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7 Mary Kathleen McCarthy, Than Ho, Randy Sekany,
Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,
8 John Mukhar, Dale Dapp, James Atkins, William Buffington
and Kirk Pennington

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

13
14 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

15 Plaintiff,

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17 vs.

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19 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATION FOR THE POLICE AND
20 FIRE DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10 inclusive

21 Defendants.

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23 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS

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)

**PLAINTIFFS' RESPONSE TO
SEPARATE STATEMENT OF
UNDISPUTED FACTS AND DISPUTED
MATERIAL FACTS IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY ADJUDICATION AND
ADDITIONAL MATERIAL FACTS**

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

Trial Date: July 22, 2013

1 Plaintiffs Robert Sapien, et al., Teresa Harris, et al., and John Mukhar, et al. hereby submits
2 their response to Defendant's Separate Statement of Undisputed Material Facts and Disputed
3 Material Facts in Opposition of Defendant's Motion for Summary Adjudication.

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5 **Issue No. 1 A: San José Charter §1506-A (Employee Additional Pension Contributions)**

6 There is no triable issue as to any material fact and Defendants are entitled to summary
7 adjudication as a matter of law that San José Charter Section 1506-A does not violate Article I,
8 Section 9 of the California Constitution and does not breach any duty by Defendants to Plaintiffs.
9 The City Charter may require employees to pay additional pension contributions to defray pension
10 plan unfunded liabilities. Plaintiffs have no vested right to the City paying for all pension plan
11 unfunded liabilities.

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14 1. Section 1506-A ("Current Employees")
of Measure B states:
15 (a) "Current Employees" means employees
16 of the City of San José as of the effective
17 date of this Act and who are not covered
18 under the Tier 2 Plan (Section 8).
19 (b) Unless they voluntarily opt in to the
20 Voluntary Election Program ("VEP,"
21 described herein), Current Employees
22 shall have their compensation adjusted
23 through additional retirement contribu-
24 tions in increments of 4% of pensionable
25 pay per year, up to a maximum of 16%,
26 but not more than 50% of the costs to
27 amortize any pension unfunded liabi-
28 lities, except for any pension unfunded
liabilities that may exist due to Tier 2
benefits in the future. These contribu-
tions shall be in addition to employees'
normal pension contributions and
contributions towards retiree healthcare
benefits.
(c) The starting date for an employee's
compensation adjustment under this

1. Undisputed

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<p>Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of	<p>2. Undisputed</p>

<p>1</p> <p>2 Charter of San José to include</p> <p>3 Section 78b (“Discretionary</p> <p>4 Powers of Council Respecting</p> <p>5 Retirement”) of Article X).</p>	
<p>6 3. Former San José Charter Section 78b</p> <p>7 stated:</p> <p>8 “Anything in Section 78a of the Charter</p> <p>9 to the contrary notwithstanding, the</p> <p>10 Council in its discretion may at any</p> <p>11 time, or from time to time, by ordinance,</p> <p>12 amend or otherwise change the</p> <p>13 retirement plan established by said</p> <p>14 Section 78a or any retirement plan or</p> <p>15 plans established pursuant to said</p> <p>16 Section 78a, or adopt or established a</p> <p>17 new or different plan or plans for</p> <p>18 eligible members of the police or fire</p> <p>19 department of the City of San José ” ...</p> <p>20 “all as the Council may deem proper and</p> <p>21 subject to such conditions, restrictions,</p> <p>22 limitations, terms and other provisions</p> <p>23 as the Council may deem proper;...”</p> <p>24</p> <p>25 <u>Supporting Evidence:</u></p> <p>26</p> <ul style="list-style-type: none"> 27 • RJN, Exh. E (California Assem- 28 bly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X). 	<p>3. Disputed as being an incomplete recitation of the 1961 Charter provision.</p> <p>Former §78b included the following additional language:</p> <p>(1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a.</p> <p>(2) Each and every such plan, as adopted or amended, and its retirement fund, shall be actuarially sound. Provision shall be made for the payment of monthly contributions into a retirement fund by both members of the plan and by the City of San Jose. The amount of monthly contribution required of members and of the City, respectfully, shall be fixed, and from time to time changed, by the administering board of the plan, so that the same will be sufficient to make or keep the plan and fund at all times actuarially sound. Monthly contributions required of members, as compared to monthly contributions required of the City, shall at all times be in the ratio of three to eight provided and excepting, however, that if provision should be made for the payment of any benefits on account of service rendered by members prior to the effective date of the ordinance which provides such prior service benefits, then in that event the Council, subject to the provisions of the above subparagraph (1) may in its discretion provide for the payment by the City of San Jose of all of such amounts as must be contributed to the retirement fund on account of such prior service benefits to render the plan and</p>

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fund actuarially sound to the extent that such amounts are not provided by members' accumulated prior service contributions, or may require contributions for such purpose by both City and members provided that contributions required of members for such purpose shall never exceed \$3 or each \$8 contributed for such purpose by the City.

4. The ballot argument in favor of Proposition A stated:
"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").

4. Undisputed

5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other*

5. Undisputed

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provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, *the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."*

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

6. Undisputed

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3	7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."	7. Undisputed as the Charter existed in 1965 – but see AMF No. _____.
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5	<u>Supporting Evidence:</u>	
6	• RJN, Exh. A.	
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8	8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	8. Undisputed
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10	<u>Supporting Evidence:</u>	
11	• RJN, Exh. A	
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14	9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	9. Undisputed
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16	<u>Supporting Evidence:</u>	
17	• RJN, Exh. A	
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20	10. The City Council has enacted some ordinances implementing Measure B.	10. Undisputed
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22	<u>Supporting Evidence:</u>	
23	• Gurza Decl, Exhs. 54, 55 . (Federated, Police and Fire Ordinances).	
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27	11. In 2010, a Coalition of City unions made	11. Undisputed
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a proposal to the City which stated:

5.1.2. Additional Retirement Contribution.

Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.

Supporting Evidence:

- Gurza Dec., ¶¶ 16-19, Exh. 2.

12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.

Supporting Evidence:

- Gurza Dec., ¶¶ 17, 18, Exhs. 3-6.

12. Disputed. The additional contribution was "to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability." Gurza Dec. Exhs 3 & 17, p. Gurza 262.

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<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	<p>13. Disputed. The additional contributions were “to be applied to reduce the contribution that the City would otherwise be required to make.” Gurza Dec. Exh. 11, p. Gurza 148.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <ul style="list-style-type: none">--Association of Building, Mechanical and Electric Inspectors (ABMEI)--Association of Legal Professionals (ALP).--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.	<p>14. Undisputed, but irrelevant.</p>



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Supporting Evidence:

- Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.

15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:

On-Going Additional Retirement Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

Supporting Evidence:

- Gurza Dec., ¶27, Exh. 11.

15. Undisputed

16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension

16. Undisputed

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<p>contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability..." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is	<p>18. Undisputed</p>

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<p>president),</p> <ul style="list-style-type: none">• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
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<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230;	<p>19. Undisputed</p>
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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	<p>21. Undisputed</p>
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal	<p>22. Undisputed</p>



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Code 3.36.1525(A).)
• Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).)

Supporting Evidence:

- RJN, Exh. D, (Municipal Code, Chapter 3.36).

Issue No. 1-B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate Article I, Section 9 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to make contributions towards unfunded liabilities to pay for their retiree healthcare. Plaintiffs have no vested right to the City paying all unfunded liabilities for retiree healthcare.



<p>23. San José Charter Section 1512-A states: “Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. B.	<p>23. Undisputed</p>
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p>	<p>24. Undisputed</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>25. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p>	<p>25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3 above.</p>
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	

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<p>26. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	<p>26. Undisputed</p>
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p>	<p>27. Undisputed</p>

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Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

28. Undisputed

29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”

29. Undisputed

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>31. Undisputed</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>32. Undisputed</p>
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p>	<p>33. Undisputed</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	
<p>34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." <u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. D.	<p>34. Undisputed</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. <u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	<p>35. Undisputed, but irrelevant. See objection to Gurza Declaration.</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <ul style="list-style-type: none">--Association of Building, Mechanical and Electrical Inspectors (ABMEI),--Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),--Association of Maintenance Supervisory Personnel (AMSP),--City Association of Management Personnel (CAMP),--International Brotherhood of Electrical Workers, Local No. 332 (IBEW);--Municipal Employees' Federation,	<p>36. Undisputed</p>

<p>1</p> <p>2 AFSCME Local 101 (MEF)</p> <p>3 --Confidential Employees Association,</p> <p>4 AFSCME Local 101 (CEO);</p> <p>5 --International Association of</p> <p>6 Firefighters, Local 230;</p> <p>7 --San José Police Officers Association.</p> <p>8 <u>Supporting Evidence:</u></p> <p>9 • Gurza Dec. ¶¶39, Exhs. 21, 39,</p> <p>10 40, 41.</p>	
<p>11 37. The City's agreement with AEA stated:</p> <p>12</p> <p>13 The City and Employee Organization</p> <p>14 agree to transition from the current</p> <p>15 partial pre-funding of retiree medical</p> <p>16 and dental healthcare benefits (referred</p> <p>17 to as the "policy method") to prefunding</p> <p>18 of the full Annual Required Contribu-</p> <p>19 tion (ARC) for the retiree healthcare</p> <p>20 plan ("Plan"). The transition shall be</p> <p>21 accomplished by phasing into fully</p> <p>22 funding the ARC over a period of five</p> <p>23 (5) years beginning June 28, 2009. The</p> <p>24 Plan's initial unfunded retiree healthcare</p> <p>25 liability shall be fully amortized over a</p> <p>26 thirty year period so that it shall be paid</p> <p>27 by June 30, 2039 (closed amortization).</p> <p>28The City and Plan members (active</p> <p>employees) shall contribute to funding</p> <p>the ARC in the ratio currently provided</p> <p>under Section 3.28.380(C)(1) and (3) of</p> <p>the San José Municipal Code. Specific-</p> <p>ally, contributions for retiree medical</p> <p>benefits shall be made by the City and</p> <p>members in the ratio of one-to-one.</p> <p>Contributions for retiree dental benefits</p> <p>shall be made by the City and members</p> <p>in the ratio of eight-to-three. . . .The</p> <p>Municipal Code and/or applicable plan</p> <p>documents shall be amended in</p> <p>accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <p>• Gurza Dec. ¶ 32 Exh. 40, AEA,</p> <p>Section 12.1.</p>	<p>37. Undisputed</p>
<p>38. The AEA agreement further stated:</p>	<p>38. Undisputed</p>

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<p>The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees’ Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	<p>39. Undisputed</p>
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p>	<p>40. Undisputed</p>



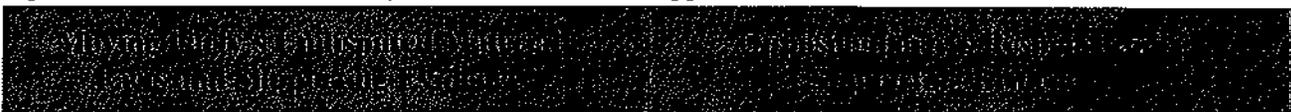
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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	
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<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶43, Exh. 42, 43 	<p>41. Undisputed</p>
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Issue No. 1-C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate Article I, Section 9 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The Supplemental Benefit Reserve was a discretionary retirement benefit. Plaintiffs have no vested right to the continuation of or payments from the Supplemental Benefit Reserve.



<p>42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve (“SRBR” shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p>	<p>42. Undisputed</p>
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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. B.	
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	<p>43. Undisputed</p>
<p>44. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...</p> <p>“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p>	<p>44. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3 above.</p>

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- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

45. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

45. Undisputed

46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or

46. Undisputed

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<p>plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><u>Supporting Evidence:</u></p>	<p>47. Undisputed</p>

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<ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council." <u>Supporting Evidence:</u> <ul style="list-style-type: none">● RJN, Exh. A.	48. Undisputed
49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance." <u>Supporting Evidence:</u> <ul style="list-style-type: none">● RJN, Exh. A	49. Undisputed
50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City." <u>Supporting Evidence:</u> <ul style="list-style-type: none">● RJN, Exh. A	50. Undisputed
51. The City Council has enacted some ordinances implementing Measure B. <u>Supporting Evidence:</u> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire	51. Undisputed

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Ordinances).	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	52. Undisputed
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exhs. L, M, N	53. Undisputed
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exh. D.	54. Undisputed
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved</p>	55. Undisputed

<p>1</p> <p>2 "The Methodology for the Distribution of</p> <p>3 Moneys In the Supplemental Retiree</p> <p>4 Benefit Reserve Of The Police and Fire</p> <p>5 Department Retirement Fund."</p> <p>6</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN., Exh. N. 	
<p>7 56. Beginning in 2010, the City Council</p> <p>8 amended the Municipal Code for the</p> <p>9 Police and Fire retirement plan to provide</p> <p>10 that "there shall be no distribution during</p> <p>11 calendar years 2010, 2011, 2012 or</p> <p>12 during calendar year 2013 ..."</p> <p>13 (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN., Exh. D. 	<p>56. Undisputed</p>
<p>14 57. In 1986 when the City Council</p> <p>15 authorized the Federated SRBR, and in</p> <p>16 2001, when the City Council authorized</p> <p>17 the Police and Fire SRBR, the actuaries</p> <p>18 reported that the City's two pension</p> <p>19 retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN, Exh. O [November 22, 1985 20 Letter from Coates, Herfurth & 21 England, to Edward F. Overton, 22 Retirement and Benefits Adminis- 23 trator, re: SB650 Study]; Gurza 24 Dec., Exh 59 [Actuarial Valuation 25 Report, City of San José Police and 26 Fire Department Retirement Plan, 27 as of June 30, 2012, at p. 5 28 (showing plan overfunded at 114.8% as of June 30, 2001] 	<p>57. Undisputed</p>
<p>58. In 2010, 2011, and 2012, the actuaries</p> <p>reported that the City's two pension</p> <p>funds had unfunded pension liabilities.</p>	<p>58. Undisputed, but irrelevant.</p>



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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
<p>59. In 2011, and 2012, the actuaries reported that the City’s two pension funds had “excess earnings” for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>59. Undisputed</p>

A Unconstitutional Taking Of Private Property, California Constitution Article 19, Section 9

(*SJPOA* second cause of action, *AFSCME* third cause of action, *Sapien* fourth cause of action, *Harris* fourth cause of action, *Mukhar* fourth cause of action.)

Issue 2A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1506-A does not violate Article 19 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. Plaintiffs have no property interest in the City paying for all pension plan unfunded liabilities.



<p>1. Section 1506-A (“Current Employees”)</p>	<p>1. Undisputed</p>
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of Measure B states:

- (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).
- (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.
- (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.
- (d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.
- (e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code

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<p>Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	<p>2. Undisputed</p>
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may</p>	<p>3. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3 above.</p> <p>Def.'s RJN, Exh. E</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS; Case No. 112CV225926	
<p>deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").	<p>4. Undisputed</p>
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p>	<p>5. Undisputed</p>

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Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*"

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, *the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent*

6. Undisputed

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<i>that the foregoing sections of this Article shall prevail over the provisions of this Section.”</i>	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter) (emphasis added).	
<p>7. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	7. Undisputed
<p>8. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	8. Undisputed
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	9. Undisputed
10. The City Council has enacted some	10. Undisputed

ordinances implementing Measure B.

Supporting Evidence:

- Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).

11. In 2010, a Coalition of City unions made a proposal to the City which stated:

5.1.2. Additional Retirement Contribution.

Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.

Supporting Evidence:

- Gurza Dec., ¶¶ 16-19, Exh. 2.

11. Undisputed, but irrelevant

12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.

12. Disputed. The additional contribution was "to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability." Gurza Dec. Exhs 3 & 17, p. Gurza 262.

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 17, 18, Exhs. 3-6. 	
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>13. Disputed. The additional contributions were “to be applied to reduce the contribution that the City would otherwise be required to make.” Gurza Dec. Exh. 11, p. Gurza 148.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <ul style="list-style-type: none"> --Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). 	<p>14. Undisputed</p>

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--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.

Supporting Evidence:

- Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.

15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:

On-Going Additional Retirement Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

Supporting Evidence:

- Gurza Dec., ¶27, Exh, 11.

15. Undisputed

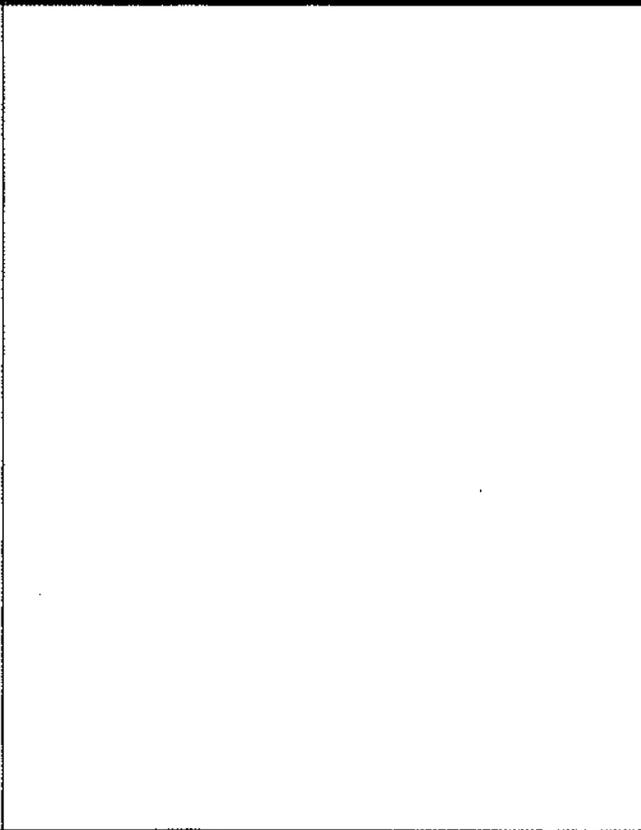
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<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution “in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...” (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	<p>16. Undisputed</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: “The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p>	<p>18. Undisputed</p>

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- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
 - Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
 - City Association of Management Personnel (CAMP)
 - International Brotherhood of Electrical Workers, Local 332 (IBEW)
 - International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
 - San José Police Officers Association (plaintiff in the SJPOA case).
- Supporting Evidence:**
- Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.



19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
- San José Police Officers Association (plaintiff in the SJPOA case).
- International Association of

19. Undisputed

1	Firefighters, Local 230;	
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4	<u>Supporting Evidence:</u>	
5	<ul style="list-style-type: none"> • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
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8	20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.	20. Undisputed
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11	<u>Supporting Evidence:</u>	
12	<ul style="list-style-type: none"> • Gurza Dec., ¶ 26, Exhs. 20, 28 	
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14	21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)	21. Undisputed
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20	<u>Supporting Evidence:</u>	
21	<ul style="list-style-type: none"> • RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
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23	22. Under the Municipal Code for Police and Fire Plan employees.	22. Undisputed
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25	<ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a 	
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UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS	OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS
<p>1</p> <p>2 recognized bargaining unit.” (Municipal</p> <p>3 Code 3.36.1525(A).)</p> <p>4 • Police and Fire Plan employees</p> <p>5 subject to interest arbitration, “shall</p> <p>6 make such additional retirement</p> <p>7 contributions for fiscal years 2010-2011</p> <p>8 as may be required by executed</p> <p>9 agreement with a recognized bargaining</p> <p>10 unit or binding order of arbitration.”</p> <p>11 (Municipal Code 3.36.1525(B).)</p> <p>12 <u>Supporting Evidence:</u></p> <p>13 • RJN, Exh. D, (Municipal Code,</p> <p>14 Chapter 3.36).</p>	

Issue 2B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate Article 19 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to make contributions towards unfunded liabilities to pay for their retiree healthcare. Plaintiffs have no property interest in the City paying all unfunded liabilities for retiree healthcare.

UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS	OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS
<p>19 23. San José Charter Section 1512-A states:</p> <p>20 “Existing and new employees must</p> <p>21 contribute a minimum of 50% of the cost</p> <p>22 of retiree healthcare, including both</p> <p>23 normal cost and unfunded liabilities.”</p> <p>24 <u>Supporting Evidence:</u></p> <p>25 • RJN, Exh. B.</p>	<p>23. Undisputed</p>
<p>26 24. On or around April 12, 1960, the voters</p> <p>27 ratified Proposition A, which amended</p> <p>28 the San José Charter to include Section 78b.</p>	<p>24. Undisputed</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS; Case No. 112CV225926	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<p>25. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ...</p> <p>"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	<p>25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.</p>

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<p>26. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	<p>26. Undisputed</p>
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p>	<p>27. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	<p>28. Undisputed</p>
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p>	<p>29. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>31. Undisputed</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>32. Undisputed</p>
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p>	<p>33. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	
<p>34. Municipal Code §3.36.575(D) provides: “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. D.	<p>34. Undisputed</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	<p>35. Undisputed, but irrelevant. See objection to Gurza decl. ¶¶ 35-37, Exhs. 36, 37 & 38.</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <ul style="list-style-type: none">--Association of Building, Mechanical and Electrical Inspectors (ABMEI),--Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),--Association of Maintenance Supervisory Personnel (AMSP),--City Association of Management Personnel (CAMP),--International Brotherhood of Electrical Workers, Local No. 332 (IBEW);--Municipal Employees' Federation,	<p>36. Undisputed</p>

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<p>AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.	
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). . . .The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	<p>37. Undisputed</p>
<p>38. The AEA agreement further stated:</p>	<p>38. Undisputed</p>

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The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”

Supporting Evidence:

- Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.

39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:

Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees’ Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).

Supporting Evidence:

- Gurza Dec., ¶ 43, Exhs. 39, 40, 41.

39. Undisputed

40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.

40. Undisputed

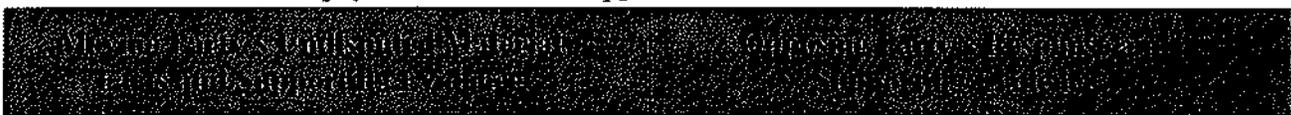


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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶43, Exh. 42, 43 	<p>41. Undisputed</p>

Issue 2C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate Article 19 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no property right to the continuation of or payments from the Supplemental Retiree Benefit Reserve.



<p>42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve (“SRBR” shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p>	<p>42. Undisputed</p>
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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS
<p>1</p> <p>2</p> <p>3</p> <p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p>7</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. B. 	<p>43. Undisputed</p>
<p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>44. Former San José Charter Section 78b stated:</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent 	<p>44. Disputed. See response to No. 3.</p>

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Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

45. The ballot argument in favor of Proposition A stated:

"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").

45. Undisputed

46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other*

46. Undisputed

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provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

47. Undisputed

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<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>48. Undisputed</p>
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>49. Undisputed</p>
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>50. Undisputed</p>
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>51. Undisputed</p>
<p>52. For the Federated Retirement System, the Municipal Code provided in Section</p>	<p>52. Undisputed</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS:

<p>3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C.	
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exhs. L, M, N	53. Undisputed
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exh. D.	54. Undisputed
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p>	55. Undisputed

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2	<u>Supporting Evidence:</u>	
3	• RJN., Exh. N.	
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5	56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."	56. Undisputed
6	(Municipal Code section 3.36.580(D)(2))	
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8	<u>Supporting Evidence:</u>	
9	• RJN., Exh. D.	
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11	57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.	57. Undisputed
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16	<u>Supporting Evidence:</u>	
17	• RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]	
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25	58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	58. Undisputed
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28	<u>Supporting Evidence:</u>	



<ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
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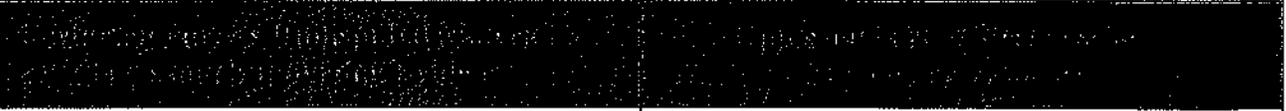
<p>59. In 2011, and 2012, the actuaries reported that the City’s two pension funds had “excess earnings” for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>59. Undisputed</p>
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3. Constitutional Taking Of Private Property Without Due Process, California Constitution Article I, Section 7

(*SJPOA* third cause of action, *AFSCME* fourth cause of action, *Sapien* third cause of action, *Harris* third cause of action, *Mukhar* third cause of action.)

Issue 3A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1506-A does not violate Article I, Section 7 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. Plaintiffs have no property interest in the City paying for all pension plan unfunded liabilities.



<p>1. Section 1506-A (“Current Employees”)</p>	<p>1. Undisputed</p>
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of Measure B states:

- (a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).
- (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.
- (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.
- (d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.
- (e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code

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Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Supporting Evidence:

- Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").

2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

2. Undisputed

3. Former San José Charter Section 78b stated:

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ...

3. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

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<p>“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	<p>4. Undisputed</p>
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise</p>	<p>5. Undisputed</p>

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provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*"

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, *the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article*

6. Undisputed

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<p><i>shall prevail over the provisions of this Section.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	
<p>7. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>7. Undisputed</p>
<p>8. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>8. Undisputed</p>
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>9. Undisputed</p>
<p>10. The City Council has enacted some ordinances implementing Measure B.</p>	<p>10. Undisputed</p>

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Supporting Evidence:

- Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).

11. In 2010, a Coalition of City unions made a proposal to the City which stated:

5.1.2. Additional Retirement Contribution.

Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.

Supporting Evidence:

- Gurza Dec., ¶¶ 16-19, Exh. 2.

11. Undisputed

12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.

Supporting Evidence:

12. Disputed. The additional contribution was "to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability." Gurza Dec. Exhs 3 & 17, p. Gurza 262.

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
<ul style="list-style-type: none">● Gurza Dec., ¶17, 18, Exhs. 3-6. <p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none">● Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),● Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)● City Association of Management Personnel (CAMP)● International Brotherhood of Electrical Workers, Local 332 (IBEW)● International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)● San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	<p>13. Disputed. The additional contributions were "to be applied to reduce the contribution that the City would otherwise be required to make." Gurza Dec. Exh. 11, p. Gurza 148.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP).</p>	<p>14. Undisputed</p>

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--Executive Management and Professional Employees (Unit 99), and other unrepresented employees.

Supporting Evidence:

- Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.

15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:

On-Going Additional Retirement

Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

Supporting Evidence:

- Gurza Dec., ¶27, Exh, 11.

15. Undisputed

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<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	<p>16. Undisputed</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose</p>	<p>18. Undisputed</p>

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<p>Municipal Code.”</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
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<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers	<p>19. Undisputed</p>
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<p>Association (plaintiff in the SJPOA case).</p> <ul style="list-style-type: none">• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	<p>21. Undisputed</p>
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall	<p>22. Undisputed</p>



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make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.36.1525(A).)

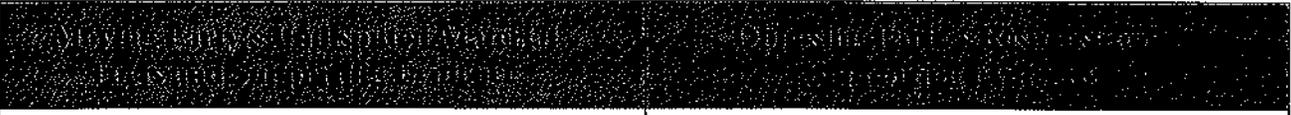
• Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).)

Supporting Evidence:

- RJN, Exh. D, (Municipal Code, Chapter 3.36).

Issue 3B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Defendants are entitled to judgment as a matter of law that San José Charter Section 1512-A does not violate Article I, Section 7 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to make contributions towards unfunded liabilities to pay for their retiree healthcare. Plaintiffs have no property interest in the City paying for all unfunded liabilities for retiree healthcare.



23. San José Charter Section 1512-A states:
“Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”

Supporting Evidence:
• RJN, Exh. B.

23. Undisputed

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<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	<p>24. Undisputed</p>
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<p>25. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...</p> <p>“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in	<p>25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3 above.</p>
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Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

26. The ballot argument in favor of Proposition A stated:

"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").

26. Undisputed

27. Undisputed

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council*

27. Undisputed

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may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

28. Undisputed

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<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>29. Undisputed</p>
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>31. Undisputed</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>32. Undisputed</p>

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<p>33. Municipal Code §3.28.385(C) provides: “Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	<p>33. Undisputed</p>
<p>34. Municipal Code §3.36.575(D) provides: “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. D.	<p>34. Undisputed</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	<p>35. Undisputed, but irrelevant. See objection to Gurza Decl. ¶¶35-37, Exhs 36, 37 & 38.</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units</p>	<p>36. Undisputed</p>

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41/42 and 43),
--Association of Maintenance Supervisory Personnel (AMSP),
--City Association of Management Personnel (CAMP),
--International Brotherhood of Electrical Workers, Local No. 332 (IBEW);
--Municipal Employees' Federation, AFSCME Local 101 (MEF)
--Confidential Employees Association, AFSCME Local 101 (CEO);
--International Association of Firefighters, Local 230;
--San José Police Officers Association.

Supporting Evidence:

- Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.

37. The City's agreement with AEA stated:

The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). . . .The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the

37. Undisputed

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above.

Supporting Evidence:

- Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.

38. The AEA agreement further stated:

The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”

Supporting Evidence:

- Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.

38. Undisputed

39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:

Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees’ Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).

Supporting Evidence:

- Gurza Dec., ¶ 43, Exhs. 39, 40,

39. Undisputed



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41.	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	40. Undisputed
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶43, Exh. 42, 43 	41. Undisputed

Issue 3C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate Article I, Section 7 of the California Constitution and does not breach any duty by Defendants to Plaintiffs. The Supplemental Retiree Benefits Reserve was a discretionary benefit. Plaintiffs have no property right to the continuation of or payments from the SRBR.



42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:	42. Undisputed
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<p>The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. B.	
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	<p>43. Undisputed</p>
<p>44. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire</p>	<p>44. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.</p>

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department of the City of San José ” ...
“all as the Council may deem proper and
subject to such conditions, restrictions,
limitations, terms and other provisions
as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

45. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

45. Undisputed

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<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	<p>46. Undisputed</p>
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or</p>	<p>47. Undisputed</p>

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<p>amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	48. Undisputed
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	49. Undisputed
<p>50. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	50. Undisputed

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<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>51. Undisputed</p>
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	<p>52. Undisputed</p>
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exhs. L, M, N	<p>53. Undisputed</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p>	<p>54. Undisputed</p>

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3	<u>Supporting Evidence:</u>	
4	• RJN., Exh. D.	
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6	55. In 2002, the City Council adopted Resolution No. 70822, which approved	55. Undisputed
7	“The Methodology for the Distribution of	
8	Moneys In the Supplemental Retiree	
9	Benefit Reserve Of The Police and Fire	
10	Department Retirement Fund.”	
11	<u>Supporting Evidence:</u>	
12	• RJN., Exh. N.	
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14	56. Beginning in 2010, the City Council	56. Undisputed
15	amended the Municipal Code for the	
16	Police and Fire retirement plan to provide	
17	that “there shall be no distribution during	
18	calendar years 2010, 2011, 2012 or	
19	during calendar year 2013 ...”	
20	(Municipal Code section 3.36.580(D)(2)	
21	<u>Supporting Evidence:</u>	
22	• RJN., Exh. D.	
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24	57. In 1986 when the City Council	57. Undisputed
25	authorized the Federated SRBR, and in	
26	2001, when the City Council authorized	
27	the Police and Fire SRBR, the actuaries	
28	reported that the City’s two pension	
	retirement funds were fully funded.	
	<u>Supporting Evidence:</u>	
	• RJN, Exh. O [November 22,	
	1985 Letter from Coates,	
	Herfurth & England, to Edward	
	F. Overton, Retirement and	
	Benefits Administrator, re:	
	SB650 Study]; Gurza Dec., Exh	
	59 [Actuarial Valuation Report,	

<p>City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]</p>	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>58. Undisputed</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>59. Undisputed</p>

4. Promissory And Equitable Estoppel

(AFSCME eighth cause of action.)

Issue 4A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1506-A is not a violation of promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded

1 liabilities. The City made no legally binding promise to pay for all pension plan unfunded liabilities.



3
4 1. Section 1506-A (“Current Employees”) of Measure B states:

1. Undisputed

5 (a) “Current Employees” means employees
6 of the City of San José as of the effective
7 date of this Act and who are not covered
8 under the Tier 2 Plan (Section 8).

9 (b) Unless they voluntarily opt in to the
10 Voluntary Election Program (“VEP,”
11 described herein), Current Employees
12 shall have their compensation adjusted
13 through additional retirement
14 contributions in increments of 4% of
15 pensionable pay per year, up to a
16 maximum of 16%, but not more than
17 50% of the costs to amortize any pension
18 unfunded liabilities, except for any
19 pension unfunded liabilities that may
20 exist due to Tier 2 benefits in the future.
21 These contributions shall be in addition
22 to employees’ normal pension
23 contributions and contributions towards
24 retiree healthcare benefits.

25 (c) The starting date for an employee’s
26 compensation adjustment under this
27 Section shall be June 23, 2013,
28 regardless of whether the VEP has been
implemented. If the VEP has not been
implemented or any reason, the
compensation adjustments shall apply to
all Current Employees.

(d) The compensation adjustment through
additional employee contributions for
Current Employees shall be calculated
separately for employees in the Police
and Fire Department Retirement Plan
and employees in the Federated City
Employees’ Retirement System.

(e) The compensation adjustment shall be
treated in the same manner as any other
employee contributions. Accordingly,
the voters intend these additional

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payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Supporting Evidence:

- Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").

2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

3. Former San José Charter Section 78b stated:

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said

2. Undisputed

3. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

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Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

4. The ballot argument in favor of Proposition A stated:
“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

4. Undisputed

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<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	<p>5. Undisputed</p>
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or</i></p>	<p>6. Undisputed</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p><i>amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN, Exh. G (1965 Charter) (emphasis added). 	
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>7. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN, Exh. A. 	<p>7. Undisputed</p>
<p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>8. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> ● RJN, Exh. A 	<p>8. Undisputed</p>
<p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p>	<p>9. Undisputed</p>

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●RJN, Exh. A

10. The City Council has enacted some ordinances implementing Measure B.

Supporting Evidence:

- Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).

10. Undisputed

11. In 2010, a Coalition of City unions made a proposal to the City which stated:

5.1.2. Additional Retirement Contribution.

Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.

Supporting Evidence:

- Gurza Dec., ¶¶ 16-19, Exh. 2.

11. Undisputed

12. Other union proposals, including proposals by the SJPOA and IAFF, also

12. Disputed. The additional contribution was "to reduce the contributions that the City

<p>proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶17, 18, Exhs. 3-6. 	<p>would otherwise be required to make for the pension unfunded liability.” Gurza Dec. Exhs 3 & 17, p. Gurza 262.</p>
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution):</p> <ul style="list-style-type: none"> • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	<p>13. Disputed. The additional contributions were “to be applied to reduce the contribution that the City would otherwise be required to make.” Gurza Dec. Exh. 11, p. Gurza 148.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction</p>	<p>14. Undisputed</p>



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or the City imposed a wage reduction:

- Association of Building, Mechanical and Electric Inspectors (ABMEI)
- Association of Legal Professionals (ALP).
- Executive Management and Professional Employees (Unit 99), and other unrepresented employees.

Supporting Evidence:

- Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.

15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:

On-Going Additional Retirement

Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

15. Undisputed

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11.	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution “in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability....” (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	<p>16. Undisputed</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: “The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San</p>	<p>18. Undisputed</p>

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<p>Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of	<p>19. Undisputed</p>

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<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none">• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	<p>21. Undisputed</p>

<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, “shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D, (Municipal Code, Chapter 3.36). 	<p>21. Undisputed</p>
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Issue 4B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1512-A is not a violation of promissory or equitable estoppel and does not violate and does not breach any duty by Defendants to Plaintiff. The City Charter may require employees to make contributions towards unfunded liabilities to pay for their retiree healthcare. The City made no legally binding promise to the contrary.

<p>23. San José Charter Section 1512-A states: “Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”</p>	<p>23. Undisputed</p>
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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. B.	
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	<p>24. Undisputed</p>
<p>25. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...</p> <p>“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p>	<p>25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.</p>



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Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

26. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

26. Undisputed

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation,

27. Undisputed

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establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*"

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."

28. Undisputed

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>29. Undisputed</p>
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>31. Undisputed</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p>	<p>32. Undisputed</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
<p>33. Municipal Code §3.28.385(C) provides: “Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C.	<p>33. Undisputed</p>
<p>34. Municipal Code §3.36.575(D) provides: “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. D.	<p>34. Undisputed</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	<p>35. Undisputed, but irrelevant. See objection to Gurza Decl. ¶¶35-37, Exhs. 36, 37 & 38.</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the</p>	<p>36. Undisputed</p>

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unfunded liabilities of retiree healthcare costs.

- Association of Building, Mechanical and Electrical Inspectors (ABMEI),
- Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),
- Association of Maintenance Supervisory Personnel (AMSP),
- City Association of Management Personnel (CAMP),
- International Brotherhood of Electrical Workers, Local No. 332 (IBEW);
- Municipal Employees' Federation, AFSCME Local 101 (MEF)
- Confidential Employees Association, AFSCME Local 101 (CEO);
- International Association of Firefighters, Local 230;
- San José Police Officers Association.

Supporting Evidence:

- Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.

37. The City's agreement with AEA stated:

The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits

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<p>shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	<p>38. Undisputed</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees’ Federation, AFSCME Local 101 (MEF); Confidential Employees Association,</p>	<p>39. Undisputed</p>

<p>1</p> <p>2 AFSCME Local 101 (CEO).</p> <p>3</p> <p>4 <u>Supporting Evidence:</u></p> <p>5 • Gurza Dec., ¶ 43, Exhs. 39, 40,</p> <p>6 41.</p>	
<p>7 40. The SJPOA and Firefighters agreements</p> <p>8 on payment of the ARC cap the</p> <p>9 contribution towards paying the full</p> <p>10 ARC at 10% of pensionable pay and</p> <p>11 provide for meet and confer and dispute</p> <p>12 resolution procedures for amounts over</p> <p>13 that percentage.</p> <p>14</p> <p>15 <u>Supporting Evidence:</u></p> <p>16 • Gurza Dec., ¶ 44, Exhs.</p> <p>17 21[Firefighters], Exh.</p> <p>18 41[SJPOA].</p>	<p>40. Undisputed</p>
<p>19 41. In a Last, Best and Final Offer, the City</p> <p>20 imposed upon OE#3 the requirement</p> <p>21 that its members make increased</p> <p>22 contributions, incrementally, towards</p> <p>23 paying the full ARC.</p> <p>24</p> <p>25 <u>Supporting Evidence:</u></p> <p>26 • Gurza Dec., ¶43, Exh. 42, 43</p>	<p>41. Undisputed</p>

27 **Issue 4C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)**

28 There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A is not a violation of promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no right to continuation of or

1 payments from the SRBR.

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4	42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:	42 Undisputed
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6	The Supplemental Retiree Benefit Reserve (“SRBR” shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.	
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11	<u>Supporting Evidence:</u>	
12	<ul style="list-style-type: none">● RJN, Exh. B.	
13	43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	43. Undisputed
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16	<u>Supporting Evidence:</u>	
17	<ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	
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24	44. Former San José Charter Section 78b stated:	44. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.
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26	“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said	
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Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

45. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of

45. Undisputed

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San José , April 12, 1960, including "Argument in Favor of Proposition A").	
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	46. Undisputed
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However,</p>	47. Undisputed

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<p>subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	48. Undisputed
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	49. Undisputed
<p>50. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p>	50. Undisputed

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	51. Undisputed
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	52. Undisputed
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exhs. L, M, N	53. Undisputed
<p>54. For the Police and Fire Retirement</p>	54. Undisputed

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<p>System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exh. D.	
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exh. N.	<p>55. Undisputed</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN., Exh. D.	<p>56. Undisputed</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward	<p>57. Undisputed</p>

1	PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS;	
2	<p>F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]</p>	
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8	<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p>	<p>58. Undisputed</p>
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11	<p><u>Supporting Evidence:</u></p>	
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13	<ul style="list-style-type: none"> • Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
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18	<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p>	<p>59. Undisputed</p>
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22	<p><u>Supporting Evidence:</u></p>	
23	<ul style="list-style-type: none"> • Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

CITY OF SAN JOSÉ 'S CROSS-COMPLAINT FOR DECLARATORY RELIEF.

5. Impairment of Contract, United States Constitution, Article I, Section 10.

(City's first cause of action)

Issue 5A: San José Charter §1506-A (Employee Additional Pension Contributions)

1 There is no triable issue as to any material fact and Cross-complainant City is entitled to
2 summary adjudication as a matter of law that San José Charter Section 1506-A does not violate
3 Article I, Section 10 of the United States Constitution and does not breach any duty by Defendant to
4 Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray
5 pension plan unfunded liabilities. Plaintiffs have no vested right to the City paying all pension plan
6 unfunded liabilities.

<p>7</p> <p>8</p> <p>9 1. Section 1506-A (“Current Employees”) of Measure B states:</p> <p>10 (a) “Current Employees” means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>11</p> <p>12 (b) Unless they voluntarily opt in to the Voluntary Election Program (“VEP,” described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees’ normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (c) The starting date for an employee’s compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27 (d) The compensation adjustment through additional employee contributions for</p>	<p>1. Undisputed</p>

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<p>Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	<p>2. Undisputed</p>
<p>3. Former San José Charter Section 78b</p>	<p>3. Disputed as being an incomplete recitation</p>

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<p>stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	<p>of the 1961 Charter provision. See response to no. 3.</p>
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p>	<p>4. Undisputed</p>

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Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including “Argument in Favor of Proposition A”).

5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*”

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

5. Undisputed

6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including

6. Undisputed

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but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, *the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.*"

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."
Supporting Evidence:
● RJN, Exh. A.

7. Undisputed

8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."
Supporting Evidence:
● RJN, Exh. A

8. Undisputed

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<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">●RJN, Exh. A	<p>9. Undisputed</p>
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>10. Undisputed</p>
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under</p>	<p>11. Undisputed</p>

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<p>this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 16-19, Exh. 2.	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶17, 18, Exhs. 3-6.	<p>12. Disputed. The additional contribution was "to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability." Gurza Dec. Exhs 3 & 17, p. Gurza 262.</p>
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution):</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing	<p>13. Disputed. The additional contributions were "to be applied to reduce the contribution that the City would otherwise be required to make." Gurza Dec. Exh. 11, p. Gurza 148.</p>

<p>1</p> <p>2 plaintiffs in the Harris case)</p> <p>3 • San José Police Officers</p> <p>4 Association (plaintiff in the SJPOA</p> <p>5 case).</p> <p>6 <u>Supporting Evidence:</u></p> <p>7 • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15,</p> <p>8 17, 23, 25, 29.</p>	
<p>9 14. For the period 2010-2011, the following</p> <p>10 unions either agreed to a wage reduction</p> <p>11 or the City imposed a wage reduction:</p> <p>12 --Association of Building, Mechanical</p> <p>13 and Electric Inspectors (ABMEI)</p> <p>14 --Association of Legal Professionals</p> <p>15 (ALP).</p> <p>16 --Executive Management and</p> <p>17 Professional Employees (Unit 99), and</p> <p>18 other unrepresented employees.</p> <p>19 <u>Supporting Evidence:</u></p> <p>20 • Gurza Dec., ¶25, Exhs. 9, 13, 32,</p> <p>21 33.</p>	<p>14. Undisputed</p>
<p>22 15. The 2010-2011 Agreement MOA</p> <p>23 between the City and AEA, states at</p> <p>24 Section 10.1.1:</p> <p>25 <u>On-Going Additional Retirement</u></p> <p>26 <u>Contributions.</u> Effective June 27, 2010,</p> <p>27 all employees who are members of the</p> <p>28 Federated City Employees' Retirement</p> <p>System will make additional retirement</p> <p>contributions in the amount of 7.30% of</p> <p>pensionable compensation, and the</p> <p>amounts so contributed will be applied</p> <p>to reduce the contributions that the City</p> <p>would otherwise be required to make for</p> <p>the pension unfunded liability, which is</p> <p>defined as all costs in both the regular</p> <p>retirement fund and the cost-of-living</p> <p>fund, except current service normal costs</p>	<p>15. Undisputed</p>

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<p>in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11.	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	<p>16. Undisputed</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (<i>Id.</i> at Section 10.1.4))</p>	<p>17. Undisputed</p>

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Supporting Evidence:
● Gurza Dec., ¶27, Exh, 11

18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
- San José Police Officers Association (plaintiff in the SJPOA case).

Supporting Evidence:
● Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.

18. Undisputed

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<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	<p>19. Undisputed</p>
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal</p>	<p>21. Undisputed</p>



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Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)

Supporting Evidence:

- RJN, Exh. C, (Municipal Code, Chapter 3.28).

22. Under the Municipal Code for Police and Fire Plan employees.

- Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)

- Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).)

Supporting Evidence:

- RJN, Exh. D, (Municipal Code, Chapter 3.36).

22. Undisputed

Issue 5B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate

1 Article I, Section 10 of the United States Constitution and does not breach any duty by Defendant to
2 Plaintiffs. The City Charter may require employees to pay towards the unfunded liabilities required
3 to fund their retiree healthcare benefits. Employees have no vested right to the City paying for all
4 unfunded liabilities for retiree healthcare benefits.



<p>5</p> <p>6 23. San José Charter Section 1512-A states:</p> <p>7 “Existing and new employees must</p> <p>8 contribute a minimum of 50% of the cost</p> <p>9 of retiree healthcare, including both</p> <p>10 normal cost and unfunded liabilities.”</p> <p>11 <u>Supporting Evidence:</u></p> <p>12 • RJN, Exh. B.</p>	<p>23. Undisputed</p>
<p>13 24. On or around April 12, 1960, the voters</p> <p>14 ratified Proposition A, which amended</p> <p>15 the San José Charter to include Section</p> <p>16 78b.</p> <p>17 <u>Supporting Evidence:</u></p> <p>18 • RJN, Exh. E (California</p> <p>19 Assembly Concurrent</p> <p>20 Resolution No. 17, adopted in</p> <p>21 Assembly January 18, 1961,</p> <p>22 approving amendment of</p> <p>23 Charter of San José to include</p> <p>24 Section 78b (“Discretionary</p> <p>25 Powers of Council Respecting</p> <p>26 Retirement”) of Article X).</p>	<p>24. Undisputed</p>
<p>25 25. Former San José Charter Section 78b</p> <p>26 stated:</p> <p>27 “Anything in Section 78a of the Charter to</p> <p>28 the contrary notwithstanding, the</p> <p>Council in its discretion may at any</p> <p>time, or from time to time, by ordinance,</p>	<p>25. Disputed as being an incomplete recitation</p> <p>of the 1961 Charter provision. See response</p> <p>to no. 3.</p>

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amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

26. The ballot argument in favor of Proposition A stated:
“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment –

26. Undisputed

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Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.* "

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

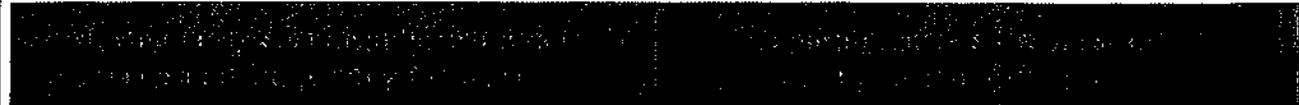
27. Undisputed

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective

28. Undisputed

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and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”

Supporting Evidence:

- RJN, Exh. A.

29. Undisputed

30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”

Supporting Evidence:

- RJN, Exh. A

30. Undisputed

31. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation,

31. Undisputed

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[REDACTED]	
<p>establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>32. Undisputed</p>
<p>33. Municipal Code §3.28.385(C) provides: “Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	<p>33. Undisputed</p>
<p>34. Municipal Code §3.36.575(D) provides: “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. D.	<p>34. Undisputed</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p>	<p>35. Undisputed, but irrelevant. See objection to Gurza Decl. ¶¶ 35-37, Exhs. 36-38</p>

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PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	
<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO); --International Association of Firefighters, Local 230; --San José Police Officers Association.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶¶ 39, Exhs. 21, 39, 40, 41.	<p>36. Undisputed</p>
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into</p>	<p>37. Undisputed</p>

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fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.

Supporting Evidence:

- Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.

38. The AEA agreement further stated:

The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”

Supporting Evidence:

- Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.

38. Undisputed

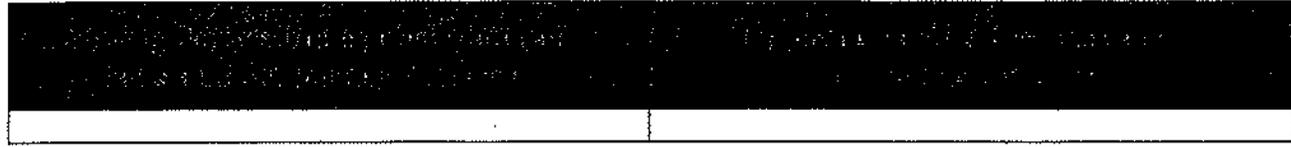
39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following

39. Undisputed

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<p>unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	<p>40 Undisputed</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶43, Exh. 42, 43	<p>41 Undisputed</p>

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Issue 5C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate Article I, Section 10 of the United States Constitution and does not breach any duty by Defendants to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have no vested right to payments from or continuation of the SRBR.



<p>42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve (“SRBR” shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. B. 	<p>42 Undisputed</p>
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of 	<p>43. Undisputed</p>

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Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

44. Former San José Charter Section 78b stated:
“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...
“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

44. Disputed. See response to no. 3.

45. The ballot argument in favor of Proposition A stated:
“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be

45. Undisputed

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responsible for investigating problems and deciding how to solve them. [¶]
THIS AMENDMENT IS SIMPLE!
Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.”*

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

46. Undisputed

47. As adopted by the voters in 1965, the San José City Charter states at Section

47. Undisputed

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1503:
Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”

Supporting Evidence:

- RJN, Exh. G (1965 Charter).

48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”

Supporting Evidence:

- RJN, Exh. A.

49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”

48. Undisputed

49. Undisputed

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	
<p>50. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	50. Undisputed
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	51. Undisputed
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): “Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve” to retirees and their survivors. Further, “[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. C.	52. Undisputed

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<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exhs. L, M, N	<p>53. Undisputed</p>
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exh. D.	<p>54. Undisputed</p>
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exh. N.	<p>55. Undisputed</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..." (Municipal Code section 3.36.580(D)(2).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN., Exh. D.	<p>56. Undisputed</p>

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<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]	<p>57. Undisputed</p>
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	<p>58. Undisputed</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p>	<p>59. Undisputed</p>

<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	
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6. Unconstitutional Taking Of Private Property, United States Constitution, 5th And 14th Amendments.

(City's second cause of action)

Issue 6A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1506-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. Plaintiffs have no property right to the City paying all pension plan unfunded liabilities.

Plaintiffs' Undisputed Material Facts and Supporting Evidence	Opposition to Plaintiffs' Undisputed Material Facts
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<p>1. Section 1506-A ("Current Employees") of Measure B states:</p> <p>(a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.</p>	<p>1. Undisputed</p>
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<p>These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p>	<p>2. Undisputed</p>

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Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

3. Former San José Charter Section 78b stated:
“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...
“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

3. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

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<p>4. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	<p>4. Undisputed</p>
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>”</p>	<p>5. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	<p>6. Undisputed</p>
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p>	<p>7. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>8. Undisputed</p>
<p>9. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>9. Undisputed</p>
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>10. Undisputed</p>
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement</p>	<p>11. Undisputed</p>

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Contribution.

Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.

Supporting Evidence:

- Gurza Dec., ¶¶ 16-19, Exh. 2.

12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.

Supporting Evidence:

- Gurza Dec., ¶17, 18, Exhs. 3-6.

13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time

12 Disputed. The additional contribution was "to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability." Gurza Dec. Exhs 3 & 17, p. Gurza 262.

13. Disputed. The additional contributions were "to be applied to reduce the contribution that the City would otherwise be required to make." Gurza Dec. Exh. 11, p. Gurza 148.

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<p>additional pension contribution):</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p> <p>--Association of Building, Mechanical and Electric Inspectors (ABMEI) --Association of Legal Professionals (ALP). --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.	<p>14. Undisputed</p>
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p>	<p>15. Undisputed</p>

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On-Going Additional Retirement

Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .

Supporting Evidence:

- Gurza Dec., ¶27, Exh, 11.

16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)

16. Undisputed

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: “The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of	<p>18. Undisputed</p>

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<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none">• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
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<p>19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs.	<p>19. Undisputed</p>
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<p>10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.</p>	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	<p>21. Undisputed</p>
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none">• Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).)• Police and Fire Plan employees subject to interest arbitration, "shall	<p>22. Undisputed</p>

<p>1</p> <p>2 make such additional retirement</p> <p>3 contributions for fiscal years 2010-2011</p> <p>4 as may be required by executed</p> <p>5 agreement with a recognized bargaining</p> <p>6 unit or binding order of arbitration.”</p> <p>7 (Municipal Code 3.36.1525(B).)</p> <p>8 <u>Supporting Evidence:</u></p> <p>9 • RJN, Exh. D, (Municipal Code,</p> <p>10 Chapter 3.36).</p>	
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11 **Issue 6B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)**

12 There is no triable issue as to any material fact and Cross-complainant City is entitled to

13 summary adjudication as a matter of law that San José Charter Section 1512-A does not violate the

14 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant

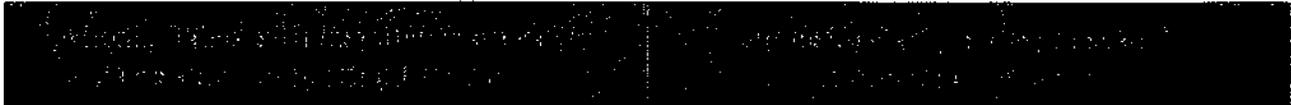
15 to Plaintiffs. The City Charter may require employees to pay towards the unfunded liabilities

16 required to pay for their retiree healthcare benefits., Employees have no property right to the City

17 paying for all unfunded liabilities.

<p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>23. Undisputed</p>
<p>23. San José Charter Section 1512-A states:</p> <p>“Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”</p> <p><u>Supporting Evidence:</u></p> <p>• RJN, Exh. B.</p>	<p>23. Undisputed</p>
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <p>• RJN, Exh. E (California</p>	<p>24. Undisputed</p>

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Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

25. Former San José Charter Section 78b stated:
"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ...
"all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

26. The ballot argument in favor of

26. Undisputed

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Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.* ”

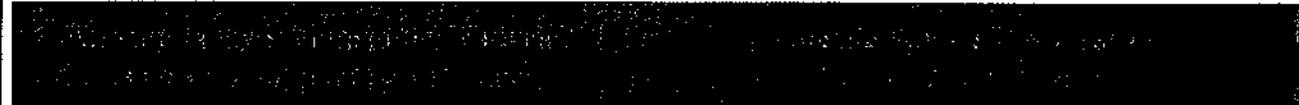
Supporting Evidence:

27. Undisputed

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<ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	<p>28. Undisputed</p>
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>29. Undisputed</p>

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<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>31. Undisputed</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	<p>32. Undisputed</p>
<p>33. Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."</p> <p><u>Supporting Evidence:</u></p>	<p>33. Undisputed</p>

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<ul style="list-style-type: none">● RJN, Exh. C.	
<p>34. Municipal Code §3.36.575(D) provides: “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. D.	34. Undisputed
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	35. Undisputed, but irrelevant. See objection to Gurza Decl. ¶¶ 35-37, Exhs. 36-38.
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI), --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), --Association of Maintenance Supervisory Personnel (AMSP), --City Association of Management Personnel (CAMP), --International Brotherhood of Electrical Workers, Local No. 332 (IBEW); --Municipal Employees' Federation, AFSCME Local 101 (MEF) --Confidential Employees Association, AFSCME Local 101 (CEO);</p>	36. Undisputed

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--International Association of Firefighters, Local 230;
--San José Police Officers Association.

Supporting Evidence:

- Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.

37. The City's agreement with AEA stated:

The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.

Supporting Evidence:

- Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.

37. Undisputed

38. The AEA agreement further stated:

The payments of the full ARC were to

38. Undisputed

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be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”

Supporting Evidence:

- Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.

39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:

Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees’ Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).

Supporting Evidence:

- Gurza Dec., ¶ 43, Exhs. 39, 40, 41.

39. Undisputed

40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.

40. Undisputed



<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	
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<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>41. Undisputed</p>
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Issue 6C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve) Causes of Action

There is no triable issue as to any material fact and Cross-complainant City is are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discriminatory benefit. Plaintiffs have no property right to payments from or continuation of the SRBR.



<p>42. Section 1511-A (“Supplemental Payments to Retirees”) of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve (“SRBR” shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the</p>	<p>42. Undisputed</p>
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benefits authorized herein shall not be funded from plan assets.

Supporting Evidence:

- RJN, Exh. B.

43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

43. Undisputed

44. Former San José Charter Section 78b stated:

“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...

“all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

44. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

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Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

45. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

45. Undisputed

46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation,

46. Undisputed

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establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*”

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”

47. Undisputed

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>48. Undisputed</p>
<p>49. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>49. Undisputed</p>
<p>50. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>50. Undisputed</p>
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Decl, Exhs. 54, 55	<p>51. Undisputed</p>

(Federated, Police and Fire Ordinances).	
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. C. 	52. Undisputed
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exhs. L, M, N 	53. Undisputed
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN., Exh. D. 	54. Undisputed
55. In 2002, the City Council adopted	55. Undisputed

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Resolution No. 70822, which approved
"The Methodology for the Distribution of
Moneys In the Supplemental Retiree
Benefit Reserve Of The Police and Fire
Department Retirement Fund."

Supporting Evidence:

- RJN., Exh. N.

56. Beginning in 2010, the City Council
amended the Municipal Code for the
Police and Fire retirement plan to provide
that "there shall be no distribution during
calendar years 2010, 2011, 2012 or
during calendar year 2013 ..."
(Municipal Code section 3.36.580(D)(2))

Supporting Evidence:

- RJN., Exh. D.

56. Undisputed

57. In 1986 when the City Council
authorized the Federated SRBR, and in
2001, when the City Council authorized
the Police and Fire SRBR, the actuaries
reported that the City's two pension
retirement funds were fully funded.

Supporting Evidence:

- RJN, Exh. O [November 22,
1985 Letter from Coates,
Herfurth & England, to Edward
F. Overton, Retirement and
Benefits Administrator, re:
SB650 Study]; Gurza Dec., Exh
59 [Actuarial Valuation Report,
City of San José Police and Fire
Department Retirement Plan, as
of June 30, 2012, at p. 5
(showing plan overfunded at
114.8% as of June 30, 2001)]

57. Undisputed

<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	<p>58. Undisputed</p>
<p>59. In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	<p>59. Undisputed</p>

7. **Unconstitutional Violation Of Due Process, United States Constitution, 5th And 14th Amendments.**

(City third cause of action)

Issue 7A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1506-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. Plaintiffs have no right to the City paying all pension plan

1 unfunded liabilities.

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- 4 1. Section 1506-A ("Current Employees")
of Measure B states:
- 5 (a) "Current Employees" means employees
6 of the City of San José as of the effective
7 date of this Act and who are not covered
8 under the Tier 2 Plan (Section 8).
- 9 (b) Unless they voluntarily opt in to the
10 Voluntary Election Program ("VEP,"
11 described herein), Current Employees
12 shall have their compensation adjusted
13 through additional retirement
14 contributions in increments of 4% of
15 pensionable pay per year, up to a
16 maximum of 16%, but not more than
17 50% of the costs to amortize any pension
18 unfunded liabilities, except for any
19 pension unfunded liabilities that may
20 exist due to Tier 2 benefits in the future.
21 These contributions shall be in addition
22 to employees' normal pension
23 contributions and contributions towards
24 retiree healthcare benefits.
- 25 (c) The starting date for an employee's
26 compensation adjustment under this
27 Section shall be June 23, 2013,
28 regardless of whether the VEP has been
implemented. If the VEP has not been
implemented or any reason, the
compensation adjustments shall apply to
all Current Employees.
- (d) The compensation adjustment through
additional employee contributions for
Current Employees shall be calculated
separately for employees in the Police
and Fire Department Retirement Plan
and employees in the Federated City
Employees' Retirement System.
- (e) The compensation adjustment shall be
treated in the same manner as any other
employee contributions. Accordingly,
the voters intend these additional

1. Undisputed

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<p>payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	<p>2. Undisputed</p>
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said</p>	<p>3. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.</p>

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<p>Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).	
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).	<p>4. Undisputed</p>

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5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

5. Undisputed

6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, *the Council shall at all times have the power and right to repeal or*

6. Undisputed

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<p><i>amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</i></p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter) (emphasis added).	
<p>7. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	<p>7. Undisputed</p>
<p>8. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	<p>8. Undisputed</p>
<p>9. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p>	<p>9. Undisputed</p>

1	PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	
2	<ul style="list-style-type: none"> • RJN, Exh. A 	
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4	<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	10. Undisputed
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10	<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • Gurza Dec., ¶¶ 16-19, Exh. 2. 	11. Undisputed
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27	12. Other union proposals, including proposals by the SJPOA and IAFF, also	12. Disputed. The additional contribution was "to reduce the contributions that the City
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<p>proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 17, 18, Exhs. 3-6.	<p>would otherwise be required to make for the pension unfunded liability.” Gurza Dec. Exhs 3 & 17, p. Gurza 262.</p>
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25% one time additional pension contribution):</p> <ul style="list-style-type: none">• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)• City Association of Management Personnel (CAMP)• International Brotherhood of Electrical Workers, Local 332 (IBEW)• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case). <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	<p>13. Disputed. The additional contributions were “to be applied to reduce the contribution that the City would otherwise be required to make.” Gurza Dec. Exh. 11, p. Gurza 148.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction</p>	<p>14. Undisputed</p>

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<p>or the City imposed a wage reduction:</p> <ul style="list-style-type: none">--Association of Building, Mechanical and Electric Inspectors (ABMEI)--Association of Legal Professionals (ALP).--Executive Management and Professional Employees (Unit 99), and other unrepresented employees. <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p>	<p>15. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11.	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution “in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability....” (Section 10.1.2)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶28, Exh, 11.	<p>16. Undisputed</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: “The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees’ Retirement System that requires an ordinance amending the San Jose Municipal Code.” (<i>Id.</i> at Section 10.1.4))</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶27, Exh, 11	<p>17. Undisputed</p>
<p>18. The City’s 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions “The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees’ Retirement System that requires an ordinance amending the San</p>	<p>18. Undisputed</p>

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Jose Municipal Code” or “The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code.”

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)
- San José Police Officers Association (plaintiff in the SJPOA case).

Supporting Evidence:

- Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.

19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:

- Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),
- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)
- City Association of Management Personnel (CAMP)
- International Brotherhood of

19. Undisputed

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<p>Electrical Workers, Local 332 (IBEW)</p> <ul style="list-style-type: none">• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)• San José Police Officers Association (plaintiff in the SJPOA case).• International Association of Firefighters, Local 230; <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec., ¶ 26, Exhs. 20, 28	<p>20. Undisputed</p>
<p>21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. C, (Municipal Code, Chapter 3.28).	<p>21. Undisputed</p>

<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> • Police and Fire Plan employees not subject to interest arbitration, “shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).) <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> • RJN, Exh. D, (Municipal Code, Chapter 3.36). 	<p>22. Undisputed</p>
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Issue 7B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate the 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant to Plaintiffs. The City Charter may require employees to pay towards the unfunded liabilities required to fund their retiree healthcare benefits. Employees have no right to the City paying for unfunded liabilities.

<p>23. San José Charter Section 1512-A states: “Existing and new employees must</p>	<p>23. Undisputed</p>
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contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”

Supporting Evidence:

- RJN, Exh. B.

24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

24. Undisputed

25. Former San José Charter Section 78b stated:

“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ...

“all as the Council may deem proper and subject to such conditions, restrictions,

25. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.

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limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

26. The ballot argument in favor of Proposition A stated:

“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

- RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).

26. Undisputed

27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:

Except as hereinafter otherwise

27. Undisputed

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provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. *Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*"

Supporting Evidence:

- RJN, Exh. G (1965 Charter) (emphasis added).

28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article

28. Undisputed

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<p>shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. G (1965 Charter).	
<p>29. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A.	<p>29. Undisputed</p>
<p>30. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>30. Undisputed</p>
<p>31. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. A	<p>31. Undisputed</p>

1	PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS:	
2	32. The City Council has enacted some ordinances implementing Measure B.	32. Undisputed
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5	<u>Supporting Evidence:</u>	
6	• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	
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8	33. Municipal Code §3.28.385(C) provides:	33. Undisputed
9	“Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one.”	
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12	<u>Supporting Evidence:</u>	
13	• RJN, Exh. C.	
14		
15	34. Municipal Code §3.36.575(D) provides:	34. Undisputed
16	“Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”	
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18	<u>Supporting Evidence:</u>	
19	• RJN, Exh. D.	
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21	35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.	35. Undisputed
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24	<u>Supporting Evidence:</u>	
25	• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	
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27	36. Beginning in 2009, the City reached agreement with the following City	36. Undisputed
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unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.

- Association of Building, Mechanical and Electrical Inspectors (ABMEI),
- Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),
- Association of Maintenance Supervisory Personnel (AMSP),
- City Association of Management Personnel (CAMP),
- International Brotherhood of Electrical Workers, Local No. 332 (IBEW);
- Municipal Employees' Federation, AFSCME Local 101 (MEF)
- Confidential Employees Association, AFSCME Local 101 (CEO);
- International Association of Firefighters, Local 230;
- San José Police Officers Association.

Supporting Evidence:

- Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.

37. The City's agreement with AEA stated:

The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section

37. Undisputed

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<p>3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . . The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	<p>38. Undisputed</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of</p>	<p>39. Undisputed</p>

<p>Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 43, Exhs. 39, 40, 41. 	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA]. 	<p>40. Undisputed</p>
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none"> Gurza Dec., ¶43, Exh. 42, 43 	<p>41. Undisputed</p>

Issue 7C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve)

There is no triable issue as to any material fact and Cross-complainant City is entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate the

1 5th or 14th amendments to the United States Constitution and does not breach any duty by Defendant
2 to Plaintiffs. The Supplemental Retiree Benefit Reserve was a discretionary benefit. Plaintiffs have
3 no right to payments from or continuation of the SRBR.



<p>4</p> <p>5 42. Section 1511-A ("Supplemental 6 Payments to Retirees") of Measure B 7 states: 8 The Supplemental Retiree Benefit Reserve 9 ("SRBR" shall be discontinued, and the 10 assets returned to the appropriate 11 retirement trust fund. Any supplemental 12 payments to retirees in addition to the 13 benefits authorized herein shall not be 14 funded from plan assets.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. B.	<p>42. Undisputed</p>
<p>15 43. On or around April 12, 1960, the voters 16 ratified Proposition A, which amended 17 the San José Charter to include Section 18 78b.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">• RJN, Exh. E (California 19 Assembly Concurrent 20 Resolution No. 17, adopted in 21 Assembly January 18, 1961, 22 approving amendment of 23 Charter of San José to include 24 Section 78b ("Discretionary 25 Powers of Council Respecting 26 Retirement") of Article X).	<p>43. Undisputed</p>
<p>26 44. Former San José Charter Section 78b 27 stated: 28 "Anything in Section 78a of the Charter to the contrary notwithstanding, the</p>	<p>44. Disputed as being an incomplete recitation of the 1961 Charter provision. See response to no. 3.</p>

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Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”

Supporting Evidence:

- RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).

45. The ballot argument in favor of Proposition A stated:
“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”

Supporting Evidence:

45. Undisputed

<p>1</p> <p>2</p> <p>3 ● RJN, Exh. F (Ballot Pamphlet for Charter Amendment – 4 Proposition A, to be submitted 5 to the Electors of the City of 6 San José, April 12, 1960, including “Argument in Favor of Proposition A”).</p>	
<p>7 46. As adopted by the voters in 1965, the 8 San José City Charter states at Section 1500:</p> <p>9 Except as hereinafter otherwise 10 provided, the Council shall provide, by 11 ordinance or ordinances, for the creation, 12 establishment and maintenance of a 13 retirement plan or plans for all officers 14 and employees of the City. Such plan or 15 plans need not be the same for all 16 officers and employees. <i>Subject to other 17 provisions of this Article, the Council 18 may at any time, or from time to time, 19 amend or otherwise change any 20 retirement plan or plans or adopt or 21 establish a new or different plan or 22 plans for all or any officers or 23 employees.”</i></p> <p>24 <u>Supporting Evidence:</u></p> <p>25 ● RJN, Exh. G (1965 Charter) 26 (emphasis added).</p>	<p>46. Undisputed</p>
<p>27 47. As adopted by the voters in 1965, the 28 San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José</p>	<p>47. Undisputed</p>

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<p>Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. G (1965 Charter).	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A.	48. Undisputed
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. A	49. Undisputed
<p>50. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a</p>	50. Undisputed

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retirement plan or plans for all officers and employees of the City.”

Supporting Evidence:

- RJN, Exh. A

51. The City Council has enacted some ordinances implementing Measure B.

Supporting Evidence:

- Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).

51. Undisputed

52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): “Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve” to retirees and their survivors. Further, “[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons.”

Supporting Evidence:

- RJN, Exh. C.

52. Undisputed

53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.

Supporting Evidence:

53. Undisputed

PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS	PLAINTIFFS' RESPONSE TO SEPARATE STATEMENT OF UNDISPUTED FACTS AND DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND ADDITIONAL MATERIAL FACTS
<p style="text-align: center;">● RJN., Exhs. L, M, N</p>	
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><u>Supporting Evidence:</u></p> <p style="text-align: center;">● RJN., Exh. D.</p>	<p>54. Undisputed</p>
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><u>Supporting Evidence:</u></p> <p style="text-align: center;">● RJN., Exh. N.</p>	<p>55. Undisputed</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ..."</p> <p>(Municipal Code section 3.36.580(D)(2))</p> <p><u>Supporting Evidence:</u></p> <p style="text-align: center;">● RJN., Exh. D.</p>	<p>56. Undisputed</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p>	<p>57. Undisputed</p>

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<p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]	
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City’s two pension funds had unfunded pension liabilities.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	<p>58. Undisputed</p>
<p>59. In 2011, and 2012, the actuaries reported that the City’s two pension funds had “excess earnings” for the year – as defined in the Municipal Code – to fund the SRBR.</p> <p><u>Supporting Evidence:</u></p> <ul style="list-style-type: none">● Gurza Dec., Exhs. 44, 45, 46, 47, 48.	<p>59. Undisputed</p>

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3 1. On June 5, 1997 in an interest arbitration
4 proceeding between IAFF Local 230 and the
5 City, George Rios of the San Jose City
6 Attorney's office made the following
7 statements concerning the 1961 Police and
8 Fire Department Pension Plan:

9
10 "Just a word or two about the Police and
11 Fire Department Retirement Plan.

12 The existing plan is an excellent retirement
13 plan for its members. It is a defined benefit
14 plan, which means that the benefits will be
15 given to the employees.

16 It will be given to the employees even if
17 the amount of money that is contributed by
18 the City or the employees is not enough and is
19 not available at the time that the benefits must
20 be paid. The City will cover those costs if, in
21 fact, that were to happen, and hopefully that
22 never will happen.

23 The plan specifically provides that with
24 regard to prior service costs, if there is a new
25 benefit granted, and that there is a prior
26 service cost with regard to that benefit, that
27 the City must pay the prior service cost 100
28 percent.

The City is required to pay at least eight-
elevenths of all current service contributions.

Retirement benefits are not like other
benefits. They are not like wages. They are
not like increased sick leave. They are not
like increased vacation days or uniform
allowance, and they are not like those
benefits, because retirement benefits, once
given, can never be taken way (sic). That's
not quite absolutely true, because there are
some ways to take them way (sic), but you
can take them away only if give (sic) a
comparable benefit.

So once a benefit comes into the
retirement plant, it becomes a benefit, then
it's there, or you're going to have to give
them something else in return later on that's
comparable to that, so for all practical
purposes, it's there forever."

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Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 2 and 3, Exhibit 1.

2. In the same interest arbitration, Mr. Rios also filed the City's Opening Brief stating:

“Unlike other benefits, such as salary (which may be linked to inflation or the consumer price index), retirement benefits in a defined benefit plan are not subject to the fluctuating economy. Once a retirement benefit has been installed in the retirement plan, the employee who meets the eligibility requirement has a vested right in the benefit upon retirement and it generally cannot be removed from the plan unless a benefit of equal or greater value is given. Betts v. Board of Administration (1977) 21 Cal.3d 859; Valdes v. Corey (1983) 139 Cal.App.3d 773.”

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 4, Exhibit 2.

3. Mr. Rios also states in his Closing Brief in the same arbitration:

“The City is obligated to the huge risk of this defined benefit plan and being solely responsible for prior service costs...”

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 5, Exhibit 3.

4. Mr. Rios, in a subsequent brief, after the panel awarded its decisions stated:

“Under the Plan, benefits are funded by contributions from both the City and the members. Member contributions (excluding those for medical coverage) consist solely of ‘current service’ costs; City contributions consist of ‘current service’ costs and also ‘prior service’ costs. Section 3.36.1520 of the San Jose Municipal Code provides that



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'current service' costs 'shall not include any amount required to make up any deficit resulting from the fact that previous rates of contribution made by the City and members were inadequate to fund benefits attributed to service rendered by such members prior to the date of any change of rates, . . .'. Costs related to service rendered prior to the date of any contribution rates changes are allocated to 'prior service' costs which are borne entirely by the City (San Jose Municipal Code Section 3.36.1550)."

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 6, Exhibit 4.

5. On June 5, 2007 in that same interest arbitration, Alex Gurza, Director of Employee Relations explains what the SRBR fund (part of the pension plan) was, and concluded by stating "so that is an additional benefit that our pension provides and it was added in 2001.

Mr. Gurza also confirmed that the City was the guarantor of the pension fund benefits.

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 7, Exhibit 5.

6. On December 1, 1990 in an interest arbitration the POA and IAFF Local 230 and the City, Steven T. Itelson, a consulting actuary to the San Jose Police and Fire Retirement Board since 1983 presented the following testimony:

Q. "There has been some discussion here, which you may be able to improve upon, as to the ratio of contributions between the City and the employees and other factors that somehow determine what the ultimate rates are by the City and the employees. First, will you describe the 8-to-3 ratio? What is it and how does it work?"

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A. The interpretation of the City Code that we were given that "current service cost" meant the cost of the Plan for new employees or new participants, and that cost was split in a 8-to 3 ratio. But contributions at that level in the future, together with the assets at that point in time, would not cover the cost of all the benefits. This is the so called unfunded liability. Whether it is called USVP or UAL or some other actuarial term, the City is fully responsible under the Code for payment of that unfunded liability."

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 8, Exhibit 6.

7. In 2011, IAFF Local 230, Local 21 and OE Local sustained 10% reduction of pay for two years.

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 9.

8. Since 1983, there have been no modifications in either the Federated City Employees Retirement Plan and the Police and Fire Department Retirement Plan that increased employee contributions or decreased pension benefits other than those resulting from the meet and confer negotiations with employee unions pursuant to the Meyers-Milias-Brown Act.

Supporting Evidence:

- Declaration of Christopher E. Platten, Paragraph 10;
Declaration of Ken Heredia , Paragraph 6.

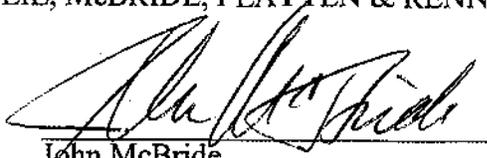
9. In a Memorandum which was distributed to City employees, Leslie R. White, City Manager stated:

"When the cost of providing (pension) benefits goes up and the benefits must be paid for, the City pays 100% of the unfunded liability (the amount not covered by

1	contributions)”	
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3	Supporting Evidence:	
4	<ul style="list-style-type: none">• Declaration of Christopher E. Platten, Paragraph 11, Exhibit 7.	
5		
6	10. On March 4, 2008, Debra Figone, San Jose City Manager made the following statement in a memo distributed to City employees: Because San Jose’s retiree healthcare benefits are part of the City’s retirement plans, the retiree healthcare benefits can be considered a “vested benefit similar to the pension benefit itself.”	10.
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10	Supporting Evidence:	
11	<ul style="list-style-type: none">• Declaration of Randy Sekany ¶3, Exhibit 1.	
12		
13	11. The City of San Jose has typically included description of the Police and Fire Department in its recruitment brochures.	11.
14		
15	Supporting Evidence:	
16	<ul style="list-style-type: none">• Declaration of Randy Sekany ¶4, Exhibit 2.	
17		
18	12. In September 1999, the City of San Jose through its City Attorney filed an amicus curiae brief in <i>Claypool v. Wilson</i> , District Court of Appeal, Third District, 3 CIV C011580 in which the City Attorney argued that pension plans (and the funds thereof) were vested and protected from impairment.	12.
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21	Supporting Evidence:	
22	<ul style="list-style-type: none">• RJN No. 1, pp. 8-10	
23		
24	13. The City of San Jose did not negotiate with IAFF Local 230 or IFPTE Local 21 over the terms and conditions of Measure B.	13.
25		
26	Supporting Evidence:	
27	<ul style="list-style-type: none">• Declaration of Christopher E. Platten, Paragraph 12; RJN No. 2.	
28		

Dated: May 2 2013

WYLIE, McBRIDE, PLATTEN & RENNER

By: 

John McBride

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

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