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14
15 Attorneys for [Proposed] Intervenor, Steven Haug and Silicon Valley Taxpayers Association, a
California non-profit corporation.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SANTA CLARA**

19
20 THE PEOPLE OF THE STATE OF
CALIFORNIA on the RELATION of SAN
21 JOSE POLICE OFFICERS' ASSOCIATION,

Plaintiff,

22 v.

23 CITY OF SAN JOSE, and CITY COUNCIL OF
24 SAN JOSE,

Defendants.

CASE NO. 113-CV-245503

**[PROPOSED] COMPLAINT IN
INTERVENTION**

DATE: April 12, 2016
TIME: 9:00 A.M.
DEPT: 7
JUDGE: McGowen

27 Proposed Intervenor, Peter Constant, Steven Haug and Silicon Valley Taxpayers Association,
28 a California non-profit corporation (jointly referred to as Intervenor, who are voters, taxpayers, a City

1 of San Jose retired police officer and former City Council Member, and an interested taxpayers' group
2 who supported the adoption of San Jose Measure B, directly benefit from the Measure's enactment,
3 and now support the Defendants' defense of Measure B and the process by which it was enacted),
4 allege as follows:

5 GENERAL ALLEGATIONS

6 **A. PARTIES**

7 1. Intervenor Peter Constant (Constant) is, and at all relevant times mentioned herein was,
8 a retired police officer of the City of San Jose and is a member of a retirement system that is governed,
9 in part, by Measure B, by virtue of his 11 years of service on the City's police force. Measure B
10 directly affects his retirement payments and health care benefits. Constant believes the long term
11 stability of the pension system of which he is a beneficiary is enhanced by Measure B, and will be
12 harmed by its nullification. Constant has a direct interest in the financial integrity of the pension
13 program that benefits from implementation of Measure B. Measure B expressly states its intent "to
14 ensure the City can provide reasonable and sustainable post employment benefits while at the same
15 time delivering Essential City Services to the residents of San Jose." Constant is clearly within the
16 class of persons intended to be protected by Measure B. Constant is also a former City Council
17 member of Defendant, City of San Jose, and he was a principal drafter of Measure B. Constant is
18 currently a senior fellow at the Reason Foundation, where he is the Director of the Pension Integrity
19 Project. Constant's professional credentials are based in part on his role as drafter of Measure B and
20 its continuing integrity, and he would be personally harmed in his profession if Measure B is nullified.

21 2. Intervenor Steven Haug (Haug) is a resident, taxpayer and registered voter of the City
22 of San Jose. Haug has an interest in the preservation of Measure B, in the form approved by the voters.
23 In addition, Intervenor Steven Haug is treasurer of SVTA and campaigned for, supported and voted
24 for Measure B. Measure B granted Haug, as well as all other San Jose voters, new power not
25 previously possessed by San Jose voters. Section 1504-A reserved to the voter authority to "consider
26 any change in matters related to pension and other post-employment benefits," and requires voter
27 approval of any increases to pension or retiree-healthcare benefits, other than Tier 2 benefit plans, as
28 set forth in Measure B. This provision of Measure B was upheld as valid by Judge Lucas of this Court

1 in San Jose Police Officers' Association v. City of San Jose (and Consolidated Actions and Related
2 Cross-Complaint), Santa Clara Superior Court Case No. 1-12-CV 225296.

3 3. Intervenor Silicon Valley Taxpayers Association (hereinafter SVTA) is a long standing
4 non-profit organization with numerous functions, and whose political committee was primarily
5 formed to support Measure B at the June 5, 2012 election. SVTA's then president, John Roeder,
6 signed the ballot argument in favor of Measure B and SVTA actively campaigned to its members and
7 the general public for its passage. SVTA's membership includes residents and voters in the City of
8 San Jose who supported and voted for Measure B, and who have a direct interest in this matter as
9 described in the next paragraph.

10 4. Intervenor collectively represent the retirees and citizens of the City who voted to
11 approve Measure B. Intervenor contend that the City proposes to desist from its defense of Measure
12 B. If a settlement, or Judgment, nullifies all or part Measure B without a vote of the people, the
13 beneficiaries of Measure B represented hereunder will face higher city costs and/or reduced services
14 as city funds are shifted from city services to pay for increased pension and related employee and
15 retiree costs, a less stable and sustainable retirement system, and, as City of San Jose voters, they will
16 be deprived of the right to approve pension changes as set forth in Section 1504-A of Measure B.

17 5. Defendant City of San Jose is, and at all relevant times mentioned herein was, a Charter
18 City organized under Article XI of the California Constitution and the laws of the State of California
19 within the boundaries and jurisdiction of the County of Santa Clara.

20 6. Defendant City Council of San Jose is the legislative body of the City of San Jose, a
21 Charter City organized under Article XI of the California Constitution and the laws of the State of
22 California. (Defendants City of San Jose and City Council are jointly referred to herein as City)

23 7. Plaintiff/Relator San Jose Police Officers' Association (SJPOA or Relator) is a labor
24 organization in the City of San Jose.

25 **B. PURPOSE FOR INTERVENTION**

26 8. Having received permission from the Attorney General as alleged herein, Relator filed
27 the underlying Quo Warranto action against Defendants. The Attorney General granted permission
28 on the sole issue of collective bargaining obligations.

1 Did the City of San Jose fulfill its statutory collective bargaining
2 obligations before placing an initiative measure [Measure B] on the June
3 2012 ballot that, after its passage, amended the City Charter so as to
4 increase city police officers' retirement contributions and reduce their
5 retirement benefits? (Att'y Gen. Op. 12-605 (April 15, 2013), p.1.)

6 9. In issuing permission to bring this action, the Attorney General limited the scope of the
7 action in a manner consistent with law governing Quo Warranto. The scope of the permission to file
8 this Quo Warranto action did not include authority to challenge any substantive provisions of Measure
9 B itself or give authority to enter into a settlement or Stipulated Judgment substituting new provisions
10 for Measure B.

11 10. Intervenors are informed, believe and hereon allege that the parties to this Quo
12 Warranto action propose a stipulated judgment that includes provisions that affect other bargaining
13 groups that are not a party to this action and other litigation. While no final terms and conditions of
14 the stipulated judgment have been made public, Intervenors are informed, believe and hereon allege
15 that the intent is to nullify Measure B and substitute different provisions for Measure B that, absent
16 the parties' proposed stipulations, would remain in effect as a valid and effective part of the San Jose
17 City Charter since the City of San Jose complied with its collective bargaining obligations prior to
18 placing Measure B on the June 2012 Ballot.

19 11. Upon learning of the City's decision, in December 2015, not to defend Measure B,
20 Intervenors investigated the status of all relevant proceedings, and learned that the parties intended to
21 submit a Stipulated Judgment to the Court that included this action, and "various related proceedings."
22 The parties indicated they intended to submit a "proposed stipulated judgment and order" addressing
23 the resolution of all of those matters, to the Court. (Case Management Statement filed jointly by the
24 parties to this action on December 14, 2015.) Entry of a judgment or stipulated judgment (referred to
25 herein as Judgment or Stipulated Judgment) in this Quo Warranto action that encompasses resolution
26 of related actions, is improper as beyond the scope of Quo Warranto jurisdiction and in excess of the
27 Quo Warranto authority granted by the Office of the California Attorney General.

28 12. Intervenors allege that the City cannot adequately represent their interests in this matter
in that the City proposes to ask this Court to accept a Stipulated Judgment that violates its duty to
defend Measure B, nullifies a validly adopted Measure without a vote of the People, and judicially

1 substitutes other provisions for Measure B without any legislative process. In taking these actions,
2 Relator and the City are acting in excess of the scope of authority granted by the California Attorney
3 General to allow this Quo Warranto action to be filed.

4 II. FACTUAL ALLEGATIONS

5 A. PROCEDURAL AND POLITICAL HISTORY

6 13. Beginning in 2008, the City faced a budget crisis driven in large part by rising costs for
7 employee retirement benefits. In response, the City adopted a fiscal reform plan that called for a
8 variety of cost reduction measures, including a possible charter amendment. (Statement of Decision
9 in *San Jose Police Officers' Association v. City of San Jose* (and Consolidated Actions and Related
10 Cross-Complaint), Santa Clara Superior Court No. 1-12-CV 225296, pp. 2-3.)

11 14. In March 2012, as part of the fiscal reform plan, and after engaging in a full and
12 complete meet and confer process pursuant to the Meyers-Milias-Brown Act, the City Council voted
13 to place Measure B on the ballot, and on June 5, 2012, approximately 70% of the City's voters enacted
14 Measure B.

15 15. In April 2013 the Attorney General granted leave to Relator to file this action in Quo
16 Warranto, concluding,

17 Leave to sue is GRANTED to determine whether the City of San Jose
18 fulfilled its statutory collective bargaining obligations before placing an
19 initiative measure on the June 2012 ballot that, after its passage,
20 amended the City Charter so as to increase city police officers'
retirement contributions and reduce their retirement benefits. (Att'y
Gen. Op. 12-605 (April 15, 2013), p.1.)

21 16. After the Attorney General's Office approved of the Complaint in this action, Relator
22 filed it on April 29, 2013. The City filed its Answer on June 28, 2013, denying all material allegations
23 and asserting its affirmative defenses.

24 17. In the meantime, six sets of plaintiffs filed actions challenging sections of Measure B.
25 The City defended including filing a cross complaint for declaratory relief as to the validity of
26 Measure B. All cases were consolidated for trial. The trial court conducted a five-day court trial on
27 11 claims of invalidity, from July 22, 2013, to July 26, 2013.

1 18. On February 20, 2014, the trial court issued a Statement of Decision in the Consolidated
2 Cases. On April 29, 2014, the trial court issued a Judgment in the Consolidated Cases. The trial court
3 found in favor of the Plaintiffs invalidating three sections of Measure B. The City prevailed on all
4 the other claims. Following entry of Judgment, the parties filed notices and cross notices of appeal.

5 19. In November 2014, the regularly scheduled general municipal election occurred in San
6 Jose. Arguably, the dominant election issue in San Jose's mayoral race was pension reform. San
7 Jose's mayoral candidates were sharply divided on the issue. Intervenors are informed, believe and
8 thereon allege that Candidate Dave Cortese, backed by the City's unions, campaigned against
9 Measure B. Conversely, Cortese's challenger and then-city council member, Sam Liccardo,
10 campaigned in favor of the measure, thereby earning him the support of much of the local business
11 community. Mr. Liccardo was elected Mayor in part based on his support for Measure B.

12 20. At its August 11, 2015 City Council meeting, the City Council, led by Mayor Liccardo,
13 and contrary to his mayoral campaign promises, announced that, in April 2015, it had entered
14 settlement discussions with SJPOA and other City public employee unions, including International
15 Association of Firefighters, Local 230 (IAFF). The City Council further disclosed that, on or about
16 July 15, 2015, the City, relator SJPOA and IAFF, Local 230 reached agreement for settlement on an
17 Alternative Pension Reform Settlement Framework (PF Settlement Framework) that provided a path
18 toward the settlement of litigation over Measure B. The proposed PF Settlement Framework differs
19 substantially from Measure B, including an increase in the retirement benefits multiplier by nearly
20 one-third over that provided in Measure B. The Council Memo pertaining to agenda item stated:

21 The settlement framework is subject to a final overall global settlement
22 with all parties related to Measure B litigation. It is also contingent on
23 the City and the SJPOA reaching agreement on a successor
24 Memorandum of Agreement (MOA). Those discussions are currently
25 ongoing. **The City Council has not yet made a decision regarding the**
26 **path by which to implement the framework, such as through a 2016**
27 **ballot measure to modify Measure B or through the quo warranto**
28 **process to remove the language attributable to Measure B from the**
 City Charter. The City Council will consider that issue at a
 subsequent meeting. (July 24, 2015 City Council Memo; Emphasis
 added.)

1 21. In a Supplemental Memorandum of August 17, 2015, the City disclosed it had settled
2 upon a path by which the PF Settlement Framework would be implemented:

3
4 Because the Framework Agreement does not include specific
5 terms for implementation, the parties continued discussing the
6 appropriate implementation path to take while acknowledging that the
7 City is still in global settlement discussions with the Federated
8 bargaining units and retirees' association. Addendum #1 regarding the
9 ballot measure (Attachment A) and Addendum #2 regarding the
10 implementation plan (Attachment B) should be considered addendums
11 to the Alternative Pension Reform Framework Agreement. ...

12 Under the agreement, **before the quo warranto process is**
13 **initiated in Court**, the POA and IAFF, Local 230 will work
14 collaboratively with the City to develop a Charter amendment ballot
15 measure, which, if the quo warranto process (as defined in the
16 Settlement Framework and Proposed Quo Warranto Implementation
17 Plan) succeeds, will supersede Measure B with the following: (1) a
18 provision requiring voter approval of defined benefit pension
19 enhancements, (2) a provision requiring actuarial soundness, (3) a
20 provision prohibiting retroactivity of defined benefit pension
21 enhancements, and (4) any other provisions contained in the Settlement
22 Framework to which the parties mutually agree.

23 The ballot measure will go to voters in November 2016. Once
24 the parties mutually agree on language, POA and IAFF agree to endorse
25 the ballot measure. Please refer to Attachment A - Addendum #1 for the
26 agreement. Once the Federated bargaining units and retirees' association
27 agree to and ratify a global settlement of the remaining Measure B
28 litigation, the implementation process will begin. (August 17, 2015
Supp. Memo; Emphasis added.)

19 22. The entire strategy was dependent on a settlement with the Federated Unions. Failing
20 that, the entire PF Settlement Framework would be placed on the ballot:

21 In the event that the Federated bargaining units and retirees' association
22 do not reach agreements to settle litigation with the City or the quo
23 warranto process fails to invalidate Measure B, the parties agreed that
24 the November 2016 ballot measure would implement the Alternative
25 Pension Reform Framework. (*Id.*)

26 23. Addendum No. 2 to the PF Settlement Framework contemplates Local 230 will
27 intervene in this Quo Warranto action without objection by the City. (Addendum No. 2.) To the
28 knowledge of Intervenors, Local 230 has not yet filed its application for intervention.

29 24. The PF Settlement Framework was approved by the City Council in open session on
30 August 25, 2015. (August 25, 2015 Minutes, p. 9.)

1 **B. THE DECEMBER 2015 AGREEMENT**

2 25. At its December 15, 2015 Council meeting, the City announced it had reached
3 agreement about settlement terms with the Federated bargaining units (Federated Settlement
4 Framework). The Council Memo stated, in part:

5
6 The Framework contains a quo warranto implementation plan to be
7 followed by the City and the bargaining units representing employees in
8 the Federated City Employees' Retirement System that is similar to the
9 process agreed to with the SJPOA and IAFF, Local 230. If the quo
10 warranto process described in the Framework succeeds, the bargaining
units representing employees in the Federated City Employees'
Retirement System agree to work with the City on a 2016 ballot measure
that will supersede Measure B and incorporate the following provisions:

- 11 (1) A provision requiring voter approval of defined retirement benefit
enhancements;
12 (2) A provision requiring actuarial soundness;
13 (3) A provision prohibiting retroactivity of defined retirement benefit
enhancements; and
14 (4) Any other provisions contained in the Framework, that the parties
may mutually agree to.

15 If the quo warranto process is not successful in invalidating Measure B,
16 the parties agree that the Framework will be implemented via a ballot
measure in November 2016. (December 4, 2015 City Council Memo.)

17 26. The City Council approved the terms of the Federated Settlement Framework at its
18 December 15, 2015 meeting and authorized the City Manager to negotiate and execute a Retirement
19 Memorandum of Agreement between the City and Federated Bargaining Units. (December 15, 2015
20 Synopsis, p. 13.) In addition to numerous other provisions, in the Federated Settlement Framework,
21 the City agreed to the "Removal of language limiting vesting of benefits from City Charter (Section
22 1508-A (h)). (Federated Settlement Framework, updated December 14, 2015, p. 4; see also PF
23 Settlement Framework, p. 5.) Section 1508-A (h) was not challenged in the Consolidated Cases.

24 27. Measure B was designed to protect the city's employees, retirees, residents and voters.
25 In Section 1502-A, Measure B states its intent:

26
27 **This Act is intended to ensure the City can provide reasonable and**
28 **sustainable post-employment benefits while at the same time**
 delivering Essential City Services to the residents of San Jose.

1 The City reaffirms its plenary authority as a charter city to control and
2 manage all compensation provided to its employees as a municipal affair
under the California Constitution.

3 The City reaffirms its inherent right to act responsibly to preserve the
4 health, welfare and well-being of its residents.

5 This Act is not intended to deprive any current or former employees of
6 benefits earned and accrued for prior service as of the time of the Act's
effective date; rather, the Act is intended to preserve earned benefits as
of the effective date of the Act.

7 This Act is not intended to reduce the pension amounts received by any
8 retiree or to take away any cost of living increases paid to retirees as of
the effective date of the Act.

9 The City expressly retains its authority existing as of January 1, 2012,
10 to amend, change or terminate any retirement or other post employment
11 benefit program provided by the City pursuant to Charter Sections 1500
and 1503. (Emphasis added.)

12 28. Measure B's findings include, among others, 1) The City's ability to provide its citizens
13 with Essential City Services (i.e., police protection; fire protection; street maintenance; libraries; and
14 community centers) has been and continues to be threatened by budget cuts caused mainly by the
15 climbing costs of employee benefit programs, and exacerbated by the economic crisis; 2) **without the**
16 **reasonable cost containment provided in this Act, the economic viability of the City, and hence,**
17 **the City's employment benefit programs, will be placed at an imminent risk;** 3) by this Act, the
18 voters find and declare that **post-employment benefits must be adjusted in a manner that protects**
19 **the City's viability and public safety, at the same time allowing for the continuation of fair post-**
20 **employment benefits for its workers;** 4) this Act is intended to strengthen the finances of the City
21 to **ensure the City's sustained ability to fund a reasonable level of benefits** as contemplated at the
22 time of the voters' initial adoption of the City's retirement programs. **It is further designed to ensure**
23 **that future retirement benefit increases be approved by the voters.** Before Measure B, these
24 matters were not mandatorily subject to voter approval. (Emphasis added.)

25 29. In mid-December, the City publicly reported that a key contingency had been removed
26 — it had reached agreement with the Federated bargaining units. The City also set forth the
27 anticipated path forward, in essence, the parties will stipulate Measure B is invalid and propose that
28 the Court enter judgment invalidating Measure B and providing for implementation of the Settlement

1 Framework. Only if the parties fail in this endeavor will the Settlement Framework be placed on the
2 ballot. (December 4, 2015 City Council Memo, pp. 15-16; Addendum No. 2.)

3 30. On February 23, 2016, the City posted the Federated Alternative Pension Reform
4 Settlement Framework Agreement, dated February 24, 2016, on its website (referred to herein as the
5 Federated Settlement Agreement). This document reiterates the terms of the Federated Settlement
6 Framework, except that Association of Building, Mechanical, and Electrical Inspectors (ABMEI) is
7 now a party to the settlement. The Federated Settlement Agreement reveals the City is still in
8 negotiations with the Federated Retirees Association, and implementation of the agreement “is
9 contingent on reaching an agreement with other parties to litigation.”

10 **C. INTERVENORS SEEK TO PRESERVE THEIR RIGHTS AND UPHOLD THE OBLIGATIONS OF THE CITY**

11 31. Intervenors affirmatively allege Measure B is squarely within the scope of the initiative
12 and charter amendment power of San Jose voters.

13 32. Intervenors contend that the City has an affirmative duty to defend Measure B on behalf
14 of its citizens. As the California Supreme Court has explained, a city or county is required to defend
15 an [adopted] initiative. (*Building Indus. Assn v. City of Camarillo* (1986) 41 Cal.3d 810, 822.) This
16 duty is rooted in the fact that the constitutionally reserved charter amendment and initiative power
17 not only is greater than that of the [legislative body], but in fact gives the people the final legislative
18 word, a limitation upon the power of the Legislature. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 704).
19 Indeed, in one Supreme Court decision where the council decided not to vigorously defend a challenge
20 brought by a third party, the Court roundly condemned the city attorney for not doing so. (*Arnel Dev.*
21 *Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514 n.3).

22 33. With the Federated Settlement Framework, and more recently the Federated Settlement
23 Agreement, the City has abdicated its duty to defend Measure B on behalf of the citizens of San Jose.
24 Intervenors allege that the City is no longer defending Measure B and has entered into a settlement,
25 and is in the process of stipulating to a Judgment that is beyond the scope of this Quo Warranto action
26 and improperly amends Measure B without a vote of the people.

27 34. As alleged herein, the City met and conferred, fully, completely and in good faith with
28 all recognized bargaining groups prior to placement of Measure B on the June 5, 2012 ballot. The

1 City has denied any violation of the Meyers-Milias-Brown Act (Gov't. Code §§ 3500 *et. seq.*) in this
2 action. The City's entry into the PF Settlement Framework, Federated Settlement Framework, Federal
3 Settlement Agreement, and the proposal for a Stipulated Judgment, as alleged herein, constitutes an
4 abandonment of the City's defense of the narrow issues before the Court in this Quo Warranto
5 action, as defined by the Attorney General. (Att'y Gen. Op. 12-605 (April 15, 2013).)

6 35. A Stipulated Judgment, as contemplated by the parties to this action, would violate the
7 rights of the voters, and Intervenors, by attempting to amend Measure B through the PF Settlement
8 Framework, Federated Settlement Framework, and a Stipulated Judgment. The City will only put
9 amendments to Measure B to a vote of the people if the negotiated means of invalidating the Measure
10 does not succeed. This strategy fails to defend Measure B and usurps the constitutional rights of the
11 People of San Jose. Unless an initiative measure otherwise provides, it "may be amended or repealed
12 only by a statute approved by the voters." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 696, fn. 2, citing
13 *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674; *Barlotti v. Lyons* (1920) 182 Cal. 575; Cal
14 Const. art. XI, § 3 ("For its own government, a county or city may adopt a charter **by majority vote**
15 **of its electors voting on the question.** ... A charter may be amended, revised, or repealed **in the**
16 **same manner.**").)

17 36. Intervention is proper under Code of Civil Procedure § 387(a) & (b) because
18 Intervenors have a direct and substantial interest in the outcome of this litigation, disposition of the
19 action may as a practical matter impair or impede their ability to protect those interests, and those
20 interests are not adequately represented by the existing parties.

21 37. Intervenors' interests clearly outweigh the existing parties' interests in excluding them
22 from the action.

23 38. Intervention is timely and Intervenors do not seek to enlarge the issues. On the contrary
24 Intervenors seek to maintain the scope of the action as ordered by the Attorney General.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Intervenors pray judgment as follows:

- 27 1. For Relator SJPOA to be denied any relief as requested;

1 2. For a Judgment that the Defendants City of San Jose and the City Council of the City
2 of San Jose did not violate its obligation to "meet and confer", under Government Code § 3505 and
3 any other applicable laws or regulations, with recognized collective bargaining groups prior to
4 placement on the June 5, 2012 municipal ballot;

5 3. Judgment in favor of the City of San Jose and the City Council of the City of San Jose
6 dismissing this Quo Warranto action with prejudice;

7 4. For attorneys' fees and costs under Code of Civil Procedure § 1021.5 and any other
8 applicable law in an amount to be determined according to proof;

9 5. For costs of suit herein incurred;

10 6. For such other and further relief as the court deems proper.

11
12 DATED: *March 9, 2016* NIELSEN MERKSAMER PARRINELLO
13 GROSS & LEONI, LLP

14
15 By: *Marguerite Mary Leoni*
16 MARGUERITE MARY LEONI
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19 Attorneys for Intervenor, PETER CONSTANT

20 DATED: *March 9, 2016* LOUNSBERY FERGUSON ALTONA & PEAK, LLP

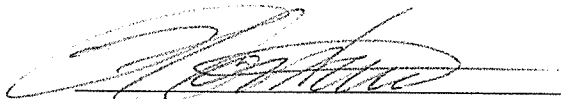
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22 KENNETH H. LOUNSBERY
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28 ASSOCIATION

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VERIFICATION

I, Peter Constant, as one of the Intervenor in the above-entitled action, declare and verify under penalty of perjury under the laws of the State of California that I am duly authorized to make this verification. I have read the foregoing Complaint-in-Intervention, which was prepared by counsel, and do hereby state that the statements contained herein are true and correct, to the best of my information, knowledge and belief, based upon the information and documentation available to me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed this 7th day of March, 2016, at Roseville, California.


Peter Constant