement plan or plans for all officers</p> <p>18 and employees of the City. Such plan or</p> <p>19 plans need not be the same for all</p> <p>20 officers and employees. <i>Subject to other</i></p> <p>21 <i>provisions of this Article, the Council</i></p> <p>22 <i>may at any time, or from time to time,</i></p> <p>23 <i>amend or otherwise change any</i></p> <p>24 <i>retirement plan or plans or adopt or</i></p> <p>25 <i>establish a new or different plan or</i></p> <p>26 <i>plans for all or any officers or</i></p> <p>27 <i>employees.”</i></p> <p>28</p> <p><u>Supporting Evidence:</u></p> <p>• RJN, Exh. G (1965 Charter)</p> <p>(emphasis added).</p>	
<p>25 47. As adopted by the voters in 1965, the</p> <p>26 San José City Charter states at Section</p> <p>27 1503:</p> <p>28 Any and all retirement system or</p> <p>systems, existing upon adoption of this</p> <p>Charter, for the retirement of officers or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., Exhs. 44, 45, 46, 47, 48.	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>8. City Charter section 602 states: "The following acts of the Council shall be by</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> Gurza Dec., ¶17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 • City Association of Management Personnel (CAMP)</p> <p>2</p> <p>3 • International Brotherhood of Electrical Workers, Local 332 (IBEW)</p> <p>4</p> <p>5 • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)</p> <p>6</p> <p>7 • San José Police Officers Association (plaintiff in the SJPOA case).</p> <p>8</p> <p>9 <u>Supporting Evidence:</u></p> <p>10 • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.</p> <p>11</p>	
<p>12 14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>13</p> <p>14 --Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>15 --Association of Legal Professionals (ALP).</p> <p>16 --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p>17</p> <p>18</p> <p>19 <u>Supporting Evidence:</u></p> <p>20 • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.</p> <p>21</p>	
<p>22 15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p>23</p> <p>24 <u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010,</p> <p>25 all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied</p> <p>26</p> <p>27</p> <p>28</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

Supporting Evidence:

- Gurza Dec., ¶27, Exh, 11.

16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)

Supporting Evidence:

- Gurza Dec., ¶28, Exh, 11.

17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 to the Federated City Employees'</p> <p>4 Retirement System that requires an</p> <p>5 ordinance amending the San Jose</p> <p>6 Municipal Code." (<i>Id.</i> at Section</p> <p>7 10.1.4))</p> <p>8 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 9 • Gurza Dec., ¶27, Exh, 11 	
<p>10 18. The City's 2010-2011 agreements with</p> <p>11 the following unions stated in</p> <p>12 connection with employees paying</p> <p>13 additional pension contributions "The</p> <p>14 parties understand that in order to</p> <p>15 implement this provision, an amendment</p> <p>16 must be made to the Federated</p> <p>17 Employees' Retirement System that</p> <p>18 requires an ordinance amending the San</p> <p>19 Jose Municipal Code" or "The parties</p> <p>20 understand that in order to implement</p> <p>21 this provision, an amendment must be</p> <p>22 made to the Police and Fire Department</p> <p>23 Retirement Plan that requires an</p> <p>24 ordinance amending the san Jose</p> <p>25 Municipal Code."</p> <ul style="list-style-type: none"> 26 • Association of Engineers and 27 Architects (AEA) (plaintiff Mukhar is 28 president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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15, 17, 23, 25, 29.

19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
- San José Police Officers Association (plaintiff in the SJPOA case).
- International Association of Firefighters, Local 230;

Supporting Evidence:

- Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.

20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.

Supporting Evidence:

- Gurza Dec., ¶ 26, Exhs. 20, 28

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 **Issue 3B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

2 There is no triable issue as to any material fact and Defendants are entitled to judgment as a matter
3 of law that San José Charter Section 1512-A does not violate Article I, Section 7 of the California
4 Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may
5 require employees to make contributions towards unfunded liabilities to pay for their retiree
6 healthcare. Plaintiffs have no property interest in the City paying for all unfunded liabilities for
7 retiree healthcare.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>10 23. San José Charter Section 1512-A states: 11 "Existing and new employees must 12 contribute a minimum of 50% of the cost 13 of retiree healthcare, including both 14 normal cost and unfunded liabilities." <u>Supporting Evidence:</u> 15 • RJN, Exh. B.</p>	
<p>17 24. On or around April 12, 1960, the voters 18 ratified Proposition A, which amended 19 the San José Charter to include Section 20 78b. <u>Supporting Evidence:</u> 21 • RJN, Exh. E (California 22 Assembly Concurrent 23 Resolution No. 17, adopted in 24 Assembly January 18, 1961, 25 approving amendment of 26 Charter of San José to include 27 Section 78b ("Discretionary 28 Powers of Council Respecting Retirement") of Article X).</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 25. Former San José Charter Section 78b 4 stated: 5 "Anything in Section 78a of the Charter 6 to the contrary notwithstanding, the 7 Council in its discretion may at any 8 time, or from time to time, by ordinance, 9 amend or otherwise change the 10 retirement plan established by said 11 Section 78a or any retirement plan or 12 plans established pursuant to said 13 Section 78a, or adopt or established a 14 new or different plan or plans for 15 eligible members of the police or fire 16 department of the City of San José " ... 17 "all as the Council may deem proper and 18 subject to such conditions, restrictions, 19 limitations, terms and other provisions 20 as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>22 26. The ballot argument in favor of 23 Proposition A stated: 24 "THIS AMENDMENT GIVES 25 DISCRETIONARY POWERS TO THE 26 CITY COUNCIL! It is good 27 government to allow the City Council to 28 be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 staff to assist them including a very 6 capable City Attorney.”</p> <p>7 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 8 • RJN, Exh. F (Ballot Pamphlet 9 for Charter Amendment – 10 Proposition A, to be submitted 11 to the Electors of the City of 12 San José , April 12, 1960, 13 including “Argument in Favor 14 of Proposition A”). 	
<p>15 27. As adopted by the voters in 1965, the 16 San José City Charter states at Section 17 1500:</p> <p>18 Except as hereinafter otherwise 19 provided, the Council shall provide, by 20 ordinance or ordinances, for the creation, 21 establishment and maintenance of a 22 retirement plan or plans for all officers 23 and employees of the City. Such plan or 24 plans need not be the same for all 25 officers and employees. <i>Subject to other 26 provisions of this Article, the Council 27 may at any time, or from time to time, 28 amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”</i></p> <p>29 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 30 • RJN, Exh. G (1965 Charter) 31 (emphasis added). 	
<p>32 28. As adopted by the voters in 1965, the 33 San José City Charter states at Section 34 1503:</p> <p>35 Any and all retirement system or 36 systems, existing upon adoption of this 37 Charter, for the retirement of officers or 38</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C.	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p>	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 <u>Supporting Evidence:</u></p> <p>4 • RJN, Exh. D.</p>	
<p>5 35. In 2007, City staff submitted a</p> <p>6 memorandum to the City Council,</p> <p>7 attaching actuarial reports, concerning</p> <p>8 the GASB standards for Other Post-</p> <p>9 Employment Benefits.</p> <p>10 <u>Supporting Evidence:</u></p> <p>11 • Gurza Dec., ¶¶ 35-37, Exhs. 36,</p> <p>12 37, 38.</p>	
<p>12 36. Beginning in 2009, the City reached</p> <p>13 agreement with the following City</p> <p>14 unions for employees to make annual</p> <p>15 contributions, increasing incrementally</p> <p>16 each year, to fund up to 50% of the</p> <p>17 unfunded liabilities of retiree healthcare</p> <p>18 costs.</p> <p>19 --Association of Building, Mechanical</p> <p>20 and Electrical Inspectors (ABMEI),</p> <p>21 --Association of Engineers and</p> <p>22 Architects, IFPTE Local 21 (AEA Units</p> <p>23 41/42 and 43),</p> <p>24 --Association of Maintenance</p> <p>25 Supervisory Personnel (AMSP),</p> <p>26 --City Association of Management</p> <p>27 Personnel (CAMP),</p> <p>28 --International Brotherhood of Electrical</p> <p>Workers, Local No. 332 (IBEW);</p> <p>--Municipal Employees' Federation,</p> <p>AFSCME Local 101 (MEF)</p> <p>--Confidential Employees Association,</p> <p>AFSCME Local 101 (CEO);</p> <p>--International Association of</p> <p>Firefighters, Local 230;</p> <p>--San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <p>• Gurza Dec. ¶¶ 39, Exhs. 21, 39,</p> <p>40, 41.</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	

1 **Issue 3C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1511-A does not violate Article I,
4 Section 7 of the California Constitution and does not breach any duty by Defendants to Plaintiffs.
5 The Supplemental Retiree Benefits Reserve was a discretionary benefit. Plaintiffs have no
6 property right to the continuation of or payments from the SRBR.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9 42. Section 1511-A ("Supplemental 10 Payments to Retirees") of Measure B 11 states: 12 The Supplemental Retiree Benefit 13 Reserve ("SRBR" shall be discontinued, 14 and the assets returned to the appropriate 15 retirement trust fund. Any supplemental 16 payments to retirees in addition to the 17 benefits authorized herein shall not be 18 funded from plan assets. 19 <u>Supporting Evidence:</u> 20 <ul style="list-style-type: none">21 • RJN, Exh. B.	
22 43. On or around April 12, 1960, the voters 23 ratified Proposition A, which amended 24 the San José Charter to include Section 25 78b. 26 <u>Supporting Evidence:</u> 27 <ul style="list-style-type: none">28 • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>44. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X). 	
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and</p> <p>4 Supporting Evidence</p>
<p>5 staff to assist them including a very</p> <p>6 capable City Attorney.”</p> <p>7 <u>Supporting Evidence:</u></p> <p>8 • RJN, Exh. F (Ballot Pamphlet</p> <p>9 for Charter Amendment –</p> <p>10 Proposition A, to be submitted</p> <p>11 to the Electors of the City of</p> <p>12 San José , April 12, 1960,</p> <p>13 including “Argument in Favor</p> <p>14 of Proposition A”).</p>	
<p>15 46. As adopted by the voters in 1965, the</p> <p>16 San José City Charter states at Section</p> <p>17 1500:</p> <p>18 Except as hereinafter otherwise</p> <p>19 provided, the Council shall provide, by</p> <p>20 ordinance or ordinances, for the creation,</p> <p>21 establishment and maintenance of a</p> <p>22 retirement plan or plans for all officers</p> <p>23 and employees of the City. Such plan or</p> <p>24 plans need not be the same for all</p> <p>25 officers and employees. <i>Subject to other</i></p> <p>26 <i>provisions of this Article, the Council</i></p> <p>27 <i>may at any time, or from time to time,</i></p> <p>28 <i>amend or otherwise change any</i></p> <p>29 <i>retirement plan or plans or adopt or</i></p> <p>30 <i>establish a new or different plan or</i></p> <p>31 <i>plans for all or any officers or</i></p> <p>32 <i>employees.”</i></p> <p>33 <u>Supporting Evidence:</u></p> <p>34 • RJN, Exh. G (1965 Charter)</p> <p>35 (emphasis added).</p>	
<p>36 47. As adopted by the voters in 1965, the</p> <p>37 San José City Charter states at Section</p> <p>38 1503:</p> <p>39 Any and all retirement system or</p> <p>40 systems, existing upon adoption of this</p> <p>41 Charter, for the retirement of officers or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 50. City Charter section 1500 states: 4 "Except as hereinafter otherwise 5 provided, the Council shall provide, by 6 ordinance or ordinances, for the creation, 7 establishment and maintenance of a 8 retirement plan or plans for all officers 9 and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10 51. The City Council has enacted some 11 ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 14 (Federated, Police and Fire 15 Ordinances). 	
<p>16 52. For the Federated Retirement System, 17 the Municipal Code provided in Section 18 3.28.340(E): "Upon the request of the 19 city council or on its own motion, the 20 board may make recommendations to 21 the city council regarding distribution, if 22 any, of the supplemental retiree benefit 23 reserve" to retirees and their survivors. 24 Further, "[t]he city council, after 25 consideration of the recommendation of 26 the board, shall determine the 27 distribution, if any, of the supplemental 28 benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 retirement funds were fully funded.</p> <p>4 <u>Supporting Evidence:</u></p> <p>5 • RJN, Exh. O [November 22,</p> <p>6 1985 Letter from Coates,</p> <p>7 Herfurth & England, to Edward</p> <p>8 F. Overton, Retirement and</p> <p>9 Benefits Administrator, re:</p> <p>10 SB650 Study]; Gurza Dec.,</p> <p>11 Exh 59 [Actuarial Valuation</p> <p>12 Report, City of San José Police</p> <p> and Fire Department Retirement</p> <p> Plan, as of June 30, 2012, at p.</p> <p> 5 (showing plan overfunded at</p> <p> 114.8% as of June 30, 2001]</p>	
<p>13 58. In 2010, 2011, and 2012, the actuaries</p> <p>14 reported that the City's two pension</p> <p>15 funds had unfunded pension liabilities.</p> <p>16 <u>Supporting Evidence:</u></p> <p>17 • Gurza Dec., ¶ 49, Exhs. 58, 59</p> <p>18 [2012 Cheiron reports, Federated</p> <p>19 Employees Retirement System at</p> <p>20 p. 6, Police and Fire Department</p> <p>21 Retirement Plan at p. 5, tables</p> <p> showing unfunded pension</p> <p> liabilities]</p>	
<p>22 59. In 2011, and 2012, the actuaries reported</p> <p>23 that the City's two pension funds had</p> <p>24 "excess earnings" for the year – as</p> <p>25 defined in the Municipal Code – to fund</p> <p> the SRBR.</p> <p>26 <u>Supporting Evidence:</u></p> <p>27 • Gurza Dec., Exhs. 44, 45, 46, 47,</p> <p>28 48.</p>	

1 **4. Promissory And Equitable Estoppel**

2 (*AFSCME eighth* cause of action.)

3 **Issue 4A: San José Charter §1506-A (Employee Additional Pension Contributions)**

4 There is no triable issue as to any material fact and Defendants are entitled to summary
5 adjudication as a matter of law that San José Charter Section 1506-A is not a violation of
6 promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The
7 City Charter may require employees to pay additional pension contributions to defray pension plan
8 unfunded liabilities. The City made no legally binding promise to pay for all pension plan
9 unfunded liabilities.

10 Moving Party's Undisputed Material 11 Facts and Supporting Evidence	10 Opposing Party's Response and 11 Supporting Evidence
12 1. Section 1506-A ("Current Employees") 13 of Measure B states: 14 (a) "Current Employees" means employees 15 of the City of San José as of the 16 effective date of this Act and who are 17 not covered under the Tier 2 Plan 18 (Section 8). 19 (b) Unless they voluntarily opt in to the 20 Voluntary Election Program ("VEP," 21 described herein), Current Employees 22 shall have their compensation adjusted 23 through additional retirement 24 contributions in increments of 4% of 25 pensionable pay per year, up to a 26 maximum of 16%, but not more than 27 50% of the costs to amortize any pension 28 unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits. (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 implemented. If the VEP has not been 4 implemented or any reason, the 5 compensation adjustments shall apply to 6 all Current Employees.</p> <p>7 (d) The compensation adjustment through 8 additional employee contributions for 9 Current Employees shall be calculated 10 separately for employees in the Police 11 and Fire Department Retirement Plan 12 and employees in the Federated City 13 Employees' Retirement System.</p> <p>14 (e) The compensation adjustment shall be 15 treated in the same manner as any other 16 employee contributions. Accordingly, 17 the voters intend these additional 18 payments to be made on a pre-tax basis 19 through payroll deductions pursuant to 20 applicable Internal Revenue Code 21 Sections. The additional contributions 22 shall be subject to withdrawal, return 23 and redeposit in the same manner as any 24 other employee contributions.</p> <p>25 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 26 • Defendant's Request for 27 Judicial Notice ("RJN"), Exh. 28 B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3 Charter of San José to include 4 Section 78b ("Discretionary 5 Powers of Council Respecting 6 Retirement") of Article X).</p>	
<p>6 3. Former San José Charter Section 78b 7 stated: 8 "Anything in Section 78a of the Charter 9 to the contrary notwithstanding, the 10 Council in its discretion may at any 11 time, or from time to time, by ordinance, 12 amend or otherwise change the 13 retirement plan established by said 14 Section 78a or any retirement plan or 15 plans established pursuant to said 16 Section 78a, or adopt or established a 17 new or different plan or plans for 18 eligible members of the police or fire 19 department of the City of San José " ... 20 "all as the Council may deem proper and 21 subject to such conditions, restrictions, 22 limitations, terms and other provisions 23 as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>24 4. The ballot argument in favor of 25 Proposition A stated: 26 "THIS AMENDMENT GIVES 27 DISCRETIONARY POWERS TO THE 28 CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 problems and deciding how to solve</p> <p>2 them. [¶] THIS AMENDMENT IS</p> <p>3 SIMPLE! Leave all the technical details</p> <p>4 up to your City Council. They have a</p> <p>5 staff to assist them including a very</p> <p>6 capable City Attorney.”</p> <p>7 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 8 • RJN, Exh. F (Ballot Pamphlet 9 for Charter Amendment – 10 Proposition A, to be submitted 11 to the Electors of the City of 12 San José , April 12, 1960, 13 including “Argument in Favor 14 of Proposition A”). 	
<p>15 5. As adopted by the voters in 1965, the</p> <p>16 San José City Charter states at Section</p> <p>17 1500:</p> <p>18 Except as hereinafter otherwise</p> <p>19 provided, the Council shall provide, by</p> <p>20 ordinance or ordinances, for the creation,</p> <p>21 establishment and maintenance of a</p> <p>22 retirement plan or plans for all officers</p> <p>23 and employees of the City. Such plan or</p> <p>24 plans need not be the same for all</p> <p>25 officers and employees. <i>Subject to other</i></p> <p>26 <i>provisions of this Article, the Council</i></p> <p>27 <i>may at any time, or from time to time,</i></p> <p>28 <i>amend or otherwise change any</i></p> <p><i>retirement plan or plans or adopt or</i></p> <p><i>establish a new or different plan or</i></p> <p><i>plans for all or any officers or</i></p> <p><i>employees.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the</p> <p>San José City Charter states at Section</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
ordinance.” <u>Supporting Evidence:</u> <ul style="list-style-type: none">• RJN, Exh. A	
9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.” <u>Supporting Evidence:</u> <ul style="list-style-type: none">• RJN, Exh. A	
10. The City Council has enacted some ordinances implementing Measure B. <u>Supporting Evidence:</u> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
11. In 2010, a Coalition of City unions made a proposal to the City which stated: 5.1.2. Additional Retirement Contribution. Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none">• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11.	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, “shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D, (Municipal Code, Chapter 3.36). 	

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1 Issue 4B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

2 There is no triable issue as to any material fact and Defendants are entitled to summary
 3 adjudication as a matter of law that San José Charter Section 1512-A is not a violation of
 4 promissory or equitable estoppel and does not violate and does not breach any duty by Defendants
 5 to Plaintiff. The City Charter may require employees to make contributions towards unfunded
 6 liabilities to pay for their retiree healthcare. The City made no legally binding promise to the
 7 contrary.

8 Moving Party's Undisputed Material Facts and Supporting Evidence	9 Opposing Party's Response and Supporting Evidence
10 23. San José Charter Section 1512-A states: 11 "Existing and new employees must 12 contribute a minimum of 50% of the cost 13 of retiree healthcare, including both 14 normal cost and unfunded liabilities." 15 <u>Supporting Evidence:</u> 16 • RJN, Exh. B.	
17 24. On or around April 12, 1960, the voters 18 ratified Proposition A, which amended 19 the San José Charter to include Section 20 78b. 21 <u>Supporting Evidence:</u> 22 • RJN, Exh. E (California 23 Assembly Concurrent 24 Resolution No. 17, adopted in 25 Assembly January 18, 1961, 26 approving amendment of 27 Charter of San José to include 28 Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
25. Former San José Charter Section 78b	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 stated:</p> <p>6 "Anything in Section 78a of the Charter 7 to the contrary notwithstanding, the 8 Council in its discretion may at any 9 time, or from time to time, by ordinance, 10 amend or otherwise change the 11 retirement plan established by said 12 Section 78a or any retirement plan or 13 plans established pursuant to said 14 Section 78a, or adopt or established a 15 new or different plan or plans for 16 eligible members of the police or fire 17 department of the City of San José " ... 18 "all as the Council may deem proper and 19 subject to such conditions, restrictions, 20 limitations, terms and other provisions 21 as the Council may deem proper;..."</p> <p>22 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 23 • RJN, Exh. E (California 24 Assembly Concurrent 25 Resolution No. 17, adopted in 26 Assembly January 18, 1961, 27 approving amendment of 28 Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3</p> <p>4 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 5 • RJN, Exh. F (Ballot Pamphlet 6 for Charter Amendment – 7 Proposition A, to be submitted 8 to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>9 27. As adopted by the voters in 1965, the 10 San José City Charter states at Section 1500:</p> <p>11 Except as hereinafter otherwise 12 provided, the Council shall provide, by 13 ordinance or ordinances, for the creation, 14 establishment and maintenance of a 15 retirement plan or plans for all officers 16 and employees of the City. Such plan or 17 plans need not be the same for all 18 officers and employees. <i>Subject to other 19 provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”</i></p> <p>20</p> <p>21 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 22 • RJN, Exh. G (1965 Charter) 23 (emphasis added). 	
<p>24 28. As adopted by the voters in 1965, the 25 San José City Charter states at Section 1503:</p> <p>26 Any and all retirement system or 27 systems, existing upon adoption of this 28 Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including</p>	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 but not limited to those retirement</p> <p>4 systems established by Parts 1, 2 and 4</p> <p>5 of Chapter 9 of Article II of the San José</p> <p>6 Municipal Code, are hereby confirmed,</p> <p>7 validated and declared legally effective</p> <p>8 and shall continue until otherwise</p> <p>9 provided by ordinance. ... However,</p> <p>10 subject to other provisions of this</p> <p>11 Article, the Council shall at all times</p> <p>12 have the power and right to repeal or</p> <p>13 amend any such retirement system or</p> <p>14 systems, and to adopt or establish a new</p> <p>15 or different plan or plans for all or any</p> <p>16 officers or employees, it being the intent</p> <p>17 that the foregoing sections of this Article</p> <p>18 shall prevail over the provisions of this</p> <p>19 Section.”</p> <p>20 <u>Supporting Evidence:</u></p> <p>21 • RJN, Exh. G (1965 Charter).</p>	
<p>22 29. Section 902 of the San Jose City Charter</p> <p>23 states: “the compensation of all City</p> <p>24 appointive officers and employees,</p> <p>25 except as otherwise provide in this</p> <p>26 Charter, shall be fixed by the Council.”</p> <p>27 <u>Supporting Evidence:</u></p> <p>28 • RJN, Exh. A.</p>	
<p>30. City Charter section 602 states: “The</p> <p>following acts of the Council shall be by</p> <p>ordinance: (a) Those acts required by</p> <p>specific provision of this Charter or by</p> <p>ordinance.”</p> <p><u>Supporting Evidence:</u></p> <p>• RJN, Exh. A</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	

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<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and</p> <p>4 Supporting Evidence</p>
<p>5 35. In 2007, City staff submitted a</p> <p>6 memorandum to the City Council,</p> <p>7 attaching actuarial reports, concerning</p> <p>8 the GASB standards for Other Post-</p> <p>9 Employment Benefits.</p> <p>10 Supporting Evidence:</p> <p>11 • Gurza Dec., ¶¶ 35-37, Exhs. 36,</p> <p>12 37, 38.</p>	
<p>13 36. Beginning in 2009, the City reached</p> <p>14 agreement with the following City</p> <p>15 unions for employees to make annual</p> <p>16 contributions, increasing incrementally</p> <p>17 each year, to fund up to 50% of the</p> <p>18 unfunded liabilities of retiree healthcare</p> <p>19 costs.</p> <p>20 --Association of Building, Mechanical</p> <p>21 and Electrical Inspectors (ABMEI),</p> <p>22 --Association of Engineers and</p> <p>23 Architects, IFPTE Local 21 (AEA Units</p> <p>24 41/42 and 43),</p> <p>25 --Association of Maintenance</p> <p>26 Supervisory Personnel (AMSP),</p> <p>27 --City Association of Management</p> <p>28 Personnel (CAMP),</p> <p>--International Brotherhood of Electrical</p> <p>Workers, Local No. 332 (IBEW);</p> <p>--Municipal Employees' Federation,</p> <p>AFSCME Local 101 (MEF)</p> <p>--Confidential Employees Association,</p> <p>AFSCME Local 101 (CEO);</p> <p>--International Association of</p> <p>Firefighters, Local 230;</p> <p>--San José Police Officers Association.</p> <p>Supporting Evidence:</p> <p>• Gurza Dec. ¶¶ 39, Exhs. 21, 39,</p> <p>40, 41.</p>	
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization</p> <p>agree to transition from the current</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 partial pre-funding of retiree medical 4 and dental healthcare benefits (referred 5 to as the "policy method") to prefunding 6 of the full Annual Required 7 Contribution (ARC) for the retiree 8 healthcare plan ("Plan"). The transition 9 shall be accomplished by phasing into 10 fully funding the ARC over a period of 11 five (5) years beginning June 28, 2009. 12 The Plan's initial unfunded retiree 13 healthcare liability shall be fully 14 amortized over a thirty year period so 15 that it shall be paid by June 30, 2039 16 (closed amortization).The City and 17 Plan members (active employees) shall 18 contribute to funding the ARC in the 19 ratio currently provided under Section 20 3.28.380(C)(1) and (3) of the San José 21 Municipal Code. Specifically, 22 contributions for retiree medical benefits 23 shall be made by the City and members 24 in the ratio of one-to-one. Contributions 25 for retiree dental benefits shall be made 26 by the City and members in the ratio of 27 eight-to-three. . . . The Municipal Code 28 and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
paying the full ARC. <u>Supporting Evidence:</u> • Gurza Dec., ¶43, Exh. 42, 43	

1 **Issue 4C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

2 There is no triable issue as to any material fact and Defendants are entitled to summary
3 adjudication as a matter of law that San José Charter Section 1511-A is not a violation of
4 promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The
5 Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no right to
6 continuation of or payments from the SRBR.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>9 42. Section 1511-A ("Supplemental 10 Payments to Retirees") of Measure B 11 states: 12 13 The Supplemental Retiree Benefit 14 Reserve ("SRBR" shall be discontinued, 15 and the assets returned to the appropriate 16 retirement trust fund. Any supplemental 17 payments to retirees in addition to the 18 benefits authorized herein shall not be 19 funded from plan assets.</p> <p>20 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none">21 • RJN, Exh. B.	
<p>22 43. On or around April 12, 1960, the voters 23 ratified Proposition A, which amended 24 the San José Charter to include Section 25 78b.</p> <p>26 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none">27 • RJN, Exh. E (California 28 Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 44. Former San José Charter Section 78b 6 stated: 7 8 "Anything in Section 78a of the Charter 9 to the contrary notwithstanding, the 10 Council in its discretion may at any 11 time, or from time to time, by ordinance, 12 amend or otherwise change the 13 retirement plan established by said 14 Section 78a or any retirement plan or 15 plans established pursuant to said 16 Section 78a, or adopt or established a 17 new or different plan or plans for 18 eligible members of the police or fire 19 department of the City of San José " ... 20 "all as the Council may deem proper and 21 subject to such conditions, restrictions, 22 limitations, terms and other provisions 23 as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 24 • RJN, Exh. E (California 25 Assembly Concurrent 26 Resolution No. 17, adopted in 27 Assembly January 18, 1961, 28 approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>29 45. The ballot argument in favor of 30 Proposition A stated: 31 32 "THIS AMENDMENT GIVES 33 DISCRETIONARY POWERS TO THE 34 CITY COUNCIL! It is good 35 government to allow the City Council to 36 be responsible for investigating 37 problems and deciding how to solve 38 them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 staff to assist them including a very 4 capable City Attorney.”</p> <p>5 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 6 • RJN, Exh. F (Ballot Pamphlet 7 for Charter Amendment – 8 Proposition A, to be submitted 9 to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>10 46. As adopted by the voters in 1965, the 11 San José City Charter states at Section 1500:</p> <p>12 Except as hereinafter otherwise 13 provided, the Council shall provide, by 14 ordinance or ordinances, for the creation, 15 establishment and maintenance of a 16 retirement plan or plans for all officers 17 and employees of the City. Such plan or 18 plans need not be the same for all 19 officers and employees. <i>Subject to other 20 provisions of this Article, the Council 21 may at any time, or from time to time, 22 amend or otherwise change any 23 retirement plan or plans or adopt or 24 establish a new or different plan or 25 plans for all or any officers or 26 employees.”</i></p> <p>27 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 28 • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>25 47. As adopted by the voters in 1965, the 26 San José City Charter states at Section 1503:</p> <p>27 Any and all retirement system or 28 systems, existing upon adoption of this Charter, for the retirement of officers or</p>	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and</p> <p>4 Supporting Evidence</p>
<p>5 employees of the City, adopted under</p> <p>6 any law or color of any law, including</p> <p>7 but not limited to those retirement</p> <p>8 systems established by Parts 1, 2 and 4</p> <p>9 of Chapter 9 of Article II of the San José</p> <p>10 Municipal Code, are hereby confirmed,</p> <p>11 validated and declared legally effective</p> <p>12 and shall continue until otherwise</p> <p>13 provided by ordinance. ... However,</p> <p>14 subject to other provisions of this</p> <p>15 Article, the Council shall at all times</p> <p>16 have the power and right to repeal or</p> <p>17 amend any such retirement system or</p> <p>18 systems, and to adopt or establish a new</p> <p>19 or different plan or plans for all or any</p> <p>20 officers or employees, it being the intent</p> <p>21 that the foregoing sections of this Article</p> <p>22 shall prevail over the provisions of this</p> <p>23 Section.”</p> <p>24 <u>Supporting Evidence:</u></p> <p>25 <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).</p>	
<p>26 48. Section 902 of the San Jose City Charter</p> <p>27 states: “the compensation of all City</p> <p>28 appointive officers and employees,</p> <p>except as otherwise provide in this</p> <p>Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <p><ul style="list-style-type: none">• RJN, Exh. A.</p>	
<p>49. City Charter section 602 states: “The</p> <p>following acts of the Council shall be by</p> <p>ordinance: (a) Those acts required by</p> <p>specific provision of this Charter or by</p> <p>ordinance.”</p> <p><u>Supporting Evidence:</u></p> <p><ul style="list-style-type: none">• RJN, Exh. A</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)] 	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

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

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

3 (City's first cause of action)

4 Issue 5A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There is no triable issue as to any material fact and Cross-complainant City is entitled to
 6 summary adjudication as a matter of law that San José Charter Section 1506-A does not violate
 7 Article I, Section 10 of the United States Constitution and does not breach any duty by Defendant
 8 to Plaintiffs. The City Charter may require employees to pay additional pension contributions to
 9 defray pension plan unfunded liabilities. Plaintiffs have no vested right to the City paying all
 10 pension plan unfunded liabilities.

11 Moving Party's Undisputed Material 12 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
13 I. Section 1506-A ("Current Employees") of Measure B states: 14 (a) "Current Employees" means employees 15 of the City of San José as of the 16 effective date of this Act and who are 17 not covered under the Tier 2 Plan (Section 8). 18 (b) Unless they voluntarily opt in to the 19 Voluntary Election Program ("VEP," 20 described herein), Current Employees 21 shall have their compensation adjusted 22 through additional retirement 23 contributions in increments of 4% of 24 pensionable pay per year, up to a 25 maximum of 16%, but not more than 26 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits. 27 (c) The starting date for an employee's 28 compensation adjustment under this Section shall be June 23, 2013,	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 approving amendment of 2 Charter of San José to include 3 Section 78b ("Discretionary 4 Powers of Council Respecting 5 Retirement") of Article X).</p>	
<p>6</p> <p>7 3. Former San José Charter Section 78b 8 stated: 9 "Anything in Section 78a of the Charter 10 to the contrary notwithstanding, the 11 Council in its discretion may at any 12 time, or from time to time, by ordinance, 13 amend or otherwise change the 14 retirement plan established by said 15 Section 78a or any retirement plan or 16 plans established pursuant to said 17 Section 78a, or adopt or established a 18 new or different plan or plans for 19 eligible members of the police or fire 20 department of the City of San José " ... 21 "all as the Council may deem proper and 22 subject to such conditions, restrictions, 23 limitations, terms and other provisions 24 as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>25 4. The ballot argument in favor of 26 Proposition A stated: 27 "THIS AMENDMENT GIVES 28 DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Supervisory Personnel (AMSP) (plaintiff Dapp is president)</p> <ul style="list-style-type: none"> • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)</p> <p>--Association of Legal Professionals (ALP).</p> <p>--Executive Management and Professional Employees (Unit 99), and other unrepresented employees..</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 pensionable compensation, and the 2 amounts so contributed will be applied 3 to reduce the contributions that the City 4 would otherwise be required to make for 5 the pension unfunded liability, which is 6 defined as all costs in both the regular 7 retirement fund and the cost-of-living 8 fund, except current service normal costs 9 in those funds. This additional 10 employee retirement contribution would 11 be in addition to the employee retirement 12 contribution rates that have been 13 approved by the Federated City 14 Employees' Retirement System Board. 15 The intent of this additional retirement 16 contribution by employees is to reduce 17 the City's required pension retirement 18 contribution rate by a commensurate 19 7.30% of pensionable compensation, as 20 illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11. 	
<p>16. The 2010-2011 MOA between the City 18 and AEA, also agreed to employees 19 making an additional one time pension 20 contribution "in the amount of 3.53% of 21 pensionable compensation, and the 22 amounts so contributed will be applied 23 to reduce the contributions that the City 24 would otherwise be required to make 25 during that time period for the pension 26 unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	
<p>17. The 2010-2011 MOA between the City 27 and AEA stated in connection with 28 employees paying additional pension contributions: "The parties understand</p>	

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that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (*Id.* at Section 10.1.4))

Supporting Evidence:

- Gurza Dec., ¶27, Exh, 11

18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
- San José Police Officers Association (plaintiff in the SJPOA case).

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D, (Municipal Code, Chapter 3.36). 	

Issue 5B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate Article I, Section 10 of the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The City Charter may require employees to pay towards the unfunded liabilities required to fund their retiree healthcare benefits. Employees have no vested right to the City paying for all unfunded liabilities for retiree healthcare benefits.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>23. San José Charter Section 1512-A states: "Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. B. 	
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>25. Former San José Charter Section 78b</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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stated:
"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ...
"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

26. The ballot argument in favor of Proposition A stated:
"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*”

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."

Supporting Evidence:

- RJN, Exh. A.

30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."

Supporting Evidence:

- RJN, Exh. A

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C.	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D.	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <ul style="list-style-type: none"> --Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association. <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 	
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	

1 Issue 5C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

2 There is no triable issue as to any material fact and Cross-complainant City is entitled to
3 summary adjudication as a matter of law that San José Charter Section 1511-A does not violate
4 Article I, Section 10 of the United States Constitution and does not breach any duty by
5 Defendants to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discretionary benefit.
6 Plaintiffs have no vested right to payments from or continuation of the SRBR.

7 Moving Party's Undisputed Material 8 Facts and Supporting Evidence	9 Opposing Party's Response and 10 Supporting Evidence
11 42. Section 1511-A ("Supplemental 12 Payments to Retirees") of Measure B 13 states: 14 The Supplemental Retiree Benefit 15 Reserve ("SRBR" shall be discontinued, 16 and the assets returned to the appropriate 17 retirement trust fund. Any supplemental 18 payments to retirees in addition to the 19 benefits authorized herein shall not be 20 funded from plan assets. 21 22 <u>Supporting Evidence:</u> 23 • RJN, Exh. B.	
24 43. On or around April 12, 1960, the voters 25 ratified Proposition A, which amended 26 the San José Charter to include Section 27 78b. 28 29 <u>Supporting Evidence:</u> 30 • RJN, Exh. E (California 31 Assembly Concurrent 32 Resolution No. 17, adopted in 33 Assembly January 18, 1961, 34 approving amendment of 35 Charter of San José to include 36 Section 78b ("Discretionary 37 Powers of Council Respecting 38 Retirement") of Article X).	

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Moving Party's Undisputed Material Facts and Supporting Evidence

Opposing Party's Response and Supporting Evidence

44. Former San José Charter Section 78b stated:
"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

45. The ballot argument in favor of Proposition A stated:
"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 staff to assist them including a very</p> <p>4 capable City Attorney.”</p> <p>5 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 6 • RJN, Exh. F (Ballot Pamphlet 7 for Charter Amendment – 8 Proposition A, to be submitted 9 to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>10 46. As adopted by the voters in 1965, the</p> <p>11 San José City Charter states at Section</p> <p>12 1500:</p> <p>13 Except as hereinafter otherwise</p> <p>14 provided, the Council shall provide, by</p> <p>15 ordinance or ordinances, for the creation,</p> <p>16 establishment and maintenance of a</p> <p>17 retirement plan or plans for all officers</p> <p>18 and employees of the City. Such plan or</p> <p>19 plans need not be the same for all</p> <p>20 officers and employees. <i>Subject to other</i></p> <p>21 <i>provisions of this Article, the Council</i></p> <p>22 <i>may at any time, or from time to time,</i></p> <p>23 <i>amend or otherwise change any</i></p> <p>24 <i>retirement plan or plans or adopt or</i></p> <p>25 <i>establish a new or different plan or</i></p> <p>26 <i>plans for all or any officers or</i></p> <p>27 <i>employees.”</i></p> <p>28 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the</p> <p>San José City Charter states at Section</p> <p>1503:</p> <p>Any and all retirement system or</p> <p>systems, existing upon adoption of this</p> <p>Charter, for the retirement of officers or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>51. The City Council has enacted some ordinances implementing Measure B:</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)] 	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

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1 6. Unconstitutional Taking Of Private Property, United States Constitution, 5th
2 And 14th Amendments.

3 (City's second cause of action)

4 Issue 6A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There is no triable issue as to any material fact and Cross-complainant City is entitled to
6 summary adjudication as a matter of law that San José Charter Section 1506-A does not violate
7 the 5th or 14th amendments to the United States Constitution and does not breach any duty by
8 Defendant to Plaintiffs. The City Charter may require employees to pay additional pension
9 contributions to defray pension plan unfunded liabilities. Plaintiffs have no property right to the
10 City paying all pension plan unfunded liabilities.

11 Moving Party's Undisputed Material 12 Facts and Supporting Evidence	11 Opposing Party's Response and 12 Supporting Evidence
13 1. Section 1506-A ("Current Employees") 14 of Measure B states: 15 (a) "Current Employees" means employees 16 of the City of San José as of the 17 effective date of this Act and who are 18 not covered under the Tier 2 Plan 19 (Section 8). 20 (b) Unless they voluntarily opt in to the 21 Voluntary Election Program ("VEP," 22 described herein), Current Employees 23 shall have their compensation adjusted 24 through additional retirement 25 contributions in increments of 4% of 26 pensionable pay per year, up to a 27 maximum of 16%, but not more than 28 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits. (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013,	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 regardless of whether the VEP has been 2 implemented. If the VEP has not been 3 implemented or any reason, the 4 compensation adjustments shall apply to 5 all Current Employees.</p> <p>6 (d) The compensation adjustment through 7 additional employee contributions for 8 Current Employees shall be calculated 9 separately for employees in the Police 10 and Fire Department Retirement Plan 11 and employees in the Federated City 12 Employees' Retirement System.</p> <p>13 (e) The compensation adjustment shall be 14 treated in the same manner as any other 15 employee contributions. Accordingly, 16 the voters intend these additional 17 payments to be made on a pre-tax basis 18 through payroll deductions pursuant to 19 applicable Internal Revenue Code 20 Sections. The additional contributions 21 shall be subject to withdrawal, return 22 and redeposit in the same manner as any 23 other employee contributions.</p> <p>24 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 25 • Defendant's Request for 26 Judicial Notice ("RJN"), Exh. 27 B, pp. 4-5 ("Measure B"). 	
<p>28 2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ...</p> <p>"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 compensation effective June 27, 2 2010. The amounts so 3 contributed will be applied to 4 subsidize and thus reduce the 5 prior service contributions that 6 the City would otherwise be 7 required to make. The parties 8 specifically understand that this 9 agreement neither alters nor 10 conflicts with the City Charter 11 Section 1505(c) because under 12 this agreement, employees will 13 be subsidizing the City's 14 Section 1505(c) required 15 contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 16 • Gurza Dec., ¶¶ 16-19, Exh. 2. 	
<p>14 12. Other union proposals, including 15 proposals by the SJPOA and IAFF, also 16 proposed that employees would pay 17 additional pension contributions to 18 defray pension plan unfunded pension 19 liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 20 • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	
<p>20 13. For the period 2010-2011, the following 21 six unions agreed that their members 22 would pay additional ongoing and one 23 time employee pension contributions, 24 and accept wage reductions, totaling 25 approximately 10% during fiscal year 26 2010-2011 to be used to defray pension 27 plan unfunded liabilities (except the 28 POA agreed only to a 5.25%. one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Supervisory Personnel (AMSP) (plaintiff Dapp is president)</p> <ul style="list-style-type: none">• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 pensionable compensation, and the 2 amounts so contributed will be applied, 3 to reduce the contributions that the City 4 would otherwise be required to make for 5 the pension unfunded liability, which is 6 defined as all costs in both the regular 7 retirement fund and the cost-of-living 8 fund, except current service normal costs 9 in those funds. This additional 10 employee retirement contribution would 11 be in addition to the employee retirement 12 contribution rates that have been 13 approved by the Federated City 14 Employees' Retirement System Board. 15 The intent of this additional retirement 16 contribution by employees is to reduce 17 the City's required pension retirement 18 contribution rate by a commensurate 19 7.30% of pensionable compensation, as 20 illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 21 • Gurza Dec., ¶27, Exh, 11. 	
<p>16. 22 The 2010-2011 MOA between the City 23 and AEA, also agreed to employees 24 making an additional one time pension 25 contribution "in the amount of 3.53% of 26 pensionable compensation, and the 27 amounts so contributed will be applied 28 to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶28, Exh, 11. 	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p>	

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<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and</p> <p>4 Supporting Evidence</p>
<p>5 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 6 • Gurza Dec., ¶ 26, Exhs. 20, 28 	
<p>7 21. For Federated employees, the Municipal</p> <p>8 Code provides: "Notwithstanding any</p> <p>9 other provisions of this Part 6 or of</p> <p>10 Chapter 3.44, members of this system</p> <p>11 shall make such additional retirement</p> <p>12 contributions as may be required by</p> <p>13 resolution adopted by the city council or</p> <p>14 by executed agreement with a</p> <p>15 recognized bargaining unit." (Municipal</p> <p>16 Code 3.28.755)</p> <p>17 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 18 • RJN, Exh. C, (Municipal Code, 19 Chapter 3.28). 	
<p>20 22. Under the Municipal Code for Police</p> <p>21 and Fire Plan employees.</p> <ul style="list-style-type: none"> 22 • Police and Fire Plan employees 23 not subject to interest arbitration, "shall 24 make such additional retirement 25 contributions as may be required by 26 resolution adopted by the city council or 27 by executed agreement with a 28 recognized bargaining unit." (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D, (Municipal Code, Chapter 3.36). 	

Issue 6B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The City Charter may require employees to pay towards the unfunded liabilities required to pay for their retiree healthcare benefits., Employees have no property right to the City paying for all unfunded liabilities.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>23. San José Charter Section 1512-A states: "Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities." <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. B. 	
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b. <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>25. Former San José Charter Section 78b</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 stated:</p> <p>2</p> <p>3 "Anything in Section 78a of the Charter</p> <p>4 to the contrary notwithstanding, the</p> <p>5 Council in its discretion may at any</p> <p>6 time, or from time to time, by ordinance,</p> <p>7 amend or otherwise change the</p> <p>8 retirement plan established by said</p> <p>9 Section 78a or any retirement plan or</p> <p>10 plans established pursuant to said</p> <p>11 Section 78a, or adopt or established a</p> <p>12 new or different plan or plans for</p> <p>13 eligible members of the police or fire</p> <p>14 department of the City of San José " ...</p> <p>15 "all as the Council may deem proper and</p> <p>16 subject to such conditions, restrictions,</p> <p>17 limitations, terms and other provisions</p> <p>18 as the Council may deem proper;..."</p> <p>19</p> <p>20</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>21 26. The ballot argument in favor of</p> <p>22 Proposition A stated:</p> <p>23 "THIS AMENDMENT GIVES</p> <p>24 DISCRETIONARY POWERS TO THE</p> <p>25 CITY COUNCIL! It is good</p> <p>26 government to allow the City Council to</p> <p>27 be responsible for investigating</p> <p>28 problems and deciding how to solve</p> <p>them. [¶] THIS AMENDMENT IS</p> <p>SIMPLE! Leave all the technical details</p> <p>up to your City Council. They have a</p> <p>staff to assist them including a very</p> <p>capable City Attorney."</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3</p> <p>4 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 5 • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>9 27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>10</p> <p>11 Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 22 • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>23</p> <p>24 28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>25</p> <p>26 Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including</p> <p>27</p> <p>28</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	
<p>30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <ul style="list-style-type: none"> --Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association. <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶ 39, Exhs. 21, 39, 40, 41. 	
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and Supporting Evidence</p>
<p>3 39. The provisions from the ABA agreement 4 on payments towards the full ARC is the 5 same or substantially similar to the text 6 in City agreements with the following 7 unions: 8 9 Association of Building, Mechanical 10 and Electrical Inspectors (ABMEI), 11 Association of Engineers and Architects, 12 IFPTE Local 21 (AEA Units 41/42 and 13 43), Association of Maintenance 14 Supervisory Personnel (AMSP), City 15 Association of Management Personnel 16 (CAMP), International Brotherhood of 17 Electrical Workers, Local No. 332 18 (IBEW); Municipal Employees' 19 Federation, AFSCME Local 101 (MEF); 20 Confidential Employees Association, 21 AFSCME Local 101 (CEO). 22 23 <u>Supporting Evidence:</u> 24 25 • Gurza Dec., ¶ 43, Exhs. 39, 40, 26 41.</p>	
<p>27 40. The SJPOA and Firefighters agreements 28 on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage. <u>Supporting Evidence:</u> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].</p>	
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
paying the full ARC. <u>Supporting Evidence:</u> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	

1 Issue 6C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve) Causes
 2 of Action

3 There is no triable issue as to any material fact and Cross-complainant City is are entitled
 4 to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate
 5 the 5th or 14th amendments to the United States Constitution and does not breach any duty by
 6 Defendant to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discriminatory benefit.
 7 Plaintiffs have no property right to payments from or continuation of the SRBR.

8 Moving Party's Undisputed Material 9 Facts and Supporting Evidence	8 Opposing Party's Response and 9 Supporting Evidence
10 42. Section 1511-A ("Supplemental 11 Payments to Retirees") of Measure B states: 12 The Supplemental Retiree Benefit 13 Reserve ("SRBR" shall be discontinued, 14 and the assets returned to the appropriate 15 retirement trust fund. Any supplemental 16 payments to retirees in addition to the 17 benefits authorized herein shall not be 18 funded from plan assets. 19 <u>Supporting Evidence:</u> 20 • RJN, Exh. B.	
20 43. On or around April 12, 1960, the voters 21 ratified Proposition A, which amended 22 the San José Charter to include Section 23 78b. 24 <u>Supporting Evidence:</u> 25 • RJN, Exh. E (California 26 Assembly Concurrent 27 Resolution No. 17, adopted in 28 Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Retirement") of Article X).	
<p>44. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 SIMPLE! Leave all the technical details 2 up to your City Council. They have a 3 staff to assist them including a very 4 capable City Attorney.”</p> <p>5</p> <p>6 <u>Supporting Evidence:</u></p> <p>7 • RJN, Exh. F (Ballot Pamphlet 8 for Charter Amendment – 9 Proposition A, to be submitted 10 to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).</p>	
<p>11 46. As adopted by the voters in 1965, the 12 San José City Charter states at Section 1500:</p> <p>13 Except as hereinafter otherwise 14 provided, the Council shall provide, by 15 ordinance or ordinances, for the creation, 16 establishment and maintenance of a 17 retirement plan or plans for all officers 18 and employees of the City. Such plan or 19 plans need not be the same for all 20 officers and employees. <i>Subject to other 21 provisions of this Article, the Council 22 may at any time, or from time to time, 23 amend or otherwise change any 24 retirement plan or plans or adopt or 25 establish a new or different plan or 26 plans for all or any officers or 27 employees.”</i></p> <p>28 <u>Supporting Evidence:</u></p> <p>• RJN, Exh. G (1965 Charter) (emphasis added).</p>	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none">• RJN, Exh. A	
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C.	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR; and in 2001, when the City Council authorized</p>	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 the Police and Fire SRBR, the actuaries 6 reported that the City's two pension 7 retirement funds were fully funded.</p> <p>8 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 9 • RJN, Exh. O [November 22, 10 1985 Letter from Coates, 11 Herfurth & England, to Edward 12 F. Overton, Retirement and 13 Benefits Administrator, re: 14 SB650 Study]; Gurza Dec., 15 Exh 59 [Actuarial Valuation 16 Report, City of San José Police 17 and Fire Department Retirement 18 Plan, as of June 30, 2012, at p. 19 5 (showing plan overfunded at 20 114.8% as of June 30, 2001)] 	
<p>21 58. In 2010, 2011, and 2012, the actuaries 22 reported that the City's two pension 23 funds had unfunded pension liabilities.</p> <p>24 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 25 • Gurza Dec., ¶ 49, Exhs. 58, 59 26 [2012 Cheiron reports, Federated 27 Employees Retirement System at 28 p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>29 59. In 2011, and 2012, the actuaries reported 30 that the City's two pension funds had 31 "excess earnings" for the year – as 32 defined in the Municipal Code – to fund 33 the SRBR.</p> <p>34 <u>Supporting Evidence:</u></p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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- Gurza Dec., Exhs. 44, 45, 46, 47, 48.

1 7. Unconstitutional Violation Of Due Process, United States Constitution, 5th And
 2 14th Amendments.

3 (City third cause of action)

4 Issue 7A: San José Charter §1506-A (Employee Additional Pension Contributions)

5 There is no triable issue as to any material fact and Cross-complainant City is entitled to
 6 summary adjudication as a matter of law that San José Charter Section 1506-A does not violate
 7 the 5th or 14th amendments to the United States Constitution and does not breach any duty by
 8 Defendant to Plaintiffs. The City Charter may require employees to pay additional pension
 9 contributions to defray pension plan unfunded liabilities. Plaintiffs have no right to the City
 10 paying all pension plan unfunded liabilities.

11 Moving Party's Undisputed Material 12 Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
13 1. Section 1506-A ("Current Employees") of Measure B states: 14 (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8). 17 (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits. 27 (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013,	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 regardless of whether the VEP has been 6 implemented. If the VEP has not been 7 implemented or any reason, the 8 compensation adjustments shall apply to 9 all Current Employees.</p> <p>10 (d) The compensation adjustment through 11 additional employee contributions for 12 Current Employees shall be calculated 13 separately for employees in the Police 14 and Fire Department Retirement Plan 15 and employees in the Federated City 16 Employees' Retirement System.</p> <p>17 (e) The compensation adjustment shall be 18 treated in the same manner as any other 19 employee contributions. Accordingly, 20 the voters intend these additional 21 payments to be made on a pre-tax basis 22 through payroll deductions pursuant to 23 applicable Internal Revenue Code 24 Sections. The additional contributions 25 shall be subject to withdrawal, return 26 and redeposit in the same manner as any 27 other employee contributions.</p> <p>28 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B"). 	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ...</p> <p>"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>6. As adopted by the voters in 1965, the</p>	

Moying Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 16-19, Exh. 2.	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶17, 18, Exhs. 3-6.	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 Personnel (CAMP)</p> <ul style="list-style-type: none"> 6 • International Brotherhood of 7 Electrical Workers, Local 332 8 (IBEW) 9 • International Union of Operating 10 Engineers, Local No. 3 (representing 11 plaintiffs in the Harris case) 12 • San José Police Officers Association 13 (plaintiff in the SJPOA case). <p>14 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 15 • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 16 15, 17, 23, 25, 29. 	
<p>17 14. For the period 2010-2011, the following</p> <p>18 unions either agreed to a wage reduction</p> <p>19 or the City imposed a wage reduction:</p> <p>20 --Association of Building, Mechanical</p> <p>21 and Electric Inspectors (ABMEI)</p> <p>22 --Association of Legal Professionals</p> <p>23 (ALP).</p> <p>24 --Executive Management and</p> <p>25 Professional Employees (Unit 99), and</p> <p>26 other unrepresented employees.</p> <p>27 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 28 • Gurza Dec., ¶25, Exhs. 9, 13, 32, 33. 	
<p>15. The 2010-2011 Agreement MOA</p> <p>between the City and AEA, states at</p> <p>Section 10.1.1:</p> <p><u>On-Going Additional Retirement</u></p> <p><u>Contributions.</u> Effective June 27, 2010,</p> <p>all employees who are members of the</p> <p>Federated City Employees' Retirement</p> <p>System will make additional retirement</p> <p>contributions in the amount of 7.30% of</p> <p>pensionable compensation, and the</p> <p>amounts so contributed will be applied</p> <p>to reduce the contributions that the City</p>	

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<p>would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11.	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>ordinance amending the San Jose Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶27, Exh, 11 	
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president); • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29. 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). • International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)• Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D, (Municipal Code, Chapter 3.36).	

1 Issue 7B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

2 There is no triable issue as to any material fact and Cross-complainant City is entitled to
3 summary adjudication as a matter of law that San José Charter Section 1512-A does not violate
4 the 5th or 14th amendments to the United States Constitution and does not breach any duty by
5 Defendant to Plaintiffs. The City Charter may require employees to pay towards the unfunded
6 liabilities required to fund their retiree healthcare benefits. Employees have no right to the City
7 paying for unfunded liabilities.

8 Moving Party's Undisputed Material 9 Facts and Supporting Evidence	8 Opposing Party's Response and 9 Supporting Evidence
10 23. San José Charter Section 1512-A states: 11 "Existing and new employees must 12 contribute a minimum of 50% of the cost 13 of retiree healthcare, including both 14 normal cost and unfunded liabilities." 14 <u>Supporting Evidence:</u> 15 <ul style="list-style-type: none">• RJN, Exh. B.	
17 24. On or around April 12, 1960, the voters 18 ratified Proposition A, which amended 19 the San José Charter to include Section 20 78b. 20 <u>Supporting Evidence:</u> 21 <ul style="list-style-type: none">• RJN, Exh. E (California 22 Assembly Concurrent 23 Resolution No. 17, adopted in 24 Assembly January 18, 1961, 25 approving amendment of 26 Charter of San José to include 27 Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
28 25. Former San José Charter Section 78b	

1 2 3 4 5 6 7 8 9 10 11 12 13 14	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
21 22 23 24 25 26 27 28	<p>stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ...</p> <p>"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). <p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>3</p> <p>4 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 5 • RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>9 27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>10</p> <p>11 Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 <u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> 22 • RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>24 28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>25</p> <p>26 Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including</p> <p>27</p> <p>28</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 but not limited to those retirement 2 systems established by Parts 1, 2 and 4 3 of Chapter 9 of Article II of the San José 4 Municipal Code, are hereby confirmed, 5 validated and declared legally effective 6 and shall continue until otherwise 7 provided by ordinance. ... However, 8 subject to other provisions of this 9 Article, the Council shall at all times 10 have the power and right to repeal or 11 amend any such retirement system or 12 systems, and to adopt or establish a new 13 or different plan or plans for all or any 14 officers or employees, it being the intent 15 that the foregoing sections of this Article 16 shall prevail over the provisions of this 17 Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	
<p>16 29. Section 902 of the San Jose City Charter 17 states: “the compensation of all City 18 appointive officers and employees, 19 except as otherwise provide in this 20 Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>22 30. City Charter section 602 states: “The 23 following acts of the Council shall be by 24 ordinance: (a) Those acts required by 25 specific provision of this Charter or by 26 ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D. 	

<p>1 Moving Party's Undisputed Material 2 Facts and Supporting Evidence</p>	<p>3 Opposing Party's Response and 4 Supporting Evidence</p>
<p>5 35. In 2007, City staff submitted a 6 memorandum to the City Council, 7 attaching actuarial reports, concerning 8 the GASB standards for Other Post- 9 Employment Benefits.</p> <p>10 Supporting Evidence:</p> <ul style="list-style-type: none"> 11 • Gurza Dec., ¶¶ 35-37, Exhs. 36, 12 37, 38. 	
<p>13 36. Beginning in 2009, the City reached 14 agreement with the following City 15 unions for employees to make annual 16 contributions, increasing incrementally 17 each year, to fund up to 50% of the 18 unfunded liabilities of retiree healthcare 19 costs.</p> <ul style="list-style-type: none"> 20 --Association of Building, Mechanical 21 and Electrical Inspectors (ABMEI), 22 --Association of Engineers and 23 Architects, IFPTE Local 21 (AEA Units 24 41/42 and 43), 25 --Association of Maintenance 26 Supervisory Personnel (AMSP), 27 --City Association of Management 28 Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association. <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gurza Dec. ¶¶ 39, Exhs. 21, 39, 40, 41. 	
<p>37. The City's agreement with AEA stated: The City and Employee Organization agree to transition from the current</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
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partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.

Supporting Evidence:

- Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.

38. The AEA agreement further stated:

The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."

Supporting Evidence:

- Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
paying the full ARC. <u>Supporting Evidence:</u> • Gurza Dec., ¶43, Exh. 42, 43	

Issue 7C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication 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. The Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no right to payments from or continuation of the SRBR.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. B. 	
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	

<p>1 Moving Party's Undisputed Material</p> <p>2 Facts and Supporting Evidence</p>	<p>Opposing Party's Response and</p> <p>Supporting Evidence</p>
<p>3 44. Former San José Charter Section 78b</p> <p>4 stated:</p> <p>5 "Anything in Section 78a of the Charter</p> <p>6 to the contrary notwithstanding, the</p> <p>7 Council in its discretion may at any</p> <p>8 time, or from time to time, by ordinance,</p> <p>9 amend or otherwise change the</p> <p>10 retirement plan established by said</p> <p>11 Section 78a or any retirement plan or</p> <p>12 plans established pursuant to said</p> <p>13 Section 78a, or adopt or established a</p> <p>14 new or different plan or plans for</p> <p>15 eligible members of the police or fire</p> <p>16 department of the City of San José " ...</p> <p>17 "all as the Council may deem proper and</p> <p>18 subject to such conditions, restrictions,</p> <p>19 limitations, terms and other provisions</p> <p>20 as the Council may deem proper;..."</p> <p>21</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
<p>22 45. The ballot argument in favor of</p> <p>23 Proposition A stated:</p> <p>24 "THIS AMENDMENT GIVES</p> <p>25 DISCRETIONARY POWERS TO THE</p> <p>26 CITY COUNCIL! It is good</p> <p>27 government to allow the City Council to</p> <p>28 be responsible for investigating</p> <p>problems and deciding how to solve</p> <p>them. [¶] THIS AMENDMENT IS</p> <p>SIMPLE! Leave all the technical details</p> <p>up to your City Council. They have a</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”). 	
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>1 employees of the City, adopted under 2 any law or color of any law, including 3 but not limited to those retirement 4 systems established by Parts 1, 2 and 4 5 of Chapter 9 of Article II of the San José 6 Municipal Code, are hereby confirmed, 7 validated and declared legally effective 8 and shall continue until otherwise 9 provided by ordinance. ... However, 10 subject to other provisions of this 11 Article, the Council shall at all times 12 have the power and right to repeal or 13 amend any such retirement system or 14 systems, and to adopt or establish a new 15 or different plan or plans for all or any 16 officers or employees, it being the intent 17 that the foregoing sections of this Article 18 shall prevail over the provisions of this 19 Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. G (1965 Charter). 	
<p>17 48. Section 902 of the San Jose City Charter 18 states: “the compensation of all City 19 appointive officers and employees, 20 except as otherwise provide in this 21 Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A. 	
<p>23 49. City Charter section 602 states: “The 24 following acts of the Council shall be by 25 ordinance: (a) Those acts required by 26 specific provision of this Charter or by 27 ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. A 	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated</p>	

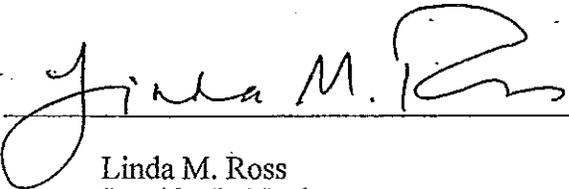
Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. N. 	
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension</p>	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)] 	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

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DATED: February 7, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

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City of San José

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