

1 Arthur A. Hartinger (SBN: 121521)  
ahartinger@meyersnave.com  
2 Linda M. Ross (SBN: 133874)  
lross@meyersnave.com  
3 Jennifer L. Nock (SBN: 160663)  
jnock@meyersnave.com  
4 Michael C. Hughes (SBN: 215694)  
mhughes@meyersnave.com  
5 MEYERS, NAVE, RIBACK, SILVER & WILSON  
555 12<sup>th</sup> Street, Suite 1500  
6 Oakland, California 94607  
Telephone: (510) 808-2000  
7 Facsimile: (510) 444-1108

8 Attorneys for Defendants  
City of San Jose and Debra Figone, in Her Official  
9 Capacity

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

12 SAN JOSE POLICE OFFICERS  
ASSOCIATION,  
13  
14 Plaintiff,  
15  
16 v.  
17 CITY OF SAN JOSE, BOARD OF  
ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10 inclusive.,  
18 Defendants.

19  
20 AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS  
21  
22  
23  
24  
25  
26  
27  
28

Consolidated Case No. 1-12-CV-225926  
[AFSCME Case No. 1-12-CV-227864]  
  
*Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV225926,  
112CV233660]*

*Assigned for all purposes to the Honorable  
Patricia M. Lucas*

**REPLY MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
DEFENDANTS' DEMURRER TO  
PLAINTIFF AFSCME'S FIRST  
AMENDED COMPLAINT**

Date: April 30, 2013  
Time: 8:30 a.m.  
Dept.: 2

Complaint Filed: June 6, 2012  
Trial Date: July 22, 2012

1 **I. INTRODUCTION**

2 American Federation of State, County, and Municipal Employees, Local 101 (“AFSCME”)  
3 filed its First Amended Complaint (“FAC”) after Judge Kirwan dismissed the second and seventh  
4 causes of action from AFSCME’s original Complaint with leave to amend. Nothing in the FAC  
5 cures the deficiencies that caused Judge Kirwan to dismiss these causes of action from the original  
6 complaint. In bringing causes of action for bill of attainder and for illegal tax, AFSCME is asking  
7 this Court to drastically depart from existing law by authorizing trial based on novel applications of  
8 these two causes of action that are without foreseeable boundaries or limits.

9 A bill of attainder is a legislative determination of guilt and punishment of an ascertainable  
10 individual or group. Here, none of these elements are present. AFSCME cannot show that the  
11 voters, in enacting Measure B, which applies to all City employees, usurped the judicial function of  
12 adjudicating guilt and imposed a punishment on AFSCME members. The California Supreme  
13 Court *rejected* an attainder claim similar to AFSCME’s, on more persuasive facts – where the  
14 ballot materials actually singled out Speaker Willie Brown and Senate Leader David Roberti as  
15 examples of why term limits and pensions should be reduced, and even where the Court found that  
16 the initiative had impaired certain pension rights. *See, Legislature of the State of California v. Eu*,  
17 54 Cal.3d 492, 525-527, 532 (1991). There is absolutely no precedent in either California or  
18 federal law for finding a bill of attainder here. If AFSCME can proceed with its novel theory, there  
19 are no limits to application of bill of attainder to all public employee compensation reductions or  
20 layoffs, not just decisions related to vested rights.

21 In the law of taxation, there is no basis for AFSCME’s claim that a reduction in wages and  
22 benefits, imposed to save fiscal resources, should be deemed a tax. This would be an extraordinary  
23 development in California law with wide-ranging repercussions as the complicated and restrictive  
24 law of tax was applied to every decision related to employee compensation and to budgeting.  
25 Turning “cuts” to programs in a City budget into a “tax” on those who feel those cuts would  
26 eviscerate a charter city’s constitutional authority over compensation and budgeting. Measure B is  
27 simply not a tax.

28 ///

1 Sustaining the City’s demurrer would have no effect on AFSCME’s ability to challenge  
2 Measure B – it would still have eight causes of action to be tried with the consolidated cases in  
3 July. This Court should not permit AFSCME to pursue these new theories, which would rewrite  
4 the established rules that govern public employee compensation, and instead dismiss these claims  
5 with prejudice.

6 **II. LEGAL ARGUMENT**

7 **A. AFSCME Still Cannot Satisfy Any of the Three Tests Required to State a**  
8 **Claim for Unlawful Bill of Attainder**

9 First, AFSCME essentially concedes that it cannot satisfy the “historical test” required to  
10 state a claim for bill of attainder, by arguing for application of “older causes of action” in “new  
11 contexts.” (AFSCME Brief at p. 6.) But our Courts have already addressed the “new context”  
12 proposed by AFSCME and have held that legislation governing pension and employment matters  
13 does not constitute a bill of attainder. *Legislature of the State of California v. Eu*, 54 Cal.3d 492,  
14 525-526 (1991) (no bill of attainder presented by “legislative term, budgetary, and pension  
15 limitations” on legislators); *California State Employees’ Ass’n v. Flournoy*, 32 Cal.App.3d 219,  
16 224-229 (1973) (no bill of attainder presented by “legislative failure to appropriate funds for salary  
17 increases of public employees”).

18 Here, there is good reason to reject AFSCME’s proposal to extend claims for unlawful bill  
19 of attainder to the “new context” of charter city employee compensation. Under the state  
20 constitution, charter cities like San Jose have plenary authority over employee compensation.  
21 *Sonoma County Org. of Public Employees v. County of Sonoma*, 23 Cal.3d 296, 317 (1979); *State*  
22 *Bldg. & Constr. Trades Council of Cal. v. City of Vista*, 54 Cal.4th 547, 580 (2012) (“*Vista*”  
23 (confirming charter city authority over compensation is a municipal affair). There is no law that  
24 requires a city to agree on compensation with its employees. If the city and its employees cannot  
25 come to an agreement, the City may impose a wage reduction as part of its “last, best and final”  
26 offer. Cal. Gov. Code § 3505.7; *Bldg. Material & Constr. Teamsters’ Union v. Farrell*, 41 Cal.3d  
27 651 (1986) (“public agencies retain the ultimate power to refuse to agree on any particular issue”).  
28 Similarly, after meet and confer, a charter city may place on the ballot a measure that concerns

1 terms and conditions of employment. *The People ex rel. Seal Beach Police Officers Ass'n*, 36  
2 Cal.3d 591, 601 (1984). AFSCME's theory completely undermines these basic constitutional and  
3 statutory principles. Under AFSCME's theory, any unilateral reduction in public employee  
4 compensation or benefits potentially would state a claim for bill of attainder on the theory that it  
5 constituted "punishment" of employees. This is not the law nor should it be the law. Notably, only  
6 AFSCME brings these novel claims and is not joined by any other plaintiff in these consolidated  
7 cases.

8         Second, AFSCME's allegations cannot satisfy the "motivational test." AFSCME claims  
9 that its FAC now alleges sufficient "punitive intent" against AFSCME because it alleges that  
10 Measure B imposes a "fine" on AFSCME members, that Measure B is retaliation for the union  
11 filing unfair labor practice charges, and that a City department head authored e-mail criticizing the  
12 productivity of City employees and stating the City was waging a "war" on AFSCME. (AFSCME  
13 Brief at p. 3.) But none of this alleged "intent" is in the ballot measure, and there is no evidence  
14 that any of these alleged "facts" motivated the *voters* to punish anyone, let alone AFSCME  
15 members. As stated by the California Supreme Court when it rejected an attainder claim, even  
16 where the ballot arguments urged imposing term limits on "legislative dictators":

17                 "But the ballot arguments contain no indication of an intent to *punish*  
18                 those individuals for any particular past misconduct. Broad reform  
19                 measures are frequently prompted by particular acts or circumstances  
20                 involving specific individuals, but in our view such measures would  
21                 not constitute improper bills of attainder unless an intent to punish  
22                 such individuals clearly appears from their face, or from the  
23                 circumstances surrounding their passage."

24 *Eu*, 54 Cal.3d at 526-527. Here, of course, there is no such finding of guilt or an intent to punish in  
25 Measure B.

26         In addition, Measure B affects all City employees, not just AFSCME. AFSCME therefore  
27 is forced to claim that the City has "punitive intent" against thousands of employees. AFSCME has  
28 cited no case that has found a bill of attainder based on an alleged animus against such a large and  
diverse group. If the Court in *Eu* did not find a bill of attainder based on the "express intent" to  
dislodge two long term incumbent legislators (54 Cal.3d at 526-527), AFSCME cannot state a  
claim for bill of attainder based on allegations that the City desired to punish all its employees.

1 Moreover, AFSCME’s contention that Measure B imposes a “fine” is pure hyperbole. An  
2 additional pension contribution, credited to an employee’s account, is hardly a fine. On  
3 AFSCME’s theory, *any* reduction in employee compensation would constitute a fine.

4 Third, AFSCME cannot satisfy the “functional test,” which is whether Measure B “can be  
5 said to further non punitive legislative purposes.” *Eu, supra*, 54 Cal.3d at 526. AFSCME cannot  
6 allege facts that show that Measure B “furthers no nonpunitive legislative goals.” *Id.* As the City  
7 demonstrated in its opening brief, Measure B has the stated goals of preserving City services while  
8 providing reasonable and sustainable post-employment benefits, which governing case law requires  
9 to be given credence. (RJN, Exh. A, § 1502-A; *see also* § 1501-A.) *Eu*, 54 Cal.3d at 526  
10 (“measure itself” “expresses, nonpunitive purposes”). AFSCME contends, however, that Measure  
11 B is punitive because it imposes a “fine,” is extremely burdensome, that there are less burdensome  
12 alternatives to achieving the City’s goals, and that the City proposed ballot language that was not  
13 ultimately on the ballot. (AFSCME Brief at pp. 4-5.) But the cases AFSCME cites do not support  
14 this theory of attainder.

15 In *Club Misty, Inc. v. Laski*, 208 F.3d 615, 617 (7th Cir. 2000), the court declined to decide  
16 whether a law letting neighbors vote to void a bar’s liquor license was a bill of attainder, but voiced  
17 “skepticism that it is.” In *Atonio v. Wards Cove Packing Co., Inc.*, 10 F.3d 1485, 1496 (9th Cir.  
18 1993), the Ninth Circuit also found that the statute at issue was not an unlawful bill of attainder. In  
19 that case, a section of the Civil Rights Act of 1991 specifically excluded the *Atonio* plaintiffs from  
20 the litigation benefits of the Act, but the Ninth Circuit found that it did not meet the test for  
21 attainder because there was nothing in the record that suggested “Congress intended to punish the  
22 workers for filing and maintaining this action.” *Atonio*, 10 F.3d at 1491-1492, n.3, 1496. The  
23 court reasoned that although “Congress was aware that it was imposing a burden on the workers  
24 when it enacted section 402(b),” its “primary concern, or at least the concern of the Members who  
25 offered the amendment, was to relieve the canneries from the cost of additional litigation,” which  
26 “may have been a product of special interest lobbying, but it was nevertheless a permissible  
27 legislative end.” *Id.* at 1496. Thus, even where a section of the Civil Rights Act of 1991  
28 *specifically excluded the Atonio plaintiffs* from the litigation benefits of the Act, the court did not

1 find unlawful attainder simply because it found nothing in the record showing “Congress intended  
2 to punish the workers for filing and maintaining this action.” *Atonio*, 10 F.3d at 1491-1492, n.3,  
3 1496.

4 In *Nixon v. Administrator of Gen. Services*, where the Supreme Court rejected former  
5 President Nixon’s attainder claim regarding a law that addressed custody of his presidential records  
6 with the goal of preventing his destruction of those records, the Supreme Court cautioned against  
7 an expansive reading of attainder:

8 By arguing that an individual or defined group is attained whenever  
9 he or it is compelled to bear burdens which the individual or group  
10 dislikes, appellant removes the anchor that ties the bill of attainder  
11 guarantee to realistic conceptions of classification and punishment.  
12 His view would cripple the very process of legislating, for any  
individual or group that is made the subject of adverse legislation can  
complain that the lawmakers could and should have defined the  
relevant affected class at a greater level of generality. . .

13 *Nixon v. Adm’r of General Servs.*, 433 U.S. 425, 470-472 (1977) (footnotes omitted) (“Forbidden  
14 legislative punishment is not involved merely because the Act imposes burdensome  
15 consequences”). Here, the City and its voters were exercising legislative powers related to the  
16 budget, City services, and employment compensation. Measure B applies to all City employees,  
17 not just AFSCME. On these facts, AFSCME cannot prove that the City or the voters were “intent  
18 on encroaching on the judicial function of punishing an individual for blameworthy offenses.” *See*,  
19 *id.* at 479.

20 In the one case AFSCME cited that actually did find unlawful attainder, the Second Circuit  
21 found unlawful attainder where the *statute expressly declared* Consolidated Edison’s negligence for  
22 a power outage, absent a judicial trial for negligence, and inflicted punishment on the utility by  
23 providing that it could not recover outage-related costs from ratepayers. *Consolidated Edison v.*  
24 *Pataki*, 292 F.3d 338, 344, 346-355 (2d Cir. 2002). Again, there is no such declaration here.

25 Thus, under the guidance of these cases, AFSCME cannot state a claim of bill of attainder.  
26 AFSCME’s newer allegations do nothing to show that the voters who approved Measure B – based  
27 on the actual language on the ballot and the text of Measure B itself – expressed a finding of guilt  
28 of any of AFSCME’s members or any intent to “punish[] an individual for blameworthy offenses.”

1 See *Nixon*, 433 U.S. at 479. Rather, AFSCME’s allegations are an attempt to dramatically broaden  
2 the scope of the law of attainder, contrary to the dictates of California’s highest court, and  
3 potentially sweep in every decision on compensation and benefits not agreed to by public employee  
4 unions.

5 **B. AFSCME Still Cannot State a Claim for an Illegal Tax, Fee or Assessment**

6 **1. *Measure B Is Not a Tax***

7 AFSCME argues that Measure B is a “tax” because is it “related to the City’s desire to  
8 finance its essential government functions.” (AFSCME Brief at p. 7.) If Measure B is a “tax” then  
9 so is every reduction in employee compensation or benefits imposed by a public entity to balance  
10 its books. Requiring every such employment and budgeting decision to be subject to strict rules on  
11 local taxation would paralyze city budgeting. No Court has ever given this remarkable theory any  
12 credence and it is contrary to established principles of California constitutional law. *Vista*, 54  
13 Cal.4th at 555, 562 and n.3, 563 (“[a]utonomy with regard to the expenditure of public funds lies at  
14 the heart of what it means to be an independent governmental entity”).

15 As demonstrated by the City’s opening brief, the definitions of local tax in the California  
16 constitution and Revenue and Tax Code do not include a public employer’s adjustment of  
17 employee compensation. To do so would contradict the specific provisions of the California  
18 constitution, Article XI, section 5(b)(4) which grant Charter cities “plenary authority” over  
19 employee compensation. (City’s Brief at pp. 10-11.)

20 As a result, there are simply no cases to support AFSCME’s tax claim. The cases AFSCME  
21 does cite simply address how to characterize taxes that no one actually disputed were taxes or how  
22 to prioritize debts owed in bankruptcy; none support their claim that a public entity’s decisions  
23 related to its own employees’ pensions and compensation is a tax. (AFSCME Opp. at 6:25-8:7.)  
24 See, e.g., *Flynn v. City and County of San Francisco*, 18 Cal.2d 210, 212-216 (1941) (finding  
25 double taxation of trucks and taxicabs); *Weekes v. City of Oakland*, 21 Cal.3d 386, 392 (1978)  
26 (upholding an “occupation tax” on the wages of people employed in (not by) Oakland); *Jenson V.*  
27 *FTB*, 178 Cal.App.4th 426, 427 (2009) (upholding tax on wealthy individuals to fund mental health  
28 services); *New Jersey v. Anderson*, 203 U.S. 483 (1906) (defining taxes for priority purposes in

1 bankruptcy); *In re E.A. Nord Co., Inc.*, 75 B.R. 634, 636-637 (Bankr. W.D. Wash 1987) (same).  
2 Similarly, there is no authority that Revenue and Tax Code section 17041.5 applies to a public  
3 sector employer's compensation decisions, from either the text of the statute or cases citing it. *See*,  
4 *Weekes*, 21 Cal.3d at 397-398 (interpreting section 17041.5, which did not prohibit a local  
5 "occupation tax").

6 AFSCME argues that Measure B is a tax because it does not relate to any individual  
7 employee's performance, years of service, seniority, job class, hours, or other indicia of  
8 employment. (AFSCME Brief at p. 7.) AFSCME could just as well be describing an across- the-  
9 board wage reduction, which also does not relate to any of the listed criteria, but which is clearly  
10 not a tax. Contrary to AFSCME's contentions, there is no requirement that a reduction in  
11 compensation be tied to any of these elements or to "current or prospective" work of particular  
12 employees. There is simply no California legal authority to deem Measure B a tax.

## 13 **2. Measure B Does Not Violate Equal Protection**

14 Because Measure B cannot, as a matter of law, be deemed a tax, the City did not address  
15 AFSCME's equal protection allegations in its opening brief because there was no need to reach the  
16 equal protection question. Given that AFSCME discussed its equal protection allegations in its  
17 opposition brief, the City hereby responds that AFSCME has not and cannot allege facts that show  
18 Measure B violates equal protection.

19 The California Supreme Court applies "a rational basis analysis" to tax claims. *Jensen*, 178  
20 Cal.App.4th at 435-436. In an equal protection tax case, the "burden of demonstrating the  
21 invalidity of a challenged classification 'rests squarely upon the party who assails it.'" *Id.* (citation  
22 omitted). "In a rational basis analysis, any conceivable state purpose or policy may be considered  
23 by the courts." *Id.* The City "'has no obligation to produce evidence to sustain the rationality of a  
24 statutory classification,' which 'may be based on rational speculation unsupported by evidence or  
25 empirical data.'" *Id.* (citation omitted). Here, the purpose of Measure B, as stated in its Findings  
26 and Intent, is to bring down employee costs so that the City may provide City services to its  
27 residents and taxpayers while at the same time preserving reasonable long-term post-employment  
28 benefits. Even assuming that Measure B is a tax (which it is not), this is not a purpose prohibited

1 by the equal protection clause.

2 AFSCME’s new allegations urge a strict scrutiny analysis, arguing that equal protection  
3 rights are violated because a “fundamental interest” is at stake – public employment retirement  
4 security. But California courts have applied rational basis analysis to public retirement plans.  
5 *Rittenband v. Cory*, 159 Cal.App.3d 410, 414 (1984) (applying rational basis analysis and  
6 upholding aspect of Judge’s Retirement Law that “encourages judges to retire at or before age 70  
7 by providing reduced retirement benefits to judges choosing to retire after age 70 and to their  
8 surviving spouses”); *Hudson v. Bd. of Admin. of the Pub. Ees Ret. Sys.*, 59 Cal.App.4th 1310, 1329  
9 (1997) (“Courts generally have applied a rational basis test in evaluating equal protection claims  
10 based on differing treatment of members of public employee retirement plans”).

11 Moreover, strict scrutiny does not apply here because public employees have ““none of the  
12 traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such  
13 a history of purposeful unequal treatment, or relegated to such a position of political powerlessness  
14 as to command extraordinary protection from the majoritarian political process.”” *Jensen*, 178  
15 Cal.App.4th at 434-435 (citation omitted). AFSCME argues that Measure B classifies employees  
16 based on wealth and thus is subject to strict scrutiny. (AFSCME Brief at 10, citing *Serrano v.*  
17 *Priest*, 5 Cal.3d 584 (1971).) Once again, this theory sweeps too broadly and would invalidate any  
18 across-the-board wage reduction, or increased payments for benefits, because lower paid workers  
19 arguably could least afford it.

20 In *Serrano*, the court held that “discrimination in educational opportunity on the basis of  
21 [school] district wealth involves a suspect classification, and ... education is a fundamental  
22 interest.” *Serrano v. Priest*, 18 Cal.3d 728, 765-766 (1976). But the high court in *Serrano* declined  
23 to decide whether to “insist upon strict scrutiny review of all governmental classifications based on  
24 wealth, thus elevating such classifications to a level of ‘suspectedness’ equivalent to those based on  
25 race.” *Id.* at 766 n.45. A subsequent case, however, applied rational basis review to the Judges’  
26 Retirement Law, even though the law “effectively encourages only ‘nonaffluent’ judges to retire,  
27 not those who are independently wealthy.” *Rittenband*, 159 Cal.App.3d at 427 n.21. The court  
28 reasoned that “even if a fundamental right were at stake in this case, ‘nonaffluence,’ however

1 reasonably defined with respect to judges, hardly rises to the level of ‘indigence’ or ‘poverty,’  
2 which, when it does result in the effective deprivation of certain highly protected rights, has been  
3 utilized to justify judicial intervention on equal protection grounds.” *Id.* It cannot be argued that  
4 any City employee, including those vigorously represented by AFSCME in this case, falls under  
5 this suspect classification.

6 Finally, the two cases AFSCME cites to show that it could state a claim under rational basis  
7 review are inapposite. (AFSCME Brief at p. 11.) *McCrae v. Cal. Unemployment Ins. Appeals Bd.*,  
8 is not an equal protection tax case, and in fact held against petitioner. *McCrae*, 30 Cal.App.3d 89,  
9 94 (1973). *Britt v. City of Pomona*, 223 Cal.App.3d 265 (1990), held that there was no rational  
10 basis for the sub-classification of people selected by the city to pay a transient occupancy tax.  
11 Here, given that Measure B applies to all employees and does not have an arbitrary classification,  
12 *Britt* and subsequent cases do not support AFSCME’s equal protection theory. *See, Weekes*, 21  
13 Cal.3d at 390, 398 (upholding an “occupation tax” on the wages of people employed in Oakland,  
14 finding, “nor does the tax discriminate unreasonably against Oakland residents who are employed  
15 in the city, merely because residents employed elsewhere are exempt).

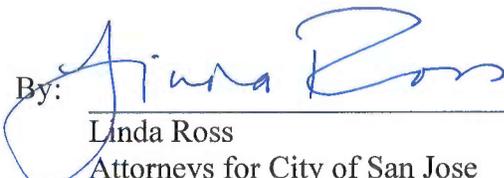
16 **III. CONCLUSION**

17 Given the consequences of permitting AFSCME to proceed with two claims that are contrary  
18 to decades of constitutional and judicial precedent regarding public sector employee compensation,  
19 the City respectfully requests that the Court sustain its demurrer to the second and seventh causes of  
20 action.

21 Respectfully submitted.

22 DATED: April 23, 2013

23 MEYERS, NAVE, RIBACK, SILVER & WILSON

24 By: 

25 Linda Ross

26 Attorneys for City of San Jose

27 2074897.1



1 **SERVICE LIST**

<p>2 John McBride 3 Christopher E. Platten 4 Mark S. Renner 5 WYLIE, MCBRIDE, PLATTEN &amp; 6 RENNEN 7 2125 Canoas Garden Ave, Suite 120 8 San Jose, CA 95125</p> <p>9 <u>E-MAIL:</u></p> <p>10 jmcbride@wmpirlaw.com 11 cplatten@wmpirlaw.com 12 mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>12 Gregg McLean Adam 13 Jonathan Yank 14 Gonzalo Martinez 15 Jennifer Stoughton 16 CARROLL, BURDICK &amp; 17 MCDONOUGH, LLP 18 44 Montgomery Street, Suite 400 19 San Francisco, CA 94104</p> <p>20 <u>E-MAIL:</u></p> <p>21 gadam@cbmlaw.com 22 jyank@cbmlaw.com 23 gmartinez@cbmlaw.com 24 jstoughton@cbmlaw.com 25 awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>21 Teague P. Paterson 22 Vishtap M. Soroushian 23 BEESON, TAYER &amp; BODINE, 24 APC 25 Ross House, 2nd Floor 26 483 Ninth Street 27 Oakland, CA 94607-4051</p> <p>28 <u>E-MAIL:</u></p> <p>tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>Harvey L. Leiderman REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105</p> <p><u>E-MAIL:</u>  hleiderman@reedsmith.com;</p>	<p>Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574 )</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)</p>
<p>Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. Silver, Hadden, Silver, Wexler &amp; Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90407</p>	<p>Attorneys for Plaintiffs/Petitioners SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT AND ROSALINDA NAVARRO</p>

2061064.1