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7 Mary Kathleen McCarthy, Than Ho, Randy Sekany,
Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,
8 John Mukhar, Dale Dapp, James Atkins, William Buffington
and Kirk Pennington
9

10
11 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 SAN JOSE POLICE OFFICERS' ASSOCIATION,

14 Plaintiff,

15 vs.

16 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATION FOR THE POLICE AND FIRE
17 DEPARTMENT RETIREMENT PLAN OF CITY OF
SAN JOSE

18 Defendants.
19

20 and Consolidated Actions

21 CITY OF SAN JOSE

22 Cross-Complainant,

23 vs.

24 SAN JOSE POLICE OFFICERS' ASSOCIATION, *et*
al.

25 Cross-Defendants.
26
27
28

ENDORSED
FILED

2013 FEB 26 A 9:02

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By: _____
Group Clerk

A. Ramirez

Case No. 1-12-CV-225926
(and Consolidated Actions 1-12-CV-
225928, 1-12-CV-226570, 1-12-CV-
226574, and 1-12-CV-227864)

**NOTICE OF MOTION OF PLAINTIFFS'
MOTION TO STRIKE AND/OR DISMISS
DEFENDANT CITY OF SAN JOSE'
MOTION FOR SUMMARY
ADJUDICATION**

Date: *March 15, 2013*
Time: 9:00 a.m.
Dept: 8
Judge: Hon. Peter H. Kirwan

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on March 15, 2013 at or 9:00 a.m. or as soon
3 thereafter as the matter can be heard in Department 8 of the above entitled court plaintiffs
4 Robert Sapien, *et al.* (Case No. 112CV225928), Teresa Harris, *et al.* (Case No.
5 112CV226570), and John Mukhar, *et al.* (Case No. 112CV226574) will and hereby do
6 move the court for its order striking and/or dismissing the motion for summary adjudication
7 filed by defendant and cross-complainants City of San Jose and scheduled for hearing on
8 April 23, 2013 in the above entitled court.

9 The motion will be made upon the grounds that the motion and relief sought does
10 not comply with the requirements of Code of Civil Procedure § 437c(f) that it seeks
11 adjudication of the issues which will not eliminate any cause of action any affirmative
12 defense, a claim for damages or an issue of duty in any of plaintiffs' complaints, and further
13 that defendant and cross-complainant's motion does not comply with the requirements of
14 Code of Civil Procedure §437c(s).

15 The motion will be based upon this notice of motion, the declaration of John
16 McBride, the memorandum of points and authorities filed herewith and on the papers and
17 files filed herein and more specifically the notice of motion for summary adjudication filed
18 by defendants and cross-complainants City of San Jose.

19 Dated: February 25, 2013

20 WYLIE, McBRIDE,
21 PLATTEN & RENNER

22 
23 JOHN McBRIDE

24 Attorneys for Plaintiffs and Cross-Defendants
25 Robert Sapien, Mary Kathleen McCarthy, Than
26 Ho, Randy Sekany, Ken Heredia, Teresa Harris,
27 Jon Reger, Moses Serrano, John Mukhar,
28 Dale Dapp, James Atkins, William Buffington and
Kirk Pennington

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