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8 Attorney for Petitioners Guy McElroy, David Cookson,  
9 Joseph Krouss and Scott A. Thompson

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 GUY McELROY, DAVID COOKSON, JOSEPH )	CASE NO: 37-2009-00081178-CU-MC-CTL
13 KROUSS and SCOTT A. THOMPSON, )	
14 )	
15 Plaintiffs, )	DECLARATION OF MICHAEL A.
16 )	CONGER IN SUPPORT OF
17 v. )	OPPOSITION TO CITY OF SAN
18 CITY OF SAN DIEGO, and DOES 1 to 20, )	DIEGO'S DEMURRER TO FIRST
19 inclusive, )	AMENDED COMPLAINT
20 )	
21 Defendants. )	Date: February 26, 2010
22 )	Time: 10:30 a.m.
23 )	Judge: Hon. Judith F. Hayes
24 )	Dept: C-68
25 )	Complaint Filed: January 13, 2009
26 )	Trial: May 28, 2010

27 I, Michael A. Conger, declare as follows:

28 1. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters stated herein and if called to do so could testify competently thereto.

29 2. Each of the documents attached to the accompanying Request for Judicial Notice in Support of Opposition to City of San Diego's Demurrer to First Amended Complaint for Writ of Mandate are true and correct copies of what they purport to be.

30 3. Based on discovery taken in this matter to date, the January 2007 Earnings Code Document (Request for Judicial Notice, Exh. 13) had nothing to do with the City's budget adoption process, and the plaintiffs have already obtained evidence sufficient to prove this fact.

1           4.       According to San Diego Municipal Code section 24.0103, the only manner for the  
2 City to have lawfully changed the Earnings Code Documents was during the budget adoption  
3 process. The plaintiffs are prepared to prove that any such changes are made by adoption of a  
4 “salary ordinance.”

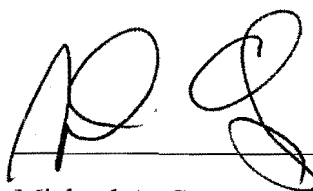
5           5.       Theoretically, such correcting adjustments to Base Compensation could later  
6 cause the independent administrator of the City employees’ pension plan, the San Diego City  
7 Employees’ Retirement System (“SDCERS”), to adjust contributions from both the City *and*  
8 *employees*. However, this result is far from certain, even if the SDPOA prevails because, after  
9 meeting and conferring with the SDPOA, the City recently eliminated all Motorcycle Care Pay.

10          6.       Officer McElroy have available evidence that he was misled into believing his  
11 retirement would be adjusted before signing the release which is the subject of the City’s request  
12 for judicial notice.

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

15           Executed this 11th day of February, 2010, at Rancho Santa Fe, California.

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Michael A. Conger