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San Jose Police Officers' Association

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

11 SAN JOSE POLICE OFFICERS'
12 ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
16 AND FIRE DEPARTMENT
RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10,
inclusive,

18 Defendants.
19

20 AND ACTIONS CONSOLIDATED
FOR PRETRIAL PURPOSES

21
22 CITY OF SAN JOSE,

23 Cross-Complainant,

24 v.

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

26 Cross-Defendants.
27
28

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)

**PLAINTIFF AND CROSS-DEFENDANT SAN
JOSE POLICE OFFICERS' ASSOCIATION'S
ANSWER TO DEFENDANT AND CROSS-
COMPLAINANT CITY OF SAN JOSE'S
CROSS-COMPLAINT FOR DECLARATORY
RELIEF**

1 Plaintiff and Cross-Defendant San Jose Police Officers' Association ("Cross-
2 Defendant") hereby answers the Cross-Complaint of Defendant and Cross-Complainant
3 City of San Jose ("Cross-Complainant"), as follows:

4 **GENERAL DENIAL**

5 Under the provisions of Sections 431.30(d) and 432.10 of the California Code
6 of Civil Procedure, this answering Cross-Defendant denies each and every, all and
7 singularly, the allegations in the Cross-Complaint, and the whole thereof.

8 WHEREFORE, this answering Cross-Defendant prays for judgment as
9 hereinafter set forth.

10 **AFFIRMATIVE DEFENSES**

11 Cross-Defendant hereby asserts the following affirmative defenses:

12 **FIRST AFFIRMATIVE DEFENSE**
13 **(Failure to State Cause of Action)**

14 Each and every cause of action asserted in the Cross-Complaint on file herein
15 fails to state facts sufficient to constitute any cause of action upon which relief may be
16 granted.

17 **SECOND AFFIRMATIVE DEFENSE**
18 **(Laches)**

19 Each and every cause of action asserted in the Cross-Complaint on file herein
20 is barred by the doctrine of laches.

21 **THIRD AFFIRMATIVE DEFENSE**
22 **(Lack of Subject Matter Jurisdiction)**

23 As to each and every cause of action asserted in the Cross-Complaint on file,
24 the Court lacks subject matter jurisdiction.

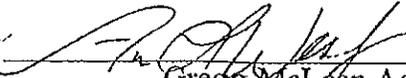
25 **FOURTH AFFIRMATIVE DEFENSE**
26 **(Seeks Improper Advisory Opinion)**

27 Each and every cause of action asserted in the Cross-Complaint seeks an
28 improper advisory opinion.

1 3. That Cross-Defendant be awarded such other and further relief as this.
2 Court may deem proper.

3
4 Dated: December 21, 2012

5 CARROLL, BURDICK & McDONOUGH LLP

6
7 By 
8 Gregg McLean Adam
9 Jonathan Yank
10 Gonzalo C. Martinez
11 Amber L. West
12 Attorneys for Plaintiff and Cross-Defendant
13 San Jose Police Officers' Association
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1 *San Jose POA v. City of San Jose, et al.,*
2 Santa Clara County Superior Court, 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)

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4 **PROOF OF SERVICE BY MAIL**

5 I declare that I am employed in the County of San Francisco, California. I am
6 over the age of eighteen years and not a party to the within cause; my business address is
44 Montgomery Street, Suite 400, San Francisco, CA 94104. On December 21, 2012, I
served the enclosed:

7 **PLAINTIFF AND CROSS-DEFENDANT SAN JOSE POLICE OFFICERS' ASSOCIATION'S**
8 **ANSWER TO DEFENDANT AND CROSS-COMPLAINANT CITY OF SAN JOSE'S**
9 **CROSS-COMPLAINT FOR DECLARATORY RELIEF**

10 on the parties in said cause (listed below) by enclosing a true copy thereof in a sealed
11 envelope and, following ordinary business practices, said envelope was placed for mailing
12 and collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate
13 place for mail collected for deposit with the United States Postal Service. I am readily
familiar with the Firm's practice for collection and processing of
correspondence/documents for mailing with the United States Postal Service and that said
correspondence/documents are deposited with the United States Postal Service in the
ordinary course of business on the same day.

14 Arthur A. Hartinger, Esq. 15 Linda M. Ross, Esq. 16 Jennifer L. Nock, Esq. 17 Michael C. Hughes, Esq. 18 Meyers, Nave, Riback, Silver & Wilson 19 555 12th Street, Suite 1500 20 Oakland, CA 94607 Phone: (510) 808-2000 Fax: (510) 444-1108 Email: ahartinger@meyersnave.com lross@meyersnave.com jnock@meyersnave.com mhughes@meyersnave.com	<i>Counsel for Defendants</i> <i>City of San Jose (No. 1-12-CV-225926)</i> <i>City of San Jose and Debra Figone</i> <i>(Nos. 1-12-CV-225928;</i> <i>1-12-CV-226570; 1-12-CV-226574;</i> <i>1-12-CV-227864)</i>
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PROOF OF SERVICE

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<p>Harvey L. Leiderman, Esq. Reed Smith LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 Phone: (415) 659-5914 Fax: (415) 391-8269 Email: hleiderman@reedsmith.com</p>	<p><i>Counsel for Defendant Board of Administration for Police and Fire Department Retirement Plan of City of San Jose (No. 1-12-CV-225926)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan (No. 1-12-CV-225928)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1975 Federated City Employees' Retirement Plan (Nos. 1-12-CV-226570; 1-12-CV-226574)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the Federated City Employees Retirement Plan (No. 1-12-CV-227864)</i></p>
<p>John McBride, Esq. Christopher E. Platten, Esq. Mark S. Renner, Esq. Wylie, McBride, Platten & Renner 2125 Canoas Garden Ave., Suite 120 San Jose, CA 95125 Phone: (408) 979-2920 Fax: (408) 979-2934 Email: jmcbride@wmprlaw.com cplatten@wmprlaw.com mrenner@wmprlaw.com</p>	<p><i>Counsel for Plaintiffs Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (No. 1-12-CV-225928)</i></p> <p><i>Teresa Harris, Jon Reger, and Moses Serrano (No. 1-12-CV-226570)</i></p> <p><i>John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington (No. 1-12-CV-226574)</i></p>
<p>Teague P. Paterson, Esq. Vishtap M. Soroushian, Esq. Beeson, Tayor & Bodine APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051 Phone: (510) 625-9700 Fax: (510) 625-8275 Email: TPaterson@beesontayer.com VSoroushian@beesontayer.com</p>	<p><i>Counsel for Plaintiff AFSCME Local 101 (No. 1-12-CV-227864)</i></p>

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 21, 2012, at San Francisco, California.


Joan Gonsalves