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12 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,  
13 Mary Kathleen McCarthy, Than Ho, Randy Sekany,  
14 Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,  
15 John Mukhar, Dale Dapp, James Atkins, William Buffington  
16 and Kirk Pennington

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

21 SAN JOSE POLICE OFFICERS' ASSOCIATION,  
22 Plaintiff,

23 v.

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

AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS.

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)

**PLAINTIFFS SAPIEN, HARRIS, AND  
MUKHAR, ET AL IN LIMINE MOTIONS**

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

1 The issues to be decided by the court are reasonably straight forward. Pursuant to  
2 authority given to it by the City Charter, the City created two pension Plans, the 1961  
3 Police and Fire Department Retirement Plan (hereinafter P&F Plan) and the 1975  
4 Federated City Employees Retirement Plan (hereinafter Federated Plan). The Plans in  
5 their entirety are set forth in the San Jose Municipal Code. Both Plans have similar  
6 provisions setting forth the retirement benefits, eligibility and contribution requirements.  
7 Both Plans require that all eligible employees must join and contribute and both establish  
8 an administrative body to administer the Plans (the Boards of Administration). Finally both  
9 Plans provide for adjustment of contributions based on actuarial recommendations.

10 In 2012, the City placed an initiative on the June ballot (Measure B) which, among  
11 other things, called for significant changes in both and P&F and Federated Plans. The  
12 measure was approved by the voters. The complaints in Sapien, Mukhar and Harris, et al.  
13 challenge the legitimacy of Measure B and its implementation, alleging that the  
14 substantive provisions of Measure B impair the vested contractual rights that employees  
15 and retirees have under the Plans, in violation of Article I, §9 of the California Constitution.  
16 Further they allege that implementation of Measure B would result in an unconstitutional  
17 taking of vested property rights in violation of Article I, §9 of the California Constitution.

18 The provision of both Plans are not in dispute. The effects of implementation of  
19 Measure B are readily apparent. Thus, the primary issue is application of established legal  
20 principles to the Measure B changes to the Plans.

21 The City has designated over 125 proposed trial exhibits many of which deal with  
22 matters extraneous to the issues in this case. See Exhibit 1 attached. The City has also  
23 designated 7 witnesses whose indicated testimony in part has no relevance to the issues in  
24 this case. See Exhibit 2 attached hereto.

25 Under California Law, public employees earn retirement benefits both pension and  
26 medical and the right to earn these benefits becomes a vested contractual right at the  
27 commencement of employment. *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 855;  
28 *Allen v. City of Long Beach* (1955) 45 Cal.2d 131, 133; *Thoring v. Hollister School District*

1 (1992) 11 Cal.App.4th 1598, 1606, 1607.

2 Vested pension rights are subject to modification for purposes of keeping pension  
3 system flexible and permit adjustments to meet changing conditions. However, any  
4 modification must bear a material relation to the theory of a pension and must provide  
5 comparable advantage for any disadvantages. *Board of Administration v. Wilson* (1977) 52  
6 Cal.App.4th 1109, 1113.

7 Here the City does not claim that the changes wrought by Measure B were needed  
8 because of fiscal emergency nor does it claim that the significant disadvantages are  
9 matched by any comparable advantages. (See Declaration of Christopher E. Platten) For  
10 the foregoing reasons any evidence concerning the financial condition of the City or the  
11 pension plans as justification for the changes to the Plans is irrelevant and should be  
12 excluded.

13 Plaintiffs submit the following motions in limine regarding admissibility of evidence  
14 by the City.

### 15 EXHIBITS

16 Plaintiffs move for an order to exclude the following of City's identified Exhibits  
17 (Exhibit 1).

18 1. 5508 and 5509 - Plaintiffs have not been supplied with a copy of these  
19 documents and thus objects on the lack of foundation. Plaintiffs also object to 5508 on the  
20 ground of relevance. A memo created after passage of Measure B can have no relevance  
21 to the issues in the case. Evidence Code §352.

22 2. 5600 through 5605 – Plaintiffs cannot identify nor have they received copies  
23 of these documents in discovery or otherwise. Plaintiffs objection therefore is to lack of  
24 foundation as well as lack of relevance.

25 3. 5800 through 5803 - Plaintiffs cannot identify nor have they received copies  
26 of these documents in discovery or otherwise. Plaintiffs objection therefore is to lack of  
27 foundation as well as lack of relevance.

28 4. 6000 through 6040 and 6058 through 6061 - Plaintiffs cannot identify nor

1 have they received copies of these documents in discovery or otherwise. Plaintiffs  
2 objection therefore is to lack of foundation as well as lack of relevance. Many of these  
3 document's appear to relate to fiscal matters regarding the plans (6000-6040) and/or the  
4 City's finances. Since the City is not claiming (and did not declare) a fiscal emergency to  
5 justify the changes to the pension plans this information is irrelevant. Further, if there was  
6 any relevance to such evidence its probitive value is far outweighed by the undue  
7 consumption of time that would be required. Thus these items should be excluded.  
8 Evidence Code §352.

9 5. 6041 through 6057 – The retirement benefits actually received by pensioners  
10 has no evidentiary relevance to whether or not Measure B unconstitutionally impairs vested  
11 contractual benefits: To the extent this evidence is offered to show that the City wanted to  
12 save money by decreasing benefits for future retirees it runs afoul of cases such as *Board*  
13 *of Administration v. Wilson*, supra at 1138 (saving an employer money is not sufficient  
14 justification for change unless the change is otherwise lawful and it provides comparable  
15 advantages).

#### 16 Evidence To Which There Are No Foundational Objections

17 6. 5100 and 5101 – Plaintiffs do not object to admission of these two exhibits for  
18 the limited purpose of showing that the City was aware of fiscal problems relating to its  
19 budget and the pension plans as early as 2008. With this exception, however, these  
20 exhibits are objectionable if they were to be admitted for any other purpose, for the reasons  
21 stated above.

22 7. 5103, 5104, 5106, 5108, 5200 through 5202, 5206 through 5214, 5301, 5401  
23 through 5404, 5407, 5418, 5454, 5455, 5460, 5461, 5473 through 5475, 5500 through  
24 5508, 5707 through 5709 and 5715 through 5718 – In addition to the relevance objections  
25 stated above plaintiffs object to these proposed exhibits and ask that they be excluded as  
26 being cumulative and because any relevance is far outweighed by the time the court and  
27 counsel would have to expend. Evidence Code §352.

28 8. 5710 thorough 5714 – In addition to the foregoing objections plaintiffs also

1 object to these "tentative agreements" which on their face were not consummated and  
2 therefore are irrelevant.

3 9. Plaintiffs do not object to the balance of the City's proposed exhibits but would  
4 suggest that the court exercise its discretion to limit cumulative evidence.

5 **WITNESS**

6 With reference to each of the City's proposed witnesses. Plaintiffs move to exclude  
7 any testimony that related to the financial condition of the City and/or of the Plans. As  
8 noted above the City did not declare a fiscal emergency nor does it claim that Measure B  
9 conforms with the requirements set forth in the *Kern* line of cases which requires that any  
10 changes to vested pension rights be consistent with the theory of pensions and provide  
11 comparable advantages for and disadvantages created.

12 These plaintiffs reserve the right to join in any other motions in limine submitted by  
13 any other party.

14 Dated: June 27, 2013

15 WYLIE, McBRIDE,  
16 PLATTEN & RENNER

17 

18 JOHN McBRIDE

19 Attorneys for Plaintiffs and Cross-Defendants  
20 Robert Sapien, Mary Kathleen McCarthy, Than  
21 Ho, Randy Sekany, Ken Heredia, Teresa Harris,  
Dale Dapp, James Atkins, William Buffington and  
Kirk Pennington

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# **EXHIBIT 1**

1 Arthur A. Hartinger (SBN: 121521)  
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8 Attorneys for Defendant  
City of San Jose  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS  
ASSOCIATION,  
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14 Plaintiff,  
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16 v.  
17 CITY OF SAN JOSE, BOARD OF  
ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10 inclusive.  
18 Defendants,

) Case No. 1-12-CV-225926  
) [Consolidated with Case Nos. 112CV225928,  
) 112CV226570, 112CV226574, 112CV227864,  
) 112CV233660]  
)  
) Assigned for all purposes to the Honorable Patricia  
) M. Lucas

**DEFENDANT CITY OF SAN JOSE'S  
EXHIBIT LIST**

Complaint Filed: June 6, 2012  
Trial Date: None Set

19  
20 AND RELATED CROSS COMPLAINT  
AND CONSOLIDATED ACTIONS  
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History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
5100	November 2008	City of San Jose General Fund Structural Deficit Elimination Plan		
5101	September 2010	City Auditor's Report, "Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future." [GURZA000001 – 000080]		
5102	September 2010	Exhibit presentation to Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future.		
5103	April 2011	City of San Jose Report to City Council: "Disability Retirement: A Program in Need of Reform."		
5104	May 2, 2011	Figone memorandum regarding City of San Jose Fiscal Reform Plan.		
5105	March 6, 2012	City of San Jose Resolution No. 76158, "A Resolution of the Council of the City of San Jose Repealing Resolution No. 76087 and Calling and Giving Notice of, on its Own Motion, the Submission to the Electors of the City of San Jose, at a Special Municipal Election to be Held on June 5, 2012, a Ballot Measure Proposal to Amend the San Jose City Charter to Add a New Article XV-A to Reform City Pensions and Benefits Provided to Current Employees and Establish Reduced Pensions and Benefits for New Employees and to Place Other Limitations on Pensions and Benefits." [SJRJN000090 – 000094]		
5106	September 7, 2012	Memorandum from Debra Figone to Mayor and City Council re: Background on Compensation Reductions.		
5107	March 26, 2013	"Stipulation and Order re: Implementation of Measure B in Connection with Trial Set for June 17, 2013." [SJRJN000605-000609]		
5108	May 1, 2013	2013-2014 City Manager's Operating Budget Message.		

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City Charter [5200 series]				
Ex. No	Date	Description	ID	EV
5200	1915	The City of San Jose 1915 City Charter Amendment		
5201	1925	The City of San Jose 1925 City Charter Amendment		
5202	1946	The City of San Jose 1946 City Charter Amendment		
5203	April 12, 1960	Ballot pamphlet for Charter Amendment – Proposition A, including “Argument in Favor of Proposition A.” [SJRJN000384 – 000386]		
5204	1961	The City of San Jose 1961 City Charter Amendment		
5205	January 24, 1961	California Assembly Concurrent Resolution No. 17. [SJRJN000376 – 000383]		
5206	May 26, 1964	The City of San Jose Charter Committee meeting minutes [SJRJN000495-000496]		
5207	September 1, 1964	Letter from Manager Edward Grossheider to the Chairman of the Charter Revision Committee re: revision of wording pertaining to Section 1601 of the City Charter. [SJRJN000497]		
5208	September 1, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000498-000499]		
5209	October 13, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000500-000501]		
5210	October 13, 1964	Memorandum of Fire and Police Retirement Plan presented by District Chief Leonard Marks of San Jose Fire Department. [SJRJN000502]		
5211	October 20, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000503-000504]		
5212	October 27, 1964	Letter from Manager Edward A. Grossheider to George Starbird, Chairman of the San Jose City Charter Committee re: recommendations for final draft of new proposed charter. [SJRJN000505-000506]		





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Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5400	May 12, 1971	Memorandum from City Manager Thomas Fletcher to City Council re: "Definition of Prior Service – Police and Fire Retirement Plan." [SJRJN000510-000511]		
5401	July 12, 1971	City of San Jose Resolution No. 40059, "A Resolution of the Council of the City of San Jose Requesting Board of Administration for Police and Fire Retirement Plan to Adjust Rates of Contribution for City and for Fire Department Members and Police Department Members of Police and Fire Department Retirement Plans." [SJRJN000512-000514]		
5402	August 16, 1978	Letter from Actuary E. Allen Arnold, and Associate Actuary Christine Nelson to Retirement and Benefits Administrator Edward Overton re: Police & Fire Contribution Rates. [SJRJN000519-000525]		
5403	June 30, 1979	Lawrence Mitchell & Associates, Inc. Consulting Actuaries' Actuarial Investigation and Valuation for the City of San Jose Police and Fire Department Retirement Plans. [SJRJN000526-000566]		
5404	July 3, 1979	City of San Jose Ordinance No. 19690, "An Ordinance of the City of San Jose Amending Topic 9 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code by Amending Section 2903.279 and Section 2903.280 to provide for increasing City's contribution for services rendered by members or persons prior to increase in the contribution rates." [SJRJN000515-000518]		
5405	December 29, 1997	Memorandum from Sr. Deputy City Attorney Susan Devencenzi to Board of Administration Police and Fire Department Retirement Plan, "Allocation of Actuarial Gains and Losses." [SJRJN000567-000581]		
5406	June 16, 2009	City of San Jose Resolution No. 74988, "A Resolution of the Council of the City of San Jose Approving Implementation of the Terms Contained in the City's Last, Best, and Final Offer to the Operating Engineers, Local No. 3, effective June 28, 2009." [GURZA000696]		
5407	April 30, 2010	Letter from Randy Sekany to Mayor and City Council Members re: budget proposal submitted to Employee Relations.		

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5408	April 30, 2010	Letter from Randy Sekany to Alex Gurza re: budget proposal.		
5409	May 14, 2010	IBEW Union Proposal to City to pay increased employee contribution rate. [GURZA000086-000087]		
5410	May 17, 2010	OE#3 Union Proposals to City to pay increased employee contribution rate. [GURZA000082-000085]		
5411	May 17, 2010	SJ POA Union Proposals to City to pay increased employee contribution rate. [GURZA000088-000090]		
5412	May 17, 2010	OE#3 Proposal to the City of San Jose		
5413	May 25, 2010	Draft of Local 230 Settlement Proposal.		
5414	June 9, 2010	IAFF letter and proposal to City to pay increased employee contribution rate. [GURZA000091-000093]		
5415	June 11, 2010	OE3's Last Best and Final Offer to City of San Jose.		
5416	June 11, 2010	Letter from William Pope to Gina Donnelly re: Last, Best and Final Offer.		
5417	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]		
5418	June 15, 2010	City of San Jose Ordinance No. 28752, “An Ordinance of the City of San Jose Amending Chapters 3.28 and 3.44 of Title 3 of the San Jose Municipal Code to Add New Sections 3.28.755, 3.28955, and 3.44.105 and Amend Sections 3.28.770 and 3.28.780 to Implement Revisions in Employee and Employer Retirement Contributions for the Federated City Employees Retirement System.” [HAR 191-196]		
5419	June 17, 2010	City Council Agenda attaching transcript of Christopher Platten’s comments to City Council. [GURZA000096 – 000097]		

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Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5420	June 17, 2010	Coalition of Unions agreement to make additional pension contributions. [GURZA000094-000095]		
5421	June 18, 2010	Coalition of Union Proposal offered to City. [GURZA000081]		
5422	June 21, 2010	Letter from Sekany to Gurza re: IAFF Local 230 and City of San Jose (2009 MOU Negotiations).		
5423	July 1, 2010	Letter from Sekany to Gurza re: San Jose Fire Fighters Local 230 Contract Proposal of June 21, 2010.		
5424	July 15, 2010	San Jose Firefighter Settlement Proposal		
5425	January 18, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal.		
5426	February 1, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal.		
5427	March 3, 2011	City of San Jose and San Jose Firefighters, Local 230 Tentative Agreement for the term of July 1, 2009 thru June 30, 2013.		
5428	March 7, 2011	Email from union representative Nancy Ostrowski (IPFTE Local 21). [GURZA000613]		
5429	Undated	Chart of Firefighters Association Proposals re: contribution rates.		
5430	Undated	San Jose Firefighters, IAFF Local 230 Settlement Proposal –Last Best Final for the term of July 1, 2009 thru June 30, 2013.		
5431	N/A	Correspondence re: Implementation of the VEP		

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Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5450	April 27, 2010	Association of Building, Mechanical and Electrical Inspectors (ABMEI) – Resolution No. 75362 approving and terms of Last, Best and Final Offer, effective June 27, 2010 [GURZA000098-000120]		
5451	May 31, 2011	ABMEI – Resolution No. 75810 approving and terms of MOA (7/1/11-6/30/13) [GURZA000121-000144]		
5452	June 22, 2010	Association of Engineers and Architects (AEA) – Resolution No. 75451 approving and terms of MOA (7/1/10-6/30/11). [GURZA000145-000174]		
5453	April 19, 2011	AEA – Resolution No. 75777 approving and terms of MOA (7/1/11-6/30/13) [GURZA000175-000204]		
5454	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]		
5455	May 31, 2011	ALP – Resolution No. 75813 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000218 – 000228]		
5456	June 22, 2010	Association of Maintenance Supervisory Personnel (AMSP) – Resolution No. 75452 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000229 – 000234]		
5457	April 19, 2011	AMSP – Resolution No. 75778 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000235 – 000259]		
5458	June 22, 2010	City Association of Management Personnel (CAMP) – Resolution No. 75449 approving and terms of Agreement (7/1/10 – 6/30/11) [GURZA000260 – 000265]		

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<b>Resolutions approving Agreements [5450 series]</b>				
<b>Ex. No</b>	<b>Date</b>	<b>Description</b>	<b>ID</b>	<b>EV</b>
5459	April 19, 2011	CAMP – Resolution No. 75779 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000266 – 000290]		
5460	October 21, 2008	Confidential Employees’ Organization (CEO), AFSCME 101 – Resolution No. 74635 approving and terms of MOA (9/21/08 – 9/17/11). [GURZA000291 – 000305]		
5461	May 31, 2011	CEO – Resolution No. 75815 approving and terms of Last, Best and Final Offer (9/18/11 – 9/15/12). [GURZA000306 – 000328]		
5462	March 22, 2011	International Association of Firefighters (IAFF) – Resolution No. 75762 approving and terms of Agreement (7/1/09 – 6/30/13). [GURZA000329 – 000371]		
5463	March 22, 2011	IAFF – Resolution No. 75762 approving and terms of Agreement (7/1/09- 6/30/13). [GURZA000372 – 000414]		
5464	March 22, 2010	International Brotherhood of Electrical Workers, Local 332 (IBEW) – Resolution No. 75450 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000415 - 000425]		
5465	May 31, 2011	IBEW – Resolution No. 75811 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000426 – 448]		
5466	June 22, 2010	Operating Engineers, Local No. 3 (OE#3) – Resolution No. 75453 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000449 – 000461]		
5467	May 31, 2011	OE#3 – Resolution No. 75812 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000462 – 000484]		
5468	August 5, 2008	Municipal Employees’ Federation (MEF), AFSCME Local 101 – Resolution No. 74525 approving and terms of MOA (7/1/08 – 6/30/11). [GURZA000485 – 000503]		
5469	May 31, 2011	MEF – Resolution No. 75814 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000504 – 000527]		

Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5470	August 3, 2010	San Jose Police Officers' Association (SJPOA) – Resolution No. 75507 approving and terms of MOA (7/1/10 – 6/30/11). [GURZA000528 – 000561]		
5471	June 14, 2011	SJPOA – Resolution No. 75846 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000562 – 000590]		
5472	January 10, 2012	SJPOA – Resolution No. 76118 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000591 – 000596]		
5473	April 27, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75363 approving Resolution for 4.75% salary reduction, effective June 27, 2010. [GURZA000597 – 000602]		
5474	June 17, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75436 approving Resolution for 5.4% salary reduction, effective June 27, 2010. [GURZA000603 - 000607]		
5475	April 19, 2011	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75780 approving Agreement for 4.75% and 5.4% salary reductions. [GURZA000608 – 000612]		

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Retiree Healthcare [5500 series]				
Ex. No	Date	Description	ID	EV
5500	February 24, 1988	Memorandum from Federated Board of Administration to Mayor and City Council regarding Federated Retirement Benefit Increases. [SJRJN000457 - 000460]		
5501	January 12, 2007	Letter from Paul Angelo and Andy Yeung to Edward Overton regarding City of San Jose Police and Fire Department Medical and Dental Insurance Plan GASB Statements No. 43 and No. 45 Results Using Requested Assumptions. [GURZA000637 - 000645]		
5502	July 2007	Report from Bartel and Associates, LLC regarding City of San Jose Retiree Healthcare Plan, June 30, 2007 - Actuarial Valuation Federated City Employees. [GURZA000629 - 000636]		
5503	July 24, 2007	Memorandum from Alex Gurza, Mark Danaj, and Scott Johnson to Honorable Mayor and City Council regarding Retiree Healthcare. [GURZA000614 - 000628]		
5504	February 24, 2009	Resolution No. 74803 approving and terms of Agreement between City and SJPOA re: Retiree Healthcare Funding. [GURZA000673 - 000686]		
5505	April 7, 2009	Memorandum from Alex Gurza to Honorable Mayor and City Council regarding Retiree Healthcare Funding. [GURZA000646 - 000670]		
5506	April 21, 2009	City of San Jose Resolution No. 74882, "A Resolution of the Council of the City of San Jose Approving Agreements between the City of San Jose and Several Bargaining Units regarding Retiree Healthcare Funding, and Implementing Retiree Healthcare Funding for Units 99 and 82." [GURZA000671 - 000672]		
5507	June 1, 2009	Last, Best and Final Offer from City to OE#3. [GURZA000687 - 000000695]		
5508	June 11, 2013	Memorandum from Alex Gurza to Mayor and City Council re: Implementation of Changes to Retiree Healthcare and Four-Tier Insurance Premium Rates for the Bargaining Units Representing Employees in the Federated City Employees' Retirement System and Modifications for Employees in Unit 99.		



Low Cost Plan Documents [5600 series]				
Ex. No	Date	Description	ID	EV
5600	April 17, 2012	Memorandum from Debra Figone to Mayor and City Council re: Adoption of a resolution approving benefit changes for executive management and professional employee.		
5601	April 27, 2012	Memorandum from Debra Figone to Mayor and City Council re: Supplemental Information for Items 3.3 – 3.12.		
5602	June 12, 2012	City of San Jose Minutes of the City Council		
5603	Undated	City of San Jose Summary of Benefit Plan Changes effective January 1, 2013.		
5604	N/A	Health Insurance Premium Schedules		
5605	N/A	Health Insurance Plan Descriptions		

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SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5700	November 22, 1985	Letter from Coates Herfurth & England, Inc. to Retirement and Benefits Administrator regarding SB650 Study. [SJRJN000489 – 000492]		
5701	April 25, 1986	Memorandum from Federated Retirement Board to Honorable Mayor and City Council regarding Supplemental Retiree Benefits Reserve. [SJRJN000493 – 000494]		
5702	May 6, 1986	Memorandum from Fran Galloni to Honorable Mayor and City Council regarding Retirement Benefit Increase. [SJRJN000451 – 000452]		
5703	February 24, 1988	Memorandum from Frances Galloni to Mayor and City Council regarding Administration's Report on Federated Retirement Benefit Increases. [SJRJN000455 – 000456]		
5704	March 21, 1988	Memorandum from Joan Gallo to Mayor and City Council regarding Benefit Increases – Federated Retirement System and possible elimination of SRBR. [SJRJN000453 – 000454]		
5705	January 29, 2002	City of San Jose Resolution No. 70822, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Police and Fire Department Retirement Fund." [SJRJN000484 – 000488]		
5706	December 16, 2003	City of San Jose Resolution No. 71870, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund."		
5707	October 22, 2010	Memorandum from Debra Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments. [GURZA000697 – 000722]		
5708	November 16, 2010	City of San Jose Resolution No. 75635, "A Resolution of the Council of the City of San Jose Amending and Restating the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds from the Reserve During Fiscal Year 2010-2011. [SJRJN000461 – 000471]		

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5709	May 13, 2011	Memorandum from Figone to Honorable Mayor and City Council regarding Continued Suspension of SRBR Payments. [GURZA000723 – 000727]		
5710	August 23, 2011	Tentative Agreement with AMBEI regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000743]		
5711	August 23, 2011	Tentative Agreement with IBEW regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000744]		
5712	August 23, 2011	Tentative Agreement with OE#3 regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000745]		
5713	August 23, 2011	Tentative Agreement with CEO regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000746]		
5714	August 23, 2011	Tentative Agreement with MEF regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000747]		
5715	January 13, 2012	Letter from William Hallmark and Anne Harper to Russell Crosby regarding Federated Employees Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000734 – 000738]		
5716	March 29, 2012	Letter from Hallmark and Joshua Davis to Russell Crosby regarding City of San Jose Police and Fire Department Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000739 – 000742]		
5717	April 9, 2012	Memorandum from Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments. [GURZA000728 – 000733]		
5718	April 24, 2012	City of San Jose Resolution No. 76204, “A Resolution of the Council of the City of San Jose Amending and Restating Resolution No. 75635 Regarding the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds From the Reserve Through Fiscal Year 2012 – 2013. [SJRJN000472 – 000483]		



Actuarial Documents [5900 series]				
Ex. No	Date	Description	ID	EV
5900	February 8, 2012	Letter from Gene Kalwarski and Margaret Tempkin to Russell Crosby regarding 5 – year Budget Projections for Federated. [GURZA000770 – 000772]		
5901	February 21, 2012	Letter from Kalwarski and Tempkin to Crosby regarding 5-year Budget Projections for Police & Fire. [GURZA000773 - 000778]		
5902	December 2012	Cheiron’s Actuarial Valuation regarding Federated City Employees’ Retirement System, June 30, 2012 to December 2012. [GURZA000779 – 000837]		
5903	December 2012	Cheiron’s Actuarial Valuation regarding City of San Jose Police and Fire Department Retirement Plan, June 30, 2012 to December 2012. [GURZA000838 – 000890]		
5904	January 9, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Federated.		
5905	January 17, 2013	Cheiron’s OPEB Actuarial Valuation Results regarding San Jose Federated City Employees’ Retirement System, June 30, 2012. [GURZA000891 – 000905]		
5906	January 30, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Police & Fire. [PF 02-07-13]		
5907	February 7, 2013	Cheiron’s OPEB Actuarial Valuation Results regarding City of San Jose Police and Fire Department Retirement System, June 30, 2012. [GURZA000906 – 000924]		

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<b>Demonstrative Exhibits [6000 Series]</b>				
<b>Ex. No</b>	<b>Date</b>	<b>Description</b>	<b>ID</b>	<b>EV</b>
6000	N/A	Chart Depicting Service Retirement Benefit (Police and Fire)		
6001	N/A	Chart Depicting Examples of Service Retirements (Police and Fire Plan)		
6002	N/A	Chart Depicting Disability Retirement Benefit (Police and Fire Plan)		
6003	N/A	Chart Depicting Examples of Disability Retirements (Police and Fire Plan)		
6004	N/A	Chart Depicting Service Retirement Benefit (Federated Plan)		
6005	N/A	Chart Depicting Examples of Service Retirements (Federated Plan)		
6006	N/A	Chart Depicting Disability Retirement Benefit (Federated Plan)		
6007	N/A	Chart Depicting Examples of Disability Retirements (Federated Plan)		
6008	N/A	Retirement Cost Increases: FY 2001-2002 to FY 2011-2012		
6009	N/A	10 Years of Budget Deficits – How Did We Get Here?		
6010	N/A	Contribution Rates (based on June 30, 2012 Valuation) – Police and Fire: 2003-2014		
6011	N/A	Contribution Rates – Federated Plan: 2003-2014		
6012	N/A	Retirement Contribution Rates (Police and Fire) – 2011 and 2012 Valuations		
6013	N/A	Retirement Contribution Rates (Federated) – 2011 and 2012 Valuations		
6014	N/A	2013-2014 Retirement Plan Contribution Rate Increases (Police and Fire)		
6015	N/A	2013-2014 Retirement Plan Contribution Rate Increases (Federated)		
6016	N/A	\$670 Million in Cumulative General Fund Shortfalls Balanced through 2012-2013		

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<b>Demonstrative Exhibits [6000 Series]</b>				
<b>Ex. No</b>	<b>Date</b>	<b>Description</b>	<b>ID</b>	<b>EV</b>
6017	N/A	Fiscal Year 12/13 Adopted vs. Fiscal Year 13/14 Proposed		
6018	N/A	Average Total Compensation – All Sworn Police Employees		
6019	N/A	Average Total Compensation – All Sworn Fire Employees		
6020	N/A	Average Total Compensation – All Miscellaneous Employees		
6021	N/A	Police Department: Budget and Staffing – FY 2001-02 to FY 2011-2012		
6022	N/A	Fire Department: Budget and Staffing – FY 2001-02 to FY 2011-2012		
6023	N/A	Fiscal Year 2010-2011 Compensation Concessions		
6024	N/A	Fiscal Year 2011-2012 Compensation Concessions		
6025	N/A	Fiscal Year 2012-2013 Compensation Concessions		
6026	N/A	\$20 Million in Savings Subject to Litigation		
6027	N/A	Chronology of Charter Progression (Contributions)		
6028	N/A	Chronology of Charter Progression (Reservation of Rights)		
6029	N/A	Unfunded Liabilities – Federated		
6030	N/A	Unfunded Liabilities – Police and Fire		
6031	N/A	MOU Excerpts (Contributions to Pension)		
6032	N/A	MOU Excerpts (Contributions to Retiree Health)		
6033	N/A	Disability Flow Chart		
6034	N/A	Service and Disability Retirement Payments FY 2000-01 through 2009-10		
6035	N/A	Benefit Payments Grew Seven Fold Over 20 Years		

Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6036	N/A	Pension Benefit Payments Have Exceeded Contributions Since 2001		
6037	N/A	Funded Ratios Have Fallen		
6038	N/A	The City's Contribution Rates for Pension and Retiree Healthcare are Projected to Rise Dramatically		
6039	N/A	Retroactive Pension Benefit Enhancements Added to the Unfunded Liability		
6040	N/A	Projected City Retirement Contributions Exceed \$1.7 Billion from FY 11-12 to FY 15-16		
6041	N/A	Retirement Benefits [James Atkins]		
6042	N/A	Retirement Benefits [William Buffington]		
6043	N/A	Retirement Benefits [Dale Dapp]		
6044	N/A	Retirement Benefits [Howard Fleming]		
6045	N/A	Retirement Benefits [Teresa Harris]		
6046	N/A	Retirement Benefits [Ken Heredia]		
6047	N/A	Retirement Benefits [Thanh Ho]		
6048	N/A	Retirement Benefits [Mary McCarthy]		
6049	N/A	Retirement Benefits [John Mukhar]		
6050	N/A	Retirement Benefits [Rosalinda Navarro]		
6051	N/A	Retirement Benefits [Frances Olson]		
6052	N/A	Retirement Benefits [Kirk Pennington]		
6053	N/A	Retirement Benefits [Jon Regar]		
6054	N/A	Retirement Benefits [Gary Richert]		
6055	N/A	Retirement Benefits [Robert Sapien]		
6056	N/A	Retirement Benefits [Randy Sekany]		
6057	N/A	Retirement Benefits [Moses Serrano]		
6058	N/A	Inflation Chart		

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<b>Demonstrative Exhibits [6000 Series]</b>				
<b>Ex. No</b>	<b>Date</b>	<b>Description</b>	<b>ID</b>	<b>EV</b>
6059	N/A	SRBR – Unforeseen Consequences		
6060	N/A	Service vs. Disability Retirement Chart		
6061	N/A	Pay Cut vs. Retirement Contribution		
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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
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DATED: June 20, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:   
Arthur A. Hartinger  
Linda M. Ross  
Michael C. Hughes  
Attorneys for Defendant and Cross-Plaintiff City of  
San Jose and Debra Figone, in Her Official Capacity

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On June 20, 2013, I served true copies of the following documents described as **DEFENDANT CITY OF SAN JOSE'S EXHIBIT LIST** on the interested parties in this action as follows:

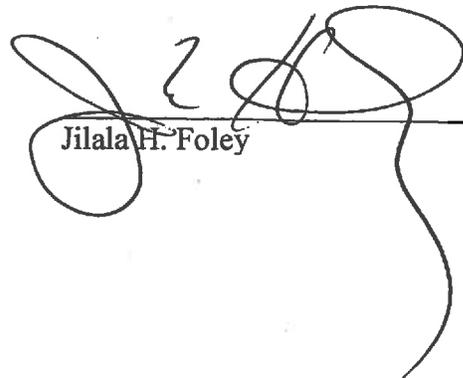
**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [jfoley@meyersnave.com](mailto:jfoley@meyersnave.com) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 20, 2013, at Oakland, California.

  
\_\_\_\_\_  
Jilala H. Foley

**SERVICE LIST**

<p>1 2 John McBride 3 Christopher E. Platten 4 Mark S. Renner 5 WYLIE, MCBRIDE, PLATTEN &amp; 6 RENNER 7 2125 Canoas Garden Ave, Suite 120 8 San Jose, CA 95125 9 Telephone: 408-979-2920 10 Fax: 408-989-0932 11 E-Mail: 12 jmcbride@wmpirlaw.com 13 cplatten@wmpirlaw.com 14 mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>12 Gregg McLean Adam 13 Jonathan Yank 14 Gonzalo Martinez 15 Jennifer Stoughton 16 Amber L. West 17 CARROLL, BURDICK &amp; 18 MCDONOUGH, LLP 19 44 Montgomery Street, Suite 400 20 San Francisco, CA 94104 21 Telephone: 415-989-5900 22 Fax: 415-989-0932 23 E-Mail: 24 gadam@cbmlaw.com 25 jyank@cbmlaw.com 26 gmartinez@cbmlaw.com 27 jstoughton@cbmlaw.com 28 awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>21 Teague P. Paterson 22 Vishtap M. Soroushian 23 BEESON, TAYER &amp; BODINE, 24 APC 25 Ross House, 2nd Floor 26 483 Ninth Street 27 Oakland, CA 94607-4050 28 Telephone: 510-625-9700 Fax: 510-625-8275 E-Mail: tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

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BOARD OF ADMINISTRATION FOR POLICE AND  
FIRE DEPARTMENT RETIREMENT PLAN OF  
CITY OF SAN JOSE  
(Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1961 SAN JOSE  
POLICE AND FIRE DEPARTMENT RETIREMENT  
PLAN  
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1975 FEDERATED  
CITY EMPLOYEES' RETIREMENT PLAN  
(Santa Clara Superior Court Case Nos. 112CV226570  
and 112CV226574 )

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE FEDERATED CITY  
EMPLOYEES RETIREMENT PLAN  
(Santa Clara Superior Court Case No. 112CV227864)

Stephen H. Silver, Esq.  
Richard A. Levine, Esq.  
Jacob A. Kalinski, Esq.  
Silver, Hadden, Silver, Wexler &  
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Santa Monica, California 90401

Attorneys for Plaintiffs/Petitioners  
SAN JOSE RETIRED EMPLOYEES ASSOCIATION,  
HOWARD E. FLEMING, DONALD S. MACRAE,  
FRANCES J. OLSON, GARY J. RICHERT AND  
ROSALINDA NAVARRO  
(Santa Clara Superior Court Case No. 1-12-cv-233660)

## **EXHIBIT 2**

COPY

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ahartinger@meyersnave.com  
2 Geoffrey Spellberg (SBN: 121079)  
gspellberg@meyersnave.com  
3 Linda M. Ross (SBN: 133874)  
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6 MEYERS, NAVE, RIBACK, SILVER & WILSON  
555 12<sup>th</sup> Street, Suite 1500  
7 Oakland, California 94607  
Telephone: (510) 808-2000  
8 Facsimile: (510) 444-1108

9 Attorneys for Defendant and Cross-Plaintiff City  
of San Jose, and Defendant Debra Figone, in Her  
10 Official Capacity

11 **IN THE SUPERIOR COURT FOR THE**  
12 **COUNTY OF SANTA CLARA**

13 SAN JOSE POLICE OFFICERS  
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF  
17 ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
18 SAN JOSE, and DOES 1-10 inclusive.,

19 Defendants.

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV227864,  
112CV233660]

**DEFENDANT CITY OF SAN JOSE'S  
DISCLOSURE OF TRIAL WITNESSES**

20 AND RELATED CROSS-COMPLAINT  
21 AND CONSOLIDATED ACTIONS

Complaint Filed: June 6, 2012  
Trial Date: July 22, 2013

22 **I. DISCLOSURE OF TRIAL WITNESSES**

23 Pursuant to the Pretrial Stipulation and Order dated April 23, 2013, Defendant City of San  
24 Jose (the "City") hereby discloses the following trial witnesses and their anticipated testimony:

- 25 1. Alex Gurza  
26 [Jennifer Schembri]  
San Jose City Hall  
27 200 E. Santa Clara Street  
San José, California 95113  
28

- 1 2. Sharon Erickson  
2 San Jose City Hall  
3 200 E. Santa Clara Street  
4 San José, California 95113
- 5 3. John Bartel  
6 411 Borel Avenue  
7 San Mateo, California 94402
- 8 4. Debra Figone  
9 San Jose City Hall  
10 200 E. Santa Clara Street  
11 San José, California 95113
- 12 5. Clare Murphy  
13 c/o Meyers Nave  
14 555 12<sup>th</sup> Street  
15 Oakland, California 94607
- 16 6. Donna Busse (or other Dept. of Retirement Services employee)  
17 City of San Jose  
18 Dept. of Retirement Services  
19 1737 North First Street, Suite 580  
20 San Jose, California 95112
- 21 7. Kenneth W. Ruthenberg, J., Esq.  
22 [Jeffry C. Chang, Esq.]  
23 Chang Ruthenberg & Long PC  
24 620 Coolidge Drive, Suite 350  
25 Folsom, CA 95630-3184

17 A. Alex Gurza. Mr. Gurza is a Deputy City Manager and Director of the Office of  
18 Employee Relations for the City of San Jose. He will testify consistently with his earlier filed  
19 Declaration testimony. He will testify concerning the City's efforts to resolve the issue of the  
20 increasing cost of pension system unfunded liabilities through bargaining with City employee  
21 unions and other means. He will describe the bargaining and agreements that addressed the  
22 unfunded liabilities for both pension and retiree healthcare. He will describe how particular  
23 provisions of Measure B address current problems and issues in the San Jose Retirement system.  
24 He will testify as to the practice of bargaining over "total compensation" and the role of wages and  
25 employee benefits in determining total compensation. He will also testify about City Council  
26 actions (including ordinances) related to the retirement system. In addition, it is anticipated that  
27 the witness will testify as to projections of contribution and compensation amounts and how those  
28 projections would relate to a particular employee's ultimate compensation and pension benefits.

1           B.     Sharon Erickson: Ms. Erickson is the City Auditor for the City of San Jose and has  
2 years of expertise in analyzing City finances and in particular analyzing City retirement and  
3 medical benefits. Ms. Erickson will testify as to her audit conclusions and analyses of the City  
4 finances for the last few years and specifically the 2010 and 2011 City Auditor reports on how  
5 retiree pension and medical benefit costs have increased to such an extent that they are on an  
6 unsustainable course and reforms needed in the disability retirement system. She will testify about  
7 the audit issues that she and her staff identified and suggestions made in audit reports on possible  
8 remedies. The witness is anticipated to testify about issues related to employee disability and/or  
9 worker's compensation as set forth in the above referenced audit reports.

10           C.     John Bartel: Mr. Bartel is an actuary who has his own independent actuarial  
11 service providing actuarial analysis and advice to public entities. Mr. Bartel has years of actuarial  
12 experience analyzing retirement costs and retirement funding for public entities throughout  
13 California. Mr. Bartel is anticipated to testify about present and future retirement costs for the  
14 City of San Jose and in particular opine upon the current and future unfunded liability issues, and  
15 the contribution rates to the City pension plans. He will opine on the increasing unfunded liability  
16 rate and also how the relevant provisions of Measure B will affect the respective retirement  
17 contributions of the City and its employees. His testimony could include discussion about current  
18 and future retirement events and any related issues including discount rates, health care trend rates,  
19 investment returns, and potential wage and salary increases. And the testimony also could include  
20 calculations of reduced employee compensation resulting from either increased contributions or  
21 decreased wages along with discussion about the potential impact of each mechanism on the  
22 employee.

23           D.     Debra Figone: Ms. Figone is the current City Manager for the City of San Jose. It  
24 is anticipated that Ms. Figone will testify about historic issues involving San Jose finances  
25 including the Fiscal Reform Plan, service reductions, employee pay cuts, layoffs, employee cost  
26 sharing on health benefits, and the decision to suspend SRBR. She is anticipated to opine about  
27 the effectiveness of the pre-Measure B efforts that were intended to control the spiraling City  
28 costs, including actions and enactments by the City Council.

1 E. Clare Murphy: Ms. Murphy was for 25 years the Executive Director of the San  
2 Francisco Employee's Retirement System. In that capacity she administered and oversaw an  
3 approximate \$14 billion retirement fund and is familiar with how public pension funds operate.  
4 Ms. Murphy is anticipated to testify about charter cities (like San Jose) and how their retirement  
5 systems are implemented and maintained and in particular how independent retirement systems  
6 operate, how provisions concerning retirement are contained in City charters, and the procedure  
7 for making changes in retirement provisions contained in City charters. She will describe other  
8 jurisdictions with the type of requirements enacted by San Jose, she will testify about the  
9 procedure and process related to the enactment of Measure B and she will testify about the types  
10 of modifications made through charter amendments, and the relevant processes. This witness may  
11 also testify about certain aspects of retiree health care and in particular comparison with other  
12 jurisdictions.

13 F. Donna Busse: Donna Busse is the Deputy Director of the Department of  
14 Retirement Services of the City of San Jose. She is expected to testify concerning the treatment  
15 by the System of employee contributions to pension accounts. This witness will testify about all  
16 related San Jose retirement service issues including retirement related accounting and reporting  
17 and how various retirements, such as disability or service retirements are implemented and  
18 managed. Depending on testimony and trial evidence, this witness will respond to any issue  
19 related to City retirement.

20 G. Kenneth Ruthenberg, Jr.: Mr. Ruthenberg is an attorney at the law firm Chang  
21 Ruthenberg & Long PC. He is expected to testify concerning defined benefit plans, including but  
22 not limited to the second tier plan within Measure B and deferred tax treatment of public  
23 employers' defined benefit pension plans, which is the same subject matter as Plaintiff POA's  
24 designated expert Benjamin Spater.

25 The City reserves the right to amend or supplement the witness list depending on the  
26 disclosures made by Plaintiffs, the results of the remaining discovery, issues raised by Plaintiffs'  
27 witnesses and any other issues raised at trial.

1 **II. INITIAL DISCLOSURE OF TRIAL EXHIBITS**

2 Pursuant to the Pretrial Stipulation and Order dated April 23, 2013, the City hereby  
3 discloses its list of trial exhibits herewith.

4 Although the City presently believes that this list is complete, it reserves the right to  
5 modify, supplement or amend this list as it becomes cognizant of new or different or alternative  
6 issues through the remaining discovery and the pre-trial process.

7 DATED: June 20, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

8  
9 By: 

10 Linda M. Ross  
11 Attorneys for Defendant and Cross-Plaintiff  
12 City of San Jose, and Defendant Debra Figone, in Her  
13 Official Capacity  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On June 20, 2013, I served true copies of the following documents described as **DEFENDANT CITY OF SAN JOSE'S INITIAL DISCLOSURE OF TRIAL WITNESSES** on the interested parties in this action as follows:

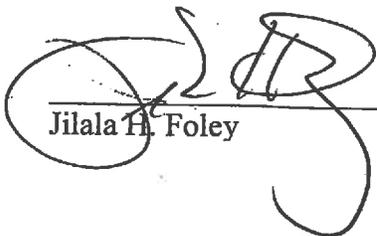
**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [jfoley@meyersnave.com](mailto:jfoley@meyersnave.com) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 20, 2013, at Oakland, California.



Jilala H. Foley

**SERVICE LIST**

<p>John McBride          Christopher E. Platten          Mark S. Renner  <b>WYLIE, MCBRIDE, PLATTEN &amp;          RENNER</b>          2125 Canoas Garden Ave, Suite 120          San Jose, CA 95125          Telephone: 408-979-2920          Fax: 408-989-0932  <u>E-Mail:</u>          jmcbride@wmpirlaw.com          cplatten@wmpirlaw.com          mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN,          MARY MCCARTHY, THANH HO, RANDY          SEKANY AND KEN HEREDIA          (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP,          JAMES ATKINS, WILLIAM BUFFINGTON AND          KIRK PENNINGTON          (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER,          MOSES SERRANO          (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>Gregg McLean Adam          Jonathan Yank          Gonzalo Martinez          Jennifer Stoughton          Amber L. West  <b>CARROLL, BURDICK &amp;          MCDONOUGH, LLP</b>          44 Montgomery Street, Suite 400          San Francisco, CA 94104          Telephone: 415-989-5900          Fax: 415-989-0932  <u>E-Mail:</u>          gadam@cbmlaw.com          jyank@cbmlaw.com          gmartinez@cbmlaw.com          jstoughton@cbmlaw.com          awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE          OFFICERS' ASSOC.          (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>Teague P. Paterson          Vishtap M. Soroushian  <b>BEESON, TAYER &amp; BODINE,          APC</b>          Ross House, 2nd Floor          483 Ninth Street          Oakland, CA 94607-4050          Telephone: 510-625-9700          Fax: 510-625-8275  <u>E-Mail:</u>          tpaterson@beesontayer.com;          vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101          (Santa Clara Superior Court Case No. 112CV227864)</p>

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<p>Harvey L. Leiderman Jeffrey R. Rieger REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 Telephone: 415-659-5914 Fax: 415-391-8269 E-Mail: hleiderman@reedsmith.com; jreiger@reedsmith.com</p>	<p>Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574 )</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)</p>
<p>Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. Silver, Hadden, Silver, Wexler &amp; Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90401</p>	<p>Attorneys for Plaintiffs/Petitioners SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT AND ROSALINDA NAVARRO (Santa Clara Superior Court Case No. 1-12-cv-233660)</p>