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S. VERA

IN THE SUPERIOR COURT FOR THE

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS ASSOCIATION, Plaintiff, v. CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10 inclusive., Defendants.	Case No. 1-12-CV-225926 *[Consolidated with Case Nos. 112CV225928, 112CV226570, 112CV226574, 112CV227864, 112CV233660]* **DEFENDANT AND CROSS-COMPLAINANT CITY OF SAN JOSE'S CONSOLIDATED OBJECTIONS TO EVIDENCE SUBMITTED BY PLAINTIFFS SAN JOSE POLICE OFFICERS ASSOCIATION, AFSCME AND SAPIEN/HARRIS/MUKHAR**
AND RELATED CROSS-COMPLAINT AND CONSOLIDATED ACTIONS	Date: June 7, 2013 Time: 9:00 a.m Dept.: 2 Judge: Hon. Patricia M. Lucas Complaint Filed: June 6, 2012 Trial Date: July 22, 2013

1. **Objections to AFSCME's Evidence In Opposition to City's Motion for Summary Adjudication**

The City hereby objects to those portions of the AFSCME evidence identified in the below table.

Evidence	Objection	Ruling
1) Declaration of Charles Allen, Exh. 4 [Memorandum dated February 7, 2008 from Jones Day to the City of San Jose].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007). This legal memorandum is not relevant to any issue raised by the Motion for Summary Adjudication. The memorandum addresses the issue of whether the health benefits offered to retired employees are vested rights. ("You have asked Jones Day to consider whether the City of San Jose (the 'City') may change the retiree medical and dental benefits currently provided to the City in light of the constitutional impairment of contract obligations.") That issue is not present in the City's motion. The City's instant motion relates to employee contributions towards retiree health benefits and not the benefits themselves. The memorandum is not the product of any employee or official of the City of San Jose and thus cannot be viewed in any way as an admission by the City. This legal memorandum is also inadmissible because it contains hearsay, opinion testimony and legal conclusions.	Sustained____ Overruled____

Evidence	Objection	Ruling
2) <u>Declaration of Charles Allen</u>, Exh. 3 [Memorandum dated March 4, 2008 from City Manager Debra Figone to City employees and retirees].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007). The Allen declaration, ¶ 3 cites to a portion of this memorandum from the City Manager which states that "retiree healthcare benefit can be considered 'vested' similar to the pension benefit itself." This statement is based on the above described Jones Day memorandum, which discussed retiree health benefits. As explained above, the City's Motion for Summary Adjudication does not concern retiree health benefits. The City's motion relates to employee contributions towards retiree health benefits and not the benefits themselves. The memorandum is not an admission by the City because it merely reported on advice given to the City. This legal memorandum is also inadmissible because it contains hearsay, opinion testimony and legal conclusions.	Sustained____ Overruled____
3) <u>Declaration of Charles Allen</u>, ¶26, Exhs. 5, 6, 7, 8. [Handbooks for Sept. 1990, Fall 1995, Fall 1997, and year 2000]. **The Declaration states: "the handbooks refer to Municipal Code sect. 3.28.710, which states that employers are responsible for paying unfunded liabilities."**	Lack of relevance (Evid. Code 352); inadmissible opinion testimony (Evid. Code 800); inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Dist.*, 149 Cal.App.4th 1424, 1444-45 (2007).) The Handbooks do not refer specifically to Municipal Code Section 3.28.710 and do not specifically say "employees are not responsible for paying unfunded liabilities."	Sustained____ Overruled____

Evidence	Objection	Ruling
4) <u>Declaration of Charles Allen</u>, ¶26, Exh. 5. **The Declaration states: "the Sept. 1990 handbook, attached as Exhibit 5, contained a section entitled "vesting' (p. 19) It stated: "To be 'vested' literally means to be entitled to a future benefit. You become vested in the retirement system after five (5) years of membership."**	Lack of relevance (Evid. Code 352); inadmissible opinion testimony (Evid. Code 800); inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Dist.*, 149 Cal.App.4th 1424, 1444-45 (2007).) The issues of when an employee becomes vested and what pension benefits are provided to retirees are not present in this Motion for Summary Adjudication or this case.	Sustained____ Overruled____
5) <u>Declaration of Dan Doonan</u>, ¶¶ 17-20 [Contract and Retirement Bargaining], ¶¶ 43-55 [Effect of a Declining Payroll], ¶¶ 56-64 [True State of Federation Pension Plan], ¶¶ 65-70 [Cost of Living Adjustment], ¶¶ 91-96. [City's True Economic State].	Not relevant and any probative value is outweighed by undue consumption of time or prejudice. (Evid. Code 352); inadmissible opinion testimony (Evid. Code 800); inadmissible hearsay (Evid. Code 1200), The paragraphs and topics identified are irrelevant to the City's instant Motion for Summary Adjudication. These paragraphs consist of general observations about the City's financial status, arguments concerning the details of that financial status, and discussion of retirement benefits not at issue here.	Sustained____ Overruled____

2. **<u>Objections to SJPOA's Evidence In Opposition to City's Motion for Summary Adjudication</u>**

The City hereby objects to those portions of the SJPOA evidence identified in the below table.

Evidence	Objection	Ruling
1) <u>Declaration of Pete Salvi</u>, ¶¶ 3, 4, 5 on the premium for the "lowest cost plan" paid by the City of San Jose on behalf	Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue involving the "lowest cost plan" and any probative value is outweighed by	Sustained____ Overruled____

Evidence	Objection	Ruling
of retirees. **"At the time I retired and throughout my career with the San Jose police department, the City represented to me that I would receive premium contributions at the same level as the City contributes for the lowest cost plan offered to active employees in the same job classification from which I retired, i.e., police officer." (¶ 3.)** **In 2012, "the city changed its representation of what it would pay. The City said it would pay the amount it pays for the premiums of the lowest cost plan available to any City employee, rather than the lowest cost plan available to active police officers." (¶ 4.)**	undue consumption of time and prejudice. Evid. Code 403.	
2) <u>Declaration of Michael J. Fehr</u>, ¶¶ 3, 4, 5 on the premium for the "lowest cost plan" paid by the City of San Jose on behalf of retirees. **"At the time I retired and throughout my career with the San Jose police department, the City represented to me that I would receive premium contributions at the same level as the City contributes for the lowest cost plan offered to active employees in the same job classification from which I retired, i.e., police officer." (¶ 3.)**	Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue involving the "lowest cost plan" and any probative value is outweighed by undue consumption of time and prejudice. Evid. Code 403.	Sustained____ Overruled____

Evidence	Objection	Ruling
In 2012, "the city changed its representation of which it would pay. The City said it would pay the amount it pays for the premiums of the lowest cost plan available to any City employee, rather than the lowest cost plan available to active police officers." (¶ 4.)		
3) <u>Declaration of John Robb</u>, ¶ 9: "Police Officers are offered the retirement benefits as inducement to work for the City of San Jose. For example, ¶¶(a) through (d), describe the pension benefits available to San Jose police officers.	Lacks foundation (Evid. Code 403); lack of personal knowledge (Evid. Code 702); inadmissible opinion testimony (Evid. Code 800; inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Dist.*, 149 Cal.App.4th 1424, 1444-45 (2007).) Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue related to the calculation of pension benefits and any probative value is outweighed by undue consumption of time and prejudice. Evid. Code 403.	Sustained____ Overruled____
4) <u>Declaration of John Robb</u>, ¶¶ 9, Exhibits A, B, C, and D, describing police officer pension benefits. **Exh. A: Retirement benefit fact sheet.** **Exh. B: Recruiting flyers and fact sheet.** **Exh. C: 2002 Recruiting flyer.** **Exh. D: 1980-81 Recruiting booklet.**	Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue related to the calculation of pension benefits and any probative value is outweighed by undue consumption of time and prejudice. Evid. Code 403.	Sustained____ Overruled____

Evidence	Objection	Ruling
5) <u>Declaration of John Robb</u>, ¶ 9: "Police Officers are offered the retirement benefits as inducement to work for the City of San Jose."	Lacks foundation (Evid. Code 403); lack of personal knowledge (Evid. Code 702); inadmissible opinion testimony (Evid. Code 800; inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Dist.*, 149 Cal.App.4th 1424, 1444-45 (2007).)	Sustained____ Overruled____
6) <u>Declaration of John Robb</u>, ¶ 14: "Based on my knowledge as a participant in the P&F Plan, my role in SJPOA, and as reflected in the CAFR and Annual Reports, Police Officers have not paid directly into general pension unfunded actuarial accrued liability ("UAAL") other than to pay for new or increased benefits."	Lacks foundation (Evid. Code 403); lack of personal knowledge (Evid. Code 702); inadmissible opinion testimony (Evid. Code 800. Legal estoppel – contradicted by the SJPOA Opposition Br. at page 23, admitting that police officers historically have paid for unfunded liabilities, contradicted by SJPOA 2010 MOA with the City, Gurza Dec., Exh. 29 [page 000544], which provided that police officer additional pension contributions were for the purpose of paying for unfunded liabilities.	Sustained____ Overruled____
7) <u>Declaration of John Robb</u>, ¶ 17: "These increased Police Officer contributions allowed the City to pay less money for its share of the normal cost contribution."	Lacks foundation (Evid. Code 403); lack of personal knowledge (Evid. Code 702); inadmissible opinion testimony (Evid. Code 800. Legal estoppel – contradicted by contradicted by SJPOA 2010 MOA with the City, which provided that police officer additional pension contributions were for the purpose of paying for unfunded liabilities. Gurza Dec., Exh. 29 [000544].)	Sustained____ Overruled____
8) <u>Declaration of John Robb</u>, ¶ 20: "Had SJPOA members paid into UAAL, those contributions would not have been credited to my and other Police Officers' individual retirement accounts."	Lacks foundation (Evid. Code 403); lack of personal knowledge (Evid. Code 702); inadmissible opinion testimony (Evid. Code 800).	Sustained____ Overruled____

Evidence	Objection	Ruling
9) <u>Declaration of John Robb</u>, ¶ 21: "Additionally based on a legal memorandum SJOA obtained from the P&R Retirement Board, it appears that Police Officers do not pay UAAL."	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007).) The declaration references a memorandum, attached as Exh. 21, which discussed the Municipal Code and parties' practices as they existed in 1998.	Sustained____ Overruled____
10) <u>Declaration of John Robb</u>, ¶ 21, Exhibit E: Memorandum to the Board of Administration of the San Jose Police and Fire Department Retirement Plan from Saltzman & Johnson Law Corporation, dated February 19, 1998.	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007).) The declaration references a memorandum, attached as Exh. 21, which discussed the Municipal Code and parties practices as they existed in 1997.	Sustained____ Overruled____
11) <u>Declaration of John Robb</u>, ¶ 24: "If Measure B Section 1512-A is applied to Police Officers, their contributions can exceed the yearly and overall contractual caps in the MOA, and Police Officers would not be able to invoke the meet and confer provisions of the MOA the parties negotiated to determine how to pay for any contributions above 10%."	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), speculation, inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007).) This statement is speculation because the SJPOA does not offer any evidence that the City is not adhering to the MOA between the City and the SJPOA.	Sustained____ Overruled____

Evidence	Objection	Ruling
12) <u>Declaration of John Robb</u>, ¶ 25: "The City has historically tied retiree healthcare premium contributions to what active Police Officers received and prior to November 2012, the City has never offered retirees a plan not connected to what active Police Officers are actually in."	Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue related to the premiums paid by the City for retiree healthcare. The City's Motion seeks adjudication over the employee contribution rate, not the benefit given to retirees. Evid. Code 403.	Sustained____ Overruled____
13) <u>Declaration of John Robb</u>, ¶ 26: "If Measure B Section 1512-A is applied to Police Officers, they will lose their right upon retirement to City payment of the premium for the lowest cost healthcare plan available to active Police Officers because Section 1512-A defines 'lowest cost' with reference to healthcare plans made available all active City employees, and not just active Police Officers."	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), speculation, inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007).) Not relevant because the City's Motion for Summary Adjudication does not seek adjudication of any issue related to the premiums paid by the City for retiree healthcare. The City's Motion seeks adjudication over the employee contribution rate, not the benefit given to retirees. Evid. Code 403.	Sustained____ Overruled____
14) <u>SJPOA RJN</u>, Exh. 19 [Memorandum dated March 18, 2011 to Chairman, Board of Police and Fire Retirement Plan re: P&F ARC Calculations, enclosing Memorandum dated December 29, 1997 to Board of Administration from Susan Devencenzi, Sr. Deputy City Attorney re: Allocation of Actuarial Gains and Losses].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007). The legal memorandum attached as Exhibit 19 describes the City's Municipal Code and practices as of 1997 concerning pension contribution rates. The City objects to the legal descriptions and conclusions in the	Sustained____ Overruled____

Evidence	Objection	Ruling
	memorandum, except the City contends that it is relevant for the fact that that employees were on notice at the time that the City Council could change "the allocations of contributions to fund the UAAL" between the city and employees. This conclusion contradicts Plaintiffs' claims that the parties understood that the City would always be responsible for all unfunded liabilities and that the City could not require employees to contribute.	
15) SJPOA RJN, Exh. 27 [Memorandum dated September 17, 1997, to Board of Administration from Susan Devencenzi, Sr. Deputy City Attorney re: Allocation of Contribution Rates Between City and Members].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007). The memorandum, attached as Exh. 27 discussed the Municipal Code and parties practices as they existed in 1997.	Sustained____ Overruled____
16) SJPOA RJN, Exh. 28 [Memorandum dated December 29, 1997 to Board of Administration from Susan Devencenzi, Sr. Deputy City Attorney re: Allocation of Actuarial Gains and Losses.] **This same memorandum is attached as part of Exh. 19.**	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible hearsay (Evid. Code 1200), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007). See objection to Exh. 19: The City objects to the legal descriptions and conclusions in the memorandum, except the City contends that it is relevant for the fact that that employees were on notice at the time that the City Council could change "the allocations of contributions to fund the UAAL" between the city and employees.	Sustained____ Overruled____

3. **Objections to Sapien/Harris/Mukhar's Evidence In Opposition to City's Motion for Summary Adjudication.**

The City hereby objects to those portions of Sapien/Harris/Mukhar's evidence identified in the below table.

Evidence	Objection	Ruling
1) Declaration of Christopher E. Platten, ¶ 3, Exh. 1 [Excerpts from Transcript iu Arbitration between SJPOA and City of San Jose, June 5, 1997, quoting George Rios, formerly of the San Jose City Attorneys Office, as stating that benefits "will be given to employees even if the amount of money that is contributed by the City or the employees is not enough and is not available at the time that the benefits must he paid. The City will cover those costs if, in fact, that were to happen, and hopefully that never will happen"].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007)), inadmissible hearsay (Evid. Code 1200). Exhibit 1 is a partial transcript from a 1997 arbitration proceeding in which the SJPOA was arguing for an increase in its retirement benefits based in part on the retirement fund having a large surplus. Plaintiffs submit a partial section of the transcript, out of context, in which Mr. Rios makes arguments for the City. The City objects to the misleading use of a partial transcript, involving a different issue, and different economic time -- before the union agreements to pay additional pension contributions and before the Municipal Code was amended. Any statements are not binding on the City in this matter due to the different circumstances under which they were was made. The quoted text is not relevant to the current time period, is an inadmissible legal conclusion and inadmissible opinion.	Sustained____ Overruled____
2) Declaration of Christopher E. Platten, ¶ 4. Exh. 2 [City's Opening Brief In Re Arbitration Of Police and Fire Retirement, describing	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified*	Sustained____ Overruled____

Evidence	Objection	Ruling
retirement benefits – "once a retirement benefit has been installed in the retirement plan, the employee who meets the eligibility requirements has a vested right in the benefit.	*School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200). Exhibit 2 is a partial brief from a 1997 arbitration proceeding in which the SJPOA was arguing for an increase in its retirement benefits based in part on the retirement fund having a large surplus. Plaintiffs submit a partial section of the brief, out of context, in which the City describes the general nature of pension benefits. This information is not relevant here because neither the City's motion or this case relates to any decrease in pension benefits. The City objects to the misleading use of a partial section of a brief, involving a different issue, and different economic time. It is not binding on the City in this matter due to the different circumstances under which it was made. The quoted text is not relevant to the current time period, is an inadmissible legal conclusion and inadmissible opinion.	
3) <u>Declaration of Christopher E. Platten</u>, ¶ 5. Exh. 3 [City's Reply Brief In Re Arbitration Of Police and Fire Retirement, describing City's exposure to risk for prior service costs].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion (*People v. Torres*, 33 Cal.App. 4th 37, 45-46 (1995), *Morrrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200). The City objects to the misleading use of a partial section of a brief, involving a different issue, and different economic time. It is not binding on the City in this matter due to the different circumstances under	Sustained____ Overruled____

Evidence	Objection	Ruling
	which it was made. The quoted text is not relevant to the current time period, is an inadmissible legal conclusion and inadmissible opinion.	
4) <u>Declaration of Christopher E. Platten</u>, ¶ 6, Exh. 4 [City's Reply Brief In Re Arbitration Of Police and Fire Retirement, describing City's exposure to risk for prior service costs].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200). The City objects to the misleading use of a partial section of a brief, involving a different issue, and different economic time. It is not binding on the City in this matter due to the different circumstances under which it was made. The quoted text is not relevant to the current time period, is an inadmissible legal conclusion and inadmissible opinion.	Sustained____ Overruled____
5) <u>Declaration of Christopher E. Platten</u>, ¶ 7. Exh. 5 [Partial transcript from 2007 Interest Arbitration].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200).	Sustained____ Overruled____
6) <u>Declaration of Christopher E. Platten</u>, ¶ 8. Exh. 6 [Partial transcript from 1990 Interest arbitration].	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion. (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200).	Sustained____ Overruled____

Evidence	Objection	Ruling
7) **Request For Judicial Notice, Exh. 1 [Amicus Curiae Brief filed on behalf of the San Jose Police and Fire Department Plan by the San Jose City Attorney in the appellate case of Claypool v. Wilson.]**	Not relevant, undue prejudice (Evid. Code 352), inadmissible opinion testimony (Evid. Code 800), inadmissible legal conclusion (*Morrow v. Los Angeles Unified School Distr.*, 149 Cal.App. 4th 1424, 1444-435 (2007), inadmissible hearsay (Evid. Code 1200). This is an amicus brief, filed in 1991 in another case and not relevant here.	Sustained____ Overruled____
8) **Request For Judicial Notice, Exh. 2 [Complaint in International Association of Firefighters, Local 230 v. City of San Jose, Case No. SF-CE-969-M]**	Not relevant, undue prejudice (Evid. Code 352), inadmissible hearsay (Evid. Code 1200). This complaint was issued in a PERB proceeding, which requires PERB to issue a complaint for the complaining party to proceed. The complaint alleges that the City did not adequately meet and confer with employee unions before placing Measure B on the ballot. It is irrelevant here, because no party in this case seeks an adjudication in this case concerning compliance with meet and confer obligations.	

DATED: May 24, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

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