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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SANTA CLARA

18  
19 SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

20 Plaintiff,

21 v.

22 CITY OF SAN JOSE, BOARD OF  
23 ADMINISTRATION FOR POLICE  
AND FIRE DEPARTMENT  
24 RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10, inclusive,

25 Defendants.

No. 1-12-CV-225926  
(and Consolidated Actions  
1-12-CV-225928, 1-12-CV-226570,  
1-12-CV-226574, 1-12-CV-227864,  
and 1-12-CV-233660)

**PLAINTIFFS SAN JOSE POLICE OFFICERS'  
ASSOCIATION AND SAN JOSE RETIRED  
EMPLOYEES' ASSOCIATION'S MOTION IN  
LIMINE No. 2 TO EXCLUDE EVIDENCE OF  
THE CITY'S FISCAL CONDITIONS  
INCLUDING CONDITIONS THAT LED TO  
PLACING MEASURE B ON THE BALLOT**

26  
27 AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS

Complaint Filed: June 16, 2012  
Trial Date: July 22, 2013

I

INTRODUCTION

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3 Plaintiff San Jose Police Officers' Association ("SJPOA") and San Jose Retired  
4 Employees' Association (SJREA) move this Court for an order *in limine* to exclude  
5 certain trial exhibits and testimony proffered by the City as "evidence at trial relating to  
6 the economic crisis and conditions that led to placing Measure B on the ballot." (See Ex.  
7 1, June 25, 2013 correspondence by Art Hartinger to Gregg Adam.)

8 SJPOA has repeatedly attempted to engage the City in discussions regarding  
9 whether it plans to proffer evidence of its fiscal condition and decisions related thereto to  
10 defend Measure B.<sup>1</sup> The City has confirmed that it does not intend "to assert at trial that  
11 Measure B was a justifiable impairment of contract based on the existence of a fiscal  
12 emergency," but nevertheless has asserted it will proffer evidence "relating to the  
13 economic crisis and conditions that led to placing Measure B on the ballot." (*Id.*) That is  
14 improper. The attached correspondence from the City, the City's final exhibit list, and the  
15 City's final witness list, make clear the City plans to introduce irrelevant, cumulative,  
16 time-consuming evidence that does not address *any* relevant issue at trial. (See Ex. 1, 2,  
17 and 3, respectively.) This will unnecessarily increase the length of trial, and unduly  
18 burden the Court and the parties with evidence unrelated to any claim, right, or defense to  
19 which the City is entitled.

20 The Court should bar this improper attempt to bring in voluminous evidence  
21 and testimony that has no nexus with the established defenses to the vested rights  
22 doctrine. That is, the City's proffered evidence will fail to address Plaintiffs' claims that  
23 their vested rights have been eviscerated in violation of the California Constitution. (*Id.*)

24 Accordingly, SJPOA and SJREA respectfully request that the Court exclude  
25 evidence and testimony relating to budgetary concerns and evidence and testimony

26  
27 <sup>1</sup> General economic conditions or municipal budgetary concerns of a public employer  
28 provide no more of an excuse to a public employer for failure to meet pension obligations  
than they do for a private employer. (See *Bellus v. City of Eureka* (1968) 69 Cal.2d 336,  
352.)

1 relating to the decisions to place Measure B on the ballot. Such evidence is flatly  
2 irrelevant to the issues properly before this Court. Specifically, economic conditions,  
3 budget decisions, the City's fiscal health, and the motives for the City officials putting  
4 Measure B on the ballot are entirely unrelated to the Court's inquiry whether the City  
5 violated the vested rights of its employees. The City's evidence--whether it pertains to the  
6 City's budget and services, general societal economic conditions, impact of those  
7 conditions on the City, or the City's decisions related thereto--do not justify that violation  
8 given that the City are not making a fiscal emergency expense. The evidence that is the  
9 subject of this MIL is simply irrelevant. Therefore, the following testimonial evidence  
10 should be excluded at trial as irrelevant, cumulative, and overly time-consuming:

11 **Testimony by Alex Gurza regarding:**

- 12
- 13 • "Testimony concerning the city's efforts to resolve the issue of the increasing cost of  
14 pension system unfunded liabilities and bargaining with city employee unions and  
15 other means": This evidence is irrelevant, because pertinent to the Court's inquiry  
16 is the charter amendment and the prior charter and ordinances.
- 17 • "Testimony as to the practice of bargaining over total compensation in the role of  
18 wages and employee benefits in determining total compensation": This evidence is  
19 irrelevant and overly time-consuming. Specifically, even if bargaining over total  
20 compensation were in any way relevant, documentary evidence should suffice.
- 21 • Testimony "about city Council actions (including ordinances) related to the  
22 retirement system": This is unnecessary and overly time-consuming. Specifically,  
the ordinances speak for themselves.
- 23 • Testimony " as to the projections of contributions and compensation amounts and  
24 how those projections would relate to a particular employee's alternate  
25 compensation and pension benefits" For reasons discussed above, this evidence is  
26 irrelevant and overly time-consuming.

27 **Testimony by Sharon Erickson regarding:**

- 28 • "Testimony as to her audit conclusions and analyses of the city finances the last few  
years and specifically and the 2010 and 2011 city auditor reports on how retiree  
pension and medical benefit costs have increased to such an extent that they are on  
an unsustainable course and reforms needed in the disability retirement system"  
The City confuses the matter of inquiry into pensions and the irrelevant inquiry as  
to the impact of pensions on the City's fisc. Evidence of the latter should be  
excluded, including this testimony.

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- "Testimony about the audit issues that she and her staff identified and suggestions made in audit reports on possible remedies": same objection.
- "Testimony about issues related to employee disability and/or workers compensation as set forth in the above referenced audit reports": same objection.

**Testimony by John Bartel regarding:**

- "Testimony about present and future retirement costs for the city of San Jose and in particular opine about the current and future unfunded liability issues and the contribution rates to the city pension plans": to the extent that this pertains to the irrelevant inquiry as to the impact on the City's fisc (as opposed to the viability of the pension fund rather than the overall City fisc), such evidence should be excluded.
- "Testimony also could include calculations of reduced employee compensation resulting from either increase contributions or decreased wages along with discussion about the potential impact of each mechanism on the employee"; same objection.

**Testimony by Debra Figone regarding:**

- "The historic issues involving San Jose finances including the fiscal reform plan, service reductions, employee pay cuts, layoffs, employee cost-sharing on health benefits" This pertains to irrelevant matters of the City's fisc. Ms. Figone's testimony should be excluded.
- "Anticipated to opine about the effectiveness of the pre measure B the efforts that were intended to control the spiraling city costs including actions and enactments by the city Council": same objection.

**Testimony by Clare Murphy regarding:**

- "testimony about charter cities and how the retarded systems are implemented and maintained and in particular how independent retirement systems operate, the provisions concerning retirement are contained in city charters, and the procedure for making changes in retirement provisions contained in city charters." There is no inquiry before the Court that concerns other jurisdictions.
- "She will describe other jurisdictions with the type of requirements enacted by San Jose, she will testify about the procedures and process related to the enactment of measure B. and she will testify about the types of modifications made through charter amendments, and the relevant processes": the Charter amendments speak for themselves and the remainder of the evidence described is cumulative to the documentary evidence the City intends to submit.
- "The witness may also testify about certain aspects of retiree healthcare and in particular comparison with other jurisdictions.": to the extent other jurisdictions are to be described, the evidence should be excluded.

**Documentary evidence:**

- City's Exhibit No. 5100: City of San Jose General Fund Structural Deficit Elimination Plan: pertains to the City's fisc.

- City's Exhibit No. 5102: Report to City Council: "Disability Retirement: A Program In Need of Reform": the City's analysis of problems with the disability retirement program does not bear directly – or with any evidence -- on any relevant inquiry into pension viability as it relates to Measure B specifically.
- City's Exhibit No. 6009: 10 Years of Budget Deficits: How Did We Get Here?": pertains to the City's general budgeting problems
- Any documentary evidence of the City's general fisc as opposed to viability or health of specific pension or retiree health care funds.

## II

### MEMORANDUM OF POINTS AND AUTHORITIES

#### A. The evidence in question is irrelevant.

Only relevant evidence is admissible. (Evid. Code, § 350.) Relevant evidence is that which tends "to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.)

This case is largely a legal determination with few triable factual issues. It is *not* a case about the fiscal condition of the City of San Jose. Instead, as framed by the unions' pleadings, the issues for trial are the existence of a vested right and substantial impairment by the City. (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863-864 ("A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity"; constitutional changes to pensions "must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages"].) Because the City has disclaimed a fiscal emergency defense, the concerns of the City's fisc are irrelevant to determining what vesting may or may not have occurred; whether the right was substantially impaired; and in short, is irrelevant to any aspect of this case.

SJPOA and SJREA do not move to exclude evidence related specifically to actuarial projections or the impacts of Measure B in relation to the health of the *pension system*—which is clearly relevant under *Betts*—because they acknowledge that the City

1 may present evidence of the reasonability of changes necessary to keep the pension  
2 system itself solvent. That, however, is not the same as the City's proffered evidence this  
3 motion seeks to exclude, i.e., exhibits and testimony regarding "historic issues involving  
4 San Jose finances" as described in the Figone testimony summary. Because that evidence  
5 is irrelevant to any issue properly before the Court, the City should not be able to proffer  
6 such evidence.

7           Rather, SJPOA and SJREA ask the court to draw the line between the City's  
8 general fisc and the viability of the pension funds, in accordance with the California  
9 Supreme Court's holding that municipal arguments based on fiscal health do not justify a  
10 city walking away from pension obligations. (*See Bellus v. City of Eureka* (1968) 69  
11 Cal.2d 336, 352.) SJPOA and SJREA have not moved to exclude evidence related  
12 specifically to actuarial projections or the impacts of Measure B in relation to,  
13 specifically, the health of the pension system, acknowledging that the City may present  
14 evidence of reasonability of changes to keep the pension system itself solvent.<sup>2</sup> This is  
15 distinguishable, however, from testimony that pertains to: "historic issues involving San  
16 Jose finances" by Debra Figone testimony summary; "conclusions and analyses of the city  
17 finances" as described in the summary of Sharon Erickson's testimony; the impact on the  
18 City of San Jose dealing with its "retirement costs" to the extent the John Bartel testimony  
19 would address matters of the City's fisc; and testimony about other cities, fiscal issues,  
20 pension systems, and their Charters by Clare Murphy; and the City's coping with  
21 increasing costs to support its retirement system by Alex Gurza, or any other matter  
22 testified to by Gurza or any other witness pertaining to the general state of the City's fisc.  
23 This is irrelevant and specifically disallowed any consideration whatsoever in the Court's  
24

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25 <sup>2</sup> Mere evidence that Measure B addresses pension system viability cannot justify  
26 violation of vested rights, but the City will have the burden a trial of showing the  
27 impairment was constitutionally reasonable, i.e., the modifications "must bear some  
28 material relation to the theory of a pension system and its successful operation, and  
changes in a pension plan which result in disadvantage to employees should be  
accompanied by comparable new advantages." (*See Betts v. Board of Administration*  
(1978) 21 Cal.3d 859, 864.)

1 inquiry. (*See id.*) Thus, SJPOA and SJREA seek to exclude the City’s “kitchen sink”  
2 document evidence list and trial testimony of the City’s overall fisc.

3 **B. The evidence in question should be excluded because it would**  
4 **necessitate undue consumption of time and confuse the issues at trial**

5 This Court may exclude even relevant evidence “if its probative value is  
6 substantially outweighed by the probability that its admission will (a) necessitate undue  
7 consumption of time or (b) create substantial danger of undue prejudice, of confusing the  
8 issues, or of misleading the jury.” (Evid. Code, § 352.)

9 Any account of the City’s decisions and economic conditions leading to its  
10 placing Measure B on the ballot would necessitate “undue consumption of time,”  
11 especially because it has limited—if any—relevance. Specifically, if the City introduced  
12 such evidence, Plaintiffs will in turn be compelled to introduce rebuttal evidence to guard  
13 against the possibility that the City has changed its mind and intends to assert a defense  
14 based on fiscal emergency, notwithstanding its assurances to the contrary. (*See Ex. 1,*  
15 *Letter from Art Hartinger on behalf of City of San Jose dated June 25, 2013.*) The section  
16 352 balance opposes admitting this evidence in this case.

17 **C. Any account of the City’s fiscal and economic decisions and**  
18 **conditions as well as decisions leading to its placing Measure B on the**  
19 **ballot would be cumulative**

20 As the California Supreme Court has held, “[a] trial judge is not bound to  
21 allow cumulative testimony upon the same point.” *Douillard v. Wood* (1942) 20 Cal. 2d  
22 665, 669. Instead, the trial court may properly refuse to admit cumulative evidence. Evid.  
Code § 352; *Moore v. Marshall* (1940) 41 Cal. App. 2d 490, 494.

23 The City of San Jose plans to introduce evidence that will augment the length  
24 of trial considerably, in part because of the sheer volume of witnesses and exhibits who  
25 will testify to the same set of facts, over and over again regarding the same set of fiscal  
26 concerns and conditions that impacted the City. The City, thus, apparently intends to  
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1 misuse the Courts' and the parties' trial time and resources, and the Court should not  
2 allow it.

3 **III**

4 **CONCLUSION**

5 Evidence about prior reported safety concerns is inadmissible because it is  
6 irrelevant to any issue in the case; because it is unduly prejudicial; and because it is an  
7 unnecessary waste of time. The Court should exclude all such evidence.

8  
9 Dated: June 27, 2013

10 CARROLL, BURDICK & McDONOUGH LLP

11  
12 By



13 Gregg McLean Adam  
14 Gonzalo C. Martinez  
15 Amber L. West

16 Attorneys for Plaintiff and Cross-Defendant  
17 San Jose Police Officers' Association  
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# **EXHIBIT 1**

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June 25, 2013

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

Gregg M. Adam  
CARROLL, BURDICK & McDONOUGH  
44 Montgomery Street, Suite 400  
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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:

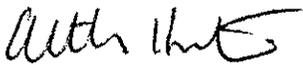
I write to respond to your letter dated June 18, 2013.

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

2097682.1

# **EXHIBIT 2**

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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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Plaintiff, )  
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v. )  
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CITY OF SAN JOSE, BOARD OF )  
16 ADMINISTRATION FOR POLICE AND )  
FIRE RETIREMENT PLAN OF CITY OF )  
17 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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Municipal Code [5300 series]				
Ex. No	Date	Description	ID	EV
5300	December 12, 2012	City of San Jose Ordinance No. 29174, "An Ordinance of the City of San Jose Amending Various Sections of Chapter 3.28 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the Federated City Employees Retirement Plan in Event of Conflict, Clarify the Definition of Tier 2 Member, Discontinue the Supplemental Retiree Benefit Reserve, Clarify Actuarial Soundness is Determined Consistent with the California Constitution, and Make Additional Requirements for Mandatory Medicare Enrollment, to be effective January 4, 2013. [GURZA000748 - 000761]		
5301	January 29, 2013	City of San Jose Ordinance No. 29198, "An Ordinance of the City of San Jose Amending Various Sections of Chapters 3.32 and 3.36 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the City of San Jose Police and Fire Retirement Plan in Event of Conflict, Discontinue the Supplemental Retiree Benefit Reserve, and Clarify Actuarial Soundness is Determined Consistent with the California Constitution, to be Effective March 1, 2013." [SJRJN000595-000604]		
5302	Undated	San Jose Municipal Code, Chapter 3.28, "1975 Federated Employees Retirement Plan Sections 3.28.010 to 3.28.2770 [Current to June 30, 2012]. [SJRJN000112 - 000230]		
5303	Undated	San Jose Municipal Code, Chapter 3.36 "1961 Police and Fire Department Retirement Plan," Sections 3.36.010 to 3.36.3760 [Current to June 30, 2012]. [SJRJN000231 - 000375]		

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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]		

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
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]		



1 Retiree Healthcare [5500 series]				
2 Ex. No	Date	Description	ID	EV
3 5500	February 24, 1988	Memorandum from Federated Board of Administration to Mayor and City Council regarding Federated Retirement Benefit Increases. [SJRJN000457 -- 000460]		
5 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]		
9 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]		
12 5503	July 24, 2007	Memorandum from Alex Gurza, Mark Danaj, and Scott Johnson to Honorable Mayor and City Council regarding Retiree Healthcare. [GURZA000614 -- 000628]		
14 5504	February 24, 2009	Resolution No. 74803 approving and terms of Agreement between City and SJPOA re: Retiree Healthcare Funding. [GURZA000673 -- 000686]		
17 5505	April 7, 2009	Memorandum from Alex Gurza to Honorable Mayor and City Council regarding Retiree Healthcare Funding. [GURZA000646 -- 000670]		
19 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]		
23 5507	June 1, 2009	Last, Best and Final Offer from City to OE#3. [GURZA000687 -- 000000695]		
25 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.		



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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]		

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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]		





Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
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		

Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
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		

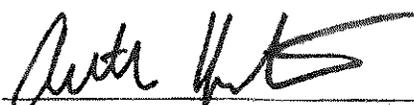
1 <b>Demonstrative Exhibits [6000 Series]</b>				
2 <b>Ex. No</b>	<b>Date</b>	<b>Description</b>	<b>ID</b>	<b>EV</b>
3 6059	N/A	SRBR – Unforeseen Consequences		
4 6060	N/A	Service vs. Disability Retirement Chart		
5 6061	N/A	Pay Cut vs. Retirement Contribution		
6 6062				
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Demonstrative Exhibits [6000 Series]				
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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:

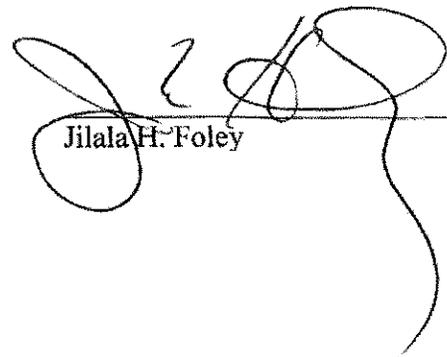
**SEE ATTACHED SERVICE LIST**

**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>John McBride          Christopher E. Platten          Mark S. Renner          WYLIE, MCBRIDE, PLATTEN &amp;          RENNEN          2125 Canoas Garden Ave, Suite 120          San Jose, CA 95125          Telephone: 408-979-2920          Fax: 408-989-0932          E-Mail:          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          CARROLL, BURDICK &amp;          MCDONOUGH, LLP          44 Montgomery Street, Suite 400          San Francisco, CA 94104          Telephone: 415-989-5900          Fax: 415-989-0932          E-Mail:          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          BEESON, TAYER &amp; BODINE,          APC          Ross House, 2nd Floor          483 Ninth Street          Oakland, CA 94607-4050          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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<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>

# **EXHIBIT 3**

1 Arthur A. Hartinger (SBN: 121521)  
ahartinger@meyersnave.com  
2 Geoffrey Spellberg (SBN: 121079)  
gspellberg@meyersnave.com  
3 Linda M. Ross (SBN: 133874)  
lross@meyersnave.com  
4 Jennifer L. Nock (SBN: 160663)  
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5 Michael C. Hughes (SBN: 215694)  
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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  
200 E. Santa Clara Street  
3 San José, California 95113
- 4 3. John Bartel  
411 Borel Avenue  
5 San Mateo, California 94402
- 6 4. Debra Figone  
6 San Jose City Hall  
200 E. Santa Clara Street  
7 San José, California 95113
- 8 5. Clare Murphy  
8 c/o Meyers Nave  
9 555 12<sup>th</sup> Street  
Oakland, California 94607
- 10 6. Donna Busse (or other Dept. of Retirement Services employee)  
11 City of San Jose  
12 Dept. of Retirement Services  
1737 North First Street, Suite 580  
13 San Jose, California 95112
- 14 7. Kenneth W. Ruthenberg, J., Esq.  
14 [Jeffry C. Chang, Esq.]  
15 Chang Ruthenberg & Long PC  
620 Coolidge Drive, Suite 350  
16 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.

28

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

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By: 

10

Linda M. Ross  
Attorneys for Defendant and Cross-Plaintiff  
City of San Jose, and Defendant 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 INITIAL DISCLOSURE OF TRIAL WITNESSES** on the interested parties in this action as follows:

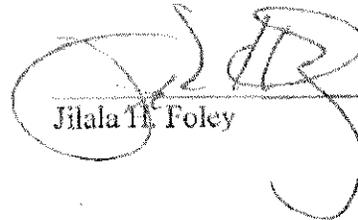
SEE ATTACHED SERVICE LIST

**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

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<p>John McBride Christopher E. Platten Mark S. Renner WYLLIE, MCBRIDE, PLATTEN &amp; RENNER 2125 Canoas Garden Ave, Suite 120 San Jose, CA 95125 Telephone: 408-979-2920 Fax: 408-989-0932 E-Mail: 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 CARROLL, BURDICK &amp; MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 Telephone: 415-989-5900 Fax: 415-989-0932 E-Mail: 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 BEESON, TAYER &amp; BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4050 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  
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FRANCES J. OLSON, GARY J. RICHERT AND  
ROSALINDA NAVARRO  
(Santa Clara Superior Court Case No. 1-12-cv-233660)

1 *San Jose POA v. City of San Jose, et al.,*  
2 Santa Clara County Superior Court, No. 1-12-CV-225926  
3 (and Consolidated Actions 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574,  
4 1-12-CV-227864, and No. 1-12-CV-233660)

5 **PROOF OF ELECTRONIC SERVICE**

6 I declare that I am employed in the County of San Francisco, California. I am  
7 over the age of eighteen years and not a party to the within cause; my business address is  
8 44 Montgomery Street, Suite 400, San Francisco, CA 94104. On June 27, 2013, I served  
9 the enclosed:

10 **PLAINTIFFS SAN JOSE POLICE OFFICERS' ASSOCIATION AND SAN JOSE RETIRED**  
11 **EMPLOYEES' ASSOCIATION'S MOTION *IN LIMINE* NO. 2**  
12 **TO EXCLUDE EVIDENCE OF THE CITY'S FISCAL CONDITIONS THAT LED TO**  
13 **PLACING MEASURE B ON THE BALLOT**

14 by electronic service. Based upon a court order or an agreement of the parties to accept  
15 service by electronic transmission, I caused the documents to be sent to the persons at the  
16 electronic notification addresses listed below. I did not receive, within a reasonable time  
17 after the transmission, any electronic message or other indication that the transmission  
18 was unsuccessful.

14 Arthur A. Hartinger, Esq. 15 Linda M. Ross, Esq. 16 Jennifer L. Nock, Esq. 17 Michael C. Hughes, Esq. 18 Meyers, Nave, Riback, Silver & Wilson 19 555 12th Street, Suite 1500 20 Oakland, CA 94607 21 Phone: (510) 808-2000 22 Fax: (510) 444-1108 23 Email: ahartinger@meyersnave.com 24 lross@meyersnave.com 25 jnock@meyersnave.com 26 mhughes@meyersnave.com	27 <i>Counsel for Defendants</i> 28 <i>City of San Jose (No. 1-12-CV-225926)</i>  <i>City of San Jose and Debra Figone</i> <i>(Nos. 1-12-CV-225928;</i> <i>1-12-CV-226570; 1-12-CV-226574;</i> <i>1-12-CV-227864 )</i>
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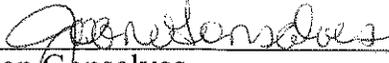
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<p>Harvey L. Leiderman, Esq. Reed Smith LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 Phone: (415) 659-5914 Fax: (415) 391-8269 Email: hleiderman@reedsmith.com</p>	<p><i>Counsel for Defendant Board of Administration for Police and Fire Department Retirement Plan of City of San Jose (No. 1-12-CV-225926)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan (No. 1-12-CV-225928)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1975 Federated City Employees' Retirement Plan (Nos. 1-12-CV-226570; 1-12-CV-226574)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the Federated City Employees Retirement Plan (No. 1-12-CV-227864)</i></p>
<p>John McBride, Esq. Christopher E. Platten, Esq. Mark S. Renner, Esq. Wylie, McBride, Platten &amp; Renner 2125 Canoas Garden Ave., Suite 120 San Jose, CA 95125 Phone: (408) 979-2920 Fax: (408) 979-2934 Email: jmcbride@wmprlaw.com cplatten@wmprlaw.com mrenner@wmprlaw.com</p>	<p><i>Counsel for Plaintiffs Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (No. 1-12-CV-225928)</i></p> <p><i>Teresa Harris, Jon Reger, and Moses Serrano (No. 1-12-CV-226570)</i></p> <p><i>John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington (No. 1-12-CV-226574)</i></p>
<p>Teague P. Paterson, Esq. Vishtasp M. Soroushian, Esq. Beeson, Tayor &amp; Bodine APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051 Phone: (510) 625-9700 Fax: (510) 625-8275 Email: TPaterson@beesontayer.com VSoroushian@beesontayer.com</p>	<p><i>Counsel for Plaintiff AFSCME Local 101 (No. 1-12-CV-227864)</i></p>

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Fleming, Donald S. Macrae, Frances J.  
Olson, Gary J. Richert and Rosalinda  
Navarro (No. 1-12-CV-233660)*

7  
8 I declare under penalty of perjury that the foregoing is true and correct, and  
that this declaration was executed on June 27, 2013, at San Francisco, California.

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10   
11 \_\_\_\_\_  
Joan Gonsalves