

1 Gregg McLean Adam, No. 203436  
Jonathan Yank, No. 215495  
2 Gonzalo C. Martinez, No. 231724  
Jennifer S. Stoughton, No. 238309  
3 **CARROLL, BURDICK & McDONOUGH LLP**  
Attorneys at Law  
4 44 Montgomery Street, Suite 400  
San Francisco, CA 94104  
5 Telephone: 415.989.5900  
Facsimile: 415.989.0932  
6 Email: gadam@cbmlaw.com  
jyank@cbmlaw.com  
7 gmartinez@cbmlaw.com  
jstoughton@cbmlaw.com

8 Attorneys for Plaintiff  
9 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  
18 RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10,  
19 inclusive,

20 Defendants.

No.

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

21  
22 I, Tina Boales, declare and say:

23 1. I am employed by the City of San Jose as a Police Officer and am a  
24 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have  
25 worked as a Police Officer for the City of San Jose since 1986. As a result of my  
26 employment with the City of San Jose, I am familiar with the facts in this matter, as well  
27 as those set 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.

9           4.    I am informed that this voluntary pay cut, combined with increases to the  
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's  
11 police officers among the lowest paid police in the region taking into account total  
12 compensation. We currently pay more into our retirement than any other police agency in  
13 the region. Effective June 24, 2012, we are slated for an additional approximate 2%  
14 decrease to take home pay which will put us even farther behind other law enforcement  
15 agencies in the region.

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

21           6.    I am married with two kids and my husband retired from the San Jose  
22 Police Department last year.

23           7.    The prior pay reduction and increases to employee-paid retirement/retiree  
24 health care costs have forced my family to cut back on all non-essential spending in order  
25 to have enough money each month to pay our living expenses. We have had to sell our  
26 house and still have been unable to save any extra money for emergencies.

27           8.    Measure B, if implemented, would require that I and other San Jose  
28 police officers begin paying 50% of the costs of retiree healthcare, including both the

1 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%  
2 which means that my salary immediately will be decreased by at least another 9% for the  
3 unfunded retiree health care costs (because we already paying 7% of the unfunded retiree  
4 health care costs), although I will receive the same level of benefits from the City. If this  
5 occurs, my family will be unable to stay current with its bills. As a retiree, my husband is  
6 on a fixed income and we simply cannot cut any more corners to make ends meet. We  
7 are, quite simply, at a loss as to how we will pay for even our basic living necessities if  
8 Measure B passes.

9           9. I have also been informed that the City will start charging me for 50% of  
10 the unfunded pension liability (also currently set at 32%), although the implementation of  
11 the unfunded pension liability charges will be phased in over time. The implementation  
12 of this additional decrease will only worsen my family's dire financial position.

13           10. Measure B will also modify disability retirement for San Jose police  
14 officers, as detailed below, such that it will no longer be of any benefit to me. I consider  
15 comprehensive disability retirement protection an absolutely crucial employment benefit  
16 for my line of work because police work is extremely physically demanding and  
17 dangerous. I have experienced a litany of on-the-job injuries. For instance, I tore my left  
18 rotator cuff pursuing a suspect and then later re-injured that same shoulder. I also suffered  
19 a severely sprained ankle and a hairline fracture in the bottom of the foot, which will now  
20 require ankle reconstruction surgery next month, when I jumped a fence in pursuit of  
21 another suspect. I have also injured my neck and spinal disks while pursuing and/or being  
22 attacked by suspects. As a result of these and other injuries, I have had three shoulder  
23 surgeries on both shoulders and will require additional surgery on my left shoulder in the  
24 near future. I would not have chosen a career in law enforcement without the knowledge  
25 that my family would be protected with full retirement benefits in the event that I am  
26 disabled as a result of actions taken in the line of duty while performing my job protecting  
27 the citizens of San Jose.

1           11. Under the City of San Jose's current disability retirement plan for police  
2 officers, I would be deemed disabled if I am no longer able to perform duties within my  
3 peace officer classification (i.e. the normal duties of a police officer). Under the current  
4 system, if I was rendered disabled, I would be entitled to retirement disability payments of  
5 50% of my current salary for the first 20 years of service and an additional 4% for every  
6 year of service thereafter. The City explained these rights to me many times throughout  
7 my career, starting in the Police Academy, and I have counted on these rights throughout  
8 my career to protect my family's financial security should I be injured in the line of duty.

9           12. As a result of the multiple injuries and surgeries to my shoulders, among  
10 other body parts, I am very physically limited in what I can do and am currently on  
11 permanent modified duty pending the approval of my disability retirement. I submitted  
12 my complete application for disability retirement in September 2011 but have been  
13 advised that my application will not get before the Retirement Board for approval until  
14 August at the earliest.

15           13. Measure B, if passed by San Jose electorate, would eviscerate the police  
16 disability retirement plan. My understanding is that instead of analyzing whether I will be  
17 able to perform police officer functions, the City will analyze whether I can perform the  
18 essential job functions of any position within the Police Department, including jobs that  
19 consist primarily of administrative tasks. If I am found to be physically able to perform  
20 the essential job functions of any position within the Police Department, my disability  
21 application will be denied. More troubling, if the job or jobs that I have been found to be  
22 able to perform are occupied, I will be terminated from city employment without any  
23 retirement benefits. The non-police jobs in the department are Alarm Technician (1  
24 positions), Crime Prevention Specialist (5 positions), Latent Fingerprint Examiner (5  
25 positions), and Police Artist (1 position). I do not recall when any of these positions was  
26 vacant for any significant period of time.

27           14. If the changes delineated in the prior paragraph are implemented, it will  
28 have an immediate and catastrophic impact on me because it almost certainly eliminates

1 the availability of any retirement pension for me, despite the fact that my doctor has  
2 declared me unfit for duty. I have already been examined by the City doctor and was  
3 initially told that his report would be completed in time to go before the Retirement  
4 Board's June 7<sup>th</sup> meeting. However, I recently learned that despite having over a month to  
5 finish his report, the City doctor did not get my report done and I will not go before the  
6 Retirement Board in June. I have no way of anticipating when the doctor will finish my  
7 report and when I will get before the Retirement Board for final approval of my retirement  
8 disability. And although I am currently on modified duty, it is extremely difficult for me  
9 to perform even these tasks because of my disabilities. I am at a loss for how to proceed if  
10 Measure B passes.

11 15. In light of this risk, if Measure B passes, I am informed that many of my  
12 colleagues will look for law enforcement work at departments that maintain full disability  
13 retirement coverage, rather than risk being hung out to dry during such a time of need.  
14 Moreover, I have been advised that other officers will no longer volunteer for high-risk  
15 assignments as they have done in the past. In fact, I believe the San Jose Police  
16 Department will find it difficult, if not impossible, to find enough officers, not only to fill  
17 these crucial roles, but also to simply maintain an adequate force to fulfill its public-safety  
18 and crime-prevention roles.

19 I declare under penalty of perjury under the laws of the State of California that  
20 the foregoing is true and correct and that this declaration is executed this 30 day of  
21 May, 2012, San Jose, California.

22  
23   
24 Tina Boales

22  
23  
24  
25  
26  
27  
28