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11 Attorneys for Defendant
12 San Jose Police Officers' Association ("SJPOA")

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

15 CITY OF SAN JOSE,
16
17 Plaintiff,

18 v.

19 SAN JOSE POLICE OFFICERS'
20 ASSOCIATION; SAN JOSE
21 FIREFIGHTERS; I.A.F.F., LOCAL
22 230; MUNICIPAL EMPLOYEES'
23 FEDERATION, AFSCME,
24 LOCAL 101; CITY
25 ASSOCIATION OF
26 MANAGEMENT PERSONNEL,
27 IFPTE, LOCAL 21, THE
28 INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL NO. 3; and DOES 1-10,
Defendants.

No. C12-02904 LHK PSG

**DECLARATION OF GREGG M. ADAM IN
SUPPORT OF DEFENDANT SAN JOSE
POLICE OFFICERS' ASSOCIATION'S
MOTION FOR ATTORNEY FEES**

Date: September 12, 2013
Time: 1:30 p.m.
Place: Dept. 8
Judge: Hon. Lucy H. Koh

1 I, Gregg McLean Adam, declare under penalty of perjury as follows:

2 1. I am an attorney at law licensed to practice before all the courts of the
3 State of California. I am a partner in the firm of Carroll, Burdick & McDonough
4 LLP (“CBM”) attorneys of record for Defendant San Jose Police Officers’
5 Association (“SJPOA”). By virtue of that representation, I have personal
6 knowledge of the facts set forth herein and if called as a witness I could and would
7 testify competently as to them. I make this declaration in support of SJPOA’s
8 Motion for Attorney Fees.

9 2. I am a graduate of the University of Edinburgh in Scotland graduating in
10 1993 with a Master of Arts in Economics and Politics. I graduated from the
11 University of California, Hastings College of Law in 1999.

12 3. I joined CBM as an associate in November, 1999 shortly after graduating
13 from law school. I became a partner with CBM effective January 1, 2006. I am
14 duly licensed to practice before all the courts in the State of California. I have
15 practiced in both federal (Northern District of California, 9th Circuit Court of
16 Appeals, United States Supreme Court) and state court, including arguing
17 approximately a dozen appeals in the California Court of Appeal, successfully
18 petitioning the California Supreme Court to grant review, and trying a eight day
19 jury trial in federal district court.

20 4. Throughout the course of my legal career, I have primarily practiced
21 public sector labor law focusing my efforts on representation of state and local
22 peace officer, firefighter and other public employee labor unions and organizations
23 as well as individual employees. In addition to public sector labor law, CBM also
24 provides legal services in the areas of corporations law, employment law, products
25 liability, complex insurance coverage, commercial litigation and class action
26 defense.

27 5. While our firm has provided representation to public sector labor unions
28 and individual public sector employees for over fifty years, this representation is

1 done so at hourly rates that are substantially less than the rates charged by CBM
2 attorneys providing services to private sector clients. Because of the long-term
3 nature of many of these relationships the rates that have been provided have been
4 substantially discounted from rates that would otherwise be charged to CBM clients
5 in the private sector

6 6. In June 2012, I learned that Plaintiff City of San Jose (“City”) filed a
7 complaint against the unions representing its employees—including SJPOA—in
8 federal court the day before Measure B was passed by the voters of San Jose. The
9 City sought declaratory relief that Measure B was not unconstitutional under state
10 and federal law. On its face, Measure B affected all San Jose city employees, even
11 though the City did not sue all the unions that represent the employees. Measure B
12 is the subject of ongoing litigation between the parties in Santa Clara Superior
13 Court.

14 7. From reviewing the Complaint, and subsequently the First Amended
15 Complaint, and my discussions with Gonzalo Martinez, I could see that a motion to
16 dismiss for lack of subject matter jurisdiction was an appropriate response.
17 Specifically, the City sought an advisory opinion on the legality of Measure B, it
18 filed prematurely and pled an unripe action, and further it failed to meet Article III
19 standing requirements. Alternatively, the City’s complaint was subject to a motion
20 to stay based on three different federal abstention principles due to the state court
21 litigation. Accordingly, I asked Mr. Martinez, then an associate in our Appellate
22 Practice Group to prepare a motion to dismiss and/or stay. I knew that Mr.
23 Martinez had federal litigation experience and familiarity with subject matter
24 jurisdictional issues and dealing with such motions. Because of the complexities
25 and intricacies of this motion, I felt that it would be most effective and efficient to
26 have him take the primary role.

27 8. In addition, I requested the assistance of Amber West, an associate in our
28 public sector labor group, to assist with motion to dismiss and/or strike and the

1 other activities in the case. Like myself, Ms. West has had extensive involvement
2 in public sector matters. Ms. West's activities in this case focused primarily first on
3 assisting in the research, drafting and filing of the motion to dismiss and/or strike. I
4 have continued to have overall responsibility for this matter and have coordinated
5 the activities in this case to date. While there have been some telephone calls and
6 exchanges of emails between myself, Mr. Martinez and Ms. West, we have
7 attempted to minimize these given the allocation of job responsibilities discussed
8 above.

9 9. The City opposed SJPOA's motion, conceding that it brought its action
10 prematurely but nevertheless pressing forward with its claims. Despite its
11 stipulation asking the Court to "rule as soon as practicable after the October 4[,
12 2012] hearing on the motions," the City sought to delay the October 4 hearing and
13 asked SJPOA to agree to continue the hearing, purportedly so the City could
14 prepare to bring its claims in the pending state court action. Because the City's
15 asserted claims were meritless, and because it desired a hearing on the motion to
16 dismiss as soon as possible, SJPOA declined.

17 10. SJPOA and the other union defendants filed a consolidated reply brief
18 pursuant to stipulation, on which SJPOA took the lead. That reply explained why
19 the City still failed to satisfy its burden of showing subject matter jurisdiction
20 existed and why abstention was inappropriate.

21 11. The matter was set for hearing before this Court on October 4. See Dkt.
22 Even though the City knew the unions desired a timely hearing and had already
23 declined to continue the matter because they desired resolution of the City's claims,
24 the City submitted a letter to this Court obliquely asking it to continue the October
25 4 hearing. That letter implicitly acknowledged the complexity of the underlying
26 motions to dismiss. This Court declined the City's request and issued an order
27 stating that: "The Court will proceed with the October 4, 2012 hearing on
28 Defendants' three pending motions to dismiss . . . unless by Monday, October 1,

1 2012, the parties stipulate to a stay of this case pending the Superior Court's
2 resolution of the state law claims in this case or the City of San Jose dismisses this
3 case pursuant to Federal Rule of Civil Procedure 41.” See Dkt. 79 (9/28/12 Order
4 at 1.) No agreement to stay was reached.

5 12. Three days before the hearing on the motions to dismiss, the City
6 voluntarily dismissed its complaint against SJPOA and AFSCME. It then refiled in
7 state court.

8 13. The parties have met and conferred about this motion, as required by
9 Local Rule 54-5(b)(1). Specifically, on October 29, 2012, I wrote to Linda M.
10 Ross, Esq., counsel for Plaintiff City of San Jose, informing her that SJPOA
11 believed it was entitled to attorney fees based, in part, on the City’s decision to
12 voluntarily dismiss its complaint only after all the underlying briefing was
13 completed. The letter offered a compromise on the amount of fees sought in return
14 for not filing a motion, but stated that if the parties did not reach an agreement on
15 attorney fees SJPOA would be forced to file this motion. I did not receive a
16 response to my letter.

17 14. On or about November 6, 2012, I instructed Ms. West to follow up with
18 the City and to negotiate a stipulation with the City bifurcating the fees motion so
19 that the Court could decide SJPOA’s entitlement to fees and then subsequently
20 decide the amount. I understand the stipulation was negotiated in November –
21 December 2012. The stipulation was filed on December 17, 2012. Dkt. 91. The
22 Court denied the stipulation on December 28, 2012, and ordered that the amount of
23 fees be briefed along with SJPOA’s entitlement thereto. Dkt. 92.

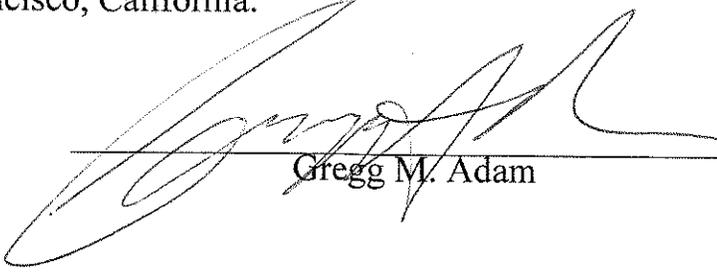
24 15. I have reviewed Exhibit A to the Declaration of Gonzalo C. Martinez with
25 respect to those charges that represent my activities in the case, I believe those are
26 true and correct representations of the activities and the dates that I performed
27 them. My practice is to prepare written entries of my time, either
28 contemporaneously with the performance of those duties or soon thereafter. While

1 our firm has paralegals, I did not utilize any paralegals to assist me in the activities
2 that I performed since they involved activities that I would consider to be attorney
3 activities and not those to be performed by paralegals. Based on my involvement in
4 the case I believe that the charges attributable to Amber West also accurately reflect
5 the time that he performed on this matter. As the supervising attorney, I exercised
6 billing judgment over the attorney fees (i.e., hours billed to the client were reduced
7 for inefficiencies, etc.).

8 16. Despite our attorneys' wealth of experience and expertise, SJPOA used
9 hourly rates to calculate the "lodestar" that are at, or below, currently prevailing
10 market rates for comparably skilled Bay Area attorneys. While rates in the Bay
11 Area are seldom below the level of \$450 per hour, that is all SJPOA seeks, which is
12 quite low for a recognized leading practitioner in this area of law. Associate rates
13 of \$350 are also at or below the market rate.

14 17. The financial cost of seeking dismissal was out of proportion to any
15 pecuniary benefit the union or its members could ever obtain in defending this
16 lawsuit. SJPOA represents current police officers who have not yet retired; the
17 rights vindicated in their defense against this lawsuit will not be paid to them until
18 after they retire, which may be several decades away.

19 I declare under penalty of perjury under the laws of the State of California that
20 the foregoing is true and correct and that this declaration is executed on this 11th
21 day of March, 2013, in San Francisco, California.

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Gregg M. Adam