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6 Attorneys for Defendant  
 7 San Jose Police Officers' Association ("SJPOA")

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10 CITY OF SAN JOSE,

11 Plaintiff,

12 v.

13 SAN JOSE POLICE OFFICERS'  
 ASSOCIATION; SAN JOSE  
 14 FIREFIGHTERS; I.A.F.F., LOCAL  
 230; MUNICIPAL EMPLOYEES'  
 15 FEDERATION, AFSCME,  
 LOCAL 101; CITY  
 16 ASSOCIATION OF  
 MANAGEMENT PERSONNEL,  
 17 IFPTE, LOCAL 21, THE  
 INTERNATIONAL UNION OF  
 18 OPERATING ENGINEERS,  
 LOCAL NO. 3; and DOES 1-10,

19 Defendants.

No. C12-02904 LHK PSG

**DECLARATION OF GONZALO C.  
 MARTINEZ 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, Gonzalo C. Martinez, 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 received my juris doctor degree from Harvard Law School, hold a  
10 masters degree from Stanford University, and received my undergraduate degree  
11 from Harvard University. I have clerked for the Honorable Maxine M. Chesney of  
12 the Northern District of California, and the Honorable Anthony W. Ishii of the  
13 Eastern District of California. I have been a member of the State Bar of California  
14 since 2004.

15 3. I began my legal career at Morrison and Foerster LLP in San Francisco  
16 where I practiced securities litigation, and subsequently moved to Coblenz Patch  
17 Duffy & Bass LLP, where I practiced general civil litigation in state and federal  
18 court.

19 4. I joined Carroll, Burdick & McDonough LLP (“CBM”) in 2007 as an  
20 associate in the appellate practice group. Effective January 1, 2013, I was elevated  
21 to partner status.

22 5. CBM presently consists of over seventy lawyers in San Francisco, Los  
23 Angeles, and Sacramento, California and Stuttgart, Germany, Hong Kong, and  
24 Beijing. CBM’s practices include both private and public sector law. In the private  
25 sector, practices include employment law, corporate law, products liability,  
26 complex insurance coverage and class action defense. CBM also has a public  
27 sector labor law group. In that practice, CBM attorneys are involved in  
28 representing various public sector labor unions and individual state and local

1 employees in grievances, disciplinary proceedings, arbitrations, negotiations and  
2 litigation.

3 6. My primary areas of focus are products liability, class action and complex  
4 litigation defense, cross-border litigation, constitutional law, and public sector labor  
5 law. I have practiced in both federal (Northern, Eastern and Central Districts, 9th  
6 Circuit, U.S. Supreme Court) and state court, including obtaining an affirmance  
7 from the U.S. Supreme Court, arguing before the 9th Circuit and numerous  
8 California courts of appeal, and successfully petitioning the California Supreme  
9 Court to grant review.

10 7. As a member of the appellate practice group, I work closely with many of  
11 CBM's practice groups, including the firm's public sector labor law group. In that  
12 capacity I have been extensively involved in this litigation.

13 8. Prior to becoming involved in this case, I handled numerous motions to  
14 dismiss for lack of personal and federal subject matter jurisdiction on behalf of  
15 other clients of CBM.

16 9. In June 2012, I learned that Plaintiff City of San Jose ("City") filed a  
17 complaint against the unions representing its employees—including SJPOA—in  
18 federal court the day before Measure B was passed by the voters of San Jose. The  
19 City sought declaratory relief that Measure B was not unconstitutional under state  
20 and federal law. Measure B is the subject of ongoing litigation between the parties  
21 in Santa Clara Superior Court.

22 10. From reviewing the Complaint, and subsequently the First Amended  
23 Complaint, I could see that a motion to dismiss for lack of subject matter  
24 jurisdiction was an appropriate response. Specifically, the City sought an advisory  
25 opinion on the legality of Measure B, it filed prematurely and pled an unripe action,  
26 and further it failed to meet Article III standing requirements. Alternatively, the  
27 City's complaint was subject to a motion to stay based on three different federal  
28 abstention principles due to the state court litigation. Given my federal litigation

1 experience and familiarity with subject matter jurisdictional issues, I was charged  
2 with preparing the briefing on the matter on behalf of our client. Gregg Adam had  
3 overall responsibility for the case. Amber West assisted in research and drafting  
4 the motion. The bulk of my time on this case has been spent on the motion to  
5 dismiss and this motion for attorney fees.

6 11. Pursuant to CBM's billing practices the attorneys working on matters are  
7 required to prepare time entries for legal services provided contemporaneously with  
8 or shortly after the rendition of the services. These time entries are prepared into  
9 monthly invoices by the CBM accounting department, which are then sent to our  
10 clients.

11 12. In connection with the preparation of this motion, I requested from the  
12 CBM accounting department a spreadsheet of all fees incurred in this matter. I then  
13 reviewed the entries to determine the ones that would be appropriate for recovery  
14 from the Plaintiff. Attached hereto as Exhibit A is a true and correct copy of a  
15 summary of the attorney fee charges that are the subject of this motion. The fees  
16 that I have included are fees that relate to the motion to dismiss and/or stay, and the  
17 preparation of this Motion for Attorney Fees.

18 13. Some of the entries in Exhibit A have been modified to remove  
19 information regarding the nature of conversations or correspondence between and  
20 among CBM attorneys and our clients on the grounds of attorney-client and work  
21 product privileges. In addition, certain entries contained time incurred in dealing  
22 with one of the recoverable categories set forth above as well as work performed on  
23 other matters relating to the case. In those situations I have included a description  
24 of each recoverable activity and the time allocable to that activity.

25 14. With respect to Exhibit A, there are entries for time provided by Mr.  
26 Adam, Ms. West and me.

27 15. I have not added any additional time to the time that was actually billed  
28 for the activities in this case. In fact, I have not included certain billing charges due

1 to the fact that they reflected time for both recoverable and non-recoverable items  
2 and it was too difficult to determine the allocation between those activities. In  
3 addition, and as will be discussed below, I have exercised billing judgment to  
4 reduce the amount of time sought in connection with the preparation of the motion  
5 to dismiss and/or stay and this Motion.

6 16. I have deleted from Exhibit A time entries where more than one attorney  
7 has billed for discussions relating to the case, and have tried to limit the included  
8 entries to the time expended by only one attorney. In addition, where time entries  
9 are not clearly attributable to one of the specific claimed activities, I have either  
10 reduced the time or deleted the entry entirely. Further, I have deleted certain  
11 additional time spent by the attorneys in researching, preparing and reviewing the  
12 related Memorandum of Points and Authorities with respect to the motion to  
13 dismiss and/or stay and this Motion. The total of such hours that we have  
14 voluntarily deleted from our request for attorneys' fees is in excess of 100 hours of  
15 attorney time.

16 17. I am informed and believe that the fees listed on Exhibit A accurately  
17 reflect charges that SJPOA incurred through our firm's representation of its  
18 interests in this litigation in the "recoverable activities" identified above less the  
19 reductions and deletions of time referenced above. However, Exhibit A contains  
20 time only through September 30, 2012 and I have not been able to assemble the  
21 time incurred in completing the preparation of this Motion. In addition, I anticipate  
22 that CBM will incur further time in preparing reply papers to the Plaintiff's  
23 anticipated opposition to this motion and there will also be charges incurred for  
24 attending the hearing on this Motion. Those charges that are ascertainable will be  
25 submitted as part of the reply papers and those fees that are not ascertainable at that  
26 time will be presented at the hearing of the Motion.

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

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7 Gonzalo C. Martinez

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# **EXHIBIT A**

Date	TKPR Name	Hrs	Narrative
6/6/2012	Martinez, Gonzalo	1.5	Extensive legal research to craft opposing arguments to potential federal motions and timing of same, including motion to dismiss City's federal complaint.
6/6/2012	Martinez, Gonzalo	0.5	Analyze City's federal complaint in preparation for motion to dismiss.
6/6/2012	Martinez, Gonzalo	3	Extensive legal research on ripeness, standing, and advisory opinions in preparation for motion to dismiss.
6/7/2012	Martinez, Gonzalo	2.6	Continued extensive legal research on advisory opinions to draft motion to dismiss.
6/7/2012	Martinez, Gonzalo	2.5	Continued extensive legal research on ripeness to draft motion to dismiss.
6/7/2012	Martinez, Gonzalo	0.6	Strategize regarding case strategy and upcoming motions.
6/8/2012	Martinez, Gonzalo	3	Begin drafting motion to dismiss for lack of standing.
6/8/2012	Martinez, Gonzalo	4.5	Continued extensive legal research on standing, ripeness, and advisory opinions to draft motion to dismiss.
6/13/2012	Adam, Gregg McLean	0.3	Review outline of motion to dismiss; delegate research and writing; analyze strengths of claims.
6/13/2012	Adam, Gregg McLean	0.2	Research on question of rightness of federal complaint.
6/13/2012	Martinez, Gonzalo	0.5	Strategize regarding motion to dismiss.
6/14/2012	Adam, Gregg McLean	0.2	Direction to Associate regarding research on ripeness question.
6/14/2012	West, Amber L.	0.1	Receive overview of case and discussed assignment - motion to dismiss
6/14/2012	West, Amber L.	1.25	Research additional authorities for motion to dismiss.
6/16/2012	Adam, Gregg McLean	0.2	Strategy re federal action.
6/17/2012	West, Amber L.	1	Read points and authorities; begin outlining sections for draft of motion to dismiss.
6/18/2012	Martinez, Gonzalo	3.5	Analyze advisory opinion cases in preparation for drafting motion to dismiss federal complaint.
6/18/2012	Martinez, Gonzalo	2.5	Begin drafting motion to dismiss section on advisory opinions as improper under Article III.
6/18/2012	West, Amber L.	1.5	Research points and authorities in support of motion to dismiss; analyzed arguments the City likely will make in opposition to the motion.
6/18/2012	West, Amber L.	2	Draft portions of motion to dismiss arguing court should dismiss without leave to amend based on points and authorities arguing the court lacks standing, ripeness under Article III.
6/19/2012	Martinez, Gonzalo	4.4	Continue drafting section of motion to dismiss for seeking improper advisory opinion.
6/19/2012	Martinez, Gonzalo	4.3	Further analysis of cases and City's federal complaint in preparation for drafting section of motion to dismiss for seeking improper advisory opinion.
6/19/2012	West, Amber L.	1.5	Draft portions of motion to dismiss arguing court should dismiss without leave to amend; finish edits to forward to senior associate for review.
6/20/2012	Adam, Gregg McLean	0.4	Initial review of points and authorities for motion to dismiss.
6/20/2012	Martinez, Gonzalo	5.5	Substantial revisions to motion to dismiss sections on ripeness, standing, and advisory opinions in preparation for circulation.
6/20/2012	West, Amber L.	2	Conduct research using feedback from senior associate; finish double checking all case cites for accuracy and for strength as authority supporting MTD.
6/20/2012	West, Amber L.	1.5	Revise draft language of MTD.

Date	TKPR Name	Hrs	Narrative
6/21/2012	Martinez, Gonzalo	1	Strategize regarding motion to dismiss and arguments to save for reply.
6/22/2012	West, Amber L.	0.3	Outline reply arguments in anticipation of opposition to motion to dismiss.
6/26/2012	Adam, Gregg McLean	1.5	Research and strategy on motion to dismiss federal complaint; call to Linda Ross.
6/26/2012	Martinez, Gonzalo	0.5	Strategize regarding filing motion to dismiss and need for additional abstention arguments.
6/29/2012	Adam, Gregg McLean	0.7	Meeting with Associates to strategize motion to dismiss; follow-up research.
6/29/2012	Martinez, Gonzalo	2	Conduct legal research on federal abstention principles for motion to dismiss.
7/2/2012	Martinez, Gonzalo	4	Conduct extensive legal analysis on Younger abstention for motion to dismiss.
7/2/2012	Martinez, Gonzalo	2.6	Conduct extensive legal analysis on Pullman abstention for motion to dismiss.
7/2/2012	Martinez, Gonzalo	0.7	Conduct initial legal analysis on declaratory relief abstention for motion to dismiss.
7/3/2012	Adam, Gregg McLean	0.5	Review initial analysis regarding first amended complaint filed by the city; strategy and status report to client.
7/3/2012	Martinez, Gonzalo	3	Draft section of motion to dismiss based on Younger abstention principles.
7/3/2012	Martinez, Gonzalo	2.3	Draft section of motion to dismiss based on Pullman abstention principles.
7/3/2012	Martinez, Gonzalo	0.5	Strategize regarding arguments in motion to dismiss.
7/3/2012	West, Amber L.	2.7	Analyze First Amended Complaint filed by the City and other filings; redline; update Motion to Dismiss draft.
7/5/2012	Adam, Gregg McLean	0.5	Meeting with G Martinez and A West and general strategy on motion to dismiss, relevant facts and best legal arguments.
7/5/2012	West, Amber L.	1	Edit, analyze, add language to intro and two sections of Motion to Dismiss in light of changes made in First Amended Complaint.
7/6/2012	Adam, Gregg McLean	0.3	Strategy with associate regarding changes in first amended complaint and impact on draft motion to dismiss; strategy regarding cooperation with co-counsel.
7/9/2012	Martinez, Gonzalo	2.8	Extensive revision to sections of motion to dismiss on declaratory relief abstention and dismissal for failure to join indispensable parties.
7/10/2012	Martinez, Gonzalo	2.3	Further extensive revisions to section of motion to dismiss on declaratory relief abstention.
7/10/2012	Martinez, Gonzalo	3.9	Further extensive revisions to all sections of motion to dismiss in preparation for circulation.
7/10/2012	West, Amber L.	2.2	Analyze and edit Motion to Dismiss in light of filing of amended complaint; draft filings in support of motion.
7/11/2012	Adam, Gregg McLean	1.2	Review and edit 24 page Points and Authorities in support of motion to dismiss.
7/11/2012	Adam, Gregg McLean	1.2	Meeting with litigation team to strategize all aspects of federal case.
7/11/2012	West, Amber L.	2.2	Analyze foundation and statutory authority re request for judicial notice and declaration; facilitate cite check of motion to dismiss; coordinate changes and additions to motion; analyze and discuss filings re related cases.
7/12/2012	Martinez, Gonzalo	3.3	Final edits to motion to dismiss for lack of subject matter jurisdiction and on abstention principles.
7/12/2012	Martinez, Gonzalo	0.5	Give direction and provide guidance to finalize all papers for filing.

Date	TKPR Name	Hrs	Narrative
7/12/2012	West, Amber L.	0.75	Receive and review substantive edits re MTD; facilitate and review cite check for Motion to Dismiss; identify authorities for reply to anticipated opposition to MTD.
7/13/2012	Adam, Gregg McLean	0.3	Review and revise declaration in support of request for judicial notice in support of MTD.
7/13/2012	Martinez, Gonzalo	2	Final revisions to motion, request for judicial notice, and Adam declaration in preparation for filing.
7/13/2012	West, Amber L.	2.5	Revise Request for Judicial Notice and Declaration in Support of Motion to Dismiss; analyze and draft Proposed Order; review feedback and edits for Proposed Order and Request for Judicial Notice; facilitate drafting of Table of Authorities and review the draft; proofread and edit Motion to Dismiss; facilitate filing of MTD and related filings.
7/16/2012	Adam, Gregg McLean	0.6	Review final draft of MTD.
7/16/2012	West, Amber L.	2.15	Facilitate filing of Motion to Dismiss, Request for Judicial Notice and Declaration iso Motion to Dismiss, Proposed Order granting motion; analyze related cases.
7/18/2012	Adam, Gregg McLean	0.2	Review series of orders from court, first resetting Oct 4 hearing for Nov 15, then ordering parties to meet and confer re consolidated hearing .
7/19/2012	Adam, Gregg McLean	1.2	Review federal court order in detail; strategy; meeting with Yank, Martinez and West to prepare for 4 PM conference call with defendants' counsel; general strategy regarding discovery and state court MJOP; follow up.
7/19/2012	Adam, Gregg McLean	0.4	Conference call with defendants' counsel (Platten, McBride, AFSCME) to discuss Judge Koh's order; determine course of action.
7/20/2012	Martinez, Gonzalo	0.5	Extensive revisions to proposed stipulation on consolidated briefing.
7/20/2012	West, Amber L.	2.25	Confer again with other parties re stipulation; analyze stipulation and judge's order; draft updated stipulation; draft status report in compliance with judge order; analyze cases and arguments that may be raised in another MTD by co defendant.
7/23/2012	Adam, Gregg McLean	0.3	Telephone call with Teague Paterson regarding AFSCME position on consolidated briefing, etc.; e-mails.
7/23/2012	Adam, Gregg McLean	0.3	Correspondence with the City; telephone conferences with G Martinez and A West regarding finalizing Stipulation; follow up call from Teague Patterson.
7/23/2012	Martinez, Gonzalo	1.3	Substantial revisions to and strategizing regarding status report to court and stipulation on consolidated briefing on motion to dismiss.
7/23/2012	West, Amber L.	1.5	Obtain consensus with counsel for other parties re Stipulation; make final changes to Stipulation as well as Status Report.
7/24/2012	West, Amber L.	0.6	Confer re Stipulation; finalize and facilitate filing of Stipulation and Proposed Order as well as the Status Report filed in response to the July 18, 2012 court order.
8/15/2012	Martinez, Gonzalo	1	Develop legal arguments for SJPOA's reply brief in support of federal motion to dismiss based on City's reply brief filed in state court for stay and consolidation.
8/23/2012	West, Amber L.	0.1	Strategize re consolidated reply in support of Motions to Dismiss.

Date	TKPR Name	Hrs	Narrative
8/28/2012	Martinez, Gonzalo	2.5	Analyze City's lengthy opposition brief in preparation for drafting reply brief in support of motion to dismiss.
8/28/2012	Martinez, Gonzalo	3	Begin analyzing City's cited cases on standing, ripeness, advisory opinions, and abstention in preparation for drafting reply brief.
8/28/2012	Martinez, Gonzalo	0.8	Outline arguments for reply brief on standing, ripeness, advisory opinions, and abstention in preparation for drafting reply brief.
8/28/2012	Martinez, Gonzalo	0.4	Strategize regarding federal cases status and division of labor on reply brief.
8/29/2012	Martinez, Gonzalo	4.5	Further analysis of City's cited cases on standing, ripeness, advisory opinions, and abstention in preparation for drafting reply brief.
8/29/2012	Martinez, Gonzalo	3	Develop legal and factual arguments for reply brief to oppose City's arguments on standing, ripeness, advisory opinions, and abstention.
8/30/2012	Martinez, Gonzalo	3.4	Draft section of reply brief on why City requests improper advisory opinion.
8/30/2012	Martinez, Gonzalo	3.4	Draft sections on introduction and factual and procedural background for reply brief.
8/31/2012	Martinez, Gonzalo	2	Analyze moving papers and City's opposition to continue drafting reply brief.
8/31/2012	Martinez, Gonzalo	2	Continue drafting reply brief.
9/3/2012	West, Amber L.	2.5	Analyze City's Brillhart arguments and authorities; identify several authorities in support of dismissal under Brillhart that address the City's arguments.
9/5/2012	West, Amber L.	1.25	Analyze authorities for use in reply re standing; draft arguments re standing, ripeness.
9/6/2012	West, Amber L.	1.6	Revise Reply iso MTD re ripeness; outline for this and the state court case why SJPOA's state court case is ripe and this one is not.
9/9/2012	West, Amber L.	0.75	Revise Reply in support of Motion to Dismiss as to standing and ripeness.
9/10/2012	Adam, Gregg McLean	0.3	Follow up on reply brief and efforts to have city voluntarily dismiss complaint.
9/10/2012	Martinez, Gonzalo	3.5	Continue drafting section of reply brief on why FAC asks for improper advisory opinion.
9/10/2012	Martinez, Gonzalo	3	Further analysis of FAC and cases to draft section of reply brief on why FAC asks for improper advisory opinion.
9/10/2012	Martinez, Gonzalo	3.8	Draft section of reply brief on Younger and Pullman abstention and why federal court should defer to state court proceeding.
9/10/2012	West, Amber L.	3.25	Confer with co-defendants' counsel re their portions of the consolidated reply; discuss w partners and senior attorney possible request to stay proceedings; continue drafting portions of consolidated reply as to standing and as to Brillhart abstention; and edit portion re ripeness.
9/11/2012	Adam, Gregg McLean	0.8	Review draft reply to opposition to MTD.
9/11/2012	Adam, Gregg McLean	0.2	Further strategy re reply brief.
9/11/2012	Martinez, Gonzalo	6.5	Substantial revisions to sections of reply brief on ripeness and standing in preparation for circulation.
9/11/2012	Martinez, Gonzalo	3.5	Draft section of reply brief on Brillhart abstention and why federal court should defer to state court.
9/11/2012	Martinez, Gonzalo	1	Analyze submissions of co-counsel for potential incorporation into reply brief.

Date	TKPR Name	Hrs	Narrative
9/11/2012	West, Amber L.	2	Continue revisions to Reply in support of Motion to Dismiss as to Brillhart abstention; print exhibits for RJN; request cite checking and creation of documents for RJN and for Declaration in support of Reply; strategize with senior attorney re filing.
9/12/2012	Adam, Gregg McLean	0.2	Suggested final tweaks to brief; strategy regarding incorporating submissions from other union defendants.
9/12/2012	Adam, Gregg McLean	0.2	Review and revise declaration in support of motion to dismiss.
9/12/2012	Adam, Gregg McLean	0.2	Review and approve request for judicial notice.
9/12/2012	Martinez, Gonzalo	3.5	Incorporate co-counsel's suggested drafts into reply brief.
9/12/2012	Martinez, Gonzalo	2.5	Strategize with AFSCME co-counsel re suggested drafts; analyze and edit further edits for incorporation into brief.
9/13/2012	Adam, Gregg McLean	0.4	Final revisions to declaration in support of motion to discuss; review final version of reply incorporating arguments by other unions.
9/13/2012	Martinez, Gonzalo	1.5	Finalize reply brief for filing.
9/26/2012	Adam, Gregg McLean	0.2	Receive and review correspondence from city requesting that the motion to dismiss hearing be taken off calendar; calls and analysis regarding appropriate response.
9/30/2012	Adam, Gregg McLean	0.3	Review order from Judge Koh regarding city's request to continue hearing; review correspondence from both city side and union side; weigh in.
<b>TOTAL</b>		<b>180.65</b>	