

1 STEPHEN H. SILVER, SBN 038241  
2 RICHARD A. LEVINE, SBN 091671  
3 JACOB A. KALINSKI, SBN 233709  
4 SILVER, HADDEN, SILVER, WEXLER & LEVINE  
5 1428 Second Street, Suite 200  
6 P.O. Box 2161  
7 Santa Monica, CA 90407-2161  
8 Telephone: (310) 393-1486  
9 Facsimile: (310) 395-5801

10 Attorneys for Plaintiff/Petitioner San Jose Retired  
11 Employees Association

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA CLARA**

14 SAN JOSE POLICE OFFICERS' ) Lead Consolidated Case No. 1-12-CV-225926  
15 ASSOCIATION, ) (Consolidated Actions 1-12-CV-225928,  
16 ) 1-12-CV-226570, 1-12-CV-226574,  
17 Plaintiff, ) 1-12-CV-227864 and 1-12-CV-233660)  
18 )  
19 v. ) (Hon. Patricia M. Lucas, Dept. 2)  
20 )  
21 CITY OF SAN JOSE, BOARD OF ) **NOTICE OF APPEAL**  
22 ADMINISTRATION FOR POLICE )  
23 AND FIRE DEPARTMENT )  
24 RETIREMENT PLAN OF CITY OF )  
25 SAN JOSE, and DOES 1-10, inclusive, )  
26 )  
27 Defendants. )  
28 )  
\_\_\_\_\_)  
AND RELATED CROSS-COMPLAINT )  
AND CONSOLIDATED ACTIONS. )  
\_\_\_\_\_)

1 TO THE CLERK OF THE SUPERIOR COURT, ALL INTERESTED PARTIES AND  
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Plaintiff/Petitioner San Jose Retired Employees  
4 Association ("SJREA") in Case No. 1-12-CV-233660 hereby appeals to the Court of Appeal  
5 for the State of California, Sixth Appellate District, from the following portions of the  
6 Judgment entered on April 30, 2014, a copy of which is attached hereto as Exhibit A:

7 1) Page 3, lines 11-13, with respect to the Court's determination that all challenges  
8 to Measure B were facial, except the challenges to Section 1512-A(a) and 1512-A(c).

9 2) Page 3, lines 20-28, with respect to the Court's determinations that Sections  
10 1504-A (Reservation of Voter Authority), 1511-A (Supplemental Retiree Benefit Reserve),  
11 1512-A(b) (Retiree Healthcare - Reservation of Rights), 1513-A (Actuarial Soundness) and  
12 1515-A (Severability) are valid and that Judgment is entered against SJREA on its causes of  
13 action challenging these Sections.

14 3) Page 4, lines 1-8, with respect to the Court's determination that Judgment is  
15 entered against SJREA on its causes of action challenging Section 1512-A(a).

16 4) Page 5, lines 3-7, with respect to the Court's determination that Judgment is  
17 entered against SJREA on its claim for violation of the Pension Protection Act, Cal. Const., art.  
18 XVI, Section 17.)

19 5) Page 5, lines 11-14, with respect to the Court's determination that Judgment is  
20 entered against SJREA on its claim for violation of the Separation of Powers doctrine.

21 6) Page 5, lines 20-23, with respect to the Court's determinations that each party  
22 obtained some but not all of its litigation objectives, that there is no prevailing party and that  
23 each party is to bear its own costs.

24 DATED: June 11, 2014

SILVER, HADDEN, SILVER, WEXLER & LEVINE

25  
26  
27 By: 

Jacob A. Kalinski, Esq.  
Attorneys for SJREA

(ENDORSED)  
**FILED**  
APR 30 2014

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY DAVID H. YAMASAKI DEPUTY

IN THE SUPERIOR COURT FOR THE  
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS  
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF  
ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10 inclusive.,

Defendants.

Consolidated Case No. 1-12-CV-225926

*Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV227864*

*Assigned for all purposes to the Honorable  
Patricia M. Lucas*

**JUDGMENT IN CONSOLIDATED CASES**

AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS

This judgment follows from the Statement of Decision filed February 20, 2014.

A bench trial in these consolidated cases was held on July 22-26, 2013, in Department 2, the Honorable Patricia M. Lucas presiding. Witnesses were sworn and testified. Evidence was offered and accepted.

The plaintiff in Case No. 1-12-CV-225926 is the San Jose Police Officers Association ("SJPOA"), representing employees who are members of the 1961 San Jose Police and Fire Department Retirement Plan ("Police and Fire Plan"). SJPOA was represented by Gregg Adams and Amber Griffiths of Carroll Burdick and McDonough. The plaintiff in Case No. 1-12-CV-

Case No. 1-12-CV-225926

CONSOLIDATED JUDGMENT

**EXHIBIT A**

1 227864 is the American Federation of State, County, and Municipal Employees, Local  
2 101("AFSCME"), representing employees who are members of the 1975 Federated City  
3 Employees' Retirement Plan ("Federated Plan"). AFSCME was represented by Teague P.  
4 Paterson and Vishtasp M. Soroushian of Beeson, Tayer & Bodine, APC. The plaintiffs in Case  
5 No. 1-12-CV-225928 are Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany,  
6 Ken Heredia ("Sapien Plaintiffs"), who are active and retired members of the Police and Fire Plan;  
7 the plaintiffs in Case No. 1-12-CV-226570 are Teresa Harris, Jon Reger, and Moses Serrano  
8 ("Harris Plaintiffs"), who are active and retired employees of the Federated Plan; and the plaintiffs  
9 in Case No. 1-12-CV-226574 are John Mukhar, Dale Dapp, James Atkins, William Buffington,  
10 and Kirk Pennington ("Mukhar Plaintiffs"), who are active and retired members of the Federated  
11 Plan. The Sapien, Harris, and Mukhar Plaintiffs (collectively, "Individual Plaintiffs") were  
12 jointly represented by Christopher E. Platten and John McBride of Wylie, McBride, Platten &  
13 Renner. The plaintiff in Case No. 1-12-CV-233660 is the San Jose Retired Employees  
14 Association ("SJREA"), represented by Stephen H. Silver and Jacob A. Kalinski of Silver,  
15 Hadden, Silver, Wexler & Levine. Defendants City of San Jose ("the City") and Debra Figone,  
16 City Manager (collectively, "Defendants"), were represented by Arthur A. Hartinger, Linda M.  
17 Ross and Geoffrey Spellberg of Meyers Nave. Real parties in interest Board of Administration for  
18 the Police and Fire Plan and the Federated Plan were represented by Harvey L. Liederman and  
19 Kerry K. Galusha of Reed Smith, LLP.

20 The City filed a cross-complaint in Case No. 1-12-CV-225926. All Plaintiffs except  
21 SJREA were named as Cross-defendants.

22 On October 10, 2013, the parties appeared to respond to additional questions from the  
23 Court. On December 20, 2013, a Tentative Decision was filed. On January 31, 2014, the parties  
24 appeared on objections to the Tentative Decision. On February 20, 2014, the Statement of  
25 Decision was filed.

26 Plaintiffs challenged the following sections of the Sustainable Retirement and  
27 Compensation Act, a ballot initiative that amended the San Jose City Charter, approved by the  
28 electorate on June 4, 2012 as "Measure B" (hereafter "Measure B"):

- 1       ▪ Section 1504-A (Reservation of Voter Authority);
- 2       ▪ Section 1506-A (Current Employees);
- 3       ▪ Section 1507-A (One Time Voluntary Election Program ('VEP'));
- 4       ▪ Section 1509-A (Disability Retirements);
- 5       ▪ Section 1510-A (Cost of Living Adjustments);
- 6       ▪ Section 1511-A (Supplemental Retirees Benefit Reserve);
- 7       ▪ Section 1512-A (Retiree Healthcare);
- 8       ▪ Section 1513-A (Actuarial Soundness);
- 9       ▪ Section 1514-A (Savings); and
- 10      ▪ Section 1515-A (Severability).

11       Plaintiffs' challenges to these sections of Measure B were facial challenges, except that the  
12 challenges to Sections 1512-A(a) and 1512-A(c) were both facial and as-applied. (See Statement  
13 of Decision at 7:10-13.)

14       Now therefore, the Court enters judgment as follows, based upon the evidence and  
15 argument presented, and consistent with the Statement of Decision, the order dated January 31,  
16 2013, granting judgment on the pleadings on SJPOA's seventh cause of action for violation of the  
17 Meyers Miliias Brown Act ("MMBA"), and the order dated April 30, 2013, sustaining without  
18 leave to amend the demurrer to AFSCME's seventh cause of action for illegal ultra vires tax, fee,  
19 or assessment:

20       1. Sections 1504-A (Reservation of Voter Authority), 1509-A (Disability Retirement),  
21 including 1509-A(b) (Definition of Disability) and 1509-A(c) (Expert Board), 1511-A  
22 (Supplemental Retiree Benefit Reserve), 1512-A(b) (Retiree Healthcare – Reservation of Rights),  
23 1512-A(c) (Retiree Healthcare – Low Cost Plan), 1513-A (Actuarial Soundness), 1514-A  
24 (Alternative of Wage Reduction), and 1515-A (Severability) are valid, and judgment is entered in  
25 favor of Defendants and against Plaintiffs, as to these Sections of Measure B, on each cause of  
26 action challenging these Sections. (SJPOA first through eighth causes of action; AFSCME first  
27 through eleventh causes of action; Individual Plaintiffs' first through fifth causes of action; SJREA  
28 first through third causes of action, all counts.)

1           3.       Section 1512-A(a) (Retiree Healthcare – Minimum Contributions) is valid with the  
2 phrase “a minimum of” severed from the provision, so that Section 1512-A(a) shall read,  
3 “Existing and new employees must contribute 50% of the cost of retiree healthcare, including both  
4 normal cost and unfunded liabilities.” With the provision modified, judgment is entered in favor  
5 of Defendants and against Plaintiffs, as to this Section of Measure B, on each cause of action  
6 challenging this Section. (SJPOA first through third and sixth causes of action; AFSCME first,  
7 third through sixth, and eighth through eleventh causes of action; Individual Plaintiffs’ first  
8 through fifth causes of action; SJREA first through third causes of action, all counts.)

9           4.       Sections 1506-A (Increased Pension Contributions – Current Employees), 1507-A  
10 (One Time Voluntary Election Program), 1510-A (Cost of Living Adjustments) are invalid and  
11 judgment is entered in favor of Plaintiffs and against Defendants, as to these sections of Measure  
12 B, on the causes of action challenging these Sections based on unconstitutional impairment of  
13 contract, Cal. Const., art. I, Section 9. (SJPOA’s first cause of action, AFSCME’s first cause of  
14 action, Individual Plaintiffs’ second cause of action (as to Sections 1506-A and 1510-A only), and  
15 SJREA’s first cause of action (Count I) and second cause of action (as to Section 1510-A only).)

16           5.       Judgment is entered in favor of Defendants and against AFSCME on AFSCME’s  
17 eighth cause of action, which claimed Promissory and Equitable Estoppel.

18           6.       AFSCME has dismissed with prejudice its second cause of action, which claimed  
19 Bill of Attainder. (Statement of Decision at 5:16-17.)

20           7.       AFSCME’s seventh cause of action, which claimed Illegal *Ultra Vires* Tax, Fee, or  
21 Assessment, is dismissed with prejudice pursuant to the order dated April 30, 2013, sustaining  
22 Defendants’ demurrer without leave to amend.

23           8.       Judgment is entered in favor of Defendants and against the SJPOA and AFSCME  
24 on their respective claims for violation of the Freedom of Speech and Right to Petition Clauses,  
25 Cal. Const., art. I, Sections 2, 3. (SJPOA’s fourth cause of action, AFSCME’s sixth cause of  
26 action.)

27           9.       Judgment is entered in favor of Defendants and against the SJPOA and AFSCME  
28 on their respective claims for violation of the Bane Act, California Civil Code section 52.1.

1 (SJPOA's first, second, third, fourth, fifth, and eighth causes of action; AFSCME's first, second,  
2 third, fourth, fifth, sixth, and seventh causes of action.)

3 10. Judgment is entered in favor of Defendants and against the SJPOA, AFSCME, and  
4 the SJREA on their respective claims for violation of the Pension Protection Act, Cal. Const., art.  
5 XVI, Section 17. (SJPOA's eighth cause of action, AFSCME's fifth cause of action, Count V of  
6 the SJREA's first cause of action, and the Pension Protection Act provision of the SJREA's  
7 second cause of action.)

8 11. SJPOA's seventh cause of action, which claimed violation of the MMBA, is  
9 dismissed with prejudice pursuant to the order dated January 31, 2013, granting Defendants'  
10 motion for judgment on the pleadings.

11 12. Judgment is entered in favor of Defendants and against the SJPOA and the SJREA  
12 on their respective claims for violation of the Separation of Powers Doctrine. (SJPOA's fifth  
13 cause of action, Count IV of the SJREA's first cause of action, and the SJREA's second cause of  
14 action.)

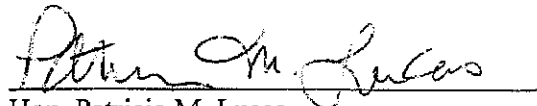
15 13. Judgment is entered in favor of Cross-Defendants and against Cross-Complainant  
16 on the City's Cross-Complaint.

17 14. Declaratory relief and injunctive relief are granted, and Defendants are enjoined  
18 from implementing or enforcing Sections 1506-A, 1507-A, and 1510-A, and the phrase "a  
19 minimum of" in Section 1512-A, with respect to employees and retirees hired before June 5, 2012.

20 15. The Court finds that each party obtained some but not all of its litigation objectives,  
21 and therefore concludes that there is no prevailing party. Accordingly, the Court exercises its  
22 discretion and orders that each party is to bear its own costs. (Cal. Civ. Proc. Code §1032(a)(4)  
23 ("the court, in its discretion, may allow costs or not").)

24 JUDGMENT IS SO ENTERED.

25 Dated: April 29, 2014

  
26 Hon. Patricia M. Lucas  
27 Judge of the Superior Court  
28

PROOF OF SERVICE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On June 11, 2014, I served the documents described as follows on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth on the attached service list:

1. NOTICE OF APPEAL

**[By Electronic Mail]** I caused the document(s) to be transmitted to the addressee(s) via electronic mail at the addresses listed on the attached Service List.

**[By Mail]** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 11, 2014, at Santa Monica, California.

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

MICHELE R. HENGESBACH

*Michele Hengesbach*  
SIGNATURE



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

Gregg M. Adam  
[gadam@cbmlaw.com](mailto:gadam@cbmlaw.com)  
Jonathan Yank  
[jyank@cbmlaw.com](mailto:jyank@cbmlaw.com)  
Amber West  
[awest@cbmlaw.com](mailto:awest@cbmlaw.com)  
Carroll Burdick & McDonough LLP  
44 Montgomery Street, Suite 400  
San Francisco CA 94104

Teague P. Paterson  
[tpaterson@beesontayer.com](mailto:tpaterson@beesontayer.com)  
Vishtap M. Soroushian  
[vsoroushian@beesontayer.com](mailto:vsoroushian@beesontayer.com)  
Beeson Taylor & Bodine APC  
Ross House, Suite 200  
483 Ninth Street  
Oakland, CA 94612

John A. McBride  
[jmcbride@wmpirlaw.com](mailto:jmcbride@wmpirlaw.com)  
Christopher E. Platten  
[cplatten@wmpirlaw.com](mailto:cplatten@wmpirlaw.com)  
Wylie McBride Platten & Renner  
2125 Canoas Garden Avenue, Suite 120,  
San Jose, CA 95125-2124

Arthur A. Hartinger  
[ahartinger@meyersnave.com](mailto:ahartinger@meyersnave.com)  
Linda Ross  
[lross@meyersnave.com](mailto:lross@meyersnave.com)  
Meyers Nave Riback Silver & Wilson  
555 12th Street, Suite 1500,  
Oakland, CA 94607

Harvey L. Leiderman  
[hleiderman@reedsmith.com](mailto:hleiderman@reedsmith.com)  
Jeffrey R. Rieger  
[jrieger@reedsmith.com](mailto:jrieger@reedsmith.com)  
Reed Smith LLP  
101 Second Street, Suite 1800,  
San Francisco, CA 94105-3659

George Nathan Jaeger  
[njaeger@natejaeger.com](mailto:njaeger@natejaeger.com)  
15118 San Jose Street  
Mission Hills, CA 91345