

1 MICHAEL J. AGUIRRE, City Attorney, CA Bar No. 60402
 2 DON MCGRATH, Executive Assistant City Attorney, CA Bar No. 44139
 3 Office of the City Attorney
 4 1200 Third Avenue, Suite 1620
 5 San Diego, California 92101-4100
 Telephone: (619) 236-6220
 Facsimile: (619) 236-6018
 Attorneys for Defendants and Cross-Complainants
 SAN DIEGO CITY ATTORNEY MICHAEL J. AGUIRRE AND THE CITY OF SAN DIEGO

F I L E D
 Clerk of the Superior Court
JUL 03 2006
 By: C. REIN, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

9	SAN DIEGO CITY EMPLOYEES'	)	Case No. GIC 841845
10	RETIREMENT SYSTEM, by and through its	)	[Consolidated with Cases No. GIC 851286
	Board of Administration,	)	and GIC 852100]
11	Plaintiff,	)	DECLARATION OF DONNA FRYE IN
12	v.)		SUPPORT OF OPPOSITION TO NON-
13	SAN DIEGO CITY ATTORNEY MICHAEL J.)		PARTY SCOTT PETERS' MOTION TO
14	AGUIRRE; THE CITY OF SAN DIEGO and	)	DISQUALIFY, QUASH SUBPOENA AND
15	DOES 1-100,	)	FOR PROTECTIVE ORDER
	Defendants.	)	DATE: JULY 13, 2006
		)	TIME: 1:30 P.M.
		)	DEPT.: 69
16		)	I/C Judge: Hon. Jeffrey B. Barton
17		)	Dept.: 69
18		)	Action filed: January 27, 2005
19		)	Trial: October 6, 2006
20	AND RELATED ACTIONS.)		

21 I, DONNA FRYE, declare as follows:

22 1. I am the City Councilmember for the Sixth Council District of the City of San
 23 Diego which includes the communities of Clairemont, Kearny Mesa, Linda Vista, Mission Bay,
 24 Mission Valley and Serra Mesa. I have served on the San Diego City Council [hereinafter
 25 referred to as the CITY COUNCIL], representing District Six, since June 2001. I was recently re-
 26 elected to a second term on June 6, 2006. I am currently the chair of the CITY COUNCIL'S
 27 Natural Resources and Culture committee. As a City Councilmember, to the best of my
 28

1 knowledge, I have regularly attended and participated in all CITY COUNCIL meetings, in both
2 open and closed session since my election in June 2001, excepting those meetings wherein I
3 intentionally choose not to attend (ie., meetings relating to the Vincent & Elkins reports), due to
4 subject matter and or for other related reasons.

5
6 2. I am submitting this Declaration in support of the City of San Diego's Opposition
7 to Non-Party, Scott Peters' Motion to Disqualify the City Attorney, Quash Subpoenas and for a
8 Protective Order [hereinafter referred to as the PETERS MOTION].

9 3. I attended the CITY COUNCIL closed session meetings between February 2002
10 and July 2002 during which the retirement benefits for City of San Diego employees were
11 discussed. I attended the CITY COUNCIL closed session meetings during the spring of 2002
12 during which pension fund issues were discussed. I attended the CITY COUNCIL closed session
13 meetings during which the City of San Diego's legal strategy in regards to the Gleason v.
14 SDCERS lawsuit was discussed. I attended the CITY COUNCIL closed session meetings during
15 the spring and summer of 2003 during which the CITY COUNCIL met with the City Attorney's
16 office to discuss potential legal problems that might arise in regard to the "underfunding" of the
17 pension fund. I attended the meetings between the CITY COUNCIL and the City Attorney's
18 office in closed session wherein the status of this case was discussed.

19 4. I have personal knowledge of the matters stated herein and if sworn as a witness, I
20 could and would competently testify thereto.

21 5. The CITY COUNCIL has never voted to authorize Scott Peters to file his Motion
22 to Disqualify the City Attorney, Quash Subpoenas and for a Protective Order, or to file his
23 Declaration in support of such Motion. Scott Peters has not filed his Motion to Disqualify the
24 City Attorney, Quash Subpoenas and for a Protective Order, and his accompanying Declaration
25 on behalf of the CITY COUNCIL or myself.

26 6. Since the filing by the City Attorney of the City of San Diego's cross-complaint
27 herein, the CITY COUNCIL has not expressed any objection to such cross-complaint.
28

1 7. I have reviewed the Declaration of Scott Peters filed in Support of his Motion to
2 Disqualify the City Attorney, Quash Subpoenas and for a Protective Order [hereinafter referred
3 to as the PETERS DECLARATION]. Many of the matters attested to by Mr. Peters in his
4 Declaration are false.

5 8. The CITY COUNCIL waived the attorney-client privilege with respect to any
6 communications and information, both oral and written that were conveyed between February
7 2002 and July 2002 with respect to the "Meet and Confer" process set forth in Paragraph 2 of the
8 PETERS DECLARATION. This waiver of the attorney-client privilege by the CITY COUNCIL
9 is described in detail in the Declaration of Karen Heumann in Support of the City of San Diego's
10 Opposition to Scott Peters' Motion to Disqualify the City Attorney, Quash Subpoenas and for a
11 Protective Order [hereinafter referred to as the HEUMANN DECLARATION], filed herewith.
12 Please see also Exhibits 7 and 8 to the City of San Diego's Notice of Lodgment filed herewith. It
13 was the intent of the CITY COUNCIL to waive the attorney-client privilege with respect to all of
14 the verbal and written communications set forth in Paragraph 2 of the PETERS
15 DECLARATION.

16 9. With respect to the confidential information, legal advice and confidential written
17 memoranda referred to in Paragraph 3 of the PETERS DECLARATION, the attorney-client
18 privilege was waived by the CITY COUNCIL as conceded by Scott Peters in Paragraph 3 of the
19 PETERS DECLARATION.

20 10. With respect to the disclosure of confidential information by the CITY COUNCIL
21 members to the San Diego City Attorney's Office during closed session meetings referred to in
22 Paragraph 4 of the PETERS DECLARATION, the CITY COUNCIL specifically waived such
23 attorney-client privilege as set forth in the HEUMANN DECLARATION filed herewith.

24 11. With respect to the confidential information that was exchanged between CITY
25 COUNCIL members and the San Diego City Attorney's Office, and the confidential
26 memorandum of law dated August 7, 2003, referred to in Paragraph 5 of the PETERS
27 DECLARATION, the CITY COUNCIL waived the attorney-client privilege as set forth in the
28 HEUMANN DECLARATION filed herewith..

1 12. At the August 2 meeting referred to by Mr. Peters in Paragraph 6 of his
2 Declaration, the CITY COUNCIL did not state that the City Attorney was not authorized to file a
3 cross-complaint on behalf of the City of San Diego in this matter. At this meeting, the San Diego
4 City Attorney requested and received permission from the CITY COUNCIL to file and prosecute
5 the cross-complaint in this action on behalf of the City of San Diego. There was no ambiguity in
6 the City Attorney's request or the CITY COUNCIL'S authorization. Pursuant to Charter section
7 40, this authorization provided the City Attorney with the authority and duty to represent the City
8 of San Diego

9 13. The transcripts of the CITY COUNCIL closed session meetings referred to in
10 Paragraph 7 of the PETERS DECLARATION were provided to Mr. Peters as of May 13, 2006.

11 14. Starting as early as January 2005, the City Attorney advised the CITY COUNCIL
12 members on a number of occasions to obtain their own legal counsel, as it related to the various
13 governmental investigations. Many of the council members have done so. As such, no
14 confidential information regarding this case or those investigations, as it related to individual
15 council members, was provided by the CITY COUNCIL members to the San Diego City
16 Attorney's Office during the January and February 2006 closed session meetings of the CITY
17 COUNCIL.

18 15. Should the Motion of Scott Peters to Disqualify the City Attorney be granted, the
19 City of San Diego and its citizens will be greatly disadvantaged as this would require the City to
20 hire and retain new counsel. The change in legal counsel would slow down and/or halt the final
21 resolution of the current pension crisis which is desperately needed. Removal of the City
22 Attorney at this time would be great disservice to this action and the opportunity to resolve these
23 issues. Moreover, the people of the City of San Diego have the right to the legal representation
24 of their elected City Attorney and the deputies in his office, whose knowledge of this complex
25 matter has been gained while the request for disqualification has been delayed.

26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under the penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on July 3, 2006, at San Diego, California.


Donna Frye