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10 IN THE SUPERIOR COURT FOR THE  
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE AND BOARD OF  
ADMINISTRATORS FOR POLICE AND  
16 FIRE DEPARTMENT RETIREMENT PLAN  
OF CITY OF SAN JOSE,

17 Defendants.  
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Case No. 112CV225926

112CV226570  
112CV226574  
112CV225928  
112CV227864

DEFENDANT CITY OF SAN JOSE'S  
MOTION TO CONSOLIDATE AND STAY  
STATE-COURT ACTIONS

Hearing:

Date: August 23, 2012  
Time: 9:00 am  
Dept.: 2  
Judge: Hon. Patricia Lucas

Complaint Filed: June 6, 2012

Trial Date: None Set

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1 The City now makes two motions. First, the City moves to consolidate all state-court  
2 actions pursuant to section 1048(a) of the Code of Civil Procedure. These cases all overlap, and  
3 they involve the same lawyers, and the same or related theories. Discovery and motion practice  
4 should clearly be coordinated in order to conserve resources and promote litigation efficiencies.

5 Second, the City moves for a stay of all state-court actions pursuant to the Court's inherent  
6 discretionary authority so that the parties may litigate the City's Federal Action. Again, there is a  
7 single complaint pending in United States District Court which involves the same claims, the same  
8 parties, and the same attorneys. The City's Federal Action is the first-filed and most  
9 comprehensive action. Under prevailing authorities, this Court clearly has the discretion to stay  
10 the various state-court actions while the City's Federal Action is adjudicated.

11 The City seeks an efficient, and comprehensive adjudication as soon as possible, so that  
12 Measure B may be implemented. Under these unique circumstances, the Court should permit the  
13 declaratory relief action to be resolved first in federal court. This will promote efficiency, permit  
14 the speedy adjudication of all claims in one forum, and avoid potentially conflicting rulings.

15 The Court should consolidate all state-court actions that challenge Measure B, and stay  
16 these actions pending the outcome in United States District Court.

#### 17 RELEVANT FACTS

##### 18 I. BACKGROUND TO MEASURE B

19 As alleged in the City's federal First Amended Complaint, the City of San Jose ("the  
20 City") is committed to providing essential city services. (Declaration of Arthur Hartinger  
21 ("Hartinger Decl."), ¶16, Ex. F (City's Federal First Amended Complaint ["City's Federal FAC"],  
22 ¶2.) The City's ability to provide these essential services has been and continues to be threatened  
23 by dramatic budget cuts caused in large part by the climbing and unsustainable cost of employee  
24 benefit programs. (City's Federal FAC, ¶3.) This has only been exacerbated by the current  
25 economic crisis. (City's Federal FAC, ¶3.) In this context, the City Council voted in March 2012  
26 to place "Sustainable Retirement Benefits and Compensation Act," also known as "Measure B,"  
27 on the ballot for the June 5, 2012 election. (City's Federal FAC, ¶¶27, 28.)

28 ///

1 **II. SUMMARY OF MEASURE B**

2 Measure B is a ballot initiative intended to adjust post-employment benefits in a manner  
3 that protects the City's viability and public safety while simultaneously allowing for fair post-  
4 employment benefits for City workers. (City's Federal FAC, ¶5.) As presented to the voters,  
5 Measure B amends and modifies retirement benefits of City employees and retirees by increasing  
6 employees' contributions, establishing a voluntary reduced pension plan for current employees,  
7 establishing pension cost and benefit limitations for new employees, modifying disability  
8 retirement procedures, authorizing temporary suspensions of COLAs during emergencies, and  
9 requiring voter approval for increases in future pension benefits. (City's Federal FAC, ¶27.)

10 **III. CITY COUNCIL ANTICIPATED LITIGATION**

11 When the City Council voted to place Measure B on the ballot, it anticipated that Measure  
12 B would face legal challenge. (City's Federal FAC, ¶9.) In fact, prior to Measure B's placement  
13 on the ballot, the City's unions and others had contended that Measure B violated both federal and  
14 state law. (See, e.g., Hartinger Decl., ¶¶8, 13, 14, Exs. D, E.) As a result of the anticipated  
15 challenge, the Council specifically directed the City to file a declaratory relief action to determine  
16 the legality of the measure. (Id. at ¶¶6, 7, Ex. C.)

17 **IV. THE CITY'S FEDERAL ACTION FOR DECLARATORY RELIEF (FIRST-FILED**  
18 **OF ALL SIX ACTIONS)**

19 **A. The Federal Action's Claims and Parties**

20 In keeping with the City Council's plan, on June 5, 2012, the City filed an action for  
21 declaratory relief in U.S. District Court, Northern District of California. (*City of San Jose v. San*  
22 *Jose Police Officers' Association, et al.*, U.S. Northern District Case No. 5:12-CV-02904-LHK  
23 ("City's Federal Action").) (Hartinger Decl., ¶15.) The case was assigned to the Honorable Judge  
24 Lucy Koh in the Court's San Jose Division. (Ibid.)

25 On July 3, 2012, the City filed its First Amended Complaint ("City's Federal FAC").  
26 (Hartinger Decl., ¶16, Ex. F.) The City's Federal FAC seeks a declaratory judgment as to the  
27 validity of Measure B. Specifically, it seeks a declaration that Measure B does not violate:

28 ///

- 1           •     the contract clauses of the federal or state constitution;
- 2           •     the takings clauses of the federal and state constitutions;
- 3           •     federal or state constitutional due process rights;
- 4           •     the right to petition government as provided by federal and state
- 5           constitutions;
- 6           •     the separation of powers doctrine set forth by the California Constitution;
- 7           •     the Meyers-Milias-Brown Act;
- 8           •     the doctrine of promissory estoppel; or
- 9           •     the California Pension Protection Act.

10 (City's Federal FAC, ¶31 & Prayer for Relief.)

11           The City's Federal FAC is brought against the following five unions:

- 12           •     San Jose Police Officers Association ("POA");
- 13           •     San Jose Firefighters, I.A.F.F. Local 230 ("Firefighters' Local 230");
- 14           •     Municipal Employees' Federation, AFSCME, Local No. 101 ("AFSCME
- 15           Local 101");
- 16           •     City Association of Management Personnel, IFPTE, Local 21 ("IFPTE
- 17           Local 21"); and
- 18           •     International Union of Operating Engineers, Local 3 ("Operating Engineers
- 19           Local 3").

20 (City's Federal FAC, ¶¶13-17.)

21           **B.     Posture of the City's Federal Action**

22           As described above, the City filed its original Complaint on June 5, 2012, and its FAC on

23 July 3, 2012. (Hartinger Decl., ¶¶15, 16.) As of July 10, 2012, the City had served its FAC on all

24 defendants. (Id. at ¶17.) On July 20, 2012, defendants IFPTE Local 21, Operating Engineers

25 Local 3, and Firefighters' Local 230 answered the City's Federal FAC. (Id. at ¶¶18-21, Ex. G-1.)

26           In late June and early July, Firefighters' Local 230, IFPTE Local 21, and the POA filed

27 motions to dismiss the City's Federal Action. (Hartinger Decl., ¶¶22, 24.) Judge Koh ordered the

28 unions to consider consolidating their motions to dismiss. (Hartinger Decl., ¶25, Ex. L.) The

unions were unable to agree to file a consolidated motion, but did agree to file a consolidated reply

1 brief and to have their motions heard in a single hearing. (Hartinger Decl., ¶26, Ex. M.) That  
2 hearing will take place on October 4, 2012. (Hartinger Decl., ¶27, Ex. N.)

3 **V. THE UNIONS' FIVE STATE-COURT ACTIONS.**

4 On June 6, 2012, the morning after the election, unions, City employees, and retirees began  
5 filing state-court actions against the City in Santa Clara County Superior Court. (Hartinger Decl.,  
6 ¶28.) As of today (August 1, 2012), five state-court actions have been filed by unions or their  
7 privies against the City. (Ibid.)

8 **A. The Police Officers' Association's Action ("POA Action") (First-Filed of the  
9 State-Court Actions)**

10 **1. POA Action's Claims and Parties**

11 On June 6, 2012, the Police Officers' Association ("POA") filed the first state-court action  
12 against the City for declaratory and injunctive relief. (*San Jose Police Officers' Association v.*  
13 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV225926 ("POA  
14 Action")) (Hartinger Decl., ¶29.)

15 On July 5, 2012, the POA filed its first amended complaint ("POA's FAC"). (Hartinger  
16 Decl., ¶30, Ex. O (POA's FAC).) The POA's FAC alleges that Measure B violates:

- 17 • the California Constitution's contract clause;
- 18 • the California Constitution's takings clause;
- 19 • the California Constitution's due process guarantee;
- 20 • the California freedom-of-speech/right-to-petition protection;
- 21 • the California Constitution's separation-of-powers doctrine;
- 22 • the Meyers-Milias-Brown Act; and
- 23 • the California Pension Protection Act.

24 (POA FAC, ¶¶73-96, 103-109.)

25 The POA's FAC also alleges that Measure B constitutes a breach of contract of the POA's  
26 memorandum of understanding ("MOA") with the City. (POA FAC, ¶¶98-102.)

27 Noticeably, the POA's FAC avoids stating any federal-law claim.

28 ///

1 The POA's FAC names as defendants the City and its Board of Administration for Police  
2 and Fire Department Retirement Plans of the City of San Jose. (POA FAC, ¶¶9, 10.)

3 **2. Posture of POA Action**

4 The POA Action has been assigned to Department 2. (Hartinger Decl., ¶31.) The City's  
5 responsive pleading must be filed by Monday, August 6, 2012. (Ibid.) No discovery has been  
6 propounded, and the initial CMC is scheduled for October 16, 2012. (Ibid.)

7 **B. The Sapien Action (Firefighters' Local 230)**

8 **1. Sapien Action's Claims and Parties**

9 Also on June 6, 2012, five active and retired San Jose firefighters filed a state-court action  
10 against the City for declaratory, injunctive, and mandamus relief entitled *Robert Sapien, et al. v.*  
11 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV225928 ("*Sapien*  
12 *Action*"). (Hartinger Decl., ¶32, Ex. P (*Sapien* Complaint, ¶¶3-7).) The *Sapien* plaintiffs are or  
13 were members of San Jose Firefighters, I.A.F.F. Local 230. (Hartinger Decl., Ex. D (Declaration  
14 of Christopher Platten, ¶1).)

15 The *Sapien* Action alleges that Measure B violates the California Constitution's (1)  
16 contract clause, (2) takings clause, and (3) due process guarantee. (*Sapien* Complaint, ¶¶20-23,  
17 28-29, 31-33, and 35-37.) Like the POA Action, the *Sapien* Action avoids stating any federal-law  
18 claims even though their counsel and their union have admitted that federal claims are at issue.  
19 (Hartinger Decl., ¶¶5, 18, Ex. D, H, I, J.)

20 The *Sapien* Action names as defendants the City and San Jose City Manager Debra Figone.  
21 (*Sapien* Complaint, ¶¶8, 9.) The *Sapien* Action also names as a "necessary party in interest" the  
22 City's Board of Administration of the 1961 Police and Fire Department Retirement Plan of City of  
23 San Jose. (*Sapien* Complaint, ¶11.)

24 **2. Posture of the Sapien Action**

25 The City and Ms. Figone answered the *Sapien* Action on July 6, 2012. (Hartinger Decl.,  
26 ¶33.) In late June, the *Sapien* plaintiffs propounded a Request for Production of Documents (set  
27 one) and Special Interrogatories (set one). (Ibid.) The City's responses are due on August 9,  
28 2012. (Ibid.) The initial CMC is scheduled for October 16, 2012 in Department 8. (Ibid.)

1           **C.     The *Harris* Action (Operating Engineers Local 3)**

2                   **1.     *Harris* Action's Claims and Parties**

3           On June 15, 2012, four current or former City employees filed a state-court action against  
4 the City for declaratory, injunctive, and mandamus relief entitled *Teresa Harris, et al. v. City of*  
5 *San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV226570 ("*Harris* Action").  
6 (Hartinger Decl., ¶34.)

7           Counsel for the *Harris* plaintiffs, Wylie, McBride, Platten & Renner, are also counsel for  
8 the *Sapien* plaintiffs. (Hartinger Decl., ¶35, Ex. Q.) The *Harris* plaintiffs are or were members of  
9 Operating Engineers, Local 3. (Hartinger Decl., Ex. D (Declaration of Christopher Platten, ¶3).)  
10 On July 3, 2012, the *Harris* plaintiffs filed a First Amended Complaint ("*Harris* FAC"), dropping  
11 Plaintiff Suzann Stauffer. (Hartinger Decl., ¶35, Ex. Q (*Harris* FAC, ¶¶3-6).)

12           Like the *Sapien* Action, the *Harris* FAC alleges that Measure B violates the California  
13 Constitution's (1) contract clause, (2) takings clause, and (3) due process guarantee. (Harris FAC,  
14 ¶10, 26-27, 30-31, and 34-35.) Like the *POA* and *Sapien* Actions, the *Harris* FAC avoids stating  
15 any federal-law claims.

16           The *Harris* FAC names as defendants the City and City Manager Debra Figone. (*Harris*  
17 FAC, ¶¶6, 7.) The *Harris* Action also names as a "necessary party in interest" the City's Board of  
18 Administration of the 1975 Federated City Employees' Retirement Plan. (*Harris* FAC, ¶9.)

19                   **2.     Posture of the *Harris* Action**

20           The City and Ms. Figone answered the *Harris* FAC on July 27, 2012. (Hartinger Decl.,  
21 ¶35.) No discovery has yet been propounded, and the initial CMC is scheduled for October 23,  
22 2012 in Department 9. (Ibid.)

23           **D.     The *Mukhar* Action (IFPTE Local 21)**

24                   **1.     *Mukhar* Action's Claims and Parties**

25           Also on June 15, 2012, five current or former City employees filed a state-court action  
26 against the City for declaratory, injunctive, and mandamus relief entitled *John Mukhar, et al. v.*  
27 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV226574 ("*Mukhar*  
28 Action"). (Hartinger Decl., ¶37, Ex. R (*Mukhar* Complaint, ¶¶3-7).)

1 Counsel for the *Mukhar* plaintiffs, Wylie, McBride, Platten & Renner, are also counsel for  
2 the *Sapient* and *Harris* plaintiffs. (Hartinger Decl., Ex. R.) The *Mukhar* plaintiffs are or were  
3 members of City Association of Management Personnel, IFPTE Local 21. (Hartinger Decl., Ex. D  
4 (Declaration of Christopher Platten, ¶2).)

5 The *Mukhar* Action is a mirror image of the *Harris* action, except that it names different  
6 plaintiffs. (*Mukhar* Complaint, ¶12, 28-29, 32-33, and 36-37.)

7 Just like the *POA*, *Sapient*, and *Harris* Actions, the *Mukhar* Action avoids stating any  
8 federal-law claims.

9 The *Mukhar* Action names as defendants the City and City Manager Debra Figone.  
10 (Mukhar, ¶¶8, 9.) It also names as a “necessary party in interest” the City’s Board of  
11 Administration of the Federated City Employees’ Retirement Plan. (Mukhar Complaint, ¶11.)

## 12 2. Posture of *Mukhar* Action

13 The City and Ms. Figone answered the complaint on July 6, 2012. (Hartinger Decl., ¶38.)  
14 No discovery has been propounded, and the initial CMC is scheduled for October 23, 2012 in  
15 Department 8. (Ibid.)

## 16 E. *AFSCME* Action

### 17 1. *AFSCME* Action’s Claims and Parties

18 On July 5, 2012, *AFSCME* Local 101 filed a state-court action against the City for  
19 declaratory, injunctive, and mandamus relief. (*American Federation of State, County, and*  
20 *Municipal Employees, Local 101 v. City of San Jose, et al.*; Santa Clara County Superior Court  
21 Case No. 112CV227864 (“*AFSCME* Action”).) (Hartinger Decl., ¶39, Ex. S.)

22 The *AFSCME* Action alleges that Measure B violates:

- 23 ● the California Constitution’s contract clause;
- 24 ● the California Constitution’s takings clause;
- 25 ● the California Constitution’s due process guarantee;
- 26 ● the California Constitution’s right-to-petition protection;
- 27 ● the Doctrine of promissory and equitable estoppel; and
- 28 ● the California Pension Protection Act.

1 (AFSCME Complaint, ¶¶121, 139, 144, 146, 157, 165, 176-181).)

2 The AFSCME Action also alleges that Measure B constitutes an:

- 3 • an unconstitutional bill of attainder under the California Constitution; and
- 4 • an illegal ultra vires tax, fee, or assessment under the California Constitution.

5 (AFSCME Complaint, ¶¶123, 129, 167-171.)

6 Like the other state-court actions, the AFSCME Action avoids stating federal-law claims.

7 The AFSCME Action names as defendants the City and City Manager Debra Figone.

8 (AFSCME Complaint, ¶¶28, 29.) It names as a “necessary party in interest” the City’s Board of  
9 Administration for the Federated City Employees Retirement Plan. (AFSCME Complaint, ¶30.)

## 10 2. Posture of the AFSCME Action

11 The AFSCME Complaint was filed on July 5, 2012 and defendants have not yet answered.  
12 (Hartinger Decl., ¶40.) No discovery has yet been propounded, and the initial CMC is scheduled  
13 for November 13, 2012 in Department 8. (Ibid.)

## 14 VI. NOTICES OF RELATED CASES

15 The City has filed a Notice of Related Cases in each of the state-court actions. (Hartinger  
16 Decl., ¶¶42-46.) To date, no party has disputed that the actions are related. (Hartinger Decl., ¶46.)  
17 Accordingly, the Court should deem these actions related and reassign them to this department,  
18 which has before it the first-filed of the state-court actions (the POA Action). Cal. Rules of Court,  
19 rule 3.300(a) and 300(h)(1)(A).

## 20 ARGUMENT

### 21 I. THE FIVE STATE-COURT ACTIONS SHOULD BE CONSOLIDATED.

22 The Court should consolidate the five state-court cases for all purposes under this first-  
23 filed action, *San Jose POA v. City of San Jose, et al.*, Case No. 112CV225926.

24 When actions involving a common question of law or fact are pending before the  
25 court, it may order a joint hearing or trial of any or all the matters in issue in the  
26 actions; it may order all the actions consolidated and it may make such orders  
concerning proceedings therein as may tend to avoid unnecessary costs or delay.

27 Code of Civ. Proc. § 1048(a).

1 Here, all actions involve the validity of Measure B and are substantially similar. For  
2 example, all actions allege violations of identical Constitutional provisions, such as the Contract  
3 Clause and the Takings Clause. The plaintiffs are all current or former city employees or their  
4 unions. Furthermore, the plaintiffs have all sued the same entity—the City of San Jose—and its  
5 City Manager or constituent boards. Consequently, the Court should consolidate the actions for  
6 all purposes under the case number of the *POA* Action and then, as discussed below, stay the  
7 consolidated state-court actions so that the parties may litigate the City’s Federal Action.<sup>1</sup>

8 **II. THE COURT SHOULD STAY THE STATE-COURT ACTIONS SO THAT THE**  
9 **PARTIES MAY LITIGATE THE CITY’S FIRST-FILED FEDERAL ACTION.**

10 The Court should stay the state-court actions in favor of the City’s Federal Action. The  
11 City’s Federal Action – the first-filed action – is the most comprehensive of all six pending  
12 actions. It includes all parties and their privies, and nearly all of state-law claims at issue in the  
13 five state-court actions.<sup>2</sup> And finally – *unlike any state-court action* – the City’s Federal Action  
14 raises federal claims. By staying the state-court cases and directing the parties to litigate the  
15 City’s comprehensive Federal Action, the Court will allow a single court to issue a single  
16 judgment that will bind all parties and their privies. Such a stay avoids the risk of conflicting  
17 judgments and piecemeal litigation, and promotes judicial economy.

18 **A. This Court Has Discretion to Stay the State-Court Actions.**

19 The Court has the discretion to stay the state-court actions:

20 It is black letter law that, when a federal action has been filed covering the same  
21 subject matter as involved in a California action, the California court has the  
22 discretion but not the obligation to stay the state court action.

23 <sup>1</sup> In its response to the City’s Notice of Related Cases, AFSCME *opposed* consolidation, stating  
24 that “[t]here are several distinct legal and factual differences in the related cases which makes  
25 consolidation of the actions in appropriate.” (Hartinger Decl., ¶48 (AFSCME’s Response to  
26 Notice of Related Cases, ¶3).) AFSCME has not yet identified these distinct legal and factual  
27 differences, and the City will respond to them in its reply (assuming AFSCME continues to  
28 maintain this position).

<sup>2</sup> The City intends to amend its Federal FAC to include all claims at issue in the state-court  
actions. (Hartinger Decl., ¶41.)

1 *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal.App.4th 800, 804 (1993)  
2 (upholding a stay of state-court proceedings in favor of an earlier-filed federal action between  
3 substantially identical parties over the same subject matter).

4 In *Caiafa*, an insurance company filed a federal RICO action against Attorney Douglas  
5 Caiafa in the Southern District of California for padded legal bills and unnecessary legal work.  
6 *Caiafa, supra*, 15 Cal.App.4th at 802. Caiafa had entered into an agreement with the insurance  
7 company to represent its insured as appointed Cumis counsel. *Ibid.* In response, Caiafa filed a  
8 state-court petition to compel arbitration in Los Angeles County Superior Court. *Ibid.* The trial  
9 court stayed the state-court action pending the outcome of the federal RICO action. *Ibid.* On  
10 appeal, the state court of court upheld the stay.

11 In so doing, the Court articulated a series of factors that trial courts should consider when  
12 determining whether to issue a discretionary stay.

13 First, trial courts should consider whether a stay would avoid unseemly conflicts with  
14 courts of other jurisdictions. *Caiafa, supra*, 15 Cal.App.4 at 804 (citing *Farmland Irrigation Co.*  
15 *v. Dopplemaier*, 48 Cal.2d 208, 215 (1957)).

16 Second, trial courts should consider whether the rights of the parties can best be  
17 determined by the court of the other jurisdiction. *Caiafa, supra*, 15 Cal.App.4th at 804 (citing  
18 *Farmland Irrigation Co. v. Dopplemaier*, 48 Cal.2d 208, 215 (1957)).

19 Finally, trial courts should consider whether the pending federal action is in California.

20 The California Supreme Court also has isolated another critical factor favoring a  
21 stay of the state court action in favor of the federal action, a factor which happens  
22 to be present in this case—the federal action is pending in California not some  
23 other state.

24 *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal.App.4th 800, 804 (1993) (citing  
25 *Thomson v. Continental Ins. Co.*, 66 Cal.2d 738, 747 (1967)).

26 Here, these factors all weigh in favor of staying the unions' state-court actions. The City's  
27 Federal FAC intentionally brings together all parties and claims so that a single court can  
28 efficiently adjudicate the validity of Measure B.

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1           **B.     The City's Federal Action is the First-Filed Action.**

2           The City's Federal Action is the first-filed action. The City filed it on June 5, 2012. The  
3 unions and their members began filing their state-court actions the next day, on June 6, 2012. As a  
4 result, the City's Federal Action has priority.

5           **C.     Important Federal Claims Are at Issue.**

6           Important issues of federal law are at stake. Claims that "vested rights" have been violated  
7 arise under the federal contracts clause, in addition to state law. U.S. Const. Art. I, § 10, cl. 1;  
8 *Dodge v. Board of Education of Chicago*, 302 U.S. 74 (1937) (rejecting federal contract clause  
9 and federal due process challenges to state law reducing teachers' retirement annuity).

10           And federal courts in the Ninth Circuit have longstanding expertise in determining public  
11 employees' claims that their public employers have violated their vested rights to retirement  
12 benefits. See, e.g., *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 2010 U.S. Dist.  
13 LEXIS 143345, \*1, \*4 (N.D. Cal. Nov. 23, 2010) (granting summary judgment to Sonoma County  
14 on, inter alia, retirees' federal contract clause and federal due process claims challenging increase  
15 in health-care premiums); *San Diego Police Officers' Ass'n v. San Diego City Employees'*  
16 *Retirement System*, 568 F.3d 725, 737 (9th Cir. 2009) (rejecting police union's claims that the  
17 City's imposition of last, best and final offer after the breakdown of labor negotiations violated  
18 vested contractual rights in violation of the federal contract clause); *Robertson v. Kulongoski*, 466  
19 F.3d 1114 (9th Cir. 2006) (rejecting current and retired public employees' federal contract clause  
20 challenge of amendment of Oregon Public Employees Retirement System).

21           **D.     The Unions Have Admitted that Federal Law Is at Issue.**

22           The City's Federal Action is the *only* action that includes both federal and state claims  
23 even though the unions have previously argued – and continue to argue – that Measure B violates  
24 federal law.

25           Christopher Platten of Wylie, McBride, Platten & Renner, counsel for plaintiffs in the  
26 *Sapien, Harris, and Mukhar* state-court actions (and counsel for three unions – Firefighters Local  
27 230, IFPTE Local 21 and Operating Engineers Local 3), stated in a declaration filed in the City's  
28 Federal Action that:

1 Prior to the date the City Council voted to place Measure B on the ballot for the  
2 June election in the course of negotiations on behalf of Local 230 and Local 21  
3 with representatives of the City, I repeatedly advised these representatives that  
provisions of the proposed ballot measure were fatally unconstitutional under both  
state and *federal* constitutions.

4 (Hartinger, Decl., Ex. D (Declaration of Christopher Platten [emphasis added]).)

5 In fact, in their Motion to Dismiss the City's Federal FAC, Firefighters' Local 230 and  
6 IFPTE Local 21 initially stated that their state-court actions were seeking declaratory relief  
7 regarding federal law. (Hartinger Decl., ¶23, Ex. J (Motion to Dismiss at pp. 1:18-22; 4:18-21.)  
8 The unions subsequently filed an "errata" removing all references to federal claims in the state-  
9 court actions. (Hartinger Decl., ¶23, Ex. K (Firefighters' Local 230 and IFPTE Local 21's errata  
10 at pp. 1:26 to 2:1).) Regardless of whether the unions' initial reference to their federal claims was  
11 a Freudian slip or whether the errata indicates a change in tactics, their decision to omit federal  
12 claims highlights a potential plan to pursue a second round of federal litigation should their state-  
13 court actions be unsuccessful.

14 Additionally, in their answers to the City's Federal FAC, three unions *admitted* to the  
15 allegations in paragraph six. (Hartinger Decl., ¶¶18-22, Exs. G, H, I (Answers of Firefighters  
16 Local 230, IFPTE Local 21, and Operating Engineering Local 3). Paragraph six of the City's  
17 Federal FAC states:

18 ¶6. ...A declaratory judgment is necessary to confirm that Measure B does not  
19 impair any vested rights, does not violate the contracts clauses of the  
20 federal and state constitutions, and does not violate federal or state due  
21 process guarantees, or any of the other legal rights claimed by defendants.  
22 This judgment is necessary because the defendants contend, on behalf of  
the their members, that Measure B contains provisions that violate  
employee vested rights to certain retirement contributions and benefits and  
is (all or in part) a violation of the contracts clauses, federal and state due  
process guarantees, and other laws.

23 The unions have intentionally failed to plead the very federal claims they admit must be  
24 decided. The Court should not permit them to pursue an unnecessary round of state-court  
25 litigation simply because they have failed to plead federal claims. *See Thomson v. Continental*  
26 *Ins. Co.*, 66 Cal.2d 739, 747 fn.5 (1967) (holding that California trial court, on remand, should  
27 consider granting a discretionary stay of California action in favor of Texas action if California  
28 plaintiff failed to have his Texas action dismissed or stayed). In *Thomson*, the court stated: "[T]he

1 rules on staying an action would be almost meaningless if the plaintiff could automatically avoid a  
2 stay by juggling the pleadings and amending a particular claim in the jurisdiction where he did not  
3 wish to have the case tried." *Ibid.*

4 If litigation over Measure B occurs only in state court, there will be a risk of inconsistent  
5 determinations under federal and state law and an inevitable -- and unnecessary -- second round of  
6 litigation in federal court.

7 **E. The Federal Forum is Best Suited for an Efficient and Fair Resolution**

8 The federal forum is the most efficient forum for litigating Measure B's validity. The  
9 City's Federal FAC is the most comprehensive of all six pending actions. At present, the City's  
10 Federal Action encompasses all legal issues in the state-court actions except two: AFSCME's  
11 bill-of-attainder and ultra-vires-tax claims. (Hartinger Decl., ¶41.) The only reason the City's  
12 Federal FAC does not address these claims is because AFSCME filed its complaint after the City  
13 filed its FAC. (*Ibid.*) The City intends to amend its complaint to add these two issues. (*Ibid.*)

14 In *Catafa* -- just as here -- the federal action contained federal claims that had not been  
15 raised in the state-court action. *Catafa, supra*, 15 Cal.App. at 806. As a result, the court held that  
16 the federal forum was better suited to resolve the underlying dispute. *Ibid.* That is the case here,  
17 and a stay of the five state-court actions is appropriate.

18 Furthermore, the unions' conduct in the cases so far has shown their intent to pursue a  
19 piecemeal -- and inefficient -- litigation strategy. For example, in *AFSCME's* response to the  
20 City's Notice of Related Cases, AFSCME contended that the state-court actions (all raising  
21 identical causes of action challenging the same law) should not even be consolidated. (Hartinger  
22 Decl., ¶48.)

23 Moreover, when Judge Koh of the Northern District ordered the unions to meet and confer  
24 regarding a consolidated motion to dismiss, the unions were unable to agree upon a consolidated  
25 opening brief. (Hartinger Decl., ¶¶25-26, Exs. L, M.)

26 Allowing the state-court actions to proceed alongside the federal, and more  
27 comprehensive, action is duplicative and unnecessary.

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1           **F. All Stakeholders Are Present in the City's Federal Action.**

2           The City's Federal Action is the only action that includes all parties and their privies. In  
3 fact, the City amended its original federal complaint to ensure that all stake holders were united in  
4 a single action. This is not the case with any of the state-court actions. Rather than managing  
5 several consolidated actions, the Court should stay the state-court actions in favor of the City's  
6 Federal Action.

7           **G. The City's Federal Action Is Pending in California, a Factor that Weighs**  
8           **Heavily in Favor of a Stay.**

9           Finally, the state-court actions should be stayed because the City's Federal FAC is pending  
10 in a federal court in California. The court in *Caiafa* indicated that a stay of a state-court action is  
11 favored when the pending federal action is in California. *Caiafa Prof. Law Corp. v. State Farm*  
12 *Fire & Cas. Co.*, 15 Cal.App.4th 800, 804 (1993) (citing *Thomson v. Continental Ins. Co.*, 66  
13 Cal.2d 738, 747 (1967)). In fact, the California Supreme Court in *Thomson* had found this factor  
14 so important that it accounted for the several earlier California decisions resulting in a stay of  
15 state-court proceedings. *Thomson, supra*, 66 Cal.2d at 747. For example, in *Conrad v. West*, 98  
16 Cal.App.2d 116, 117 (1950), one of the cases cited in *Thomson*, the appellate court reversed a trial  
17 court's refusal to abate a state-court action in Los Angeles Superior Court for unlawful detainer in  
18 favor the state-court defendant's earlier-filed federal action in the Southern District of California.

19           This factor supports a stay here. The City's action is not pending in a distant federal court  
20 but right here in the San Jose Division of the Northern District. As such, it is the favored forum  
21 under *Caiafa*.

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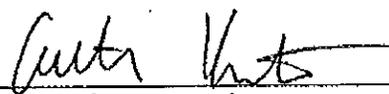
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CONCLUSION

In conclusion, the Court should consolidate and then stay the state-court actions. By staying the state-court actions and directing the parties to litigate the City's comprehensive Federal Action, the Court will allow a single court to issue a single judgment that will bind all parties. Such a stay avoids the risk of conflicting judgments and piecemeal litigation, and promotes judicial economy.

DATED: August 1, 2012

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