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8 San Jose Police Officers' Association

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11
12 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

13 Plaintiff,

14 v.

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

18 Defendants.

19
20 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS

Case No. 1-12-CV-225926
(and Consolidated Actions 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-2335660)

**REPLY POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF AND CROSS-
DEFENDANT SAN JOSE POLICE OFFICERS'
ASSOCIATION'S MOTION FOR ATTORNEYS'
FEES**

Judge: Hon. Hon. Patricia Lucas
Date: September 25, 2014
Time: 9:00 a.m.
Dept.: 2

The Hon. Patricia Lucas, Dept. 2

Action Filed: June 6, 2012

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22
23 **I.**
INTRODUCTION AND OVERVIEW

24
25 A reader unfamiliar with the Court's February 20, 2014 Statement of Decision could be
26 excused after reading the City's Opposition from concluding that the City had overwhelmingly
27 defeated the challenges to Measure B. The City's narrative trivializes plaintiffs' victories,
28 claiming they were mere technicalities, of little substantive value. It is of course a false narrative.

1 In truth, while defendants tallied more wins on the figurative causes of action scorecard, it
2 was plaintiffs who landed the knockout blow. Section 1506-A's unlawful attempt to erode the
3 vested rights of plaintiffs was the central plank of Measure B. It was declared illegal, as was
4 defendants' threshold assertion that the reservation of rights clause permitted them carte blanche
5 authority to change any employee pension rights. The VEP, COLA and section 1512-A rulings in
6 plaintiffs' favor all flowed from this key aspect of the court's decision.

7 The court's prior determination that there was no prevailing party for purposes of
8 attributing costs is not dispositive of this motion. Code of Civil Procedure section 1032 (costs)
9 and section 1021.5 (fees) have differing standards.¹

10 The City's arguments in opposition founder and barely scratch the surface of the proper fee
11 inquiry under section 1021.5. Courts assess *the overall effects of the Court's ruling* – not a mere
12 tally of winning causes of action versus losing. Without the concrete relief plaintiffs obtained
13 about the reservation of rights and the Contracts Clause, the City would have placed unfunded
14 liability burdens on its employees, frozen COLAs anytime the City Council exercised a self-
15 created right to do so, reduced pension payouts in the amounts *already earned*, and violated
16 plaintiffs' right to 1:1 contributions to healthcare retirement benefits.²

17 Plaintiffs defended the status quo – the rights and benefits they were promised and had
18 earned – after the City abandoned pension negotiations with the very unions it sued. The City
19 searches endlessly for ways to disparage the unions' litigation motives, but the City sued first. It
20 sued not all of its employees, nor even all unions.

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23
24 ¹ SJPOA addressed the matter of separate standards in its Memorandum of Points and Authorities
("MPA") at pages 9:17-10:12.

25 ² The Opposition does not note this latter ruling. (SOD 29:10-13 [vested right to retiree healthcare
26 contributions no greater than 1:1 ratio with City contributions].) Thus, the City errs in its "tally"
27 of rulings in plaintiffs' favor. The Court struck language from 1512-A, *id.* at 30:5-6, so that the
28 City may not burden employees with a disproportionate ratio for healthcare contributions, without
which paycheck deductions for retirement contributions would have skyrocketed, as the City well
knows.

1 The Court should grant the fees motion for three reasons. *First*, the California Supreme
2 Court has upheld the significance of the public right at issue—it need not be groundbreaking, as
3 the City claims.

4 *Second*, the Court’s rulings preserve the status quo of many benefits not just plaintiffs but
5 the thousands employed by the City. Moreover, the reservation of rights ruling bars the City from
6 subjecting these thousands of workers to benefit reductions it might otherwise insert into the
7 Charter. It is significant that a state court issued the ruling on reservation of rights, which
8 occurred solely due to plaintiffs’ efforts.

9 *Third*, the necessity and expense of litigating militate in SJPOA’s favor. The City drew up
10 Measure B, placed it on the ballot, determined it would sue for declaratory relief, advised the
11 unions that it would file suit against them, and then did so. A small minority of individuals and
12 their associations defended against the City’s federal suit and, in response, pressed forward with
13 claims in state court. In addition, the Supreme Court has stated, “in assessing the financial
14 burdens and benefits in the context of section 1021.5, we are evaluating incentives rather than
15 outcomes.” (*Conservatorship of Whitley* (2010) 50 Cal. 4th 1206, 1221.) To rule as the City
16 requests would deny the very sort of incentive the legislature intended under CCP Section 1021.5.
17 To grant SJPOA’s petition, which is set forth in terms proportionate to the undue burden it carried,
18 would provide the intended incentive to future workers who would vindicate important rights of
19 other public employees. SJPOA’s application of a negative multiplier to the lodestar
20 acknowledges that the victory was pecuniary and incomplete.

21 **II.**
22 **ARGUMENT**

23 The Opposition brief obfuscates the analysis for determining an award of Section 1021.5
24 fees: (1) the plaintiffs’ action has resulted in the enforcement of an important right, (2) a
25 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public
26 or a large class of persons, and (3) a disproportionate burden of enforcement is carried by the
27 plaintiffs, so as to make the award appropriate. (CCP § 1021.5; *Press v. Lucky Stores, Inc.* (1983)
28 34 Cal.3d 311, 321.)

1 *Ramon v. County of Santa Clara* (2009) 173 Cal.App.4th 915 [Santa Clara County liable for fees
2 after Court of Appeal invalidated County billing its residents for arrest costs.)³

3 **B. The Significant Benefit of the Court’s Ruling to All City Employees Is Obvious**

4 Under Section 1021.5, fees are appropriate where a significant benefit, whether pecuniary
5 or nonpecuniary, has been conferred on the general public or a large class of persons. (*Press*, 34
6 Cal.3d at 321.) Not only is there no “litmus test” for what large class means, courts have awarded
7 Section 1021.5 fees where a smaller group of individuals benefitted. (*See Planned Parenthood v.*
8 *Aakhus* (1993) 14 Cal.App.4th 162, 171 [“The evidence of the size of the population benefited by
9 a private suit is not always required.”]; *see, e.g., California Common Cause v. Duffy* (1987) 200
10 Cal.App.3d 730, 747-749 [upholding Section 1021.5 attorneys' fees award to plaintiff who
11 successfully stopped a sheriff from ordering his deputies, while in uniform and on duty, to
12 distribute campaign literature].)

13 The City argues that no “large” class of persons benefitted as if City employees numbering
14 nearly 6,000 is not large enough. (Opp.12:14-15.) This bald statement contains no authority to
15 support it. (*See id.* at 12 and generally.) It cites inapposite authorities. Both of the cases it cites
16 on this point are environmental rulings, which stand for the uncontroversial principle that though
17 the public interest may be served by a ruling, Section 1021.5 fees are not appropriate where the
18 ruling does not pertain to an important right or benefit of a large group (or the public). (*Id.* at
19 11:14-12:24.)

20 In addition, the City argues “this case did not involve a sweeping victory vindicating
21 Contracts Clause rights.” (*Id.* 10:9-10). It goes on to state “the rulings were theoretical and make
22 no difference in practice.” (*Id.* 12:12-13.) It also claims, “Plaintiffs did not establish any benefit,
23 much less a ‘significant benefit’ for City employees.” (*Id.* 12:11-12.)

24
25
26 ³ Defendants’ “voters’ interests” argument is particularly problematic in this case because so few
27 registered voters actually showed up to cast a vote regarding Measure B. (RJN Ex. 2 [Santa Clara
28 County Registrar of Voters Official Final Results] at p. 1; *see also* p. 14.) Indeed, since Measure
B passed, the Legislature has passed a law that permits charter cities to amend their charters only
during general elections, not primary ones. (RJN Ex. 3 [Elec. Code § 9255.]

1 The City minimizes the impact of the Statement of Decision on the state and national
2 pension debate. But the decision has prompted several politicians to propose amending the
3 California Constitution's Contracts Clause to permit what this Court found illegal. Mayor Reed
4 summed this up in many press conferences and releases, including the following:

5 Unfortunately, the Judge's decision to invalidate certain portions of
6 Measure B also highlights the fact that current California law provides
7 cities, counties and other government agencies with very little
8 flexibility in controlling their retirement costs. That's why I believe that
9 we need a constitutional amendment that will empower government
10 leaders to tackle their massive pension problems and negotiate fair and
11 reasonable changes to employees' future pension benefits.

12 (RJN Ex. 1.) The case has had other impacts in national, state, and local discussions. (RJN Exs.
13 4-6.) Not the least of those impacted are other California municipalities seeking the best means to
14 approach to pension reform. (RJN Exs. 4-5) Those discussions continue on a national level.

15 (RJN Ex. 5.)

16 The City's argument that a "sweeping victory" is required is unsupported. The important
17 public right or interest prong of section 1021.5 requires that plaintiffs must be successful. The
18 City fails to comprehend that a *partial* victory as to the plaintiffs still may qualify as an important
19 victory to the public's benefit (or the benefit of a large class of persons). (*See Hammon v. Agran*
20 (2002) 99 Ca. App. 4th 115; *Sokolow v. County of San Mateo* (1989) 213 Cal. App. 3d 231.) The
21 City misreads *Sokolow v. San Mateo* by trying to distinguish it on the facts alone. But it is
22 indistinguishable, more fundamentally, with respect to the law on the larger point: there, as here, a
23 "tally" of claims would not lead to a claim of victory. (*Sokolow*, 213 Cal. App. 3d at 245-246).
24 An assessment of the *impact* of the court's ruling makes it clear that an important right was
25 vindicated. (*Id.*) Thus, a fees award commensurate to SJPOA's partially prevailing on an
26 important right is appropriate. (*E.g., Hammond*, 99 Cal. App. 4th at 136-137.)

27 Similarly, it states the reservation of rights findings by this Court did not determine the
28 legality of Section 1506-A. (*Id.* at 6:4-18, 10:24-25.) To the contrary:

The City's primary argument in opposition is that, without more, the
Charter's reservation of rights precludes the creation of a vested right.
As discussed above, the Court finds this argument unsupported by law.
Second, the City argues that it has the right to regulate compensation

1 and that the parties treated pension contributions as if they were an
2 element of compensation.

3 (Statement of Decision [“SOD”] at 12:7-8, 13:20-24.) In addition, City employees’ vested rights
4 were largely vindicated by the Court’s holding. (SOD at 17:3 [Section 1507-A impairs vested
5 right to City payment of unfunded liability]; 17:22-24 [VEP (“The City does not explain how
6 section 1507-A could be a voluntary alternative election given the invalidity of section 1506-A.
7 For these reasons, Section 1507-A is also invalid.”)]; 22:9, 24:8 [Section 15010-A impairs vested
8 right to COLAs]; 29:10-13, 30:5-6 [severing a portion of 1512-A as to retiree healthcare:
9 “However, this argument is at odds with the plain language of Measure B: it ignores ‘a minimum
10 of’—which clearly would authorize an employee contribution requirement greater than 50%,
11 which in turn impairs the vested right to have the City pay ‘one to one.’”])

12 Finally, the City mischaracterizes Section 1021.5 fees as being available only to those
13 litigants with altruistic motives. But the California Supreme Court is clear on this point – the
14 legislature designed Section 1021.5 as a means to provide incentives to prospective litigants who
15 would engage in litigation concerning important public rights. (*Conservatorship of Whitley* (2010)
16 50 Cal.4th 1206, 1211.) [courts are “not to compensate with attorney fees only those litigants who
17 have altruistic or lofty motives, but rather all litigants and attorneys who step forward to engage in
18 public interest litigation when there are insufficient financial incentives to justify the litigation in
19 economic terms.”].)

20 **C. Plaintiffs Carry a Disproportionate Burden of Enforcement**

21 Section 1021.5 recognizes that an award of fees may be appropriate in instances where
22 “the necessity and financial burden of private enforcement, or of enforcement by one public entity
23 against another public entity, are such as to make the award appropriate,”

24 A trial court may award fees for partial success under Section 1021.5. (*Hammond v.*
25 *Agran* (2002) 99 Cal. App. 4th 115, 136-137.) The fact that SJPOA’s victory preserved the status
26 quo does not preclude a fees award. (*See Press*, 34 Cal.3d at 321.) But SJPOA realizes that if
27 Court awards fees it may wish to do so by “prorating” an award commensurate to the interest
28

1 served. SJPOA's Motion for Fees sets forth a suggested ratio for calculation of such an award.
2 (MPA at 12:1-3.)

3 Otherwise, absent a fee award, a disincentive results, potentially preventing working
4 individuals in the future, whose responsibility is to collectively negotiate benefits, from litigating
5 to protect those benefits. To impose hundreds of thousands of dollars on such individuals in this
6 case is a disincentive to future litigants and highlights the disproportionate burden.

7 The City claims plaintiffs had "sufficient motivation to bring this case—to shield their
8 members from contributing the actual cost of retirement benefits and instead shift the costs to the
9 City." (Opp. 1:14-16.) But it was the City that pursued the Measure B litigation—filing in federal
10 court before the Measure B polls had closed and suing certain associations representing some of
11 its employees. In response, plaintiffs defended and ended the federal court litigation, in order to
12 obtain a state court ruling. (CITE [same RT portion cited above].)

13 Finally, the City takes it upon itself to note plaintiffs lost their fee petition in federal court.
14 This merely highlights the degree of disproportionate burden that plaintiffs have carried. In
15 addition, it ignores that plaintiffs could have included in this fee petition a request for a fees award
16 also for services defending against the City's attack in federal court—fees that were required in
17 order to convince the City to leave federal court, so as to obtain a state court ruling that the City
18 must obey its Charter. Indeed, courts have awarded federal court fees in similar situations. (*See,*
19 *e.g., Ramon v. County of Santa Clara* (2009) 173 Cal.App.4th 915, 923; 97 Cal.App.4th 740;
20 *Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 755-756 [trial court
21 had discretion to award fees in state court with respect to federal case, because "[t]he ancillary
22 judicial proceedings with which we are here concerned related very directly to the issues presented
23 in the action in which fees were awarded, and [the plaintiffs] prevailed in those proceedings.
24 While the federal proceedings may not have been a necessary precondition of the superior court
25 action, they materially contributed to the resolution of the constitutional issues presented to that
26 court."].)

27 The City has used the Opposition to re-litigate its arguments rather than address
28 objectively the degree of disproportionate burden plaintiffs have borne, the significant benefit City

1 employees have received from the SOD, and the important rights—in this instance, constitutional
2 rights and Charter rights—plaintiffs have vindicated for themselves and all City employees.

3
4 **III.**
CONCLUSION

5 The Court should exercise its discretion and award plaintiff SJPOA reasonable
6 attorneys' fees under Code of Civil Procedure section 1021.5. SJPOA has, alongside the other
7 plaintiffs in these consolidated matters, vindicated “an important right affecting the public
8 interest.”

9 Dated: September 18, 2014

CARROLL, BURDICK & McDONOUGH LLP

10
11 By 
12 Gregg McLean Adam
13 Gonzalo C. Martinez
14 Amber L. Griffiths
15 Attorneys for Plaintiff and Cross-Defendant
16 San Jose Police Officers' Association
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EXHIBIT A

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 BEFORE THE HONORABLE PATRICIA M. LUCAS, JUDGE

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6 San Jose Police Officers')
7 Association, et al.,)
8 Plaintiffs,)
9 vs.) Case No. 112-CV-225926
10 City of San Jose, et al.,) ELECTRONIC COPY
11 Defendants.)

12 _____

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15 REPORTER'S TRANSCRIPT OF THE PROCEEDINGS
16 August 23, 2012

17
18 A P P E A R A N C E S:

19 For the Plaintiffs: Christopher E. Platten, Esq.
20 For Plaintiff AFSCME: Vishtasp M. Soroushian, Esq.
21 For Plaintiff SJPOA: Gregg McLean Adam, Esq.
22 For Defendant City
23 of San Jose: Arthur A. Hartinger, Esq.
Michael Hughes, Esq.
24 For Defendant
25 Board of Admin.
for Police and Fire: Harvey L. Leiderman, Esq.

26 Julie T. Serna
27 Official Court Reporter
CSR #7890

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1 San Jose, California August 23, 2012

2 P R O C E E D I N G S:

3 THE COURT: Line 12 is San Jose Police Officers
4 Association versus City of San Jose.

5 MR. HARTINGER: Good morning, Your Honor.
6 Arthur Hartinger and Mike Hughes for defendants.

7 MR. ADAM: Good morning, Your Honor.
8 Gregg Adam for San Jose Police Officers Association.

9 MR. PLATTEN: Good morning, Your Honor.
10 Christopher Platten representing three different
11 groups of plaintiffs: Sapien, S-a-p-i-e-n, plaintiffs;
12 the Harris plaintiffs; and the Mukhar plaintiffs,
13 M-u-k-h-a-r.

14 MR. SOROUSHIAN: Good morning, Your Honor.
15 Vishtasp Soroushian representing plaintiffs AFSCME,
16 Local 101.

17 THE COURT: Good morning.

18 Mr. Hartinger, this is the defendants' request.

19 MR. HARTINGER: Yes, Your Honor. We did receive
20 the tentative. We had -- we were giving the Court the
21 opportunity to let the Federal Court pass on this, and I'm
22 sorry that was -- I don't mean to be humorous, we were
23 looking for one forum where everything could be resolved
24 at one time including federal claims and --

25 THE COURT: Right.

26 My main concern is that suppose you beat the motion
27 to dismiss, that would be good for you, and suppose Judge
28 Koh rules on the state law issues; where are we then?

1 MR. HARTINGER: I think we're -- you mean in
2 terms of Judge Koh rendering a judgment on the matter that
3 is before her?

4 THE COURT: Right.

5 MR. HARTINGER: We have a judgment in the United
6 States District Court?

7 THE COURT: Right.

8 MR. HARTINGER: And that is what the City
9 Council pledged to the voters in not necessarily federal
10 court we are looking for one forum where everything can be
11 resolved that is a judgment in the trial court that will
12 inform the City as to what it should do relative to the --

13 THE COURT: Right.

14 But what will it inform the City about this
15 resolution of the state law issues?

16 MR. HARTINGER: Well, the federal court can
17 exercise any jurisdiction over state court issues.

18 THE COURT: Well, she may, but even if she does,
19 where does that put the state law? That's my concern. I
20 mean, it's a bit of a rhetorical question, but that's my
21 concern and the reason for my ruling as to the stay.

22 MR. HARTINGER: Right.

23 And I guess it's theoretically possible that the
24 Unions could take the position and other stakeholders in
25 Measure B can take the position that it has no affect on
26 the state court rulings. The state court can proceed
27 somehow in a different action. I guess you're saying
28 you -- the Court is saying the City's not going to achieve

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1 the sufficient and final outcome in District Court even if
2 I go with your plan, even if we goes with the Court plan
3 is what you're saying.

4 THE COURT: well, I wouldn't put it quite that
5 way.

6 I don't think that given the configuration of these
7 six cases, including the federal case, a stay of these
8 actions is appropriate.

9 MR. HARTINGER: And so one of the questions we
10 had was, so it -- because one of your options is to wait
11 and see what Judge Koh does on October 4 and stay things
12 in the interim in light of the fact that we have lots of
13 discovery going on that's not coordinated, and it's this
14 costly sort of disorganized exercise at this point that we
15 think is insufficient.

16 THE COURT: Not coordinated as between the five
17 state cases and the federal case?

18 MR. HARTINGER: No. well, yes, but also not
19 coordinated as between any of the parties in the five
20 cases.

21 THE COURT: well, I intended that my order
22 address that. If that is the case, I intended that my
23 order addressed that by consolidating these cases for
24 pre-trial purposes, which I look closely at the
25 plaintiff's arguments on this issue, which seem mostly to
26 address trial, but I don't see any reason and I don't
27 think anybody is telling me that it's not a good idea to
28 prevent confusion and waste and disarray and inefficiency.

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1 in pre-trial matters in these five cases.

2 MR. HARTINGER: And we appreciate that and I
3 think that would go a long way to addressing one of the
4 City's central concerns is having things done at one time
5 in one place for efficiency.

6 THE COURT: And I think that -- I don't think
7 that either, Judge Koh or I, could make you do this, but
8 it certainly would be a good thing to do by stipulation to
9 coordinate discovery that overlaps between the federal
10 case and the state cases to the extent that that's
11 happening before October 4, but that's a matter of
12 stipulation at least for the moment.

13 MR. HARTINGER: Well, there's no discovery
14 that's going on in federal court at this time. So it's
15 only state court discovery that's been initiated, as we
16 pointed out in our papers.

17 THE COURT: Okay.

18 MR. HARTINGER: So I guess again I come back to
19 the question, the Court has concluded that a stay is
20 inappropriate, in any event, even if Judge Koh denies the
21 motion to dismiss, denies their motion to abstain and
22 stay, and she decides to proceed on the case.

23 THE COURT: Well, yes, because my concern is
24 that even if she denies the motion to dismiss and rules on
25 the state cases I don't think that really is the end in
26 terms of a resolution of the state law issues.

27 MR. HARTINGER: Okay. So on the issue of

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1 that in terms of it being for all purposes except for
2 trial, discovery, for motions, and I do have a suggestion
3 that we work to -- work with the other side to come up
4 with a stipulation on all of this, unless the Court wants
5 to work on it here and come back, either come back and
6 discuss it with the Court or submit a stipulation and
7 order defining sort of the contours of the consolidation
8 issues, and you set a CMC for October 16th and we would
9 respectfully request an earlier date if possible.

10 THE COURT: Well, that was earliest initial case
11 management conference in any of the five cases, but if
12 everybody agrees we can move that up. I don't have a
13 problem with that.

14 Anything else for the defendants?

15 MR. HARTINGER: No, Your Honor.

16 THE COURT: May I hear then from the plaintiffs
17 on the issues. I didn't get any advisement that the
18 plaintiffs were contesting the tentative.

19 MR. ADAM: We're not, Your Honor. We are not
20 contesting the consolidation for pre-trial purposes.
21 We're happy to work with defense counsel on a stipulation
22 on what consolidation of pre-trial aspects of the case
23 will look like. We're happy to talk with defense counsel
24 about moving up the CMC from October 16th.

25 THE COURT: Okay. What do you have in mind?

26 MR. HARTINGER: Well, I would hope for two,
27 three weeks.

28

THE COURT: From now?

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1 MR. HARTINGER: Yes.

2 THE COURT: What do you expect to accomplish in
3 that period of time with your meet and confer?

4 MR. HARTINGER: Well, I would hope that we could
5 define specifically things like how many interrogatories
6 do they get per case, per party? Is it when we make
7 presumably cross motions for summary judgment are there
8 five, five motions or is it one motion? Is it one side
9 for purposes of peremptory challenges, for example, as it
10 would be or in our view you just got a recipe where you've
11 got all these cases and there could be more. It should be
12 one side, you know, one side versus the other side on that
13 issue. Those kind of things, Your Honor.

14 THE COURT: Okay. Those sound like good issues
15 for to you talk about.

16 In litigation of this nature even more so than usual
17 it will be very helpful to me to have statements in
18 advance of your case management conference. Although our
19 civil division is structured -- let me say first, I don't
20 anticipate any discovery issues with all these great legal
21 minds working together.

22 In the unlikely event that you do have a discovery
23 dispute, as you are aware our civil division is structured
24 in a way that discovery is handled separately from other
25 pre-trial matters. However, I have an open mind to
26 assisting you directly in discovery disputes if counsel

Court transcript re motion to stay consolidate 8 23 12.txt
27 think that would be helpful, and I also am willing to talk
28 about discovery issues before anybody types a word of a

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1 motion if counsel will find that helpful.

2 So do you want to convene on Tuesday, September 18th;
3 is that enough time?

4 MR. HARTINGER: I just need to check my
5 calendar, Your Honor.

6 THE COURT: Okay.

7 COURTCALL OPERATOR: Pardon the interruption,
8 Your Honor, this is the CourtCall operator. We do have an
9 attorney, Harvey Leiderman, on the line. His line is
10 live, I am not sure why he has not spoken.

11 MR. LEIDERMAN: Good morning. Harry Leiderman
12 from Reid Smith. I was waiting for the Clerk to call
13 CourtCall persons, excuse me.

14 THE COURT: Good morning. Are you on line 12?

15 MR. LEIDERMAN: Yes, Your Honor. Representing
16 in the San Jose Police Officers case, the defendant Board
17 of Administration of the Police and Fire Retirement Plan,
18 and then in the other related cases necessary parties in
19 interest one of the two retirement boards for the City of
20 San Jose.

21 THE COURT: Okay. And obviously, counsel, you
22 are welcome to appear by phone, and in the future just
23 speak up when other people state their appearances. No
24 need to be shy.

25 Is there anything you wanted to add on anything?

26 MR. LEIDERMAN: No. We're satisfied with the
Page 8

27 Court's tentative ruling. Thank you, Your Honor.

28 THE COURT: Okay. How about that September 18th

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1 date?

2 MR. HARTINGER: I have a conflict, Your Honor,
3 so I ask for another date.

4 THE COURT: All right. Why don't you pick
5 another Tuesday as that calendar is Tuesday at 10:00.

6 MR. HARTINGER: So may I suggest -- since this
7 isn't what I wanted, but October 2nd. Or may I suggest if
8 the Court is willing to do it on a day other than Tuesday.

9 THE COURT: October 2nd works for me.

10 MR. ADAM: Yes.

11 THE COURT: It might be much better to have it
12 on the 9th though. As long as we're two days away from
13 your hearing.

14 MR. ADAM: Yeah. Or after.

15 THE COURT: I think you would have more
16 information on the 9th than you would on the 2nd.

17 MR. PLATTEN: I agree, Your Honor.

18 THE COURT: Who will be preparing the order by
19 the way?

20 MR. PLATTEN: Plaintiffs will take care of it,
21 Your Honor.

22 THE COURT: Okay.

23 MR. HARTINGER: Your Honor, so do we have a
24 commitment then for meet and confer to try to get a
25 stipulation and order to you in advance, and can we have

Court transcript re motion to stay consolidate 8 23 12.txt
26 the Court's assistance in setting a deadline so feet can
27 be held to the fire?

28 THE COURT: What do you propose?

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1 MR. HARTINGER: Two weeks.

2 THE COURT: So you want to submit a proposed
3 stipulation by September 25th?

4 MR. HARTINGER: Yes.

5 THE COURT: Does that work for plaintiffs'
6 counsel?

7 MR. PLATTEN: Yes.

8 THE COURT: Okay. That's good.
9 Okay. Anything else?

10 MR. ADAM: Thank you, Your Honor.

11 MR. PLATTEN: Thank you, Your Honor.

12 MR. HARTINGER: That's it.

13 MR. SOROUSHIAN: Thank you.

14 MR. HUGHES: Thank you.

15 MR. LEIDERMAN: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (Whereupon, the matter was concluded.)

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Julie T. Serna, CSR 7890

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11

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SANTA CLARA)
4

5 I, JULIE T. SERNA, HEREBY CERTIFY: That the
6 foregoing is a full, true and correct transcript of the
7 proceedings had in the above-mentioned action taken;

8 That it is a full, true and correct transcript
9 of the evidence offered and received, acts and statements
10 of the court, also all objections of counsel and all
11 matters to which the same relate;

12 That I reported the same in stenotype to the
13 best of my ability, being the duly qualified and acting
14 Official Court Reporter of said court, and thereafter
15 transcribed the same into typewriting as herein appears.

16 In said capacity, I have adhered to Code of
17 Civil Procedure Section 237(a)(2), Sixth District Court of
18 Appeal Miscellaneous Order 96-2, by sealing, through
19 redaction, all references to juror-identifying
20 information, including but not limited to names, addresses
21 and telephone numbers.

22

23 Dated: _____

Court transcript re motion to stay_consolidate 8 23 12.txt
24

25 signed:_____

26 Julie T. Serna, CSR#7890

27

28 ---000---

Julie T. Serna, CSR 7890

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 September 18, 2014, I served true copies of the following document(s):

8 **REPLY POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF AND CROSS-DEFENDANT**
9 **SAN JOSE POLICE OFFICERS' ASSOCIATION'S MOTION FOR ATTORNEYS' FEES**

10 on the interested parties in this action as follows:

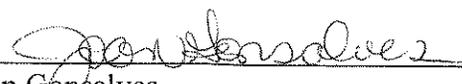
11 Arthur A. Hartinger, Esq. 12 Linda M. Ross, Esq. 13 Meyers, Nave, Riback, Silver & Wilson 14 555 12th Street, Suite 1500 15 Oakland, CA 94607 16 Phone: (510) 808-2000 17 Fax: (510) 444-1108 18 Email: ahartinger@meyersnave.com 19 lross@meyersnave.com	20 Counsel for Defendants 21 City of San Jose (No. 1-12-CV-225926) 22 23 City of San Jose and Debra Figone 24 (Nos. 1-12-CV-225928; 1-12-CV-226570; 25 1-12-CV-226574; 1-12-CV-227864)
26 Harvey L. Leiderman, Esq. 27 Reed Smith LLP 28 101 Second Street, Suite 1800 San Francisco, CA 94105 Phone: (415) 659-5914 Fax: (415) 391-8269 Email: hleiderman@reedsmith.com	29 Counsel for Defendant Board of 30 Administration for Police and Fire 31 Department Retirement Plan of City of San 32 Jose (No. 1-12-CV-225926) 33 34 Necessary Party in Interest The Board of 35 Administration for the 1961 San Jose Police 36 and Fire Department Retirement Plan 37 (No. 1-12-CV-225928) 38 39 Necessary Party in Interest The Board of 40 Administration for the 1975 Federated City 41 Employees' Retirement Plan 42 (Nos. 1-12-CV-226570; 1-12-CV-226574) 43 44 Necessary Party in Interest The Board of 45 Administration for the Federated City 46 Employees Retirement Plan 47 (No. 1-12-CV-227864)

<p>1 John McBride, Esq. 2 Christopher E. Platten, Esq. 3 Wylie, McBride, Platten & Renner 4 2125 Canoas Garden Ave., Suite 120 5 San Jose, CA 95125 6 Phone: (408) 979-2920 7 Fax: (408) 979-2934 8 Email: jmcbride@wmprlaw.com 9 cplatten@wmprlaw.com</p>	<p>Counsel for Plaintiffs Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (No. 1-12-CV-225928)</p> <p>Teresa Harris, Jon Reger, and Moses Serrano (No. 1-12-CV-226570)</p> <p>John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington (No. 1-12-CV-226574)</p>
<p>8 Teague P. Paterson, Esq. 9 Vishtasp M. Soroushian, Esq. 10 Beeson, Taylor & Bodine APC 11 Ross House, 2nd Floor 12 483 Ninth Street 13 Oakland, CA 94607-4051 14 Phone: (510) 625-9700 15 Fax: (510) 625-8275 16 Email: TPaterson@beesontayer.com 17 VSoroushian@beesontayer.com</p>	<p>Counsel for Plaintiff AFSCME Local 101 (No. 1-12-CV-227864)</p>
<p>14 Stephen H. Silver, Esq. 15 Jacob A. Kalinski, Esq. 16 Silver, Hadden, Silver, Wexler & Levine 17 1428 Second Street, Suite 200 18 Santa Monica, CA 90401 19 Phone: (310) 393-1486 20 Fax: (310) 395-5801 21 Email: shsilver@shslaborlaw.com 22 jkalinski@shslaborlaw.com</p>	<p>Counsel for Plaintiff San Jose Retired Employees Association (No. 1-12-CV-233660)</p>

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

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

Executed on September 18, 2014, at San Francisco, California.


Joan Gonsalves