

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 **BEESON, TAYER & BODINE, APC**
4 483 Ninth Street, 2nd Floor
5 Oakland, CA 94607
6 Telephone: (510) 625-9700
7 Facsimile: (510) 625-8275
8 Email: tpaterson@beesontayer.com
9 vsoroushian@beesontayer.com

10 Attorneys for Plaintiff
11 *AFSCME LOCAL 101*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**
15 **AT SAN JOSÉ**

16 SAN JOSE POLICE OFFICERS'
17 ASSOCIATION,
18
19 Plaintiff,
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21 v.
22 CITY OF SAN JOSÉ, BOARD OF
23 ADMINISTRATION FOR POLICE AND FIRE
24 DEPARTMENT RETIREMENT PLAN OF
25 CITY OF SAN JOSE, and DOES 1-10,
26 inclusive,
27 Defendants.
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Consolidated Case No. 1-12-CV-225926
[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]
ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2
**PLAINTIFF/PETITIONER AFSCME
LOCAL 101's OBJECTIONS TO
TENTATIVE DECISION AND PROPOSED
STATEMENT OF DECISION RE
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS**

AND RELATED CROSS-COMPLAINT AND
CONSOLIDATED ACTIONS

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.1590, Plaintiff/Petitioner AFSCME Local 101
3 (“Plaintiff” or “AFSCME”) files the following objections to the Tentative Decision and Proposed
4 Statement of Decision re Complaint for Declaratory and Injunctive Relief and Petition for Writ of
5 Mandamus (“Tentative Decision”), filed December 20, 2013.

6 AFSCME makes these objections subject to its rights on appeal and by making these
7 objections does not in any way limit the arguments it will make on appeal.

8 AFSCME objects to the Court’s denial of its claim for promissory and equitable estoppel,
9 which it articulates on pages 33 to 34 of its Tentative Decision.

10 **II. ARGUMENT**

11 Defendant City of San José (“City”) should be estopped from enforcing Measure B and
12 denying Federated members the benefits it promised them throughout their careers because, when the
13 City induced said members to work for it, they forewent the opportunity to participate in the federal
14 Social Security (OASDI) program.

15 The California Supreme Court has expressly recognized and affirmed the application of
16 estoppel against municipalities to protect employees’ retirement rights, particularly in cases where
17 “employees were induced to accept and maintain employment on the basis of expectation fostered by
18 widespread, long-continuing misrepresentation.” (*Longshore v. County of Ventura* (1979) 25 Cal.3d
19 14, 28.) In *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, the Court held that “the proper rule
20 governing equitable estoppel against the government is the following: The government may be bound
21 by an equitable estoppel in the same manner as a private party when the elements requisite to such an
22 estoppel against a private party are present and, in the considered view of a court of equity, the
23 injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify
24 any effect upon public interest or policy which would result from the raising of an estoppel.” (*Id.* at
25 496.)

26 The doctrine of “privity of estoppel” has been specifically applied to government agencies
27 and their subdivisions, even in the retirement benefits context. In *Crumpler v. Bd. of Admin.* (1973) 2

1 32 Cal.App.3d 567 (hereinafter "*Crumpler*"), the appellate court held that the PERS board was
2 equitably estopped from retroactively reclassifying certain animal control officers as non-safety
3 members, thereby affording lesser retirement benefits, where the officers had paid the greater
4 contributions required of safety members over the years; the officers were entitled to receive the
5 "benefit of ... what they had bargained and paid for." (*See Barrett v. Stanislaus County Employees*
6 *Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1608 (discussing *Crumpler*.) Because the city of San
7 Bernardino was "clearly estopped from seeking petitioners' reclassification," the retirement board
8 was also estopped from doing so because "the agents of the same government are in privity with each
9 other since they represent not their own rights but the right of the government." (*Crumpler, supra*, 32
10 Cal.App.3d at 581, 583.) Privity of estoppel has been applied by the State Supreme Court in a
11 situation where the retirement board urged that the bad advice of the city could not be imputed to it.
12 The Court stated, "An estoppel binds not only the immediate parties to the transaction but those in
13 privity with them," and, "A public agency may not avoid estoppel by privity on the ground that the
14 conduct giving rise to estoppel was committed by an independent public entity." (*Lerner v. Los*
15 *Angeles City Board of Education* (1963) 59 Cal.2d 382, 398-9).

16 In this case, most of the material inducing employees' reliance originated from retirement
17 services, a City agency. Not only was retirement services most likely authorized to send such
18 communications as a routine matter (Tr. 682:1-14), but given that retirement services represents the
19 rights of the City rather than its own, its representations may be imputed to the City. (*See Crumpler,*
20 *supra*, 32 Cal.App.3d at 583.)

21 The *Crumpler* court found estoppel appropriate where one petitioner had "arranged his
22 personal financial affairs in the expectation he would ultimately receive the retirement benefit of a
23 safety members" and where another relinquished continuing accrual of federal pension benefits for
24 the city retirement benefits originally represented to him. (*Crumpler, supra*, 32 Cal.App.3d at 582.)
25 This case is similar. In assuming positions with the City, its employees consciously forewent the
26 opportunity to participate in the federal Social Security program. (*See, e.g.*, Tr. 105:19-28; 379:12-15;
27 Exh. 329, p. 10 (AFSCME003894); *see also* Exhs. 365, 366 (Statement Concerning Your

1 Employment in a Job Not Covered by Social Security).) This forbearance was established as a matter
2 of fact with respect to all AFSCME members and, the City's witnesses admitted it. The fact that the
3 Federated System operates as an "Alternative Retirement System" to social security, is conclusive
4 proof that the benefits are offered in exchange for this forbearance. (*See, e.g.*, Tr. 108:26-27, 109:8-
5 13.)

6 Just as the *Crumpler* court held that the board was estopped from "reclassifying petitioners
7 *nunc pro tunc* as of the date of their initial membership in the system," (32 Cal.App.3d at 584) this
8 Court should also find that estoppel, in addition to the vested rights doctrine cited by the court,
9 forbids the pension changes sought by Measure B. It also pertains to AFSCME members' pay
10 towards retiree health unfunded liabilities, as such would require them to make contributions based
11 upon service *already* performed by retirees and other employees (*See* Tr. 515:9-26 (Erickson
12 acknowledging that retiree health and pension UALs may include cost attributable to retirees and
13 other employees), as well as the fact that their payment towards retiree health benefits estops the City
14 from reducing the value or reclassifying the retiree benefit plan.

15 **III. CONCLUSION**

16 For the aforementioned reasons, AFSCME objects to the Court's denial of its claims for
17 estoppel.

18
19 Dated: January 6, 2014

Respectfully submitted,

20 BEESON, TAYER & BODINE, APC

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22 By:


23 VISHTASP M. SOROUSHIAN

Attorneys for AFSCME LOCAL 101

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**PLAINTIFF/PETITIONER AFSCME LOCAL 101's OBJECTIONS TO TENTATIVE
DECISION AND PROPOSED STATEMENT OF DECISION RE COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF
MANDAMUS**

By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

By Personally Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

By Messenger Service to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.

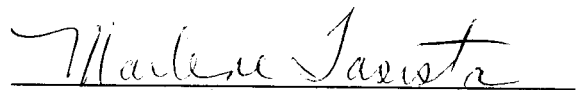
By UPS Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, January 6, 2014.



Marlene T. Tasista

SERVICE LIST

Greg McLean Adam, Esq.
Jonathan Yank, Esq.
Gonzalo C. Martinez, Esq.
Amber L. West, Esq.
CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOCIATION (Santa Clara Superior Court Case No. 112CV225926)

Arthur A. Hartinger, Esq.
Geoffrey Spellberg, Esq.
Linda M. Ross, Esq.
Jennifer L. Nock, Esq.
Michael C. Hughes, Esq.
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, CA 94607

Attorneys for Defendants, THE CITY OF SAN JOSE AND DEBRA FIGONE

John McBride, Esq.
Christopher E. Platten, Esq.
Mark S. Renner, Esq.
WYLIE, McBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125

Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY McCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112-CV-225928)

AND

Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)

AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)

Harvey L. Leiderman, Esq.
REED SMITH, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV22574)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)

PROOF OF SERVICE

Consolidated Case No. 112CV225926

1 Stephen H. Silver, Esq.
2 Richard A. Levine, Esq.
3 Jacob A. Kalinski, Esq.
4 SILVER, HADDEN, SILVER, WEXLER &
5 LEVINE
6 1428 Second Street, Suite 200
7 Santa Monica, CA 90401-2367

8 *Attorneys for Plaintiffs, SAN JOSE RETIRED*
9 *EMPLOYEES ASSOCIATION, HOWARD E.*
10 *FLEMING, DONALD S. MACRAE, FRANCES J.*
11 *OLSON, GARY J. RICHERT and ROSALINDA*
12 *NAVARRO (Santa Clara Superior Court Case No.*
13 *112CV233660)*

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PROOF OF SERVICE

Consolidated Case No. 112CV225926