

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Jennifer S. Stoughton, No. 238309
CARROLL, BURDICK & McDONOUGH LLP
3 Attorneys at Law
44 Montgomery Street, Suite 400
4 San Francisco, CA 94104
Telephone: 415.989.5900
5 Facsimile: 415.989.0932
Email: gadam@cbmlaw.com
6 jyank@cbmlaw.com
jstoughton@cbmlaw.com
7

8 Attorneys for Plaintiff
San Jose Police Officers' Association

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11
12 THE PEOPLE OF THE STATE OF
CALIFORNIA on the RELATION of
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

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

18 Defendants.
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No.

VERIFIED COMPLAINT IN *QUO WARRANTO*

**[CODE CIV. PROC. § 803; CAL. CODE REG
TITLE 11, SECTION 2(A)]**

1 The People of the State of California, on the Relation of SAN JOSE POLICE
2 OFFICERS' ASSOCIATION complain of Defendants, and for cause of action allege as
3 follows:

4 1. This action is brought pursuant to Section 803 of the Code of Civil
5 Procedure.

6 2. At all times herein mentioned, Defendant the CITY OF SAN JOSE ("the
7 City"), was a municipal corporation existing, qualifying, and acting under a charter
8 granted by the Legislature of the State of California and adopted pursuant to the
9 Constitution of the laws of the State of California.

10 3. At all times herein mentioned, Defendant the CITY COUNCIL OF SAN
11 JOSE ("City Council") was a municipal corporation existing, qualifying, and acting under
12 a charter granted by the Legislature of the State of California and adopted pursuant to the
13 Constitution of the laws of the State of California.

14 4. The relator in this action is the SAN JOSE POLICE OFFICERS'
15 ASSOCIATION ("SJPOA", "Plaintiff" or "Relator").

16 **The Parties and Their Collective Bargaining**
17 **Relationship Under the Meyers-Milias-Brown Act,**
18 **Government Code Section 3500 *et seq.***

19 5. Labor-management relations and the process of bargaining between the
20 SJPOA and the City are governed by the Meyers-Milias-Brown Act ("the MMBA" or "the
21 Act"), Government Code section 3500, *et seq.*

22 6. The SJPOA is, and was at all relevant times, a non-profit corporation
23 organized and existing under the laws of the State of California, with its principal place of
24 business in the County of Santa Clara. The SJPOA is the "recognized employee
25 organization" for all police officer classifications in Bargaining Units 11, 12, 13 and 14
26 (collectively "Police Officers") employed by the City of San Jose to work in the San Jose
27 Police Department, pursuant to the Meyers-Milias-Brown Act, Government Code section
28 3500 *et. seq.* ("MMBA"). As one of its functions, the relator represents public employees
on matters related to their employment conditions, including wages and hours. Plaintiff's

1 approximately 1100 members perform all law enforcement functions for the nearly 1
2 million residents of the City of San Jose.

3 7. By reason of the facts stated in the prior paragraph, the SJPOA is
4 beneficially interested in the City's faithful performance of its obligations under the
5 MMBA. The SJPOA brings this action on behalf of itself and its members, having
6 standing to do so under the doctrine articulated by the California Supreme Court in
7 *Professional Fire Fighters v. City of Los Angeles* (1963) 60 Cal.2d 276, and *Int'l Assoc. of*
8 *Fire Fighters v. City of Palo Alto* (1963) 60 Cal.2d 295.

9 8. At all times relevant, the City is and has been the employer of the
10 SJPOA's members and a "public agency" within the meaning of the MMBA. As a charter
11 city, in addition to being bound by the MMBA in regard to its labor-relations with the
12 SJPOA, the City is governed by the San Jose City Charter.

13 9. The MMBA requires that the City meet and confer in good faith with the
14 SJPOA over the wages, hours, and other terms and conditions of employment for Police
15 Officers, including retirement benefits. (Gov. Code §§ 3504, 3505.) When negotiations
16 result in agreement between the parties, the MMBA requires that the agreement be
17 reduced to a mutually-signed writing known as a "memorandum of agreement" ("MOA").
18 (Gov. Code § 3505.1.)

19 10. The MMBA further states that "knowingly providing a recognized
20 employee organization with inaccurate information regarding the financial resources of
21 the public employer, whether or not in response to a request for information, constitutes a
22 refusal or failure to meet and negotiate in good faith." (Gov. Code § 3506.5(c).)

23 11. The MMBA also prohibits the City from taking unilateral action on
24 matters impacting wages, hours, and other terms and conditions of employment for Police
25 Officers without first providing the SJPOA with reasonable notice and an opportunity to
26 bargain, resolve any differences, and reach agreement prior to implementation. (Gov.
27 Code § 3504.5.) "The duty to bargain requires the public agency to refrain from making
28 unilateral changes in employees' wages and working conditions until the employer and

1 employee association have bargained to impasse.” (*Santa Clara County Counsel*
2 *Attorneys Assoc. v. Woodside* (1994) 7 Cal.4th 525, 537.) Thus, for example, it is well-
3 established that an MMBA-covered city is “required to meet and confer with [a union
4 representing impacted employees] before it propose[s] charter amendments which affect
5 matters within their scope of representation.” (*People ex rel. Seal Beach Police Officers*
6 *Assn. v. City of Seal Beach* (“*Seal Beach*”) (1984) 36 Cal.3d 591, 602.)

7 12. Where there is no imminent need to act prior to a deadline to place a
8 proposed measure on an election ballot, doing so without first satisfying the bargaining
9 obligation violates Government Code section 3504. (*Santa Clara County Registered*
10 *Nurses Assoc.* (2010) PERB Decision No. 2120-M, pp. 15-16.)¹ In order to demonstrate
11 that financial difficulties create a compelling operational necessity permitting unilateral
12 action prior to satisfying the bargaining obligation, the employer must demonstrate “an
13 actual financial emergency which leaves no real alternative to the action taken and allows
14 no time for meaningful negotiations before taking action.” (*Id.* at p.16.) “The mere fact
15 that [a public employer] thought the inclusion of the measure on the ... ballot was
16 desirable does not constitute a compelling operational necessity sufficient to set aside its
17 bargaining obligation.” (*Id.* at 17.)

18 13. Even after bargaining has reached a state of impasse, the bargaining
19 obligation does not end permanently. Rather, “impasse is always viewed as a temporary
20 circumstance and the impasse doctrine ... therefore, is not a device to allow any party to
21 continue to act unilaterally or to engage in the disparagement of the collective bargaining
22 process.” (*McClatchy Newspaper* (1996) 321 NLRB 1386, 1398-1390.) “An impasse
23 does not constitute a license to avoid the statutory obligation to bargain collectively where
24 the circumstances which led to the impasse no longer remain in status quo.” (*Kit*

25
26 ¹ The Public Employment Relations Board (“PERB”) is the California administrative
27 agency generally charged with construing and administering the MMBA. (Gov. Code §§
28 3501 and 3509.) While PERB does not have jurisdiction over cases involving labor
associations representing police officers (Gov. Code § 3511), Courts give great deference
to its construction of the MMBA. (*Banning Teachers Assn. v. Public Employment*
Relations Bd. (1988) 44 Cal.3d 799, 804–805.)

1 *Manufacturing Co., Inc. and Sheet Metal Workers Int'l Assoc., Local 213, AFL-CIO*
2 (1962) 138 NLRB 1290, 1294.) Thus, “[a]nything that creates a new possibility of fruitful
3 discussion (even if it does not create a likelihood of agreement) breaks an impasse.” (*Gulf*
4 *States Mfg. Inc. v. N.L.R.B.* (5th Cir. 1983) 704 F.2d 1390, 1399 [citations omitted].)²
5 Thus, when a party has made a significant bargaining concession, impasse will be broken.
6 Likewise, when an employer’s financial condition has improved substantially, impasse
7 will be broken. (*See, e.g., Kit Manufacturing Co., Inc. and Sheet Metal Workers Int’l*
8 *Assoc., Local 213, AFL-CIO* (1962) 138 NLRB 1290, 1294-1295.)

9 14. On or about March 6, 2012, the defendants submitted to the electorate of
10 the City of San Jose a ballot measure designed to dramatically reduces the pension
11 benefits of SJPOA-represented Police Officers by forcing current employees into a new
12 retirement plan that, *inter alia*, severely reduces accrual rates, dramatically increases
13 minimum retirement age and service requirements, cuts the maximum cost-of-living
14 adjustment in half (from 3% to 1.5%), and slashes survivorship and disability retirement
15 benefits.

16 15. On or about June 5, 2012, a majority of the electorate approved the
17 foregoing resolution. The charter amendment thus approved was thereafter filed with the
18 Secretary of State.

19 16. The proceedings described in Paragraphs 14 and 15, which were taken by
20 the defendants to amend its charter, were defective and violative of Government Code §
21 3500 *et seq.* in that defendants (1) failed to meet and confer in good faith with the SJPOA
22 to discuss the proposed cuts to the benefits prior to arriving at the ballot measure and
23 engaged in bad-faith bargaining by, *inter alia*, insisting that the SJPOA was required to
24 convince the City to undo its *fait accompli* and asserting that the City was under no

25 _____
26 ² Decisions by the federal courts and the National Labor Relations Board (“NLRB”)
27 construing the Labor Management Relations Act are persuasive in construing similar
28 California labor relations statutes. (*See, e.g., Modesto City*, 136 Cal.App.3d at 895-896; *J.*
R. Norton Co. v. ALRB (1987) 192 Cal.App.3d 874, 908.) Decisions interpreting similar
provisions of other California labor statutes are also persuasive. *County Sanitation Dist.*
No. 2 v. Los Angeles County Employees’ Assn. (1985) 38 Cal.3d 564, 572-573.

1 obligation to bargain with the SJPOA in any event, (2) deliberately overstated the extent
2 of its pension liabilities—by in excess of \$250 million dollars—to create enormous public
3 and media pressure on the SJPOA to make concessions and inhibit the parties’ ability to
4 reach agreement (which is a per se unfair labor practice pursuant to Government Code
5 section 3506.5) and (3) failed and refused to return to bargaining on the asserted basis that
6 the parties were at impasse even after significantly changed circumstances required a
7 resumption of bargaining, including an improved financial outlook for the City, greatly
8 improved pension fund performance, and significant monetary concessions by the SJPOA.
9 These allegations are set forth in further detail below.

10 **The Defendants Violated the Meyers-Milias-Brown Act, Government Code**
11 **Section 3500 *et seq.*, by Deciding to Place Measure B Before the Voters Without**
12 **First Providing the SJPOA With Notice and an Opportunity to Bargain**

13 17. In the spring and early summer of 2011, during collective bargaining
14 negotiations, SJPOA and the City had lengthy negotiations over retirement benefits. The
15 parties agreed to create a program through which current employees could voluntarily
16 choose to opt out of the current level of pension benefits into a lower level of benefits
17 (“the SJPOA opt-in”).

18 18. The parties also agreed that either side could continue to “meet and
19 confer” (the technical term for collective bargaining and used herein interchangeably with
20 the term “bargaining”) on pension and retiree health care benefits for current and future
21 employees, notwithstanding that they had reached an agreement on other terms and
22 conditions of employment.

23 19. Notwithstanding this agreement, and almost before the ink on it was dry,
24 the City’s Mayor, Chuck Reed, began a campaign to have the City Council declare a fiscal
25 emergency.

26 20. Concurrently, the Mayor and other City Council members proposed a
27 ballot measure that would unilaterally reduce retirement benefits of all city employees,
28 including those represented by SJPOA. On May 13, 2011, the City published a
Memorandum re: Fiscal Concerns wherein Mayor Chuck Reed asserted that the City’s

1 pension costs were projected to grow to \$650 million annually by 2016 and recommended
2 that the City Council approve a ballot measure to amend the San Jose City Charter to
3 dramatically decrease retirement benefits for current retirees and current/future employees,
4 as well as to require voter approval of future increases in retirement benefits for these
5 same employees. The Mayor recommended setting a maximum level of retirement
6 benefits (that, in some cases, were less than current employees and retirees earn currently)
7 ~~that could not be exceeded without voter approval.~~

8 21. At a meeting on May 24, 2011, the City Council approved the Mayor's
9 recommendation and directed City Council staff to draft a proposed ballot measure that, if
10 approved by the voters of the City of San Jose, would implement the Mayor's
11 recommendations.

12 22. The Mayor began a frenzied political and media campaign warning of
13 impending fiscal disaster for the City as a result of projections for escalating pension
14 costs. The Mayor and his staff repeatedly asserted, including in official city documents
15 put forward as part of the City's bargaining position, that by Fiscal Year 2015-16, the
16 City's retirement contribution could reach \$650 million per year, from a 2010-11 level of
17 \$245 million in Fiscal Year 2010-2011. This figure was used approximately 38 times,
18 including in press releases and interviews in the New York Times and Vanity Fair
19 magazine.

20 23. Throughout these discussions, the City continued to represent that its
21 pension costs were projected to increase annually to approximately \$650 million by 2016.
22 As detailed below, these representations were knowingly false and without basis.

23 24. As recently as February 24, 2012, the Mayor asserted that the City's
24 pension liability could still reach \$650 million by 2015-16.

25 25. In response to the City's ballot measure, SJPOA and other San Jose labor
26 unions invoked their statutory and City Charter rights to meet and confer about the ballot
27 measure. Concurrently, SJPOA, in coalition with IAFF, Local 230 ("Local 230"),
28

1 representing firefighters employed by the City of San Jose, bargained over retirement
2 benefits and the SJPOA opt-in.

3 26. In mid-July, the SJPOA and the City began bargaining over retirement
4 benefits. The negotiations concerned retirement benefits, the ballot measure and SJPOA's
5 opt-in.

6 27. Throughout the meet and confer process, the City's position was that it
7 would vote on sending the ballot measure to the public at a Special Election, planned for
8 March 2012.

9 28. The original ground rules contemplated that the parties would complete
10 bargaining on the July 5, 2011 ballot measure by October 31, 2011. Thereafter, if no
11 agreement had been reached, the parties would enter mediation.

12 29. The negotiations were made more difficult by the City's own
13 acknowledgement that the changes to retirement benefits being proposed by the ballot
14 measure were of questionable legal validity.

15 30. Despite the difficulty, over the following four (4) months, the parties met
16 and conferred at least 13 times, including on July 13, August 2, 25, 30, and 21, September
17 13, 15, and 27, and October 5, 12, 14, 17, and 20. During the Retirement Negotiations,
18 the parties bargained over various proposals put forth by the SJPOA and the City
19 regarding retirement generally, along with bargaining about the specific language of the
20 proposed ballot measure. In the course of the negotiations, the City passed proposals on
21 the following subjects unrelated to the ballot measure: Retirement benefits for New
22 Employees; Retiree Healthcare Benefits For New Employees; Supplemental Retiree
23 Benefit Reserve ("SRBR"); Healthcare Cost Sharing; and Workers' Compensation Offset.
24 For example, the City proposed to change the retirement benefits for new employees, such
25 that the pension benefits formula for employees hired after April 1, 2012 would be 1.5%
26 per year of service, subject to a maximum of 60% of final compensation, and raising the
27 retirement year to 60 years old. The City also proposed to cap any cost of living
28

1 adjustments to 1% per fiscal year and to limit the City's maximum contribution to 9% of
2 pensionable compensation.

3 31. The SJPOA, in conjunction with the other labor unions, also made
4 various proposals in the course of bargaining unrelated to the ballot measure. For
5 example, on September 26, 2011, they proposed a three-tier retirement model that
6 maintained the *status quo* for active employees but created a second tier for new hires and
7 opt-ins with reduced retirement benefits.

8 32. The parties met and conferred until approximately October 31, 2011, but
9 unfortunately were unable to reach an agreement. On November 15-16, 2011, the parties
10 participated in mediation in an effort to resolve their differences. The mediation was not
11 successful.

12 33. Following mediation, in the run up to the Council's planned vote, the
13 City significantly changed its ballot proposal on November 22, 2011. In an email to all
14 employees, the City Manager Debra Figone described the revised ballot measure as "far
15 different than the earlier versions."

16 34. On November 11, November 18 and December 1, 2011, SJPOA and
17 Local 230 (described herein collectively as "the Unions") put forward new proposals
18 significantly amending their prior proposal. The Unions asked to resume bargaining over
19 the revised ballot measure and the Unions' revised proposals. But the City refused to
20 bargain, or deviate from its original plan to vote on its proposed ballot measure on
21 December 6.

22 35. No bargaining has taken place at any time over the City's revised
23 November 22, 2011 ballot measure or the Unions' proposals of November 11, November
24 18 and December 1, 2011.

25 36. On December 1, 2011, the independent actuary for the Retirement Plan
26 issued an updated report with projections for prospective City retirement contributions.
27 The report showed that the City's retirement contributions would be far less than
28 previously estimated and far less than the City had been relying on as justification for both

1 its proposed Declaration of a Fiscal Emergency and its ballot measure. The report showed
2 that—just for the Police and Fire Retirement Plan—the City’s contributions for Fiscal
3 Year 2012-13 would be approximately \$55 million *less than* previously expected.

4 37. On approximately December 5, 2011, the Mayor withdrew his proposal
5 to have the City Council declare a Fiscal State of Emergency.

6 38. But notwithstanding the Unions’ new proposals or the greatly reduced
7 pension contribution projections, the City Council voted to place the November 22, 2012
8 ballot measure before the voters.

9 39. On December 6, 2011, the City Council adopted Resolution 76087 and
10 approved a ballot measure for the June 2012 election ballot, which, *inter alia*, would
11 implement dramatic reductions in Police Officers’ retirement benefits beginning June 24,
12 2012. The draft ballot measure language approved by the City Council was prepared on
13 December 5, 2011, and though largely based on the November 22 version, was approved
14 by the Council the following day, without providing the SJPOA with notice and an
15 opportunity to bargain, as required by the MMBA. (Gov. Code § 3504.5 [requiring notice
16 and opportunity to bargain before adoption of “ordinance, rule, resolution, or regulation
17 directly relating to matters within the scope of representation proposed to be adopted by
18 the governing body”]; *Seal Beach, supra*, 36 Cal.3d at 602.)

19 40. The ballot measure language approved by the City Council on December
20 6, 2011, dramatically reduces the pension benefits of SJPOA-represented Police Officers
21 by forcing current employees into a new retirement plan that, *inter alia*, severely reduces
22 accrual rates, dramatically increases minimum retirement age and service requirements,
23 cuts the maximum cost-of-living adjustment in half (from 3% to 1.5%), and slashes
24 survivorship and disability retirement benefits. Police Officers who elect not to go into
25 the misnomered “Voluntary Election Program,” would be punished by slashing their
26 salaries and requiring that they pay 50% of existing unfunded liabilities.

27 41. The City took the unusual step, however, of seeking to put the ballot
28 measure before the voters in June of 2012, not March 2012, as previously planned. The

1 City Council then essentially directed City staff to engage in after-the-fact mediation—but
2 not bargaining—with the SJPOA and other City unions.

3 42. The SJPOA subsequently met with the City on two occasions in late
4 December, 2011 and early January 2012, but the City refused to agree to bargain, taking
5 the position that the parties remained at impasse.

6 43. On February 21, 2012, the City, through its Director of Labor Relations,
7 provided the SJPOA with a copy of a revised version of its ballot measure and informed
8 the SJPOA that the City Council intended to take a final vote on language for a June 2012
9 ballot measure at its regularly-calendared session on March 6, 2012. *Inter alia*, the
10 measure language was amended to move its effective date to June 23, 2013.

11 44. On February 24, 2012, the SJPOA made a request to bargain about the
12 February 21, 2012 ballot measure. The letter noted that the February 21, 2012 revised
13 measure contained significant changes from the December 6, 2011 version and
14 specifically referenced a concession by the City Manager that it contained “many
15 significant changes and movement from earlier drafts.” The SJPOA noted that it “had no
16 opportunity to bargain about this new ballot language.”

17 45. On February 27, 2012, the City’s Labor Relations Director, Alex Gurza
18 responded to the SJPOA’s February 24 communication by conditioning any resumption of
19 bargaining on the Association (1) making a concession that the City deemed in its
20 subjective opinion to be “sufficient” and (2) that such concession be capable of being
21 “ratified prior to March 6.”

22 46. On March 2, 2012, SJPOA and Local 230 presented a new proposal—
23 designed to meet the City’s concern about the un-guaranteed nature of prior union
24 proposals—which guaranteed tens of millions of dollars in savings to the City annually.

25 47. The City rejected the proposal on March 5, 2012—*i.e.*, within 72 hours—
26 without any meeting or bargaining about the proposal.

1 48. On March 6, 2012, the San Jose City Council adopted a resolution to
2 place the February 21, 2012 version of the pension ballot measure on the June 2012
3 election ballot.

4 49. The ballot measure language approved by the City Council on March 6,
5 2012, dramatically reduces the pension benefits of SJPOA-represented Police Officers in
6 the same ways as the prior version approved by the City Council on December 6, 2011.
7 The February 21, 2012 version of the pension reduction ballot measure adopted by the
8 City Council on March 6, 2012 also includes new language dictating that the City will file
9 as lawsuit seeking a declaration as to the legality of the various pension reduction
10 provisions delineated in the measure.

11 50. These actions and plans were made by the City unilaterally and without
12 providing the SJPOA with notice and an opportunity to “meet and confer ... before [the
13 City] proposed charter amendments which affect matters within their scope of
14 representation.” (*Seal Beach, supra*, 36 Cal.3d at 602.)

15
16 **The City Misrepresented Its Projected Pension Costs and Pushed
17 Toward Declaring a So-Called “Fiscal State of Emergency”**

18 51. On April 13, 2011, San Jose Mayor Chuck Reed and Vice Mayor Nguyen
19 issued a press release announcing that “San José’s retirement director has projected that
20 [pension] costs could rise to \$650 million per year by fiscal year 2015-2016” This
21 statement knowingly and recklessly misrepresented the City’s potential pension liability.

22 52. On May 13, 2011, the City published a Memorandum re: Fiscal Concerns
23 wherein Mayor Chuck Reed asserted that the City’s pension costs were projected to grow
24 to \$650 million annually by 2016. Again, there was no basis for this assertion.

25 53. The \$650 million figure was communicated by the Mayor and the City
26 again and again in press releases, reports, and official City documents until approximately
27 mid-November 2011.

28 54. The communications referenced in the preceding paragraphs were made
even though the City’s retirement director—the only source for the \$650 estimation

1 according to the Mayor—had expressly disavowed any \$650 million projection and had
2 told the Mayor and the City that it should NOT be relied upon. The City had no other
3 actuarially sound basis for projecting a \$650 million pension projection for 2015-16.

4 55. The intent of the City in continuing to communicate the false \$650
5 million projection was to whip-up public, media and political sentiment to support the
6 City's plan to declare a fiscal emergency (discussed *infra*) and slash retirement and other
7 ~~benefits for Police Officers and other City civil servants~~. At all times that these
8 representations were made, the City was aware that they were false and without any
9 reasonable actuarial basis, such that the City "knowingly providing [the SJPOA] with
10 inaccurate information regarding the financial resources of the public employer ...
11 constitute[d] a refusal or failure to meet and negotiate in good faith." (Gov. Code
12 § 3506.5(c).)

13 56. On February 8, 2012, NBC Channel 11, a San Jose area television station
14 produced an investigative report alleging that the City had deliberately overstated its
15 potential pension liability for political reasons. The report suggested that the City's
16 overstatements were deliberate, and designed to support both the Mayor's budget proposal
17 and his proposal for the Declaration of Fiscal Emergency. To wit, in an interview with
18 NBC, when asked the basis for the \$650 million city pension liability projection, Mayor
19 Reed acknowledged that the sole source for the \$650 million figure was the City's
20 Retirement Services Director, Russell Crosby. In the same interview, Mr. Crosby stated
21 about the \$650 million estimation: "That was a number off the top of my head." He also
22 stated that: "The Mayor was told not to use that number ... that the number was 400
23 [million dollars]."

24 57. In fact, on approximately February 21, 2012, the City's own retirement
25 system's actuaries estimated that the actual future projection figure for Fiscal Year 2015-
26 16 is approximately \$310 million, less than half the level the City had consistently and
27 knowingly misrepresented. In light of the developments regarding the City's improved
28 financial condition and the dramatically-reduced projections of retirement related costs

1 over the next few years, any ostensible bargaining impasse was broken. (See *Kit*
2 *Manufacturing Co., Inc. and Sheet Metal Workers Int'l Assoc., Local 213, AFL-CIO*
3 (1962) 138 NLRB 1290, 1294-1295 [improvement in employer's financial condition
4 breaks impasse].)

5 58. Undeterred, as recently as February 24, 2012, Mayor Reed was still
6 publicly estimating that the City's pension liability could reach \$650 million.

7 59. On February 28, 2012, five California State Assembly members and two
8 State Senators requested that the California Legislature's Joint Legislative Audit
9 Committee conduct an audit into the City's general finances and current and future
10 pension obligations ("the State audit request"). They asked that: "The audit should focus
11 on all projections used by the City and/or its elected officials that include, but may not be
12 limited to, \$400 million, \$431 million, \$570 million, and \$650 million."

13 60. On March 7, 2012, the State of California's Joint Legislative Audit
14 Committee ordered a state audit to determine, *inter alia*, whether the Mayor, City Council,
15 or other officials engaged in any wrongdoing or legal violations in referencing the false
16 \$650 million projection. The committee directed the state auditor to give the audit
17 priority status.

18
19 **The City Continued to Refuse to Bargain Even After Its So-Called "Fiscal State of
Emergency" Proved to be a Myth**

20 61. As noted above, on approximately February 21, 2012, the City revised its
21 estimate for the City's pension liability projection for Fiscal Year 2015-16 to
22 approximately \$310 million, less than half the level the City had consistently and
23 knowingly misrepresented. In light of the developments regarding the City's improved
24 financial condition and the dramatically-reduced projections of retirement related costs
25 over the next few years, any ostensible bargaining impasse was broken. (See *Kit*
26 *Manufacturing Co., Inc. and Sheet Metal Workers Int'l Assoc., Local 213, AFL-CIO*
27 (1962) 138 NLRB 1290, 1294-1295 [improvement in employer's financial condition
28 breaks impasse].)

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5. For such costs and further relief as the Court deems just and proper.

Dated: _____, 2012

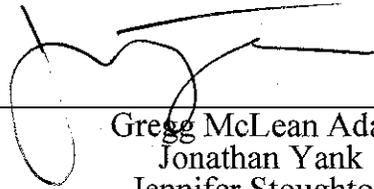
By _____
Attorney General for the State of California

Dated: _____, 2012

By _____
Deputy Attorney General for the State of California

Dated: June 21, 2012

CARROLL, BURDICK & McDONOUGH LLP

By  _____
Gregg McLean Adam
Jonathan Yank
Jennifer Stoughton
Attorneys for Relator
San Jose Police Officers' Association
Attorneys for the People of the State of California

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VERIFICATION

I, Gregg McLean Adam, am the relator in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of June, 2012 at San Francisco, California.



Gregg McLean Adam