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9 **IN THE SUPERIOR COURT FOR THE**  
10 **COUNTY OF SANTA CLARA**

11 SAN JOSE POLICE OFFICERS  
ASSOCIATION,

12 Plaintiff,

13 v.

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

17 Defendants.

18  
19 AND RELATED CROSS-COMPLAINT  
20 AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

*Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV227864,  
112CV233660*

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
PLAINTIFFS' MOTIONS FOR  
ATTORNEYS' FEES**

Date: September 25, 2014  
Time: 9:00 am  
Dept: 2, Honorable Patricia Lucas

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1 **I. INTRODUCTION**

2 These fee motions arise from challenges to Measure B, the 2012 pension-reform initiative  
3 passed by the citizens of San Jose. Plaintiffs brought six separate lawsuits, which were  
4 consolidated for pretrial and trial. Out of the six cases, plaintiffs in three bring motions for  
5 attorney's fees: San Francisco Police Officers Association (SJPOA), AFSCME, and San Jose  
6 Retired Employees Association (SJREA).<sup>1</sup>

7 Plaintiffs seek an award of attorneys' fees under Government Code section 1021.5, blindly  
8 relying on a number of cases where Section 1021.5 fees were awarded to a successful party. But  
9 they ignore a core teaching of these cases—that "the inquiry is an intensely factual, pragmatic  
10 one." The facts of this case do not support a fee award.

11 Plaintiffs must prove *every* element of Section 1021.5 to be entitled a fee award. But they  
12 cannot prove *any* element. Most significantly, Plaintiff's cannot prove the final element under  
13 Section 1021.5, which requires a showing that the litigation "placed a burden on the plaintiff out  
14 of proportion to his individual stake in the matter." Plaintiffs, on behalf of their members, had  
15 sufficient economic motivation to bring this case—to shield their members from contributing to  
16 the actual cost of retirement benefits and instead shift the costs to the City. While the Plaintiffs  
17 were mostly unsuccessful, their members stood to gain from the litigation, and the economic  
18 burden of the litigation was therefore not out of proportion to the benefit sought.

19 Plaintiffs also fail to meet their burden of proving every other element of Section 1021.5.  
20 Despite the trial court's determination to the contrary, Plaintiffs assert that their success on three  
21 of thirteen challenges to Measure B renders them a successful party. They ignore the fact that  
22 none of these "successes" provide any tangible benefit to the plaintiffs or any member of the  
23 public.

24 Plaintiffs make grandiose statements that they vindicated an "important right" that  
25 conferred a "significant benefit" on the general public or a large class. They drape themselves in

26  
27 <sup>1</sup> The parties have agreed to litigate whether Plaintiffs have a right to fees before litigating the  
28 amount of fees, if any. Stipulation (attached to RJN as Exhibit 1).

1 the Contracts Clause but not every challenge involving a constitutional issue, including the instant  
2 challenge, implicates an “important right.” Plaintiffs ignore the fact that the majority of taxpayers  
3 supported Measure B, which aimed to secure the financial health and stability of the City.

4 This Court should reject Plaintiffs attempt to reap taxpayer monies for their mostly  
5 unsuccessful attempt to overturn measure B. The public interest was served by the savings and  
6 increased services generated by Measure B, not by Plaintiffs’ attack on it.

## 7 **II. STATEMENT OF FACTS AND PROCEDURAL POSTURE**

8 Plaintiffs in the consolidated cases brought six actions against the City of San Jose to  
9 invalidate Measure B. The Court found the following sections valid and granted judgment for the  
10 City and against Plaintiffs as to these sections:

11 “Sections 1504-A (Reservation of Voter Authority), 1509-A (Disability Retirement),  
12 including 1509-A(b) (Definition of Disability) and 1509-A(c) (Expert Board), 1511-A  
13 (Supplemental Retiree Benefit Reserve), 1512-A(b) (Retiree Healthcare—Reservation of Rights),  
14 1512-A(c) (Retiree Healthcare- Low Cost Plan), 1513-A (Actuarial Soundness), 1514-A  
15 (Alternative of Wage Reduction), and 1515-A (Severability).” Judgment In Consolidated Cases,  
16 April 29, 2014, ¶ 1 (attached as Exhibit 2 to Request For Judicial Notice).

17 The Court further found that “Section 1512-A(a) (Retiree Healthcare—Minimum  
18 Contributions) is valid with the phrase ‘a minimum of’ severed from the provision” and granted  
19 judgment for the City and against Plaintiffs as to this section. Judgment, ¶ 3.

20 The Court also entered judgment for the City and against Plaintiffs on the following causes  
21 of action: Promissory and Equitable Estoppel; Illegal Ultra Vires Tax, Fee or Assessment;  
22 Freedom of Speech and Right to Petition; Bane Act; Pension Protection Act; MMBA; and  
23 Separation of Powers Doctrine. Judgment, ¶¶ 4-12.

24 The Court found in favor of Plaintiffs on only three sections of Measure B: “Sections  
25 1506-A (Increased Pension Contributions—Current Employees), 1507-A (One Time Voluntary  
26 Election Program), 1510-A (Cost of Living Adjustments).” Judgment, ¶ 4.

27

28

1 As to costs, “[t]he Court f[ound] that each party obtained some but not all of its litigation  
2 objectives, and therefore conclude[d] that there is no prevailing party. Accordingly, the court  
3 exercise[d] its discretion and order[ed] that each party is to bear its own costs. (Cal. Civ. Proc.  
4 Code 1032(a)(4) (‘the court, in its discretion, may allow costs or not’).” Judgment, ¶ 15.

### 5 **III. ARGUMENT**

6 Plaintiffs are not entitled to attorneys’ fees because they do not meet the statutory  
7 requirements under Section 1021.5. Section 1021.5 provides that trial courts “may award  
8 attorneys’ fees to a successful party” in limited situations. Cal. Civ Proc. Code § 1021.5. A court  
9 of appeal recently explained the burden a successful party faces in obtaining attorney fees under  
10 this section:

11 Entitlement to fees under [Code of Civil Procedure] section 1021.5 requires a  
12 showing that the litigation: (1) served to vindicate an important right; (2) conferred  
13 a significant benefit on the general public or a large class or persons; and (3)  
14 imposed a financial burden on plaintiffs which was out of proportion to their  
15 individual stake in the matter.

14 *Cal. Redevelopment Ass’n v. Matosantos*, 212 Cal.App.4th 1457, 1474 (2013) (alteration in  
15 original) (internal quotations and citations omitted). Petitioners cannot meet this burden.

16 Section 1021.5 places the burden on petitioners, “requir[ing] that each element be satisfied  
17 to justify an award of attorney fees.” *Robinson v. City of Chowchilla*, 202 Cal.App.4th 382, 390-  
18 91 (2011). Conversely, denial of attorneys’ fees is mandated where any one element is missing. *Id.*  
19 Here, Petitioners cannot meet *any* of the required elements for an award of fees.

#### 20 **A. Plaintiffs Were Not “Successful Parties” Under Section 1021.5.**

21 Code of Civil Procedure Section 1021.5 provides that a court “*may* award attorneys’ fees  
22 to a successful party . . . .” Cal. Code Civ. Proc. § 1021.5 (emphasis added). “As used in section  
23 1021.5, ‘successful’ is synonymous with ‘prevailing.’” *Schmier v. Sup. Ct.*, 96 Cal.App.4th 873,  
24 877 (2002). Plaintiffs are not entitled to attorneys’ fees because, as the Court previously found,  
25 they did not prevail overall.

26 The Plaintiffs here failed to vindicate the lion’s share of their claims. Their lawsuit  
27 challenged thirteen sections of Measure B, but the Court found only three sections to be invalid.

1 The Court found “that each party obtained some but not all of its litigation objectives, and  
2 therefore conclude[d] that there is no prevailing party,” and exercised its discretion in directing  
3 each party to bear its own costs. Judgment, ¶ 15. Plaintiffs now cite to cases where Courts  
4 permitted the award of attorneys’ fees to parties that achieved only some of their objectives in in  
5 their lawsuit. But these cases do not change the analysis.

6 The fact that a party obtained some of its objectives in litigation does not entitle it to  
7 attorneys’ fees where the party does not achieve its “primary goal.” *Ebbets Pass Forest Watch v.*  
8 *Cal. Dept. of Forestry and Fire Prot.*, 187 Cal.App.4th 376, 388 (2010) (Party not “successful”  
9 under Section 1021.5 because it had not prevailed on its “strategic objectives of overturning”  
10 plan); *see also Marine Forests Soc’y v. Cal. Coastal Comm’n*, 160 Cal.App.4th 867, 879-880  
11 (2008) (“Legislature’s amendment of section 30312 cannot be viewed as the primary relief sought  
12 by Marine Forests’ complaint, which was aimed at preventing the removal of its artificial reef”).

13 “[I]n determining whether a party is successful, the court must critically analyze the  
14 surrounding circumstances of the litigation and pragmatically assess the gains achieved by the  
15 action.” *Ebbets*, 187 Cal.App.4th at 382. “At bottom, the inquiry is an intensely factual,  
16 pragmatic one . . . .” *Schmier*, 96 Cal.App.4th at 878.

17 Here, a “pragmatic” assessment of “the gains achieved in the action” demonstrates that  
18 Plaintiffs cannot be considered a “successful party.” As stated above, Plaintiffs challenged  
19 thirteen sections of Measure B, but the Court found only three sections invalid. On the few issues  
20 where the Court ruled for Plaintiffs, their success was theoretical and did not result in any concrete  
21 benefit to their members.

22 Tellingly, the vast majority of plaintiffs’ evidence and effort at trial was directed to  
23 overturning the retiree medical provisions in Measure B—and plaintiffs lost at trial with respect to  
24 these provisions.

25 **1. Contributions to pay for unfunded liabilities.**

26 Although the Court held that employees need not pay increased employee pension  
27 contributions, it also held that the City could collect them by other means—through a wage  
28

1 reduction. The Court invalidated Section 1506-A (Increased Pension Contributions), which  
2 required employees to pay up to 16% of their compensation in the form of additional pension  
3 contribution rates towards the retirement systems unfunded liabilities. But the Court upheld  
4 Section 1514-A (Alternative of Wage Reduction), which as an alternative to Section 1506-A,  
5 required employees to contribute up to 16% in a wage reduction to assist the City in paying for  
6 unfunded liabilities. Statement of Decision at 34-35 (attached to RJN as Exhibit 3). The Court  
7 found:

8 Plaintiffs do not dispute that the city has plenary authority to control employee  
9 compensation. Instead, they contend that this provision violates their constitutional  
10 rights to free speech and petition because it threatens to reduce “salaries to dissuade  
11 successful legal challenges.”

12 The logic of Plaintiffs’ argument is lacking. section 1514-A does not impose “a  
13 cost or risk upon the exercise of a right to a hearing . . . [that] has no other purpose  
14 or effect than to chill the assertion of constitutional rights by penalizing those who  
15 choose to exercise them.” It simply recites what is already the law: that the City  
16 may adjust employee compensation “to the maximum extent permitted by law.”  
17 Plaintiffs’ challenge is unavailing.

18 Statement of Decision at 34-35 (citations omitted).

19 Although Plaintiffs succeeded in invalidating Section 1506-A, they failed in obtaining any  
20 financial relief for their members because the Court found the alternative method of contribution  
21 contained in Section 1514-A to be valid.

## 22 **2. Voluntary Election Plan (VEP).**

23 The Court invalidated Section 1507-A, but this was not a separate victory for Plaintiffs,  
24 nor does it provide a tangible benefit. Section 1507-A established the VEP, an alternative plan  
25 available to employees who chose not to make additional pension contributions under Section  
26 1506-A. But the Court’s decision on the validity of the VEP was tied to its decision on Section  
27 1506-A, and thus was not a separate victory for Plaintiffs. Statement of Decision at 17 (“The City  
28 does not explain how section 1507-A could be a voluntary election given the invalidity of section  
1506-A. For these reasons, Section 1507-A is also invalid.”). Moreover, the invalidity of the VEP  
has absolutely no effect on any employee or retiree. The VEP was to be effective only if approved

1 by the IRS, which never occurred.

2 **3. Emergency suspension of COLA.**

3 The Court's finding that the City could not reduce retiree COLAs under Section 1510-A  
4 was a limited and technical ruling that did not remove the City's state law authority to take  
5 appropriate actions in an emergency. This action has no current or practical impact on any  
6 employee or retiree. The Court did not hold that the City could never act to suspend vested rights  
7 in the event of an emergency. Rather, the Court held that Section 1510-A was invalid because it  
8 "does not require an emergency to impair these vested rights, but simply a Council resolution  
9 declaring an emergency" and did "not merely suspend or defer benefits: it gives the City the  
10 authority to withhold them altogether." Statement of Decision at 23-24. Moreover, there was no  
11 evidence that the City had any present intent to invoke this section. Its application is therefore  
12 completely theoretical.

13 **4. Reservation of Rights.**

14 Overall, Plaintiffs failed in obtaining any concrete relief for their members. In an attempt  
15 to deflect this reality, Plaintiffs contend that they should be deemed a successful party because  
16 they defeated a "central plank" of Measure B, the City's reliance on the City Charter's reservation  
17 of rights. *See* SJPOA Br. at 6. But the City Charter was only one of many City laws at issue in  
18 Measure B, and the Court's decision on the effect of the Charter's reservation of rights was not  
19 determinative on any one issue.

20 For example, in the litigation over Section 1506-A (Increased Pension Contributions), the  
21 City contended not only that the Charter's reservation of rights permitted this change, but also that  
22 the City and union practices of negotiation, and changes to the City Municipal Code, demonstrated  
23 that employees had no vested right to the City paying for all unfunded liabilities. The Court's  
24 decision addressed *all* of these issues—not merely the Charter's reservation of rights. Statement of  
25 Decision at 13-17.<sup>2</sup> And the Court did not even mention the reservation of rights in connection  
26 with the Court's decisions on the VEP and Emergency suspension of COLAs.

27 <sup>2</sup> Moreover, as demonstrated above, the invalidity of Section 1506-A arguably could lead to a  
28 negative impact on active employees, who now face the alternative of a straight pay reduction.

1 Plaintiffs each cite to various cases where attorneys' fees were awarded to a party that  
2 achieved less than total success. But each of these cases is distinguishable and none of them stand  
3 for the proposition advanced by Plaintiffs that a party that fails in achieving most of its objectives  
4 is nevertheless entitled to attorneys' fees.

5 Plaintiff SJPOA attempts to equate its "success" in this case to the plaintiff's success in  
6 *Sokolow v. County of San Mateo*, 213 Cal.App.3d, 231 (1989). SJPOA Br. at 5-6. But *Sokolow* is  
7 of no help to plaintiffs. In *Sokolow*, the female plaintiff alleged that a mounted unit's male-only  
8 policy violated her Equal Protection rights under the constitution. The plaintiff sought an  
9 injunction permitting her to join the unit. *Sokolow*, 213 Cal.App.3d at 239. The court granted her  
10 summary judgment, but did not grant this relief, ordering only that the mounted patrol needed to  
11 either terminate its male-only membership policy or to sever its relationship with the County  
12 Sheriff. *Id.* at 240. Despite her clear legal victory, the trial court found she was not a successful  
13 party for the purpose of an award of Section 1021.5 attorney's fees because she did not obtain all  
14 relief sought. *Id.* at 242. The Court of Appeal reversed, holding that plaintiff was entitled to fees  
15 because she succeeded on all of her legal claims. *Id.* at 257. Here, unlike in *Sokolow*, Plaintiffs  
16 did not succeed on all legal claims.

17 Plaintiff AFSCME relies on the Supreme Court's statement in *Maria P. v. Riles*, 43 Cal.3d  
18 1281, 1291-912 (1987) that prevailing party status depends on "the role, if any, played by the  
19 litigation in effecting any changes." Here, as demonstrated above, the litigation achieved no  
20 concrete change.

21 Plaintiff SJREA succeeded on only one issue in this litigation—the suspension of the  
22 COLA. As stated above, this was a theoretical victory that had no practical effect. SJREA relies  
23 on *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 565 (2004), but that case emphasized that a  
24 "lawsuit's ultimate purpose is to achieve actual relief from an opponent." There was no actual  
25 relief here. SJREA also cites to *Envntl. Prot. Info. Ctr. v. Dep't of Forestry & Fire Prot.*, 190  
26 Cal.App.4th 217, 2131 (2010), but that case discusses other factors involved in the award of fees,  
27 such as reduction of an award based on degree of success.

28

1                   **B. Plaintiffs Did Not Vindicate An “Important Right Affecting the Public**  
2                   **Interest.”**

3                   Plaintiffs are likewise not entitled to attorneys’ fees under Section 1021.5 because their  
4 partial victories do not vindicate an “important right affecting the public interest.” Although  
5 Plaintiffs drape themselves in the state constitution, their Contracts Clause claims were personal  
6 and pecuniary and thus not “important rights” under Section 1021.5.

7                   The SJPOA’s arguments boil down to the same argument it advanced in support of it  
8 being a “successful party.” The SJPOA contends that it vindicated an “important right” because it  
9 (1) invalidated the City’s reliance on the Charter’s reservation of rights, affirming the protections  
10 of the Contracts Clause and vested rights, and (2) affirmed the rights of public employees  
11 throughout California that pension reform must consider “already-existing obligations under the  
12 Contracts Clause.” SJPOA Br. at 3-4. AFSCME and SJREA also rely on their alleged vindication  
13 of constitutional rights, particularly vested rights to pensions. AFSCME Br. at 7-9; SJREA Br. at  
14 6-7. These are grandiose contentions not grounded in the law or the actual relief obtained.

15                   **1. Not Every Constitutional Right Is An “Important Right” Under Section**  
16                   **1021.5.**

17                   Simply because a right is based in the California Constitution does not make it an  
18 “important right” under Section 1021.5. As explained in *Woodland Hills Residents Ass’n v. City*  
19 *Council of Los Angeles*, 23 Cal.3d 917, 935 (1979):

20                   [T]he Legislature obviously intended that there be some selectivity, on a qualitative  
21 basis, in the award of attorney fees under the statute, for section 1021.5 specifically  
22 alludes to litigation which vindicates “important” rights and does not encompass  
23 the enforcement of “any” or “all” statutory rights.” Thus, again like the federal  
24 cases, the statute directs the judiciary to exercise judgment in attempting to  
25 ascertain the “strength” or “societal importance” of the right involved.

26                   The Supreme Court has extended this reasoning to cases involving constitutional claims  
27 and confirmed that “not all lawsuits enforcing constitutional guarantees will warrant an award of  
28 fees” under Section 1021.5. *Press v. Lucky Stores Inc.*, 34 Cal.3d 311, 319 n.7 (Cal. 1983); *see*  
also *Young v. State Water Res. Control Bd.*, 219 Cal.App.4<sup>th</sup> 397, 404 (2013) (holding that due  
process rights did not rise to the level of “important right” warranting award of fees). The Court

1 has clearly held that personal pecuniary interests, like plaintiffs' interests in this case, do not rise  
2 to the level of "important rights," even if grounded in the constitution:

3 In *Pacific Legal Foundation*, two considerations not present here combined to  
4 make an award unwarranted. First, the litigation enforced plaintiffs' right to be free  
5 from an unconstitutional taking of their private property. While that right was  
6 certainly important, the economic interests protected in that case can hardly be  
7 considered as fundamental as the equal protection rights vindicated in *Serrano v.*  
8 *Priest*, or the freedom of speech and petition rights enforced in the present case. . .  
[where] plaintiffs had no personal pecuniary interest in the subject of the litigation.  
Instead, they sought to enforce their fundamental rights to speak freely and to  
petition the government. Litigation enforcing these rights necessarily confers a  
significant benefit on society as a whole.

9 *Press*, 34 Cal.3d at 319 n.7 (citation omitted)

10 The Court in *Young* denied attorney's fees, sought for vindication of due process rights,  
11 based on similar reasoning:

12 We see no evidence in the record before us that the Customers' ability to participate  
13 in the proceedings confers any benefit on the public generally. As farmers and  
14 landowners they seek to benefit financially from securing additional and steady  
15 water supplies. . . . [G]iven the personal financial interests of the Customers in  
prevailing on their due process claim, a claim that was recognized by the Water  
Board and not appealed, we must reverse the award of attorney fees.

16 *Young*, 219 Cal.App.4th at 407.

17 None of the cases relied upon by Plaintiffs involve a right under the Contracts Clause to a  
18 pecuniary interest, such as a pension or retirement benefit. Rather they involve non-pecuniary  
19 interests such as equal protection or freedom of expression.<sup>3</sup> They therefore are inapplicable to

20 <sup>3</sup> See *Press*, 34 Cal.3d at 318 (constitutional right to free expression an "important right"); *Serrano*  
21 *v. Priest* ("*Serrano III*"), 20 Cal.3d 25 (1977) (constitutional right to equal protection an  
22 "important right"); *City of Santa Monica v. Stewart*, 126 Cal.App.4th 43, 83-84 (2005) (First  
23 Amendment rights associated with Anti-SLAPP motion an "important right"); *Edgerton v. State*  
*Personnel Bd.*, 83 Cal.App.4th 1350, 1362-63 (2000) (constitutional privacy right an "important  
24 right" where litigants did not secure any pecuniary benefit from the case); *Planned Parenthood v.*  
*Aakhus*, 14 Cal.App.4th 162, 170-171 (1993) (constitutional right to privacy an "important right");  
25 *Sokolow*, 213 Cal.App.3d at 245-46 (equal protection clause's guarantee against discrimination an  
"important right" where "Appellants had no personal pecuniary interest in the subject of the  
litigation"); *Baggett v. Gates*, 32 Cal.3d 128, 143 (1982) (Question involving constitutionality of  
26 Public Safety Officers' Procedural Bill of Rights application to charter cities an "important right");  
*Wilkerson v. City of Placentia*, 118 Cal.App.3d 435 (1981) (awarding PAGA attorneys' fees in  
27 case implicating due process and right to liberty concerns without addressing whether such rights  
28 are "important").

1 this Court's analysis here.

2 **2. Plaintiffs Obtained Only Limited Rulings That Applied Existing Law**  
3 **And Did Not Break New Ground.**

4 Even if a claim for pension or retirement benefits could, in theory, be an "important right,"  
5 the particular relief obtained here did not rise to that level. "The award of fees under section  
6 1021.5 is an equitable function, and the trial court must realistically and pragmatically evaluate the  
7 impact of the litigation to determine if the statutory requirements have been met." *Concerned*  
8 *Citizens of La Habra v. City of La Habra*, 131 Cal.App.4th 329, 334 (2010).

9 Contrary to Plaintiffs' characterization, this case did not involve a sweeping victory  
10 vindicating Contracts Clause rights. The City did not ask the Court to overturn the decades of  
11 case law that created the vested rights doctrine. Rather the City contended that Measure B was  
12 consistent with the vested rights doctrine and that its changes were legally permissible under it.  
13 This Court's decision did not announce new law, but applied existing law to the particular text of  
14 San Jose's Charter and ordinances, finding most of Measure B to be valid.

15 Plaintiffs pound away, claiming a great victory in the Court's ruling on the application of  
16 the San Jose Charter's reservation of rights. But on that issue the City relied on an existing case,  
17 *Walsh v. Bd. of Admin.*, 4 Cal.App.4th 682, 697 (1992), which stated: "The modification of a  
18 retirement plan pursuant to a reservation of the power to do so is consistent with the terms of any  
19 contract extended by the plan and does not violate the contract clause of the federal constitution."  
20 Statement of Decision at 10. The Court did not purport to overturn *Walsh*, or declare that a  
21 reservation of rights clause could never have any effect, but rather limited *Walsh* "to its peculiar  
22 facts: in connection with the unique circumstances of . . . a windfall not contemplated under the  
23 prior system." Statement of Decision at 11-12.

24 Moreover, as demonstrated in Section III.A., *supra*, the Court's decision on the reservation  
25 of rights issue was not determinative of the legality of Section 1506-A, or any other section of  
26 Measure B. After discussing the reservation of rights issue, the Court spent a number of pages  
27 analyzing the City's Municipal Code and past collective bargaining agreements, and only then  
28

1 decided the legality of Section 1506-A. Statement of Decision at 13-17. The Court’s decisions on  
2 Sections 1507-A and 1510-A did not refer to the reservation of rights and were equally narrowly  
3 tailored to San Jose’s ordinances and practices.

4 AFSCME cites to newspaper reports on the litigation as proof of the importance of the  
5 rights at issue, but fails to cite any authority supporting the contention that third party media  
6 accounts—often based on “spin” generated by interested parties—have any bearing on the  
7 Court’s legal determination here.

8 Finally, the SJPOA claims a great victory in “convincing” the City to drop its federal  
9 lawsuit. The City voluntarily dropped its federal lawsuit, rather than pursue cases simultaneously  
10 in two forums. Plaintiffs fail to reveal that their motion for attorney’s fees in the federal case was  
11 denied by the federal district court. RJN, Exh. 4 (Order Denying Motion For Attorneys’ Fees).

12 Here, the issues litigated do not rise to the level of an “important right in the public  
13 interest” by any stretch.

14 **C. Plaintiffs Did Not Confer A “Significant Benefit” On “The General Public Or**  
15 **A Large Class Of Persons.”**

16 Plaintiffs’ requested fee award is unwarranted for the additional reason that this lawsuit did  
17 not confer a “significant benefit on the general public or a large class of people” as required under  
18 Section 1021.5. The SJPOA does not separately address this factor. AFSCME and the SJREA  
19 repeat the arguments made as to the other Section 1021.5 factors—they achieved a great  
20 constitutional victory for City employees by defeating the City’s reliance on the Charter’s  
21 reservation of rights.

22 Even in cases where courts have found the existence of an important right, Courts have  
23 refused to award attorneys’ fees if the prevailing party failed to show that the lawsuit conferred a  
24 significant *benefit* on the general public or a large class of persons. For example, in *Concerned*  
25 *Citizens of La Habra*, a California Court of Appeal refused to award attorneys’ fees under Section  
26 1021.5 to a party who partially succeeded on its CEQA claims because the benefit gained was not  
27 “significant and widespread.” *Concerned Citizens of la Habra*, 131 Cal.App.4th at 336. The

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1 court reasoned that the decision did not result in statewide precedent, but merely established a  
2 defect in the CEQA process for a particular project. *Id.* So too in *Center for Biological Diversity*  
3 *v. California Fish and Game Comm'n*, 195 Cal.App.4th 128, 139 (2011), where the Court of  
4 Appeal held that a successful challenge to a denial of an Endangered Species Act petition did not  
5 constitute a “significant benefit” to the public even though it involved an important public interest.  
6 And in *King v. Lewis*, 219 Cal.App.3d 552, 556 (1990) the court denied a fee award where a  
7 partially successful writ challenge resulting in changes to an impartial analysis of a county  
8 referendum “were ‘relatively insignificant’ when compared to the totality of relief sought.”

9 Like the above cases, the relief obtained by the petitioners in this action does not rise to a  
10 level of a “significant benefit” for the “general public or a large class of persons.”

11 As established in Section III.A., *supra*, Plaintiffs did not establish any tangible benefit,  
12 much less a “significant benefit” for City employees. Bottom line: the rulings were theoretical  
13 and will make no concrete difference in practice. *See* Section III.A., *supra*.

14 And there certainly was no “significant benefit” for the general public. The retirement  
15 benefits at issue were solely for City employees. And even if Plaintiffs had prevailed, any  
16 recovery would in fact have injured the general public by requiring the City to continue to pay for  
17 retirement system’s unfunded liabilities.

18 Nor does this Court’s decision have statewide or national significance as touted by  
19 Plaintiffs. San Jose is governed by its own City Charter, Municipal Code and practices. San  
20 Jose’s employees are not members of a state-wide retirement system such as CalPERS, CalSTRS  
21 or CERL, governed by state wide laws of general application. In deciding this case, the Court  
22 analyzed the precise text of San Jose’s Charter and Municipal Codes, and examined the City’s  
23 historical practices. Plaintiffs have not cited to any other entity with the same Charter text, Code  
24 sections, or practices. The impact of the decision is therefore minimal, not “significant.”

25 **D. Plaintiffs Cannot Demonstrate The Necessity And Financial Burden Of**  
26 **Private Enforcement Are Such As To Make The Award Appropriate.**

27 Plaintiffs cannot demonstrate that “the necessity and financial burden of private  
28 enforcement . . . are such as to make the award appropriate.” Cal. Civ. Proc. Code § 1021.5. To

1 do so, Plaintiffs must demonstrate that the litigation “placed a burden on the plaintiff out of  
2 proportion to his individual stake in the matter.” *Woodland Hills*, 23 Cal.3d at 941 (citation and  
3 quotation omitted). The plaintiff employee associations brought these lawsuits on behalf of their  
4 members for pecuniary reasons—to preserve their financial interest in City subsidies towards  
5 members’ retirement benefits. The costs of this litigation were justified by these interests.

6 Plaintiffs sued to prevent, among other things, (1) higher member contributions to pay for  
7 unfunded liabilities, up to 16% of pay (Sections 1506-A, 1514-A), (2) higher member payments to  
8 pay for retiree healthcare, including 50% of unfunded liabilities (Section 1512-A), (3)  
9 discontinuance of supplemental retirement payments (Section 1511-A), and (4) potential  
10 reduction of COLA payments in the event of a fiscal emergency (Section 1510-A). Plaintiffs case  
11 was based on claims that Measure B would have significant negative financial consequences for  
12 their members. See e.g., Trial Transcript pages 35, 77-78, 109, 138-139, 198, attached to RJN as  
13 Exh. 5.

14 This financial motivation precludes Plaintiffs from meeting the final factor necessary to  
15 show entitlement to attorneys’ fees, and is dispositive of their motion. See *Cal. Redevelopment*  
16 *Ass’n v. Matosantos*, 212 Cal.App.4th 1468, 1479-80, 1482 (2013) (declining to award attorney  
17 fees under Section 1021.5 where the litigation “did not impose a burden on CRA and its members  
18 out of proportion to their individual stakes in the matter”); *Cal. Teachers Ass’n v. Cory*, 155  
19 Cal.App.3d 494, 515 (1984) (same); *Cal. Licensed Foresters Assn. v. State Bd. of Forestry*, 30  
20 Cal.App.4th 562, 570 (1994) (Section 1021.5 is intended as a “bounty” for pursuing public interest  
21 litigation, not a reward for litigants motivated by their own interests who coincidentally serve the  
22 public).

23 In *Matosantos*, the California Redevelopment Association (“CRA”), a nonprofit whose  
24 members are redevelopment agencies and whose associate members are businesses having  
25 interests in redevelopment activities, prevailed in a suit to enjoin enforcement of new legislation  
26 that required the transfer of a combined \$350 million from redevelopment agencies to county  
27 educational revenue augmentation funds. *Matosantos*, 212 Cal.App.4th at 1468-69, 1473-74. The  
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1 trial court awarded the CRA over \$300,000 in attorneys' fees under Section 1021.5, which was  
2 half the amount requested. *Id.* at 1469, 1474. On appeal, the court reversed, holding that the CRA  
3 was not entitled to an award of attorney fees under Section 1021.5 because the litigation "did not  
4 impose a burden on CRA and its members out of proportion to their individual stakes in the  
5 matter." *Id.* at 1482.

6 The court rejected CRA's argument that the court should "look to CRA alone and not its  
7 individual members . . . to determine whether the financial burden placed upon CRA was out of  
8 proportion to its individual stake in the matter" and that it should conclude that "the cost of  
9 litigation was obviously out of proportion to CRA's stake" because "CRA has no stake in the  
10 outcome of the litigation apart from that of its members." *Id.* at 1476, 1479-80. In rejecting this  
11 argument, the court reasoned that "CRA had a financial stake in this matter to the same extent as  
12 its members" because "[a]s a membership association, it may be inferred '[CRA's] very existence  
13 depends upon the economic vitality of its members and any benefit or burden derived by [CRA]  
14 from this lawsuit ultimately redounds to the membership.'" *Id.* at 1479-80 (citation omitted).

15 In *Cory*, the court applied the same rationale and denied a union motion for attorney's fees  
16 based on the benefit to the union membership. *Cory*, 155 Cal.App.3d at 515. In *Cory*, the  
17 Teachers Association had sued to prevent the state from reducing funding to the State Teachers  
18 Retirement Fund. The Court held that the state had violated the Contracts Clause in reducing he  
19 finding, based on the vested right created by state law. However, the Court denied attorneys' fees  
20 based on the financial interest of the individual teachers in the fund. The Court explained:

21 [S]ection 1021.5 provides that a prerequisite of entitlement to recovery of attorneys'  
22 fees is whether "the necessity and financial burden of private enforcement are such  
23 as to make the award appropriate . . . ." Here it is not. The large sums in issue will  
24 accrue to the direct benefit of the members of the State Teachers' Retirement Fund,  
25 of whom a significant portion are members of the California Teachers Association.  
26 In these unique circumstances we hold the magnitude of the benefit is such that the  
27 financial burden placed on petitioner CTA is not out of proportion to the personal  
28 stake of its members. *Cory*, at 515.

26 The rationale articulated in *Matosantos* and *Cory*, applies with full force to the  
27 membership association Plaintiffs in this action. Like the burden placed on the CRA in

1 *Matosantos* and the California Teachers Association in *Cory*, the financial burden placed on  
2 SJPOA, AFSCME, and the SJREA was not out of proportion to the benefits to its members that  
3 they pursued in this litigation.

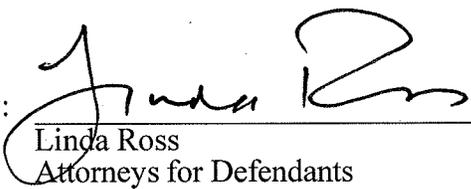
4 Plaintiffs cite to a number of cases to demonstrate that they meet the financial burden  
5 prong of Section 1021.5, but these cases only underscore why this Court must deny plaintiffs  
6 petitions. Each case cited by petitioner involves a distinguishable scenario where fees were  
7 awarded to a prevailing party that had little to no pecuniary interest in the outcome of the  
8 litigation.<sup>4</sup> This is a far cry from the case at hand. The law disposes plaintiffs' motion because  
9 they cannot prove this element.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the court should deny each plaintiffs' petition for attorneys'  
12 fees.

13  
14 DATED: September 12, 2014

Respectfully submitted,  
MEYERS, NAVE, RIBACK, SILVER & WILSON

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17 By: 

Linda Ross  
Attorneys for Defendants  
City of San Jose and Debra Figone, in Her Official  
Capacity

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21 <sup>4</sup> *Bagget*, 32 Cal.3d at 143 (financial burden prong met where litigation success “may well not  
22 result in any pecuniary benefit to plaintiffs themselves”); *Monterey/Santa Cruz Cnty. Bldg. and*  
23 *Constr. Trades Council v. Cypress Marina Heights*, 191 Cal.App.4th 1500, 1523 (2011) (financial  
24 burden of fees far exceed litigation’s financial value because “pecuniary benefit will be indirect  
25 and uncertain”); *Otto v. Los Angeles Unified School Dist.*, 106 Cal.App.4th 328, 333 (2003)  
26 (financial burden prong met where litigation success unlikely to provide any pecuniary benefit to  
27 plaintiffs); *Los Angeles Police Protective League v. Los Angeles Unified School Dist.*, 188  
28 Cal.App.3d 1, 12-13, 333 (1986) (appellate attorneys’ fees awarded in dispute where plaintiffs’  
pecuniary interest was \$5/month); *Citizens Against Rent Control v. City of Berkeley*, 181  
Cal.App.3d 213, 230 (1986) (plaintiffs did not receive a direct pecuniary benefit); *Cnty of San*  
*Luis Obispo v. Abalone, Alliance*, 178 Cal.App.3d 848, 868 (1986)(Attorneys’ fees were  
appropriate where party’s pecuniary interests were minimal compared to injunctive relief sought).

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On September 12, 2014, I served true copies of the following document described as on the interested parties in this action as follows: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR ATTORNEYS' FEES**

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the 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 E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address kthomas@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 12, 2014, at Oakland, California.

  
Kathy Thomas

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