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

12 THE PEOPLE OF THE STATE OF CALIFORNIA
13 on the RELATION of SAN JOSE POLICE
14 OFFICERS' ASSOCIATION,

15 Plaintiff,

16 v.

17 CITY OF SAN JOSE, and CITY COUNCIL OF
18 SAN JOSE,

19 Defendants.

Case No. 113-cv-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

**OPPOSITION BY CITY OF SAN JOSE TO
APPLICATION TO INTERVENE**

Date: April 5, 2016
Time: 9:00 a.m.
Dept: 7
Judge: Hon. Beth McGowen

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1 **I. INTRODUCTION**

2 In this action, the People of the State of California, through the San Jose Police Officers’
3 Association, claim that the City of San Jose failed to adequately meet and confer with the City’s unions
4 before placing Measure B on the ballot for voter approval. The action is brought under *People ex rel.*
5 *Seal Beach Police Officers Assn v. City of Seal Beach* (1984) 36 Cal.3d 591, 602, in which the California
6 Supreme Court held that a City must satisfy the meet and confer requirements of the Meyers Miliias
7 Brown Act before placing a matter involving terms and conditions of employment on the ballot.
8 Contrary to the arguments of Proposed Intervenors, the City is not just beginning to litigate this question.
9 Since before the passage of Measure B, City of San Jose employees, unions and retirees have filed more
10 than ten separate actions challenging its legality. For the past three years, the City has extensively
11 litigated these challenges, both in the courts and in companion cases before the Public Employee
12 Relations Board presenting the same issues as this *quo warranto* action, where one Administrative Law
13 Judge issued a proposed decision against the City. As a result of this companion litigation, all existing
14 parties are well informed of the facts and risks involved in the case, including the Attorney General who
15 has approved the proposed stipulation and order previously submitted to this Court as a resolution of this
16 case.

17 The Court should reject the application to intervene for the following reasons.

18 First, the application is not timely, which dooms it under both Code of Civil Procedure Sections
19 387(a) and (b). The SJPOA filed this case in April 2013, after the Attorney General granted leave to sue
20 in the name of the State. For the last year, Proposed Intervenors have been on notice of the proposed
21 settlement. In March 2015, the City publicly posted a letter referring to a proposed settlement of the *quo*
22 *warranto* action on its website. In July and August 2015, the City publicly posted the actual global
23 settlement of all Measure B related litigation on its website. The settlement involves a proposed ballot
24 measure for the November 2016 ballot. Under state law, the City is able to place a measure on the ballot
25 only once every two years. If Proposed Intervenors objected to the settlement, they were under a duty to
26 move to intervene much earlier, and not delay resolution of this action.

27 Second, even if they were not untimely, Proposed Intervenors do not have a sufficient interest to
28 intervene as of right under Section 387(b). None of the Applicants has an “interest relating to the

1 property or transaction” which “may as a practical matter impair or impede that person's ability to protect
2 that interest.” Proposed Intervenor Pete Constant cannot show any detriment to his own pension benefits,
3 and his contention that the settlement threatens the health of the Police and Fire retirement fund is
4 speculative. His participation as a member of the City Council in placing Measure B on the ballot is not
5 sufficient. The claim that his reputational interest is at risk, like his claim about the pension system, is
6 also speculative. SVTA and Haug claim an interest as campaigners and voters in support of Measure B,
7 but in fact they are in the same position as all other San Jose voters, which does not give them the
8 required interest to intervene.

9 Third, for the same reasons, the Proposed Intervenors do not have a “direct and immediate”
10 interest needed to justify permissive intervention under Section 387(a). But even if they had a sufficient
11 interest, their application should be denied because the Proposed Intervenors will widen this litigation,
12 which is already settled, and any interest of the Proposed Intervenors is outweighed by the existing
13 parties’ interests. The parties to this *quo warranto* action have worked diligently to resolve the issues
14 raised by this *quo warranto* action and the companion actions pending before the Public Employee
15 Relations Board. These cases have divided the City from its workforce, burdened the Police
16 Department’s recruiting and retention, and caused uncertainty for the City as to its financial status.

17 Finally, this is a *quo warranto* action brought by the SJPOA in the name of the State of
18 California. In permitting this action, the Attorney General authorized the SJPOA to bring suit but the
19 Attorney General maintained management of the case in the name of the State. The applicants cannot
20 intervene as parties, after the Attorney General has approved the settlement of the *quo warranto* action,
21 and ended the case.

22 The City asks that this Court deny the motion to intervene.

23 **II. ARGUMENT**

24 **A. The Court Must Reject The Application As Untimely.**

25 Under both Code of Civil Procedure sections 387(a) and 387(b), an application to intervene must
26 be made in a timely manner, or be rejected. Here, the application is untimely.

27 “Whether intervention is of right, or only permissive, the party seeking to intervene must make
28 ‘timely’ application to the court.” (Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group

1 2015) ¶ 2:438.) “Aside from the statutory limitation upon the time of intervention [before trial], it is the
 2 general rule that a right to intervene should be asserted within a reasonable time and that the intervenor
 3 must not be guilty of an unreasonable delay after knowledge of the suit.” (*Allen v. California Water &*
 4 *Tel. Co.* (1947) 31 Cal.2d 104, 108 [“at various times between the commencement of the action and the
 5 entry of judgment, officials of the city of Coronado were informed of the pendency of the litigation, the issues
 6 involved, and of the progress of the suit.”]; see *Noya v. A. W. Coulter Trucking* (2006) 143 Cal.App.4th
 7 838, 842 [“it is significant that Zurich took no steps to participate in the litigation until several years had
 8 passed and a comprehensive settlement agreement had been reached between CalTrans and plaintiffs.”].)¹

9 Proposed Intervenors claim that their application is timely because only recently did all City
 10 unions agree to the settlement. (Opening Br. at pp. 12-13.) However, Proposed Intervenors have been
 11 on notice for almost a year that the City and SJPOA were discussing a settlement of this *quo warranto*
 12 action. In April 2013, the SJPOA filed its complaint in the name of the State. (City RJN, Exh. C.) In
 13 March 2015, the City posted on its website a letter from the Mayor to City unions that referred to a
 14 potential settlement that included resolution of this *quo warranto* action. (City RJN, Exh. G.) In July
 15 2015, the City posted on its website notice that the City had come to an agreement with the SJPOA to
 16 settle this action. (City RJN, Exh. I.) In August 2015, the City posted on its website an addendum to the
 17 settlement which expressly included the “Proposed Quo Warranto Implementation Plan, dated August
 18 14, 2015.” (City RJN, Exh. J [Memorandum dated August 17, 2015, attaching Addendum #2 to July 15,
 19 2015 Alternative Pension Framework].) Addendum #2 to the settlement specifically described the
 20 process for a “Stipulated Order that City should have engaged in further negotiation of final language
 21 before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect
 22 significant enough to declare null and void Resolution placing Measure B on Ballot.” (City RJN, Exh. J.)
 23 These developments were widely covered in the press. (City RJN, Exh. M; See *Allen, supra*, 31 Cal.2d
 24 at p. 108 [“The litigation was also given much local publicity.”].)

25 This application is especially untimely because the Settlement Framework includes a proposed
 26

27 ¹ In *Allen*, the Supreme Court had left issues to be decided on remand, and the applicants attempted to
 28 intervene in connection with the unresolved issues. Nonetheless, *Allen* stands for the proposition that an
 applicant must make a timely intervention after notice of the pendency of the action.

1 Charter amendment to appear on the November 2016 ballot. (City RJN, Exh. J [Addendum #1 to the
2 July 15, 2015 Alternative Pension Reform Settlement Framework].)² In order to place a measure on the
3 November 2016 ballot, the City must draft the Charter amendment, go through meet and confer with the
4 unions, and vote by August 2016 to place it on the ballot. (Duenas Decl., ¶ 15.) Under state law, the
5 City can place a charter amendment involving employment related issues on the ballot only every other
6 year. (Elec. Code, § 9255(a); § 1200.) Therefore, if the City cannot place a matter on the November
7 2016 ballot, it must wait until November 2018 to do so. Accordingly, if applicants are permitted to
8 intervene, a dispute that began in June 2012, and has spawned four years of litigation, cannot be settled
9 until 2018.

10 Proposed Intervenors contend that this *quo warranto* action has not yet begun. (Opening Br. at p.
11 12.) But they ignore the fact that related litigation has thoroughly vetted the issue raised in this action –
12 whether the City Council engaged in adequate meet and confer before placing Measure B on the ballot.
13 In a related case, a PERB Administrative Law Judge issued a Proposed Decision finding that the City had
14 not engaged in adequate meet and confer, and included an order invalidating the City Council Resolution
15 to place Measure B on the ballot. (City RJN, Exh. E.) The Settlement Framework reflects the totality of
16 the litigation experience of the parties; this is not the beginning of this litigation, but rather an informed
17 and reasoned end.

18 Given this timeframe, the Proposed Intervenors engaged in undue delay and the Court must deny
19 their application.

20 **B. Applicants Do Not Have A Direct Interest That Would Permit Them To Intervene**
21 **As Of Right.**

22 The moving parties bear the burden to “show that this is a proper case for intervention.” (*People*
23 *v. Brophy* (1942) 49 Cal.App.2d 15, 34.) Here, Proposed Intervenors claim a right to intervention under
24 Code of Civil Procedure Section 387(b), but cannot satisfy its stringent requirements.

25
26 ² The ballot measure would include: (1) a provision requiring voter approval of defined benefit pension
27 enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of
28 defined benefit pension enhancements, and (4) any other provisions contained in the Settlement
Framework that the parties mutually agreed to, for inclusion in a 2016 ballot measure that will
incorporate any such provisions into the City Charter. (City RJN, Exh. J.)

1 Section 387(b) states:

2 (b) If any provision of law confers an unconditional right to intervene or if
3 the person seeking intervention claims an **interest relating to the**
4 **property or transaction** which is the subject of the action and that person
5 is so situated that the disposition of the action **may as a practical matter**
6 **impair or impede that person's ability to protect that interest**, unless
7 that person's interest is adequately represented by existing parties, the court
8 shall, upon timely application, permit that person to intervene.

9 Proposed Intervenor claim an "interest relating to the property or transaction" that "may as a practical
10 matter impair or impede that person's ability to protect that interest." (Code Civ. Proc. 387(b).) But the
11 few cases that have found a right to intervene under section 387(b) involve the right of subrogation. For
12 example an employer who has paid workers compensation benefits to an employee has the right to
13 intervene in a lawsuit by the employee against the person causing the injury. (See *Bailey v Reliance Ins.*
14 *Co.* (2000) 79 Cal.App.4th 449, 454.) Or an insurer that has paid benefits to an insured for losses caused
15 by a third party. (See *Hodge v. Kirkpatrick Develop. Inc* (2005) 130 Cal.App.4th 540, 548-49.)
16 Intervention under Section 387(b) is the "counterpart to the compulsory joinder rule of CCP 389." (Cal.
17 Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶2:408.) "It gives the nonparty the
18 right to intervene in cases where his or her joinder has not yet been ordered but could be ..." (Cal.
19 Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶2:407 [citing *Hodge, supra*, 130
20 Cal.App.4th at p. 556].) This is not a case in which the Court would have the authority to order joinder of
21 the applicants.³

22 **1. Proposed Intervenor Pete Constant Does Not Have An Interest That Entitles**
23 **Him To Intervene As Of Right.**

24 Proposed Intervenor Constant contends that he has a right to intervene because he (1) is member

25 ³ The description of an indispensable party under the compulsory joinder statute is virtually identical to the
26 description of a party who may intervene as of right. The California compulsory joinder statute, Code of Civil
27 Procedure section 389, subdivision (a), states: "A person who is subject to service of process and whose
28 joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party
in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he
claims an interest relating to the subject of the action and is so situated that the disposition of the action in his
absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the
persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent
obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be
made a party."

1 of the City's retirement system, and (2) was an architect and drafter of Measure B. Neither constitutes an
2 interest that qualifies him to intervene as of right.

3 **Member of Retirement System.** Proposed Intervenor Constant contends that he has a right to
4 intervene as a beneficiary of the City's retirement system, because Measure B "directly affects his
5 retirement payments and health care benefits." (Opening Br. at p. 7.) Constant claims that: "As a
6 current recipient of a pension from the City of San Jose, I have a direct and personal interest in ensuring
7 the long-term fiscal stability of the City's pension fund." (Constant Decl., ¶ 5.) But Constant does not
8 describe any aspect of the settlement that has a direct or personal impact on his pension benefits.

9 The City's retirement system is a defined benefit plan under which retirees receive a pension
10 under a formula based on age, salary and years of service. (San Jose Municipal Code section 3.36 *et*
11 *seq.*) The settlement does not change the formula that governs Constant's pension, and he makes no
12 claim that his personal benefits would be affected. Rather, Constant's argument is more general -- that
13 Measure B "provides reforms necessary to ensure the City of San Jose can meet its future pension
14 obligations." (Constant Decl., ¶ 11.)

15 But Constant offers no evidence that the retirement system will be less able to "meet its future
16 obligations" under the Settlement Framework. He cites only to the Supplemental Retiree Benefit
17 Reserve, an aspect of Measure B unrelated to the City's pension formulas for retirees. Before its
18 elimination under Measure B, the SRBR had required the retirement systems, in years of "excess
19 earnings" to place the excess in a special fund, to be used to pay supplemental benefits to retirees.
20 Constant contends that the Settlement Framework's replacement of the SRBR with a "Guaranteed
21 Purchasing Power provision" "has the potential to eliminate the savings realized from the elimination of
22 the SRBR." (Constant Decl., ¶ 13.) Not only is this statement completely speculative, it is not supported
23 by the City memorandum cited in Constant's declaration, which reported that the SRBR savings were
24 intact and that the GPP was estimated to apply to only approximately 55 retirees. (City RJN, Exh. I, July
25 24, 2015 memorandum at p. 12 ["by continuing the elimination of the SRBR, the City will solidify the \$9
26 million General Fund savings already achieved by the City as result of Measure B."].)

27 **Proponent of Measure B.** Constant also claims a direct interest in Measure B as "a principle
28 architect and drafter of Measure B." (Constant Decl., ¶ 11.) The Proposed Intervenor rely on case law

1 that shows state legislators who sponsored state ballot measures have intervened in court challenges to
2 those measures.

3 The City greatly appreciates the public service and contributions of former City Council member
4 Constant. But the record shows that his involvement in Measure B was not the legal equivalent of an
5 official sponsor of a state ballot measure. In the state legislative process, there is an official “author” for
6 a bill, and when a matter is placed on the ballot, the Elections Code states that the “author of the
7 measure” drafts an argument for adoption. (Elec. Code § 9041.)

8 In contrast, in this case, there was no official individual author of Measure B. The legislative
9 history of Measure B demonstrates that in May 2011, the City Council, prompted by a memorandum
10 from former Mayor Chuck Reed and others, authorized the City Manager to begin the drafting of a
11 pension reform measure. (City RJN, Exh. A [Memorandum from City Manager, dated February 21,
12 2012 (with attachments), at p. 2 (“in a memorandum dated May 13, 2011, Mayor Reed, Vice Mayor
13 Nguyen and Councilmembers Herrera and Liccardo, recommended an amendment to the City Charter in
14 order to limit retirement benefits . . . This was approved by the City Council, which directed staff to
15 return with a proposed ballot measure.”)].) In February 2012, under its state constitutional authority, the
16 City Council authorized the placement of Measure B on the June 2012 ballot. (City RJN, Exh. B
17 [Resolution No. 76158].) Eight of eleven council members voted to place Measure B on the ballot. (*Id.*)
18 Unlike the state legislative process, in which an individual state legislator is identified as the official
19 “author,” the official record for Measure B does not identify Intervenor Constant in that role.

20 Even if the facts were different, the case law cited by Proposed Intervenors cannot be cited in
21 support of their position that Proposed Intervenor Constant must be allowed to intervene as of right.
22 (Opening Br. at p. 8.) In describing their procedural background, these cases comment that various state
23 legislators were intervenors, but none of them address “whether intervention was proper.” (See *City and*
24 *County of San Francisco v. State* (2005) 128 Cal.App.4th 1030, 1042 [“Because these cases do not
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1 address the propriety of intervention, they do not constitute authority supporting the Fund’s position.”].) ⁴
2 The cases cited do not discuss whether intervention was granted as of right, by permission, or offer any
3 analysis at all. Therefore, these cases are not authority in support of Proposed Intervenors’ position.

4 **Reputational Injury.** Proposed Intervenors contend that the Settlement Framework would “have
5 a negative impact” on Constant’s “professional credentials.” (Opening Br. at p. 10.) But this contention
6 is too speculative to support a right to intervene. In *CCSF*, which rejected an attempt at *permissive*
7 intervention, the Court concluded that: “Any change in the Fund’s reputation, or any drop in its
8 fundraising revenues, would be merely a consequence of the judgment, and not a result of the legal
9 operation of the judgment itself.” (*CCSF, supra*, 128 Cal.App.4th at p. 1043.) The same is true here.
10 Nothing in the “legal operation” of the Settlement Framework would injure Constant’s reputation. The
11 *CCSF* Court also concluded: “we believe the potential for the Fund to suffer amorphous damage to its
12 organizational ‘reputation’ as a result of an unfavorable court decision is far too speculative a basis upon
13 which to conclude the trial court was required to permit intervention.” (*Ibid.*) Similarly, any damage to
14 Constant’s reputation is “far too speculative” to support intervention. ⁵

15 **2. Applicants SVTA and Haug Do Not Have Interests That Entitle Them To**
16 **Intervene As Of Right.**

17 According to Proposed Intervenors, SVTA is a not-for profit organization whose members

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19 ⁴ Applicants rely on *Field v. Bowen* (2011) 199 Cal.App.4th 346, 352 (“Former Senator and Lieutenant
20 Governor Abel Maldonado, the legislative sponsor of Proposition 14 and Senate Bill 6, . . . successfully
21 intervened in the case.”); *Rubin v. Bowen* (2015) 233 Cal.App.4th 1128, 1136 (“The trial court permitted
22 several persons and entities to intervene to defend the top-two system, including Abel Maldonado, a former
23 state senator who was involved in the passage of Proposition 14.”); *Watson v. Fair Political Practices*
24 *Commission* (1990) 217 Cal.App.3d 1059, 1067 (“Assembly Member Ross Johnson, one of the authors of
25 Proposition 73, and Mark Pickens, a nonincumbent seeking election to the Legislature, intervened as
26 defendants.”); *Water Quality Association v. City of Escondido* (1997) 53 Cal.App.4th 755, 759 (“The
27 City, joined by intervener San Diego County Water Authority (the Water Authority) (author of a model
28 ordinance on which the City based its version)(sometimes referred to as appellants), appeal.”); *Ammwest Sur.*
Ins. Co. v. Wilson (1995) 11 Cal.4th 1243, 1250 (“In December, 1990, Voter Revolt, the organization that
drafted Proposition 103 and campaigned for its passage, successfully sought to intervene in the present case . .
.”).

⁵ *CCSF* found that cases citing reputational interest as a basis for permitting intervention had in fact also
involved tangible interests such as “a clear interest in the piece of property that was the subject of the
quiet title action” (describing *Simpson Redwood Co. v. State* (1987) 196 Cal.App.3d 1192) or that
members “frequently used the party for recreation” (*People ex rel. Rominger v. County of Trinity* (1983)
Cal.App.3d 655.). *CCSF, supra*, 128 Cal.App.4th at p. 1042-43. There is no similar tangible interest
here.

1 include San Jose taxpayers and voters, SVTA formed a political committee to support Measure B, and
2 SVTA's former president signed a ballot argument in favor of Measure B. (Opening Br. at p. 1.) Haug,
3 treasurer of SVTA, is a resident, homeowner, taxpayer and voter of the City. (Opening Br. at p. 9.)
4 Proposed Intervenor contend that: "If Measure B is invalidated, San Jose voters who are members of
5 proposed Intervenor SVTA, and proposed Intervenor Haug will lose their direct authority over changes
6 related to pension and other post-employment benefits accorded them in Measure B." (Opening Br. at p.
7 10.) They further allege that "all the resources and effort dedicated to campaigning for passage of
8 Measure B will be rendered for naught." (Opening Br. at p. 10.)

9 But neither SVTA nor Haug has an interest separate or different from any other member of the
10 electorate, and thus has no right to intervene to generally uphold the law. In *Socialist Workers 1974 Cal.*
11 *Campaign Comm. v. Brown* (1976) 53 Cal.App.3d 879, Common Cause sought to intervene in an action
12 challenging the validity of Elections Code provisions requiring public disclosure of information
13 regarding campaign contributors. But "the court concluded the petitioners stood in the same position as
14 all Californians with respect to their interest in the validity of the disclosure laws, and that this political
15 interest was too 'indirect and inconsequential' to support intervention." (*CCSF, supra*, 128 Cal.App.4th
16 at p. 1040 [describing the decision in *Socialist Workers*].) Similarly, here Proposed Intervenor stand "in
17 the same position" as all San Jose voters and cannot cite to any separate, and more personal, interest.

18 In *People ex rel. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, the Court found
19 sufficient potential harm in Sierra Club members being exposed to pesticides, but stated: "The fact that
20 intervenors and their members actively support the ordinances in question and that they have a general
21 interest in the enforcement of environmental laws alone will not support their intervention." (*Id.* at
22 p. 662.) Similarly, here, Proposed Intervenor have asserted only "a general interest" in the enforcement
23 of the law.

24 Finally, in *CCSF*, in rejecting permissive intervention, the Court explained that: "Because the
25 Funds' members stand in the same position as a broad cross-section of the California public regarding
26 such potential effects of a judgment ... their interests are not sufficiently unique or direct to support
27 intervention." (*CCSF, supra*, 128 Cal.App.4th at 1039, n. 8.)

28 Proposed Intervenor claim that they will be injured if they are unable to vote on any changes to

1 Measure B, but that contention could be made by any San Jose voter, and thus is not sufficient for
2 intervention. Neither is their contention that they have an interest based on their campaign activities.

3 **C. Proposed Intervenors Cannot Satisfy The Requirements For Permissive**
4 **Intervention.**

5 Proposed Intervenors focus their arguments on Section 387(b), which governs intervention as of
6 right. But the same case law that defeats that contention also defeats any contention that this Court
7 should grant permissive intervention under Section 387(a).

8 Section 387(a) states:

9 Upon timely application, any person, who has an interest in the matter in
10 litigation, or in the success of either of the parties, or an interest against
both, may intervene in the action or proceeding.

11 Under this section, the court has discretion to permit a nonparty to intervene provided:

- 12 • The nonparty has a direct and immediate interest in the litigation,
- 13 • The intervention will not enlarge the issues in the case, and
- 14 • The reasons for intervention outweigh any opposition by the existing parties.

15 (*CCSF, supra*, 128 Cal.App.4th at p. 1036; *Reliance Ins. Cor. v Sup. Ct.* (2000) 84 Cal.App.4th
16 383, 386; *Truck Ins. Exch. v. Sup. Ct* (1997) 60 Cal.App.4th 342, 346.)

17 **1. None Of The Proposed Intervenors Has A Direct Or Immediate Interest In**
18 **The Litigation.**

19 “To support permissive intervention, it is well established that the proposed intervener’s interest
20 in the litigation must be direct rather than consequential, and it must be an interest that is capable of
21 determination in the action.” (*CCSF, supra*, 128 Cal.App.4th at p. 1037.) “The requirement of a direct
22 and immediate interest means that the interest must be of such a direct and immediate nature that the
23 moving party ‘will either gain or lose by the direct legal operation and effect of the judgment.’” (*Id.*
24 [quoting *Jersey Main Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 663].) It is not sufficient that
25 “the results of the action may indirectly benefit or harm its owner.” (*Id.*)

26 For the reasons discussed above, Proposed Intervenors do not have a “direct and immediate”
27 interest that justifies permissive intervention under Section 387(b).

28 **Pete Constant.** As demonstrated above, Constant does not have a “direct and immediate”

1 interest in the case, because he presents no evidence that the Settlement Framework will have any impact
 2 on his pension benefits. He argues that the retirement fund will be harmed by replacement of the SRBR
 3 benefit with another benefit, but this contention is speculative and unsupported. Constant’s participation
 4 in the creation of Measure B is not the equivalent of a state legislator’s sponsor of a bill or voter measure.
 5 But even if the facts were different, Proposed Intervenors cite only to case law that contains no analysis
 6 and thus cannot be relied upon. The claim that his reputational interest is at risk, like his claim about the
 7 pension system, is also speculative.

8 **SVTA and Haug.** The claims of these applicants also fail to satisfy the requirement of a “direct
 9 and immediate interest.” They claim an interest as San Jose voters and campaigners in support of
 10 Measure B. But in fact, they are in the same position as all other San Jose voters. As stated in *CCSF*:
 11 “In short, the Fund has directed us to no authority holding that petitioners who supported and
 12 campaigned for a ballot initiative have such a direct and immediate interest in litigation challenging the
 13 initiative’s validity that they must be permitted to intervene under Code of Civil Procedure section 387,
 14 subdivision (a).” (*CCSF, supra*, 128 Cal.App.4th at p. 1037.)

15 **2. Intervention Will Enlarge The Issues In The Case.**

16 The parties to this *quo warranto* action have been involved in the multiple cases challenging
 17 whether the City engaged in adequate meet and confer under the Meyers Miliias Brown Act before
 18 placing Measure B on the ballot. All parties are well aware that, in *People ex rel. Seal Beach Police*
 19 *Officers Assn v. City of Seal Beach* (1984) 36 Cal.3d 591, 602, the Supreme Court set aside a City
 20 Charter measure for failure to properly meet and confer under the Meyers Miliias Brown Act -- the claim
 21 made here. The settlement here results from years of litigation that developed the factual and legal issues
 22 involved in this case. For example, in litigation before the Public Employee Relations Board, some San
 23 Jose unions obtained an ALJ ruling that the City did not adequately meet and confer before the City
 24 Council placed Measure B on the ballot, and that the City Council vote must be set aside. (City RJN,
 25 Exhs. E, H.) In this case, the Attorney General, after review of the circumstances of this case, authorized
 26 the SJPOA to bring an action to set aside the City Council vote to place Measure B on the ballot and
 27 invalidate Measure B. (City RJN, Exh. C.) Taking into consideration these legal rulings, and the
 28 prospect of further litigation, the parties made an informed and reasoned decision to enter into the

1 settlement.

2 If intervention is permitted, the last few years of settlement discussions will be set aside. Rather
3 than being over, this case, will be revived, along with the expense and divisiveness within the City. (See
4 Duenas Decl., ¶ 12.)

5 **3. The Reasons For Intervention Are Outweighed By The Interests Of The City**
6 **And Its Employees In Ending Four Years Of Expensive And Divisive**
7 **Litigation.**

8 Proposed Intervenors present general, and indirect, interests as justifications for intervention:
9 membership in the retirement system, reputation, having been promoters of Measure B, and status as
10 voters in the City of San Jose. (Opening Br. at pp. 7-9.) In contrast, the City's interests in resolving this
11 litigation are concrete and direct, as described in the declarations filed by San Jose's City Manager and
12 Chief of Police.

13 Measure B was enacted by the voters in June 2012. Ten or more separate legal actions
14 challenging Measure B are pending against the City in state Superior Court, the state Court of Appeal,
15 and before the state Public Employee Relations Board. (Duenas Decl., ¶¶ 10, 11.) The City has spent
16 millions of dollars defending against these actions, and will be required to spend significant additional
17 amounts on defense if the Settlement Framework does not go forward. (Duenas Decl., ¶ 12.)

18 The Settlement Framework leaves much of Measure B intact, and addresses those issues that have
19 had unintended negative consequences for the City. Measure B reduced retirement benefits for new
20 recruits below the statewide norms. In the wake of Measure B, the Police Department in particular has
21 faced negative impacts in recruiting and retaining police officers. (Duenas Decl., ¶ 13; Garcia Decl.,
22 ¶¶ 5-7.)

23 According to the City Manager: "The settlement framework negotiated by the parties in July is a
24 key component to the City's attempt to stabilize hiring and retention in the Police Department and delays
25 in its implementation will jeopardize our ability to recruit and retain police officers." (Duenas Decl.,
26 ¶ 13.) According to the Chief of Police, over the years, San Jose was able "to recruit and retain the
27 highest qualify officers, both as new recruits and veteran lateral hires." (Garcia Decl., ¶ 4.) However,
28 beginning in 2012, after the adoption of Measure B, the City "began to face challenges in retaining
officers" and in "filling police academies." (Garcia Decl., ¶¶ 5-7.)

1 Prior to Measure B, the City routinely filled at least a 45-person academy, but the last academy
2 had a graduating class of only seven (7) recruits. (Garcia Decl., ¶ 7.) Although the Police Department is
3 budgeted for 1109 officers, the Department currently has 193 vacancies, and considering trainees,
4 injuries and staff on leave, the Department fields only 821 street ready officers. (Garcia Decl., ¶¶ 8, 9.)
5 Because of short staffing, the Department has implemented mandatory overtime, currently filling 252
6 shifts per week by requiring officers to work overtime. (Garcia Decl., ¶ 10.) According to the Chief, the
7 announcement that the City had settled the Measure B litigation “had led to cautious optimism in the
8 Department.” (Garcia Decl., ¶ 13.) “Almost immediately after the City publicly announced that it had
9 reached agreement with the POA over replacement to Measure B, I began to receive inquiries from
10 officers who have left the Department about returning to work for the City of San Jose.” (Garcia Decl.,
11 ¶ 13.)

12 Here, the parties have worked long and hard on a solution. The solution maintains much of
13 Measure B’s savings, while preserving the competitive nature of City benefits and City’s ability to attract
14 police officers and other employees.

15 **D. The Court Must Deny The Application To Intervene Because The Attorney General**
16 **Already Approved The Settlement.**

17 A party cannot bring an action in *quo warranto* without the permission of the Attorney General,
18 because in prosecuting a *quo warranto* action, a party is acting on behalf of the State. Here, the Attorney
19 General gave the SJPOA leave to prosecute this action in the name of the State, but maintained control
20 over its management, and now has approved the settlement. Applicants have no right to interfere in its
21 completion.

22 An action in *quo warranto* was the exclusive method for the SJPOA to challenge the City
23 Council’s placement of a Charter measure on the ballot based on an alleged failure to adequately meet
24 and confer with the union. (*International Association of Firefighters, Local 55, AFL-CIO v. City of*
25 *Oakland* (1985) 174 Cal.App.3d 687, 693-98; see *People ex rel. Seal Beach Police Officers Assn v. City*
26 *of Seal Beach* (1984) 36 Cal.3d at 602 [holding that Charter measure be set aside for failure to meet and
27 confer under the Meyers Miliias Brown Act.].) Under Code of Civil Procedure section 803, a party
28

1 seeking to sue based on *quo warranto* must obtain the permission of the Attorney General. In this case,
2 the Attorney General's grant of authority to the SJPOA stated as follows:

3
4 As more fully set forth in Attorney General Opinion 12-506, a copy of
5 which is attached hereto, Leave to Sue is hereby granted to Relator-
6 Plaintiff (Plaintiff) SAN JOSE POLICE OFFICERS' ASSOCIATION, and
7 to Plaintiff's attorneys Gregg McLean Adam, and Carroll, Burdick &
8 McDonough LLP, to file the original Verified Complaint in Quo Warranto
9 and this Leave to Sue. Plaintiff may use the name of THE PEOPLE OF
10 THE STATE OF CALIFORNIA ex rel. SAN JOSE POLICE OFFICERS'
11 ASSOCIATION as plaintiff in this proceeding. No amended complaint
12 shall be filed unless it has been approved by the Attorney General. At any
13 time, the Attorney General may either dismiss or assume the management
14 of this action. Upon any adverse judgment, approval of the Attorney
15 General must be obtained before Plaintiff may file a notice of appeal.
16 Copies of all documents filed in this action by any party must be served on
17 the Attorney General.

18
19 This Leave to Sue is granted upon the condition that neither the PEOPLE
20 OF THE STATE OF CALIFORNIA, nor the Attorney General, shall be
21 liable for any damages, costs, charges, or counsel fees in the proceeding.
22 (Code Civ. Proc. § 810.) In this regard, this Leave to Sue has been issued
23 only upon Plaintiffs acknowledgement and agreement-accompanied by a
24 deposit in the sum of Five Hundred Dollars (\$500.00)-that, without
25 limitation, any judgment for damages, costs, charges, or fees that may be
26 recovered against Plaintiff, and/or any associated costs and expenses
27 incurred in this action, will be borne and paid by Plaintiff.

28 (RJN, Exh. C.)

Here, the Attorney General gave the SJPOA leave to bring this *quo warranto* action, but granted
leave on conditions that maintained the Attorney General's control over the action. The "Leave to Sue"
required the Attorney General's permission for the filing of an amended complaint or an appeal, gave the
Attorney General authority at any time to manage the action, and required the SJPOA to provide a bond
to indemnify the Attorney General against any costs or expenses incurred in the action. (City RJN, Exh.
C.) Here, as part of its authority to manage the action, the Attorney General worked with the parties and
approved the proposed settlement.

The Proposed Intervenors should not be permitted to challenge a settlement that has been agreed
to by the Attorney General, who controls the management of this *quo warranto* action.

III. CONCLUSION

This Court should reject the application for intervention. The Proposed Intervenors have waited
too long. The SJPOA's *quo warranto* action, filed in April 2013, provided notice that the SJPOA

1 intended to seek invalidation of the City Council's vote to place Measure B on the ballot, and thus
2 eliminate Measure B. The City gave notice in March 2015 that it was considering the settlement of this
3 action, and gave notice in July and August 2015 of the settlement of this action. The settlement includes
4 a ballot measure that must be placed on the ballot by this August, or the City must wait two more years.

5 Not only are they untimely, Proposed Intervenors cannot show an interest that justifies
6 intervention as of right or by permission of the Court. The interests they claim are general and indirect –
7 membership in the retirement system, advocacy in favor of Measure B, their reputations, and status as
8 San Jose voters. But even if Proposed Intervenors could show an adequate interest, their interests are
9 outweighed by the City's interest in resolving years of expensive and divisive litigation with its
10 employees and employee unions. The City has made a decision that the ability of its police department
11 to recruit and retain officers requires an immediate solution. The Attorney General, who authorized this
12 litigation in the name of the State, has approved the settlement. Proposed Intervenors should not be
13 permitted to interfere in its completion.

14
15 Dated: March 23, 2016

RENNE SLOAN HOLTZMAN SAKAI LLP

16
17 By: 

18 Charles D. Sakai

19 Attorneys for Defendant
20 CITY OF SAN JOSE
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PROOF OF SERVICE

I, the undersigned, am employed by Renne Sloan Holtzman Sakai LLP. My business address is 1220 Seventh Street, Suite 300, Berkeley, California 94710. I am readily familiar with the business practices of this office. I am over the age of 18 and not a party to this action.

On March 23, 2016, I served the following document(s):

OPPOSITION BY CITY OF SAN JOSE TO APPLICATION TO INTERVENE; DECLARATION OF NORBERTO DUENAS IN SUPPORT OF OPPOSITION TO APPLICATION TO INTERVENE; DECLARATION OF EDGARDO GARCIA IN SUPPORT OF OPPOSITION TO APPLICATION TO INTERVENE; DEFENDANT CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO APPLICATION TO INTERVENE

by the following method(s):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses on the attached Service List and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Overnight delivery.** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses on the attached Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- Messenger service.** I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses on the attached Service List and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service*).
- Personal service.** I personally delivered the document(s) to the persons at the addresses listed on the attached Service List. Delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening.
- Facsimile transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed on the attached Service List. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.
- Electronic Mail.** Based on an agreement of the parties to accept service by e-mail, copies of the above document(s) in PDF format were transmitted to the e-mail addresses of the parties on the attached Service List on Date at Time . No delivery errors were reported.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 23rd day of March 2016 at Berkeley, California.

By: 
Erika Casady

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