

**Case No. H043540**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOR THE SIXTH APPELLATE DISTRICT**

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**PETER CONSTANT, STEVEN HAUG, and SILICON VALLEY  
TAXPAYERS' ASSOCIATION, a California non-profit corporation,**  
*Proposed Intervenors, Appellants and Petitioners*

v.

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SANTA CLARA,**  
*Respondent*

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**THE PEOPLE OF THE STATE OF CALIFORNIA on the  
RELATION of SAN JOSE POLICE OFFICERS' ASSOCIATION,**  
*Plaintiff, Respondent, and Real Party in Interest*

**CITY OF SAN JOSE, and CITY COUNCIL OF SAN JOSE,**  
*Defendants, Respondents, and Real Parties in Interest*

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**CITY OF SAN JOSE'S PRELIMINARY OPPOSITION  
TO A STAY OR OTHER RELIEF**

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From Order of the Superior Court of Santa Clara County  
The Honorable Beth McGowen, Presiding  
Superior Court Case No. 2013-cv-245503

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

(CALIFORNIA RULES OF COURT 8.208 AND 8.488)

Court of Appeal Case No.: **H043540**

Case

Name: Constant v. Superior Court of California, County of Santa Clara

- There are no interested entities or persons to list in this certificate per California Rules of Court, Rule 8.208(e)(3).



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## **PRELIMINARY OPPOSITION TO A STAY OR OTHER RELIEF**

### **INTRODUCTION**

After waiting more than six months from the public announcement of the settlement between the City of San Jose and the San Jose Police Officers Association (“SJPOA”) before seeking to intervene in the action below, Petitioners Peter Constant, Steven Haug, and Silicon Valley Taxpayers’ Association (collectively “Petitioners”) now come before this court with a sudden and inexplicable sense of urgency, asking this Court for drastic relief: an immediate stay of the Judgment below.

Petitioners lack any basis for their request as they have no direct interest in the issues underlying this case – whether the parties bargained in good faith prior to placing Measure B before the voters. Moreover, despite Petitioners’ claims of immediate disenfranchisement and establishment of new vested rights, there is simply no basis for this court to conclude that the City could effect those changes before this Court has time to rule on the pending Petition for Writ of Mandate or Writ of Supersedeas.

Relief through writ review is *extraordinary*, equitable, and *completely discretionary*. (Cal. Prac. Guide Civ. App. & Writs Ch. 15-A (The Rutter Group, 2015) ¶15:1.2; *Roden v. AmerisourceBergan Corp.* (2005) 130 Cal.App.4th 211, 213 [“Extraordinary relief is supposed to be extraordinary. It is not available as a matter of course...”].) A writ for

supersedeas may be granted only upon a showing that (a) Petitioners would suffer irreparable harm absent the stay and (b) the appeal has merit. (Cal. Prac. Guide Civ. App. & Writs Ch. 7-E (The Rutter Group, 2015) ¶ 7:279.) Here, Petitioners are not able to make a showing as to either and relief by a temporary stay, writ of mandate, or writ of supersedeas should not be granted.

### **ARGUMENT**

#### **1. There is No Emergency Justifying an Immediate Stay Because Respondent City of San Jose Must Comply With State Law Before Adopting Ordinances To Modify Pension Benefits.**

Petitioners argue for an immediate stay claiming that implementation of the Settlement Framework during the pendency of this appeal may result in pension rights vesting and that certain changes to pension benefits may be impossible to unwind. (Petition for Writ of Mandate, Supersedeas, or Other Appropriate Relief, p. 15.) This argument fails because the City must follow lengthy procedures established by the California Government Code before it can change pension benefits. (See Gov. Code §§ 36933, 36934, 36937.) The implementation of the Stipulated Judgment is not the instantaneous endeavor that Petitioners have made it out to be.

The City of San Jose provides its Pension benefits by ordinance. In order to change such ordinances, the City must follow procedures established by the California Government Code. The procedures include: a first reading (or introduction) of the ordinances (Gov. Code § 36934), a second reading of the ordinances at a regular meeting of the City Council (*Id.*), and publication of the ordinances (Gov. Code § 36933). Ordinances are not effective for thirty (30) days after their adoption. (Gov. Code § 36937.) Taken together, these procedures will take from 30-60 days from the introduction of the ordinances to their effective date. The City is currently involved in negotiations over replacement ordinances with all of its labor groups and there is no anticipated timeline for adopting ordinances.

Thus, even if the City were so disposed, it could not immediately modify the pension benefits of its employees. Petitioners will have significant public notice before the City can take any action to implement changes to employee retirement benefits.

Furthermore, Petitioners attempt to blow smoke by claiming in their improperly filed supplemental brief entitled “Urgent New Information Regarding Request for Immediate Stay” that the City of San Jose has already begun to implement the Stipulated Judgment at the May 10, 2016, City Council meeting. The agenda action by the City Council does not

have any immediate effect. The City must still follow the government code procedures outlined above in its implementation of the Stipulated Judgment. There is no need for an immediate stay.

**2. Petitioners Have Not Shown Irreparable Harm if the Stipulated Judgment Goes Forward and Their Tactics Are Designed to Cause Delay and to Prejudice the Real Parties.**

Petitioners must show that the real parties in interest would not be irreparably harmed by the grant of a stay or if real parties could suffer some harm, that the prejudice to petitioners from not granting the stay would outweigh the harm to real parties from granting it. (Cal. Prac. Guide Civ. App. & Writs Ch. 7-E (The Rutter Group, 2015) ¶ 7:281; see also *Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861.)

As Real Parties have briefed in the court below (see AA, Joint Opposition to Application to Stay Enforcement of Judgment, p. 1266-76), Petitioners' tactics are designed to cause delay to prejudice the Real Parties. The Settlement Framework includes two alternative proposals for a Charter amendment to appear on the November 2016 ballot – either a full amendment incorporating the terms of the framework or a shortened version, and the existence of a final order determines which type of measure must be negotiated and placed before the voters. (*Id.* at 1270-71.) In order to place a measure on the November 2016 ballot, the City must draft the Charter amendment, complete negotiations with the unions over

the specific terms of the ballot language, and pass a resolution before August 12, 2016. (Duenas Decl. in Support of City's Opposition to Application to Intervene, ¶ 15, AA 522-25; Cal. Elections Code Sec. 9255(b)(1) [governing body must propose amendment to charter at least 88 days prior to election].) A stay will create substantial uncertainty in terms of which ballot language the parties need to negotiate. If a stay is granted, the Parties will be left with only a short time to negotiate two separate ballot measures.

In contrast, Petitioners will not suffer irreparable harm because even if the stipulated judgment goes forward, the actual implementation of any changes to the pension benefits will still take time.

**3. Petitioners Cannot Demonstrate a Likelihood of Success on the Merits.**

Petitioners cloak themselves in the role of defenders of the voters of San Jose. However, the case below does not concern the rights of individual voters. Instead, the case below is an action in quo warranto where Respondent SJPOA is acting on behalf of The People of the State of California on relation from the Attorney General. As authorized by the Attorney General, this case involves a single issue: "Did the City of San Jose fulfill its statutory collective bargaining obligations before placing an initiative measure on the June 2012 ballot that, after its passage, amended

the City Charter so as to increase city police officers' retirement contributions and reduce their retirement benefits?" (96 Ops.Cal.Atty.Gen. 1.) The People of the State of California, through Respondent SJPOA, claim that the City failed to satisfy the meet and confer requirements of the Meyers Milias Brown Act before placing Measure B on the ballot for voter approval. (See *People ex rel. Seal Beach Police Officers Assn v. City of Seal Beach* (1984) 36 Cal.3d 591.)

Petitioners have no interest in the negotiations between the parties, no basis for challenging the stipulated facts agreed by the parties, and thus they have no likelihood of prevailing in this case.

**CONCLUSION**

For all the foregoing reasons, the Petition for Writ of Mandate, Supersedeas, or Other Appropriate Relief should be denied.

Dated: May 10, 2016

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By:



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**CITY OF SAN JOSE**

**CERTIFICATION OF WORD COUNT**

**(California Rules of Court, Rule 8.204(c)(1))**

1. The foregoing brief contains 1,214 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

Dated: May 10, 2016

RENNE SLOAN HOLTZMAN SAKAI LLP

By:   
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I am employed in the County of San Francisco, State of California.

I am over the age of 18 and not a party to the within action; my business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On May 10, 2016, I served the foregoing document described as:

**PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF  
MANDATE, PROHIBITION OR OTHER RELIEF** on the parties in  
this action by serving:

- Electronic service via TRUEFILING (to all registered participants) pursuant to Local Rule 2(k).

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- 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.

The Honorable Beth McGowen  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 10, 2016 at San Francisco, California.



Pauline Berkes