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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
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| 10 | PEOPLE OF THE STATE OF CALIFORNIA, |) | Case No. GIC 850246 |
| 11 | Plaintiff, |) | FIRST AMENDED COMPLAINT FOR |
| 12 | v. |) | RECOVERY OF ECONOMIC BENEFIT |
| 13 | LAWRENCE GRISSOM; RONALD L. |) | WRONGFULLY RECEIVED; |
| 14 | SAATHOFF; JOHN A. TORRES; SHARON K. |) | INJUNCTIVE RELIEF SETTING ASIDE |
| 15 | WILKINSON; TERRI A. WEBSTER; CATHY |) | OFFICIAL ACTION UNDER THE |
| 16 | LEXIN; BRUCE HERRING; LORAINE LEE |) | POLITICAL REFORM ACT OF 1974, AS |
| 17 | CHAPIN, and DOE DEFENDANTS 1 through |) | AMENDED |
| | 25, |) | [Government Code §§ 87100, 87200, |
| | Defendants. |) | 91001 (b), 91003(a), 91003(b), 91001.5, |
| | |) | and 91005(b)] |
| | |) | |

18 The People of the State of California allege as follows:

19 1. The People of the State of California bring this action in the public interest to
20 enforce the provisions of the Political Reform Act of 1974. (Govt. Code §§ 81000 through
21 91014.)

22 I.

23 **MISUSE OF OFFICIAL POSITION**

24 2. An express purpose of the Political Reform Act of 1974 (the "Act"), as set forth in
25 Govt. Code § 81002(c), is to ensure that the assets and income of public officials that might be
26 materially affected by their official actions should be disclosed, and in appropriate circumstances
27 the officials should be disqualified from acting in order that conflicts of interest be avoided. Any
28 benefits received based upon an official action in which a party holds a prohibited conflicted

1 interest in violation of Govt. Code § 87100 should be set aside and up to three times the benefit
2 wrongfully received should be recovered.

3 3. Govt. Code § 87100 prohibits local public officials from using their official
4 positions to influence governmental decisions in which they have an economic interest. Govt.
5 Code § 87100 provides:

6 No public official at any level of state or local government shall make, participate
7 in the making or in any way attempt to use his official position to influence a
8 governmental decision in which he knows or has reason to know he has a
9 financial interest.

10 II.

11 CIVIL ENFORCEMENT

12 4. Govt. Code § 91300 provides that upon a preliminary showing that a violation of
13 Govt. Code § 87100 has occurred, the court may restrain the execution of any official action in
14 relation to which such a violation has occurred, pending final adjudication by the Court. If it is
15 ultimately determined that a violation has occurred and that the official action might not
16 otherwise have been taken or approved, the court may set the official action aside as void. The
17 official actions that are set aside should include, but are not limited to, orders, resolutions, and
18 contracts. The injury done to the San Diego City Employees Retirement System (“SDCERS”)
19 far outweighs any injury that might be suffered by innocent persons relying on the official action
20 the People seek to set aside in this action. The official action the People seek to set aside not
21 only has created liabilities for which SDCERS will be responsible, unless the subject official
22 action is set aside, but also has materially and substantially contributed to a \$1.7 billion deficit in
23 the SDCERS funding for benefits.

24 5. Any designated employee or public official specified in Govt. Code § 87200 who
25 realized an economic benefit as a result of a violation of Govt. Code § 87100 is liable in a civil
26 action brought by the civil prosecutor for an amount up to three times the value of the benefit.

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1 **III.**

2 **THE PARTIES**

3 6. The San Diego City Attorney is empowered to bring this action as a civil
4 prosecutor in the name of the People of the State of California under Govt. Code § 91001.5,
5 which provides:

6 In any case in which a district attorney could act as the civil or criminal
7 prosecutor under the provisions of this title, the elected city attorney of any
8 charter city may act as the civil or criminal prosecutor with respect to any
9 violations of this title occurring within the city.

10 7. The San Diego City Attorney is elected, and the City of San Diego is a charter
11 city. This is a case in which the district attorney could act as the civil prosecutor under the
12 Political Reform Act of 1974. The violations alleged in this complaint occurred within the City
13 of San Diego.

14 8. Govt. Code § 91003(a) provides in pertinent part that: “Any person residing in
15 the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with
16 the provisions of this title [Title 9, Political Reform Act 1974].” Govt. Code § 91001(b)
17 provides in pertinent part that: “The civil prosecutor may bring any civil action under this title
18 [Title 9, Political Reform Act 1974] which could be brought by a voter or resident of the
19 jurisdiction.”

20 9. As civil prosecutor, the San Diego City Attorney, in the name of the People of the
21 State of California, may bring the cause of action for injunctive relief alleged in this complaint
22 under Govt. Code § 91003(b) because: (1) the San Diego City Attorney is authorized to act as a
23 civil prosecutor in this action under Govt. Code § 91001.5; and (2) this civil action could have
24 been brought by a voter or resident of the jurisdiction, as provided in Govt. Code §§ 91001(b)
25 and 91003(a).

26 10. Under the provisions of Govt. Code § 91005(b), the People of the State of
27 California may seek up to three times the value of any economic benefits received by defendants
28 in violation of Govt. Code § 87100. Govt. Code § 87100 provides in pertinent part: “No public

1 official at any level of state or local government shall make, participate in making or in any way
2 attempt to use his official position to influence a governmental decision in which he knows or
3 has reason to know he has a financial interest.” Govt. Code § 91005(b) provides: “Any
4 designated employee or public official specified in Section 87200, except an elected state officer,
5 who realizes an economic benefit as a result of a violation of Section 87100 or of a
6 disqualification provision of a conflict of interest code is liable in a civil action brought by the
7 civil prosecutor or by a person within the jurisdiction for an amount up to three times the value
8 of the benefit.”

9 11. The San Diego City Attorney, as civil prosecutor, in the name of the People of the
10 State of California also seeks three times the value of the benefits received by the defendants as
11 provided for in Govt. Code § 91005(b).

12 12. The eight defendants against whom this complaint is filed are: (1) Lawrence
13 Grissom; (2) Ronald L. Saathoff; (3) John A. Torres; (4) Sharon K. Wilkinson; (5) Terri A.
14 Webster; (6) Cathy Lexin; (7) Bruce Herring; and (8) Loraine Lee Chapin (a.k.a. Loraine Lee
15 Etherington). Each of these defendants is either a public official, as defined by Govt. Code §
16 82048, and/or a designated employee, as defined by Govt. Code §82019(a).

17 13. At all relevant times alleged in this complaint, the defendants were residents of
18 the County of San Diego, State of California.

19 **IV.**

20 **JURISDICTION AND VENUE**

21 14. This court has original jurisdiction over the amount in controversy in this matter.
22 Because the facts and circumstances giving rise to the causes of action asserted in this complaint
23 occurred in the City of San Diego, the County of San Diego is the proper venue for this action
24 pursuant to Code of Civil Procedure § 393.

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V.

STEP 1: DEFENDANTS WERE PUBLIC OFFICIALS

15. At all times relevant to this complaint the City of San Diego and the San Diego City Employees Retirement System (SDCERS) were and are local government agencies as that term is used in Govt. Code § 82048.

16. At all times relevant to this complaint the San Diego City employees, the SDCERS' employees, and the members of the SDCERS board of trustees named as defendants in this action were and are public officials or designated employees as those terms are defined by Govt. Code §§ 87100 and 87200 and 91005(b).

17. The first defendant is Lawrence Grissom. Defendant Lawrence Grissom at all relevant times alleged in this complaint was and is a resident of the County of San Diego, State of California. From in and around July 1987, defendant Grissom has been employed by SDCERS as the SDCERS Administrator. As an employee of SDCERS, defendant Lawrence Grissom at all relevant times alleged in this complaint was a public official as defined by in Govt. Code § 82048.

18. Defendant Lawrence Grissom at all relevant times alleged in this complaint was a designated employee of SDCERS as defined in Govt. Code §82019(a).

19. Defendant Lawrence Grissom at all relevant times alleged in this complaint was a public official because he exercised primary responsibility for the management of SDCERS' public investments as provided in FPPC Reg. § 18701(b)1(B).

20. Defendant Lawrence Grissom at all relevant times alleged in this complaint was a public official or designated employee governed by or subject to Govt. Code §§ 87100, 87200, 91003, 91005(b).

21. Under Govt. Code § 87100, defendant Lawrence Grissom at all times alleged in this complaint had a duty not to make, not to participate in making, or not to in any way attempt to use his official position as the SDCERS Administrator to influence a governmental decision in which he knew or had reason to know he had a financial interest.

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1 22. The second defendant is Ronald L. Saathoff. Defendant Ronald L. Saathoff at all
2 relevant times alleged in this complaint was and is a resident of the County of San Diego, State
3 of California. Defendant Ronald L. Saathoff at all relevant times alleged in this complaint was
4 employed by the City of San Diego as a Captain in the City of San Diego Fire Department.

5 23. Defendant Ronald L. Saathoff at all relevant times alleged in this complaint was
6 the elected president of the San Diego Fire Fighters Union Local 145. Defendant Ronald L.
7 Saathoff at all times alleged in this complaint was elected by the members of the San Diego Fire
8 Department to be and he did serve as a trustee of the San Diego City Employees Retirement
9 System (SDCERS) under San Diego City Charter Art. 10 (7) and § 144 (prior to 2004
10 amendment).

11 24. Defendant Ronald L. Saathoff at all relevant times alleged in this complaint was
12 a public official as that term is defined by Govt. Code § 82048 because of his position as an
13 elected member of the SDCERS board of trustees and because he was a San Diego City
14 employee. As an SDCERS trustee, defendant Ronald L. Saathoff was a public official who
15 managed SDCERS public assets as provided in Govt. Code § 87200 and FPPC Regulations
16 §18701(b)(1)(A).

17 25. Under Govt. Code § 87100, defendant Ronald L. Saathoff at all times alleged in
18 this complaint had a duty not to make, not to participate in making, or not to in any way attempt
19 to use his official position as a member of the SDCERS board of trustees to influence a
20 governmental decision in which he knew or had reason to know he had a financial interest.

21 26. The third defendant is John A. Torres. Defendant John A. Torres at all relevant
22 times alleged in this complaint was and is a resident of the County of San Diego, State of
23 California. Defendant John A. Torres at all relevant times alleged in this complaint was
24 employed by the City of San Diego as a latent fingerprint analyst in the San Diego City Police
25 Department.

26 27. Defendant John A. Torres at all relevant times alleged in this complaint was
27 elected by the general members of the San Diego City employee workforce to be and he did

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1 serve as a trustee of SDCERS as provided in San Diego City Charter § 144 (before 2004
2 amendment).

3 28. Defendant John A. Torres at all relevant times alleged in this complaint was a
4 public official as that term is defined by Govt. Code § 82048 because of his position as an
5 elected member of the SDCERS board of trustees and because he was a San Diego City
6 employee. As an SDCERS trustee, defendant John A. Torres was a public official who managed
7 SDCERS public assets as provided in Govt. Code § 87200 and FPPC Reg. §18701(b)(1)(A).

8 29. Under Govt. Code § 87100, defendant John A. Torres at all times alleged in this
9 complaint had a duty not to make, not to participate in making, or not to in any way attempt to
10 use his official position as a member of the SDCERS board of trustees or as a San Diego City
11 employee to influence a governmental decision in which he knew or had reason to know he had a
12 financial interest.

13 30. The fourth defendant is Sharon K. Wilkinson. Defendant Sharon K. Wilkinson at
14 all relevant times alleged in this complaint was and is a resident of the County of San Diego,
15 State of California. Defendant Sharon K. Wilkinson at all relevant times alleged in this
16 complaint was employed by the City of San Diego as an employee in the Special Projects
17 Department, assigned to Qualcomm Stadium.

18 31. Defendant Sharon K. Wilkinson at all relevant times alleged in this complaint was
19 elected by general members of the San Diego City employee workforce to be and she did serve
20 as a trustee of the San Diego City Employees Retirement System (SDCERS) as provided in San
21 Diego City Charter § 144 (before 2004 amendment).

22 32. Defendant Sharon K. Wilkinson at all relevant times alleged in this complaint was
23 a public official as that term is defined in Govt. Code § 82048 because of her position as an
24 elected member of the SDCERS board of trustees and because she was a San Diego City
25 employee. As an SDCERS trustee, defendant Sharon K. Wilkinson was a public official who
26 managed SDCERS public assets as provided in Govt. Code § 87200 and FPPC Reg.
27 §18701(b)(1)(A).

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1 33. Under Govt. Code § 87100, defendant Sharon K. Wilkinson at all times alleged in
2 this complaint had a duty not to make, not to participate in making, or not to in any way attempt
3 to use her official position as a member of the SDCERS board of trustees or as a San Diego City
4 employee to influence a governmental decision in which she knew or had reason to know she
5 had a financial interest.

6 34. The fifth defendant is Terri A. Webster. Defendant Terri A. Webster at all
7 relevant times alleged in this complaint was and is a resident of the County of San Diego, State
8 of California. Defendant Terri A. Webster at all relevant times alleged in this complaint was a
9 San Diego City employee and was employed as the Assistant City Auditor and Comptroller or
10 Acting City Auditor and Comptroller.

11 35. Defendant Terri A. Webster at all relevant times alleged in this complaint was an
12 ex officio member of the SDCERS board of trustees as provided in San Diego City Charter § 144
13 (before 2004 amendment).

14 36. Defendant Terri A. Webster at all relevant times alleged in this complaint was a
15 public official as that term is defined in Govt. Code § 82048 because of her position as an ex
16 officio member of the SDCERS board of trustees and because she was a City of San Diego
17 employee. As an SDCERS trustee, defendant Terri A. Webster was a public official who
18 managed SDCERS public assets as provided in Govt. Code § 87200; and FPPC Reg.
19 §18701(b)(1)(A).

20 37. Under Govt. Code § 87100, defendant Terri A. Webster at all times alleged in this
21 complaint had a duty not to make, not to participate in making, or not to in any way attempt to
22 use her official position as a member of the SDCERS board of trustees or as a San Diego City
23 employee to influence a governmental decision in which she knew or had reason to know she
24 had a financial interest.

25 38. The sixth defendant is Cathy Lexin. Defendant Cathy Lexin at all relevant times
26 alleged in this complaint was and is a resident of the County of San Diego, State of California.
27 Defendant Lexin at all relevant times alleged in this complaint was employed by the City of San

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1 Diego as either the Labor Relations Manager or the Director of the Human Resources
2 Department.

3 39. Defendant Cathy Lexin was at all relevant times alleged in this complaint an ex
4 officio member of the SDCERS board of trustees as provided in San Diego City Charter § 144
5 (before 2004 amendment).

6 40. Defendant Cathy Lexin at all relevant times alleged in this complaint was a public
7 official as that term is defined by Govt. Code § 82048 because of her position as an ex officio
8 member of the SDCERS board of trustees or because she was a San Diego City employee
9 employed in a management position with the City of San Diego. As an SDCERS trustee
10 defendant Cathy Lexin was a public official who managed SDCERS public assets as provided by
11 Govt. Code § 87200 and FPPC Reg. §18701(b)(1)(A).

12 41. Under Govt. Code § 87100, defendant Cathy Lexin at all times alleged in this
13 complaint had a duty not to make, not to participate in making, or not to in any way attempt to
14 use her official position as a member of the SDCERS board of trustees or because of her position
15 as a San Diego City employee in a management position with the City of San Diego to influence
16 a governmental decision in which she knew or had reason to know she had a financial interest.

17 42. Defendant Lexin, a member of the SDCERS board of trustees, and the City of San
18 Diego Labor Relations Manager, participated in, or used her official position to influence the
19 governmental decisions, described in this complaint, in which she had a financial interest in
20 violation of Govt. Code § 87100. In 1996 defendant Lexin participated as the City of San Diego
21 Labor Relations Manager in the decision of the SDCERS board of trustees to adopt the City
22 Manager's pension funding proposal identified herein after as MP-1. For example, in and around
23 17 May 1996, defendant Lexin negotiated with San Diego City Municipal Employee Association
24 ("MEA") attorney Ann Smith to secure the MEA's support for MP-1.

25 43. The seventh defendant is Bruce Herring. Defendant Bruce Herring at all relevant
26 times alleged in this complaint was and is a resident of the County of San Diego, State of
27 California. Defendant Bruce Herring at all relevant times alleged in this complaint was
28 employed by the City of San Diego as Deputy City Manager.

1 44. Defendant Bruce Herring at relevant times alleged in this complaint was an ex
2 officio member of the SDCERS board of trustees.

3 45. Defendant Bruce Herring at certain relevant times alleged in this complaint was a
4 public official as that term is defined by Govt. Code § 82048 because of his position as an ex
5 officio member of the SDCERS board of trustees or as a San Diego City employee in a
6 management position. As an SDCERS trustee defendant Bruce Herring was a public official
7 who managed SDCERS public assets as provided by Govt. Code § 87200 and FPPC Reg.
8 §18701(b)(1)(A).

9 46. Under Govt. Code § 87100, defendant Bruce Herring at all times alleged in this
10 complaint had a duty not to make, not to participate in making, or not to in any way attempting
11 to use his official position as a member of the SDCERS board of trustees or as a San Diego City
12 employee in a management position to influence a governmental decision in which he knew or
13 had reason to know he had a financial interest.

14 47. The eighth defendant is defendant Loraine Lee Chapin (a.k.a. Loraine Lee
15 Etherington). Defendant Chapin at all relevant times alleged in this complaint was and is a
16 resident of the County of San Diego, State of California. Defendant Loraine Lee Chapin at all
17 relevant times alleged in this complaint was an SDCERS employee. Defendant Loraine Lee
18 Chapin at all relevant times alleged in this complaint was an attorney for SDCERS.

19 48. Under Govt. Code § 87100, defendant Loraine Lee Chapin at all times alleged in
20 this complaint had a duty not to make, not to participate in making, or not to in any way attempt
21 to use her position as an employee of SDCERS to influence a governmental decision in which
22 she knew or had reason to know she had a financial interest.

23 **ALLEGATIONS RELATED TO CITY MANAGER'S PROPOSAL**

24 **NO. 1 AND SDCERS MEETING OF 21 JUNE 1996**

25 **VI.**

26 **STEP 2: DEFENDANTS INFLUENCED GOVERNMENTAL DECISIONS**

27 49. On 21 June 1996, the SDCERS board of trustees voted on a 21 June 1996 San
28 Diego City Manager Proposal regarding contribution rates, benefits, and distribution of earnings.

1 This proposal has come to be known within San Diego City government as Manager’s Proposal
2 1 (“MP-1”).

3 50. San Diego City Manager Jack McGrory represented to the SDCERS board of
4 trustees at the 21 June 1996 meeting that MP-1 compromised several interrelated parts.
5 According to its own terms, the interrelationship of these various parts to each other necessitated
6 that the entire MP-1 proposal be considered and acted upon concurrently.

7 51. Under the terms of MP-1, the City of San Diego agreed to increase employee
8 pension benefits without providing the funding needed to pay for those benefits. Under MP-1 an
9 unfunded liability was created for which the City of San Diego was to be responsible and for
10 which revenues from future years would pay. The creation of liabilities under MP-1 for which
11 same-year City of San Diego revenues were not available violated the liability limits of San
12 Diego City Charter § 99 and California Constitution Art. 16 § 18.

13 52. On 21 June 1996, defendants Ronald L. Saathoff, Sharon K. Wilkinson, John A.
14 Torres, Bruce Herring, and Terri A. Webster, acting within the authority of their positions as
15 members of the SDCERS board of trustees, individually made a governmental decision, as
16 defined in Govt. Code § 87100 and FPPC Reg. § 18702.1, by voting in favor of MP-1 at the 21
17 June 1996 board of trustees’ meeting. Defendants Ronald L. Saathoff, Sharon K. Wilkinson,
18 John A. Torres, Bruce Herring, and Terri A. Webster engaged in the conduct alleged in this
19 complaint in violation of Govt. Code §87100.

20 53. Between 26 February 1996, and 21 June 1996, acting within the authority of his
21 position as SDCERS Administrator, defendant Lawrence Grissom participated in making the
22 governmental decision to adopt MP-1, as defined in Govt. Code § 87100 and FPPC Reg.
23 18702.2, by doing the following: (1) negotiating with San Diego City Manager Jack McGrory
24 the terms of and the methods and means by which MP-1 would be adopted by the SDCERS
25 board of trustees; (2) advising and making recommendations to the board of trustee decision
26 makers directly by (a) conducting research and investigations that required the exercise of
27 judgment on defendant Grissom’s part with the intent and purpose of influencing the board of
28 trustees to adopt MP-1 on 21 June 1996, and (b) preparing and presenting reports, analyses, and

1 opinions orally and in writing that required the exercise of judgment by defendant Grissom with
2 the intent and purpose of influencing the board of trustees' decision to adopt MP-1. Defendant
3 Lawrence Grissom engaged in the conduct alleged in this complaint in violation of Govt. Code §
4 87100.

5 54. On and before 21 June 1996, acting within the authority of her position as
6 SDCERS legal counsel, defendant Loraine Chapin participated in making the governmental
7 decision to adopt MP-1, as defined in Govt. Code § 87100 and FPPC Reg. 18702.2, by doing the
8 following: (1) advising the SDCERS board of trustees and conducting legal research that
9 required her to exercise her judgment for the purpose of influencing the SDCERS board of
10 trustees to adopt MP-1 on 21 June 1996; and (2) advising the SDCERS board of trustees through
11 her oral legal opinions. In reaching her legal opinions, defendant Chapin exercised her judgment
12 for the purpose of influencing the SDCERS board of trustees to adopt MP-1. Defendant Loraine
13 Lee Chapin engaged in the conduct alleged in this complaint in violation of Govt. Code §87100.

14 55. On and before 21 June 1996, defendant Cathy Lexin used her official position to
15 participate in making the governmental decision to adopt MP-1, as defined in Govt. Code §
16 87100 by, among other things, doing the following: (1) on and before 15 and 16 May 1996,
17 defendant Lexin helped to secure and then conveyed to MEA attorney Ann Smith information
18 about the costs of the illegal benefits that were to be created under MP-1; (2) on 7 May 1996,
19 defendant Lexin conferred with and received information from SDCERS Administrator
20 Lawrence Grissom regarding MP-1 with the intent of providing the information to MEA in order
21 to secure association support of the MP-1 proposal; (3) on 29 May 1996, defendant Lexin
22 provided information to and arranged to receive from attorney Jeffrey Leavitt a legal opinion
23 supporting the MP-1 agreement as being consistent with applicable fiduciary law with the intent
24 of participating in and influencing the decision of the SDCERS board of trustees to adopt MP-1;
25 (4) on 21 June 1996, defendant Lexin communicated with defendant Webster regarding terms of
26 the MP-1 agreement, the adoption of which were in violation of the SDCERS board of trustees'
27 fiduciary duties owed to the SDCERS plan participants under Art. 3 § 17 of the California State

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1 Constitution; and (5) on 23 July 1996, defendant Lexin prepared a memorandum detailing the
2 terms of the MP-1 agreement.

3 56. Defendants Lawrence Grissom, Ronald L. Saathoff, John A. Torres, Sharon K.
4 Wilkinson, Terri A. Webster, Cathy Lexin, Bruce Herring, and Loraine Lee Chapin used their
5 official positions to influence the SDCERS board of trustees to adopt MP-1 in violation of Govt.
6 Code § 87100. These defendants also attempted to use their official positions to influence the
7 SDCERS board of trustees to adopt MP-1 in violation of Govt. Code §87100.

8 **VII.**

9 **STEP 3: DEFENDANTS HAD DISQUALIFYING ECONOMIC INTERESTS**

10 57. Defendants Lawrence Grissom, Ronald L. Saathoff, John A Torres, Sharon K.
11 Wilkinson, Terri A. Webster, Cathy Lexin, Bruce Herring, and Loraine Lee Chapin each had a
12 financial interest in a decision within the meaning of § 87100. It was reasonably foreseeable to
13 defendants Lawrence Grissom, Ronald L. Saathoff, John A Torres, Sharon K. Wilkinson, Terri
14 A. Webster, Cathy Lexin, Bruce Herring, and Loraine Lee Chapin that the decision to adopt MP-
15 1 would have a material financial effect on these defendants in their capacity as public officials
16 or designated employees that was distinguishable from its effect on the public generally.

17 58. The defendants' disqualifying financial interests subject to this complaint
18 consisted of only those expected financial claims that they gained under the MP-1 contract that
19 were to be derived from the agreement of defendants Saathoff, Herring, Wilkinson, and Torres to
20 violate their fiduciary duties, as members of the SDCERS board of trustees, owed to the
21 SDCERS plan participants. Defendants Saathoff, Herring, Wilkinson, and Torres agreed under
22 this agreement not to require the City of San Diego to make actuarial-based payments to
23 SDCERS in violation of Art. 16 § 17 of the California State Constitution. In exchange for
24 defendants Saathoff, Herring, Wilkinson, and Torres agreeing to so violate their fiduciary duties,
25 the San Diego City Council and San Diego City Manager Jack McGrory agreed to violate their
26 fiduciary duties owed to the City of San Diego to limit the City's liabilities to the City's same-
27 year revenues. These City officials agreed to create rights to payments in favor of defendants

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1 and others in amounts that exceeded the City's liability limits set by San Diego City Charter § 99
2 and California State Constitution Art. 16 § 18.

3 59. Defendants held a financial interest in the 1996 mutual agreements of defendants
4 Saathoff, Herring, Wilkinson, and Torres and of the San Diego City Council and the San Diego
5 City Manager to violate their respective fiduciary duties in order to create illegal benefits in
6 favor of defendants and others. Included in those illegal benefits in which defendants held a
7 prohibited financial interest and which were adopted by the SDCERS board of trustees as part of
8 the unlawful agreement among and between defendants Saathoff, Herring, Wilkinson, and Torres
9 and the San Diego City Council and San Diego City Manager Jack McGrory were the following:
10 (1) a service credit purchase program in which the defendants and others would be permitted to
11 buy up to five years' worth of pension credits in the SDCERS pension fund; (2) an increase in
12 the benefit to general members for industrial disability retirement from 33-1/3% to 50%; (3) an
13 increase in the per year formula for determining which percentage defendants and others would
14 receive of their last year salary; and (4) the creation of a Deferred Retirement Option Plan that
15 would allow defendants and others special benefits in addition to their normal retirement
16 benefits.

17 60. The contract under which the defendants were to receive their disqualifying
18 economic interests is hereinafter referred to in this complaint as "Defendants' MP-1 Quid Pro
19 Quo Contract." The economic interest acquired under Defendants' MP-1 Quid Pro Quo Contract
20 will be hereinafter referred to as "Defendants' MP-1 Quid Pro Quo Economic Interest."

21 VIII.

22 **STEP 4: ECONOMIC INTEREST WAS INVOLVED IN THE DECISION**

23 61. The Defendants' MP-1 Quid Pro Quo Economic Interest was directly and
24 indirectly involved in the SDCERS board of trustees' governmental decision to adopt
25 Defendants' MP-1 Quid Pro Quo Contract.

26 62. On and before 21 June 1996, City Manager Jack McGrory, an agent of the City of
27 San Diego, which was the source of income for Defendants' MP-1 Quid Pro Quo Economic
28 Interest, initiated the proceeding before the SDCERS board of trustees during which Defendants

1 MP-1 Quid Pro Quo Contract was to be considered and approved or rejected by the SDCERS
2 board of trustees.

3 63. Defendants' financial interests were a subject of the proceedings before the
4 SDCERS board of trustees because under the Defendants' MP-1 Quid Pro Quo Contract,
5 defendants' would or would not receive illegal benefits depending on whether it was approved or
6 rejected by the SDCERS board of trustees on 21 June 1996.

7 64. The SDCERS board of trustees' approval or denial of Defendants' MP-1 Quid Pro
8 Quo Economic Interests had a financial effect on their personal finances as provided in Govt.
9 Code § 87103 and FPPC Reg. § 18704.5.

10 **IX.**

11 **STEP 5: THE DECISION HAD MATERIAL FINANCIAL EFFECT**

12 65. It was reasonably foreseeable to defendants that the SDCERS board of trustees'
13 governmental decision to consider and adopt or reject Defendants' MP-1 Quid Pro Quo Contract
14 would have a material financial effect on defendants' source of income (Defendants' MP-1 Quid
15 Pro Quo Economic Interest) under Defendants' MP-1 Quid Pro Quo Contract, as provided in the
16 FPPC regulations [Cal. Code of Regs., tit. 2 §§ 18704.5, 18705(a)(5), 18705.5(a)]. The personal
17 financial effect of the SDCERS board of trustees' decision to consider and adopt or reject
18 Defendants' MP-1 Quid Pro Quo Contract was in excess of the applicable dollar materiality
19 standard as provided by FPPC regulation [Cal. Code of Regs., tit. 2 §18705.5(a)].

20 **X.**

21 **STEP 6: FORESEEABLE INTEREST MATERIALLY AFFECTED**

22 66. The effects of the SDCERS board of trustees' decision to adopt Defendants' MP-
23 1 Quid Quo Pro Contract, that gave rise to defendants' disqualifying conflict of interest
24 consisting of Defendants' MP-1 Quid Pro Quo Economic Interests, were reasonably foreseeable
25 under all of the circumstances on and before 21 June 1996, the date the SDCERS board of
26 trustees made the decision to adopt Defendants' MP-1 Quid Pro Quo Contract.

27 67. On and before 21 June 1996, it appeared to the defendants that there was a
28 substantial likelihood, based upon all the facts available to defendants before and at the time the

1 SDCERS board of trustees made the governmental decision to adopt Defendants' MP-1 Quid Pro
2 Quo Contract, that the effects thereof would bring about the disqualifying conflict of interest as
3 provided in the FPPC Regulations (Cal. Code Regs., tit. 2, §18706).

4 **XI.**

5 **STEP 7: EFFECT DISTINGUISHABLE FROM GENERAL PUBLIC**

6 68. The effect of the SDCERS board of trustees' decision to adopt Defendants MP-1
7 Quid Pro Quo Contract on 21 June 1996, did not affect defendants' economic interests in
8 substantially the same manner as it did the public generally or a significant segment of the public
9 as provided by Govt. Code § 87103 and FPPC Regulations (Cal. Code Regs., tit. 2 §§ 18707 and
10 18707.1).

11 **XII.**

12 **STEP 8: OFFICIALS' PARTICIPATION NOT LEGALLY REQUIRED**

13 69. Defendants' participation in the SDCERS board of trustees governmental decision
14 to adopt Defendants' MP-1 Quid Pro Quo Contract was not necessary or required because there
15 was no necessity or requirement that the SDCERS board of trustees adopt Defendants' MP-1
16 Quid Pro Quo Contract. Defendants' participation in the SDCERS board of trustees' decision to
17 adopt Defendants' MP-1 Quid Pro Quo Contract was not legally required because defendants
18 were not faced with an isolated, nonrecurring situation involving a disqualifying conflict of
19 interest. There were reasonable alternatives and reasonable alternative manners of decision
20 making as provided in FPPC regulations [Cal. Code Regs., tit. 2, § 18708(a)].

21 **ALLEGATIONS RELATED TO CITY MANAGER'S PROPOSAL**

22 **NO. 2 AND SDCERS MEETING OF 11 JULY 2002**

23 70. Under Defendants' MP-1 Quid Pro Quo Contract, the City of San Diego was
24 required to make a balloon payment to SDCERS if the funding ratio changed so that SDCERS'
25 assets were less than 82.3% of SDCERS' liabilities, which would be 10% below the funded ratio
26 calculated at the June 30, 1996 actuarial valuation:

27 . . . The City will pay the agreed-to rates shown above for FY96 through FY2007.

28 In the event that the funded ratio of the System falls to a level 10% below the

1 funded ratio calculated at the June 1996 actuarial valuation [an asset to liability
2 funded ratio of 82%] which will include the impact of the benefit improvements
3 included in this Proposal, the City-paid rate will be increased on July 1 of the year
4 following the date of the actuarial valuation in which the shortfall in funded ratio
5 is calculated [the City's balloon payment]. The increase in the City-paid rate will
6 be the amount determined by the actuary necessary to restore a funded ratio no
7 more than the level that is 10% below the funded ratio calculated at the June 30,
8 1996 actuarial valuation [an asset-to-liability funded ratio of 82%].

9 71. By 11 July 2002, the eight defendants against whom this complaint is filed, (1)
10 Lawrence Grissom; (2) Ronald L. Saathoff; (3) John A. Torres; (4) Sharon K. Wilkinson; (5)
11 Terri A. Webster; (6) Cathy Lexin; (7) Bruce Herring; and (8) Loraine Lee Chapin (a.k.a.
12 Loraine Lee Etherington) knew that the SDCERS pension plan funding ratio that required the
13 balloon payment under the MP-1 Agreement was likely to be reached.

14 XIII.

15 **STEP 2: DEFENDANTS INFLUENCED GOVERNMENTAL DECISIONS**

16 72. On 11 July 2002, the SDCERS board of trustees voted on a 10 June 1996 San
17 Diego City Manager Proposal (modified on 18 June 2002, 21 June 2002, and 2 July 2002)
18 regarding SDCERS' contribution rates and reserves. This proposal has come to be known as
19 Managers' Proposal 2 ("MP-2").

20 73. In creating the MP-2 agreement, defendants followed the earlier format of MP-1
21 in which illegal benefits were created as part of a quid pro quo in which defendants Torres,
22 Saathoff, Lexin, Webster, and Wilkinson agreed to violate their fiduciary duties to protect
23 SDCERS plan participants by making the City of San Diego pay all sums due to the SDCERS
24 pension plan they agreed to do so in exchange for the San Diego City Council agreeing to create
25 illegal benefit liabilities in favor of defendants and others. The City officials agreed that the new
26 benefits would not be paid for with same-year revenues – an agreement that was in violation of
27 the City's liability limits that are contained in § 99 of the San Diego City Charter.

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1 74. As part of the mutual agreements to not abide by applicable fiduciary duty
2 requirements, defendants Saathoff, Lexin, Torres, Wilkinson and Webster agreed that in
3 exchange for more illegal benefits for defendants and others, these defendants would agree not to
4 enforce the City of San Diego’s covenant under MP-1 to make the balloon payment if the
5 SDCERS pension plan’s asset to liability funding ratio fell below 82.3%.

6 75. Under the terms of MP-2, the City of San Diego agreed to increase employee
7 pension benefits (including special benefits for defendants Webster and Saathoff) without
8 providing the funding needed to pay for those benefits. Under MP-2, unfunded liability was
9 created for which the City of San Diego was responsible and for which revenues from future
10 years would need to be used. The creation of liabilities under MP-2 for which same year City of
11 San Diego revenues were not available violated the liability limits of San Diego City Charter §
12 99 and California Constitution Art. 16 § 18.

13 76. On 11 July 2002, defendants Saathoff, Wilkinson, Torres, Webster and Lexin,
14 acting within the authority of their positions as members of the SDCERS board of trustees, each
15 made a governmental decision, as defined in Govt. Code § 87100 and FPPC Reg. § 18702.1, by
16 voting in favor of MP-2 at the 11 July 2002 Board of Trustees’ meeting. Defendants Saathoff,
17 Wilkinson, Torres, Webster and Lexin engaged in the conduct alleged in this complaint in
18 violation of Govt. Code §87100.

19 77. Between 29 May 2002 and 11 July 2002, defendant Bruce Herring, acting within
20 the authority of his position as a Deputy City Manager, participated in making the governmental
21 decision to adopt MP-2, as defined in Govt. Code § 87100 and FPPC Reg. 18702.2 by: (1)
22 negotiating the terms of and the methods and means by which MP-2 would be adopted by the
23 SDCERS board of trustees with the SDCERS Administrator Lawrence Grissom; (2) advising and
24 making recommendations to the board of trustee decision makers directly by (a) conducting
25 research and investigations that required the exercise of judgment on defendant Grissom’s part
26 with the intent and purpose of influencing the board of trustees to adopt MP-2 on 11 July 2002,
27 and, (b) preparing and presenting reports, analyses, and opinions orally and in writing that
28 required the exercise of judgment by defendant Grissom with the intent and purpose of

1 influencing the board of trustees decision to adopt MP-2. Defendant Bruce Herring engaged in
2 the conduct alleged in this complaint in violation of Govt. Code § 87100.

3 78. On and before 11 July 1996, defendant Loraine Lee Chapin, acting within the
4 authority of her position as SDCERS legal counsel, participated in making the governmental
5 decision to adopt MP-1, as defined in Govt. Code § 87100 and FPPC Reg. 18702.2, by doing the
6 following: (1) advising the decision-making members of the SDCERS board of trustees,
7 conducting legal research, and exercising her judgment for the purpose of influencing the
8 SDCERS board of trustees to adopt MP-2 on 11 July 2002; and (2) advising the decision-making
9 members of the SDCERS board of trustees by preparing an oral legal opinion that required the
10 exercise of judgment to influence the SDCERS board of trustees to adopt MP-2. Defendant
11 Loraine Lee Chapin engaged in the conduct alleged in this complaint in violation of Govt. Code
12 § 87100.

13 79. Defendants Lawrence Grissom, Ronald L. Saathoff, John A Torres, Sharon K.
14 Wilkinson, Terri A. Webster, Cathy Lexin, Bruce Herring, and Loraine Lee Chapin used their
15 official positions to influence the SDCERS board of trustees to adopt MP-2 in violation of Govt.
16 Code § 87100. These defendants also attempted to use their official positions to influence the
17 SDCERS board of trustees to adopt MP-1 in violation of Govt. Code § 87100.

18 XIV.

19 **STEP 3: DEFENDANTS HAD DISQUALIFYING ECONOMIC INTERESTS**

20 80. Defendants Grissom, Saathoff, Torres, Wilkinson, Webster, Lexin, Herring, and
21 Chapin each had a financial interest in a decision within the meaning of §87100. It was
22 reasonably foreseeable to defendants Grissom, Saathoff, Torres, Wilkinson, Webster, Lexin,
23 Herring, and Chapin that the decision to adopt MP-2 would have a material financial effect on
24 them in their capacity as public officials or designated employees distinguishable from its effect
25 on the public generally.

26 81. The defendants' disqualifying interests consisted of only those expected claims
27 under the MP-2 contract that were to be derived from defendants' agreement to violate their
28 fiduciary duties to require the City of San Diego to make actuarial based payments to SDCERS.

1 In exchange for defendants agreeing to violate their fiduciary duty, the San Diego City Council
2 and City Manager agreed to violate their fiduciary duties to limit the City's liabilities to its same
3 year revenues by creating rights to payments in favor of defendants and others in amounts that
4 exceeded the City's liability limits set by San Diego City Charter § 99 and California State
5 Constitution Art. 16 § 18.

6 82. The contract under which the defendants were to receive their disqualifying
7 economic interests is referred to in this complaint as "Defendants' MP-2 Quid Pro Quo
8 Contract." The economic interest acquired under Defendants' MP-2 Quid Pro Quo Contract will
9 be referred to as "Defendants' MP-2 Quid Pro Quo Economic Interest."

10 **XV.**

11 **STEP 4: ECONOMIC INTEREST WAS INVOLVED IN THE DECISION**

12 83. The Defendants' MP-2 Quid Pro Quo Economic Interest was directly and
13 indirectly involved in the SDCERS board of trustees' governmental decision to adopt
14 Defendants' MP-2 Quid Pro Quo Contract.

15 84. On and before 11 July 2002, an agent of the City of San Diego, the source of
16 income for Defendants MP-2 Quid Pro Quo Economic Interest, initiated the proceeding before
17 the SDCERS board of trustees during which Defendants' MP-2 Quid Pro Quo Contract was to be
18 considered, approved or rejected by the SDCERS board of trustees.

19 85. Defendants financial interests were a subject of the 11 July 2002 proceedings
20 before the SDCERS board of trustees because defendants were to receive or not receive illegal
21 benefits under Defendants' MP-2 Quid Pro Quo Contract should it be approved or rejected by
22 the SDCERS board of trustees on 11 July 2002.

23 86. The SDCERS board of trustees' approval or denial of Defendants' MP-2 Quid Pro
24 Quo Economic Interests had a financial effect on their personal finances as provided in Govt.
25 Code § 87103 and FPPC Reg. § 18704.5.

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1 **XVI.**

2 **STEP 5: THE DECISION HAD MATERIAL FINANCIAL EFFECT**

3 87. It was reasonably foreseeable to defendants that the SDCERS board of trustees'
4 governmental decision to consider and adopt or reject Defendants' MP-2 Quid Pro Quo Contract
5 would have a material financial effect on defendants' source of income (Defendants' MP-2 Quid
6 Pro Quo Economic Interest) under Defendants' MP-2 Quid Pro Quo Contract, as provided in the
7 FPPC regulations [Cal. Code of Regs., tit. 2 §§ 18704.5, 18705(a)(5), 18705.5(a)]. The personal
8 financial effect of the SDCERS board of trustees' decision to consider and adopt or reject
9 Defendants' MP-2 Quid Pro Quo Contract was in excess of the applicable dollar materiality
10 standard as provided by FPPC regulation [Cal. Code of Regs., tit. 2 §18705.5(a)].

11 **XVII.**

12 **STEP 6: FORESEEABLE INTEREST MATERIALLY AFFECTED**

13 88. The effects of the SDCERS board of trustees' decision to adopt Defendants' MP-
14 2 Quid Quo Pro Contract, that gave rise to defendants' disqualifying conflict of interest
15 consisting of Defendants' MP-2 Quid Pro Quo Economic Interests, were reasonably foreseeable
16 under all of the circumstances on and before 11 July 2002, the date the SDCERS board of
17 trustees made the decision to adopt Defendants' MP-2 Quid Pro Quo Contract.

18 89. On and before 11 July 2002, it appeared to the defendants that there was a
19 substantial likelihood, based upon all the facts available to defendants before and at the time the
20 SDCERS board of trustees made the governmental decision to adopt Defendants' MP-2 Quid Pro
21 Quo Contract, that the effects thereof would bring about the disqualifying conflict of interest as
22 provided in the FPPC Regulations (Cal. Code Regs., tit. 2, §18706).

23 **XVIII.**

24 **STEP 7: EFFECT DISTINGUISHABLE FROM GENERAL PUBLIC**

25 90. The effect of the SDCERS board of trustees' decision to adopt Defendants' MP-2
26 Quid Pro Quo Contract on 11 July 2002 did not affect defendants' economic interests in
27 substantially the same manner as the public generally or a significant segment of the public as

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1 provided by Govt. Code § 87103 and FPPC Regulations (Cal. Code Regs., tit. 2 §§ 18707 and
2 18707.1).

3 **XIX.**

4 **STEP 8: OFFICIALS' PARTICIPATION NOT LEGALLY REQUIRED**

5 91. Defendants' participation in the SDCERS board of trustees governmental decision
6 to adopt Defendants' MP-2 Quid Pro Quo Contract was not necessary or required because there
7 was no necessity or requirement that the SDCERS board of trustees adopt Defendants' MP-2
8 Quid Pro Quo Contract. Defendants' participation in the SDCERS board of trustees decision to
9 adopt Defendants' MP-2 Quid Pro Quo Contract was not legally required because defendants
10 were not faced with an isolated, nonrecurring situation involving a disqualifying conflict of
11 interest. There were reasonable alternatives and reasonable alternative manners of decision
12 making as provided in FPPC regulations [Cal. Code Regs., tit. 2, § 18708(a)].

13 92. Upon these premises, defendants have violated Govt. Code § 87100. The
14 governmental action taken by the SDCERS board of trustees of adopting and approving MP-1
15 and MP-2 might not otherwise have been taken or approved if the violation had not occurred.
16 The People seek an order of this court setting aside as void any contracts claimed under
17 defendants' MP-1 Quid Pro Quo Contract and Defendants' MP-2 Quid Pro Quo Contract.

18 93. The People seek an order of this court restraining the further execution of any
19 official action taken by the SDCERS board of administration in relation to the adoption of
20 defendants' MP-1 Quid Pro Quo Contract and Defendants' MP-2 Quid Pro Quo Contract
21 pending final adjudication by the Court in this action and permanently under the provisions of
22 Govt. Code § 91003.

23 94. Defendants' wrongful conduct, unless and until enjoined by order of this court,
24 will cause great and irreparable harm to SDCERS and the City of San Diego unless and until
25 enjoined by order of this court.

26 95. Plaintiff has no adequate remedy at law, unless this court acts to require
27 defendants to so act.

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1 96. Defendants are designated employees or public officials as specified in Govt.
2 Code § 87200. Each of the defendants have violated Govt. Code §87100 as alleged in this
3 complaint. Each of the defendants realized an economic benefit as a result of their MP-1 Quid
4 Pro Quo Interest and MP-2 Quid Pro Quo Interest they held under MP-1 and MP-2. The People
5 seek up to three times the value of the benefits defendants received in connection with their
6 violation of Govt. Code § 87100.

7 97. Doe defendants 1 through 25 are defendants' agents, co-conspirators, and aiders
8 and abettors in carrying out the unlawful acts set forth herein. The People are ignorant of the
9 true names of Doe defendants 1 through 25 and therefore sue them in their fictitious names.
10 Each of the Doe defendants are legally responsible for the violations set forth in this complaint
11 and are otherwise subject to the relief sought in this complaint. The People will amend this
12 complaint to add in the true names of the Doe defendants upon discovery.

13 98. Defendants intentionally concealed the factual basis from the People until January
14 2004. Accordingly, the statute of limitations was tolled, and the People brought this action
15 within four years of their discovery of the underlying facts giving rise to the causes of action set
16 forth in this complaint. Further, the defendants acted in concert with each other and conspired to
17 engage in the unlawful acts alleged in this complaint. Defendants engaged in material and
18 significant acts in furtherance of the objectives of the conspiracy to and including November
19 2002, as alleged above. This action was brought within four years of the date of the last overt act
20 alleged in this complaint.

21 99. Defendants knowingly and intentionally concealed from the People that the
22 reserve that had been purportedly created to pay for the benefits created pursuant to the MP-1
23 and MP-2 agreements was in fact funded with funds diverted from the SDCERS trust funds.
24 Thus defendants concealed from the People the fact that there were no separate funds to pay for
25 the retroactive and other benefits created under the MP-1 and MP-2 agreements.

26 100. As a direct and proximate result of the defendants' unlawful conduct, the
27 SDCERS pension has suffered irreparable injury. From 1997, the funded ratio of assets to
28 liabilities of the SDCERS pension fund has dropped from 93.3% to less than 65.8%. During this

1 same period the City's contribution (from employer and employees) has increased from 8.71% of
2 payroll to greater than 26.86%. Despite the significant increase in the City's contribution to the
3 SDCERS pension fund, the unfunded liability has increased from \$116,507,000 in 1997, to in
4 excess of \$1,368,648,000 in 2004 -- an 1100% increase. A significant and material part of this
5 increase in the unfunded liability of the SDCERS pension fund was a direct and proximate result
6 of the unlawful and unfunded pension benefits created as a result of the MP-1 and MP-2 Quid
7 Pro Quo Contracts.

8 **XX.**

9 **INJUNCTIVE AND OTHER RELIEF**

10 WHEREFORE, plaintiff prays for judgment against defendants as follows:

11 1. For statutory penalties against defendants, payable to the "General Fund of the
12 City of San Diego" according to proof, in an amount up to three times the benefit that they
13 received in violation of Govt. Code § 87100;

14 2. For an order setting aside the action taken by the SDCERS board of trustees on 21
15 June 1996, adopting MP-1 and further setting aside any and all benefits conferred on any party as
16 a result of the adoption of MP-1, as alleged in this complaint;

17 3. For an order setting aside the action taken by the SDCERS board of trustees on 11
18 July 2002, adopting MP-2 and further setting aside any and all benefits conferred on any party as
19 a result of the adoption of MP-2, as alleged in this complaint;

20 4. For a preliminary injunction and a permanent injunction enjoining defendants and
21 each of them and their agents, servants, and employees and successors and all persons acting in
22 concert with them or for them as set forth in this complaint;

23 5. For costs of litigation and reasonable attorneys' fees as provided by Govt. Code §
24 91003, subdivision (a); and

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6. For such other and further relief as the Court may deem proper.

Dated: July 7, 2005

Michael J. Aguirre
San Diego City Attorney
Attorneys for the People of
the State of California