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San Jose Police Officers' Association

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

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT
18 PLAN OF CITY OF SAN JOSE, and
DOES 1-10, inclusive,

19 Defendants.
20

No.

**DECLARATION OF MIKE ALBIN IN
SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

21 I, Mike Albin, declare and say:

22 1. I am employed by the City of San Jose as a Police Officer and am a
23 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have
24 worked as a Police Officer for the City of San Jose since 2000. Before that, I worked as a
25 Police Officer in Redwood City from 1994 until 2000. As a result of my employment
26 with the City of San Jose, I am familiar with the facts in this matter, as well as those set
27 forth in this Declaration. If called upon as a witness, I could and would testify
28 competently to these facts.

1 2. I submit this declaration in support of the SJPOA's *Ex Parte* Application
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary
3 Injunction ("*Ex Parte* Application for TRO").

4 3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee
6 contributions for retirement benefits (including increases to employee-paid retirement and
7 retiree health care costs) that amount to an approximate additional 17% decrease to my
8 take-home pay. Effective June 24, 2012, we are slated for an additional approximate 2%
9 decrease to take home pay.

10 4. The cumulative impact of the pay reduction along with the increases to
11 employee-paid retirement/retiree health care costs has forced many officers to take
12 positions with other police agencies in the region. I know several officers who have
13 already left the department and many more who are considering leaving should additional
14 decreases to pay and/or pension benefits occur.

15 5. I am married and have two kids.

16 6. Measure B, if implemented, would require that I and other San Jose
17 police officers begin paying 50% of the costs of retiree healthcare, including both the
18 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%
19 which means that my salary immediately will be decreased by at least another 9% for the
20 unfunded retiree health care costs (because we already paying 7% of the unfunded retiree
21 health care costs) although I will receive the same level of benefits from the City. If this
22 occurs, it will be devastating to my financial situation because we will not be able to cover
23 our living expenses with such a big pay reduction.

24 7. I have also been informed that the City will start charging me for 50% of
25 the unfunded pension liability (also currently set at 32%) although the implementation of
26 the unfunded pension liability charges will be phased in over time. The implementation
27 of this additional decrease will make my financial situation even more precarious.

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1 8. Measure B will also modify disability retirement for San Jose police
2 officers, as detailed below, such that it will no longer be of any benefit to me. I consider
3 comprehensive disability retirement protection an absolutely crucial employment benefit
4 for my line of work because police work is extremely physically demanding and
5 dangerous. Police officers are expected to respond to any and all situations, some of
6 which we have little opportunity to plan ahead for. Moreover, it is impossible to
7 adequately train for each and every situation a police officer may find themselves in. That
8 means that, in many instances, police officers are asked to respond immediately without
9 the benefit of forethought, to a dangerous situation that they could have never prepared
10 for. I would not have chosen a career in law enforcement without the knowledge that my
11 family would be protected with full retirement benefits in the event that I am disabled as a
12 result of actions taken in the line of duty while performing my job protecting the citizens
13 of San Jose.

14 9. Under the City of San Jose's current disability retirement plan for police
15 officers, I would be deemed disabled if I am no longer able to perform duties within my
16 peace officer classification (i.e. the normal duties of a police officer). Under the current
17 system, if I was rendered disabled, I would be entitled to retirement disability payments of
18 50% of my current salary for the first 20 years of service and an additional 4% for every
19 year of service thereafter. The City explained these rights to me many times throughout
20 my career and I have counted on these rights throughout my career to protect my family's
21 financial security should I be injured in the line of duty.

22 10. On January 25, 2011, I, along with several other officers, responded to a
23 report of a burglary in progress in a rural part of San Jose. The suspect was reportedly
24 armed with a knife. When we arrived at the scene, the suspect was in a creek bed,
25 screaming and waving two knives in the air. I was positioned at the top of the hill about
26 15 to 20 feet above the creek bed while two of my colleagues went down onto the creek
27 bed in an attempt to subdue the suspect. Following an unsuccessful attempt to subdue the
28 suspect with a taser, the suspect suddenly charged one of the officers with his knives. In

1 an effort to protect my colleague, I ran/jumped down the hill to the creek bed as soon as I
2 saw the suspect start charging my fellow officers in a threatening manner. Unfortunately,
3 I landed awkwardly when I ran/jumped down the hill and blew out my knee so bad that I
4 had to be transported to the hospital from the scene.

5 11. Despite the fact that my doctor said that my knee had to be surgically
6 repaired, the City took several months to approve my surgery. Because of the delay from
7 the City's side, I attempted to come back to work prior to my surgery in an effort to
8 conserve my paid leave. However, being back on duty exacerbated my knee injury and I
9 was eventually unable to get out of my patrol car because my knee could not support my
10 weight. My doctor ordered my off-duty again and the City finally approved me for
11 surgery. I subsequently required a second surgery to further repair my knee. Following
12 the second surgery, the City denied my doctor's recommendation for physical therapy on
13 the grounds that it did not appear that my knee was getting any better. Also, after my
14 doctor ordered a knee brace because my knee kept collapsing on me, the City refused to
15 approve the knee brace. I ended up purchasing my own knee brace and joined a health
16 club using my own funds in an effort to rehab my knee and get back to duty.

17 12. As a result of my knee injury and two surgeries, I am still unable put all
18 of my weight on my knee and need to use a cane or knee brace to keep my knee from
19 collapsing on me. I am also unable to sit down in one place too long because of the pain
20 in my knee and am currently on modified duty. I have submitted my disability retirement
21 paperwork but was advised by the City that it cannot even be considered until six months
22 after my last surgery when I will be considered permanent and stationary. This policy is
23 at odds with the fact that I was denied rehabilitation for my knee after my second surgery
24 on the grounds that my knee was not improving. Furthermore, had I known about this
25 policy, I would have delayed my second surgery until after I submitted my retirement
26 disability application and would have been eligible to seek disability retirement several
27 months ago.

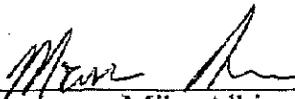
1 13. Measure B, if passed by San Jose electorate, would eviscerate the police
2 disability retirement plan. My understanding is that instead of analyzing whether I will be
3 able to perform police officer functions, the City will analyze whether I can perform the
4 essential job functions of any position within the Police Department, including jobs that
5 consist primarily of administrative tasks. If I am found to be physically able to perform
6 the essential job functions of any position within the Police Department, my disability
7 application will be denied. More troubling, if the job or jobs that I have been found to be
8 able to perform are occupied, I will be terminated from city employment without any
9 retirement benefits.

10 14. If the changes delineated in the prior paragraph are implemented, it will
11 have an immediate and catastrophic impact on me because it will virtually eliminate the
12 availability of any retirement pension. Essentially, the changes have all but guaranteed
13 that I will be terminated and left without the means to support myself and my family as a
14 result of being injured in the line of duty. As a result of my injury, coupled with the fact
15 that the City delayed approval of my surgery for several months, I have already burned
16 through almost all of my State and City leave. Therefore, I will have no income should
17 Measure B pass and no way to earn income because my injury prevents me from working
18 as a police officer anywhere.

19 15. In light of this risk, if Measure B passes, I am informed that many of my
20 colleagues will look for law enforcement work at departments that maintain full disability
21 retirement coverage, rather than risk being hung out to dry like I will be during such a
22 time of need. Moreover, I believe many officers will no longer volunteer for high-risk
23 assignments. In fact, I believe the San Jose Police Department will find it difficult, if not
24 impossible, to find enough officers, not only to fill these crucial roles, but also to simply
25 maintain an adequate force to fulfill its public-safety and crime-prevention roles.
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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 and that this declaration is executed this 15th day of JUNE ~~May~~, 2012, SAN JOSE, California.



Mike Albin