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COURT SERVICES

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  
21 AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

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

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

**DEFENDANTS' RESPONSE TO SAN  
JOSE RETIRED EMPLOYEES  
ASSOCIATION REQUEST FOR  
STATEMENT OF DECISION AND  
ADOPTION OF PROPOSALS NOT  
INCLUDED IN STATEMENT OF  
DECISION**

**By Fax**

1 Defendants City of San Jose and Debra Figone, in her official capacity, make the following  
2 response to the “Request for Statement of Decision and Adoption of Proposals Not Included In  
3 Statement of Decision” filed by Petitioner San Jose Retired Employees’ Association (“SJREA”).

4 **Section 1512-A(b) (No Creation Of Vested Rights).**

5 The Court found that this section did not change the status quo as to any vested rights  
6 currently possessed by City employees or retirees. (Tentative Statement of Decision (“TSD”) at p.  
7 28) The SJREA claims to be confused by this ruling and asks the Court to confirm that this  
8 section does not change retirees’ right to a medical plan premium subsidy in the amount of the  
9 lowest cost medical plan available to active employees. The City does not read the Court’s ruling  
10 as affecting any right to a medical plan premium subsidy, which the Court addressed in a separate  
11 section of its TSD. No change is required to this aspect of the Court’s ruling.

12 **Section 1511-A (SRBR).**

13 The Court found that in enacting the Federated Supplemental Retiree Benefit Reserve  
14 (SRBR), the City did not intend to create a vested right to funding the reserve. The SJREA does  
15 not offer any new arguments in its brief, but repeats arguments previously made and rejected by  
16 the Court.

17 First, the SJREA contends that the text of the Municipal Code makes funding of the  
18 Federated SRBR a vested right because it uses the term “shall.” But the Court’s ruling addressed  
19 this argument, finding that the purpose and text of the Municipal Code did not create a vested right  
20 to the funding of a benefit that was discretionary. (TSD at p. 23-25.)

21 Second, the SJREA contends that the City intended the SRBR to be funded whether or not  
22 the retirement funds were fully funded because the purpose of the SRBR was to provide additional  
23 benefits when the 3% COLA did not keep up with inflation. There is no evidence supporting this  
24 assertion. In fact, the intent of the SRBR, as recognized by the Court, was for retirees to share in  
25 the “superior investment performance” of the retirement funds. (TSD, at p 23-24, citing Exhs.  
26 5701, 5709)

27 Third, the SJREA misreads the Court’s decision as being based on an assumption that the  
28 SRBR funds, when returned to the general retirement fund, would be used to fund supplemental

1 benefits. In fact, the Court's decision noted that the funds would be used for the benefit of retirees  
2 by being available to pay for pension benefits, as was the case in *Claypool v. Wilson*, 4 Cal.4<sup>th</sup> 646  
3 (1992), and did not assume that the funds would be used to pay for additional supplemental  
4 benefits. (TSD at p. 25.)

5 Fourth, the SJREA contends that evidence at trial showed that the City was funding the  
6 SRBR. But in fact, the evidence showed that the City initially recognized that the SRBR had a  
7 cost, but did not consistently assign a value to the SRBR that was paid for by plan participants. At  
8 trial, both actuarial experts agreed that the City's actuaries did not consistently or adequately  
9 provide for funding to support the SRBR. (TSD at p. 24.) SJREA's citation to historical  
10 snippets that are decades old cannot negate the record and testimony at trial.

11 Fifth, the SJREA contends that the Court could not properly rule as to the vested rights of  
12 retirees who retired before the effective date of the SRBR because the SJREA dismissed, and thus  
13 preserved, those claims before trial. Those claims, however, were not based on a vested rights  
14 theory, but rather a promissory estoppel theory. SJREA claimed that the City's inclusion of  
15 existing retirees in the group that was eligible for the SRBR estopped the City from eliminating  
16 the benefit as to existing retirees.

17 For these reasons, the Court should not make any of the changes to the TSD requested by  
18 the SJREA.

19 Dated: January 8, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

20  
21 By:   
22 Arthur A. Hartinger  
23 Linda M. Ross  
24 Attorneys for Defendants  
25 City of San Jose and Debra Figone, in Her Official  
26 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 January 8, 2014, I served true copies of the following documents described as **DEFENDANTS' RESPONSE TO SJREA'S REQUEST FOR STATEMENT OF DECISION AND ADOPTION OF PROPOSALS NOT INCLUDED IN STATEMENT OF DECISION** 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 8, 2014, at Oakland, California.

  
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Kathy Thomas

**SERVICE LIST**

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