

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Amber L. West, No. 245002
3 **CARROLL, BURDICK & McDONOUGH LLP**
Attorneys at Law
4 44 Montgomery Street, Suite 400
San Francisco, CA 94104
5 Telephone: 415.989.5900
Facsimile: 415.989.0932
6 Email: gadam@cbmlaw.com

7 Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers' Association

8
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
16 ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
17 RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10, inclusive,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT
20 AND CONSOLIDATED ACTIONS
21

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

**DECLARATION OF FRANCO VADO IN
SUPPORT OF PLAINTIFF SAN JOSE POLICE
OFFICERS' ASSOCIATION'S OPPOSITION
TO MOTION FOR SUMMARY
ADJUDICATION**

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

Complaint Filed: June 6, 2012
Trial Date: July 22, 2013

1 I, Franco Vado, declare and say:

2 1. I am employed by the City of San Jose as a Police Officer and am a
3 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). As a
4 result of my employment with the City of San Jose and affiliation with the SJPOA, I am
5 familiar with the facts in this matter, as well as those set forth in this Declaration. If
6 called upon as a witness, I could and would testify competently to these facts.

7 2. I submit this declaration in support of the SJPOA's Opposition to City of
8 San Jose's Motion for Summary Adjudication ("MSA").

9 3. I started employment as a Police Officer with the San Jose Police
10 Department in 1995.

11 4. SJPOA is a union representing Police Officers working for the City of
12 San Jose ("Police Officers"). I have been Chief Financial Officer of the SJPOA since July
13 2010. Before that, I was a member of the Board of Directors from January 2009 to July
14 2010.

15 5. I am familiar with the collective bargaining history between the SJPOA
16 and the City of San Jose as the parties negotiated their Memoranda of Understanding
17 ("MOA"), including effects on Police Officers' retirement benefits. I am also familiar
18 with various forms of compensation the City has offered me and other Police Officers,
19 including deferred compensation. This includes retirement pension benefits,
20 Supplemental Retirement Benefit Reserve ("SRBR") benefits and retiree healthcare
21 benefits.

22 6. I have been directly involved on behalf of SJPOA and its members in
23 interest arbitrations between SJPOA and the City of San Jose. In that capacity, I rely on
24 my knowledge of the rules pertaining to interest arbitration, including the rules within the
25 City Charter, which requires interest arbitration for disputes between the City and Police
26 Officers regarding wages, hours, and terms and conditions of employment upon
27 declaration of an impasse by one of the parties during negotiations.
28

1 7. I was a member of the negotiation team for the 2010-2011, 2011-2013
2 MOAs. I have reviewed paragraphs 30 and 31 of the Declaration of Alex Gurza in
3 Support of Defendants' and Cross-Complainant's Motion for Summary Adjudication. I
4 disagree with his assertion that the parties treated increased employee pension
5 contribution rates as "interchangeable" with wage decreases. SJPOA agreed to the
6 increased pension contribution because we considered it a more favorable form of
7 concession than a wage cut. There were a number of reasons for this, as follows.

8 8. First, SJPOA agreed to a one-time additional 5.25% contribution made
9 directly from the employee's income into the employee's individual retirement account.
10 In contrast to this concession, a wage cut could have reduced the amount of pensionable
11 pay. The one-time additional 5.25% contribution did not. A pay cut also would have
12 adversely affected individual Police Officers' ability to qualify for loans and mortgages.

13 9. In addition, the one-time additional 5.25% contribution was not a
14 permanent change. It was agreed upon for one year.

15 10. Additionally, when any SJPOA member left City service, he or she could
16 leave their money in the system if they were vested; if unvested, they were required to
17 withdraw the total amount, which included the 5.25% additional contribution. This meant
18 that any Officer who left City employment who was not vested in the retirement system
19 had the full value of their concession returned to them plus interest. Because of this, the
20 City refused to continue this form of concession and agreed, instead, to a 10 percent total
21 compensation reduction beginning on July 1, 2011, the duration of which will be
22 arbitrated by the parties.

23 11. Finally, during the negotiations for the 2010-2011 MOA that led to
24 Article 5.1, SJPOA did not intend and nor did it ever expressly waive the vested rights of
25 its members relating to the City's payment of unfunded accrued actuarial liability. In fact,
26 this possibility was never even discussed by the parties. The parties negotiated and their
27 ultimate agreement was that Police Officers' increased pension contributions were made
28

1 on a one-time basis and were credited to their individual retirement accounts, not to
2 general UAAL.

3 I declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct and that this declaration is executed this 1st day of
5 May, 2013, San Jose, California.

6
7 F. Vado
8 Franco Vado
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28