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City of San Jose and Debra Figone, in Her
9 Official Capacity

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

12 SAN JOSE POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

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

18 Defendants.

19
20 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS
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ENDORSED

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County of Santa Clara Superior Court
Clara, California
1990

COURT SERVICES

Consolidated Case No. 1-12-CV-225926
[AFSCME Case No. 1-12-CV-227864]

*Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV225926]*

*Assigned for all purposes to the Honorable
Patricia M. Lucas]*

**DEFENDANTS' REQUEST FOR
DIFFERENT STATEMENT OF
DECISION AND PROPOSALS NOT IN
TENTATIVE STATEMENT TO CLARIFY
THREE ISSUES**

BY FAX

Case No. 1-12-CV-225926

Defendants' Request For Different Statement Of Decision and Proposals Not in
Tentative Statement Of Decision to Clarify Three Issues

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to California Rules of Court, Rule 3.1590, and
3 California Code of Civil Procedure Section 632, Defendants City of San Jose and Debra Figone,
4 hereby request the Court to issue a different Statement of Decision (1) on the following principal
5 controverted issues, and (2) adopting the following proposals not in the Tentative Statement of
6 Decision (“TSD”) in order to clarify three issues.¹

7 The City of San Jose submits this request as to (1) Section 1507-A, the Voluntary Election
8 Plan (“VEP”), (2) Section 1512-A(a), employee contribution towards retiree healthcare unfunded
9 liabilities, and (3) Section 1512-A(c), lowest cost medical plan.

10 **A. ADDITIONAL CONTROVERTED PRINCIPAL ISSUES ON WHICH A**
11 **STATEMENT OF DECISION IS REQUESTED**

12 1. That the Court did not rule that the VEP, Section 1507-A, is invalid in all
13 circumstances but rather invalid only as applied in Section 1506-A, under which employees are
14 required to pay a higher pension contribution rate unless they opt in to the VEP.

15 2. That the Court ruled that employees can be required to pay for retiree healthcare
16 unfunded liabilities up to a one to one ratio with the City.

17 3. That the Court did not rule that the City was currently in violation of any
18 requirement that the “lowest” cost medical plan be available to all Federated retirement system
19 retirees.

20 **B. PROPOSALS NOT INCLUDED IN THE TENTATIVE STATEMENT OF**
21 **DECISION**

22 1. **Section 1507-A — The VEP**

23 The TSD finds that the VEP, Section 1507-A, is invalid because it is tied to employees
24 paying higher pension contribution rates – which the Court has found to violate employees’ vested
25 rights. (TSD, p. 17) The City is proposing a clarification of the Court’s ruling because Section
26 1507-A is a stand-alone section within Measure B, and the City is pursuing Internal Revenue

27 ¹ This request focuses on three sections with respect to which the Court should amend and clarify its Tentative
28 Statement of Decision. For the record, the City objects to and reserves its right to appeal with respect to each section
of Measure B found invalid by the Court.

1 Service approval of the VEP as an alternative pension plan *even if the City is not permitted to*
2 *impose the higher pension contribution rates.* Section 1507-A does not reference Section 1506-A
3 or higher pension contribution rates, and in fact states that, under the VEP, employees will not be
4 required to pay towards pension system unfunded liabilities: “Employees who opt into the VEP
5 will not be responsible for the payment of any pension unfunded liabilities of the system or plan.”
6 (Section 1507-A(c).) Under the parties’ trial stipulation (TSD p. 5), and the severability
7 provisions of Measure B (Section 1515-A), Section 1507-A can be implemented separately from
8 Section 1506-A.

9 The TSD should confirm that the Court did not hold the VEP to be invalid *except to the*
10 *extent that the VEP is tied to section 1506-A, which requires increased contributions toward*
11 *pension liabilities.* The TSD should also confirm that the Court does not intend to interfere or
12 offer any opinion regarding the City’s pending request to the Internal Revenue Service (“IRS”) for
13 approval of the VEP.

14 The City proposes that the final sentence concerning the VEP, located at page 17, line 5, of
15 the TSD, be amended as follows. (Omitted terms are in brackets and additional terms are
16 underlined.)

17 “For the reasons stated above, Section 1507-A is invalid to the extent it is
18 premised on the requirement in Section 1506-A that employees are
19 required to pay additional pension contribution rates unless they sign up
20 for the VEP. Section 1507-A itself does not reference Section 1506-A or
21 include a requirement that employees pay additional pension contribution
22 rates and in any event is severable from Section 1506-A. The Court’s
23 ruling does not extend to the substantive provisions of the alternative
24 pension plan contained in the VEP, or any other aspect of the VEP not
25 specifically addressed in the Court’s ruling. The Court makes no opinion
26 regarding the City’s request to the IRS for approval of the VEP.”
27
28

1 **2. Section 1512-A — Employee Payment Towards**
2 **Retiree Health Unfunded Liabilities**

3 The TSD provides that employees have no vested right to the City paying all unfunded
4 liabilities for retiree healthcare, but that Measure B’s statement that employees must pay a
5 “minimum” of 50% violates the employees’ rights to a one to one ratio with the City. (TSD, p.
6 28)

7 The City proposes a clarification of the Court’s conclusion to make it clear that employees
8 can be required to pay for unfunded liabilities *up to the one to one ratio*. As noted in the TSD,
9 under the Municipal Code (SJMC 3.28.385(C) and 3.36.575(D)), the City and employees pay for
10 retiree healthcare on a one to one basis. Currently, the City and its unions have agreed in MOAs
11 to payments by employees up to 50% of the annual cost of retiree healthcare including unfunded
12 liabilities, but not above 50%. (RT 790-98, Exhs. 5504-5508; 5107.) At no time has the City
13 proposed that employees pay more than 50%.

14 The City proposes the following text be added to page 28 (lines 4-5) of the TSD: (Omitted
15 terms are in brackets and additional terms are underlined.)

16 “Accordingly, Section 1512-A is not invalid with respect to its inclusion
17 of unfunded liabilities, but would [does] impair a vested right to have the
18 City pay ‘one to one to the extent that the City requires employees to pay
19 more than 50% of the annual cost of unfunded liabilities for retiree
20 healthcare.”

21 **3. Section 1512-A(c) — Low Cost Plan For Federated Employees**

22 The TSD rules that plaintiffs did not prove an implied vested right that prohibits the City
23 from changing the plan design of retiree health plans, but that Section 1504-A(c) violates vested
24 rights of Federated employees and retirees because it does not include the requirement that the
25 “lowest cost plan” be a plan for which all Federated retirees are eligible. (TSD, p. 29)

26 As noted in the TSD, the San Jose Municipal Code currently provides that the City make
27 available to Federated system retirees a premium subsidy tied to the premium for the “lowest”
28 cost plan. (SJMC 3.28.1980B(1).) The evidence at trial showed that all Federated employees

1 currently are eligible for the “lowest cost plan” offered by the City. (Ex. 5605.) No Federated
2 retiree testified that they were ineligible for the lowest cost plan, and there is no substantial
3 evidence in the record suggesting this outcome. Accordingly, this issue presents only a theoretical
4 concern at this time.

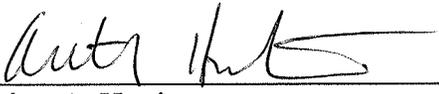
5 In addition, the City asks the Court to clarify that retirees are entitled to a particular
6 “plan” – and not “benefits” in general – that is fully paid.

7 To clarify the record in this regard, the City requests the following modification: (Omitted
8 terms are in brackets and additional terms are underlined.)

9 “Since Section 1512-A(c) takes away the right under the Federated Plan to
10 have access to a healthcare plan [] that is [] fully paid for, to the extent
11 the City does not make the lowest cost plan available to all members or
12 survivors of the Federated Plan, Section 1512-A(c) violates vested rights
13 and is invalid.”
14

15 DATED: January 6, 2014

Respectfully submitted,
MEYERS, NAVE, RIBACK, SILVER & WILSON

18 By: 
19 _____
20 Arthur A. Hartinger
21 Attorneys for Defendants
22 City of San Jose and Debra Figone, in Her Official
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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.

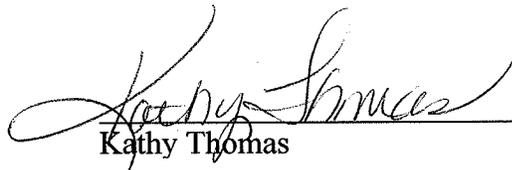
On January 6, 2013, I served true copies of the following documents described as **DEFENDANTS' REQUEST FOR DIFFERENT STATEMENT OF DECISION AND PROPOSALS NOT IN TENTATIVE STATEMENT TO CLARIFY THREE ISSUES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rsimpson@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 January 6, 2013, at Oakland, California.


Kathy Thomas

SERVICE LIST

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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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