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ENDORSED

2013 MAY -3 A 10:40

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

By A. PACHECO
Clerk

6 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,
7 Mary Kathleen McCarthy, Than Ho, Randy Sekany,
8 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,
9 John Mukhar, Dale Dapp, James Atkins, William Buffington
and Kirk Pennington

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

13 SAN JOSE POLICE OFFICERS' ASSOCIATION

14 Plaintiff,

15 v.

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

20 Defendants.

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)

**DECLARATION OF RANDY SEKANY
IN OPPOSITION TO MOTION FOR
SUMMARY ADJUDICATION OF ISSUES**

21 and Consolidated Actions

22 CITY OF SAN JOSE

23 Cross-Complainant,

24 v.

25 SAN JOSE POLICE OFFICERS' ASSOCIATION, *et*
26 *at.*

27 Cross-Defendants.
28

June 7
Date: **May 3, 2013**
Time: **9:00 a.m.**
Dept: **2**
Judge: **Hon. Patricia M. Lucas**

Trial Date: June 17, 2013

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I, Randy Sekany, say:

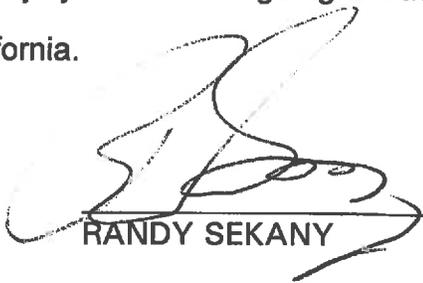
1. I am one of the Plaintiffs/Cross-Defendants in the *Sapien, et al. v. City of San Jose* lawsuit, Case No. 1-12-CV-225928.

2. I was employed by the City of San Jose Fire Department from September of 1980 until my retirement in January of 2009. I started as a firefighter and retired as a captain. From May of 1996 until January of 2011, I was the President of IAFF Local 230.

3. On or about May 4, 2008, a Memorandum was addressed and promulgated to all City Employees from Debra Figone, City Manager, a true and correct copy of which is attached hereto as Exhibit 1. In that Memorandum on page 2, Ms. Figone confirmed that: "Because San Jose retiree healthcare benefits are part of the City's retirement health plans, the retiree healthcare benefits can be considered a 'vested' benefit similar to the pension benefit itself."

4. The City of San Jose has typically included descriptions of the Police and Fire Department Retirement Plan. As an example, attached hereto as Exhibit 2 is a true and correct copy of the Recruiting Brochure used in 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2013, at Pleasanton, California.

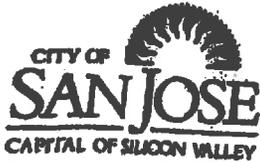


RANDY SEKANY

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EXHIBIT 1

COPY



Memorandum

TO: All City Employees and Retirees
SUBJECT: Retiree Healthcare Developments

FROM: Debra Figone
DATE: March 4, 2008

Process Update

In December of last year, I sent out an informational memorandum to all City employees and retirees on the subject of retiree healthcare. The memo discussed key background information related to retiree health issues, the City Council's direction to develop a process to address retiree healthcare, and the process by which we proposed to gather input from all stakeholders. In light of new information, this memo serves as a brief update on the efforts put forth thus far on this important issue.

As a reminder, on August 28, 2007, the City Council directed staff to:

1. Engage stakeholders in identifying strategies and alternatives to address our unfunded liability for retiree healthcare. Stakeholders will include, at a minimum, employees, City Labor Alliance, Executive Management Forum, retiree associations, retirement boards, and South Bay Labor Council.
2. Continue to survey how other cities and counties are addressing their unfunded liabilities.
3. Engage experts, identified by the Administration and stakeholders, as necessary to evaluate strategies and approaches that are identified by stakeholders or have been implemented in other cities or counties.
4. Study how pre-full funding of benefits can be accomplished through a phased approach.

The first two items listed above are nearing completion as the facilitations and survey have been successfully executed by City staff in coordination with three consultants. Starting in December of 2007, our consultants have engaged the identified stakeholders to solicit their input and capture their ideas. A report summarizing all stakeholder feedback sessions, along with a survey of other organizations who are exploring ways to comply with GASB regulations will be completed in March. As an additional resource for all stakeholder groups, a website has been created to provide relevant background information as well as the most up-to-date documentation produced from each meeting. The website can be viewed at: www.sanjoseca.gov/retireehealthcare.

Vested Benefit

In addition, the City Council requested additional information regarding the legal issues related to changing retiree healthcare benefits. In San José, retiree healthcare benefits are in the Municipal Code as part of the City's retirement plans. Because San José's retiree healthcare benefits are part of the City's retirement plans, the retiree healthcare benefit can be considered a "vested" benefit similar to the pension benefit itself. Based on this, we will not be recommending changes to retiree healthcare benefits (as specified in the Municipal Code) for current employees or current retirees at this time.

Although this information may help address the existing concerns about the possibility that the level of benefit (100% of the lowest cost plan for single or family coverage) would be changed for current employees and/or current retirees, there remains a very significant challenge in funding the benefit. The unfunded liability is currently between \$1.2 and \$1.65 billion, and we will continue to face the challenge of paying the long-term costs of providing these retiree healthcare benefits. The City and employees covered by the current benefit share an interest in addressing the costs of retiree healthcare benefits for many reasons, including that the Municipal Code specifies that the costs are shared between the City and employees.

Per the Municipal Code, cost-sharing for retiree medical insurance is split 50/50 between the City and employees. (For retiree dental insurance, the costs are shared between the City and employees at a ratio of eight to three.) In addition to funding the costs of the benefit for current employees and current retirees, we must continue to work together on other solutions to mitigate the significant cost of healthcare, including wellness programs and plan design changes.

I encourage you to continue participating in this process as we move forward. As requested by the City Council, staff will conduct further research and compile the information into a report which will offer ways to accomplish full pre-funding of benefits through a phased approach. It is imperative that the City of San José continue to learn and engage in solutions towards funding this significant liability.


Debra Figone
City Manager

EXHIBIT 2

San José Fire Department

applied on

2-6-06



Welcome to the Recruitment Office

JDH

66440

The San Jose Fire Department is an advanced, diverse and progressive fire department situated in the Capital of Silicon Valley.

Our goal is to maintain San Jose's heritage of excellence by recruiting candidates that reflect the rich make-up of our diverse population. We appreciate your interest and have provided information which will guide you through the steps required to become a member of our elite firefighting team.

PSW
AMBER

- Qualifications
- Education
- Application
- Physical
- Benefits
- Other Resources
- Home

Firefighter Recruit (EMT) (No Previous Academy or Firefighter Experience)

AND

Firefighter Recruit/Firefighter (PARAMEDIC)

Type of Job: Open to all Applicants
 Requisition #: CSJ-2006-
 Department: Fire
 Open Date: Monday, February 6, 2006
 Close Date: Wednesday, February 8, 2006
 Benefit Level: Full-Time with Benefits
 Salary:

- **Firefighter Recruit (EMT) (No Previous Academy or Firefighter Experience):** \$2,284.00 bi-weekly or \$59,384.00 annually (Candidates hired as Firefighter Recruit EMTs will be placed in the Firefighter Recruit classification)

- **Firefighter Recruit/Firefighter - Paramedic:** \$2,284.00 - \$3,216.00 bi-weekly or \$59,384.00 - \$83,616.00

Eligible employees would also receive additional premium pay upon successful completion of the Academy:

- **EMT Pay:** 3% of top step Firefighter (\$96.48 bi-weekly and \$2,508.48 annually)
- **Paramedic Pay:** 12% of top step Firefighter (\$385.92 bi-weekly and \$10,033.92 annually)
- **Oral Bilingual Pay:** \$29 bi-weekly (\$754.00 annually)
- **Education & Training Pay (AA/AS - Fire Science):** \$35 bi-weekly (\$910.00 annually)

Based on the Department's current hiring needs, the San José Fire Department is currently accepting applications for openings in the classifications of both Firefighter (2311) and Firefighter Recruit (2310).

Firefighters, Paramedics and EMTs with bilingual language skills (Cantonese, Mandarin, Spanish, Tagalog and Vietnamese) and experienced Firefighter - Paramedics are encouraged to apply. All new-hires must attend a 17-18 week Academy. The probationary period for Firefighter (2311) is one (1) year from date of hire. The probationary period for Firefighter - Recruit (2310) is one (1) year from date of Academy graduation.

Qualified Paramedics may apply for both Firefighter Recruit/Firefighter (Paramedic) and/or Firefighter Recruit (EMT) (No Previous Academy or Firefighter Experience).

MINIMUM QUALIFICATIONS:

To be considered, the following **MINIMUM QUALIFICATIONS** are required for both Firefighter Recruit/Firefighter (Paramedic) and Firefighter Recruit (EMT) (No Previous Academy or Firefighter Experience):

1. At least 18 years of age on the date of the written examination;
2. Graduation from high school or equivalent (G.E.D. or California Proficiency Certificate) on the date of the written examination;
3. Possession of a valid California driver's license or equivalent on the date of the written examination; and,
4. Possession of a current and valid certification as a National registered Emergency Medical Technician Basic on the date of the written examination, or;

Possession of a current and valid certification as a California State Fire Marshal Emergency Medical Technician I on the date of the written examination, or;

Possession of a current and valid certification as an Emergency Medical Technician I from any County in the State of California on the date of the written examination; or,

Possession of a current and valid Paramedic license issued by the State of California Emergency Medical Services Authority on the date of the written examination.

REQUIRED LICENSURE AND CERTIFICATION requirements for Firefighter Recruit/Firefighter (PARAMEDIC) are:

Proof of Paramedic Licensure and Certification:

- o Possession of a current and valid Paramedic license issued by the State of California Emergency Medical Services Authority by the date of the written examination, or
- o Documentation of successful completion of an approved paramedic training program and successful completion of the National Registry of EMT-Ps written and practical examinations and possession of a current and valid paramedic license issued by the State of California Emergency Medical Services Authority by the date of the written examination, or
- o Possession of a valid EMT-P certification from another state, territory, country and registration with the National registry of EMT-Ps and possession of a current and valid paramedic license issued by the State of California Emergency Medical Services Authority by the date of the written examination.

Persons who are not currently fully licensed and certified as a Paramedic as described above may not apply at this time for the Firefighter Recruit/Firefighter (Paramedic). Persons currently enrolled in a Paramedic School (Didactic and Skills Training), completing their Hospital and Clinical Training or completing their Field Internship are also not eligible to apply at this time. However, if you are not eligible to apply as a Firefighter Recruit/Firefighter (Paramedic), you may, if qualified, apply for Firefighter Recruit (EMT) under this posting or you may contact the San José Fire Department at sjfdrecruiting@sanjoseca.gov to request notification of future job announcements.

Persons who are not currently fully certified as an EMT as described above may not apply at this time. If you are not eligible to apply under this posting, you may contact the San José Fire Department at sjfdrecruiting@sanjoseca.gov to request notification of future job announcements.

with the City of San José based on the Fire Department's hiring standards.

In responding to the PHQ, applicants must be prepared to provide detailed information of their personal history in the following nine (9) categories:

- Education
- Employment
- Legal History
- Military Experience
- Substance Use
- Fire Service/Public Safety Experience
- Driving Record
- Financial History
- General Information

To be admitted to the Written Test, candidates will be required to provide, at sign-in, written proof that they meet the MINIMUM QUALIFICATIONS described above for each opening for which they have applied – Firefighter Recruit (EMT) and/or Firefighter Recruit/Firefighter (Paramedic). Failure on the part of the candidate to produce the required documentation will prevent him/her from advancing to the Written Test and will result in their disqualification in this posting and testing and selection process.

2. Oral Board Interview : Only those candidates who satisfactorily demonstrate that they have met the MINIMUM QUALIFICATIONS described above and pass both elements of the Written Test, the NFSI and PHQ, will be invited to participate in an Oral Board Interview. The Oral Board Interviews will be conducted by a panel of City of San José employees, community leaders and San José Fire Department members.

To be admitted to the Oral Board Interview, candidates will be required to present, at sign-in, a current Candidate Physical Ability Test (CPAT) certification card. Information on the CPAT test, including event descriptions, test preparation and test scheduling may be obtained at <http://cpatonline.org>. Prior to a conditional offer, as discussed later in this announcement, candidates must also present a CPAT certification card which would not be more than one (1) year old as of the Academy start-date. Oral Board Interviews are tentatively scheduled to be conducted the week of March 27 – 31, 2006.

3. Qualified Candidate Group : Only those candidates who successfully demonstrate that they have met the MINIMUM QUALIFICATIONS described above, who have passed the Written Test, hold a current CPAT certification card, and have successfully completed the Oral Board Interview, will be placed in the Qualified Candidate Group (QCG).

4. Chiefs Interview: Those candidates deemed to be the most qualified based on their standing in the QCG may be invited to participate in a Chief's Interview. This Chief's Interview will determine which candidates advance to the next phase of the selection process, the Background Investigation and Polygraph Examination. Chief's Interviews are tentatively scheduled for the week of April 24, 2006.

5. Background Investigation and Polygraph Examination : Those candidates who have passed all phases of the testing process through the Chief's Interview may be considered for advancement to the detailed Background Investigation and Polygraph Examination. This process is tentatively scheduled to occur between May 8, 2006 and June 30, 2006. The Background Investigation and Polygraph Examination process includes the following elements:

- o Attendance at the mandatory comprehensive Background Investigation orientation (tentatively scheduled for the week of May 8, 2006);

- o Completion of a detailed Personal History Statement (PHS) and review of documentation with the background investigator. Applicants are responsible for providing original documents as identified in the PHS document. **Falsification or failure to disclose or complete any pertinent or required information during any phase of the application, testing or selection process is grounds for immediate disqualification ;**

- o A detailed Background Investigation covering at least the last ten years of each applicant's history including a credit check, motor vehicle records check, verification of education, licensure and certifications, personal, business and employer reference checks, and law enforcement, criminal and civil court records;

APPLICATION AND SELECTION PROCESS

Qualified applicants may apply for these positions by submitting an application on-line at <http://jobs.cityofsj.org>. First Click on "Open Recruitment's" then Click on "Firefighter Recruit/Firefighter" to view the job announcement. Click the "Apply to This Position" button at the bottom of the job announcement to apply. On-line applications will only be accepted between 8:00 a.m. Monday, February 6, 2006 and 11:59 p.m. Wednesday, February 8, 2006.

The City of San José strongly encourages the use of the on-line application system. However, if you are unable to apply on-line, completed hard copy applications will be received during regular business hours by the Employee Services Department between 8:00 a.m. Monday February 6, 2006 and 5:00 p.m. Wednesday February 8, 2006. All hard copy applications must be submitted to the Employee Services Department located at 200 East Santa Clara Street, San José. Applications will not be accepted by the Fire Department.

Failure to submit an application within the times and dates identified above will result in ineligibility for further consideration in this posting and testing and selection process.

1. Written Test: Applicants who meet the minimum qualifications will be notified by mail of the testing date(s) and location(s), tentatively scheduled for the week of **March 6, 2006**. The City reserves the right to schedule written examinations based on the number of applications received and the Fire Department's hiring needs. The following tests will be administered to all eligible applicants:

National Firefighter Selection Inventory (NFSI) : The written examination will be the National Firefighter Selection Inventory. This multiple-choice test will cover the following problem solving skills and personality characteristics needed to function effectively as a Firefighter: deductive reasoning, inductive reasoning, verbal comprehension, verbal expression, problem sensitivity, mathematical reasoning, numeric facility, stress tolerance, team orientation, and motivation/attitude.

Study guides may be purchased directly from the test vendor by calling: Public Safety Recruitment - IO Solutions at (800) 343-HIRE (4473) or <http://ifpra.com>.

Personal History Questionnaire (PHQ) : This questionnaire consists of approximately 180 questions and allows each applicant to answer questions that have been determined to relate directly to job suitability. The Fire Department has developed hiring standards that assess an applicant's suitability for employment as a Firefighter with the City of San José. The PHQ is designed to identify applicants in the testing process who best meet these hiring standards.

As part of this testing process, a thorough Background Investigation will be conducted on each applicant. This investigatory process will also include a Polygraph Examination. The PHQ is included as a part of that process. ***Please take the time to read this information so that you may accurately assess your own suitability for employment with the City of San José Fire Department.*** Examples of background issues that may be reason for rejection during the testing and selection processes include, but are not limited to:

- o Criminal history, including commission or conviction of a criminal offense(s);
- o Recent forced resignation, termination, or probation failure from any public safety or emergency medical service position or other employment related issues;
- o Recent or current use of any illegal drugs or narcotics. Past use is evaluated on a case-by-case basis. Failure to disclose prior use is cause for immediate disqualification;
- o Falsification or failure to disclose any required information during the application, testing and/or selection processes; and/or,
- o Other issues that may affect an applicant's suitability for a public safety position

- o A polygraph Examination; and,
- o A criminal records fingerprint check through the Department of Justice.

6. Final CPAT Verification : Upon the completion of the Background Investigation and Polygraph Examination, and prior to a conditional offer, candidates must present a current CPAT certification card, which would be not more than one year old as of the Academy start-date.

7. Conditional Offer of Employment : At this point, successful candidates may be given a conditional offer of employment. The final selection process, tentatively scheduled to begin the week of July 10, 2006, includes the following steps:

- o Administration of a written and oral psychological screening; and,
- o A medical examination completed by the City's Physician.

Those candidates who successfully complete the testing and selection process and are given an offer of employment must successfully complete a 17-18 week Academy. This Academy is tentatively scheduled to commence on Monday, August 28, 2006.

If you have any questions regarding this job announcement, please contact Cheryl Uyehara of the Fire Department, Bureau of Administrative Services, at (408) 277-4076 or e-mail: Cheryl.Uyehara@sanjoseca.gov. If you have questions, comments or concerns about the recruitment, hiring or selection process, please contact Renee Bettencourt of the Employee Services Department at (408) 277-3041 or e-mail: renee.bettencourt@sanjoseca.gov.

SUPPLEMENTAL BENEFIT AND RETIREMENT INFORMATION (Subject to negotiated changes with IAFF, Local 230)

BENEFITS

Work Schedule : 24-hour shifts/56-hour week. **Health Insurance :** Three plans to choose from: Kaiser, Blue Shield POS/PPO or Blue Shield HMO. **Dental Insurance :** Delta Dental HMO or Dental Care/PMI HMO. **Vacation :** 1 - 5 years = 120 hours (5 shifts), 6 - 10 years = 168 hours (7 shifts), 11 - 12 years = 192 hours (8 shifts), 13 - 14 years = 216 hours (9 shifts), 15+ years = 288 hours (12 shifts). **Sick Leave :** .04616 hours x number of hours worked **Uniform Allowance :** \$495.00 per year.

RETIREMENT

Contribution : Employee 10.25% of base salary and the City 14.22% of base salary. **Service Retirement :** Age 50 and 25 years of service, age 55 and 20 years of service or any age and 30 years of service. Mandatory retirement at age 70. **Service Retirement Allowance =** 1 st 20 years x 2.5%; 21 - 25 years 3%, and 26 - 30 years 4% (85% max. for 30 years of service). Final compensation based on highest 12 consecutive months. **Early Retirement :** 50 - 54 years with 20 years (reduced monthly allowance - percentage is based on age); **Early Retirement Allowance** reduced pursuant to Section 3.36.810 Municipal Code. **Reciprocity :** The City of San Jose Police and Fire Retirement systems have signed a reciprocity agreement with PERS; reciprocity with other public agencies may be established. For more information regarding reciprocity, call Retirement Services at (408) 392-6700. **Vesting of Pension Credit :** 10 years (must have 20 years from date of entry to collect pension). **Deferred Vested Retirement :** 55 with 10 years of service only if 20 years have elapsed from date of membership. For more information regarding retirement benefits, call Retirement Services at (408) 392 - 6700.

FIREFIGHTER VISION STANDARDS

Please read the following information to ensure that you meet the minimum vision standards. If you need more detailed information, please call Medical Services at (408) 277-4177. These standards are subject to review and change at the

discretion of the City of San Jose .

Uncorrected Vision: If you do not wear glasses or contact lenses, and have not had any vision-related surgery or medical procedures, the vision standard is 20/100 binocular (both eyes open).

Corrected Vision : Your vision, with glasses or soft contacts, must be 20/20 binocular (both eyes open); 20/40 in the worst eye.

Soft Contacts: One year of successful use prior to the medical examination. Eyeglasses are to be used as a back-up on an emergency basis and must be available at all times. Eyeglasses must be worn when using respirators.

RK Surgery:

- All post-op records must be submitted for review;
- No significant difficulty with glare or night vision;
- No indications that uncorrected far acuity will be significantly degraded within the next 2 to 3 years by progressive hyperopia;
- No significant diurnal instability in visual testing or function; and,
- One (1) year minimum elapsed time between surgery and qualifying examination.

Orthokeratology:

- This procedure is unacceptable, and must have been discontinued for at least 12 months prior to examination. Evaluation will be on a case-by-case basis.

Other Invasive Eye Altering Procedures

- Candidates undergoing other procedures will be conditionally disqualified until a minimum of one year from the date of the last procedure.

Color Vision:

- Candidates who fail the PIP test must pass the Farnsworth D-15 with no more than one major crossing error.
- Use of rose-colored lenses (e.g. "X-Chrom") is not permitted during testing.

If your interest is **Fire and Emergency Medical Dispatching**, check [here](#) for more information about San Jose's outstanding communications center.

You will need the free Adobe Acrobat Reader to view and print the interest card.



For questions or comments about employment, please contact our SJFD Recruitment Officer by [e-mail](#) or by telephone: **408-277-FIRE (3473)**

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