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City of San Jose
9

10 **IN THE UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 CITY OF SAN JOSE,

13 Plaintiff,

14 v.

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

20 Defendants.
21

Case No. 5:12-CV-02904-LHK

**DECLARATION OF LINDA M. ROSS IN
SUPPORT OF PLAINTIFF CITY OF SAN
JOSE'S OPPOSITION TO SAN JOSE POLICE
OFFICERS' ASSOCIATION'S MOTION FOR
ATTORNEY FEES**

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

22 I, Linda M. Ross, declare as follows:

23 1. I am an attorney with Meyers, Nave, Riback, Silver & Wilson, attorneys for
24 Plaintiff City of San Jose ("City") and submit this declaration in support of the City's Opposition
25 to San Jose Police Officers' Association's Motion for Attorney Fees. I have personal knowledge
26 of the facts set forth below and if called as a witness I could and would testify competently
27 thereto.

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1 2. The City filed the complaint in this federal action on June 5, 2012. The City's
2 complaint sought a declaratory judgment that certain provisions of Measure B, the City of San
3 Jose's pension reform measure, do not violate the federal and state contract clauses and various
4 other federal and state laws.

5 3. The City's federal action was filed in order to consolidate all interested parties and
6 their federal-law and state-law claims into a single, efficient action.

7 4. On June 6, 2012, City of San Jose unions, employees, and retirees began filing five
8 separate state-court actions in Santa Clara County Superior Court challenging Measure B on state-
9 law claims only.

10 5. In late June 2012, defendants in this federal action began filing motions to dismiss,
11 which were set for hearing on October 4, 2012.

12 6. In early August 2012, the City filed a motion in Santa Clara Superior Court to
13 consolidate and stay the state-court actions. The City contended that the state-court actions should
14 be stayed so that the parties could litigate this federal action, which was the first-filed, and most
15 comprehensive, of all Measure B lawsuits. The City stated that its goal was a "fair, efficient and
16 comprehensive resolution of all claims related to Measure B."

17 7. At a hearing on August 23, 2013, the Santa Clara Superior Court granted the City's
18 motion to consolidate the five cases for pretrial purposes, but denied the City's motion to stay the
19 cases pending the outcome in this federal action. I have attached a true and correct copy of the
20 Court's order denying the City's motion to stay to this declaration as Exhibit A. Soon thereafter, I
21 wrote a letter to counsel for the federal defendants and indicated that the City was planning to
22 proceed solely in state court in light of the state court's August 23, 2012 ruling. I requested that
23 the parties grant the City time to procedurally effect this plan. The POA refused and continued to
24 work on its motion to dismiss. I have attached a true and correct copy of my September 4, 2012
25 letter to this declaration as Exhibit B.

26 8. Although the City believed that its federal complaint would survive the federal
27 motions to dismiss, the City realized that its federal action would then be proceeding in tandem
28 with the consolidated state-court actions. To avoid a multiplicity of actions and because the state-

1 court plaintiffs had indicated that they would consent to the City's filing a state-court cross-
2 complaint raising federal claims, the City elected to dismiss its federal action without prejudice.

3 9. Critically, the City dismissed its federal suit to avoid the expense of litigating a
4 multiplicity of actions. The City alerted the Court prior to the hearing on the federal defendants'
5 motions to dismiss in order to spare the Court the time and expense of preparing for the hearing.
6 On September 26, 2012, I sent a letter to the Court informing the Court of the order by the state
7 court denying the City's motion to stay. I have attached a true and correct copy of my September
8 26, 2012 letter to this declaration as Exhibit C. My letter appears as Docket No. 76. In my letter,
9 I stated:

10 Given that the legality of Measure B will be litigated in state court,
11 the City would like to avoid a multiplicity of actions, and will be
12 seeking leave to file its federal claims in the consolidated state court
13 action in the form of a Cross-Complaint. If the state court grants the
14 City leave to file its Cross-Complaint, the City will be in a position
15 to dismiss this federal action without prejudice or request a stay.

14 10. The City did not dismiss its federal action because it feared losing the motions to
15 dismiss. On the contrary, the City believed, and continues to believe, it would have prevailed.
16 But such a victory – in light of the state court's ruling denying the stay motion – would not have
17 eliminated the simultaneous and inefficient adjudication of Measure B in two forums. This would
18 have been an expensive and inefficient use of public resources.

19 11. On October 1, 2012, the City dismissed without prejudice the San Jose Police
20 Officers' Association and AFSCME pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). (Docket No. 80.)
21 Neither the POA nor AFSCME had filed a motion for summary judgment or an answer.

22 12. On October 1, 2012, the City filed in this Court a motion for a court order
23 dismissing the remaining defendants without prejudice. (Docket Nos. 82-85 & 88.) In its
24 supporting memorandum (Docket No. 83), the City stated:

25 Because the state-court actions would be proceeding in tandem with
26 the City's federal action, and because the state-court plaintiffs have
27 informed the City that they would consent to the City's filing a
28 state-court Cross-Complaint raising federal claims, the City has
elected to dismiss this federal action without prejudice. The City's
purpose is to avoid the expense of a multiplicity of actions.

