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FILED

AUG 25 2014

Dr. Wendel
Court

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10
11 SAN JOSE RETIRED EMPLOYEES
12 ASSOCIATION, DAVID ARMSTRONG,
13 DONNA JEWETT, DOROTHY MCGINLEY
AND KIRK W. PENNINGTON,

14 Plaintiff/Petitioner,

15 v.

16 CITY OF SAN JOSE; DOES 1 through 50,
17 inclusive,

18 Defendant/Respondent.

19 BOARD OF ADMINISTRATION FOR THE
20 FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM, ,

21 Real Party in Interest.

Case No. 114CV268085

**NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT OR IN
THE ALTERNATIVE MOTION FOR A
STAY; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: October 7, 2014
Time: 9:00 am
Dept: 2

Action Filed: July 16, 2014
Trial Date: None Set

BY FAX

114CV268085

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 7, 2014 at 9:00 am or as soon thereafter as counsel may be heard in Department 2 of the above-entitled Court, located at 191 N. First Street, San Jose, California, Defendant City of San Jose will and hereby does generally demur to the complaint of Plaintiff, and in the alternative moves for a stay until the conclusion of the appeals filed in the related case of *San Jose Police Officers Association v. City of San Jose*, Case No. 1-12-CV 225926, Santa Clara County Superior Court.

The Demurrer is made (1) pursuant to Code of Civil Procedure Section 430.10, subdivision (e), on the ground that the allegations contained in the Complaint, and each cause of action, fail to state facts sufficient to constitute a cause of action, and (2) pursuant to Code of Civil Procedure Section 430.10, subdivision (c), that there is another action pending between the same parties on the same cause of action, and therefore, this lawsuit should be abated.

The Motion for Stay is based on the inherent equitable powers of the Court to prevent a multiplicity of actions that place a burden on Court resources and may result in inconsistent determinations.

The Demurrer and Motion for Stay are based on this Notice, the attached Demurrer, the attached Memorandum of Points and Authorities in support thereof, the Request for Judicial Notice, all records and proceedings in this action, and on such other and further matters as may be presented to the Court in connection with the hearing on this Demurrer and Motion.

DATED: August 25, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 

Arthur A. Hartinger
Linda M. Ross
Attorneys for Defendants/Respondents

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DEMURRER

Defendant City of San Jose ("Defendant") hereby demurs to Plaintiffs' Complaint on each of the following grounds:

1. Pursuant to California Code of Civil Procedure Section 430.10, subdivision (e), Plaintiffs' Complaint, and every cause of action therein, fails to state facts sufficient to constitute a cause of action.

2. Pursuant to California Code of Civil Procedure Section 430.10, subdivision (c), Plaintiffs' Complaint, and every cause of action therein, is addressed in another action pending between the same parties on the same cause of action, and therefore this action should be abated pending a decision on appeal in the first filed action.

DATED: August 25, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

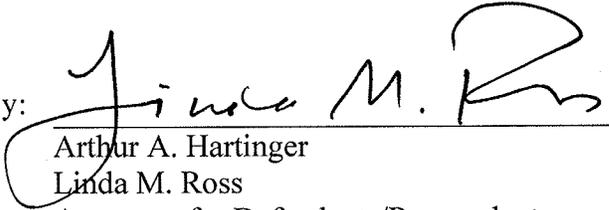
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER**
2 **AND IN THE ALTERNATIVE MOTION FOR STAY**

3 **I. INTRODUCTION**

4 For almost two years, the City of San Jose defended against multiple consolidated lawsuits
5 challenging various provisions of Measure B, a ballot measure that made reforms to San Jose’s
6 retirement system. The case resulted in a final judgment which is now on appeal.

7 Plaintiff San Jose Retired Employees Association (SJREA) was a party to that case,
8 participating in pretrial proceedings, and a week-long bench trial, and has filed a notice of appeal.

9 The allegation in the instant case – that retirees have a vested right to the continuation of a
10 particular retiree medical plan – was fully adjudicated in the Measure B case. The Court entered
11 judgment in favor of the City on this issue which is now on appeal.

12 After two years of litigation, and while an appeal is pending, the Court should not permit
13 the SJREA to resurrect and attempt to retry this issue. As shown by the Complaint, this issue was
14 ripe for adjudication back in December 2012, when the City first instituted a new “lowest cost
15 plan.” The issue was litigated from 2012 through 2014 in the Measure B cases. It is unfair to the
16 City, and its taxpayers, to burden the City with yet another round of litigation on an issue already
17 thoroughly reviewed and decided.

18 The City asks that its demurrer be sustained on all causes of action because (1) under Code
19 of Civil Procedure section 430.10(e), the pleading does not state facts sufficient to constitute a
20 cause of action – as was previously determined in the Measure B case; and (2) under Code of Civil
21 Procedure section 430.10(c) there is another action pending between the same parties on the same
22 cause of action – the appeal in the Measure B case – and this action should be abated. In the
23 alternative, the City asks that this Court exercise its inherent equitable powers and order a stay of
24 this new case until the Measure B case appeals are concluded.

25 **II. SUMMARY OF PLAINTIFFS’ ALLEGATIONS AND BACKGROUND**

26 **A. Plaintiffs’ Instant Complaint.**

27 The instant complaint is brought by SJREA and four retirees who are members of the City
28 of San Jose Federated Retirement System. The SJREA and the retirees purport to bring the action

1 on behalf of all retirees under the Federated Retirement Plan (the “Plan”). (SJREA Complaint,
2 paras. 3, 4, attached to the Request for Judicial Notice (“RJN”), Exh. 12.)

3 The Complaint focuses on the provision of the Plan that determines the amount of the
4 subsidy provided by the City towards the premiums paid by retirees for their retiree medical
5 benefits. The Plan ties the amount of the subsidy to the “lowest of the premiums” for a plan
6 “available to any employee of the city” According to the Complaint:

7 Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16, the portion of
8 the premium to be paid by the Plan shall be “the portion that represents an amount
9 equivalent to the lowest of the premiums for single or family medical insurance
10 coverage, for which the member or survivor is eligible and in which the member or
11 survivor enrolls under the provisions of this part, which is available to an employee
12 of the city at such time as said premium is due and owing.” (Complaint, para. 11.)

13 The Complaint alleges that this provision created vested contractual right in favor of
14 retirees that prohibited the City from introducing a lower cost medical plan, with lower premiums,
15 that in turn lowered the amount of the subsidy paid to retirees.

- 16 ▪ The Complaint alleges that the City “reduced the amount of payments to Affected
17 Retirees and Affected Beneficiaries under the City’s Retiree Medical Plan by
18 fundamentally altering the nature and quality of the eligible plans available to current
19 employees and the attendant premiums.” (Complaint, para. 13.)
- 20 ▪ It further alleges: “In particular, the City included a new deductible medical plan
21 option and continued to include a co-pay option that had not been included in the city’s
22 offered medical plans in existence when the Affected Retirees rendered services for the
23 City and the benefit became vested.” (para. 14.)
- 24 ▪ The Complaint concludes: “The City unilaterally interpreted the plan with these
25 options as the “low cost plan” available to City employees, with the attendant greatly
26 reduced premiums serving as the new amount paid to Affected Retirees and Affected
27 Beneficiaries under the City’s Retiree Medical Plan.” (para. 15)
- 28 ▪ The Complaint alleges that retirees have been damaged in the amount of the difference
between the payments provided to them since December 31, 2012 (when the new low
cost plan was implemented), and the higher payments they claim are required under the

1 Plan, and seeks declaratory relief and a writ of mandate. (Complaint, p. 15)

2 The Complaint includes causes of action for (1) Violation of the Contract Clause of the
3 California Constitution (article I, Section 9), which focuses on the change to a “low cost plan”
4 with a deductible, (2) Violation of the Contract Clause of the California Constitution (article I,
5 Section 9), which focuses on the change to a “low cost plan” with a co-pay requirement, (3)
6 Breach of the Implied Covenant of Good Faith and Fair Dealing, based on interference with
7 retirees’ vested rights to the Plan, (4) Breach of the Implied Covenant of Good Faith and Fair
8 Dealing, based on interference with retirees’ vested rights to the Plan (this cause of action appears
9 to duplicate no. 3), (5) Promissory estoppel, based on retirees’ alleged reliance on the City’s
10 alleged practice of offering medical plans without a deductible, and (6) Promissory estoppel, based
11 on retirees alleged reliance on the City’s alleged practice of offering medical plans without a co-
12 pay, (7) Declaratory relief, and (8) Petition for Writ of Mandate (Code of Civil Procedure Section
13 1085). (See RJN, Exh. 12).

14 **B. The Prior Measure B Litigation.**

15 On June 5, 2012, the City’s voters passed Measure B. Measure B added Article XV-A, a
16 pension reform measure, to the San Jose City Charter. Six sets of plaintiffs filed suit challenging
17 sections of Measure B, and the City cross-complained for declaratory relief. All cases were
18 consolidated for trial.¹

19 As a group, plaintiffs sought declaratory and injunctive and/or mandamus relief prohibiting
20

21 ¹ The six sets of plaintiffs are: (1) the San Jose Police Officers Association (“SJPOA”), which
22 represents employees who are members of the 1961 San Jose Police and Fire Department
23 Retirement Plan (“Police and Fire Plan”); (2) the American Federation of State, County, and
24 Municipal Employees, Local 101 (“AFSCME”), which represents employees who are members of
25 the 1975 Federated City Employees’ Retirement Plan (“Federated Plan”); (3) Robert Sapien, Mary
26 Kathleen McCarthy, Thanh Ho, Randy Sekany, and Ken Heredia, who are active and retired
27 members of the Police and Fire Plan (collectively, “Sapien Plaintiffs”); (4) Teresa Harris, Jon
28 Reger, and Moses Serrano, who are active and retired members of the Federated Plan
(collectively, “Harris Plaintiffs”); (5) John Mukhar, Dale Dapp, James Atkins, William
Buffington, and Kirk Pennington, who are active and retired members of the Federated Plan
(collectively, “Mukhar Plaintiffs”); and (6) the San Jose Retired Employees Association (“Retiree
Plaintiffs”).

1 the City from applying twelve separate sections of Measure B based on state constitutional claims
2 of contractual impairment, violation of due process, takings, right to petition, equitable estoppel,
3 and other claims. Trial occurred over five days, from July 22, 2013, to July 26, 2013. On
4 February 20, 2014, the Court issued a Statement of Decision (RJN, Exh. 3), and on April 30, 2014
5 the Court entered Judgment (RJN, Exh. 4). All parties including SJREA have filed notices of
6 appeal and/or cross appeal which are pending. (RJN, Exhs. 5-11)

7 The allegation in the instant case – that retirees have a vested right to the continuation of a
8 particular “lowest cost plan,” which in turn determined their premium subsidy – was fully
9 adjudicated in the Measure B case. It was addressed in connection with two separate sections of
10 Measure B. First the Court found that Measure B’s reservation of rights in connection with retiree
11 healthcare (Section 1512-A(b)) was valid in part because plaintiffs had not proven a vested right to
12 a particular medical plan. (RJN, Exh. 3, Decision at p. 30.) Second, the Court found that neither
13 Measure B (Section 1512-A(c)), nor the Plan, required the City to provide a particular “lowest
14 cost” medical plan, in order to keep premium subsidies at certain levels. (RJN, Exh. 3, Decision at
15 p. 31-32.) Judgment was entered in favor of the City and against plaintiffs on these claims (RJN,
16 Exh. 4, Judgment at p. 3.)

17 **III. ARGUMENT**

18 **A. The Demurrer Should Be Granted Based on Code of Civil Procedure Section** 19 **430.10(e) Because The Complaint Does Not State Facts Sufficient To** 20 **Constitute A Cause Of Action.**

21 All counts in the complaint rest on the same legal contention: that the retirees have a
22 vested right to continuation of a prior “lowest cost plan” that determined the subsidy to be paid by
23 the City towards their medical premiums. (Complaint, paras. 11-14) The first two counts are
24 based on the California Constitution, the third and fourth are based on the doctrine of good faith
25 and failure dealing, the fifth and sixth are based on promissory estoppel and the final two are for
26 declaratory relief and writ of mandate. Plaintiffs cannot state a claim under any count because, as
27 determined in the Measure B litigation, the Municipal Code section they rely on did not create a
28 vested right to maintain a particular medical plan as the “lowest cost” plan.

A retirement benefit is vested only when “the statutory language or circumstances

1 accompany its passage ‘clearly’ . . . evince a legislative intent to create private rights of a
2 contractual nature enforceable against the [government body].” *Retired Employees Association of*
3 *Orange County v. County of Orange (REAOC)*, 52 Cal.4th 1171, 1187 (2011). The Complaint
4 alleges that Municipal Code 3.28.1980B(1) created a vested right to continuation of a prior
5 medical plan as the “lowest cost plan.” (Complaint, paras. 13-15.) But as found by the Court in
6 adjudicating the Measure B case, the Code did no such thing.

7 Section 3.28.1980B(1) states:

8 “The portion of the premium to be paid from the medical benefits account, or trust
9 fund established by Chapter 3.52, shall be the portion that represents an amount
10 equivalent to **the lowest of the premiums for single or family medical insurance**
11 **coverage**, for which the member or survivor is eligible and in which the member or
12 survivor enrolls under the provisions of this part, **which is available to an**
13 **employee of the city** at such time as said premium is due and owing.”

14 This Code section simply provides that the City will pay a subsidy towards retiree medical
15 premiums equal to the “lowest of the premiums for single or family medical coverage” which “is
16 available to an employee of the city. There is nothing in this section that constitutes a promise to
17 continue to provide a particular medical plan for the purpose of determining the amount of the
18 retiree subsidy. And there is certainly nothing that addresses the level of copays or deductibles in
19 a particular plan.

20 Plaintiffs only argument is based on past conduct -- that in the past the City offered a
21 different “lowest cost plan” that resulted in a higher subsidy for retirees. But this very argument
22 was rejected in *Sappington v. Orange Unified School Dist.*, 119 Cal.App.4th 949, 953 (2004),
23 which rejected a claim by retirees that they had a vested right to a free employer paid PPO plan
24 because the District’s 20 year “practice” was to subsidize the higher cost PPO plan.

25 As explained in *Sappington*: “The fact that the District provided a free PPO benefit for 20
26 years – before health insurance premiums skyrocketed and the cost of PPO coverage began far
27 outpacing the cost of HMO coverage – does not prove the District promised to provide that option
28 forever.” *Sappington*, 119 Cal.App.4th at 955.

1 On remand, the federal district court ruling in *REAOC* confirmed this principle, rejecting
2 the claim by Orange County retirees that “the County’s 23-year practice of annually authorizing
3 this generous [subsidization] policy morphed into an implied contract requiring the County to
4 guarantee this benefit for life.” *REAOC*, 2012 U.S. Dist. LEXIS 146637, **1, 37 (C.D. Cal.
5 2012). The Court concluded that the retirees were asking the county “to pay for a promise that it
6 never made: to continue using a favorable ‘pooling’ methodology to calculate the health care
7 premiums of its retired employees.” *Id.* The *REAOC* trial court decision was recently affirmed
8 by the Ninth Circuit Court of Appeals, which held that: “A practice or policy extended over a
9 period of time does not translate into an implied contract right without clear legislative intent to
10 create that right.” *REAOC*, Case No. 12-56706 (9th Cir. 2014).

11 **B. The Demurrer Should Be Granted Based on Code of Civil Procedure Section**
12 **430.10(c) Because There Is Another Action Pending Between The Same**
13 **Parties On The Same Cause Of Action.**

14 Code of Civil Procedure Section 430.10(c) provides that a party may object by demurrer
15 on the ground that: “There is another action pending between the same parties on the same cause
16 of action.” Although pleas in abatement have been described as disfavored, Witkin argues that a
17 demurrer based on section 430.10(c) should in fact be favored:

18 “[U]nnecessary duplication of litigation over the same claim is a serious and
19 unwarranted burden on the defendant, against which he or she is justly entitled to
20 claim the protection of the court. The plea in this respect is, on reflection, more
21 meritorious than the ‘favored’ pleas of the statute of limitations or laches. (5
22 Witkin, Cal. Procedure, section 1138, p. 563.)

23 Defendants have a right “to be protected from harassment by successive suits.” *Wulffen v.*
24 *Dolton*, 24 Cal. 2d 891, 896 (1944). Moreover, “a plea in abatement should be favored to alleviate
25 the backlog of cases before the courts by preventing duplicative actions.” Witkin at p. 564.

26 “Another action is pending” when (1) both suits are predicated upon the same cause of
27 action; (2) both suits are pending in the same jurisdiction, and (3) both suits are contested by the
28 same parties. *Colvig v. RKO General Inc.*, 232 Cal.App.2d 56, 72 (1956); *In Re Conservatorship*
v. Pacheco, 224 Cal.App.3d 171, 176 (1990). An action is pending until its “final determination on
appeal.” *Colvig*, at 71. When these factors are satisfied, the trial court should order an “abatement
or continuance” of the second action. “The purpose of the interlocutory judgment ... is to permit

1 the trial court to retain jurisdiction over the subsequent action so that when a final determination is
2 had in the prior pending action the court will be empowered to determine the issues in the
3 subsequent suit.” *Lord v. Garland*, 27 Cal.2d 840, 848 (1946).

4 Here, both suits are predicated on the “same cause of action.” California follows the
5 “primary right” theory under which “there is only a single cause of action for the invasion of one
6 primary right.” *Agarwal v. Johnson* 25 Cal.3d 932, 954 (1979); *Mycogen Corp. v. Monsanto*, 28
7 Cal.4th 888 (2009) (“primary right is simply plaintiff’s right to be free from the particular injury”).
8 In this case, both suits involve the same “primary right.” Both involve whether the City’s
9 retirement plan created a vested right to the continuance of a particular “lowest cost plan” that
10 determined the subsidy for retiree premiums. The same injury – a lower subsidy – is alleged in
11 both.

12 Here, there is no question that both suits are pending in the same jurisdiction

13 Here, both suits are contested by the same parties. The City, SJREA and Kirk Pennington
14 are named parties in both the Measure B case and in the instant case. (RJN Exhs. 1, 2, 3, 4, 12)
15 And the remaining individual retirees are also involved in both cases because the SJREA brought
16 the Measure B case in a representative capacity. (RJN Exh. 2)

17 SJREA may contend that Section 430.10(c) section does not apply because the SJREA did
18 not litigate over “lowest cost plan” in the Measure B litigation. This is not true. First, in rejecting
19 the SJREA’s contention that Section 1512-A(b) of Measure B was invalid, the Court specifically
20 addressed the contention that retirees were entitled to continuation of a particular medical plan.
21 (RJN Exh. 3, p. 30) Second, and directly on point, SJREA is in “privity” with the plaintiffs in the
22 Measure B case who litigated the validity of changes to the “lowest cost plan” and is thus bound
23 by the outcome in that litigation. (See RJN Exh. 3, p. 30) As explained in *Citizens for Open*
24 *Access To San and Tide, Inc. v. Seadrift Ass’n*, 60 Cal.App.4th 1053, 1070-71 (1998) “A party is
25 adequately represented for purposes of the privity rule ‘if his or her interests are so similar to a
26 party’s interest that the latter was the former’s virtual representative in the earlier action.’” The
27 question is whether a party “had the same interest as the party to be precluded, and whether that ...
28 party had a strong motive to assert that interest.” *Id.*, see also *Rysburger v. Dairyman’s Fertilizer*

1 *Coop*, 266 Cal.App. 269, 278 (1968) (“If it appears that a particular party, although not before the
2 court in person, is so far represented by others that his interest received actual and efficient
3 protection, the decree will be held to be binding upon him.”)

4 Here, the interests of the SJREA, the individual retiree plaintiffs, and indeed all retirees,
5 were adequately represented in the Measure B litigation. AFSCME litigated and tried the issue of
6 whether the San Jose Municipal Code had created a right in Federated System retirees to a
7 particular “lowest cost plan.” Moreover, the SJREA was not absent from the litigation; it was an
8 active party participating in every aspect of pretrial, trial and post trial proceedings.

9
10 **C. In The Alternative, This Court Should Exercise Its Inherent Equitable Powers
And Order A Stay Pending The Outcome Of The Measure B Appeal.**

11 Even if section 430.10(c) were not applicable, this Court has inherent authority to enjoin a
12 second action that raises the specter of conflicting judgments. In *Franklin & Franklin v. &-Eleven*
13 *Owners*, 85 Cal.App.4th 1168 (2000), the Court of Appeal upheld a trial court injunction against a
14 second suit that threatened the relief in a first suit that was on appeal. Citing *Witkin*, the Court
15 explained

16 “In keeping with both the practical nature of the rule and the historically flexible
17 remedial powers of equity, exactitude was not required. That the parties in the two
18 actions ‘are not entirely identical’ and ‘that the remedies sought by the two actions
19 are not precisely the same’ is not controlling. It is sufficient for the exercise of
20 protective equitable jurisdiction that the [] issue in both suits is the same and arises
out of the same transaction or events. Or as *Witkin* puts it, ‘Although their claimed
rights and therefore their alleged causes of action are distinct, the issues ‘in the two
proceedings’ are substantially the same and individual suits might result in
conflicting judgments.’” (*Id.* at 1175)

21 Similarly, in *Rynsberger*, the Court of Appeals upheld an injunction issued by the Superior
22 Court of San Bernardino County enjoining an action pending in the Superior Court of Orange
23 County to prevent conflicting or vexatious litigation. 266 Cal.App. 269. The Court stated:
24 “Where there exists two or more actions involving the same subject matter or the same facts or
25 principles, restraint is necessary to prevent a multiplicity of judicial proceedings. “*Id.* (internal
26 citations omitted).

27 These principles apply here. The issues raised in the Complaint are on appeal in the
28 Measure B case. This Court should stay this new action until the appeals are concluded. This will

1 ensure that the Court and the City are not faced with a multiplicity of actions on the same subject.
2 Once the appeals are concluded, the Court can consider whether the Instant Complaint is barred by
3 res judicata or collateral estoppel. At the very least there may be governing law on the issue of
4 “lowest cost plan” to efficiently guide the decision in this case.

5 Principles of equity support a stay. The Complaint admits that the City action that gave
6 rise to Plaintiffs claim – the change in “lowest cost plan” – took place in December 2012. Yet
7 Plaintiffs sat on their hands, participated in extensive Measure B pretrial, trial and post trial
8 proceedings during 2013 and 2014, before they brought suit in July 2014. They strategically
9 waited until the Measure B case was on appeal before bringing their case.

10 There is no excuse for this delay. The SJREA and individual plaintiff Kirk Pennington are
11 both named plaintiffs in the Measure B case and well aware of the issues being litigated there.
12 Counsel for the SJREA represented SJREA in the Measure B case, and sat through an entire trial
13 during which the issue of “lowest cost plan” was litigated.

14 And there is no question that the City is being prejudiced. Had the SJREA raised the
15 “lowest cost plan” issue at the same time it was being litigated in the Measure B cases, all
16 discovery, pretrial, trial and post trial proceedings could have been consolidated. If the City must
17 conduct yet another full blown defense—of something already adjudicated – the prejudice is
18 obvious.

19 **IV. CONCLUSION**

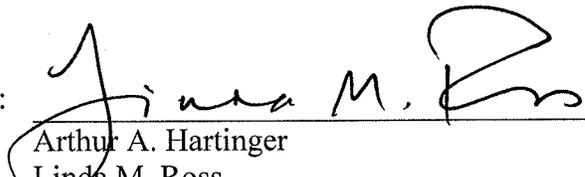
20 This Court should grant the City’s demurrer based on Plaintiffs’ failure to state a claim
21 upon which relief can be granted. In the alternative the Court should grant the City’s demurrer
22 based on a prior pending action – the Measure B case – and abate this action. If for some reason
23 this Court does not grant the City’s demurrers, it has the inherent authority to stay the instant case
24 until the Measure B appeals are concluded. To permit this case to go forward, when the exact
25 issue raised here is before the Court of Appeal, would be an unnecessary drain on the resources of
26 the Court and the City, and potentially lead to conflicting results.

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1 DATED: August 25, 2014

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By: 
Arthur A. Hartinger
Linda M. Ross
Attorneys for Defendants/Respondents

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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 August 25, 2014, I served true copies of the following document(s) described as NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties in this action as follows:

Stephen H. Silver, Esq.
Richard A. Levine, Esq.
Jacob A. Kalinski, Esq.
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shsilver@shslaborlaw.com

Harvey L. Leiderman
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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 kthomas@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.

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Executed on August 25, 2014, at Oakland, California.


Kathy Thomas

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