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9 Joseph Krouss and Scott A. Thompson

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

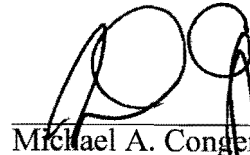
12	GUY McELROY, DAVID COOKSON, JOSEPH )	CASE NO: 37-2009-00081178-CU-MC-CTL
13	KROUSS and SCOTT A. THOMPSON, )	
14	Plaintiffs, )	NOTICE OF RULING
15	v. )	
16	CITY OF SAN DIEGO, and DOES 1 to 20, )	
17	inclusive, )	
18	Defendants. )	

19 PLEASE TAKE NOTICE THAT at the duly-noticed hearing in the referenced matter, the  
20 Court today confirmed its tentative ruling, attached at Exhibit 1, in its entirety.

21  
22  
23 Dated: April 16, 2010

**LAW OFFICE OF MICHAEL A. CONGER**

24  
25 By:



26 Michael A. Conger  
27 Attorney for Plaintiffs/Petitioners  
28

# **EXHIBIT 1**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE  
TENTATIVE RULINGS - February 25, 2010**

EVENT DATE: 04/16/2010      EVENT TIME: 10:30:00 AM      DEPT.: C-68

JUDICIAL OFFICER: Judith F. Hayes

CASE NO.: 37-2009-00081178-CU-MC-CTL

CASE TITLE: MCELROY VS. CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 10/15/2009

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The Demurrer to the First Amended Complaint for Writ of Mandate is **OVERRULED**. As amended, the complaint states sufficient facts to support a claim that the City violated the Court's holding in *Sloan v. City of San Diego*, violated San Diego Municipal Code section 24.0103, and violated San Diego City Charter, article IX, section 143.1. The complaint expressly alleges the petitioners are not seeking money or damages such that plaintiff was required to comply with the Government Tort Claims Act. (FAC, paras. 34-35)

Even if petitioners primarily sought money or damages, it appears their claims would be exempt from compliance with the Act under Government Code section 905(c) and 905(f). Further, the City was on notice in *Sloan* as to the claims asserted in this case. Therefore, although it was not necessary under the amended complaint, plaintiff substantially complied with the Tort Claims Act as the principles behind the Act were satisfied by that notice.

The Court overrules the demurrer as to the City's request to abate this action pending the resolution of *San Diego Police Officers' Association v. City of San Diego*, Case No. 2009-81659. The *San Diego Police Officers' Association* can only be brought by the association because it seeks to remedy a certain right regarding meeting and conferring with the association before the City took action. The instant matter seeks redress for these four individual petitioners for the actual and anticipated incorrect calculation of pension benefits based on the exclusion of canine care pay and motorcycle care pay from the earnings code documents.

Even though essentially the same wrong is alleged, the same parties (except that this action is brought by the individuals themselves and SDPOA was brought by the association), and the same relief is sought, abatement is not warranted. A decision in one case would not necessarily be res judicata in the other as the City asserts. SDPOA challenges compliance with the Meyers-Milias-Brown Act and this action challenges compliance with the California Constitution, the Municipal Codes and the City Charter. Because the analysis in each case could render a different outcome, the cases may run parallel without abatement.

The Court grants Petitioner's unopposed request for judicial notice. The Court denies the City's request

for judicial notice as to the Release executed by Guy McElroy as improperly before the Court.

Respondent the City of San Diego is directed to Answer the First Amended Complaint within ten days.

1 **PROOF OF SERVICE**

2 **McELROY, et al. v. CITY OF SAN DIEGO**  
3 **San Diego Superior Court Case No. 37-2009-00081178-CU-MC-CTL**

4 I declare as follows:

5 I, the undersigned declare under penalty of perjury that I am employed in the County of San  
6 Diego, State of California. I am over the age of 18 and not a party to the within action; my business  
7 address is 16236 San Dieguito Road, Suite 4-14, P.O. Box 9374, Rancho Santa Fe, California  
8 92067.

9 On April 16, 2010, I served the foregoing document(s) described as:

10 **1. NOTICE OF RULING;**

11 on the following:

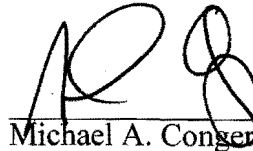
12 **Walter C. Chung, Deputy City Attorney**  
13 **Office of the City Attorney**  
14 **1200 Third Avenue, Suite 1100**  
15 **San Diego, CA 92101**  
16 **Telephone: (619) 533-5800**  
17 **Facsimile: (619) 533-5856**  
18 **E-Mail: wchung@sandiego.gov**

**Attorneys for Defendant**  
**City of San Diego**

19 **(X) BY ELECTRONIC MAIL** - I caused a copy of said document(s) to be delivered by  
20 electronic mail to the addressee(s) pursuant to Code of Civil Procedure §1010.6(6) on  
21 April 16, 2010.

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

24 Executed on April 16, 2010, at Rancho Santa Fe, California.

25   
26 \_\_\_\_\_  
27 Michael A. Conger  
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