

ENDORSED
FILED

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Clerk

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EXEMPT FROM FILING FEES
GOV'T CODE § 6103

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

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

14 Plaintiff/Petitioner,

15 v.

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

17 Defendant/Respondent.

18
19 BOARD OF ADMINISTRATION FOR THE
20 FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM, ,

21 Real Party in Interest.

Case No. 114CV268085

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
COMPLAINT; MOTION FOR STAY**

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

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

BY FAX

22
23 Defendant City of San José hereby requests that the Court take judicial notice pursuant to
24 California Evidence Code Sections 452(a) and (d), and in accordance with California Rules of
25 Court 3.1113(l) and 3.1306(c), of the following material which are true and correct copies of
26 documents filed in the *San Jose Police Officers Association v. City of San Jose et al.*, Case No. 1-12-CV-
27 225926 (and Consolidated Actions 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, and 1-
28 12-CV-227864), Santa Clara Superior Court, and attached hereto:

114CV268085

- 1 1. *San Jose Retired Employees Association et al. v. City of Jose*, Complaint for
2 Injunction and Declaratory Relief and Verified Petition for Writ of Mandate [CCP 1085] filed
3 October 5, 2012 (without exhibits);
- 4 2. *San Jose Retired Employees Association v. City of San Jose*, First Amended
5 Complaint for Injunction and Declaratory Relief and Verified Petition for Writ of Mandate [CCP
6 1085] dated July 10, 2013 (without exhibits);
- 7 3. *San Jose Police Officers' Association v. City of San Jose*, No. 1-12-CV-225926 and
8 consolidated actions, Statement of Decision, filed February 20, 2014;
- 9 4. *San Jose Police Officers' Association v. City of San Jose*, No. 1-12-CV-225926 and
10 consolidated actions, Judgment filed April 30, 2014;
- 11 5. Notice of Appeal filed by Robert Sapien, Mary Kathleen McCarthy, Than Ho,
12 Randy Sekany, Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano, John Mukhar, Dale Dapp,
13 James Atkins, William Buffington and Kirk Pennington, on May 1, 2014;
- 14 6. Notice of Appeal filed by San Jose Retired Employees Association on June 11,
15 2014
- 16 7. Notice of Appeal filed by AFSCME Local 101 on June 23, 2014;
- 17 8. Notice of Appeal filed by San Jose Police Officers Association on June 23, 2014;
- 18 9. Notice of Appeal filed by City of San Jose on June 25, 2014;
- 19 10. Notice of Cross Appeal filed by City of San Jose on June 30, 2014;
- 20 11. Notice of Cross Appeal filed by AFSCME Local 101 on July 10, 2014;
- 21 12. Complaint filed by San Jose Retired Employees Association, David Armstrong,
22 Donna Jewett, Dorothy McGinley and Kirk Pennington, Case No. 114CV268085 on July 16,
23 2014.

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1 DATED: August 25, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

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

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

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

5 On August 25, 2014, I served true copies of the following document(s) described as
6 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO COMPLAINT**
on the interested parties in this action as follows:

7 Stephen H. Silver, Esq.
8 Richard A. Levine, Esq.
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17 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
18 persons at the addresses listed in the Service List and placed the envelope for collection and
19 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
20 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.

21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
22 document(s) to be sent from e-mail address kthomas@meyersnave.com to the persons at the e-
23 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.

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

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

26
27 
28 Kathy Thomas

EXHIBIT 1

1 STEPHEN H. SILVER, SBN 038241
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FILED
 OCT - 5 2012

DAVID H. YAMASAKI
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY _____ DEPUTY
 J. Wendel

7 Attorneys for Plaintiffs/Petitioners San Jose Retired
 8 Employees Association, Howard E. Fleming,
 9 Donald S. Macrae, Frances J. Olson, Gary J. Richert
 10 And Rosalinda Navarro

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 FOR THE COUNTY OF SANTA CLARA

13 SAN JOSE RETIRED EMPLOYEES)
 14 ASSOCIATION, HOWARD E. FLEMING,)
 15 DONALD S. MACRAE, FRANCES J.)
 16 OLSON, GARY J. RICHERT and)
 17 ROSALINDA NAVARRO,)

Case No. **112CV233660**
 COMPLAINT FOR INJUNCTION AND
 DECLARATORY RELIEF AND
 VERIFIED PETITION FOR WRIT OF
 MANDATE-[CCP-1085]-

17 Plaintiffs/Petitioners,)

[Unlimited Jurisdiction] **BY FAX**

18 vs.)

19 CITY OF SAN JOSE; DOES 1 through 50,)
 20 inclusive,)

21 Defendants/Respondent.)

22 BOARD OF ADMINISTRATION FOR)
 23 THE FEDERATED CITY EMPLOYEES)
 24 RETIREMENT SYSTEM,)

25 Real Party in Interest.)

1 INTRODUCTION

2 By this action, Plaintiffs/Petitioners, the San Jose Retired Employees
3 Association and retired members of the Federated City Employees Retirement System, seek
4 injunctive, declaratory and writ relief to invalidate recent amendments to the San Jose City
5 Charter as violations of the retired members' vested rights. Specifically, Plaintiffs/Petitioners
6 challenge certain provisions of "The Sustainable Retirement Benefits and Compensation Act"
7 ("Measure B") passed by the electors of the City of San Jose on June 5, 2012.

8 A. PARTIES

9 1. At all times herein mentioned, Defendant/Respondent City of San Jose
10 (the "City") was, and now is, a municipal corporation of the State of California that operates
11 pursuant to the authority of the California Constitution and the City Charter of the City of San
12 Jose (the "City Charter").

13 2. At all times mentioned herein, Real Party in Interest Board of
14 Administration for the Federated City Employees Retirement System ("the Board") was, and
15 now is, the entity whose members are appointed by the City Council to manage, administer and
16 control the Federated City Employees Retirement System (the "Plan"). Pursuant to Article
17 XVI, Section 17(a) of the California Constitution, the Board has a fiduciary responsibility to
18 administer the Plan in a manner that will ensure prompt delivery of benefits and related
19 services to the participants and other beneficiaries. According to Article XVI, Section 17(b) of
20 the California Constitution the Board must discharge its "duties with respect to the system
21 solely in the interest of, and for the exclusive purposes of providing benefits to, participants and
22 their beneficiaries, minimizing employer contributions thereto, and defraying reasonable
23 expenses of administering the system." However the Board's "duty to its participants and their
24 beneficiaries shall take precedence over any other duty."

25 3. At all times herein mentioned, Plaintiff/Petitioner San Jose Retired
26 Employees Association ("SJREA") was, and now is, an organization composed of retired
27 employees of the City who are members of the Plan ("Affected Retirees"). SJREA brings this
28 action in a representative capacity to enforce vested rights accrued to the Affected Retirees, as

1 well as qualifying spouses, domestic partners and other eligible beneficiaries of Affected
2 Retirees and eligible beneficiaries of deceased employees (hereinafter collectively referred to as
3 "Affected Beneficiaries").

4 4. At all times herein mentioned Plaintiffs/Petitioners Howard E. Fleming
5 and Donald S. Macrae were, and now are, Affected Retirees who retired prior to on or about
6 September 18, 1984. Mr. Fleming and Mr. Macrae bring this action in a representative
7 capacity to enforce vested rights accrued to all Affected Retirees who retired prior to on or
8 about September 18, 1984, Affected Beneficiaries of any such Affected Retirees, and those
9 persons who became Affected Beneficiaries prior to said date.

10 5. At all times herein mentioned Plaintiff/Petitioner Frances J. Olson was,
11 and now is, an Affected Retiree who retired between on or about September 18, 1984 and on or
12 about June 3, 1986. Ms. Olson brings this action in a representative capacity to enforce vested
13 rights accrued to all Affected Retirees who retired between on or about September 18, 1984 and
14 on or about June 3, 1986, Affected Beneficiaries of any such Affected Retirees, and those
15 persons who became Affected Beneficiaries prior to said date.

16 6. At all times herein mentioned Plaintiff/Petitioner Gary J. Richert was,
17 and now is, an Affected Retiree who retired between on or about June 3, 1986 and on or about
18 April 1, 2006. Mr. Richert brings this action in a representative capacity to enforce vested
19 rights accrued to all Affected Retirees who retired between on or about June 3, 1986 and on or
20 about April 1, 2006. Affected Beneficiaries of any such Affected Retirees and those persons
21 who became Affected Beneficiaries prior to said date.

22 7. At all times herein mentioned Plaintiff/Petitioner Rosalinda Navarro
23 was, and now is, an Affected Retiree who retired after on or about April 1, 2006. Ms. Navarro
24 brings this action in a representative capacity to enforce vested rights accrued to all Affected
25 Retirees who retired after on or about April 1, 2006, and Affected Beneficiaries of any such
26 Affected Retirees.

27 8. At all times relevant herein, Defendants/Respondents designated Does 1
28 - 50 were the agents, servants, and employees of the City and in doing the things hereinafter

1 alleged were acting within the scope of their authority with the permission and consent of the
2 City. Plaintiffs will amend this Complaint to allege the true names and capacities of Does 1 -
3 50, inclusive, when ascertained.

4 **B. RETIREMENT BENEFITS REQUIRED BY THE CITY CHARTER**

5 9. Article XV, Section 1500 of the City Charter requires the City Council to
6 establish and maintain a retirement plan for all officers and employees of the City. A true and
7 correct copy of Article XV, Section 1500 of the City Charter is attached hereto as Exhibit A
8 and incorporated herein by reference as though set forth in full.

9 10. While City Charter Section 1500 gives the City Council the ability to "at
10 any time, or from time to time, amend or otherwise change any retirement plan or plans or
11 adopt or establish a new or different plan or plans for all or any officers or employees"
12 (emphasis added), such ability is limited to officers or employees and thus excludes retired
13 persons and their beneficiaries such as Affected Retirees and Affected Beneficiaries.
14 Therefore, any new or different plans for the Affected Retirees or the Affected Beneficiaries
15 that provide reduced or less advantageous benefits than those which were established during
16 the Affected Retirees' employment may not be adopted or established.

17 **C. RETIREMENT BENEFITS OF AFFECTED RETIREES AND AFFECTED**
18 **BENEFICIARIES DESCRIBED IN THE SAN JOSE MUNICIPAL CODE**

19 11. Pursuant to its authority under the California Constitution and the
20 requirements of Article XV, Section 1500 of the City Charter, the City Council established the
21 Plan as a defined benefit plan. The provisions of the Plan are set out in Chapters 3.16, 3.20,
22 3.24 and 3.28 of the San Jose Municipal Code ("SJMC"). A true and correct copy of the Plan
23 is attached as Exhibit B and incorporated herein by reference as though set forth in full.
24 Membership in the Plan is mandatory for persons employed by the City in the positions held by
25 Affected Retirees and was mandatory for all Affected Retirees during their employment with
26 the City. The Plan pays a monthly retirement allowance to the Affected Retirees and pays a
27 monthly survivorship allowance to the Affected Beneficiaries.

28 12. Benefits payable under the Plan are funded by contributions from the

1 active Plan members and the City. Contribution rates are determined by the Board and are
2 adjusted from time to time based upon valuations performed by the Board's actuaries. During
3 their employment with the City, Affected Retirees made contributions for retirement benefits as
4 required by the Plan and as set by the Board.

5 13. Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16,
6 which became effective on or about September 18, 1984, Affected Retirees who were
7 employed on or after that date, their Affected Beneficiaries, and those persons who became
8 Affected Beneficiaries on or after that date who met the requirements set forth therein became
9 eligible to participate in a medical insurance plan sponsored by the City (the "City's Retiree
10 Medical Plan") with respect to which the Plan pays all or a prescribed portion of the premium
11 upon and following their retirement or, in the case of a survivor, following the death of the
12 member. Those Affected Retirees who were employed on or after the enactment of the City's
13 Retiree Medical Plan, their Affected Beneficiaries and those persons who became Affected
14 Beneficiaries on or after such enactment who met the minimum requirements set forth in the
15 Plan earned a vested contractual right to participate in the City's Retiree Medical Plan
16 following the Affected Retirees' retirement or, in the case of a survivor, following the death of
17 the member.

18 In addition, the City promised those Affected Retirees who retired prior
19 to the enactment of the City's Retiree Medical Plan, and those persons who became Affected
20 Beneficiaries prior to such enactment, that they and their Affected Beneficiaries would be
21 entitled to participate in the City's Retiree Medical Plan and to have the Plan pay the same
22 premiums or prescribed portions thereof paid by the Plan for Affected Retirees who were
23 employed, and those persons who became Affected Beneficiaries, on or after the enactment of
24 the City's Retiree Medical Plan. The City is therefore estopped from treating the Affected
25 Retirees who retired prior to the enactment of the City's Retiree Medical Plan, their Affected
26 Beneficiaries, and those persons who became Affected Beneficiaries prior to such enactment
27 differently from the Affected Retirees who were employed on or after the enactment of the
28 City's Retiree Medical Plan and those persons who became Affected Beneficiaries subsequent

1 to such enactment because (a) the City was apprised of the above facts when making its
2 promises; (b) the City intended that its promises be acted upon; (c) these Affected Retirees and
3 Affected Beneficiaries were ignorant of the fact that the City might later assert that they had no
4 right to participate in the City's Retiree Medical Plan and have the entitled premium payments
5 made by the Plan; and (d) these Affected Retirees and Affected Beneficiaries relied on the
6 City's promises to their detriment by foregoing other opportunities to procure medical
7 insurance coverage for themselves and dependents at a lower cost than might be the case if they
8 were not allowed to participate in the City's Retiree Medical Plan or were no longer entitled to
9 have the Plan make the same level of premium contributions as the Plan makes for Affected
10 Retirees employed on or after the enactment of the City's Retiree Medical Plan and those who
11 became Affected Beneficiaries subsequent to such enactment.

12 14. Pursuant to SJMC Chapter 3.24, Part 24 and SJMC Chapter 3.28, Part
13 17, which became effective on or about June 3, 1986, Affected Retirees who were employed on
14 or after that date, their Affected Beneficiaries and those persons who became Affected
15 Beneficiaries on or after that date who met the requirements set forth therein became eligible to
16 participate in a dental insurance plan sponsored by the City (the "City's Retiree Dental Plan")
17 with respect to which the Plan pays all of the premium upon and following their retirement or,
18 in the case of a survivor, following the death of the member. Those Affected Retirees who
19 were employed on or after the enactment of the City's Retiree Dental Plan, their Affected
20 Beneficiaries and those persons who became Affected Beneficiaries on or after such enactment
21 who met the minimum requirements set forth in the Plan earned a vested contractual right to
22 participate in the City's Retiree Dental Plan following the Affected Retirees' retirement or, in
23 the case of a survivor, following the death of the member.

24 In addition, the City promised those Affected Retirees who retired prior
25 to the enactment of the City's Retiree Dental Plan and those persons who became Affected
26 Beneficiaries prior to such enactment that they and their Affected Beneficiaries would be
27 entitled to participate in the City's Retiree Dental Plan and to have the Plan pay the same
28 premiums paid by the Plan for Affected Retirees who were employed, and those persons who

1 became Affected Beneficiaries, on or after the enactment of the City's Retiree Dental Plan and
2 their Affected Beneficiaries. The City is therefore estopped from treating the Affected Retirees
3 who retired prior to the enactment of the City's Retiree Dental Plan, their Affected
4 Beneficiaries and those persons who became Affected Beneficiaries prior to such enactment
5 differently from the Affected Retirees who were employed on or after the enactment of the
6 City's Retiree Dental Plan and those persons who became Affected Beneficiaries subsequent to
7 such enactment because (a) the City was apprised of the above facts when making its promises;
8 (b) the City intended that its promises be acted upon; (c) these Affected Retirees and Affected
9 Beneficiaries were ignorant of the fact that the City might later assert that they had no right to
10 participate in the City's Retiree Dental Plan and have the entitled premium payments made by
11 the Plan; and (d) these Affected Retirees and Affected Beneficiaries relied on the City's
12 promises to their detriment by foregoing other opportunities to procure dental insurance
13 coverage for themselves and dependents at a lower cost than might be the case if they were not
14 allowed to participate in the City's Retiree Dental Plan or were not entitled to have the Plan
15 make the same level of premium contributions as the Plan makes for Affected Retirees
16 employed on or after the enactment of the City's Retiree Dental Plan and those who became
17 Affected Beneficiaries subsequent to such enactment.

18 15. Medical and dental benefits payable under the Plan are funded by prior
19 contributions from Affected Retirees, contributions from the active Plan members, and
20 contributions from the City at rates determined by the Board. During their employment with
21 the City on or after the enactment of the City's Retiree Medical Plan, as described above in
22 Paragraph 13, Affected Retirees made contributions for medical benefits as required by the
23 Plan and as set by the Board. During their employment with the City on or after the enactment
24 of the City's Retiree Dental Plan, as described above in Paragraph 14, Affected Retirees made
25 contributions for dental benefits as required by the Plan and as set by the Board. Similarly, the
26 members of the Plan whose survivors became Affected Beneficiaries on or after such
27 enactments also made contributions for medical and dental benefits as required by the Plan and
28 as set by the Board.

1 16. Effective on or about April 1, 1970, the City Council adopted SJMC
2 Chapter 3.44 to provide cost-of-living adjustments ("COLAs") for retirement allowances and
3 survivorship allowances based upon percentage changes in the applicable Consumer Price
4 Index. Effective on or about April 1, 2006, SJMC Chapter 3.44 was amended by the enactment
5 of Section 3.44.160 to provide for a guaranteed flat annual COLA increase of 3% for members
6 of the Plan and survivors of members. The Affected Retirees and the Affected Beneficiaries
7 met the eligibility requirements set forth in Chapter 3.44 and therefore the Affected Retirees
8 and the Affected Beneficiaries earned a vested contractual right to the COLAs described in
9 Chapter 3.44. A true and correct copy of Chapter 3.44 is attached hereto as Exhibit C and
10 incorporated herein by reference as though set forth in full.

11 17. On or about June 3, 1986, SJMC Sections 3.28.200, et seq. and
12 particularly Section 3.28.340, were enacted to establish the Supplemental Retiree Benefit
13 Reserve ("SRBR") within the San Jose Federated Employees City Retirement Fund (the
14 "Fund") to provide for supplemental distributions to eligible members and survivors. Those
15 Affected Retirees who were employed and those persons who became Affected Beneficiaries
16 on or after these enactments met the eligibility requirements set forth in SJMC Section
17 3.28.200, et seq. and therefore those Affected Retirees and Affected Beneficiaries earned a
18 vested contractual right to all benefits provided by the Fund including but not limited to
19 distributions from the SRBR.

20 In addition, the City promised those Affected Retirees who retired and
21 those persons who became Affected Beneficiaries prior to the enactments described above
22 creating the SRBR that they and their Affected Beneficiaries would be entitled to the benefits
23 of the Fund and the SRBR. The City is therefore estopped from treating the Affected Retirees
24 who retired prior to the enactments described above, their Affected Beneficiaries and those
25 persons who became Affected Beneficiaries prior to such enactments differently from the
26 Affected Retirees who were employed on or after such enactments and those persons who
27 became Affected Beneficiaries subsequent to such enactments because (a) the City was
28 apprised of the above facts when making its promises; (b) the City intended that its promises be

1 acted upon; (c) these Affected Retirees and Affected Beneficiaries were ignorant of the fact that
2 the City might later assert that they had no right to receive the benefits of the Fund and the
3 SRBR; and (d) these Affected Retirees and Affected Beneficiaries relied on the City's
4 promises to their detriment by foregoing other opportunities to procure supplemental retirement
5 income for themselves and dependents at a lower cost than might be the case if they were not
6 allowed to receive the benefits of the SRBR.

7 18. Since at least 1970, and continuing thereafter, the City, through
8 numerous discretionary actions of the City Council, has expressly and impliedly assured
9 Affected Retirees and Affected Beneficiaries that to the extent the COLA set out in SJMC
10 Chapter 3.44 was inadequate to allow the payments to Affected Retirees and Affected
11 Beneficiaries to keep up with the changes in the applicable consumer price index during high
12 inflationary periods, the City Council would have the discretion to grant additional pension
13 increases. The Affected Retirees and Affected Beneficiaries met the eligibility requirements
14 set forth in Chapter 3.44 and detrimentally relied upon the City's assurances. The Affected
15 Retirees and the Affected Beneficiaries earned a vested contractual right to have the City
16 Council maintain its discretion to grant additional pension increases and/or are entitled to have
17 the City Council maintain said discretion through the doctrine of detrimental reliance.

18 19. The benefits as described above in paragraphs 11 through 18 became
19 vested when the Affected Retirees commenced performing services as employees of the City or
20 when the Affected Retirees first performed services for the City after a benefit or improved
21 benefit was enacted during their employment and, with respect to those Affected Retirees who
22 had already retired and those Affected Beneficiaries who had already become survivors before
23 the benefit or improved benefit was created, when those Affected Retirees and Affected
24 Beneficiaries relied to their detriment upon the City's promise to make those benefits available
25 to them. Further, the Affected Retirees continued to rely on the existence of those vested rights
26 in continuing their employment with the City.

27 ///
28 ///

1 SJMC Chapter 3.44, those persons who became Affected Beneficiaries subsequent to such
2 enactment and their Affected Beneficiaries to receive annual COLAs as set forth above in
3 paragraph 16.

4 24. Section 1511-A of Measure B, entitled "Supplemental Payments to
5 Retirees" states:

6 "The Supplemental Retiree Benefit Reserve ("SRBR") shall be
7 discontinued, and the assets returned to the appropriate retirement trust
8 fund. Any supplemental payments to retirees in addition to the benefits
9 authorized herein shall not be funded from plan assets."

10 25. In the event that Section 1511-A of Measure B is applied to the vested
11 contractual rights of the Affected Retirees and the Affected Beneficiaries to receive
12 distributions from the SRBR as set forth above in paragraphs 17 and 18, as well as those
13 entitlements as set forth above in Paragraph 17, those vested contractual rights and entitlements
14 will have been abrogated and/or impaired by the City as a result of that action.

15 26. Section 1512-A of the Act, entitled "Retiree Healthcare" states in
16 pertinent part:

17 "(b) Reservation of Rights. No retiree healthcare plan or benefit shall
18 grant any vested right, as the City retains its power to amend, change or
19 terminate any plan provision."

20 27. To the extent the City interprets and applies Section 1512-A paragraph
21 (b) of Measure B to alter the status of the Affected Retirees' and Affected Beneficiaries' rights
22 (a) to participate in the City's Retiree Medical Plan and/or the City's Retiree Dental Plan and
23 (b) to have the Retirement Plan pay all or a prescribed portion of the premiums from vested
24 contractual rights to non-vested rights, Section 1512-A, paragraph (b) of Measure B abrogates
25 and/or substantially impairs the vested contractual rights, as well as those entitlements created
26 by the application of the doctrine of promissory estoppel as set forth in paragraphs 13 and 14,
27 of Affected Retirees and Affected Beneficiaries to participate in the City Medical Plan and the
28 City Dental Plan and have the Plan pay all or a prescribed portion of the premiums.

1 28. Section 1504-A of Measure B, entitled "Reservation of Voter Authority"
2 states in pertinent part:

3 "Neither the City Council, nor any arbitrator appointed pursuant to
4 Charter Section 1111, shall have the authority to agree to or provide
5 any increase in pension and/or retiree health care benefits without voter
6 approval, except that the Council shall have the authority to adopt Tier
7 2 pension benefit plans within the limits set forth herein."

8 29. In the event that Section 1504-A of Measure B is interpreted by the City
9 to apply to and is applied to the Affected Retirees' and Affected Beneficiaries' vested
10 contractual right to receive additional Council-approved benefits, including but not limited to
11 distributions from the SRBR; those vested contractual rights, as well as those entitlements
12 created by the application of promissory estoppel as set forth in Paragraph 17, will have been
13 abrogated and/or impaired by the City as a result of that action.

14 30. Unless and until enjoined by this Court, Defendants/Respondents, and
15 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A
16 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected
17 Beneficiaries by abrogating and/or impairing their vested contractual rights in violation of
18 Article I, Section 9 of the California Constitution.

19 31. No plain, adequate or complete remedy at law is available to
20 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested contractual
21 rights of the Affected Retirees and Affected Beneficiaries.

22 32. In the absence of such injunctive relief issued pursuant to law, the
23 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

24 33. The successful prosecution of this Count will entitle Plaintiffs/Petitioners
25 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

26 **Count II [Taking Without Just Compensation In Violation**
27 **Of The California Constitution (Article I, Section 19)]**

28 34. The allegations contained above in paragraphs 1 through 29 are

1 incorporated herein by reference as though set forth in full.

2 35. The enactment and implementation of Sections 1504-A, 1510-A, 1511-A
3 and 1512-A paragraph (b) of Measure B, constitute a taking without just compensation, in
4 violation of Article I, Section 19 of the California Constitution.

5 36. Unless and until enjoined by this Court, Defendants/Respondents, and
6 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A
7 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected
8 Beneficiaries by taking their rights and entitlements without just compensation.

9 37. No plain, adequate or complete remedy at law is available to
10 Plaintiffs/Petitioners to prevent the taking of the vested contractual rights and other
11 entitlements of Affected Retirees and Affected Beneficiaries without just compensation.

12 38. In the absence of such injunctive relief issued pursuant to law, the
13 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

14 39. The successful prosecution of this Count will entitle Plaintiffs/Petitioners
15 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

16 **Count III [Deprivation of Property Without Due Process Of Law In Violation**
17 **Of The California Constitution (Article I, Section 19)]**

18 40. The allegations contained above in paragraphs 1 through 29 are
19 incorporated herein by reference as though set forth in full.

20 41. The enactment of Sections 1504-A, 1510-A, 1511-A and 1512-A
21 paragraph (b) of Measure B, abrogating and/or impairing vested contractual rights of the
22 Affected Retirees and Affected Beneficiaries, constitutes a deprivation of property without due
23 process of law, in violation of Article I, Section 7 of the California Constitution.

24 42. Unless and until enjoined by this Court, Defendants/Respondents, and
25 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A
26 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected
27 Beneficiaries by depriving them of their property without due process of law.

28 43. No plain, adequate or complete remedy at law is available to

1 Plaintiffs/Petitioners to prevent the deprivation of the property of the Affected Retirees and
2 Affected Beneficiaries without due process of law.

3 44. In the absence of such injunctive relief issued pursuant to law, the
4 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

5 45. The successful prosecution of this Count will entitle Plaintiffs/Petitioners
6 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

7 **Count IV [Violation Of Separation of Powers Under The**
8 **California Constitution (Article III, Section 3)]**

9 46. The allegations contained above in paragraphs 1 through 29 are
10 incorporated herein by reference as though set forth in full.

11 47. Section 1515-A of Measure B, entitled "Severability" states in pertinent
12 part:

13 "(b) If any ordinance adopted pursuant to the Act is held to be invalid,
14 unconstitutional or otherwise unenforceable by a final judgment, the
15 matter shall be referred to the City Council for determination as to
16 whether to amend the ordinance consistent with the judgment, or
17 whether to determine the section severable and ineffective."

18 48. Insofar as Section 1515-A of Measure B is interpreted in essence to give
19 the City Council judicial power to decide the appropriate manner of relief to be provided upon
20 a judgment that any portion of Measure B is invalid, unconstitutional or otherwise
21 unenforceable, it constitutes a violation of the separation of powers between the legislative,
22 executive, and judicial branches under Article III, Section 3 of the California Constitution.

23 49. Unless and until enjoined by this Court, Defendants/Respondents, and
24 each of them, will implement and enforce Section 1515-A of Measure B by giving the City
25 Council judicial powers in violation of the separation of powers between the legislative,
26 executive, and judicial branches under Article III, Section 3 of the California Constitution.

27 50. No plain, adequate or complete remedy at law is available to
28 Plaintiffs/Petitioners to prevent the violation of the separation of powers between the

1 legislative, executive, and judicial branches under Article III, Section 3 of the California
2 Constitution.

3 51. In the absence of such injunctive relief issued pursuant to law, the
4 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

5 52. The successful prosecution of this Count will entitle Plaintiffs/Petitioners
6 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

7 **Count V [Violation of California Pension Protection Act**
8 **(Article XVI, Section 17)]**

9 53. The allegations contained above in paragraphs 1 through 29, are
10 incorporated herein by reference as though set forth in full.

11 54. Section 1513-A of Measure B, entitled "Actuarial Soundness (for both
12 pension and retiree healthcare plans)" states in pertinent part:

13 "(c) In setting the actuarial assumptions for the plans, valuing the
14 liability of the plans, and determining the contributions required to fund
15 the plans, the objectives of the City's retirement boards shall be to:

16 (i) achieve and maintain full funding of the plans using at
17 least a median economic planning scenario. The likelihood of
18 favorable plan experience should be greater than the likelihood of
19 unfavorable plan experience; and

20 (ii) ensure fair and equitable treatment for current and future
21 plan members and taxpayers with respect to the costs of the plans, and
22 minimize any intergenerational transfer of costs."

23 55. By enacting Section 1513-A, paragraph (c) of Measure B, the City has
24 violated Article XVI, Section 17 of the California Constitution because it compromises the
25 Board's fiduciary duties to Affected Retirees and Affected Beneficiaries by compelling the
26 Board to consider equally the City's residents and taxpayers in making determinations affecting
27 the Plan.

28 56. Unless and until enjoined by this Court, Defendants/Respondents, and
each of them, will enforce Section 1513-A paragraph (c) of Measure B and thereby
compromise the Board's fiduciary duties to Affected Retirees and Affected Beneficiaries by

1 compelling the Board to consider equally the City's residents and taxpayers in making
2 determinations affecting the Plan, in violation of Article XVI, Section 17 of the California
3 Constitution,

4 57. No plain, adequate or complete remedy at law is available to
5 Plaintiffs/Petitioners to prevent the compromising of the Board's fiduciary duties to Affected
6 Retirees and Affected Beneficiaries under Article XVI, Section 17 of the California
7 Constitution.

8 58. In the absence of such injunctive relief issued pursuant to law, the
9 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

10 59. The successful prosecution of this Count will entitle Plaintiffs/Petitioners
11 to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

12 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

13 60. The allegations contained above in Paragraphs 1 through 29, and in
14 Paragraphs 35, 41, 47, 48, 54 and 55 are incorporated herein by reference as though set forth in
15 full.

16 61. An actual controversy has arisen and now exists between
17 Plaintiffs/Petitioners, on the one hand, and Defendants/Respondents, on the other hand,
18 concerning the rights of the Affected Retirees and Affected Beneficiaries and the respective
19 duties and obligations of Defendants/Respondents.

20 Plaintiffs/Petitioners contend that Sections 1504-A, 1510-A, 1511-A and
21 1512-A paragraph (b) of Measure B: (a) violate Article I, Sections 7, 9 and 19 of the California
22 Constitution as to the Affected Retirees and Affected Beneficiaries in that Sections 1504-A,
23 1510-A, 1511-A and 1512-A paragraph (b) of Measure B abrogate and/or substantially impair
24 vested contractual rights, and (b) abrogate and/or substantially impair entitlements created by
25 the application of the doctrine of promissory estoppel. Conversely, Defendants/Respondents
26 contend that Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph (b) of Measure B do not
27 violate Article I, Sections 7, 9 and 19 of the California Constitution or improperly impact
28 Affected Retirees or Affected Beneficiaries.

1 Plaintiffs/Petitioners further contend that Section 1515-A of Measure B
2 constitutes a violation of the separation of powers between the legislative, executive, and
3 judicial branches under Article III, Section 3 of the California Constitution. Conversely,
4 Defendants/Respondents contend that Section 1515-A of Measure B does not constitute a
5 violation of the separation of powers between the legislative, executive, and judicial branches
6 under Article III, Section 3 of the California Constitution.

7 Finally, Plaintiffs/Petitioners contend that Section 1513-A, paragraph (c)
8 of Measure B constitutes a violation of Article XVI, Section 17 of the California Constitution
9 because it compromises the Board's fiduciary duties to Affected Retirees and Affected
10 Beneficiaries by compelling the Board to consider equally the City's residents and taxpayers in
11 making determinations affecting the Plan. Conversely, Defendants/Respondents contend that
12 1513-A, paragraph (c) of Measure B does not constitute a violation of Article XVI, Section 17
13 of the California Constitution.

14 62. Pursuant to California Code of Civil Procedure Section 1060,
15 Plaintiffs/Petitioners desire a judicial determination of this controversy and a declaration that
16 Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph (b) of Measure B violate Article I,
17 Sections 7, 9 and 19 of the California Constitution as to the Affected Retirees and Affected
18 Beneficiaries; that Section 1515-A constitutes a violation of the separation of powers between
19 the legislative, executive, and judicial branches under Article III, Section 3 of the California
20 Constitution; and that Section 1513-A, paragraph (c) of Measure B constitutes a violation of
21 Article XVI, Section 17 of the California Constitution.

22 63. Such a judicial declaration is necessary and appropriate at this time
23 under the circumstances in order that the Affected Retirees, Affected Beneficiaries,
24 Plaintiffs/Petitioners and Defendants/Respondents may ascertain their respective rights.

25 64. The successful prosecution of this Cause of Action will, therefore, entitle
26 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
27 Civil Procedure.

28 ///

1 **THIRD CAUSE OF ACTION FOR PETITION FOR WRIT OF MANDATE**

2 65. The allegations contained above in Paragraphs 1 through 12, and in
3 Paragraphs 17, 18, 19, 24, 25, 28 and 29 are incorporated herein by reference as though set
4 forth in full.

5 66. Unless the City is commanded by this Court to set aside any action it
6 takes implementing and enforcing Section 1511-A of Measure B and to return to the SRBR any
7 and all monies transferred out of the SRBR, the Affected Retirees and Affected Beneficiaries
8 will suffer great and irreparable injury in that they will be deprived of their vested contractual
9 rights as described above in violation of the Contract Clause of the California Constitution and
10 the entitlements created by the application of the doctrine of promissory estoppel described
11 above.

12 67. There are no administrative remedies available to Plaintiffs/Petitioners to
13 compel the City to rescind action that may be taken to implement and enforce Section 1511-A
14 of Measure B by transferring monies out of the SRBR which otherwise would be available for
15 distributions to Affected Retirees and Affected Beneficiaries, as described above.
16 Consequently, Plaintiffs/Petitioners have exhausted all available remedies.

17 68. Plaintiffs/Petitioners do not have an adequate remedy at law in that the
18 harm posed by any action of the City in implementing and enforcing Section 1511-A of
19 Measure B by transferring monies out of the SRBR which otherwise would be available for
20 distributions is a continuing one, and the relief requested cannot be measured or satisfied by an
21 award of monetary damages alone.

22 69. The successful prosecution of this Cause of Action will entitle
23 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
24 Civil Procedure.

25 WHEREFORE, Plaintiffs/Petitioners request that this Court:

26 A. Issue a Permanent Injunction enjoining Defendants/Respondents and
27 each of them from in any way implementing or enforcing Sections 1504-A, 1510-A,
28 1511-A, 1512-A paragraph (b), 1513-A paragraph (c), and 1515-A of Measure B as to

1 the Affected Retirees and Affected Beneficiaries;

2 B. Declare that Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph
3 (b) of Measure B substantially impair and/or abrogate (a) vested contractual rights of
4 the Affected Retirees and Affected Beneficiaries in violation of the Contract Clause of
5 the California Constitution and (b) entitlements created by the application of the
6 doctrine of promissory estoppel;

7 C. Declare that Section 1515-A of Measure B violates Article III, Section 3
8 of the California Constitution;

9 D. Declare that Section 1513-A paragraph (c), of Measure B violates Article
10 XVI, Section 17 of the California Constitution

11 E. Issue its Peremptory Writ of Mandate (1) commanding the City to set
12 aside any action it has taken implementing and enforcing Section 1511-A of Measure B
13 by transferring monies out of the SRBR so as to prevent further distributions; and (2) to
14 return those monies to the SRBR to be available for distributions to Affected Retirees
15 and Affected Beneficiaries.

16 F. Award Plaintiffs/Petitioners their costs of suit;

17 G. Award Plaintiffs/Petitioners reasonable attorneys' fees in accordance
18 with California Code of Civil Procedure Section 1021.5; and,

19 H. Award such other and further relief as the Court deems proper.

20 Respectfully submitted,

21 SILVER, HADDEN, SILVER, WEXLER & LEVINE

22
23 DATED: October 5, 2012

24 By: 
STEPHEN H. SILVER

25 Attorneys for Plaintiffs/Petitioners SAN JOSE
26 RETIRED EMPLOYEES ASSOCIATION,
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EXHIBIT 2

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Employees Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

SAN JOSE RETIRED EMPLOYEES) Case No. 1-12-CV-233660
ASSOCIATION)
) Consolidated with Case Nos.
Plaintiff/Petitioner,) 1-12-CV-225926 (Lead case), 1-12-CV-
) 225928, 1-12-CV-226574,
vs.) 1-12-CV-227864 and 1-12-CV-226570
)
CITY OF SAN JOSE; DOES 1 through 50,) FIRST AMENDED COMPLAINT FOR
inclusive,) INJUNCTION AND DECLARATORY
) RELIEF AND VERIFIED PETITION FOR
Defendants/Respondent.) WRIT OF MANDATE [CCP 1085]
)
BOARD OF ADMINISTRATION FOR) [Unlimited Jurisdiction]
THE FEDERATED CITY EMPLOYEES)
RETIREMENT SYSTEM,)
)
Real Party in Interest.)
)
)
)
)

1 INTRODUCTION

2 By this action, Plaintiff/Petitioner the San Jose Retired Employees Association
3 seeks injunctive, declaratory and writ relief to invalidate recent amendments to the San Jose
4 City Charter as violations of the retired members' vested rights. Specifically,
5 Plaintiff/Petitioner challenges certain provisions of "The Sustainable Retirement Benefits and
6 Compensation Act" ("Measure B") passed by the electors of the City of San Jose on June 5,
7 2012.

8 A. PARTIES

9 1. At all times herein mentioned, Defendant/Respondent City of San Jose
10 (the "City") was, and now is, a municipal corporation of the State of California that operates
11 pursuant to the authority of the California Constitution and the City Charter of the City of San
12 Jose (the "City Charter").

13 2. At all times mentioned herein, Real Party in Interest Board of
14 Administration for the Federated City Employees Retirement System ("the Board") was, and
15 now is, the entity whose members are appointed by the City Council to manage, administer and
16 control the Federated City Employees Retirement System (the "Plan"). Pursuant to Article
17 XVI, Section 17(a) of the California Constitution, the Board has a fiduciary responsibility to
18 administer the Plan in a manner that will ensure prompt delivery of benefits and related
19 services to the participants and other beneficiaries. According to Article XVI, Section 17(b) of
20 the California Constitution the Board must discharge its "duties with respect to the system
21 solely in the interest of, and for the exclusive purposes of providing benefits to, participants and
22 their beneficiaries, minimizing employer contributions thereto, and defraying reasonable
23 expenses of administering the system." However the Board's "duty to its participants and their
24 beneficiaries shall take precedence over any other duty."

25 3. At all times herein mentioned, Plaintiff/Petitioner San Jose Retired
26 Employees Association ("SJREA") was, and now is, an organization composed of retired
27 employees of the City who are members of the Plan ("Affected Retirees"). SJREA brings this
28 action in a representative capacity to enforce vested rights accrued to the Affected Retirees, as

1 well as qualifying spouses, domestic partners and other eligible beneficiaries of Affected
2 Retirees and eligible beneficiaries of deceased employees (hereinafter collectively referred to as
3 "Affected Beneficiaries").

4 4. At all times relevant herein, Defendants/Respondents designated Does 1
5 - 50 were the agents, servants, and employees of the City and in doing the things hereinafter
6 alleged were acting within the scope of their authority with the permission and consent of the
7 City. Plaintiff will amend this Complaint to allege the true names and capacities of Does 1 -
8 50, inclusive, when ascertained.

9 **B. RETIREMENT BENEFITS REQUIRED BY THE CITY CHARTER**

10 5. Article XV, Section 1500 of the City Charter requires the City Council to
11 establish and maintain a retirement plan for all officers and employees of the City. A true and
12 correct copy of Article XV, Section 1500 of the City Charter is attached hereto as Exhibit A
13 and incorporated herein by reference as though set forth in full.

14 6. While City Charter Section 1500 gives the City Council the ability to "at
15 any time, or from time to time, amend or otherwise change any retirement plan or plans or
16 adopt or establish a new or different plan or plans for all or any officers or employees"
17 (emphasis added), such ability is limited to officers or employees and thus excludes retired
18 persons and their beneficiaries such as Affected Retirees and Affected Beneficiaries.
19 Therefore, any new or different plans for the Affected Retirees or the Affected Beneficiaries
20 that provide reduced or less advantageous benefits than those which were established during
21 the Affected Retirees' employment may not be adopted or established.

22 **C. RETIREMENT BENEFITS OF AFFECTED RETIREES AND AFFECTED**
23 **BENEFICIARIES DESCRIBED IN THE SAN JOSE MUNICIPAL CODE**

24 7. Pursuant to its authority under the California Constitution and the
25 requirements of Article XV, Section 1500 of the City Charter, the City Council established the
26 Plan as a defined benefit plan. The provisions of the Plan are set out in Chapters 3.16, 3.20,
27 3.24 and 3.28 of the San Jose Municipal Code ("SJMC"). A true and correct copy of the Plan
28 is attached as Exhibit B and incorporated herein by reference as though set forth in full.

1 Membership in the Plan is mandatory for persons employed by the City in the positions held by
2 Affected Retirees and was mandatory for all Affected Retirees during their employment with
3 the City. The Plan pays a monthly retirement allowance to the Affected Retirees and pays a
4 monthly survivorship allowance to the Affected Beneficiaries.

5 8. Benefits payable under the Plan are funded by contributions from the
6 active Plan members and the City. Contribution rates are determined by the Board and are
7 adjusted from time to time based upon valuations performed by the Board's actuaries. During
8 their employment with the City, Affected Retirees made contributions for retirement benefits as
9 required by the Plan and as set by the Board.

10 9. Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16,
11 which became effective on or about September 18, 1984, Affected Retirees who were
12 employed on or after that date, their Affected Beneficiaries, and those persons who became
13 Affected Beneficiaries on or after that date who met the requirements set forth therein became
14 eligible to participate in a medical insurance plan sponsored by the City (the "City's Retiree
15 Medical Plan") with respect to which the Plan pays all or a prescribed portion of the premium
16 upon and following their retirement or, in the case of a survivor, following the death of the
17 member. Those Affected Retirees who were employed on or after the enactment of the City's
18 Retiree Medical Plan, their Affected Beneficiaries and those persons who became Affected
19 Beneficiaries on or after such enactment who met the minimum requirements set forth in the
20 Plan earned a vested contractual right to participate in the City's Retiree Medical Plan
21 following the Affected Retirees' retirement or, in the case of a survivor, following the death of
22 the member.

23 10. Pursuant to SJMC Chapter 3.24, Part 24 and SJMC Chapter 3.28, Part
24 17, which became effective on or about June 3, 1986, Affected Retirees who were employed on
25 or after that date, their Affected Beneficiaries and those persons who became Affected
26 Beneficiaries on or after that date who met the requirements set forth therein became eligible to
27 participate in a dental insurance plan sponsored by the City (the "City's Retiree Dental Plan")
28 with respect to which the Plan pays all of the premium upon and following their retirement or,

1 in the case of a survivor, following the death of the member. Those Affected Retirees who
2 were employed on or after the enactment of the City's Retiree Dental Plan, their Affected
3 Beneficiaries and those persons who became Affected Beneficiaries on or after such enactment
4 who met the minimum requirements set forth in the Plan earned a vested contractual right to
5 participate in the City's Retiree Dental Plan following the Affected Retirees' retirement or, in
6 the case of a survivor, following the death of the member.

7 11. Medical and dental benefits payable under the Plan are funded by prior
8 contributions from Affected Retirees, contributions from the active Plan members, and
9 contributions from the City at rates determined by the Board. During their employment with
10 the City on or after the enactment of the City's Retiree Medical Plan, as described above in
11 Paragraph 9, Affected Retirees made contributions for medical benefits as required by the Plan
12 and as set by the Board. During their employment with the City on or after the enactment of
13 the City's Retiree Dental Plan, as described above in Paragraph 10, Affected Retirees made
14 contributions for dental benefits as required by the Plan and as set by the Board. Similarly, the
15 members of the Plan whose survivors became Affected Beneficiaries on or after such
16 enactments also made contributions for medical and dental benefits as required by the Plan and
17 as set by the Board.

18 12. Effective on or about April 1, 1970, the City Council adopted SJMC
19 Chapter 3.44 to provide cost-of-living adjustments ("COLAs") for retirement allowances and
20 survivorship allowances based upon percentage changes in the applicable Consumer Price
21 Index. Effective on or about April 1, 2006, SJMC Chapter 3.44 was amended by the enactment
22 of Section 3.44.160 to provide for a guaranteed flat annual COLA increase of 3% for members
23 of the Plan and survivors of members. The Affected Retirees and the Affected Beneficiaries
24 met the eligibility requirements set forth in Chapter 3.44 and therefore the Affected Retirees
25 and the Affected Beneficiaries earned a vested contractual right to the COLAs described in
26 Chapter 3.44. A true and correct copy of Chapter 3.44 is attached hereto as Exhibit C and
27 incorporated herein by reference as though set forth in full.
28

1 13. On or about June 3, 1986, SJMC Sections 3.28.200, et seq. and
2 particularly Section 3.28.340, were enacted to establish the Supplemental Retiree Benefit
3 Reserve ("SRBR") within the San Jose Federated Employees City Retirement Fund (the
4 "Fund") to provide for supplemental distributions to eligible members and survivors. Those
5 Affected Retirees who were employed and those persons who became Affected Beneficiaries
6 on or after these enactments met the eligibility requirements set forth in SJMC Section
7 3.28.200, et seq. and therefore those Affected Retirees and Affected Beneficiaries earned a
8 vested contractual right to all benefits provided by the Fund including but not limited to
9 distributions from the SRBR.

10 14. Since at least 1970, and continuing thereafter, the City, through
11 numerous discretionary actions of the City Council, has expressly and impliedly assured
12 Affected Retirees and Affected Beneficiaries that to the extent the COLA set out in SJMC
13 Chapter 3.44 was inadequate to allow the payments to Affected Retirees and Affected
14 Beneficiaries to keep up with the changes in the applicable consumer price index during high
15 inflationary periods, the City Council would have the discretion to grant additional pension
16 increases. The Affected Retirees and Affected Beneficiaries met the eligibility requirements
17 set forth in Chapter 3.44. The Affected Retirees and the Affected Beneficiaries earned a vested
18 contractual right to have the City Council maintain its discretion to grant additional pension
19 increases.

20 15. The benefits as described above in paragraphs 7 through 14 became
21 vested when the Affected Retirees commenced performing services as employees of the City or
22 when the Affected Retirees first performed services for the City after a benefit or improved
23 benefit was enacted during their employment. Further, the Affected Retirees continued to rely
24 on the existence of those vested rights in continuing their employment with the City.

25 ///
26 ///
27 ///
28 ///

1 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

2 **Count I [Violation of the Contract Clause of the California Constitution**
3 **(Article I, Section 9)]**

4 16. The allegations contained above in paragraphs 1 through 15 are
5 incorporated herein by reference as though set forth in full.

6 17. On June 5, 2012, the citizens of the City passed Measure B which
7 abrogates and/or substantially impairs the vested contractual rights of the Affected Retirees and
8 Affected Beneficiaries described above in paragraphs 7 through 15. A true and correct copy of
9 Measure B is attached hereto as Exhibit D and incorporated herein by reference as though set
10 forth in full. Measure B became effective immediately upon its passage and includes a goal
11 that any implementing ordinances "shall become effective no later than September 30, 2012."

12 18. Section 1510-A of Measure B, entitled "Emergency Measures to Contain
13 Retiree Cost of Living Adjustments," states:

14 "If the City Council adopts a resolution declaring a fiscal and
15 service level emergency, with a finding that it is necessary to suspend
16 increases in cost of living payments to retirees the City may adopt the
17 following emergency measures, applicable to retirees (current and future
18 retirees employed as of the effective date of this Act):

19 (a) Cost of living adjustments ("COLAs") shall be
20 temporarily suspended for all retirees in whole or in part for up to five
21 years. The City Council shall restore COLAs prospectively (in whole or
22 in part), if it determines that the fiscal emergency has eased sufficiently
23 to permit the City to provide essential services protecting the health and
24 well-being of City residents while paying the cost of such COLAs.

25 (b) In the event the City Council restores all or part of the
26 COLA, it shall not exceed 3% for Current Retirees and Current
27 Employees who did not opt into the VEP and 1.5% for Current
28 Employees who opted into the VEP [the One Time Voluntary Election
Program set forth in Section 1507-A of Measure B] and 1.5% for
employees in Tier 2."

19. By allowing for the suspension of applicable entitled COLAs, Section
1510-A of Measure B abrogates and/or substantially impairs the unconditional vested
contractual rights of the Affected Retirees who were employed on or after the enactment of

1 SJMC Chapter 3.44, those persons who became Affected Beneficiaries subsequent to such
2 enactment and their Affected Beneficiaries to receive annual COLAs as set forth above in
3 paragraph 16.

4 20. Section 1511-A of Measure B, entitled "Supplemental Payments to
5 Retirees" states:

6 "The Supplemental Retiree Benefit Reserve ("SRBR") shall be
7 discontinued, and the assets returned to the appropriate retirement trust
8 fund. Any supplemental payments to retirees in addition to the benefits
9 authorized herein shall not be funded from plan assets."

10 21. In the event that Section 1511-A of Measure B is applied to the vested
11 contractual rights of the Affected Retirees and the Affected Beneficiaries to receive
12 distributions from the SRBR as set forth above in paragraphs 13 and 14, those vested
13 contractual rights and entitlements will have been abrogated and/or impaired by the City as a
14 result of that action.

15 22. Section 1512-A of the Act, entitled "Retiree Healthcare" states in
16 pertinent part:

17 "(b) Reservation of Rights. No retiree healthcare plan or benefit shall
18 grant any vested right, as the City retains its power to amend, change or
19 terminate any plan provision."

20 23. To the extent the City interprets and applies Section 1512-A paragraph
21 (b) of Measure B to alter the status of the Affected Retirees' and Affected Beneficiaries' rights
22 (a) to participate in the City's Retiree Medical Plan and/or the City's Retiree Dental Plan and
23 (b) to have the Retirement Plan pay all or a prescribed portion of the premiums from vested
24 contractual rights to non-vested rights, Section 1512-A, paragraph (b) of Measure B abrogates
25 and/or substantially impairs the vested contractual rights of Affected Retirees and Affected
26 Beneficiaries to participate in the City Medical Plan and the City Dental Plan and have the Plan
27 pay all or a prescribed portion of the premiums.

28

1 24. Section 1504-A of Measure B, entitled "Reservation of Voter Authority"
2 states in pertinent part:

3 "Neither the City Council, nor any arbitrator appointed pursuant to
4 Charter Section 1111, shall have the authority to agree to or provide
5 any increase in pension and/or retiree health care benefits without voter
6 approval, except that the Council shall have the authority to adopt Tier
7 2 pension benefit plans within the limits set forth herein."

8 25. In the event that Section 1504-A of Measure B is interpreted by the City
9 to apply to and is applied to the Affected Retirees' and Affected Beneficiaries' vested
10 contractual right to receive additional Council-approved benefits, including but not limited to
11 distributions from the SRBR, those vested contractual rights will have been abrogated and/or
12 impaired by the City as a result of that action.

13 26. Unless and until enjoined by this Court, Defendants/Respondents, and
14 each of them, will implement and enforce Sections 1504-A, 1510-A, 1511-A and 1512-A
15 paragraph (b) of Measure B to the detriment of the Affected Retirees and Affected
16 Beneficiaries by abrogating and/or impairing their vested contractual rights in violation of
17 Article I, Section 9 of the California Constitution.

18 27. No plain, adequate or complete remedy at law is available to SJREA to
19 prevent the abrogation and/or impairment of the vested contractual rights of the Affected
20 Retirees and Affected Beneficiaries.

21 28. In the absence of such injunctive relief issued pursuant to law, the
22 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

23 29. The successful prosecution of this Count will entitle SJREA to an award
24 of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

25 **Count II [Taking Without Just Compensation In Violation**
26 **Of The California Constitution (Article I, Section 19)]**

27 30. The allegations contained above in paragraphs 1 through 25 are
28 incorporated herein by reference as though set forth in full.

1 without due process of law.

2 40. In the absence of such injunctive relief issued pursuant to law, the
3 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

4 41. The successful prosecution of this Count will entitle SJREA to an award
5 of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

6 **Count IV [Violation Of Separation of Powers Under The**
7 **California Constitution (Article III, Section 3)]**

8 42. The allegations contained above in paragraphs 1 through 25 are
9 incorporated herein by reference as though set forth in full.

10 43. Section 1515-A of Measure B, entitled "Severability" states in pertinent
11 part:

12 "(b) If any ordinance adopted pursuant to the Act is held to be invalid,
13 unconstitutional or otherwise unenforceable by a final judgment, the
14 matter shall be referred to the City Council for determination as to
15 whether to amend the ordinance consistent with the judgment, or
16 whether to determine the section severable and ineffective."

17 44. Insofar as Section 1515-A of Measure B is interpreted in essence to give
18 the City Council judicial power to decide the appropriate manner of relief to be provided upon
19 a judgment that any portion of Measure B is invalid, unconstitutional or otherwise

20 unenforceable, it constitutes a violation of the separation of powers between the legislative,
21 executive, and judicial branches under Article III, Section 3 of the California Constitution.

22 45. Unless and until enjoined by this Court, Defendants/Respondents, and
23 each of them, will implement and enforce Section 1515-A of Measure B by giving the City
24 Council judicial powers in violation of the separation of powers between the legislative,
25 executive, and judicial branches under Article III, Section 3 of the California Constitution.

26 46. No plain, adequate or complete remedy at law is available to SJREA to
27 prevent the violation of the separation of powers between the legislative, executive, and judicial
28 branches under Article III, Section 3 of the California Constitution.

1 47. In the absence of such injunctive relief issued pursuant to law, the
2 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

3 48. The successful prosecution of this Count will entitle SJREA to an award
4 of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

5 **Count V [Violation of California Pension Protection Act**

6 **(Article XVI, Section 17)]**

7 49. The allegations contained above in paragraphs 1 through 25 are
8 incorporated herein by reference as though set forth in full.

9 50. Section 1513-A of Measure B, entitled "Actuarial Soundness (for both
10 pension and retiree healthcare plans)" states in pertinent part:

11 “(c) In setting the actuarial assumptions for the plans, valuing the
12 liability of the plans, and determining the contributions required to fund
13 the plans, the objectives of the City’s retirement boards shall be to:

14 (i) achieve and maintain full funding of the plans using at
15 least a median economic planning scenario. The likelihood of
16 favorable plan experience should be greater than the likelihood of
unfavorable plan experience; and

17 (ii) ensure fair and equitable treatment for current and future
18 plan members and taxpayers with respect to the costs of the plans, and
minimize any intergenerational transfer of costs.”

19 51. By enacting Section 1513-A, paragraph (c) of Measure B, the City has
20 violated Article XVI, Section 17 of the California Constitution because it compromises the
21 Board’s fiduciary duties to Affected Retirees and Affected Beneficiaries by compelling the
22 Board to consider equally the City’s residents and taxpayers in making determinations affecting
23 the Plan.

24 52. Unless and until enjoined by this Court, Defendants/Respondents, and
25 each of them, will enforce Section 1513-A paragraph (c) of Measure B and thereby
26 compromise the Board’s fiduciary duties to Affected Retirees and Affected Beneficiaries by
27 compelling the Board to consider equally the City’s residents and taxpayers in making
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1 determinations affecting the Plan, in violation of Article XVI, Section 17 of the California
2 Constitution,

3 53. No plain, adequate or complete remedy at law is available to SJREA to
4 prevent the compromising of the Board's fiduciary duties to Affected Retirees and Affected
5 Beneficiaries under Article XVI, Section 17 of the California Constitution.

6 54. In the absence of such injunctive relief issued pursuant to law, the
7 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

8 55. The successful prosecution of this Count will entitle SJREA to an award
9 of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

10 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

11 56. The allegations contained above in Paragraphs 1 through 25, and in
12 Paragraphs 31, 37, 43, 44, 50 and 51 are incorporated herein by reference as though set forth in
13 full.

14 57. An actual controversy has arisen and now exists between SJREA, on the
15 one hand, and Defendants/Respondents, on the other hand, concerning the rights of the
16 Affected Retirees and Affected Beneficiaries and the respective duties and obligations of
17 Defendants/Respondents.

18 SJREA contends that Sections 1504-A, 1510-A, 1511-A and 1512-A
19 paragraph (b) of Measure B violate Article I, Sections 7, 9 and 19 of the California Constitution
20 as to the Affected Retirees and Affected Beneficiaries in that Sections 1504-A, 1510-A, 1511-
21 A and 1512-A paragraph (b) of Measure B abrogate and/or substantially impair vested
22 contractual rights. Conversely, Defendants/Respondents contend that Sections 1504-A, 1510-
23 A, 1511-A and 1512-A paragraph (b) of Measure B do not violate Article I, Sections 7, 9 and
24 19 of the California Constitution or improperly impact Affected Retirees or Affected
25 Beneficiaries.

26 SJREA further contends that Section 1515-A of Measure B constitutes a
27 violation of the separation of powers between the legislative, executive, and judicial branches
28 under Article III, Section 3 of the California Constitution. Conversely,

1 Defendants/Respondents contend that Section 1515-A of Measure B does not constitute a
2 violation of the separation of powers between the legislative, executive, and judicial branches
3 under Article III, Section 3 of the California Constitution.

4 Finally, SJREA contends that Section 1513-A, paragraph (c) of Measure
5 B constitutes a violation of Article XVI, Section 17 of the California Constitution because it
6 compromises the Board's fiduciary duties to Affected Retirees and Affected Beneficiaries by
7 compelling the Board to consider equally the City's residents and taxpayers in making
8 determinations affecting the Plan. Conversely, Defendants/Respondents contend that 1513-A,
9 paragraph (c) of Measure B does not constitute a violation of Article XVI, Section 17 of the
10 California Constitution.

11 58. Pursuant to California Code of Civil Procedure Section 1060, SJREA
12 desires a judicial determination of this controversy and a declaration that Sections 1504-A,
13 1510-A, 1511-A and 1512-A paragraph (b) of Measure B violate Article I, Sections 7, 9 and 19
14 of the California Constitution as to the Affected Retirees and Affected Beneficiaries; that
15 Section 1515-A constitutes a violation of the separation of powers between the legislative,
16 executive, and judicial branches under Article III, Section 3 of the California Constitution; and
17 that Section 1513-A, paragraph (c) of Measure B constitutes a violation of Article XVI, Section
18 17 of the California Constitution.

19 59. Such a judicial declaration is necessary and appropriate at this time
20 under the circumstances in order that the Affected Retirees, Affected Beneficiaries, SJREA and
21 Defendants/Respondents may ascertain their respective rights.

22 60. The successful prosecution of this Cause of Action will, therefore, entitle
23 SJREA to an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil
24 Procedure.

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1 **THIRD CAUSE OF ACTION FOR PETITION FOR WRIT OF MANDATE**

2 61. The allegations contained above in Paragraphs 1 through 8, and
3 Paragraphs 13, 14, 15, 20, 21, 24 and 25 are incorporated herein by reference as though set
4 forth in full.

5 62. Unless the City is commanded by this Court to set aside any action it
6 takes implementing and enforcing Section 1511-A of Measure B and to return to the SRBR any
7 and all monies transferred out of the SRBR, the Affected Retirees and Affected Beneficiaries
8 will suffer great and irreparable injury in that they will be deprived of their vested contractual
9 rights as described above in violation of the Contract Clause of the California Constitution.

10 63. There are no administrative remedies available to SJREA to compel the
11 City to rescind action that may be taken to implement and enforce Section 1511-A of Measure
12 B by transferring monies out of the SRBR which otherwise would be available for distributions
13 to Affected Retirees and Affected Beneficiaries, as described above. Consequently, SJREA has
14 exhausted all available remedies.

15 64. SJREA does not have an adequate remedy at law in that the harm posed
16 by any action of the City in implementing and enforcing Section 1511-A of Measure B by
17 transferring monies out of the SRBR which otherwise would be available for distributions is a
18 continuing one, and the relief requested cannot be measured or satisfied by an award of
19 monetary damages alone.

20 65. The successful prosecution of this Cause of Action will entitle SJREA to
21 an award of attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

22 WHEREFORE, SJREA requests that this Court:

23 A. Issue a Permanent Injunction enjoining Defendants/Respondents and
24 each of them from in any way implementing or enforcing Sections 1504-A, 1510-A,
25 1511-A, 1512-A paragraph (b), 1513-A paragraph (c), and 1515-A of Measure B as to
26 the Affected Retirees and Affected Beneficiaries;

27 B. Declare that Sections 1504-A, 1510-A, 1511-A and 1512-A paragraph
28 (b) of Measure B substantially impair and/or abrogate vested contractual rights of the

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Affected Retirees and Affected Beneficiaries in violation of the Contract Clause of the California Constitution;

C. Declare that Section 1515-A of Measure B violates Article III, Section 3 of the California Constitution;

D. Declare that Section 1513-A paragraph (c), of Measure B violates Article XVI, Section 17 of the California Constitution

E. Issue its Peremptory Writ of Mandate (1) commanding the City to set aside any action it has taken implementing and enforcing Section 1511-A of Measure B by transferring monies out of the SRBR so as to prevent further distributions; and (2) to return those monies to the SRBR to be available for distributions to Affected Retirees and Affected Beneficiaries.

F. Award SJREA its costs of suit;

G. Award SJREA reasonable attorneys' fees in accordance with California Code of Civil Procedure Section 1021.5; and,

H. Award such other and further relief as the Court deems proper.

Respectfully submitted,

SILVER, HADDEN, SILVER, WEXLER & LEVINE

DATED: July 10, 2013

By: *Stephen H. Silver*

STEPHEN H. SILVER

Attorneys for Plaintiff/Petitioner SAN JOSE
RETIREED EMPLOYEES ASSOCIATION

EXHIBIT 3

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(ENDORSED)
FILED
FEB 20 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
Ann Vizconde

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,
Plaintiff,
vs.
CITY OF SAN JOSE, et al.,
Defendants.

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

AND CONSOLIDATED ACTIONS AND
RELATED CROSS-COMPLAINT

STATEMENT OF DECISION
(Code of Civil Procedure 632;
Rule of Court 3.1590)

Plaintiffs have challenged the validity of several provisions of the "Sustainable Retirement Benefits and Compensation Act", known as Measure B, a voter-approved amendment to the Charter of the City of San Jose ("the City"). Much like the amici curiae League of California Cities and California State Association of Counties in *Retired Employees Ass'n of Orange County v. County of Orange* (2011) 52 Cal.4th 1171, 1188 ("*REAOC*"), the City here argues that Measure B was "a measured and thoughtful response to an ever-increasing unfunded liability." However, the question before this Court, as was the question before the Supreme Court in *REAOC*, "is one of law, not of policy." The legal question is whether and to what extent Measure B violates vested rights.

1 **I. BACKGROUND AND PROCEDURAL HISTORY**

2 The City is a charter city, with the most recent and operative charter being the 1965
3 Charter. Article XV, section 1500 of the Charter (Ex. 701 at POA007114) requires the City
4 Council to establish and maintain a retirement plan for all officers and employees of the City.
5 The Charter provides for two separate retirement systems (“systems” or “plans”), administered
6 by two different retirement boards: the 1961 Police and Fire Department Plan, covering sworn
7 employees in the City’s police and fire departments, and the 1975 Federated City Employees
8 Retirement Plan, covering “miscellaneous” or “civilian” employees in the City’s workforce.

9 The Charter also specifies certain “minimum benefits” and authorizes the City Council to
10 define the plan benefits and other details concerning plan administration. By ordinances codified
11 in the Municipal Code, the City Council has adopted, and has amended from time to time, the
12 various plan definitions relating to contributions, eligibility, and benefits. As with other defined
13 benefit plans, San Jose pension benefits are generally defined by age, a percentage of final
14 defined salary, and years of service.

15 For many years, the City’s workforce has been mostly unionized, with many employees
16 represented by labor organizations. The labor organizations have collectively bargained with the
17 City over wages, hours and other terms and conditions of employment. When agreements have
18 been reached, they are reduced to writing in labor contracts, referred to as “memoranda of
19 agreements” or “MOAs.” For police and fire employees, the City Charter permits arbitration to
20 resolve bargaining impasses, including disputes about certain pension issues such as pension
21 contribution rates. For civilian employees, bargaining impasses are resolved under the Meyers-
22 Milius-Brown Act, Government Code section 3500, et seq.

23 Beginning in approximately 2008, the City was faced with fiscal challenges precipitated
24 by the recession. Tax and other revenues declined. The City’s retirement costs climbed steeply,
25 driven in part by an overall multi-billion-dollar unfunded liability. In part due to the worldwide
26 stock market decline, the corpus of the retirement funds lost over \$1 billion in a single year. The
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1 unfunded liability was also the result of a larger retiree pool, modified actuarial analyses,
2 enhanced benefits and higher final salaries.

3 Responding to the budget crisis, the City eliminated numerous jobs and reduced City
4 services, including public safety, libraries, community centers, parks and other taxpayer services.
5 The City adopted a fiscal reform plan that called for a variety of cost reduction measures. The
6 fiscal reform plan expressly called for an effort to adjust retirement costs, including a possible
7 charter amendment. The City considered, but did not ultimately adopt, a declaration of fiscal
8 emergency. In March 2010, the City Council voted to place Measure B on the ballot, and on
9 June 5, 2012, approximately 70% of the City's voters enacted Measure B.

10 Measure B contains fifteen sections, and begins with legislative findings. Among other
11 things, the voters found that "[t]he City's ability to provide its citizens with Essential City
12 Services has been and continues to be threatened by budget cuts caused mainly by the climbing
13 costs of employee benefit programs, and exacerbated by the economic crisis." (Section 1501-A)
14 The voters also found that current and projected reductions in service "will endanger the health,
15 safety and well-being of the residents of San Jose." Further, "[w]ithout the reasonable cost
16 containment provided in this Act, the economic viability of the City, and hence, the City's
17 employment benefit programs, will be placed at imminent risk." *Id.*

18 After the election, several lawsuits challenging parts of Measure B were filed on behalf
19 of: (1) the San Jose Police Officers Association ("POA"), representing employees who are
20 members of the 1961 San Jose Police and Fire Department Retirement Plan ("Police and Fire
21 Plan"); (2) the American Federation of State, County, and Municipal Employees, Local 101
22 ("AFSCME"), representing employees who are members of the 1975 Federated City Employees'
23 Retirement Plan ("Federated Plan"); (3) Robert Sapien, Mary Kathleen McCarthy, Thanh Ho,
24 Randy Sekany, and Ken Heredia, who are active and retired members of the Police and Fire Plan
25 (collectively, "Sapien Plaintiffs"); (4) Teresa Harris, Jon Reger, and Moses Serrano, who are
26 active and retired members of the Federated Plan (collectively, "Harris Plaintiffs"); (5) John
27 Mukhar, Dale Dapp, James Atkins, William Buffington, and Kirk Pennington, who are active
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1 and retired members of the Federated Plan (collectively, "Mukhar Plaintiffs"); and (6) the San
2 Jose Retired Employees Association ("REA"). The City also filed its own cross-complaint for
3 declaratory relief. The Sapien Plaintiffs, the Harris Plaintiffs, and the Mukhar Plaintiffs
4 (collectively, "Individual Plaintiffs") were jointly represented at trial.

5 Plaintiffs challenge the following sections of Measure B: Section 1504-A (Reservation
6 of Voter Authority), Section 1506-A (Current Employees), Section 1507-A (One Time
7 Voluntary Election Program ("VEP")), Section 1509-A (Disability Retirements), Section 1510-A
8 (Emergency Measures to Contain Retiree Cost of Living Adjustments), Section 1511-A
9 (Supplemental Payments to Retirees), Section 1512-A (Retiree Healthcare), Section 1513-A
10 (Actuarial Soundness), Section 1514-A (Savings), and Section 1515-A (Severability).

11 The lawsuits were consolidated for trial, and a court trial was held on July 22-26, 2013.
12 The following causes of action went to trial:

13 **Breach of Contract** (POA's Sixth Cause of Action)

14 **Takings Clause**, Cal. Const., art. I, Section 19 (Individual Plaintiffs' Fourth Cause of
15 Action, AFSCME's Third Cause of Action, REA's First Cause of Action, Count II, and Second
16 Cause of Action for Declaratory Relief)

17 **Due Process**, Cal Const., art. I, Section 7 (Individual Plaintiffs' First Cause of Action,
18 AFSCME's Fourth Cause of Action, REA's First Cause of Action, Count III and Second Cause
19 of Action, Declaratory Relief)

20 **Impairment of Contract**, Cal. Const., art. I, Section 9 (POA's First Cause of Action,
21 Individual Plaintiffs' Second Cause of Action, AFSCME's First Cause of Action, REA's First
22 Cause of Action, Count I, and Second Cause of Action for Declaratory Relief)

23 **Freedom of Speech, Right to Petition**, Cal. Const., art. I, Sections 2, 3 (SJPOA's Fourth
24 Cause of Action, AFSCME's Sixth Cause of Action)

25 **Pension Protection Act**, Cal. Const., art. XVI, Section 17 (SJPOA's Eighth Cause of
26 Action, AFSCME's Fifth Cause of Action, REA's First Cause of Action, Count V, Second Cause
27 of Action for Declaratory Relief)
28

1 **Promissory and Equitable Estoppel** (AFSCME's Eighth Cause of Action)

2 **Writ of Mandate** (AFSCME's Eleventh Cause of Action)

3 The City brings the following causes of action for declaratory relief:

4 **Contracts Clause**, Article I, Section 10, United States Constitution

5 **Takings Clause**, 5th and 14th Amendments, United States Constitution

6 **Due Process Clause**, 5th and 14th Amendments, United States Constitution

7 At trial, the parties reached stipulations concerning the admission of numerous exhibits.

8 The parties submitted a stipulation on July 26, 2013, confirming the admission and authenticity
9 of numerous exhibits. The parties also entered into the following substantive stipulations:

10 Severability: All parties agreed that Measure B is severable and that the Court has the
11 authority to adjudicate its legality section by section.

12 New hires: No plaintiff contends that Measure B is illegal as to future employees. Based
13 on this stipulation, the Court finds that the Measure B sections at issue in this case can proceed
14 as to new employees.

15 Bill of attainder: AFSCME dismissed with prejudice its second cause of action for bill of
16 attainder.

17 The POA called four witnesses: Mike Fehr, Pete Salvi and John Robb, current and former
18 POA members, who testified concerning the City's provision of a subsidy in the amount of the
19 premium for the "lowest cost" plan offered City employees; and Bob Leininger, a Federated plan
20 retiree, who testified that he received a retirement system newsletter in the mail.

21 AFSCME called three witnesses: Charles Allen, an AFSCME union representative, who
22 testified concerning union negotiations over contributions for retiree healthcare costs; Margaret
23 Martinez, a Federated retiree, who testified concerning "lowest cost plan"; and Dan Doonan, an
24 AFSCME employee called as a "labor economist," who testified concerning cost of living
25 statistics and other financial topics.

26 The Individual Plaintiffs called actuary Thomas Lowman as an expert witness, who
27 testified about general actuarial principles of government defined-benefit plans.
28

1 REA did not call any witnesses.

2 The City called four witnesses: Sharon Erickson, City Auditor, who testified concerning
3 audit reports on the sustainability of the City's pension system and the need for reform in the
4 disability retirement system; Debra Figone, City Manager, who testified concerning City budget
5 shortfalls and service reductions related to increased retirement costs; Alex Gurza, Deputy City
6 Manager and head of the Office of Employee Relations, who testified concerning City and union
7 labor negotiations over employee pension and retiree health contribution rates, labor contracts
8 and City retirement benefits; and John Bartel, an outside actuarial expert who testified
9 concerning the nature of the SRBR.

10 As of the last scheduled day of trial (July 26, 2013), certain outstanding exhibits
11 remained in dispute and so the Court scheduled the further date of August 26, 2013, to complete
12 the receipt of evidence. Certain parties reached a subsequent stipulation dated August 13, 2013,
13 and all parties withdrew objections concerning the final submission of exhibits. Accordingly, the
14 remaining outstanding exhibits were admitted without objection, the additional trial date of
15 August 26, 2013, was vacated, and the evidence was closed.

16 Pursuant to stipulation and order, all parties on September 10, 2013, simultaneously
17 submitted written closing arguments and proposed statements of decision.

18 Despite the fact that the evidence was closed, the City's post-trial brief attached as
19 Exhibit L an unsigned Proposed Statement of Decision in San Francisco Superior Court Case
20 No. CPF-13-512788. On September 16, 2013, the Individual Plaintiffs objected to the
21 submission of Exhibit L; on September 18, 2013, AFSCME also so objected, and on the same
22 date, SJPOA joined in the Individual Plaintiffs' objections. Because the evidence was closed,
23 and the City did not obtain or seek an order to reopen, the Court will not consider Exhibit L.

24 The parties appeared on October 10, 2013, to address the Court's questions concerning
25 the proposed statements of decision, and the matter was at that time submitted. Pursuant to Code
26 of Civil Procedure section 632 and Rule of Court 3.1590, the Court issued a tentative decision
27 filed on December 20, 2013. Thereafter the parties filed objections and requests for a different
28

1 statement of decision, and on January 31, 2014, the parties appeared to address the Court's
2 questions concerning the objections and requests. At the Court's request, on February 4, 2014,
3 AFSCME filed a brief addressing a question from the January 31, 2014 hearing. The City
4 presented a reply letter on February 11, 2014.

5 **II. ANALYSIS OF RECORD EVIDENCE AND THE LAW**

6 **A. Threshold Legal Principles**

7 **1. Presumption of Statutory Validity**

8 "All presumptions favor the validity of a statute. The court may not declare it invalid
9 unless it is clearly so." *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1102 ("*Tobe*") (1995). The
10 parties generally agree that the challenges to all sections of Measure B are facial challenges, with
11 the exception of the challenges to sections 1512-A(a) and 1512-A(c) which are both facial and
12 as-applied. (Reporter's Transcript ("RT") October 10, 2013, at 87:19-90:21.) In the case of a
13 facial challenge, "petitioners must demonstrate that the act's provisions inevitably pose a present
14 total and fatal conflict with applicable constitutional prohibitions." *Tobe, supra*, 9 Cal.4th at
15 1084, quoting *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-81.

16 **2. Pension Benefits as Vested Rights**

17 " [I]t is presumed that a statutory scheme is not intended to create private contractual or
18 vested rights and a person who asserts the creation of a contract with the state has the burden of
19 overcoming that presumption." *Walsh v. Board of Administration* (1992) 4 Cal.App.4th 682, 697
20 ("*Walsh*"). Generally "legislation in California may be said to create contractual rights when the
21 statutory language or circumstances accompanying its passage 'clearly ... evince a legislative
22 intent to create private rights of a contractual nature enforceable against the [governmental
23 body].'" *REOAC*, 52 Cal.4th at 1187, quoting *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 786.
24 "In California law, a legislative intent to grant contractual rights can be implied from a statute if
25 it contains an unambiguous element of exchange of consideration by a private party for
26 consideration offered by the state." *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d
27 494, 505 (enforcing implied contract concerning funding of retirement benefits).
28

1 “A public employee’s pension constitutes an element of compensation, and a vested
2 contractual right to pension benefits accrues upon acceptance of employment. Such a pension
3 right may not be destroyed, once vested, without impairing a contractual obligation of the
4 employing public entity.” *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863 (Supreme
5 Court issued writ to require Board to set retirement benefits based on statutes in effect during
6 employment); see also *Allen v. City of Long Beach* (1955) 45 Cal.2d 128 (“*Allen/Long*
7 *Beach*”)(replacement of fluctuating benefit system based on salary of current occupant of
8 position with a fixed system based on employee’s highest salary, and contribution increase,
9 impair vested right). The right to earn a pension vests in the sense that it cannot be destroyed by
10 charter amendment even before retirement. *Kern v. City of Long Beach* (1947) 29 Cal.2d 848,
11 855-856 (“*Kern*”)(elimination of pension system impairs vested rights). Charters and municipal
12 codes are valid and enforceable sources of vested property rights. See *International Assn. of*
13 *Firefighters v. San Diego* (1983) 34 Cal.3d 292, 302 (charter, ordinances, and municipal codes);
14 *REAOC, supra*, 52 Cal.4th at 1194 (ordinances).

16 The vested rights doctrine does not mean that pension provisions cannot be changed.
17 “Not every change in a retirement law constitutes an impairment of the obligations of contracts,
18 however. [Citation omitted.] Nor does every impairment run afoul of the contract clause.”
19 *Allen v. Board of Administration of the Public Employees Retirement System* (1983) 34 Cal.3d
20 114, 119 (“*Allen/Board*”)(benefits properly limited by subsequent change which confined
21 benefits to reasonable expectations and avoided windfalls). The protection against impairment of
22 contract “does not exact a rigidly literal fulfillment” (*id.*, at 119-120, quoting *City of El Paso v.*
23 *Simmons* (1965) 379 U.S. 497, 508 (“*Simmons*”)). “[A]n employee may acquire a vested
24 contractual right to a pension but [] this right is not rigidly fixed by the specific terms of the
25 legislation in effect during any particular period in which he serves. The statutory language is
26 subject to the implied qualification that the governing body may make modifications and
27 changes in the system. The employee does not have a right to any fixed or definite benefits, but
28 only to a substantial or reasonable pension. There is no inconsistency therefore in holding that he

1 has a vested right to a pension but that the amount, terms and conditions of the benefits may be
2 altered.” *Kern, supra*, 29 Cal.2d at 855.

3 The law imposes restrictions on the employer’s ability to make changes: “An employee’s
4 vested contractual pension rights may be modified prior to retirement for the purpose of keeping
5 a pension system flexible to permit adjustments in accord with changing conditions and at the
6 same time maintain the integrity of the system. [Citations omitted.] To be sustained as
7 reasonable, alterations of employees’ pension rights must bear some material relation to the
8 theory of a pension system and its successful operation, and changes in a pension plan which
9 result in disadvantage to employees should be accompanied by comparable new advantages.
10 [Citations omitted.]... Constitutional decisions ‘have never given a law which imposes
11 unforeseen advantages or burdens on a contracting party constitutional immunity against
12 change.’ [Citation omitted]” *Allen/Board, supra*, 45 Cal.2d at 131. “[T]he propriety of a
13 modification is not dependent upon the ability to strike a precise dollar balance between benefit
14 and detriment. It is enough that a modification does not frustrate the reasonable expectations of
15 the parties to the contract of employment [citation omitted].” *Frank v. Board of Administration*
16 (1976) 56 Cal.App.3d 236, 242 (“*Frank*”).

17 3. The Charter’s Reservation of Rights

18 The City relies on two “reservation of rights” clauses in the Charter which permit the
19 City to “amend or otherwise change” its retirement plans and to “repeal or amend” any
20 retirement system. Specifically, Section 1500 (Exhibit 5216, at SJRJN000062) provides, in
21 pertinent part:

22 Subject to other provisions in this Article, the Council may at any time, or from time to
23 time, amend or otherwise change any retirement plan or plans or adopt or establish a new
24 or different plan or plans for all or any officers or employees....

25 Similarly, section 1503 (Exhibit 5216, at SJRJN000063-64) provides, in pertinent part:

26 However, subject to other provisions of this Article, the Council shall at all times have
27 the power and right to repeal or amend any such retirement system or systems, and to
28 adopt or establish a new or different plan or plans for all or any officers or employees....

The City argues that these “reservation of rights” clauses preclude the creation of vested

1 rights, relying on the decision in *Walsh, supra*, 4 Cal.App.4th at 700: “The modification of a
2 retirement plan pursuant to a reservation of the power to do so is consistent with the terms of any
3 contract extended by the plan and does not violate the contract clause of the federal constitution.”

4 Plaintiffs argue that the reservation of rights clauses do not preclude their vested rights
5 claims because: (1) the clauses are inapplicable by their own terms; (2) such clauses are not
6 generally enforceable; and (3) the sparse case law does not support the application of these
7 clauses specifically in the pension context to preclude the creation of vested rights.

8 First, Plaintiffs contend that the Charter’s reservation of rights by its own terms applies
9 only to actions *by the Council*, and that Measure B was not an action by the Council but rather by
10 the voters. On this basis, Plaintiffs further argue that *Walsh* does not apply to preclude a claim of
11 contract impairment because Measure B is **not** a “modification of a retirement plan pursuant to a
12 reservation of rights”. In this regard, Plaintiffs rely on *Legislature v. Eu* (1991) 54 Cal.3d 492
13 (“*Eu*”), which held that the Constitutional reservation of rights in favor of the Legislature did not
14 apply to legislation passed by voter initiative rather than by a vote of the Legislature. However,
15 Measure B was **not** legislation passed by voter initiative—but rather is a Charter amendment.
16 The Council performed the tasks with respect to Measure B that the law allows and requires: to
17 place it on the ballot and later to implement it by ordinance (Cal. Const., Art. XI, section 3(b);
18 Ordinance No. 29174, Ordinance No. 29198). But a vote of the people was the proper means to
19 amend the Charter. Plaintiffs’ argument based on *Eu* would compel an anomalous result
20 whereby the people who, through the reservation of rights clauses, gave the Council authority to
21 retain control over pension changes, do not themselves have that power by way of approving a
22 Charter amendment. In any event, the *Eu* court found that the initiative statute was outside the
23 reservation of rights for another reason not pertinent in this case: a reservation of rights to “limit”
24 retirement benefits did not authorize *termination* of those benefits. In this case, the reservation of
25 rights clause reserves the authority to “amend or otherwise change” the City’s retirement plans,
26 which is consistent with Measure B.
27

28 Plaintiffs further contend that the reservation of rights clauses should be interpreted to

1 permit only benefit increases, and not decreases. On its face this is an unreasonable
2 construction: there could be no possible vested rights issue when benefits are simply increased.
3 The “reservation of rights” clauses were added to the Charter in 1965 Charter, at the same time
4 as the “minimum benefits” sections. It is reasonable to conclude that while the minimum
5 benefits specified in the Charter may likely be considered vested, any increases beyond those
6 minimums could be subject to the express right of modification: here, with respect to the pension
7 contributions paid by active employees. To construe the Charter otherwise would render the
8 reservation of rights clauses meaningless, which violates a fundamental rule of construction. See
9 *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54 (“an interpretation which
10 would render terms surplusage should be avoided”).

11 With respect to Plaintiffs’ contention that reservation-of-rights clauses are generally not
12 enforceable, the authorities on which Plaintiffs rely are not applicable. *Air Cal, Inc. v. San*
13 *Francisco* (N.D.Cal. 1986) 638 F.Supp.659; *Continental Illinois Nat’l Bank & Trust Co. v.*
14 *Washington* (9th Cir. 1983) 696 F.2d 692; *Southern Cal. Gas Co. v. City of Santa Ana* (9th Cir.
15 2003) 336 F.3d 885. These cases all involve negotiated contracts between public and private
16 entities, with general clauses reserving “police powers”.

17 Finally, Plaintiffs argue that, despite the sweeping language in *Walsh* that modification to
18 retirement benefits made pursuant to a reservation of rights does not violate vested rights, the
19 case does *not* stand for the proposition that a reservation of rights necessarily precludes the
20 creation of vested rights. Indeed, no other authority has been cited for such a broad conclusion.
21 Moreover, the position argued by the City is contrary to the Supreme Court’s language in *Eu*:
22 “Significantly, we have never suggested that the mere existence of [the reservation of rights at]
23 article IV, section 4, precludes legislators from acquiring pension rights protected by the state or
24 federal contract clauses.” *Eu, supra*, 54 Cal.3d at 529. Finally, the language of *Walsh* itself
25 supports Plaintiffs’ argument that the case should be limited to its peculiar facts: in connection
26 with the unique circumstances of the change from a part-time “citizens” legislature to a full-time
27 legislature, members’ salary nearly tripled, and pension benefits tied to the new salary were a
28

1 windfall not contemplated under the prior system. In the last sentence of footnote 6, the District
2 Court of Appeal in *Walsh* distinguishes the Supreme Court's ruling in *Eu* with this observation:
3 "The question whether a former member of the Legislature acquired a contractual right to wholly
4 unmodifiable pension benefits when he served during a time when the LRL was neither
5 actuarially funded nor supported by a continuing appropriation, was not a question which was
6 implicated in the *Legislature v. Eu* decision." *Walsh, supra*, 4 Cal.App.4th at 700. Accordingly,
7 this Court concludes that a reservation of rights does not of itself preclude the creation of vested
8 rights.

9 **B. Section 1504-A: Reservation of Voter Authority**

10 Section 1504-A reserves voter authority to "consider any change in matters related to
11 pension and other post-employment benefits," and requires voter approval for any increases to
12 pension or retiree healthcare benefits, other than Tier 2 benefit plans. (Exhibit 5216, at
13 SJRJN000069.)

14 Only the REA challenges this section, claiming that it violates retirees' vested right to
15 have the City Council empowered to grant increases in retirement benefits. This question is
16 purely a facial challenge.

17 Article XI, section 5(b)(4) of the California constitution grants "plenary authority" for a
18 city charter "to provide therein or by amendment thereto" for the "compensation" of city officers
19 and employees:
20

21 It shall be competent in all city charters to provide, in addition to those provisions
22 allowable by this Constitution, and by the laws of the State for: (1) the constitution,
23 regulation, and government of the city police force (2) subgovernment in all or part of a
24 city (3) conduct of city elections and (4) *plenary authority is hereby granted*, subject only
25 to the restrictions of this article, *to provide therein or by amendment thereto*, the manner
26 in which, the method by which, the times at which, and the terms for which the several
27 *municipal officers and employees whose compensation is paid by the city shall be elected*
28 *or appointed, and for their removal, and for their compensation*, and for the number of
deputies, clerks and other employees that each shall have, and *for the compensation,*
method of appointment, qualifications, tenure of office and removal of such deputies,
clerks and other employees." [Emphases added]

1 Given this plenary authority, a city charter may require electoral approval of the
2 compensation of city officers and employees. See *Munoz v. City of San Diego*, 37 Cal.App.3d 1,
3 4 (1974) (upholding city charter provision that required council member salaries to be decided by
4 the electorate “because it has been constitutionally committed to a political department of
5 government, i.e., the electorate, and not to the courts”). Retirement benefits relate to
6 compensation. *Downey v. Board of Administration*, 47 Cal.App.3d 621, 629 (1975) (“It is clear
7 that provisions for pensions relate to compensation and are municipal affairs within the meaning
8 of the Constitution”). Therefore, Article XI, section 5(b) permits the voters to provide “by
9 amendment” for voter approval of any increases in employee retirement benefits.

10 The REA does not address this authority, nor do they argue that Council implementation
11 is itself a vested right. (REA’s Post-Trial Brief, at 25-28.) Accordingly, the Court finds that
12 Plaintiffs have not met their burden, and that Section 1504-A is valid.

13 **C. Section 1506-A: Increased Pension Contributions**

14 By its terms, Section 1506-A does not apply to retirees, to current employees governed
15 by the Tier 2 Plan, or to current employees who opt into the VEP. With respect to all other
16 current employees, this section provides for increased pension contributions up to 16%, but no
17 more than 50% of the costs to amortize any non-Tier 2 pension unfunded liabilities.

18 Plaintiffs argue that they have an express statutory vested right to have the City pay
19 unfunded actuarially accrued liabilities (“UAAL”), relying on numerous provisions of the SJMC,
20 including sections 3.28.710, 3.28.880, and 3.36.1520A. The City’s primary argument in
21 opposition is that, without more, the Charter’s reservation of rights precludes the creation of a
22 vested right. As discussed above, the Court finds this argument unsupported by law. Second,
23 the City argues that it has the right to regulate compensation and that the parties treated pension
24 contributions as if they were an element of compensation.

25 SJMC section 3.28.710 (Exhibit 5302, at SJRJN000145), applicable to the Federated
26 Plan, provides:

27 ...[I]f and when, from time to time, the members’ normal rate of contribution is hereafter
28 amended or changed, *the new rate shall not include any amount designed to thereafter*

1 *recover from members or return to members the difference between the amount of*
2 *normal contributions theretofore actually require to be paid by member and any greater*
3 *or lesser amount which, because of amendments hereafter made to this system or as a*
4 *result of experience under this system, said member should have theretofore been*
 required to pay in order to make their normal contributions equal three-elevenths of the
 abovementioned pensions, allowances, and other benefits.... [Emphases added.]

5 SJMC section 3.36.1520A (Exhibit 5303, at SJRJN000332), applicable to the Police and
6 Fire Plan, provides:

7 The retirement board shall determine and fix, and from time to time it may change, the
8 amount of monthly or biweekly contributions for current service which must be required
9 of the City of San Jose and of members of this plan to make and keep this plan and the
10 retirement system at all times actuarially sound. For the purpose of this section,...
11 “contributions for current service” for member employed in the police department shall
12 mean the sum of the normal costs for each actively employed member in the police
13 department as determined under the entry age normal actuarial costs method, divided by
14 the aggregate current compensation of such members. *Rates for current service shall not*
15 *include any amount required to make up any deficit resulting from the fact that previous*
16 *rates of contribution made by the city and members were inadequate to fund benefits*
17 *attributable to service rendered by such members prior to the date of any change of rates,*
18 and shall not include any amount required for payment of medical or dental insurance
19 benefits. [Emphases added.]

20 These provisions are consistent with the prior history requiring that the City pay UAALs.
21 The 1946 Charter amendments expressly allocated UAALs to the City. (Exhibit 1, at
22 POA005584 (“Any actuarial deficiency in the fund shall be made up over a period of years by
23 gifts, waivers, donations, earnings and contributions *by the City.*”)(Emphasis added).) The 1961
24 Charter amendments retained this requirement, but added a provision allowing for increased
25 benefits in exchange for which employees paid UAAL. (Exhibit 2, at POA005619-20.) The
26 1965 Charter also required an actuarially sound system. (Exhibit 5215, at SJRJN000437.) In
27 1971, a Council resolution provided that member contributions “shall not include any amount
28 required to make up any deficit resulting from the fact that previous rates of contribution thereto
 made by the City and by such members were inadequate” (Exhibit 3, at POA005622.) In
 1979, the Council enacted Resolution 19690, the precursor to the current SJMC language.
 (Exhibit 4, at POA005627.)

 Moreover, the City acted consistently with its being obligated to pay UAALs. For

1 example, Mr. Gurza's October 23, 2009 memorandum to the Mayor and the Council
2 unambiguously states that: "...[T]he San Jose Municipal Code provides that the City is
3 responsible for 100% of the unfunded liability for the pension benefit." (Exhibit 445, at
4 AFSCME002650 (Emphasis in original).) See also, e.g., Exhibit 401, 1993 Federated System
5 Annual Report, at AFSCME002957: "...[T]he City of San Jose Municipal Code states that part
6 of the pension liabilities under the System is to be shared by the members and the City on a 3:8
7 ratio, part is to be shared on a 42:58 ratio, and *the balance is the responsibility of the City alone.*"
8 (Emphasis added); Exhibit 328, Federated Handbook 1990, at AFSCME001238: contribution
9 rates changes are not retroactive.

10 City ordinances can "manifest[] an express intent" that the City pay for certain
11 obligations for a pension system. *Ass'n of Blue Collar Workers v. Wills* (1986) 187 Cal.App.3d
12 780, 789 ("*Wills*"). The City relies on the 2010 Municipal Code changes to argue that the
13 ordinances in effect at the time Measure B was passed authorize additional employee
14 contributions toward unfunded liabilities. But the City overstates the effect of those ordinances
15 which, by their terms, acknowledge that contributions to fund UAALs are ones "that the city
16 would otherwise be required to make...." (Exhibits 5302 (SJMC 3.28.955) and 5303 (SJMC
17 3.36.1525).)

18
19 The City also attempts to distinguish *Wills* on the ground that it did "not involve a history
20 of pension contribution rates being treated as a component of 'total compensation.'" (City's
21 Post-Trial Brief at 26:10-11.) Specifically, the City argues that because in 2010 some bargaining
22 units proposed additional pension contributions to address UAALs, this conduct is inconsistent
23 with the existence of vested rights. The City does not address how the conduct by only a portion
24 of the bargaining units could affect the rights of employees not members of those units: for
25 example, AFSCME made no such proposal. More significantly, the City provides no authority
26 which supports the remarkable proposition that, under the circumstances of such proposals,
27 pension benefits could be transformed into compensation and that rights thereto would be
28 forfeited by a clear, unmistakable, intelligent and voluntary waiver. The City has not met the

1 high burden that the law imposes on proof of such waivers in public employment. *Choate v.*
2 *Celite Corp.* (2013) 215 Cal.App.4th 1460, 1466.

3 Accordingly, Plaintiffs have shown a vested right to have the City pay UAALs; Section
4 1506-A impairs that right. The City argues in the alternative that, even if there is a vested right
5 that is impaired, Section 1506-A is nevertheless valid as it offers a “comparable new advantage”
6 (*Allen/Long Beach*, 45 Cal.2d at 131: “[C]hanges in a pension plan which result in
7 disadvantage to employees should be accompanied by comparable new advantages.”) The City
8 has not argued that Section 1506-A, although imposing the disadvantage of increased
9 contribution rates, offers a countervailing advantage. Instead, the City’s argument is that
10 increased contribution rates are more advantageous than a wage cut. In other words, the City
11 does not suggest that Section 1506-A offers a comparable new advantage to the law previously
12 in place, but instead that it is a better alternative than a third choice. The logic of this argument
13 is: if the third choice is sufficiently unacceptable, then the challenged law is valid because it is
14 better than the third choice even if it offers no advantage over the previous law.

15
16 At trial, the City conceded that it had no authority for that novel interpretation of the
17 “comparable new advantage” doctrine. Then the City rephrases the doctrine, in imprecise
18 language in post-trial briefing and argument, as “whether the comparable new advantage had to
19 *relate to* a benefit in existence before the comparable new advantage was enacted” (City’s Post-
20 Trial Brief, at 29:12-13 (emphasis added)). Based on this rephrasing, the City then contends that
21 *Claypool v. Wilson* (1992) 4 Cal.App.4th 646 (“*Claypool*”), holds that a comparable new
22 advantage can be “based on” another aspect of the same law that is challenged. This distorts the
23 “comparable new advantage” doctrine, and misreads *Claypool*. In that case, the court of appeal
24 compared the loss of the benefits under the previous law (“loss of potentially higher benefits
25 under the Extraordinary Performance Account Program”) with the effects of the new law.
26 (*Claypool*, 4 Cal.App.4th at 668-69.) *Claypool* provides no support of the City’s illogical
27 formulation of the “comparable new advantage” rule. Thus, the fact that increased employee
28 contributions may be more beneficial to employees than straight pay reductions is irrelevant, and

1 does not render the increased contributions a “comparable new advantage” compared to the pre-
2 Measure B system.

3 Accordingly, Section 1506-A impairs vested rights and is invalid.

4 **D. Section 1507-A: One Time Voluntary Election Program**

5 Section 1507-A provides an alternative retirement plan, expressly contingent on IRS
6 approval, for employees who wish to avoid increased contribution rates. The City argues that the
7 challenge to this section is “a repetition” of the challenge to section 1506-A. (City’s Post-Trial
8 Brief, at 38:7.) Plaintiffs contend that section 1507-A may be unlawful even if section 1506-A is
9 not. Specifically, the POA complains that members wishing to enroll in VEP would not be able
10 to do so in the absence of IRS approval. (POA Post-Trial Brief, at 15: 3-5.)

11 In its Request for a Different Statement of Decision, filed January 6, 2014 (“Request”),
12 the City asked for a “clarification” that section 1507-A is not invalid “except to the extent that
13 the VEP is tied to section 1506-A...”. (Request, at 2:9-10.) The City urges that section 1507-A
14 is “a stand-alone section” (id., at 1:24-25): i.e., because the discrete sections of Measure B are
15 generally severable, section 1507-A is valid notwithstanding the invalidity of section 1506-A.
16 However, this request ignores the language, structure and obvious purpose of section 1507-A: a
17 voluntary alternative to section 1506-A. The City claims that section 1507-A “does not
18 reference” section 1506-A (Request at 2:2)—presumably meaning that section 1507-A does not
19 mention section 1506-A by number. However, section 1506-A is referenced in that sense that it
20 is the program to which section 1507-A is expressly intended to be an “alternative retirement
21 program” into which employees may “opt”. (Section 1507-A, first paragraph.) The City does
22 not explain how section 1507-A could be a voluntary alternative election given the invalidity of
23 section 1506-A. For these reasons, Section 1507-A is also invalid.

24
25 The City also requests that the Court clarify that it “does not intend to interfere or offer
26 any opinion regarding the City’s pending request to the Internal Revenue Service [] for approval
27 of the VEP.” (Request, at 2:11-13.) The City does not identify any portion of the Tentative
28 Decision as giving rise to this concern. The IRS approval was not an issue at trial, nor has it

1 been addressed in this Statement of Decision.

2 **E. Section 1509-A: Disability Retirement**

3 In April 2011, the City Auditor issued a report that concluded that the disability
4 retirement system needed reform. (Exhibit 5103.) The report noted the unusually high number
5 of police and fire employees who retired on disability, the high rate of approvals, and the number
6 of employees granted disability retirement but still able to work. (*Id.*, at SJ001549-50,
7 SJ001553-54, SJ001560-64; RT at 467-69.)

8 Measure B incorporated recommendations from the report: creation of an independent
9 panel with medical expertise to decide disability retirement applications; appeal to a hearing
10 officer; and clarification that the purpose of disability retirement was to provide income for those
11 unable to work but not yet eligible for service retirement. (Exhibit 5103, at SJ001573; RT at
12 477.)

13 **1. Expert Board to Determine Disability**

14 Before Measure B, disability retirement determinations were made by retirement board
15 members consisting of members of the public, as well as employees and retirees who are
16 members of the plan. (Exhibit 5103, at SJ001544-45, SJ001556-58.) Consistent with the
17 Auditor's recommendations, Section 1509-A(c) requires instead that disability determinations be
18 made by an independent panel of medical experts.

19 Relying on the Article 16, section 17 of the California Constitution concerning the
20 fiduciary responsibilities of the board of a public retirement system over "investment of moneys
21 and administration of the system", Plaintiffs claim that they have a vested right to have the
22 "fiduciaries" for the retirement system – the members of the Retirement Board—make the
23 eligibility decision concerning every disability retirement. However, Plaintiffs do not have a
24 vested right, or any other right, in the composition of the body that makes disability
25 determinations. *Whitmire v. City of Eureka*, 29 Cal.App.3d 28, 34 (1972) (where "only
26 administrative and procedural changes" were involved, ordinances restructuring the Commission
27 charged with collecting and disbursing the funds of the police and fire retirement system did not
28

1 violate vested rights), cited in *Claypool, supra*, 4 Cal.App.4th at 670 (“although active and
2 retired members have a vested right to a pension, they do not have a vested right to control the
3 administration of the plan which provides for the payment of pensions”).

4 Following the Tentative Decision, Plaintiffs attempted to distinguish *Whitmire* by
5 claiming that that case does not deal with transferring fiduciary responsibilities outside the board,
6 but this argument begs the question: what is the scope of section 17, and what changes are
7 administrative and therefore allowable? The change of the decision-making body set forth in
8 Measure B appears to be considerably farther from the core purpose of section 17 to protect
9 retirement funds than were the changes allowed in *Whitmire* and *Claypool*.

10 Plaintiffs did not meet their burden of proof with respect to this section.

11 2. Definition of Disability

12 Section 1509-A also changes the eligibility requirements for obtaining a disability
13 retirement by requiring that employees be unable to work. For Federated employees, the
14 employee must be unable to “perform any other jobs described in the City’s classification plan”;
15 for Police and Fire employees, the employee must be unable to “perform any other jobs in the
16 City’s classification plan in the employee’s department.” (Section 1509-A(b).)

17 Plaintiffs claim that the change in the eligibility criteria violates their vested rights
18 because it denies a disability retirement to a worker who can do any job, even a clerk’s job, with
19 no requirement that such job be offered. As the City points out, Plaintiffs’ reliance on *Newman*
20 *v. City of Oakland Retirement Board* (1978) 80 Cal.App.3d 450, is unavailing, as that case
21 involved an officer who had already retired and was collecting a pension, when the department
22 change the eligibility criteria and recalled him. Plaintiffs also rely on *Frank, supra*, 56
23 Cal.App.3d at 245 (allowing benefits under statute in place when employee began working,
24 despite subsequent statutory change before injury), involving new eligibility rules which would
25 have decreased the employee’s benefits by 80%: such “nominal” benefits “obviously never
26 intended to provide self-sufficiency” thwarted the employee’s reasonable expectation.
27

28 The City argues that section 1509-A does not violate the reasonable expectations of

1 employees because it changes *only eligibility and not benefits*. *Frank* is not properly
2 distinguished, as the City claims, as involving only a change in benefits “rather than eligibility”
3 (City’s Post-Trial Brief, at 41:9): in fact, it involves both. The City relies on *Gatewood v. Board*
4 *of Retirement* (1985)175 Cal.App.3d 311, 321 (“*Gatewood*”)(change in statutory definition of
5 disability valid, but writ issued because evidence did not support finding that disability was not
6 service-connected), for the proposition that a statutory change that alters only eligibility
7 requirements “to restore the original purpose of disability retirements” is therefore valid. (City’s
8 Post-Trial Brief, at 41:9-12.) *Gatewood*, although it is helpful to the City, does not stand for
9 such a broad proposition. In that case, the change in the statutory definition of eligibility resulted
10 only in a “semantic, not substantive” difference. *Gatewood, supra*, 175 Cal.App.3d at 316. The
11 City does not, and could not, argue that the eligibility changes in section 1509-A are merely
12 “semantic”. What is instructive about *Gatewood* is the alternative analysis under the
13 *Allen/Board* test: that “any modification of pension rights (1) must be reasonable, (2) must bear a
14 material relation to the theory and successful operation of the pension system, and (3) when
15 resulting in disadvantage to employees, must also afford comparable new advantages.” *Id.*, at
16 320. The constitutionally permissible modification in *Gatewood*, like section 1509-A, “does not
17 eliminate service-connected disability pensions; nor does it reduce benefits.” *Id.*, at 321. The
18 question here is whether section 1509-A “reasonably refine[s] the threshold criteria for award of
19 a service-connected disability” (*id.*), because it has a material relationship to the successful
20 operation of the system and offers comparable new advantages.

21
22 The eligibility changes in section 1509-A are reasonable and related to the successful
23 operation of the system. (Exhibit 5103, at SJ001559-66.) Over time, employees were not placed
24 in alternative positions, thus creating the anomaly, noted by the Auditor, of City employees,
25 retired for disability on substantial pensions, who were still able to work. (*Id.*) The report
26 recommended that the eligibility criteria for disability retirement be modified to provide benefits
27 “to those employees who are incapable of engaging in any gainful employment.” (*Id.*, at 1566.)

28 Section 1509-A also provides a countervailing advantage: a decrease in the amount of

1 time the employee must be disabled before being eligible for retirement – from “permanent” or
2 “at least until the disabled person attains the age of fifty-five (55) years” to “at least one year”
3 (compare Exhibit 5216 at SJRJN000065 (Charter Section 1504(d)) to Exhibit 5216 at
4 SJRJN000074 (Measure B, Section 1509-A(b)(iii))). Although the City contends that there is
5 another countervailing advantage in the language that it “may” provide contributions to long-
6 term disability insurance for work-related injuries (Exhibit 5216 at SJRJN000074 (Section 1509
7 A(d))), that discretionary term offers only a possible benefit which is not sufficient. *Teachers*
8 *Retirement Board v. Genest* (2007) 154 Cal.App.4th 1012, 1037-38 (“*Genest*”).

9
10 Plaintiffs argued that the “advantage” of reducing the waiting period for eligibility is
11 “meager” and may not apply in every case. (POA Post-Trial Brief, at 17:10-17.) However, the
12 analysis does not require that a new advantage be equivalent: “a precise dollar balance between
13 benefit and detriment” is not necessary. *Frank, supra*, 56 Cal.App.3d at 244. “It is enough that a
14 modification does not frustrate the reasonable expectations of the parties to the contract of
15 employment.” *Lyon v. Flournoy* (1969) 271 Cal.App.2d 774, 782. This is, of course, consistent
16 with the notion that, prior to retirement, “the employee does not have a right to any fixed or
17 definite benefits but only to a substantial or reasonable pension.” *Wallace v. City of Fresno*
18 (1954) 42 Cal.22 180, 183.

19 After the Tentative Decision, Plaintiffs argued that the “countervailing advantage”
20 doctrine is not satisfied, even in the case of a facial challenge, unless there is a new advantage *for*
21 *each and every employee*. In this regard, Plaintiffs rely on *Wisley v. City of San Diego* (1961)
22 188 Cal.App.2d 482, 486, which was an action by individuals to recover excess salary
23 deductions and not a facial challenge. Plaintiffs have turned on its head the controlling principle
24 in a facial challenge such as this one: it is not the City’s burden to show that every employee will
25 receive a new advantage, but rather Plaintiffs who “must demonstrate that the act’s provisions
26 inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.”
27 *Tobe, supra*, 9 Cal.4th at 1084.

28 Section 1509-A is a permissible modification of disability retirement benefits.

1 **F. Section 1510-A: Cost of Living Adjustments**

2 Section 1510-A provides that, if the Council adopts a resolution declaring “a fiscal and
3 service level emergency”, the City may, for a period of up to five years, suspend all or part of the
4 COLA payments due to all retirees. If the Council later determines that “the fiscal emergency
5 has eased sufficiently to permit the City to provide essential services”, it shall restore COLAs—
6 *prospectively only*. If all or part of the COLA is restored, it shall not exceed 3% for current
7 retirees and current employees and 1.5% for employees who are in VEP or Tier 2.

8 Plaintiffs challenge this provision on the ground that it impairs a vested right to COLA
9 payments. The evidence at trial establishes such a vested right:

10 • In April 1970, the City Council passed Ordinance No. 15118 (Exhibit 606 at
11 REA000445-000473) enacting SJMC Chapter 9, Article II, Part 6, which provided COLAs for
12 retirement allowances and survivorship allowances based upon percentage changes in the
13 applicable Consumer Price Index. (Exhibit 606 at REA000448.) Prior to 2006, the SJMC
14 provided for an annual COLA based upon the percentage increase in the applicable Consumer
15 Price Index published by the United States Department of Labor with a “cap” of three percent.
16 (Exhibit 606 at REA000447.)

17 • In February 2006, the City Council passed Ordinance No. 27652, adding SJMC
18 Section 3.44.160, which provided for fixed three-percent annual COLAs. (Exhibit 630,
19 REA000561.) Section 3.44.160 of the current SJMC states in pertinent part at paragraph (a)(1):

20
21 Each retirement allowance and each survivorship allowance which is payable
22 under Chapter 3.24 or Chapter 3.28 in any subject year which begins on or after
23 April 1, 2006, together with any increases or decreases in the amount of any such
24 allowance which were previously made pursuant to this Chapter 3.44, shall be
25 increased by three percent per annum in lieu of the increase otherwise provided in
26 this chapter. The first such three percent increase shall be made on April 1, 2006.
27 (Exhibit 602, REA000441)

28 • Throughout this entire time, employees funded a portion of this COLA benefit by
paying contributions that, in part, were designed to fund an annual three-percent COLA. Even
prior to the passage of Ordinance No. 27652, the employees’ contribution rate attributable to the
COLA was based on an actuarial assumption that the COLA would increase 3% annually. (RT

1 353:12-24; see also, Exhibit 651 at REA000781, which shows that employees contributed 1.61%
2 of their income towards COLAs.)

3 The City does not argue that there is no vested right to COLA payments, but responds
4 that the issue is not ripe for adjudication, and that the section is not invalid because it does not
5 prohibit the City from paying back suspended payments when the Council determines the
6 emergency is over. Furthermore, the City argues, even vested rights may be suspended in an
7 emergency, relying on *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 790-91 (“*Valdes*”).

8 The City’s ripeness argument is not well taken. The City cites *San Bernardino Public*
9 *Employees Ass’n v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1226, for the proposition that
10 “where the City has not yet modified retirement benefits, the matter is not ripe for review”
11 (City’s Post-Trial Brief, at 43:19-20). However, here the City has modified benefits, in the form
12 of Measure B. The City’s claim is not well taken that Plaintiffs may not challenge this provision
13 until the City has declared an emergency and then failed to exercise its discretion to make
14 payments it had been obligated to make. *Genest, supra*, 154 Cal.App.4th at 1037-38.

15 The City argues that *Valdes* supports the notion that vested rights can be suspended in an
16 emergency. There are several difficulties with this argument. First, the holding in *Valdes* does
17 not support this proposition, since in that case the Court of Appeal issued peremptory writs
18 directing the State to fulfill its obligations under the pension system despite legislative direction
19 that payments not be made: “We therefore conclude the state has failed to meet its burden of
20 demonstrating that the impairment of petitioners’ rights is warranted by an ‘emergency’ serving
21 to protect a ‘basic interest of society.’” *Valdes, supra*, 139 Cal.App.3d at 791. Second, Section
22 1510-A does not require an emergency to impair these vested rights, but simply a Council
23 resolution declaring an emergency. *Sonoma County Organization for Public Employees v.*
24 *County of Sonoma* (1979) 23 Cal.3d 296, 311 (Supreme Court issued writ directing local entities
25 to pay salary increases despite their contention that the existence of a fiscal emergency allowed
26 them to avoid such obligations: it is “always open to judicial inquiry” whether an emergency
27 exists (quoting *Home Building & Loan Ass’n v. Blaisdell* (1934) 290 U.S. 398, 442)). Third,
28 Section 1510-A does not merely suspend or defer benefits: it gives the City the authority to

1 withhold them altogether. One of the *Valdes* factors to be considered in evaluating whether a
2 legislative impairment of vested rights may be warranted on grounds of necessity, is that: “the
3 enactment is designed as a temporary measure, during which time the vested contract rights are
4 not lost but merely deferred for a brief period, interest running during the temporary deferment.”
5 *Valdes*, 139 Cal.App.3d at 790-91, quoting *Olson v. Cory* (1980) 27 Cal.3d 532, 539. In
6 authorizing denial of benefits rather than mere deferral, Section 1510-A exceeds the scope of
7 what *Valdes* contemplates as potentially allowable.

8 Accordingly, Section 1510-A is unlawful and invalid.

9 **G. Section 1511-A: Supplemental Retiree Benefit Reserve**

10 Section 1511-A discontinues the Supplemental Retiree Benefit Reserve (“SRBR”), and
11 returns its assets “to the appropriate retirement trust fund.” It further provides that “[a]ny
12 supplemental payments to retirees in addition to the benefits authorized herein shall not be
13 funded from plan assets.”

14 The Municipal Code provides for two SRBR plans (Exhibits 5302 and 5303): one in the
15 Federated plan (SJMC 3.28.340), and one in the Police and Fire Plan (SJMC 3.36.580). The
16 purpose of the SRBR was to provide a source of funding for supplemental benefits. (SJMC
17 3.28.340(E)(1); 3.36.580.)

18 The City contends that SRBR distributions are within the discretion of the City, and
19 therefore there can be no vested rights to such distributions and the SRBR may properly be
20 eliminated. Plaintiffs claim that a vested right does exist because distributions from the Fire and
21 Police Plan are mandatory, not discretionary, and that in any event discretion under the Federated
22 Plan to authorize distributions does not warrant elimination of the SRBR altogether. AFSCME
23 and REA make a further argument that section 1511-A violates the Pension Protection Act
24 (California Constitution, article XVI, section 17).

25
26 As a preliminary matter, the Court rejects Plaintiffs’ challenge with respect to any retiree
27 who “retired prior to the effective date” when the SRBR program came into effect. *Claypool*,
28 *supra*, 4 Cal.App.4th at 660. There could not possibly be a vested right with respect to such

1 retirees because they did not perform any work that could possibly create a right to the benefit.

2 *Id.*

3 With respect to other employees, the Court has considered both the language and the
4 history of these Municipal Code provisions. When the Federated SRBR was initially established
5 in 1986, the reserve was designed to allow “the retirees [to] benefit when the money in the fund
6 [of the retirement system] grows because of superior investment performance.” (Exhibit 5701 at
7 SJRJN000493; see also Exhibit 5719.) At that time, the Federated System was fully funded
8 (Exhibit 5700): the concept was that adjustments would be made “based on ...the availability of
9 funds in the retirement system” and the reserve was to be funded by “excess earnings”. (Exhibit
10 5701.) Likewise, when the Police and Fire SRBR was established in 2001, the system was fully
11 funded. (Exhibit 6030.)

12 Excess earnings are, however, not “free”, as both actuarial experts agreed at trial. (RT
13 296 (Lowman) and 965 (Bartel).) “Skimming” excess assets when earnings are high and not
14 returning funds in years in which the system has losses, does in fact have a cost to the system.
15 (RT at 286-87 (Lowman); 964-65 (Bartel).) That cost was not taken into account until 2011
16 when actuaries assigned and subtracted a cost for the SRBR. (RT at 290-92 (Lowman); 967-68,
17 971-72 (Bartel).)

18 The terms of the Federated SRBR reserve to the Council discretion to determine whether
19 any distributions will be made at all (SJMC Section 3.28.340(E)(2)):

20
21 Upon request of the city council or on its own motion, the board **may** make
22 recommendations to the city council regarding the distribution, **if any**, of the
23 supplemental retiree benefit reserve to retired members, survivors of members,
24 and survivors or retired members. The city council, after consideration of the
25 recommendation of the board, **shall determine** the distribution, **if any**, of the
26 supplemental retiree benefit reserve to said persons. (Emphasis added.)

27 Indeed, from 1986 to 1999, the Council did not authorize any SRBR distributions to retirees, but
28 used the SRBR funds to pay for other retirement benefits and considered eliminating SRBR if it
became unable to fund new benefits. (Exhibits 5703 and 5704.)

Starting during the technology bubble in 2000 and until 2009, the Council did authorize
distributions. Also during that time, a SRBR was established for the Police and Fire Plan, for

1 employees receiving benefits effective June 30, 2001. (Exhibit 5303, at Section 3.36.580(D)(3).)
2 The board was directed to develop a methodology for distributions: “[u]pon approval of the
3 methodology by the city council, the board shall make distributions in accordance with such
4 methodology.” (*Id.*, at Section 3.36.580(D)(5).) The plan contemplated that there are
5 circumstances in which distributions shall not be made. (*Id.*, at Section 3.36.580(D)(6): “[T]he
6 board shall not transfer or distribute funds in the SRBR if such transfer or distribution would
7 reduce the SRBR principal.”)

8 In 2010, SRBR distributions ceased and have not resumed. (See Section 3.36.580(D)(2),
9 directing that distributions shall not be made in 2010, 2011, 2012 or 2013 prior to June 30,
10 2013.) The Council approved the suspension of distributions beginning in 2010 because of
11 significant unfunded liabilities. (Exhibits 5707-5709, 5717, 5718.)

12 Based on this history, Plaintiffs argue that even though the Federated Plan expressly
13 reserves to the Council the discretion to make any distribution at all, the City does not have
14 discretion to eliminate the SRBR altogether. In essence, Plaintiffs argue that they have a vested
15 right to the existence of a segregated reserve which is not required to be distributed. Plaintiffs do
16 not identify any statutory language that would support such an illogical result.

17 While Plaintiffs cite the requirement of SJMC 3.28.070(B)(4) that assets of the SRBR
18 must be allocated to members when the fund is terminated, they do not, and cannot, contend that
19 upon discontinuance of the SRBR, those funds will be used for any purpose other than the
20 retirement system. To the contrary, Section 1511-A expressly provides that “the assets [of the
21 SRBR shall be] returned to the appropriate retirement trust fund.” Plaintiffs claim instead that it
22 is unconstitutional for the City to use the SRBR assets to “offset what it would have otherwise
23 been required to pay into the retirement system for that year.” (AFSCME Post-Trial Brief, at
24 20:24-25.) But using the funds for the retirement system is not the same as using the funds “to
25 [the City’s] own advantage” (*id.*, at 20:25)—given that there is no right to distribution of the
26 funds as SRBR benefits. *Claypool, supra*, 4 Cal.App.4th at 660-61 (funds which offset employer
27
28

1 obligations are nevertheless committed to fund pension benefits). Plaintiffs have failed to
2 establish a vested right to the existence of a SRBR under the Federated Plan.

3 The related argument based on the Pension Protection Act fares no better. That statute
4 provides that the assets of a pension fund shall be held for the exclusive purpose of providing
5 benefits and defraying expenses of the system. The evidence at trial showed that the SRBR was
6 not a separate “trust” but rather a reserve, and the funds remain available for the benefit of
7 retirees in an “appropriate retirement trust fund.” (Section 1511-A.) *Claypool*, 4 Cal.App.4th at
8 674 (using former supplemental COLA funds to reduce employer contributions to PERS did not
9 violate Cal. Const., art. XVI, § 17, where the funds “continue to be ‘held for the exclusive
10 purposes of providing benefits to participants in the pension or retirement system and their
11 beneficiaries and defraying reasonable expenses of administering the system’”). The fact that
12 this transfer of funds could lead to a decrease in the City’s contribution rates is not equivalent to
13 use of fund assets for an improper purpose. The record does not show a violation of the Pension
14 Protection Act.

15
16 The language in the Police and Fire Plan is materially different from the Federated Plan.
17 The POA points out that the only element of discretion reserved to the City in the Police and Fire
18 Plan is to approve the board’s methodology, which the City did in 2002, and so now nothing is
19 left but for the board to make distributions. The City’s contention that “no retiree [under the
20 Police and Fire SRBR] was guaranteed ... any payment at all” (City’s Post-Trial Brief, at 49:16)
21 is contrary to the language of the Municipal Code.

22 The City argues, in the alternative, that even if there is a vested right to SRBR
23 distributions under the Police and Fire Plan, Section 1511-A is still valid because it remedies
24 “unforeseen burdens” of the SRBR. “Constitutional decisions ‘have never given a law which
25 imposes unforeseen advantages or burdens on a contracting party constitutional immunity
26 against change.’” *Allen/Board*, *supra*, 34 Cal.3d at 120 (quoting *Simmons*, *supra*, 379 U.S. at
27 515). *Allen/Board* concerned a 1947 statute by which legislators’ pension COLAs were tied to
28 the pay of current legislators. Then, in 1966, when legislative salaries increased dramatically

1 with the transition to a full-time legislature, a new law removed the COLA link to current
2 salaries and replaced it with a COLA based on CPI. The Supreme Court held that the 1966
3 revision was valid notwithstanding vested rights under the 1947 law, because of the unforeseen
4 burdens on the state and undue windfall to retirees of COLA payments based on greatly
5 increased salaries never earned by members not in office but not yet retired in 1966.

6 Plaintiffs respond that there is no “unintended consequence” because the City itself
7 enacted the SRBR. (POA Post-Trial Brief, at 23:3-4.) This argument fails to justify why the rule
8 should not be applied here: if the City had foreseen the unintended consequence of the SRBR
9 “skimming”, it could have written around it, but the same, of course, is true for the failure of the
10 legislature in 1947 to draft around a major increase in incumbent salaries. Plaintiffs further
11 argue that there is no evidence that the parties had a reasonable expectation that the SRBR would
12 be abolished rather than amended. (*Id.*, at 23:21-22.) This argument misses the point: the record
13 evidence shows that the reserve was established at a time when the system was fully funded, and
14 the actuaries did not factor in the cost of the “skimming” until years later. The SRBR was, by its
15 terms, intended to apply to “superior investment performance” by the system—and not to a fund
16 with billions in unfunded liabilities. Finally, Plaintiffs argue that “[e]ven the plaintiffs in
17 *Allen/[Board]* received a comparable new benefit” (*id.*, at 23:23-24)--but *Allen/Board* does not
18 describe the alternative statutory formulation in those terms, nor does it hold that this is a
19 requirement under the “unforeseen burden” doctrine.
20

21 For these reasons, there is no constitutional impediment to Section 1511-A.

22 **H. Section 1512-A: Retiree Healthcare**

23 **1. Minimum Contributions**

24 Section 1512-A(a) provides: “Existing and new employees must contribute a minimum of
25 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”

26 With respect to the final phrase of the section relating to the specific inclusion of
27 unfunded liabilities in the cost of retiree healthcare, the City correctly argues that Plaintiffs have
28 not met the heavy burden under *REAOC* to establish an implied vested right. The Municipal

1 Code does not grant employees protection against contribution to unfunded liabilities relating to
2 healthcare benefits (SJMC 3.28.385(C) and 3.36.575(D)). Moreover, the conduct of the parties
3 negates such an implied right: the evidence presented at trial through Mr. Lowman and Mr.
4 Gurza showed that employees have contributed for years to unfunded liabilities for healthcare
5 benefits. (RT 793-794, 853-854; Exhibits 5501-5502, 5504-5508.) The stipulation concerning
6 the effective date of Section 1512-A renders ineffective POA's argument that there has been a
7 violation of the MOA (which will expire before the stipulated effective date).

8 The City does not argue that there is no vested right in the "one to one" ratio, but instead
9 claims that this section "simply moved the existing 'one to one' funding ratio from the Municipal
10 Code into the Charter." (City's Post-Trial Brief, at 54:9-10.) However, this argument is at odds
11 with the plain language of Measure B: it ignores "a minimum of"—which clearly would
12 authorize an employee contribution requirement greater than 50%, which in turn impairs the
13 vested right to have the City pay "one to one".
14

15 At the hearing following the responses to the Tentative Decision, the City invoked
16 *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135, 166 ("*Borikas*"), to
17 support an argument made for the first time that the Court should sever out the phrase "a
18 minimum of". Because the City had not previously made this argument, the Court offered
19 Plaintiffs an opportunity to address the argument but none accepted this offer. The Court has
20 now reviewed *Borikas* which involved a taxpayer challenge to a parcel tax and sets forth the law
21 as to severing out phrases or words from invalid statutory language. Here as in *Borikas*, there is
22 statutory language allowing severance: specifically, section 1515-A(a). Such language is
23 persuasive, though not conclusive, evidence of the intent of the enacting body: in this case, the
24 voters. *Borikas, supra*, 214 Cal.App.4th at 165. In addition, the parties to this case have
25 explicitly stipulated to severability.

26 In addition to these factors, the Court has also considered whether the phrase is
27 grammatically and functionally separable. *Id.*, at 166. The phrase "a minimum of" is separable
28 in both aspects. Finally, the Court has considered whether the phrase is also "volitionally

1 separable”. Id., at 167. Given the record evidence concerning the history of the relevant charter
2 sections and the statements of findings and intent in Measure B itself, Section 1512-A(a) without
3 the subject phrase “reflects a ‘substantial’ portion of the electorate’s purpose” (id., quoting
4 *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 715), and can and should be saved.

5 Accordingly, the phrase “a minimum of” is severed and section 1512-A(a) is otherwise
6 valid.

7 2. Reservation of Rights

8 Section 1512-A(b) provides: “No retiree healthcare plan or benefit shall grant any vested
9 right, as the City retains its power to amend, change or terminate any plan provisions.”

10 REA argues that this section is invalid because it makes unvested rights out of vested
11 rights: specifically, “the right to health care and dental coverage and premium contributions”.
12 (REA Post-Trial Brief, at 16:17-19.) This assertion overlooks the precise language in Section
13 1512-A(b): i.e., that no *plan* or *benefit* shall create a vested right.

14 Plaintiffs have not argued, and definitely have not proved, that there is a vested right to a
15 particular plan or a particular benefit, as distinct from a vested right to health care and dental
16 coverage in general. The City is correct that “[t]his section does not change the status quo, but
17 rather (1) reflects what vested rights currently exist, since it does not propose to take them away,
18 and (2) declares an intent not to create any new vested rights.” (City’s Post-Trial Brief, at 57:3-
19 5.)
20

21 On this facial challenge, Plaintiffs have failed to prove that there is no application of this
22 section that would be legal. Accordingly, the challenge to this section fails.

23 3. Low Cost Plan

24 Section 1512-A(c) provides: “For purposes of retiree healthcare benefits, ‘low cost plan’
25 shall be defined as the medical plan which has been the lowest monthly premium available to
26 any active employee in either the Police and Fire Department Retirement Plan or Federated City
27 Employees’ Retirement System.”

28 The previous “low cost plan” terms for retiree healthcare benefits under the Federated

1 Plan and the Police and Fire Plan involve different language and different histories, and so are
2 analyzed separately.

3 a. *Federated Plan*

4 Retiree health benefits under the Federated Plan are governed by SJMC 3.28.1980B(1):

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

11 Plaintiffs advance two arguments as to how Section 1512-A(c) violates a vested right.

12 First, they argue that “members were vested in their right to retiree healthcare free of high
13 deductibles or exorbitant costs” (AFSCME Post-Trial Brief, at 35:13-14): i.e., a vested right to a
14 particular plan. However, the City is correct that plaintiffs had not met their high burden under
15 *REAOC* to provide “clear” and “unmistakable” evidence of an implied vested right preventing
16 the City from changing plan designs.

17 Plaintiffs also argue that the prior language contained an additional limitation that Section
18 1512-A(c) lacks: specifically, that the lowest cost plan must be one “for which the member or
19 survivor is eligible”. (AFSCME Post-Trial Brief, at 35:26-36:8.) Plaintiffs explain that this
20 omission is significant because, under the new language, the member may not be eligible for the
21 lowest cost plan and therefore would not have an option to choose a plan that is fully paid for.

22 In its post-trial brief, the City addressed only the first argument and not this one. (City’s
23 Post-Trial Brief, at 59:5-7.) On January 31, 2014, at the post-Tentative Decision hearing, the
24 City presented a “Revised Request for Different Statement of Decision”, raising new arguments
25 on this issue. AFSCME addressed the City’s Revised Request orally at the hearing, and initially
26 declined but later accepted the Court’s request that AFSCME’s position be stated in a
27 supplemental brief, which was filed on February 4, 2014. The City responded by letter dated
28 February 11, 2014.

The phrase “for which the member or survivor is eligible” in SJMC 3.28.1980B(1)

1 modifies “coverage”—not a particular benefit plan. The word “plan” (referring to a plan of
2 medical coverage, as distinct from the Federated “Plan”) does not appear in the code section.
3 Eligibility for coverage, as described in SJMC 3.28.1970A and B, does not relate to a specific
4 benefit plan and is not evaluated by the status of benefit plans at the time of an individual’s
5 retirement. The contrary interpretation would effectively give an employee or retiree a vested
6 right to a particular benefit plan, which, as explained above, is not supported by the evidence.

7 Accordingly, with respect to the Federated Plan, Section 1512-A(c) does not impair a
8 vested right and is valid.

9
10 *b. Police and Fire Plan*

11 Implemented on July 27, 1984, Ordinance 21686 (Exhibit 6, former SJMC 3.36.1930)
12 provided that police and fire employees were entitled to retiree healthcare benefits with payment
13 of premiums “in the same amount as is currently paid by an employee of the City in the
14 classification from which the member retired.” Ordinance 25615, the pre-Measure B version of
15 SJMC 3.36.1930, was implemented on July 31, 1998, and provided:

16 For the purposes of this section, “lowest cost medical plan” means that medical plan
17 (single or family coverage as applicable to the coverage selected by the member, former
18 member or survivor):

- 19 1. Which is an eligible medical plan as defined in Section 3.36.1940; and
- 20 2. Which has the **lowest monthly premium of all eligible medical plans then in effect**,
determined as of the time the premium is due and owing. [Emphasis added.]

21 Plaintiffs argue that this language creates “an *express* vested right to the lowest cost plan
22 available to any city employee and an *implied* vested right to the lowest cost plan available to
23 Police Officers.” (POA Post-Trial Brief, at 25:13-15 (emphasis in original).) The City does not
24 dispute the former. Plaintiffs claim that the implied vested right was established by course of
conduct and the 1997 Bogue arbitration award which resulted in the revision to the SJMC.

25 Neither of these bases provides the “clear” and “unmistakable” evidence required under
26 *REAOC*. The POA cites language from the Bogue award which does not specify comparability
27 to active police officers as opposed to active city employees (POA Post-Trial Brief, at 26:18-23;
28 Exhibit 35), so that award provides no basis for an implied right. Similarly, SJMC 3.36.1930,

1 amended “to implement the Bogue arbitration decision” also contains no indication that the
2 “lowest cost medical plan” refers only to police and fire employees, but instead refers generally
3 to “the lowest monthly premium of all eligible medical plans then in effect”. (POA Post-Trial
4 Brief, at 26:24-27:3.) The POA claims that the revised code section is “ambiguous” because the
5 ordinance relates only to police and fire employees. But the logical inference to be drawn from
6 the *deletion* of the prior language specifically establishing that the baseline was police officer
7 benefits (“in the classification from which the member retired”) and its replacement with more
8 general language (“all eligible medical plans then in effect”) negates the existence of an implied
9 right.

10 The “course of conduct” argument relies on testimony by retiring officers that they
11 understood their benefits would be tied to those of active officers, but such understanding is not
12 persuasive proof of a course of conduct by the City. More persuasive is the fact that no one from
13 the City told Officer Fehr that his benefit would be tied to the “lowest cost plan” for active
14 officers as opposed to active City employees. (RT 92-93.) The fact that actuarial reports
15 (Exhibits 15-18 and 23) and benefit sheets that related only to the police and fire retirement
16 system did not refer to other employees not covered by that system is of little significance.
17 Lastly, Plaintiffs rely on Exhibit 51, a memorandum from City Manager Debra Figone, as a
18 representation that retiree healthcare benefits are vested rights, but that sheds no light on the
19 specific question of whether the “lowest cost plan” is tied to all City employees or only police
20 and fire employees.

21 Plaintiffs rely on two pleading cases for general propositions concerning evidence that
22 may bear on implied rights. *Requa v. Regents of the University of California* (2012) 213
23 Cal.App.4th 213; *International Brotherhood of Electrical Workers, Local 1245 v. City of Redding*
24 (2012) 210 Cal.App.4th 1114. However, applying the evidentiary standard specified in *REAOC*,
25 Plaintiffs have failed to meet their burden that such an implied right exists. See also *Sappington*
26 *v. Orange Unified School Dist.* (2004) 119 Cal.App.4th 949, 953 (“Generous benefits that exceed
27 what is promised in a contract are just that: generous. They reflect a magnanimous spirit, not a
28

1 contractual mandate.”).

2 Therefore, with respect to the Police and Fire Plan, Section 1512-A(c) does not impair a
3 vested right and is valid.

4 **I. Section 1513-A: Actuarial Soundness**

5 Section 1513-A requires that pension plans be actuarially sound, minimize risks to the
6 City and its residents, and be prudent and reasonable in light of economic climate, among other
7 things. Plaintiffs assert a facial challenge that this section violates the state Pension Protection
8 Act because it requires the retirement boards to consider the interest of “taxpayers with respect to
9 the costs of the plans” (Section 1513-A(c)(ii).) They contend that the Pension Protection Act
10 requires retirement boards to keep paramount the interests of retirees and beneficiaries.

11 However, the record includes ordinances stating that the actuarial soundness of the
12 Federated and Police and Fire Plans is to be determined consistent with the Pension Protection
13 Act. (Exhibits 5300, 5301.) Thus, Plaintiffs have not shown that this section inevitably poses a
14 “present total and fatal conflict” with the Constitution. *Tobe, supra*, 9 Cal.4th at 1084. Plaintiffs
15 have not met their burden of proof that Section 1512-A is invalid under any cause of action.
16

17 **J. Section 1514-A : Alternative of Wage Reduction**

18 Section 1514-A provides that, in the event that the Court determines that Section 1506-
19 A(b) is “illegal, invalid or unenforceable”, then the City may accomplish equivalent savings
20 through pay reduction.

21 Plaintiffs do not dispute that the City has plenary authority to control employee
22 compensation. Instead, they contend that this provision violates their constitutional rights to free
23 speech and petition because it threatens to reduce “salaries to dissuade successful legal
24 challenges.” (POA Post-Trial Brief, at 47:16.)

25 The logic of Plaintiffs’ argument is lacking. Section 1514-A does not impose “a cost or
26 risk upon the exercise of a right to a hearing... [that] has no other purpose or effect than to chill
27 the assertion of constitutional rights by penalizing those who choose to exercise them.”

28 *California Teachers Ass’n v. State of California* (1999) 20 Cal.4th 327, 338 (imposition of half

1 the cost of administrative hearing to determine propriety of employment termination chilled right
2 of teacher to have such hearing). It simply recites what is already the law: that the City may
3 adjust employee compensation “to the maximum extent permitted by law”. Section 1514-A.
4 Plaintiffs’ challenge is unavailing.

5 **K. Section 1515-A: Severability**

6 Section 1515-A provides a general severability clause, stating at subsection (b) that if
7 “any ordinance adopted” pursuant to Measure B is “held to be invalid, unconstitutional or
8 otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for
9 determination as to whether to amend the ordinance consistent with the judgment, or whether to
10 determine the section severable and ineffective.”

11 Plaintiffs contend that this section violates the separation of powers doctrine because it is
12 the role of the courts, not the Council, to determine whether “the section is severable and
13 ineffective.” However, this argument elevates form over substance. The language addresses a
14 circumstance in which a court has entered a judgment, and provides that the Council shall then
15 determine, essentially, whether to revise the ordinance or to treat it as ineffective. Nothing in
16 this language is inconsistent with the common practice of letting government defendants exercise
17 discretion in complying with judgments. *Common Cause v. Board of Supervisors* (1989) 49
18 Cal.3d 432, 445-446 (“although a court may issue a writ of mandate requiring legislative or
19 executive action to conform to the law, it may not substitute its discretion for that of legislative
20 or executive bodies in matters committed to the discretion of those branches”).

21 Plaintiffs have not met their burden of proof to show that Section 1515-A is invalid under
22 any cause of action.
23

24 **L. Additional Causes of Action**

25 1. **Equitable and Promissory Estoppel**

26 AFSCME asserts an “equitable estoppel” claim, which requires proof of: “(1) a
27 representation or concealment of material facts (2) made with knowledge, actual or virtual, of the
28 true facts (3) to a party ignorant, actually and permissibly, of the truth (4) with the intention,

1 actual or virtual, that the latter act upon it and (5) that the party actually was induced to act upon
2 it.” *Walsh, supra*, 4 Cal.App.4th at 709.

3 AFSCME did not meet this burden. First, since AFSCME is relying on statements made
4 outside City ordinances, promissory estoppel will not lie, because in San Jose, the Charter
5 requires that retirement plans must be enacted by ordinance. City Charter Section 1500; *San*
6 *Diego City Firefighters, Local 145 v. Bd. of Admin. of San Diego City Emples. Ret. Sys.* (2012)
7 206 Cal.App.4th 594, 610-11 (“When there has been no compliance with the relevant charter
8 provision, the city may not be liable in quasi-contract and will not be estopped to deny the
9 validity of the contract.”). Similarly, there is no viable claim for estoppel when the agency
10 making the statement has no authority to grant the benefits promised. *Medina v. Board of*
11 *Retirement* (2013) 112 Cal.App.4th 864, 869. AFSCME did not offer any evidence that the City
12 departments that issued various booklets and flyers had any authority to enlarge City retirement
13 benefits.

14
15 But in any event, AFSCME did not prove at trial that the City misrepresented any fact, or
16 that anyone was actually induced to act. In particular, ASFCME did not establish that any of its
17 witnesses accepted employment and continued working for the City based on any
18 misrepresentation about benefits. Jeffrey Rhoads could not cite to any other job with better pay,
19 or with better benefits, that he had been offered but had rejected in preference for his City job.
20 (RT 114-118.) Margaret Martinez testified that her own private understanding of Exhibit 51, the
21 2008 Figone memorandum, was that the City was not planning to change healthcare benefits, but
22 she did not claim to have continued employment, or given up more lucrative employment, based
23 on the memorandum. (RT 322-333.) Even if they had testified as to detrimental reliance, their
24 testimony would not establish a basis for any relief for AFSCME.

25 Based on the evidence at trial, AFSCME did not prove its claim for promissory and
26 equitable estoppel.

27 2. Bane Act

28 Both the POA and AFSCME have asserted a violation of the Bane Act, California Civil

1 Code section 52.1 (“Section 52.1” or “Bane Act”), to “seek redress in the Superior Court for
2 violation of constitutional rights.” Neither argued this claim in their post-trial briefs, and they
3 did not prove this cause of action at trial.

4 First, AFSCME and POA do not have standing because Section 52.1 “is limited to
5 plaintiffs who themselves have been the subject of violence or threats.” *Bay Area Rapid Transit*
6 *Dist. v. Superior Court* (1995) 38 Cal.App.4th 141, 142, 144. There is no statutory authority or
7 precedent for conferring associational standing for Section 52.1 claims.

8 Second, Section 52.1 is not a vehicle for redress of constitutional harms. A constitutional
9 violation on its own – without the requisite threat, intimidation, or coercion – does not implicate
10 Section 52.1. *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 957, 959 (“in
11 pursuing relief for those constitutional violations under section 52.1,” plaintiffs must allege the
12 acts “were accompanied by the requisite threats, intimidation, or coercion”).

13 Third, Plaintiffs did not offer any testimony of physical, verbal or written threats or
14 intimidation. They claim coercion because they may be forced to choose between paying more
15 for an existing pension plan or accepting an inferior plan. That would be an economic choice,
16 not the egregious “coercion” contemplated by Section 52.1. *City and County of San Francisco v.*
17 *Ballard* (2006) 136 Cal.App.4th 381, 408 (where plaintiff alleged City coerced him by
18 threatening to impose \$15 million in penalties and “partial demolition” of his building if he did
19 not perform “unrequired construction”, the court found he had “not alleged and the record does
20 not establish any conduct that rises to the level of a threat of violence or coercion” under Section
21 52.1).

22
23 Based on the evidence at trial, AFSCME and the POA have not proven a violation of the
24 Bane Act under any of their causes of action.

25 **M. City’s Cross-Complaint for Declaratory Relief**

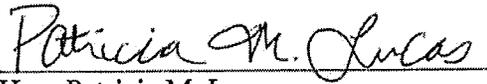
26 The City filed a cross-complaint seeking a declaration that certain provisions of Measure
27 B are lawful under the Federal Constitution. However, the City has not argued that federal law
28 applies to require a different outcome, and in any event, given the foregoing, this Court exercises

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its discretion to find that the relief requested is “not necessary or proper ... under all the circumstances.” *Meyer v. Sprint Spectrum* (2009) 45 Cal.4th 634, 647.

Plaintiffs are ordered to prepare a form of judgment consistent with this decision.

Dated: February 19, 2014


Hon. Patricia M. Lucas
Judge of the Superior Court

<p align="center">IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA</p>	<p align="center">Endorsed FILED</p> <p align="center">Date: <u>February 20, 2014</u> DAVID YAMASAKI Chief Executive Officer Clerk Superior Court of CA County of Santa Clara</p> <p>By: <u>Ann Vizconde</u> Ann Vizconde, Deputy</p>
<p>In Re the Matter of:</p> <p>San Jose Police Officers' Association VS City of San Jose, et al</p>	<p>Case Number: 1-11-CV 211989</p>
<p>PROOF OF SERVICE BY MAIL OF: Statement of Decision</p>	

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on: February 20, 2014

David Yamasaki, Chief Executive Officer/Clerk

BY Ann Vizconde, Deputy
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EXHIBIT 4

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(ENDORSED)
FILED
APR 30 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

IN THE SUPERIOR COURT FOR THE
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS
ASSOCIATION,

Plaintiff,

v.

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

Defendants.

Consolidated Case No. 1-12-CV-225926

*Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864*

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

JUDGMENT IN CONSOLIDATED CASES

AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS

This judgment follows from the Statement of Decision filed February 20, 2014.

A bench trial in these consolidated cases was held on July 22-26, 2013, in Department 2,
the Honorable Patricia M. Lucas presiding. Witnesses were sworn and testified. Evidence was
offered and accepted.

The plaintiff in Case No. 1-12-CV-225926 is the San Jose Police Officers Association
("SJPOA"), representing employees who are members of the 1961 San Jose Police and Fire
Department Retirement Plan ("Police and Fire Plan"). SJPOA was represented by Gregg Adams
and Amber Griffiths of Carroll Burdick and McDonough. The plaintiff in Case No. 1-12-CV-

1 227864 is the American Federation of State, County, and Municipal Employees, Local
2 101("AFSCME"), representing employees who are members of the 1975 Federated City
3 Employees' Retirement Plan ("Federated Plan"). AFSCME was represented by Teague P.
4 Paterson and Vishtasp M. Soroushian of Beeson, Tayer & Bodine, APC. The plaintiffs in Case
5 No. 1-12-CV-225928 are Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany,
6 Ken Heredia ("Sapien Plaintiffs"), who are active and retired members of the Police and Fire Plan;
7 the plaintiffs in Case No. 1-12-CV-226570 are Teresa Harris, Jon Reger, and Moses Serrano
8 ("Harris Plaintiffs"), who are active and retired employees of the Federated Plan; and the plaintiffs
9 in Case No. 1-12-CV-226574 are John Mukhar, Dale Dapp, James Atkins, William Buffington,
10 and Kirk Pennington ("Mukhar Plaintiffs"), who are active and retired members of the Federated
11 Plan. The Sapien, Harris, and Mukhar Plaintiffs (collectively, "Individual Plaintiffs") were
12 jointly represented by Christopher E. Platten and John McBride of Wylie, McBride, Platten &
13 Renner. The plaintiff in Case No. 1-12-CV-233660 is the San Jose Retired Employees
14 Association ("SJREA"), represented by Stephen H. Silver and Jacob A. Kalinski of Silver,
15 Hadden, Silver, Wexler & Levine. Defendants City of San Jose ("the City") and Debra Figone,
16 City Manager (collectively, "Defendants"), were represented by Arthur A. Hartinger, Linda M.
17 Ross and Geoffrey Spellberg of Meyers Nave. Real parties in interest Board of Administration for
18 the Police and Fire Plan and the Federated Plan were represented by Harvey L. Liederman and
19 Kerry K. Galusha of Reed Smith, LLP.

20 The City filed a cross-complaint in Case No. 1-12-CV-225926. All Plaintiffs except
21 SJREA were named as Cross-defendants.

22 On October 10, 2013, the parties appeared to respond to additional questions from the
23 Court. On December 20, 2013, a Tentative Decision was filed. On January 31, 2014, the parties
24 appeared on objections to the Tentative Decision. On February 20, 2014, the Statement of
25 Decision was filed.

26 Plaintiffs challenged the following sections of the Sustainable Retirement and
27 Compensation Act, a ballot initiative that amended the San Jose City Charter, approved by the
28 electorate on June 4, 2012 as "Measure B" (hereafter "Measure B"):

- 1 ▪ Section 1504-A (Reservation of Voter Authority);
- 2 ▪ Section 1506-A (Current Employees);
- 3 ▪ Section 1507-A (One Time Voluntary Election Program ('VEP'));
- 4 ▪ Section 1509-A (Disability Retirements);
- 5 ▪ Section 1510-A (Cost of Living Adjustments);
- 6 ▪ Section 1511-A (Supplemental Retirees Benefit Reserve);
- 7 ▪ Section 1512-A (Retiree Healthcare);
- 8 ▪ Section 1513-A (Actuarial Soundness);
- 9 ▪ Section 1514-A (Savings); and
- 10 ▪ Section 1515-A (Severability).

11 Plaintiffs' challenges to these sections of Measure B were facial challenges, except that the
12 challenges to Sections 1512-A(a) and 1512-A(c) were both facial and as-applied. (See Statement
13 of Decision at 7:10-13.)

14 Now therefore, the Court enters judgment as follows, based upon the evidence and
15 argument presented, and consistent with the Statement of Decision, the order dated January 31,
16 2013, granting judgment on the pleadings on SJPOA's seventh cause of action for violation of the
17 Meyers Milias Brown Act ("MMBA"), and the order dated April 30, 2013, sustaining without
18 leave to amend the demurrer to AFSCME's seventh cause of action for illegal ultra vires tax, fee,
19 or assessment:

20 1. Sections 1504-A (Reservation of Voter Authority), 1509-A (Disability Retirement),
21 including 1509-A(b) (Definition of Disability) and 1509-A(c) (Expert Board), 1511-A
22 (Supplemental Retiree Benefit Reserve), 1512-A(b) (Retiree Healthcare – Reservation of Rights),
23 1512-A(c) (Retiree Healthcare – Low Cost Plan), 1513-A (Actuarial Soundness), 1514-A
24 (Alternative of Wage Reduction), and 1515-A (Severability) are valid, and judgment is entered in
25 favor of Defendants and against Plaintiffs, as to these Sections of Measure B, on each cause of
26 action challenging these Sections. (SJPOA first through eighth causes of action; AFSCME first
27 through eleventh causes of action; Individual Plaintiffs' first through fifth causes of action; SJREA
28 first through third causes of action, all counts.)

1 3. Section 1512-A(a) (Retiree Healthcare – Minimum Contributions) is valid with the
2 phrase “a minimum of” severed from the provision, so that Section 1512-A(a) shall read,
3 “Existing and new employees must contribute 50% of the cost of retiree healthcare, including both
4 normal cost and unfunded liabilities.” With the provision modified, judgment is entered in favor
5 of Defendants and against Plaintiffs, as to this Section of Measure B, on each cause of action
6 challenging this Section. (SJPOA first through third and sixth causes of action; AFSCME first,
7 third through sixth, and eighth through eleventh causes of action; Individual Plaintiffs’ first
8 through fifth causes of action; SJREA first through third causes of action, all counts.)

9 4. Sections 1506-A (Increased Pension Contributions – Current Employees), 1507-A
10 (One Time Voluntary Election Program), 1510-A (Cost of Living Adjustments) are invalid and
11 judgment is entered in favor of Plaintiffs and against Defendants, as to these sections of Measure
12 B, on the causes of action challenging these Sections based on unconstitutional impairment of
13 contract, Cal. Const., art. I, Section 9. (SJPOA’s first cause of action, AFSCME’s first cause of
14 action, Individual Plaintiffs’ second cause of action (as to Sections 1506-A and 1510-A only), and
15 SJREA’s first cause of action (Count I) and second cause of action (as to Section 1510-A only).)

16 5. Judgment is entered in favor of Defendants and against AFSCME on AFSCME’s
17 eighth cause of action, which claimed Promissory and Equitable Estoppel.

18 6. AFSCME has dismissed with prejudice its second cause of action, which claimed
19 Bill of Attainder. (Statement of Decision at 5:16-17.)

20 7. AFSCME’s seventh cause of action, which claimed Illegal *Ultra Vires* Tax, Fee, or
21 Assessment, is dismissed with prejudice pursuant to the order dated April 30, 2013, sustaining
22 Defendants’ demurrer without leave to amend.

23 8. Judgment is entered in favor of Defendants and against the SJPOA and AFSCME
24 on their respective claims for violation of the Freedom of Speech and Right to Petition Clauses,
25 Cal. Const., art. I, Sections 2, 3. (SJPOA’s fourth cause of action, AFSCME’s sixth cause of
26 action.)

27 9. Judgment is entered in favor of Defendants and against the SJPOA and AFSCME
28 on their respective claims for violation of the Bane Act, California Civil Code section 52.1.

1 (SJPOA's first, second, third, fourth, fifth, and eighth causes of action; AFSCME's first, second,
2 third, fourth, fifth, sixth, and seventh causes of action.)

3 10. Judgment is entered in favor of Defendants and against the SJPOA, AFSCME, and
4 the SJREA on their respective claims for violation of the Pension Protection Act, Cal. Const., art.
5 XVI, Section 17. (SJPOA's eighth cause of action, AFSCME's fifth cause of action, Count V of
6 the SJREA's first cause of action, and the Pension Protection Act provision of the SJREA's
7 second cause of action.)

8 11. SJPOA's seventh cause of action, which claimed violation of the MMBA, is
9 ~~dismissed with prejudice pursuant to the order dated January 31, 2013, granting Defendants'~~
10 motion for judgment on the pleadings.

11 12. Judgment is entered in favor of Defendants and against the SJPOA and the SJREA
12 on their respective claims for violation of the Separation of Powers Doctrine. (SJPOA's fifth
13 cause of action, Count IV of the SJREA's first cause of action, and the SJREA's second cause of
14 action.)

15 13. Judgment is entered in favor of Cross-Defendants and against Cross-Complainant
16 on the City's Cross-Complaint.

17 14. Declaratory relief and injunctive relief are granted, and Defendants are enjoined
18 from implementing or enforcing Sections 1506-A, 1507-A, and 1510-A, and the phrase "a
19 minimum of" in Section 1512-A, with respect to employees and retirees hired before June 5, 2012.

20 15. The Court finds that each party obtained some but not all of its litigation objectives,
21 and therefore concludes that there is no prevailing party. Accordingly, the Court exercises its
22 discretion and orders that each party is to bear its own costs. (Cal. Civ. Proc. Code §1032(a)(4)
23 ("the court, in its discretion, may allow costs or not").)

24 JUDGMENT IS SO ENTERED.

25 Dated: April 29, 2014

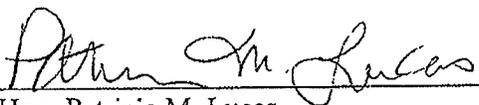

26 Hon. Patricia M. Lucas
27 Judge of the Superior Court
28

EXHIBIT 5

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

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

Defendants.

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

) (Hon. Patricia M. Lucas, Dept. 2)

) **NOTICE OF APPEAL (UNLIMITED CIVIL
CASE)**

AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS.

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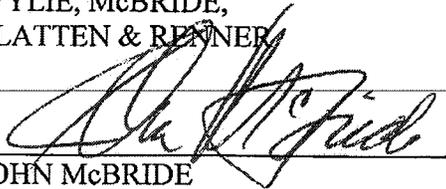
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1 NOTICE IS HEREBY GIVEN THAT Plaintiffs Robert Sapien , Mary Kathleen
2 McCarthy, Thanh Ho, Randy Sekany, Ken Heredia in Case No. 1-12-CV-225928; Plaintiffs
3 Teresa Harris, Jon Reger, Moses Serrano in Case No. 1-12-CV-226570; and Plaintiffs John
4 Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington in 1-12-CV-226574
5 appeal from the judgment after court trial which was entered on April 30, 2014.

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Dated: May 1, 2014

WYLIE, McBRIDE,
PLATTEN & RENNERT



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

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PROOF OF SERVICE
(C.C.P. 1013(3) & 1011)
(Revised 1/1/88)

I, the undersigned, say:

That I am now and at all times herein mentioned a citizen of the United States and resident of Santa Clara County, California. I am over the age of eighteen years and not a party to this action. My business address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

NOTICE OF APPEAL (UNLIMITED CIVIL CASE)

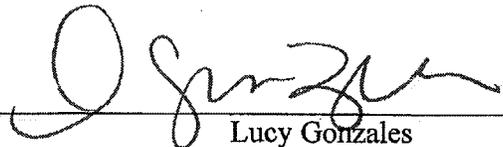
X by placing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

_____ by placing a true copy thereof, enclosed in a sealed U.P.S. overnight-mail envelope with our firm's account number for U.P.S. pick-up and addressed as set forth below.

X by E-Mail - as follows: I personally sent to the addressee's e-mail address a true copy of the above-described document(s). I verified transmission.

SEE ATTACHED MAILING LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 1ST day of May, 2014, at San Jose, California.



Lucy Gonzales

<p>1 Teague P. Paterson, Esq. 2 Vishtasp M. Soroushian, Esq. 3 Beeson, Tayer & Bodine, APC 4 483 Ninth Street, 2nd Floor 5 Oakland, CA 94607-4051 6 (510) 625-8275 – Facsimile 7 tpaterson@beesontayer.com 8 vsoroushian@beesontayer.com 9 <i>Attorneys for Municipal Employees Federation, AFSCME Local 101</i></p>	<p>Arthur A. Hartinger, Esq. Jennifer L. Nock, Esq. Linda M. Ross, Esq. Michael C. Hughes, Esq. Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 (510) 444-1108 – Facsimile ahartinger@meyersnave.com jnock@meyersnave.com lorrs@meyersnave.com mhughes@meyersnave.com <i>Attorneys for The City of San Jose and Debra Figone</i></p>
<p>10 Harvey L. Leiderman, Esq. 11 Reed Smith, LLP 12 101 Second Street, Suite 1800 13 San Francisco, CA 94105 14 (415) 391-8269 - Facsimile 15 hleiderman@reedsmith.com 16 <i>Attorneys for The Board of Administration for 17 the 1961 San Jose Police and Fire 18 Department Retirement Plan and The Board 19 of Administration for the 1975 Federated City Employees' Retirement Plan</i></p>	<p>Gregg McLean Adam, Esq. Jonathan Yank, Esq. Gonzalo Martinez, Esq. Jennifer S. Stoughton, Esq. Amber L. Griffiths, Esq. Carroll, Burdick & McDonough LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 (415) 989-0932 – Facsimile gadam@cbmlaw.com jyank@cbmlaw.com agriffiths@cbmlaw.com jstoughton@cbmlaw.com gmartinez@cbmlaw.com <i>Attorneys for San Jose Police Officers' Association</i></p>
<p>20 Jacob A. Kalinski, Esq. 21 Stephen H. Silver, Esq. 22 Richard A. Levine, Esq. 23 Silver, Hadden, Silver, Wexler & Levine 24 1428 Second Street, Suite 200 25 Santa Monica, CA 90407 26 jkalinski@shslaborlaw.com 27 shsilver@shslaborlaw.com 28 rlevine@shslaborlaw.com <i>Attorneys for San Jose Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro</i></p>	

EXHIBIT 6

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 2 RICHARD A. LEVINE, SBN 091671
 3 JACOB A. KALINSKI, SBN 233709
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 7 Santa Monica, CA 90407-2161
 8 Telephone: (310) 393-1486
 9 Facsimile: (310) 395-5801
 10 Attorneys for Plaintiff/Petitioner San Jose Retired
 11 Employees Association

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **FOR THE COUNTY OF SANTA CLARA**

14	SAN JOSE POLICE OFFICERS')	Lead Consolidated Case No. 1-12-CV-225926
15	ASSOCIATION,)	(Consolidated Actions 1-12-CV-225928,
16)	1-12-CV-226570, 1-12-CV-226574,
17	Plaintiff,)	1-12-CV-227864 and 1-12-CV-233660)
18)	
19	v.)	(Hon. Patricia M. Lucas, Dept. 2)
20)	
21	CITY OF SAN JOSE, BOARD OF)	NOTICE OF APPEAL
22	ADMINISTRATION FOR POLICE)	
23	AND FIRE DEPARTMENT)	
24	RETIREMENT PLAN OF CITY OF)	
25	SAN JOSE, and DOES 1-10, inclusive,)	
26)	
27	Defendants.)	
28)	
	_____)	
	AND RELATED CROSS-COMPLAINT)	
	AND CONSOLIDATED ACTIONS.)	
	_____)	

1 TO THE CLERK OF THE SUPERIOR COURT, ALL INTERESTED PARTIES AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Plaintiff/Petitioner San Jose Retired Employees
4 Association ("SJREA") in Case No. 1-12-CV-233660 hereby appeals to the Court of Appeal
5 for the State of California, Sixth Appellate District, from the following portions of the
6 Judgment entered on April 30, 2014, a copy of which is attached hereto as Exhibit A:

7 1) Page 3, lines 11-13, with respect to the Court's determination that all challenges
8 to Measure B were facial, except the challenges to Section 1512-A(a) and 1512-A(c).

9 2) Page 3, lines 20-28, with respect to the Court's determinations that Sections
10 1504-A (Reservation of Voter Authority), 1511-A (Supplemental Retiree Benefit Reserve),
11 1512-A(b) (Retiree Healthcare - Reservation of Rights), 1513-A (Actuarial Soundness) and
12 1515-A (Severability) are valid and that Judgment is entered against SJREA on its causes of
13 action challenging these Sections.

14 3) Page 4, lines 1-8, with respect to the Court's determination that Judgment is
15 entered against SJREA on its causes of action challenging Section 1512-A(a).

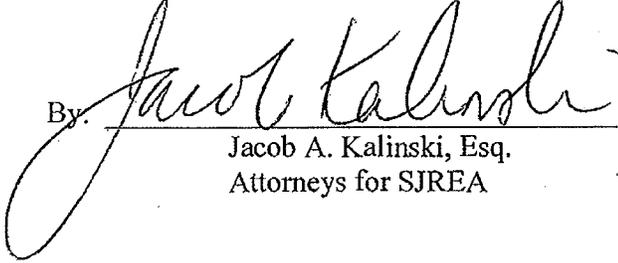
16 4) Page 5, lines 3-7, with respect to the Court's determination that Judgment is
17 entered against SJREA on its claim for violation of the Pension Protection Act, Cal. Const., art.
18 XVI, Section 17.)

19 5) Page 5, lines 11-14, with respect to the Court's determination that Judgment is
20 entered against SJREA on its claim for violation of the Separation of Powers doctrine.

21 6) Page 5, lines 20-23, with respect to the Court's determinations that each party
22 obtained some but not all of its litigation objectives, that there is no prevailing party and that
23 each party is to bear its own costs.

24 DATED: June 11, 2014

SILVER, HADDEN, SILVER, WEXLER & LEVINE

25
26 By: 
27 Jacob A. Kalinski, Esq.
28 Attorneys for SJREA

1 227864 is the American Federation of State, County, and Municipal Employees, Local
2 101 ("AFSCME"), representing employees who are members of the 1975 Federated City
3 Employees' Retirement Plan ("Federated Plan"). AFSCME was represented by Teague P.
4 Paterson and Vishtasp M. Soroushian of Beeson, Tayer & Bodine, APC. The plaintiffs in Case
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6 Ken Heredia ("Sapien Plaintiffs"), who are active and retired members of the Police and Fire Plan;
7 the plaintiffs in Case No. 1-12-CV-226570 are Teresa Harris, Jon Reger, and Moses Serrano
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9 in Case No. 1-12-CV-226574 are John Mukhar, Dale Dapp, James Atkins, William Buffington,
10 and Kirk Pennington ("Mukhar Plaintiffs"), who are active and retired members of the Federated
11 Plan. The Sapien, Harris, and Mukhar Plaintiffs (collectively, "Individual Plaintiffs") were
12 jointly represented by Christopher E. Platten and John McBride of Wylie, McBride, Platten &
13 Renner. The plaintiff in Case No. 1-12-CV-233660 is the San Jose Retired Employees
14 Association ("SJREA"), represented by Stephen H. Silver and Jacob A. Kalinski of Silver,
15 Hadden, Silver, Wexler & Levine. Defendants City of San Jose ("the City") and Debra Figone,
16 City Manager (collectively, "Defendants"), were represented by Arthur A. Hartinger, Linda M.
17 Ross and Geoffrey Spellberg of Meyers Nave. Real parties in interest Board of Administration for
18 the Police and Fire Plan and the Federated Plan were represented by Harvey L. Liederman and
19 Kerry K. Galusha of Reed Smith, LLP.

20 The City filed a cross-complaint in Case No. 1-12-CV-225926. All Plaintiffs except
21 SJREA were named as Cross-defendants.

22 On October 10, 2013, the parties appeared to respond to additional questions from the
23 Court. On December 20, 2013, a Tentative Decision was filed. On January 31, 2014, the parties
24 appeared on objections to the Tentative Decision. On February 20, 2014, the Statement of
25 Decision was filed.

26 Plaintiffs challenged the following sections of the Sustainable Retirement and
27 Compensation Act, a ballot initiative that amended the San Jose City Charter, approved by the
28 electorate on June 4, 2012 as "Measure B" (hereafter "Measure B"):

- 1 ▪ Section 1504-A (Reservation of Voter Authority);
- 2 ▪ Section 1506-A (Current Employees);
- 3 ▪ Section 1507-A (One Time Voluntary Election Program (“VEP”));
- 4 ▪ Section 1509-A (Disability Retirements);
- 5 ▪ Section 1510-A (Cost of Living Adjustments);
- 6 ▪ Section 1511-A (Supplemental Retirees Benefit Reserve);
- 7 ▪ Section 1512-A (Retiree Healthcare);
- 8 ▪ Section 1513-A (Actuarial Soundness);
- 9 ▪ Section 1514-A (Savings); and
- 10 ▪ Section 1515-A (Severability).

11 Plaintiffs’ challenges to these sections of Measure B were facial challenges, except that the
12 challenges to Sections 1512-A(a) and 1512-A(c) were both facial and as-applied. (See Statement
13 of Decision at 7:10-13.)

14 Now therefore, the Court enters judgment as follows, based upon the evidence and
15 argument presented, and consistent with the Statement of Decision, the order dated January 31,
16 2013, granting judgment on the pleadings on SJPOA’s seventh cause of action for violation of the
17 Meyers Milias Brown Act (“MMBA”), and the order dated April 30, 2013, sustaining without
18 leave to amend the demurrer to AFSCME’s seventh cause of action for illegal ultra vires tax, fee,
19 or assessment:

20 1. Sections 1504-A (Reservation of Voter Authority), 1509-A (Disability Retirement),
21 including 1509-A(b) (Definition of Disability) and 1509-A(c) (Expert Board), 1511-A
22 (Supplemental Retiree Benefit Reserve), 1512-A(b) (Retiree Healthcare – Reservation of Rights),
23 1512-A(c) (Retiree Healthcare – Low Cost Plan), 1513-A (Actuarial Soundness), 1514-A
24 (Alternative of Wage Reduction), and 1515-A (Severability) are valid, and judgment is entered in
25 favor of Defendants and against Plaintiffs, as to these Sections of Measure B, on each cause of
26 action challenging these Sections. (SJPOA first through eighth causes of action; AFSCME first
27 through eleventh causes of action; Individual Plaintiffs’ first through fifth causes of action; SJREA
28 first through third causes of action, all counts.)

1 3. Section 1512-A(a) (Retiree Healthcare – Minimum Contributions) is valid with the
2 phrase “a minimum of” severed from the provision, so that Section 1512-A(a) shall read,
3 “Existing and new employees must contribute 50% of the cost of retiree healthcare, including both
4 normal cost and unfunded liabilities.” With the provision modified, judgment is entered in favor
5 of Defendants and against Plaintiffs, as to this Section of Measure B, on each cause of action
6 challenging this Section. (SJPOA first through third and sixth causes of action; AFSCME first,
7 third through sixth, and eighth through eleventh causes of action; Individual Plaintiffs’ first
8 through fifth causes of action; SJREA first through third causes of action, all counts.)

9 4. ~~Sections 1506-A (Increased Pension Contributions – Current Employees), 1507-A~~
10 (One Time Voluntary Election Program), 1510-A (Cost of Living Adjustments) are invalid and
11 judgment is entered in favor of Plaintiffs and against Defendants, as to these sections of Measure
12 B, on the causes of action challenging these Sections based on unconstitutional impairment of
13 contract, Cal. Const., art. I, Section 9. (SJPOA’s first cause of action, AFSCME’s first cause of
14 action, Individual Plaintiffs’ second cause of action (as to Sections 1506-A and 1510-A only), and
15 SJREA’s first cause of action (Count I) and second cause of action (as to Section 1510-A only).)

16 5. Judgment is entered in favor of Defendants and against AFSCME on AFSCME’s
17 eighth cause of action, which claimed Promissory and Equitable Estoppel.

18 6. AFSCME has dismissed with prejudice its second cause of action, which claimed
19 Bill of Attainder. (Statement of Decision at 5:16-17.)

20 7. AFSCME’s seventh cause of action, which claimed Illegal *Ultra Vires* Tax, Fee, or
21 Assessment, is dismissed with prejudice pursuant to the order dated April 30, 2013, sustaining
22 Defendants’ demurrer without leave to amend.

23 8. Judgment is entered in favor of Defendants and against the SJPOA and AFSCME
24 on their respective claims for violation of the Freedom of Speech and Right to Petition Clauses,
25 Cal. Const., art. I, Sections 2, 3. (SJPOA’s fourth cause of action, AFSCME’s sixth cause of
26 action.)

27 9. Judgment is entered in favor of Defendants and against the SJPOA and AFSCME
28 on their respective claims for violation of the Bane Act, California Civil Code section 52.1.

1 (SJPOA's first, second, third, fourth, fifth, and eighth causes of action; AFSCME's first, second,
2 third, fourth, fifth, sixth, and seventh causes of action.)

3 10. Judgment is entered in favor of Defendants and against the SJPOA, AFSCME, and
4 the SJREA on their respective claims for violation of the Pension Protection Act, Cal. Const., art.
5 XVI, Section 17. (SJPOA's eighth cause of action, AFSCME's fifth cause of action, Count V of
6 the SJREA's first cause of action, and the Pension Protection Act provision of the SJREA's
7 second cause of action.)

8 11. SJPOA's seventh cause of action, which claimed violation of the MMBA, is
9 dismissed with prejudice pursuant to the order dated January 31, 2013, granting Defendants'
10 motion for judgment on the pleadings.

11 12. Judgment is entered in favor of Defendants and against the SJPOA and the SJREA
12 on their respective claims for violation of the Separation of Powers Doctrine. (SJPOA's fifth
13 cause of action, Count IV of the SJREA's first cause of action, and the SJREA's second cause of
14 action.)

15 13. Judgment is entered in favor of Cross-Defendants and against Cross-Complainant
16 on the City's Cross-Complaint.

17 14. Declaratory relief and injunctive relief are granted, and Defendants are enjoined
18 from implementing or enforcing Sections 1506-A, 1507-A, and 1510-A, and the phrase "a
19 minimum of" in Section 1512-A, with respect to employees and retirees hired before June 5, 2012.

20 15. The Court finds that each party obtained some but not all of its litigation objectives,
21 and therefore concludes that there is no prevailing party. Accordingly, the Court exercises its
22 discretion and orders that each party is to bear its own costs. (Cal. Civ. Proc. Code §1032(a)(4)
23 ("the court, in its discretion, may allow costs or not").)

24 JUDGMENT IS SO ENTERED.

25 Dated: April 29, 2014


Hon. Patricia M. Lucas
Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On June 11, 2014, I served the documents described as follows on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth on the attached service list:

1. NOTICE OF APPEAL

[By Electronic Mail] I caused the document(s) to be transmitted to the addressee(s) via electronic mail at the addresses listed on the attached Service List.

[By Mail] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 11, 2014, at Santa Monica, California.

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

MICHELE R. HENGESBACH

Michele Hengesbach
SIGNATURE

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meyers | nave

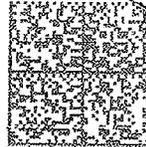
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Oakland, CA 94607

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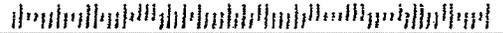


EXHIBIT 7

ORIGINAL

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Teague P. Paterson (SBN 226659), Vishtasp Soroushian (SBN 278895) Beeson, Tayer & Bodine 483 Ninth Street, 2nd Floor Oakland, CA 94607</p> <p>TELEPHONE NO.: (510) 625-9700 FAX NO. (Optional): (510) 625-8275 E-MAIL ADDRESS (Optional): vsoroushian@beesonstayer.com ATTORNEY FOR (Name): Plaintiff/Petitioner AFSCME LOCAL 101</p>	<p>FOR COURT USE ONLY 2014 JUN 23 A 11: 20</p> <p><i>[Signature]</i> J. CAO-NGUYEN</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</p> <p>STREET ADDRESS: 191 N. 1st St. MAILING ADDRESS: 191 N. 1st St. CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court</p>	<p>CASE NUMBER: 1-12-CV-225926</p>
<p>PLAINTIFF/PETITIONER: San Jose Police Officers' Association, et al. DEFENDANT/RESPONDENT: City of San Jose, et al.</p>	
<p><input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)</p>	
<p>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</p>	

1. NOTICE IS HEREBY GIVEN that (name): **Plaintiff/Petitioner AFSCME Local 101**
appeals from the following judgment or order in this case, which was entered on (date): **April 30, 2014**

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code of Civil Procedure section 904.1(a)(2)
- An order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
- Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (if known):

Copy of Notice of Appeal
sent to DCA and counsel
on 8/12/14
[Signature] Deputy Clerk
Joyce Nelson

Date: June 23, 2014

Vishtasp M. Soroushian

(TYPE OR PRINT NAME)

[Signature]

(SIGNATURE OF PARTY OR ATTORNEY)

FAXED

FILED

PROOF OF SERVICE

2014 JUN 23 A 11:20

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California, I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607. On this day, I served the foregoing Document(s):

NOTICE OF APPEAL

By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that 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 Personally Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

By Messenger Service to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.

By UPS Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

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

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, June 23, 2014.

Marlene Tasista

Marlene T. Tasista

SERVICE LIST

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Gonzalo C. Martinez, Esq.
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AND

Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)

AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)

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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)

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 112CV22574)

AND

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

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FLEMING, DONALD S. MACRAE, FRANCES J.
OLSON, GARY J. RICHERT and ROSALINDA
NAVARRO (Santa Clara Superior Court Case No.
112CV233660)*

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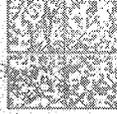


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County of Santa Clara

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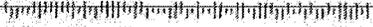
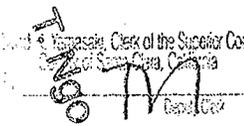


EXHIBIT 8

UCS

APP-002

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Gregg McLean Adam, No. 203436; Gonzalo C. Martinez, No. 231724 Amber L. Griffiths, No. 245002 Carroll Burdick & McDonough LLP 44 Montgomery St., Suite 400 San Francisco, CA 94104 TELEPHONE NO.: 415.989.5900 FAX NO. (Optional): 415.989.0932 E-MAIL ADDRESS (Optional): gadam@cbmlaw.com; gmartinez@cbmlaw.com ATTORNEY FOR (Name): Plaintiff San Jose Police Officers' Assoc.</p>	<p>FOR COURT USE ONLY</p> <p>2014 JUN 23 A 11: 08</p> <p>Joyce Nelson, Clerk of the Superior Court Superior Court of California, County of Santa Clara</p> 
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court</p>	
<p>PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, et al.</p>	
<p><input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)</p>	<p>CASE NUMBER: 1-12-CV-225926</p>
<p>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</p>	

1. NOTICE IS HEREBY GIVEN that (name): San Jose Police Officers' Association
 appeals from the following judgment or order in this case, which was entered on (date): April 30, 2014

- Judgment after jury trial
- Judgment after court trial as to Case No. 1-12-CV-225926
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code of Civil Procedure section 904.1(a)(2)
- An order of judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
- Other (describe and specify code section that authorizes this appeal):

BY FAX

Copy of Notice of Appeal
 sent to DCA and counsel
 on 8/12/14
 Joyce Nelson, Deputy Clerk
 Joyce Nelson

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (if known):

Date: June 23, 2014

Amber L. Griffiths
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

FILED APP-002

CASE NAME: San Jose POA v. City of San Jose, et al.

CASE NUMBER: 1-12-CV-22592 JUN 23 A 11:08

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

[X] Mail [] Personal Service

- 1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify): Carroll Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
3. I mailed or personally delivered a copy of the Notice of Appeal/Cross-Appeal (Unlimited Civil Case) as follows (complete either a or b):
a. [X] Mail. I am a resident of or employed in the county where the mailing occurred.
(1) I enclosed a copy in an envelope and
(a) [X] deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
(b) [] placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices.
(2) The envelope was addressed and mailed as follows:
(a) Name of person served: SEE ATTACHED SERVICE LIST
(b) Address on envelope:
(c) Date of mailing:
(d) Place of mailing (city and state):
b. [] Personal delivery. I personally delivered a copy as follows:
(1) Name of person served:
(2) Address where delivered:
(3) Date delivered:
(4) Time delivered:

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

Date: June 23, 2014

Joan Gonsalves (TYPE OR PRINT NAME)

[Signature] (SIGNATURE OF DECLARANT)

1 *San Jose Police Officers' Association v. City of San Jose*
2 Santa Clara County Superior Court, Case Number 1-12-CV-225926

3 **PROOF OF SERVICE**

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of San Francisco, State of California. My business address is 44
6 Montgomery Street, Suite 400, San Francisco, CA 94104.

7 On June 23, 2014, I served true copies of the following document(s) described as
8 **NOTICE OF APPEAL** on the interested parties in this action as follows:

9 **SEE ATTACHED SERVICE LIST**

10 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
11 persons at the addresses listed in the Service List and placed the envelope for collection and
12 mailing, following our ordinary business practices. I am readily familiar with the practice of
13 Carroll, Burdick & McDonough LLP for collecting and processing correspondence for mailing.
14 On the same day that correspondence is placed for collection and mailing, it is deposited in the
15 ordinary course of business with the United States Postal Service, in a sealed envelope with
16 postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The
17 envelope was placed in the mail at San Francisco, California.

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

20 Executed on June 23, 2014, at San Francisco, California.

21 
22 Joan Gonsalves

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SERVICE LIST
San Jose Police Officers' Association v. City of San Jose
No. 1-12-CV-225926 (and consolidated actions)

<p>Arthur A. Hartinger, Esq. Linda M. Ross, Esq. Jennifer L. Nock, Esq. Michael C. Hughes, Esq. Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 Phone: (510) 808-2000 Fax: (510) 444-1108 Email: ahartinger@meyersnave.com lross@meyersnave.com jnock@meyersnave.com mhughes@meyersnave.com</p>	<p>Counsel for Defendants City of San Jose (No. 1-12-CV-225926)</p> <p>City of San Jose and Debra Figone (Nos. 1-12-CV-225928; 1-12-CV-226570; 1-12-CV-226574; 1-12-CV-227864)</p>
<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>Counsel for Defendant Board of Administration for Police and Fire Department Retirement Plan of City of San Jose (No. 1-12-CV-225926)</p> <p>Necessary Party in Interest The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan (No. 1-12-CV-225928)</p> <p>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)</p> <p>Necessary Party in Interest The Board of Administration for the Federated City Employees Retirement Plan (No. 1-12-CV-227864)</p>

1	John McBride, Esq. Christopher E. Platten, Esq. 2 Mark S. Renner, Esq. 3 Wylie, McBride, Platten & Renner 2125 Canoas Garden Ave., Suite 120 4 San Jose, CA 95125 Phone: (408) 979-2920 5 Fax: (408) 979-2934 6 Email: jmcbride@wmpirlaw.com cplatten@wmpirlaw.com mrenner@wmpirlaw.com	Counsel for Plaintiffs Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (No. 1-12-CV-225928) Teresa Harris, Jon Reger, and Moses Serrano (No. 1-12-CV-226570) John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington (No. 1-12-CV-226574)
7	Teague P. Paterson, Esq. 8 Vishtasp M. Soroushian, Esq. Beeson, Taylor & Bodine APC 9 Ross House, 2nd Floor 483 Ninth Street 10 Oakland, CA 94607-4051 Phone: (510) 625-9700 11 Fax: (510) 625-8275 12 Email: TPaterson@beesontayer.com VSoroushian@beesontayer.com	Counsel for Plaintiff AFSCME Local 101 (No. 1-12-CV-227864)
13	Stephen H. Silver, Esq. 14 Richard A. Levine, Esq. Jacob A. Kalinski, Esq. 15 Silver, Hadden, Silver, Wexler & Levine 1428 Second Street, Suite 200 16 Santa Monica, CA 90401 Phone: (310) 393-1486 17 Fax: (310) 395-5801 18 Email: shsilver@shslaborlaw.com rlevine@shslaborlaw.com 19 jkalinski@shslaborlaw.com	Attorneys for Plaintiff San Jose Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro (No. 1-12-CV-233660)
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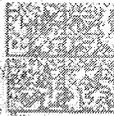
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Superior Court of California
County of Santa Clara

Superior Court Building
191 North First Street
San Jose, California 95113

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EXHIBIT 9

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6 Telephone: (510) 808-2000
Facsimile: (510) 444-1108

7 Attorneys for Defendant and Cross-Plaintiff
8 City of San Jose and Defendant Debra Figone

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

BY FAX

11 SAN JOSE POLICE OFFICERS'
12 ASSOCIATION,

13 Plaintiff,

14 v.

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

18 Defendants.

19 ROBERT SAPIEN, MARY KATHLEEN
20 MCCARTHY, THANH HO, RANDY
21 SEKANY and KEN HEREDIA,

22 Plaintiffs and Petitioners,

23 v.

24 CITY OF SAN JOSE, DEBRA FIGONE, in
25 her official capacity as City Manager of the
26 CITY OF SAN JOSE, and DOES 1 through
27 15,

28 Defendants and Respondents.

THE BOARD OF ADMINISTRATION FOR
THE 1961 SAN JOSE POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN,

Necessary Parties in Interest.

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574, 1-12-CV-
227864, 1-12-CV-233660]

NOTICE OF APPEAL

Case No. 1-12-CV-225928

Copy of Notice of Appeal
sent to DCA and counsel
on 8/12/14
Joyce Nelson
Deputy Clerk

1 TERESA HARRIS, JON REGER and MOSES
2 SERRANO

3 Plaintiffs and Petitioners,

4 v.

5 CITY OF SAN JOSE, DEBRA FIGONE, in
6 her official capacity as City Manager of the
7 CITY OF SAN JOSE, and DOES 1 through
8 15,

9 Defendant and Respondent.

10 THE BOARD OF ADMINISTRATION FOR
11 THE 1961 SAN JOSE POLICE AND FIRE
12 DEPARTMENT RETIREMENT PLAN,

13 Necessary Party in Interest.

14 AMERICAN FEDERATION OF STATE,
15 COUNTY, AND MUNICIPAL
16 EMPLOYEES, LOCAL 101, on behalf of its
17 members,

18 Plaintiffs and Petitioners,

19 v.

20 CITY OF SAN JOSÉ, DEBRA FIGONE, in
21 her official capacity as City Manager,

22 Defendants and Respondents.

23 THE BOARD OF ADMINISTRATION FOR
24 THE FEDERATED CITY EMPLOYEES'
25 RETIREMENT PLAN,

26 Necessary Party in Interest.

27 JOHN MUKHAR, DALE DAPP, JAMES
28 ATKINS, WILLIAM BUFFINGTON and
KIRK PENNINGTON,

Plaintiffs and Petitioners,

v.

CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of the
CITY OF SAN JOSE, and DOES 1 through
15,

Defendants and Respondents.

Case No. 1-12-CV-226570

Case No. 1-12-CV-227864

Case No. 1-12-CV-226574

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THE BOARD OF ADMINISTRATION FOR
THE 1975 FEDERATED CITY
EMPLOYEES' RETIREMENT PLAN,

Necessary Party in Interest.

SAN JOSE RETIRED EMPLOYEES
ASSOCIATION, HOWARD E. FLEMING,
DONALD S. MACRAE, FRANCES J.
OLSON, GARY J. RICHERT and
ROSALINDA NAVARRO,

Plaintiffs and Petitioners,

v.

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

Defendants and Respondents.

BOARD OF ADMINISTRATION FOR THE
FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM,

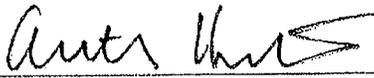
Real Party in Interest.

Case No. 1-12-CV-233660

Defendant and Cross-Plaintiff City of San Jose and Defendant Debra Figone, in Case Nos.
1-12-CV-225926, 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, 1-12-CV-227864, and 1-
12-CV-233660, hereby appeal from the final judgment in this matter, which was entered on April
30, 2014.

DATED: June 23, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

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

2282641.2

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF ALAMEDA

4: 011

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 25, 2014 I served true copies of the following documents described as NOTICE OF APPEAL on the interested parties in this action as follows:

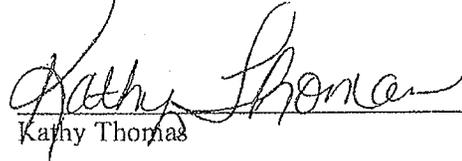
SEE ATTACHED SERVICE LIST

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 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.

Executed on June 25, 2014 at Oakland, California.


Kathy Thomas

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<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & 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) AND Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p>
	<p>AND 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 & 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 & 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>

<p>1 2 3 4 5 6 7 8</p>	<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>9 10 11 12 13 14 15</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>16 17 18 19 20 21</p>	<p>Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. Silver, Hadden, Silver, Wexler & Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90401 shsilver@shslaborlaw.com</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</p>
<p>22 23 24 25 26 27 28</p>		

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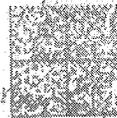
Superior Court of California
County of Santa Clara

Superior Court Building
191 North First Street
San Jose, California 95113

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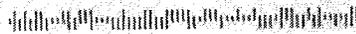


EXHIBIT 10

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Arthur A. Hartinger (121521), Linda M. Ross (133874) Mary C. Tsai (216963) Meyers Nave Riback Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 TELEPHONE NO.: 510-808-2000 FAX NO. (Optional): 510-444-1108 E-MAIL ADDRESS (Optional): lross@meyersnave.com ATTORNEY FOR (Name): City of San Jose and Debra Figone</p>	<p>FOR COURT USE ONLY</p> <p>2014 JUN 30 P 12:15</p> <p>Debra M. Riback, Clerk of the Superior Court County of Santa Clara</p> <p><i>J. CAO-NGUYEN</i> J. CAO-NGUYEN</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:</p>	<p>CASE NUMBER: 1-12-CV-225926 Consolidated with Case Nos. 112cv225928;112cv226570; 112cv 226574;112cv227864;112cv233660</p>
<p>PLAINTIFF/PETITIONER: San Jose Police Officers' Association DEFENDANT/RESPONDENT: City of San Jose, et al.</p>	
<p><input type="checkbox"/> NOTICE OF APPEAL <input checked="" type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)</p>	
<p>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</p>	

1. NOTICE IS HEREBY GIVEN that (name): City of San Jose and Debra Figone appeals from the following judgment or order in this case, which was entered on (date): April 30, 2014
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
 - Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal: See Attachment 1
 - b. Date superior court clerk mailed notice of original appeal: See Attachment 1
 - c. Court of Appeal case number (if known): H040979 (For appeals filed 5/1/14 and 6/11/14; unknown for two appeals filed 6/23/14)

Date: June 30, 2014

Arthur A. Hartinger

(TYPE OR PRINT NAME)

Arthur Hartinger
 (SIGNATURE OF PARTY OR ATTORNEY)

Copy of Notice of Appeal sent to DCA and counsel on 6/12/14
 Debra M. Riback, Deputy Clerk
 Joyce Nelson

Attachment 1 to Defendant and Cross-Plaintiff City of San Jose and Defendant Debra Figone's Notice of Cross-Appeal

San Jose Police Officers' Association v. City of San Jose, et al.,
Lead Case No. 1-12-cv-225926

Case Number on Appeal: Sixth District Court of Appeal Case No. H040979

Trial Court Case Number: *San Jose Police Officers' Association v. City of San Jose, et al.,* Case No. 1-12-cv-225926 also includes the following consolidated actions:

Robert Sapien, et al. v. City of San Jose, et al., Case No. 1-12-cv-225928

Teresa Harris, et al. v. City of San Jose, et al., Case No. 1-12-cv-226570

~~*American Federation of State, County, and Municipal Employees, Local 101, et al. v. City of San Jose, et al.,*~~
Case No. 1-12-cv-227864

John Mukhar, et al. v. City of San Jose, et al., Case No. 1-12-cv-226574

San Jose Retired Employees Association, et al. v. City of San Jose, et al., Case No. 1-12-cv-233660

2. For cross-appeals only:

(a)-(b). Defendant and Cross-Plaintiff City of San Jose and Defendant Debra Figone cross-appeal the notices of appeal filed on the following dates:

Appellant	Date Notice of Appeal Filed	Date Superior Court Mailed Notice of Original Appeal
Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano, John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington	5/1/14	5/5/14
San Jose Retired Employees Association	6/11/14	6/24/14
San Jose Police Officers' Association	6/23/14	
AFSCME Local 101	6/23/14	

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2014 JUN 30 P 12:15

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. *CAO NGUYEN*

On June 30, 2014, I served true copies of the following document described as **NOTICE OF CROSS-APPEAL** 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

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ecasady@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 30, 2014, at Oakland, California.

Erika Casady
Erika Casady

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SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & 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) AND Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p>
	<p>AND 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. Griffiths CARROLL, BURDICK & 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 Vishtasp M. Soroushian BEESON, TAYER & 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: hleiterman@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 & Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90401 shsilver@shslaborlaw.com</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</p>

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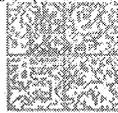
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Superior Court of California
County of Santa Clara

Superior Court Building
191 North First Street
San Jose, California 95113

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M. Dziedic
C. Sanchez
B. Casady



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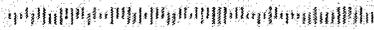


EXHIBIT 11

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Teague Paterson, SBN 226659; Vishtasp M. Soroushian, SBN 278895 BEESON, TAYER & BODINE 483 Ninth St. 2nd Floor Oakland, CA 94607 TELEPHONE NO.: (510) 625-9700 FAX NO. (Optional): (510) 625-8275 E-MAIL ADDRESS (Optional): vsoroushian@beesontayer.com ATTORNEY FOR (Name): AFSCME Local 101	FOR COURT USE ONLY FILED Santa Clara Co 07/10/14 2:00pm David H. Yamaseki Chief Executive Officer Sgt. Wendel OTSC/VD10 RW201400043103 OK 105.00 100.00 Court 1-12-CV-225926
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:	
PLAINTIFF/PETITIONER: San Jose Police Officers' Association, et al. DEFENDANT/RESPONDENT: City of San Jose, et al.	
<input type="checkbox"/> NOTICE OF APPEAL <input checked="" type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: 1-12-CV-225926 (Consolidated with case /s 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, 1-12-CV-227864, 1-12-CV-233660)
Notice: Please read Information on Appeal Procedures for Unlimited Civil Cases (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. NOTICE IS HEREBY GIVEN that (name):

appeals from the following judgment or order in this case, which was entered on (date):

- Judgment after jury trial
 Judgment after court trial
 Default judgment
 Judgment after an order granting a summary judgment motion
 Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 Judgment of dismissal after an order sustaining a demurrer
 An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 An order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
 Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal: June 25, 2014
 b. Date superior court clerk mailed notice of original appeal: not yet received
 c. Court of Appeal case number (if known): unknown (possibly to be assigned H040979)

Date: July 10, 2014

Vishtasp M. Soroushian

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

BY FAX

Copy of Notice of Appeal
 sent to DCA and counsel
 on 8/12/14
 J. Nelson, Deputy Clerk
JOYCE NELSON

CASE NAME:	CASE NUMBER:
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NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify):
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (complete either a or b):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that 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.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (city and state):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

FILED
JUL 10 2014

PROOF OF SERVICE

SANTA CLARA SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

AFSCME LOCAL 101'S NOTICE OF CROSS-APPEAL

By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that 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 Personally Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

By Messenger Service to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.

By UPS Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

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

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, July 10, 2014.



Esther Aviva

SERVICE LIST

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AND

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AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)

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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 112CV22574)

AND

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



Superior Court of California
County of Santa Clara

Superior Court Building
101 North First Street
San Jose, California 95113

135.023 / 135.031
 ✓ K. Thomas
 R. Mullinax
 M. Dzabic
 C. Casady
 E. Casady

PRESORTED
FIRST CLASS



Hasler

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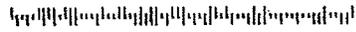


EXHIBIT 12

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FILED Santa Clara County
07/16/14 3:42pm
David H. Yamasaki
Chief Executive Officer
By: pmahan DTSCIV010139
R#201400065045
GK \$435.00
TL \$435.00
Case: 1-14-CV-268085

6 Attorneys for Plaintiffs/Petitioners San Jose Retired
7 Employees Association, David Armstrong, Donna Jewett,
8 Dorothy McGinley, and Kirk W. Pennington

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CLARA

11
12 SAN JOSE RETIRED EMPLOYEES)
13 ASSOCIATION, DAVID ARMSTRONG,)
14 DONNA JEWETT, DOROTHY)
15 MCGINLEY and KIRK W. PENNINGTON,)

Case No. 14CV268085

15 Plaintiffs/Petitioners,)

16 vs.)

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

19 Defendants/Respondents.)

20 BOARD OF ADMINISTRATION FOR)
21 THE FEDERATED CITY EMPLOYEES)
22 RETIREMENT SYSTEM,)

23 Real Party in Interest.)
24)

VERIFIED COMPLAINT FOR:

1. IMPAIRMENT OF VESTED AND CONTRACTUAL RIGHTS (California Constitution Article I, Section 9;
2. IMPAIRMENT OF VESTED AND CONTRACTUAL RIGHTS (California Constitution Article I, Section 9;
3. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
4. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
5. PROMISSOR ESTOPPEL;
6. PROMISSORY ESTOPPEL;
7. DECLARATORY RELIEF; and
8. PETITION FOR WRIT OF MANDATE

(Code of Civil Procedure Section 1085)

[Unlimited Jurisdiction]

27
28
BY FAX

VERIFIED COMPLAINT

1 5. At all times relevant herein, Defendants/Respondents designated Does 1
2 - 50 were the agents, servants, and employees of the City and in doing the things hereinafter
3 alleged were acting within the scope of their authority with the permission and consent of the
4 City. Plaintiffs will amend this Complaint to allege the true names and capacities of Does 1 -
5 50, inclusive, when ascertained.

6 6. Article XV, Section 1500 of the City Charter requires the City Council to
7 establish and maintain a retirement plan for all officers and employees of the City. A true and
8 correct copy of Article XV, Section 1500 of the City Charter is attached hereto as Exhibit A
9 and incorporated herein by reference as though set forth in full.

10 7. While City Charter Section 1500 gives the City Council the ability to "at
11 any time, or from time to time, amend or otherwise change any retirement plan or plans or
12 adopt or establish a new or different plan or plans for all or any officers or employees", such
13 ability is limited to officers or employees and thus excludes retired persons and their
14 beneficiaries such as Affected Retirees and Affected Beneficiaries. Therefore, any new or
15 different plans for the Affected Retirees or the Affected Beneficiaries that provide reduced or
16 less advantageous benefits than those which were established during the Affected Retirees'
17 employment may not be adopted or established.

18 8. Pursuant to its authority under the California Constitution and the
19 requirements of Article XV, Section 1500 of the City Charter, the City Council established the
20 Plan as a defined benefit plan. The provisions of the Plan are set out in Chapters 3.16, 3.20,
21 3.24 and 3.28 of the San Jose Municipal Code ("SJMC"). A true and correct copy of the Plan
22 is attached as Exhibit B and incorporated herein by reference as though set forth in full.
23 Membership in the Plan is mandatory for persons employed by the City in the positions held by
24 Affected Retirees and was mandatory for all Affected Retirees during their employment with
25 the City. The Plan pays a monthly retirement allowance to the Affected Retirees and pays a
26 monthly survivorship allowance to the Affected Beneficiaries.

27 9. Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16,
28 which became effective on or about September 18, 1984, Affected Retirees who were

1 employed on or after that date, their Affected Beneficiaries, and those persons who became
2 Affected Beneficiaries on or after that date who met the requirements set forth therein became
3 eligible to participate in a medical insurance plan sponsored by the City (the "City's Retiree
4 Medical Plan") with respect to which the Plan pays all or a prescribed portion of the premium
5 upon and following their retirement or, in the case of a survivor, following the death of the
6 member.

7 10. Medical benefits payable under the Plan are funded by prior
8 contributions from Affected Retirees, contributions from the active Plan members, and
9 contributions from the City at rates determined by the Board based on, *inter alia*, investment
10 earnings of the Plan's funds. During their employment with the City on or after the enactment
11 of the City's Retiree Medical Plan, Affected Retirees made contributions for medical benefits
12 as required by the Plan and as set by the Board. Similarly, the members of the Plan whose
13 survivors became Affected Beneficiaries on or after such enactments also made contributions
14 for medical and dental benefits as required by the Plan and as set by the Board.

15 11. Pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16, the
16 portion of the premium to be paid by the Plan shall be "the portion that represents an amount
17 equivalent to the lowest of the premiums for single or family medical insurance coverage, for
18 which the member or survivor is eligible and in which the member or survivor enrolls under the
19 provisions of this part, which is available to an employee of the city at such time as said
20 premium is due and owing."

21 12. Those Affected Retirees who were employed on or after the enactment
22 of the City's Retiree Medical Plan, their Affected Beneficiaries and those persons who became
23 Affected Beneficiaries on or after such enactment who met the minimum requirements set forth
24 in the Plan earned a vested and contractual right to participate in the City's Retiree Medical
25 Plan following the Affected Retirees' retirement or, in the case of a survivor, following the
26 death of the member. These rights became vested when the Affected Retirees commenced
27 performing services as employees of the City or when the Affected Retirees first performed
28 services for the City after a benefit or improved benefit was enacted during their employment.

1 Further, the Affected Retirees continued to rely on the existence of those vested rights in
2 continuing their employment with the City and when making retirement planning decisions.

3 13. From at least on or around December 31, 2012, through and including
4 the present time, the City, through its officers and employees, specifically including but not
5 limited to its Board, reduced the amount of payments to Affected Retirees and Affected
6 Beneficiaries under the City's Retiree Medical Plan by fundamentally altering the nature and
7 quality of the eligible plans available to current employees and the attendant premiums.

8 14. In particular, the City included a new deductible medical plan option and
9 continued to include a co-pay option that had not been included in the City's offered medical
10 plans in existence when the Affected Retirees rendered services for the City and the benefit
11 became vested.

12 15. The City unilaterally interpreted the plan with these options as the "low
13 cost plan" available to City's employees, with the attendant greatly reduced premiums serving
14 as the new amount paid to Affected Retirees and Affected Beneficiaries under the City's
15 Retiree Medical Plan.

16 16. The resulting reduced payment amounts to Affected Retirees and
17 Affected Beneficiaries under the City's Retiree Medical Plan produced significant monthly
18 premium increases Affected Retirees and Affected Beneficiaries were required to pay for
19 essentially the same medical plans previously contractually made available to them.

20 17. Plaintiffs/Petitioners have done all the things necessary and required to
21 be done and satisfied all conditions precedent to the maintenance of this action, including the
22 filing of all applicable claims and notices under the rules, regulations and policies of the City.
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1 **FIRST CAUSE OF ACTION**

2 (Violation of the Contract Clause of the California Constitution
3 (Article I, Section 9))

4 18. The allegations contained above in paragraphs 1 through 17 are
5 incorporated herein by reference as though set forth in full.

6 19. Imposing the deductible medical plan option described in paragraph 14
7 and unilaterally interpreting the plan with this option as the "low cost plan" violated Affected
8 Retirees' and Affected Beneficiaries' vested and contractual rights, in violation of California
9 Constitution, Article I, Section 9, to a payment equal to the premium level to an available "low
10 cost plan" that is a no deductible medical plan that is provided to a substantial number of the
11 City's employees.

12 20. Affected Retirees and Affected Beneficiaries have been damaged in the
13 amount of the difference between the amount of the payments which have been provided since
14 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
15 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

16 21. Furthermore, unless and until enjoined by this Court,
17 Defendants/Respondents, and each of them, will continue imposing the deductible medical plan
18 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
19 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries by
20 abrogating and/or impairing their vested and contractual rights in violation of Article I, Section
21 9 of the California Constitution.

22 22. No plain, adequate or complete remedy at law is available to
23 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested and contractual
24 rights of the Affected Retirees and Affected Beneficiaries.

25 23. In the absence of such injunctive relief issued pursuant to law, the
26 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

27 24. The successful prosecution of this cause of action will entitle
28 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of

1 Civil Procedure.

2
3 **SECOND CAUSE OF ACTION**

4 (Violation of the Contract Clause of the California Constitution

5 (Article I, Section 9))

6 25. The allegations contained above in paragraphs 1 through 17 are
7 incorporated herein by reference as though set forth in full.

8 26. Imposing the co-pay medical plan option described in paragraph 14 and
9 unilaterally interpreting the plan with this option as the "low cost plan" violated Affected
10 Retirees' and Affected Beneficiaries' vested and contractual rights, in violation of California
11 Constitution, Article I, Section 9, to a payment equal to the premium level to an available "low
12 cost plan" that is a no co-pay medical plan that is provided to a substantial number of the City's
13 employees.

14 27. Affected Retirees and Affected Beneficiaries have been damaged in the
15 amount of the difference between the amount of the payments which have been provided since
16 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
17 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

18 28. Furthermore, unless and until enjoined by this Court,
19 Defendants/Respondents, and each of them, will continue imposing the co-pay medical plan
20 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
21 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries by
22 abrogating and/or impairing their vested and contractual rights in violation of Article I, Section
23 9 of the California Constitution.

24 29. No plain, adequate or complete remedy at law is available to
25 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested and contractual
26 rights of the Affected Retirees and Affected Beneficiaries.

27 30. In the absence of such injunctive relief issued pursuant to law, the
28 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

1 and Affected Beneficiaries were required to pay for essentially the same medical plans
2 previously offered to them.

3 36. On information and belief, leading up to the imposition of these medical
4 plan design changes, in violation of their duty to act in good faith, the City, its elected officials
5 and/or its authorized agents made statements that were untrue, intentionally or negligently
6 misleading and omitted to provide material information to the Board, City employees and the
7 general public about the fiscal necessity and viability of various pension reforms and medical
8 plan design changes.

9 37. Affected Retirees and Affected Beneficiaries have been damaged in the
10 amount of the difference between the amount of the payments which have been provided since
11 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
12 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

13 38. Furthermore, unless and until enjoined by this Court,
14 Defendants/Respondents, and each of them, will continue imposing the deductible medical plan
15 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
16 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries by unfairly
17 interfering with Affected Retirees' and Affected Beneficiaries' vested and contractual rights to
18 participate in the City's Retiree Medical Plan.

19 39. No plain, adequate or complete remedy at law is available to
20 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested and contractual
21 rights of the Affected Retirees and Affected Beneficiaries.

22 40. In the absence of such injunctive relief issued pursuant to law, the
23 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

24 41. The successful prosecution of this cause of action will entitle
25 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
26 Civil Procedure.

27

28

1 **FOURTH CAUSE OF ACTION**

2 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

3 42. The allegations contained above in Paragraphs 1 through 17 are
4 incorporated herein by reference as though set forth in full.

5 43. In every agreement there is an implied promise of good faith and fair
6 dealing that neither party will do anything which will injure the right of the other to receive the
7 benefits of the agreement. (*Comunale v. Traders & General Ins. Co., supra*, 50 Cal.2d at 658.)
8 "The covenant of good faith finds particular application in situations where one party is
9 invested with a discretionary power affecting the rights of another. Such power must be
10 exercised in good faith." (*Carma Developers (Cal.), Inc. v. Marathon Development California,*
11 *Inc., supra*, 2 Cal.4th at 371-372.)

12 44. The Affected Retirees and Affected Beneficiaries earned a vested and
13 contractual right to participate in the City's Retiree Medical Plan when the Affected Retirees
14 commenced performing services as employees of the City or when the Affected Retirees first
15 performed services for the City after a benefit or improved benefit was enacted during their
16 employment. Further, the Affected Retirees continued to rely on the existence of those vested
17 rights in continuing their employment with the City and when making retirement planning
18 decisions.

19 45. In imposing the co-pay medical plan option described in paragraph 14
20 and unilaterally interpreting the plan with this option as the "low cost plan", the City, through
21 its officers and employees, specifically including but not limited to its Board, unfairly and in
22 bad faith interfered with and violated Affected Retirees' and Affected Beneficiaries' vested and
23 contractual rights to participate in the City's Retiree Medical Plan, as the resulting reduced
24 payment amounts produced significant monthly premium increases Affected Retirees and

25 Affected Beneficiaries were required to pay for essentially the same medical plans previously
26 offered to them.

27 46. On information and belief, leading up to the imposition of these medical
28 plan design changes, in violation of their duty to act in good faith, the City, its elected officials

1 and/or its authorized agents made statements that were untrue, intentionally or negligently
2 misleading and omitted to provide material information to the Board, City employees and the
3 general public about the fiscal necessity and viability of various pension reforms and medical
4 plan design changes.

5 47. Affected Retirees and Affected Beneficiaries have been damaged in the
6 amount of the difference between the amount of the payments which have been provided since
7 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
8 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

9 48. Furthermore, unless and until enjoined by this Court,
10 Defendants/Respondents, and each of them, will continue imposing the co-pay medical plan
11 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
12 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries by unfairly
13 interfering with Affected Retirees' and Affected Beneficiaries' vested and contractual rights to
14 participate in the City's Retiree Medical Plan.

15 49. No plain, adequate or complete remedy at law is available to
16 Plaintiffs/Petitioners to prevent the abrogation and/or impairment of the vested and contractual
17 rights of the Affected Retirees and Affected Beneficiaries.

18 50. In the absence of such injunctive relief issued pursuant to law, the
19 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

20 51. The successful prosecution of this cause of action will entitle
21 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
22 Civil Procedure.

23 **FIFTH CAUSE OF ACTION**

24 (Promissory Estoppel)

25 52. The allegations contained above in Paragraphs 1 through 17 are
26 incorporated herein by reference as though set forth in full.

27 53. Prior to the City's imposition of the deductible medical plan option
28 described in paragraph 14 and the City's unilateral interpretation of the plan with this option as

1 the "low cost plan", since the establishment of the City's Retiree Medical Plan, the City had
2 offered exclusively medical plans without a deductible.

3 54. On information and belief, Affected Retirees and Affected Beneficiaries
4 reasonably relied to their detriment on the City's practice of offering exclusively medical plans
5 without a deductible by planning, *inter alia*, their personal investments and the timing of their
6 retirement based on the belief that the "low cost plan" offered by the City would be a medical
7 plan without a deductible.

8 55. It was reasonably foreseeable by the City that the Affected Retirees
9 would rely on the City's practice of offering exclusively medical plans without a deductible.

10 56. Affected Retirees and Affected Beneficiaries have been damaged in the
11 amount of the difference between the amount of the payments which have been provided since
12 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
13 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

14 57. Furthermore, unless and until enjoined by this Court,
15 Defendants/Respondents, and each of them, will continue imposing the deductible medical plan
16 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
17 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries.

18 58. In the absence of such injunctive relief issued pursuant to law, the
19 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

20 59. The successful prosecution of this cause of action will entitle
21 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
22 Civil Procedure.

23 **SIXTH CAUSE OF ACTION**

24 (Promissory Estoppel)

25 60. The allegations contained above in Paragraphs 1 through 17 are
26 incorporated herein by reference as though set forth in full.

27 61. Prior to the City's imposition of the co-pay medical plan option
28 described in paragraph 14 and the City's unilateral interpretation of the plan with this option as

1 the "low cost plan"; since the establishment of the City's Retiree Medical Plan, the City had
2 offered exclusively medical plans without a co-pay.

3 62. On information and belief, Affected Retirees and Affected Beneficiaries
4 reasonably relied to their detriment on the City's practice of offering exclusively medical plans
5 without a co-pay by planning, *inter alia*, their personal investments and the timing of their
6 retirement based on the belief that the "low cost plan" offered by the City would be a medical
7 plan without a co-pay.

8 63. It was reasonably foreseeable by the City that the Affected Retirees
9 would rely on the City's practice of offering exclusively medical plans without a co-pay.

10 64. Affected Retirees and Affected Beneficiaries have been damaged in the
11 amount of the difference between the amount of the payments which have been provided since
12 December 31, 2012 and the amount of the payments which are required pursuant to SJMC
13 Chapter 3.24, Part 23 and Chapter 3.28, Part 16, which shall be determined at trial.

14 65. Furthermore, unless and until enjoined by this Court,
15 Defendants/Respondents, and each of them, will continue imposing the co-pay medical plan
16 option described in paragraph 14 and unilaterally interpreting the plan with this option as the
17 "low cost plan" to the detriment of the Affected Retirees and Affected Beneficiaries.

18 66. In the absence of such injunctive relief issued pursuant to law, the
19 Affected Retirees and Affected Beneficiaries will sustain great and irreparable harm.

20 67. The successful prosecution of this cause of action will entitle
21 Plaintiffs/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
22 Civil Procedure.

23
24 **SEVENTH CAUSE OF ACTION**

25 (Declaratory Relief)

26 68. The allegations contained above in Paragraphs 1 through 51 are
27 incorporated herein by reference as though set forth in full.
28

1 69. An actual controversy has arisen and now exists between
2 Plaintiffs/Petitioners, on the one hand, and Defendants/Respondents, on the other hand,
3 concerning the rights of the Affected Retirees and Affected Beneficiaries and the respective
4 duties and obligations of Defendants/Respondents.

5 70. Plaintiffs/Petitioners contend that imposing the deductible and co-pay
6 medical plan options described in paragraph 14 and unilaterally interpreting the plan with these
7 options as the "low cost plan" violated Affected Retirees' and Affected Beneficiaries' vested
8 and contractual rights, in violation of California Constitution, Article I, Section 9, to a payment
9 equal to the premium level to an available "low cost plan" that is a no co-pay, no deductible
10 medical plan that is provided to a substantial number of the City's employees. Conversely,
11 Defendants/Respondents contend that imposing the deductible and co-pay medical plan options
12 described in paragraph 14 and unilaterally interpreting the plan with these options as the "low
13 cost plan" do not violate Article I, Section 9 of the California Constitution.

14 71. Additionally, Plaintiffs/Petitioners contend that imposing the deductible
15 and co-pay medical plan options described in paragraph 14 and unilaterally interpreting the
16 plan with these options as the "low cost plan" unfairly interfered with and violated Affected
17 Retirees' and Affected Beneficiaries' vested and contractual rights to participate in the City's
18 Retiree Medical Plan, as the resulting reduced payments produced significant monthly premium
19 increases Affected Retirees and Affected Beneficiaries were required to pay for essentially the
20 same medical plans previously offered to them. Conversely, Defendants/Respondents contend
21 that imposing the deductible and co-pay medical plan options described in paragraph 14 and
22 unilaterally interpreting the plan with these options as the "low cost plan" do not unfairly
23 interfere with or violate Affected Retirees' and Affected Beneficiaries' vested and contractual
24 rights to participate in the City's Retiree Medical Plan.

25 72. Pursuant to California Code of Civil Procedure Section 1060,
26 Plaintiffs/Petitioners desire a judicial determination of this controversy and a declaration that
27 imposing the deductible and co-pay medical plan options described in paragraph 14 violated
28 Affected Retirees' and Affected Beneficiaries' vested and contractual rights, in violation of

1 77. There are no administrative remedies available to Affected Retirees,
2 Affected Beneficiaries, or Plaintiffs/Petitioners to compel the City to set aside any action it has
3 taken in implementing the deductible and co-pay medical plan options described in paragraph
4 14 and unilaterally interpreting the plan with these options as the "low cost plan".
5 Consequently, Affected Retirees, Affected Beneficiaries, or Plaintiffs/Petitioners have
6 exhausted all available remedies.

7 78. Affected Retirees, Affected Beneficiaries, and Plaintiffs/Petitioners do
8 not have an adequate remedy at law.

9 79. The successful prosecution of this cause of action will entitle
10 Plaintiff/Petitioners to an award of attorneys' fees pursuant to Section 1021.5 of the Code of
11 Civil Procedure.

12 WHEREFORE, Plaintiffs/Petitioners requests that this Court:

13 A. Award damages to Plaintiffs/Petitioners, Affected Retirees and Affected
14 Beneficiaries in the amount of the difference between the amount of the payments
15 which have been provided since December 31, 2012 and the amount of the payments
16 which are required pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16,
17 and/or Plaintiffs'/Petitioners' vested rights, which shall be determined at trial;

18 B. Issue a Permanent Injunction enjoining Defendants/Respondents and
19 each of them from imposing the deductible and co-pay medical plan options described
20 in paragraph 14 and unilaterally interpreting the plan with these options as the "low cost
21 plan";

22 C. Declare that imposing the deductible and co-pay medical plan options
23 described in paragraph 14 and unilaterally interpreting the plan with these options as the
24 "low cost plan" substantially impair and/or abrogate vested and contractual rights of
25 the Affected Retirees and Affected Beneficiaries in violation of the Contract Clause of
26 the California Constitution;

27 D. Declare that imposing the deductible and co-pay medical plan options
28 described in paragraph 14 and unilaterally interpreting the plan with these options as the

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“low cost plan” unfairly interfere with violated Affected Retirees’ and Affected Beneficiaries’ vested and contractual rights to participate in the City’s Retiree Medical Plan;

E. Issue its Peremptory Writ of Mandate (1) commanding the City to set aside any action it has taken imposing the deductible and co-pay medical plan options described in paragraph 14 and unilaterally interpreting the plan with these options as the “low cost plan”, including paying the amount of the difference between the amount of the payments which have been provided since December 31, 2012 and the amount of the payments which are required pursuant to SJMC Chapter 3.24, Part 23 and Chapter 3.28, Part 16 and/or Plaintiffs’/Petitioners; vested rights;

F. Award Plaintiffs/Petitioners their costs of suit;

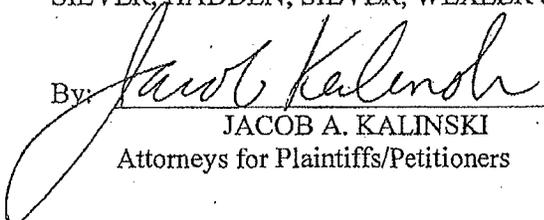
G. Award Plaintiffs/Petitioners reasonable attorneys’ fees in accordance with California Code of Civil Procedure Section 1021.5; and,

H. Award such other and further relief as the Court deems proper.

Respectfully submitted,

SILVER, HADDEN, SILVER, WEXLER & LEVINE

DATED: July 16, 2014

By: 

JACOB A. KALINSKI

Attorneys for Plaintiffs/Petitioners