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9 City of San José and Debra Figone

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

12 AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL  
13 EMPLOYEES, LOCAL 101, on behalf of its  
members,  
14  
15 Plaintiffs and Petitioners,  
16 v.  
17 CITY OF SAN JOSÉ, DEBRA FIGONE, in  
her official capacity as City Manager,  
18  
19 Defendants and Respondents.

20 THE BOARD OF ADMINISTRATION FOR  
THE FEDERATED CITY EMPLOYEES'  
RETIREMENT PLAN,  
21  
22 Necessary Party in Interest.

Case No. 112CV227864

ANSWER OF DEFENDANTS CITY OF  
SAN JOSE AND DEBRA FIGONE, IN  
HER OFFICIAL CAPACITY AS CITY  
MANAGER OF THE CITY OF SAN JOSE  
TO COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
PETITION FOR WRITE OF MANDAMUS

Complaint Filed: July 5, 2012

Trial Date: None Set

**BY FAX**

23 Defendants City of San Jose ("City") and Debra Figone, in her official capacity,  
24 (collectively, "Defendants") answer and respond to the Complaint for Declaratory and Injunctive  
25 Relief and Petition for Writ of Mandamus ("Complaint") filed by Plaintiff American Federation of  
26 State, County, and Municipal Employees, Local 101 ("Plaintiff") as follows:

27 ///  
28 ///

**ENDORSED**  
2012 AUG -6 2:44  
Judi L. Gentry, Clerk of the Superior Court  
County of Santa Clara, California  
By: \_\_\_\_\_  
Deputy Clerk

EXEMPT FROM FILING FEES  
GOV'T CODE § 6103

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**GENERAL DENIAL**

Under the provisions of Section 431.30 of the California Code of Civil Procedure, Defendants deny each and every allegation in the Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate/Prohibition or Other Appropriate Writ Relief, and further deny that Plaintiffs have been damaged or harmed in any way. Defendants specifically aver that all rights due to Plaintiffs were observed, and that there is no basis to award declaratory relief, injunctive relief, or any relief whatsoever.

**FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANTS ALLEGE AS FOLLOWS:**

**FIRST AFFIRMATIVE DEFENSE**

1. Plaintiff is not entitled to a writ of mandate on the grounds that it has adequate legal remedies; there exists a plain, speedy, and adequate alternative remedy, in the ordinary course of law. (Code Civ. Proc., § 1086.)

**SECOND AFFIRMATIVE DEFENSE**

2. Plaintiff is not entitled to a writ of mandate on the grounds that there does not exist a clear, present and ministerial duty upon the part of Defendants as alleged by Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**

3. Plaintiff is not entitled to injunctive relief under California Code of Civil Procedure section 526. (See, e.g., Code Civ. Proc. § 526, subd. (a)(4) & (5), subd. (b)(4), (6) & (7).)

**FOURTH AFFIRMATIVE DEFENSE**

4. Plaintiff is not entitled to declaratory relief under California Code of Civil Procedure sections 1060 and 1061, on the ground that the City had already filed a request for declaratory relief in the United States District Court for the Northern District of California, Case No. C12-02904 LHK PSG, related to the validity of Measure B before implementation, such that declaratory relief here is not necessary or proper under the circumstances.

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**FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiff's causes of action, and each of them, should be stayed or dismissed on the ground that they arise from the same nucleus of operative facts and circumstances currently being litigated in Case No. C12-02904 LHK PSG, captioned *City of San Jose v. San Jose Police Officers' Association, et al.*, in the United States District Court for the Northern District of California.

**SIXTH AFFIRMATIVE DEFENSE**

6. Plaintiff fails to state facts sufficient to constitute grounds for granting any relief to Plaintiff under the statutory and constitutional provisions and common law authority upon which they rely.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiff's causes of action, and each of them, are barred on the grounds that Plaintiff may not bring actions, or obtain the requested relief, directly under the specified sections of the California Constitution.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiff's causes of action, and each of them, are barred on the ground that if Plaintiff, or any of its current or former members, had a vested right to any of the benefits alleged in the Complaint (although such is not admitted hereby or herein), then any modification alleged in the Complaint is reasonable, in that it is in accord with changing conditions and at the same time maintains the integrity of the City's retirement system, bears some material relation to the theory of a pension system and its successful operation, and to the extent they result in disadvantage to Plaintiffs (although such is not admitted hereby or herein) it was accompanied by comparable new advantages.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff's first cause of action, for impairment of contract, is barred on the ground that no contract existed for all or some of the terms Plaintiffs allege.

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**TENTH AFFIRMATIVE DEFENSE**

10. Plaintiff's first cause of action, for impairment of contract, if barred on the ground that Debra Figone was not a party to any contract with Plaintiff.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiff's first cause of action, for impairment of contract, is barred on the ground that any impairment of Plaintiffs' contractual rights (although such is not admitted hereby or herein) was not substantial.

**TWELFTH AFFIRMATIVE DEFENSE**

12. Plaintiff's second cause of action, impairment of contract, is barred on the ground that any contractual impairment (although such is not admitted hereby or herein) was reasonable and necessary to serve an important public purpose, including without limitation, insuring the solvency and actuarial soundness of the City's retirement plans.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Plaintiff's causes of action, and each of them, are barred on the ground that the Plaintiff failed to file a government claim pursuant to California Government Code § 945.4 for damages sought in the prayer for relief, including "any and all actual, consequential and incidental damages according to proof, including but not limited to damages that have been or made [sic] be suffered by plaintiffs and petitioners..." See *Sappington v. Orange Unified School Dist.*, 119 Cal.App.4th 949, 955, 14 Cal.Rptr.3d 764 (2004).

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. Plaintiff's causes of action, and each of them, are barred on the ground that they are premature and not ripe for adjudication.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiff's causes of action, and each of them, are barred by the privileges and immunities applicable to public agencies and employees, including without limitation California Government Code §§ 815, 815.2, 815.6, 818, 818.2, 818.8, 820.4, 820.2, 820.6, 820.8, 821, and 822.2.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

16. Plaintiff's causes of action, and each of them, are barred on the ground that Plaintiff lacks standing, in whole or in part, to assert the claims alleged in the Complaint.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Plaintiff's causes of action, and each of them, as pled in the Complaint are uncertain.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Plaintiff's causes of action, and each of them, are barred on the ground that Defendants exercised reasonable diligence to discharge any mandatory duty they may have had with respect to Plaintiffs.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Defendants' actions were based on good, sufficient, and legal cause, upon reasonable grounds for belief in their justification, and were taken in good faith and without malice.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiff's causes of action, and each of them, are barred by the doctrine of separation of powers in that a court cannot find a vested contractual right in the absence of clear legislative intent to create one.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Plaintiff's claims are barred by laches, waiver, estoppel, and/or the statute of limitations: Cal. Civ. Proc. Code § 339 (2 years for unwritten contract); Cal. Civ. Proc. Code § 342 (referral to Government Claims Act); Cal. Gov. Code § 911.2 (6 mos. to 1 year to file claims); Cal. Gov. Code § 945.6 (time to file after claim filed).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Plaintiff is not entitled to the relief requested on the ground that it would compel an illegal act or violation of duty by a public officer or official.

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. Plaintiff is not entitled to the relief requested on the ground that it would compel Defendants to exercise their discretionary and/or legislative power in a particular manner.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. Plaintiff is not entitled to the relief requested on the ground that it would abrogate the City's municipal and police powers granted by the California and United States Constitutions and by the San Jose City Charter.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. If the City's current or former employees or officers or any of them made promises or representations alleged in the Complaint, although such is not admitted hereby or herein, such statements were made outside the scope of employment and not by agents of Defendants and, thus, Defendants are not liable for such acts.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. To the extent Plaintiff is able to prove its claims, although such is not admitted hereby or herein, Plaintiff had a duty to mitigate any damages to which it may be entitled, but failed to do so.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. Plaintiff fails to state facts or statutory authority sufficient to entitle them to recover attorneys' fees. Plaintiff is not entitled to attorney's fees under California Civil Code section 52.1, Civil Procedure Code section 1021.5, Government Code section 800, or any other statute.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

28. Plaintiff fails to state facts sufficient to constitute grounds to grant the costs of suit incurred herein or for any other relief.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

29. Defendants reserve the right to amend this Answer to assert additional affirmative defenses and to supplement, alter or change the Answer and defenses upon revelation of more definitive facts, and upon the undertaking of discovery and investigation in this matter.

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**PRAYER FOR RELIEF**

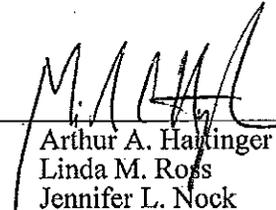
WHEREFORE, Defendants respectfully pray for relief as hereinafter set forth:

1. That all relief requested in the First Amended Complaint be denied with prejudice;
2. That Plaintiff take nothing by its action;
3. That judgment be entered in Defendants' favor;
4. That Defendants be awarded all costs of suit, including reasonable attorneys' fees; and
5. Such further and other relief as the Court deems just and proper.

DATED: August 6, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: \_\_\_\_\_



Arthur A. Haltinger  
Linda M. Ross  
Jennifer L. Nock  
Michael C. Hughes  
Attorneys for Defendants  
City of San Jose and Debra Figone

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

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

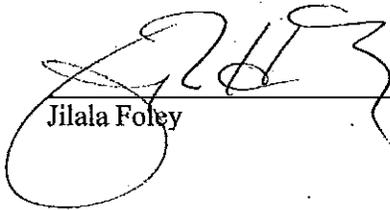
On August 6, 2012, I served true copies of the following document described as **ANSWER OF DEFENDANTS CITY OF SAN JOSE AND DEBRA FIGONE, IN HER OFFICIAL CAPACITY AS CITY MANAGER OF THE CITY OF SAN JOSE TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRITE OF MANDAMUS** on the interested 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.

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

Executed on August 6, 2012, at Oakland, California.

  
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Jilala Foley

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<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN &amp; RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125b</p>	<p><i>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</i></p> <p><i>AND</i></p> <p><i>Defendant, SAN JOSE FIREFIGHTERS, I.A.F.F. LOCAL 230 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p> <p><i>AND</i></p> <p><i>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</i></p> <p><i>AND</i></p> <p><i>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</i></p> <p><i>AND</i></p> <p><i>Defendant, CITY ASSOC. OF MANAGEMENT. PERSONNEL, IFPTE, LOCAL 21 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p> <p><i>AND</i></p> <p><i>Defendant, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK &amp; MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p>	<p><i>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</i></p> <p><i>AND</i></p> <p><i>Defendant, SAN JOSE POLICE OFFICERS' ASSOC. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p>

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AFSCME, LOCAL 101(U.S. Northern District  
Court Case No. 5:12-CV-2904-LHK)  
  
AND  
  
Plaintiff, AFSCME LOCAL 101 (Santa Clara  
County Superior Court Case No. 112CV227864)

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REED SMITH, LLP  
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San Francisco, CA 94105

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 112CV226574 )  
  
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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