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

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

SAN JOSE POLICE OFFICERS' ASSOCIATION,  
Plaintiff,

v.

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

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)

**DECLARATION OF CHRISTOPHER E.  
PLATTEN IN SUPPORT OF MOTIONS IN  
LIMINE**

Trial Date: July 22, 2013  
Time: 9:00 a.m.  
Dept: 2  
Judge: Hon. Patricia M. Lucas

AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS.

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I, Christopher E. Platten, say:

I am one of the attorneys for the plaintiffs in the Sapien, Mukhar and Harris cases.

On June 26, 2013, I was present at the deposition of Debra Figone, the City Manager of the City of San Jose. In her deposition Ms. Figone confirmed that the City Council did and has not declared a fiscal emergency. Attached hereto are true and correct copies of correspondence my office received, Exhibit 1 being a letter from Mr. Adam to Mr. Hartinger dated June 18, 2013 and Exhibit 2 being a reply letter from Mr. Hartinger to Mr. Adam dated June 25, 2013.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 27, 2013, at San Jose, California.

  
CHRISTOPHER E. PLATTEN

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# **EXHIBIT 1**

June 18, 2013

Carroll, Burdick & McDonough LLP

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**VIA EMAIL AND REGULAR MAIL**

Arthur A. Hartinger, Esq.  
Linda M. Ross, Esq.  
Meyers, Nave, Riback, Silver & Wilson  
555 12th Street, Suite 1500  
Oakland, CA 94607

**COPY**

**Re: *San Jose POA v. City of San Jose, et al.*, Santa Clara County Superior Court, No. 1-12-CV-225926 (and Consolidated Actions)—City Economic Necessity/Emergency Argument File No. 038809**

Dear Art and Linda:

I recall discussing with you, Linda, at least once, but perhaps twice, the possibility that the City will try to defend Measure B on the ground that, even if it does violate the vested rights of plaintiffs, it was required by economic necessity or emergency. I recall you stating that defendants would not pursue that defense. When I say "that defense," I am referring to the first sentence, which I acknowledge is laid out in general terms. I do not recall us drilling down in great detail on this issue, but I also understand that other plaintiffs' counsel have discussed the issue with you, and have the same understanding as to the City's intentions.

Because of the significant increase in the scope of the issues at trial that would be created by the City pursuing any type of economic necessity/emergency defense (in terms of increased witnesses addressing and expanded subject matter), plaintiffs would like to resolve this issue now. Otherwise, we will have to take steps in anticipation of addressing this issue at trial, including potentially seeking to reopen discovery, additional depositions and alerting Judge Lucas that the current timeframe for trial may be insufficient. For example, if economic necessity and the like are going to be litigated, then plaintiffs would likely feel obligated to bring facts such as the whole bargaining history, the whole business about the \$650 million estimation, legislative audits, etc., into the record

Arthur A. Hartinger, Esq.

Linda M. Ross, Esq.

Re: *San Jose POA v. City of San Jose, et al.*, Santa Clara County Superior Court, No. 1-12-CV-225926 (and Consolidated Actions)—City Economic Necessity/Emergency Argument

June 18, 2013

Page 2

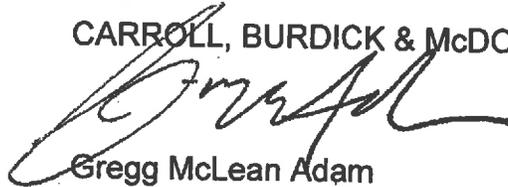
Plaintiffs have been operating based on your statements that the City would not pursue this issue at trial. If that is not so, then we need to resolve it one way or the other.

If you are amenable, we will prepare a stipulation to the effect that the issue will not be raised at trial.

Please get back to me on this question at your earliest opportunity.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Harvey L. Leiderman, Esq.  
John McBride, Esq.  
Christopher E. Platten, Esq.  
Teague P. Paterson, Esq.  
Vishtasp Soroushian, Esq.  
Stephen H. Silver, Esq.  
Jacob Kalinski, Esq.

## **EXHIBIT 2**



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Arthur A. Hartinger  
Attorney at Law  
ahartinger@meyersnave.com

June 25, 2013

**Via Email and U.S. Mail**

Gregg M. Adam  
CARROLL, BURDICK & McDONOUGH  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104

Re: *POA. et al. v. City of San Jose*  
Case No. 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)  
MN File No. 135.023

Dear Gregg:

I write to respond to your letter dated June 18, 2013.

You have inquired about the City's intention to assert a defense based on a fiscal emergency. We believe you are referring to the doctrine permitting a legislative body to take emergency measures that would otherwise impair contract rights. One element of this defense includes the issue whether there is a true financial emergency. *See Home Building & Loan Association v. Blaisdell*, 42 U.S. 311 (1934); *Sonoma County Org. of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 305 (1979).

We do not intend to assert at trial that Measure B was a justifiable impairment of contract rights based on the existence of a fiscal emergency within the meaning of *Blaisdell* and *County of Sonoma*. We do anticipate that there will be evidence at trial relating to the economic crisis and conditions that led to placing Measure B on the ballot.

We trust this resolves your question and concern.

Very truly yours,

Arthur A. Hartinger

AAH:kt

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