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CITY OF SAN DIEGO  
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Harold Fuson, Chief Operating Officer  
Copley Press  
7776 Ivanhoe Avenue  
La Jolla, CA 92037

Dear Mr. Copley and Mr. Fuson:

*A-1 Article of October 7, 2007 by Alex Roth Regarding City Attorney's Office:  
"Aguirre's War on Expenses Getting Expensive"*

The lead article in your Sunday edition, mischaracterizing the City Attorney's use of resources for pension litigation, is replete with factual errors and intentionally misleading, which unfortunately was picked-up by other news outlets. By omitting key facts, the story also wholly lacks context and grossly mischaracterizes events at issue.

This letter represents my demand that the *Union-Tribune* publish a correction regarding the erroneous statements and misrepresentations in the article.

I also request that future pension news stories in the *Union-Tribune* provide background that puts into context all relevant issues to provide accurate and balanced reporting for your readers:

**Background:**

- The San Diego City Employees' Retirement System (SDCERS) Board of Trustees approved pension benefits that were granted by the City Council in 1996 and 2002 in exchange for allowing the City to under fund the employee pension system.

- The City Council actions of 1996 and 2002 have contributed to a \$1.4 billion unfunded liability in the San Diego City employees' pension system.
- Four Council members who voted for the under funding in 2002 are still members of the City Council: Council President Scott Peters and Council members Toni Atkins, Jim Madaffer and Brian Maienschein.
- Two separate criminal investigations are still pending in the U.S. Attorney's Office and the District Attorney's Office into alleged schemes that contributed to the under-funding of the City's employees' pension system.
- Three separate investigations by the Vinson & Elkins law firm (2004), Kroll, Inc., (2006) and the City Attorney's Office (2004-present) found that City officials violated their fiduciary duties when they allegedly schemed to under-fund the City employees' pension system.
- On November 14, 2006, the U.S. Securities and Exchange Commission issued a cease-and-desist order finding that San Diego City Officials violated the anti-fraud provisions of the federal securities laws. The SEC determined that San Diego City Officials and employees withheld information from investors in City bond disclosures concerning hundreds of millions of dollars of pension and retiree debt.

As for the Alex Roth story, readers are never told that the pension case was brought in an effort to set aside hundreds of millions of dollars of pension benefits that were alleged to have been created unlawfully by the City Council. Because the *Union-Tribune* should share my desire to accurately inform citizens, consider the following in evaluating "Aguirre's record to date":

- My efforts to set aside illegal pension benefits and restore integrity to the City employee pension system stand to save the City about \$800 million. Of course litigation against entrenched unions is costly and difficult, but it is necessary. No less an authority than the California Court of Appeal wrote in its opinion of September 7, 2007—an opinion which supports pursuit of the District Attorney's parallel criminal pension case—that a "reasonable person could harbor a **strong** suspicion of [the officials'] guilt" under state conflict of interest laws "based upon their actions in considering, discussing, negotiating and ultimately voting to approve MP2 [which increased pension benefits]." After reviewing the extensive record, the Court suggested that each official "knew that their respective employing units, and themselves personally, would financially benefit from the transaction." In plain English, the appeals court has found a lot of smoke and a probable fire as to **criminal** conduct. I would be remiss in my duties as City Attorney if I did not uphold the law and pursue a parallel civil action to set aside the huge illegal debt loaded on taxpayers' backs by self-interested public officials.

- San Diego's City Attorneys have historically served as counsel for the City's pension system. The City Charter mandates that the City Attorney is the attorney for all City departments, including the pension system. The decision to violate the Charter and permit the pension system to operate without any City legal oversight was made by the same officials who created the illegal pension benefits. Charter-mandated City Attorney oversight is the only way to guard the City's interests in a legally accountable pension system. I am committed to restoring that oversight.
- The City repeatedly has been sued by plaintiffs' lawyers seeking to profit from the pension system's past misdeeds. As City Attorney, I must defend those lawsuits, while also seeking to remedy violations by prior City officials. Our office recently won the federal court lawsuit brought by the Police Officers' Association —whose case was thrown out in a 71-page opinion written by federal district Judge Marilyn Huff. That pension-related case was a complete victory for the City.
- The City also was sued by plaintiffs' lawyer Michael Conger —who has sued the City six times and recovered multi-million dollar attorneys' fees awards during previous City Attorney administrations. Mr. Conger's comments should be viewed against the backdrop of a recent opinion by a former federal judge. Judge Harry McCue wrote in his arbitration decision giving Mr. Conger only *one dollar* in attorneys' fees, "It is the conclusion of the Arbitrator that this McGuigan lawsuit simply illustrates the ease with which public money can be squandered in the name of the public interest. It was clearly within the public interest to settle this case as the City correctly did. It was, however, not in the public interest to file it." In plain English, Mr. Conger's lawsuit was abusive litigation. Mr. Conger struck back by attacking the personal integrity of Judge McCue (a charge he later recanted), and he threatened to file multiple appeals. Ultimately, to limit its litigation expense, the City settled Mr. Conger's fee claim for a fraction of the \$28 million originally sought.
- The work of the fine attorneys in my office has been praised repeatedly in the courts. In the lead pension case, the Court's opinion cited "the excellent presentation at trial of this case by the City. . . ." Such excellent work also resulted in the complete reversal of the \$150 million adverse judgment against the City in the Roque De La Fuente case (a judgment I inherited from my predecessor in this office), and in a victory in the Ninth Circuit Court of Appeals, finding that the City's insurer must pay for the City's defense of all related De La Fuente cases. That latter ruling alone has gained the City several million dollars in attorneys' fee's reimbursements.

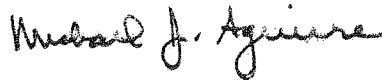
Calculating the net financial contribution of this City Attorney's Office to the City's bottom line would show that we have moved the City toward the black by at least \$150 million

—even after subtracting the costs of pension litigation. But that is not the yardstick by which we measure our success.

We ask whether we have exorcised the self-dealing that has long plagued our City. We ask whether improper influences continue to undermine the quality government our citizens deserve. We ask whether the rule of law is restored. On that task, we have not yet accomplished our goals, but we intend to keep trying.

We accordingly request that the *Union-Tribune* promptly and conspicuously make appropriate corrections to fix these errors, and that future pension news stories provide the background and context that will provide accurate and balanced reporting for your readers.

Very truly yours,



MICHAEL J. AGUIRRE, City Attorney

cc: Karin Winner, Editor, *Union-Tribune*  
Todd Merriman, Senior Editor for News, *Union Tribune*  
Alex Roth, Staff Writer, *Union-Tribune*  
Roger Hedgecock, Roger Hedgecock Show  
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