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City of San Diego
COUNCIL PRESIDENT SCOTT PETERS
DISTRICT ONE

MEMORANDUM

DATE: November 29, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Council President Scott Peters *Elizabeth Kinsley for SPP*

SUBJECT: Payment of Court ordered Legal Fees for *SDCERS v. Aguirre* (No. GIC 841845), *People v. Grissom* (No. GIC 850246), and *Torres v. City* (No. GIC 852293)

On March 6, 2007, Superior Court Judge Linda B. Quinn entered a judgment which ordered the City of San Diego to pay the legal costs associated former City Employees involved in City pension related litigation filed by the City Attorney. The City Attorney appealed the lower court's decision. The Fourth Appellate Court denied the City Attorney's Appeal on July 25, 2007. He then filed a petition for review of this ruling to the Supreme Court of California. On October 24, 2007, the Supreme Court denied his petition for review. The City is now under mandatory court order to pay these fees.

Therefore, I have docketed this item as a supplemental docket item on the City Council meeting of December 3/4, 2007.

Thank you for your attention to this matter.

cc: Honorable City Attorney Michael Aguirre
Jay Goldstone, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst
Mary Lewis, Financial Management Director
Greg Levin, Comptroller
Greg Bych, Risk Management Director

Court of Appeal, Fourth Appellate District, Div. 1 - No. D049111
S156059

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JOHN A. TORRES, et al., Plaintiffs and Respondents,

v.

CITY OF SAN DIEGO, Defendant and Appellant;

BRUCE HERRING, Intervener and Respondent.

The petition for review is denied.

SUPREME COURT
FILED

OCT 24 2007

Frederick K. Ohrich Clerk

Deputy

GEORGE
Chief Justice

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOHN A. TORRES et al.,

Plaintiffs and Respondents,

v.

CITY OF SAN DIEGO,

Defendant and Appellant;

BRUCE HERRING,

Intervener and Respondent.

D049111

(Super. Ct. No. GIC852293)

APPEAL from an order of the Superior Court of San Diego County, Linda B. Quinn, Judge. Dismissed in part; affirmed in part.

Plaintiffs, John A. Torres, Ronald L. Saathoff, Cathy Lexin, Terri A. Webster, Sharon K. Wilkinson and Mary Vattimo, and plaintiff-in-intervention, Bruce Herring, are former members of the Board of Administration of the San Diego City Employees' Retirement System (SDCERS).¹ The board members sued the City of San Diego (City) for specific performance and declaratory relief, alleging that under a City resolution and

Government Code section 995 the City was required to pay for their defense in a civil action the San Diego City Attorney, Michael Aguirre, filed against them on behalf of the People of California, and in another civil action in which he filed a cross-complaint against them on behalf of the City. The board members obtained summary judgment against the City. The City filed a late notice of appeal and we dismissed the matter.

Subsequently, the trial court issued an order awarding the board members attorney fees incurred in this action, under the City's resolution. The City has timely appealed the order, but also purports to raise issues pertaining to the summary judgment. We dismiss the appeal to the extent it concerns the summary judgment ruling as we lack jurisdiction to consider it. We affirm the order on the attorney fees incurred in this action.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2005, Aguirre, on behalf of the People of the State of California, filed a first amended complaint against the board members (with the exception of Vattimo) for the recovery of economic benefits wrongly received and injunctive relief under the Political Reform Act of 1974, as amended. (*People v. Grissom* (Super. Ct. San Diego County, 2005, No. GIC850246).) The complaint alleged that in 1996, in connection with their service with SDCERS, the board members violated conflict of interest laws by

¹ For convenience we refer to the plaintiffs and the plaintiff-in-intervention as board members.

voting to increase employee pension-benefits without providing the required funding, thereby creating an "unfunded liability . . . for which the City . . . was to be responsible and for which revenues from future years would pay."

Also in July 2005, Aguirre, on behalf of the City, filed a cross-complaint against the board members for declaratory relief, breach of trust, breach of fiduciary duty, fraud, negligence and conspiracy. The underlying complaint was by SDCERS against Aguirre and the City. The cross-complaint alleged the same misconduct as alleged in *People v. Grissom*, and added that the board members violated Government Code section 1090, which prohibited them from taking action on contracts in which they had a financial interest. (*SDCERS v. Aguirre*, Super. Ct. San Diego County, 2005, No. GIC841845.) The record contains no evidence the San Diego City Council (City Council) approved Aguirre's filing of either of these civil actions.

In 2002 the City Council had unanimously adopted a resolution designated R-297335. The resolution's preamble explains that SDCERS board members "may, from time to time be subjected to claims and suits for actions taken in [that] capacity," and "there is a need to protect and encourage individuals who volunteer their time and their talent to serve in the public interest." The resolution provides that "the City shall defend, indemnify and hold harmless all past, present and future members of the Retirement Board against all expenses, judgments, settlements, liability and other amounts actually and reasonably incurred by them in connection with any claim or lawsuit arising from any act or omission in the scope of the performance of their duties as Board Members."

The board members tendered the defense of the two civil actions to the City based on the resolution and Government Code section 995.² That created an unusual situation, of course, as Aguirre, the City Attorney, filed the actions and the provision of a defense would require the City to pay both prosecution and defense costs.

The City Council sought legal advice on the matter from the law firm Procopio Cory Hargreaves & Savitch, LLP (Procopio). In a July 2005 memorandum that was later publicly released, Procopio concluded the City was obligated to provide the board members a defense in the two civil actions, notwithstanding the City Attorney's role in the lawsuits. The following month the City Council voted 4 to 2 to provide a defense, but a vote of five was required to carry the matter. The board members thus retained their own defense counsel.

In August 2005, the board members, excluding Herring, sued the City for specific performance and declaratory relief, seeking a defense in the civil actions based on Resolution R-297335 and Government Code section 995. Herring filed a complaint-in-intervention against the City for the same relief.

The board members filed a motion for summary judgment. After a January 2006

² Government Code section 995 provides: "Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him [or her], in his [or her] official or individual capacity or both, on account of an act or omission in the scope of his [or her] employment as an employee of the public entity. [¶] For the purposes of this part, a cross-action, counterclaim or cross-complaint against an employee or former employee shall be deemed to be a civil action or proceeding brought against him [or her]."

hearing, the court confirmed its tentative ruling granting the motion on the grounds that under resolution R-297335 and Government Code section 995 the board members are entitled to recover from the City all attorney fees and costs incurred in the two civil actions. Under Government Code section 995, the duty to defend is mandatory unless the public entity finds any of the following: "(1) The act or omission was not within the scope of his or her employment. [¶] (2) He or she acted or failed to act because of actual fraud, corruption, or actual malice. [¶] The defense of the action . . . by the public entity would create a specific conflict of interest between the public entity and the employee or former employee." (Gov. Code, § 995.2, subd. (a).) Government Code section 995.2, subdivision (c) "appears to have been intended to allow a public entity to withdraw from the defense of an employee in conflict of interest situations because it is unreasonable to require a public entity to finance litigation directed against it." (*Stewart v. City of Pismo Beach* (1995) 35 Cal.App.4th 1600, 1606.) The board members submitted undisputed evidence, however, that the City Council never made any finding under Government Code section 995.2.

The court also determined that in a later noticed motion the board members could request attorney fees incurred in this action. The judgment, entered on March 6, 2006, contained blank spaces for the later entry of the amounts of fees and costs each board member incurred in this action.

The following May 10, the City filed a notice of appeal of the judgment, *Torres v. City of San Diego*, D048687. Torres filed a motion to dismiss and the City filed opposition to the motion. We dismissed the appeal as untimely on June 1.

In June 2006 the City Attorney's Office served on the parties a request to dismiss the board members from the cross-complaint in the *SDCERS v. Aguirre* action. In October the City Attorney's Office filed a request to dismiss the complaint in *People v. Grissom*, and a dismissal was entered. When that case was dismissed, the court was considering a motion by board member Lexin to disqualify the City Attorney's Office from representing the People based on conflicts of interest such as its provision of legal advice to Lexin regarding the subject matter of the lawsuit.³

The board members then moved for attorney fees incurred in this action. The motion was supported by declarations from the board members' attorneys attesting to the amount of fees and costs incurred, and by detailed time entries.

The City opposed the motion on the ground attorney fees are not authorized by contract, statute or law. The City argued that neither resolution R-297335 nor Government Code section 995 provide for the recovery of fees by the prevailing party in an action to obtain a defense or indemnity. The City did not contest the amount or reasonableness of the fees requested.

In reply, the board members argued the plain language of the resolution entitles them to attorney fees incurred in enforcing the City's duty under the resolution to provide them with a defense in the underlying civil actions. The hearing was originally scheduled for June 2, 2006, but the court continued it to June 23 to allow the City "to provide

³ We have taken judicial notice of these documents in the *People v. Grissom* superior court file. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

supplemental briefing on whether . . . Resolution R-297335 provides a legal basis for an award of attorney's fees" to the board members. Originally, the board members sought attorney fees under Government Code section 800 and Code of Civil Procedure section 128.5.

On June 23, the court issued an order that granted the motion for fees on the basis of the resolution. The court awarded the board members various amounts for fees and costs incurred in this action, totaling \$182,342.50 and \$6,176.16, respectively, and the individual awards were added to the judgment. The City timely appealed the June 23 order.

DISCUSSION

I

Motion to Dismiss

A

The board members have moved to dismiss the City's appeal insofar as it purports to raise issues pertaining to the summary judgment, which the City did not timely appeal. The City counters that the court's June 23, 2006 order on attorney fees "substantially and materially altered" the judgment, thus beginning anew the time within which to appeal. The City asserts the board members were not entitled to summary judgment because they did not plead or prove the essential elements of a claim for specific performance and Government Code section 995 provides no basis for declaratory relief or specific performance.

Unless otherwise provided by law, a notice of appeal must be filed on or before the earliest of three dates: (1) 60 days after the court clerk serves a notice of entry of judgment or a file-stamped copy of the judgment on the appealing party, (2) 60 days after the appealing party serves or is served by the opposing party with a notice of entry of judgment, or (3) 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a.) "If a notice of appeal is filed late, the reviewing court must dismiss the appeal." (*Id.*, rule 8.104(b).)

"The effect of an amended judgment on the appeal time period depends on whether the amendment substantially changes the judgment or, instead, simply corrects a clerical error." (Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2006) ¶ 3:56, pp. 3-24 to 3-25.) "When the trial court amends a nonfinal judgment in a manner amounting to a *substantial modification* of the judgment (e.g., on motion for new trial or motion to vacate and enter different judgment), the amended judgment supersedes the original and becomes the appealable judgment (there can only be *one* 'final judgment' in an action . . .). Therefore, a new appeal period starts to run from notice of entry or entry of the *amended* judgment." (*Id.*, ¶ 3:56.1, p. 3-25.) "For example, an order amending a judgment to reflect the *correct name of a party* . . . substantially changes the judgment and therefore starts a new appeal time period (for an appeal from the amended judgment)." (*Id.*, ¶ 3:56.1a, p. 3-25.) The City relies on *CC-California Plaza Assocs. v. Paller & Goldstein* (1996) 51 Cal.App.4th 1042, 1049, in which the court explained, "we cannot imagine a more substantial or material change in the form of a judgment than in the identity of the losing party."

It is well settled, however, that "[w]here the judgment is modified merely to add costs, attorney fees and interest, the original judgment is not substantially changed and the time to appeal it is therefore not affected." (Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs, *supra*, ¶ 3:56:3, p. 3-26; *Amwest Sur. Ins. Co. v. Patriot Homes, Inc.* (2005) 135 Cal.App.4th 82, 84, fn. 1.) "When a party wishes to challenge both a final judgment *and* a postjudgment costs/attorney fee order, the normal procedure is to file *two separate appeals*: one from the final judgment, and a second from the postjudgment order." (Eisenberg et al., *supra*, ¶ 2:156.1, p. 2-73.)

The June 23, 2006 order on attorney fees and costs did not amend the March 6, 2006 judgment in any substantive way. Rather, the judgment was merely modified to add the fees and costs awards. Accordingly, we lack jurisdiction to consider any aspect of the summary judgment ruling.

B

The City contends the modification of the March 6, 2006 judgment to add attorney fees and costs was a "material and substantial" change, since the spaces left on the judgment for the later entry of fees were supposed to be for fees the board members incurred in defending the two underlying civil actions. The City complains that "[i]nstead of moving to insert the attorney's fees and costs incurred in the *other two lawsuits* . . . , [the board members] applied for an award of the fees and costs they incurred in the *current lawsuit*," and that action "left them hoist[ed] on their own petard." (Boldface omitted.) The City is incorrect, as the judgment stated the blank spaces were for fees "incurred in *this* action." (Italics added.) As discussed, the addition to the

judgment of attorney fees and costs awarded in a postjudgment order does not constitute a substantial change in the judgment for purposes of the notice of appeal deadline.

We also reject the City's argument the judgment was substantially changed because the basis for attorney fees in this action was not "an undisputed statute or contract," but resolution R-297335, which raised "new legal issues." The City points out that in their complaint the board members prayed for attorney fees under Government Code section 800 and Code of Civil Procedure section 128.5, rather than under the resolution. The legal basis for a fee award, however, is reviewed in the appeal from the order awarding fees; it does not resurrect a stale appeal of the judgment. The legal basis for the award has nothing to do with the propriety of the underlying summary judgment.

Further, the City's cursory assertion the court denied it due process is unfounded. In its opposition to the motion for attorney fees, the City raised the resolution, arguing it does not provide a basis for an award of fees in this action. When the board members claimed in their reply that the resolution does entitle them to fees, the court continued the hearing for three weeks to give the City the opportunity for further briefing. The City cites no authority for the notion it did not receive a fair hearing and opportunity to be heard on the matter.

Lastly, the City's reliance on *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736 (*Stone*), is misplaced. In *Stone*, the Regents of the University of California (Regents) appealed a judgment directing a writ of mandate issue to compel them to provide a defense to a physician (*Stone*) in an underlying civil action against him. *Stone* moved to dismiss the appeal as untimely. The trial court had ruled the Regents

acted arbitrarily in refusing to defend Stone, and granted a petition requiring them to provide him a defense from May 25, 1995. Judgment was initially entered on March 25, 1996. The Regents successfully moved for reconsideration, and on May 15, 1996, a new judgment was entered, identical to the first but directing them to pay for Stone's defense from March 25, 1996. Stone then moved for reconsideration, and the trial court modified the judgment to require the Regents to pay his defense from June 12, 1995. On July 26, 1996, notice of entry was served on the Regents, and they filed a notice of appeal on August 9 from the judgment as modified. (*Id.* at p. 743.)

The appellate court held the appeal was timely, explaining the "July 22, 1996, amendment was undeniably one of substance The modification required the Regents to pay Stone's legal expenses for an additional nine months. That materially affected their rights. While the Regents would have been prudent to file a timely notice of appeal from the original judgment, just in case, Stone's partial victory on his motion for reconsideration saved the day for them." (*Stone, supra*, 77 Cal.App.4th at p. 744.)

Stone is not "practically on all fours with this case," as the City asserts, as it does not concern a postjudgment award of attorney fees incurred in bringing that action. Rather, that case concerns a change in the terms of the judgment requiring the Regents to defend Stone in an underlying action. Here, in contrast, the court's June 23, 2006 order did not alter the terms of the summary judgment. *Stone* is inapplicable.

II

Attorney Fees Under Resolution R-297335

Attorney fees are allowed as costs to the prevailing party when authorized by any of the following: contract, statute or law. (Code Civ. Proc., §§ 1032, subs. (a)(4) & (b), 1033.5, subd. (a)(10); Civ. Code, § 1717.) "Except as attorney's fees are specifically provided for by statute [e.g., Code Civ. Proc., § 1033.5, subd. (a)(10)], the measure and mode of compensation of attorneys . . . is left to the agreement . . . of the parties." (Code Civ. Proc., § 1021.) The legal basis for an award of attorney fees is a question of law we review independently. (*Leamon v Krajewicz* (2003) 107 Cal.App.4th 424, 431.)

The City contends that because R-297335 does not expressly state fees shall be awarded the "prevailing party" in any action to enforce the resolution, the fee award here is improper. The City relies on *Hillman v. Leland E. Burns, Inc.* (1989) 209 Cal.App.3d 860 (*Hillman*), and *Otis Elevator Co. v. Toda Const. of California* (1994) 27 Cal.App.4th 559 (*Otis*), which are in a line of cases holding attorney fees are not available in the prosecution of an indemnity action absent clear language in the indemnity agreement stating the parties contemplated an award of fees for enforcing the agreement. (*Otis*, at p. 566.)

In *Otis, supra*, 27 Cal.App.4th 559, the court, following the reasoning of *Hillman* and related cases, held that "[b]ecause the indemnity agreement at issue here did not explicitly provide for attorney fees incurred in pursuing an indemnity claim against [the indemnitor], [the indemnitee] was not entitled to them. The attorney fee award must therefore be amended to reflect only those fees incurred in the [underlying third party]

personal injury action." (*Id.* at p. 566.) The pertinent question under the *Hillman* line of cases is whether the indemnity provision contains language "which reasonably can be interpreted as addressing the issue of an action between the parties on the contract." (*Building Maintenance Service Co. v. AIL Systems, Inc.* (1997) 55 Cal.App.4th 1014, 1030; *Continental Heller Corp. v. Amtech Mechanical Services, Inc.* (1997) 53 Cal.App.4th 500, 509.)

In *Otis, supra*, 27 Cal.App.4th at page 564, the subcontract between the parties provided indemnity for " 'all liability, charges, penalties, fines, costs, fees, losses, damages, expenses, causes of action, claims, suits, settlements, awards and judgments (including reasonable attorney's fees) resulting from injury or death sustained by any person . . . which injury, death or damage arises out of, or is in any way *connected with, or incidental to the performance of the work under this Subcontract.*' " (Italics added.) The court rejected the notion the clause covered attorney fees incurred in litigating the indemnity claim, as the "subcontract permits recovery of expenses, including attorney fees, incurred in defense of any third party claims arising out of Otis's [indemnitor] performance of the work promised in the subcontract. . . . The provision does not specifically state . . . that Toda [indemnatee] would be entitled to such fees in an action to enforce the *indemnity* provision of the subcontract." (*Otis, supra*, at p. 564.) The indemnity clause in *Hillman* was similar to that in *Otis*. (*Hillman, supra*, 209 Cal.App.3d at p. 866.)

This action does not concern an indemnity contract between the parties, but a public agency resolution. "A decision is authority only for the point actually passed on

by the court and directly involved in the case. General expressions in opinions that go beyond the facts of the case will not necessarily control the outcome in a subsequent suit involving different facts." (*Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985; *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.)

The construction of a municipal resolution is governed by the rules that govern construction of statutes. (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.) The "primal principle of statutory construction requires the ascertainment of the *intent of the legislative body* [citations] When . . . there is no direct evidence of the legislative intent, the court turns first to the words of the enactment for the answer and may also rely upon extrinsic aids [citations], including *recitals and findings in the enactment.*" (*County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668-669, italics added.)

Resolution R-297335 requires that the City "defend, indemnify and hold harmless all past, present and future members of the Retirement Board against *all expenses, judgments, settlements, liability and other amounts* actually and reasonably incurred by them *in connection with any claim or lawsuit arising from any act or omission in the scope of the performance of their duties as Board Members.*" (Italics added.) To any extent that language, standing alone, could be construed to cover only attorney fees incurred in underlying third party suits, such a construction is belied by the City Council's declared intent in passing the resolution: it did not want any of the 13 members of the SDCERS Board of Administration to incur attorney fees associated with any litigation pertaining to the discharge of their duties. Again, the resolution's preamble explains

"there is a need to *protect* and *encourage* individuals who volunteer their time and their talent to serve in the public interest." (Italics added.) Board members would obviously not be protected or encouraged to serve if they were required to incur substantial attorney fees and costs to enforce the City's duty of defense under the resolution.

We acknowledge that the situation here is unusual since the defense obligation arose in conflict of interest actions filed by the City Attorney's Office, and in passing resolution R-297335 the City Council likely did not foresee this situation. The City Council, however, never made any finding of wrongdoing on the board members' part that may have excused the City from its defense obligation. (See Gov. Code, § 995.2; *Stewart v. City of Pismo Beach, supra*, 35 Cal.App.4th at p. 1606.) Contrary to Aguirre's position in this appeal, his filing of the underlying civil actions is not tantamount to the City Council making a finding of wrongdoing, particularly since there is no evidence the City Council even approved of his filing of the actions. Further, Aguirre dismissed the civil actions against the board members before any findings on the merits were made, and thus there was no showing of any actual conflict of interest. Under all the circumstances, we agree with the trial court's assessment that resolution R-297335 entitles the board members to attorney fees and costs incurred in this action.

DISPOSITION

The appeal is dismissed to the extent it purports to appeal issues pertaining to the summary judgment. In all other respects, the June 23, 2006 order awarding attorney fees and costs is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.

Filed 8/17/07.

CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

JOHN A. TORRES et al.,

Plaintiffs and Respondents,

v.

CITY OF SAN DIEGO,

Defendant and Appellant;

BRUCE HERRING,

Intervener and Respondent.

D049111

(Super. Ct. No. GIC852293)

ORDER CERTIFYING OPINION
FOR PUBLICATION

THE COURT:

The opinion filed July 25, 2007, is ordered certified for publication.

The attorneys of record are:

Michael J. Aguirre, City Attorney, and Joe Cordileone, Deputy City Attorney, for
Defendant and Appellant.

Sheppard, Mullin, Richter & Hampton, Robert D. Rose and Frank J. Polek for
Plaintiff and Respondent John A. Torres.

Coughlan, Semmer & Lipman, R.J. Coughlan, Jr., and Cathleen G. Fitch for
Plaintiff and Respondent Ronald L. Saathoff.

Law Office of Frank T. Vecchione and Frank T. Vecchione for Plaintiff and
Respondent Teresa A. Webster.

Damiani Law Group and Lisa J. Damiani for Plaintiff and Respondent Sharon K.
Wilkinson.

Gibson, Dunn & Crutcher and Nicola T. Hanna for Plaintiff and Respondent Cathy
Lexin.

Hahn & Adema and David Hahn for Plaintiff and Respondent Mary Vattimo.

Schwartz, Semerdjian, Haile Ballard & Cauley and Kristen T. Dalessio for
Intervener and Respondent.

McCONNELL, P. J.

Copies to: All parties

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6 Attorneys for Plaintiff JOHN A. TORRES

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN DIEGO
9

10 JOHN A. TORRES, RONALD L.
11 SAATHOFF, CATHY LEXIN, TERRI A.
12 WEBSTER, SHARON K. WILKINSON,
and MARY VATTIMO,

Plaintiffs,

v.

14 THE CITY OF SAN DIEGO,

15 Defendant.

16 BRUCE HERRING,

17 Plaintiff-in-Intervention
18

Case No. GIC 852293

NOTICE OF ENTRY OF JUDGMENT

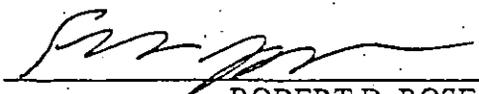
DEPT: 74
JUDGE: Linda B. Quinn

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on March 6, 2006, the Court entered a
21 Judgment by Court Under C.C.P. § 437c. Attached hereto as Exhibit "A" is a true and
22 correct copy of the Judgment.

23 DATED: March 9, 2006

24 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

25
26 By 

27 ROBERT D. ROSE
FRANK J. POLEK

28 Attorneys for Plaintiff John A. Torres

F I L 0 1 9 2

Clerk of the Superior Court

MAR 6 2006

By. M. BARHAM, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOHN A. TORRES, RONALD L.
SAATHOFF, CATHY LEXIN, TERRI A.
WEBSTER, SHARON K. WILKINSON,
and MARY VATTIMO,

Plaintiffs,

v.

THE CITY OF SAN DIEGO,

Defendant.

BRUCE HERRING

Plaintiff-in-Intervention

Case No. GIC 852293

~~PROPOSED~~ JUDGMENT BY
COURT UNDER C.C.P. § 437c

DEPT: 74
JUDGE: Linda B. Quinn

This Court, having granted on January 20, 2006 the motion for summary judgment by Plaintiffs John A. Torres, Ronald L. Saathoff, Mary Vattimo, Cathy Lexin, Terri A. Webster and Sharon K. Wilkinson, and joined by Plaintiff-in-Intervention Bruce Herring (collectively, "Plaintiffs"), and having ordered entry of judgment as requested in said motion,

IT IS ORDERED, ADJUDGED AND DECREED that:

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2
3 1. Plaintiffs are entitled to recover from Defendant The City of
4 San Diego all attorneys' fees and costs of suit incurred by them, or to be incurred by them,
5 in defense of those claims filed against them in those lawsuits styled as: (1) *People of the*
6 *State of California v. Grissom, et al.*, San Diego Superior Court Case No. GIC 850246; and
7 (2) *San Diego City Employees' Retirement System v. Aguirre, et al.*, San Diego Superior
8 Court Case No. GIC 841845.

9
10 2. Plaintiff John A. Torres shall recover from Defendant The City of
11 San Diego attorneys' fees incurred in this action in the amount of \$ 111,908.00, plus
12 costs of suit in the amount of \$ 2,826.12.

13
14 3. Plaintiff Ronald L. Saathoff shall recover from Defendant The City of
15 San Diego attorneys' fees incurred in this action in the amount of \$ 2,925.00, plus
16 costs of suit in the amount of \$ 317.50.

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18 4. Plaintiff Cathy Lexin shall recover from Defendant The City of
19 San Diego attorneys' fees incurred in this action in the amount of \$ 6,222.50, plus
20 costs of suit in the amount of \$ 317.50.

21
22 5. Plaintiff Terri A. Webster shall recover from Defendant The City of
23 San Diego attorneys' fees incurred in this action in the amount of \$ 12,960.00, plus
24 costs of suit in the amount of \$ 317.50.

25
26 6. Plaintiff Sharon K. Wilkinson shall recover from Defendant The City
27 of San Diego attorneys' fees incurred in this action in the amount of \$ 13,681.00, plus
28 costs of suit in the amount of \$ 364.50.

1 7. Plaintiff Mary Vattimo shall recover from Defendant The City of
2 San Diego attorneys' fees incurred in this action in the amount of \$ 11,321.50, plus
3 costs of suit in the amount of \$ 317.50.

4
5 8. Plaintiff-in-Intervention Bruce Herring shall recover from Defendant
6 The City of San Diego attorneys' fees incurred in this action in the amount of
7 \$ 23,324.50, plus costs of suit in the amount of \$ 1,715.54.

8
9
10 IT IS SO ORDERED.

11
12 Dated: 3-6-06.

Linda B. Quinn

JUDGE OF THE SUPERIOR COURT

JUDGE LINDA B. QUINN

FRANK T. VECCHIONE
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November 7, 2007

VIA HAND DELIVERY

Scott Peters, President
San Diego City Council
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: SDCERS v. Aguirre
San Diego Superior Court Case No. GIC841845

People v. Grissom
San Diego Superior Court Case No. GIC850246

Torres v. City
San Diego Superior Court Case No. GIC852293

Dear Mr. Peters:

In order to provide you further documentation with regard to Court Orders and Opinions as they pertain to the granting of attorney fees in the above-entitled matters, enclosed please find the following:

- (1) Ruling of Judge Linda Quinn ordering attorney fees in SDCERS v. Aguirre and People v. Grissom, dated January 20, 2006;
- (2) Judgment Ordering Attorney Fees in SDCERS, Grissom, and Torres, dated March 6, 2006;
- (3) Ruling of Judge Linda Quinn granting Motion for Attorney Fees in Torres v. City of San Diego, dated June 29, 2006;

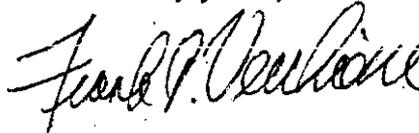
FRANK T. VECCHIONE
ATTORNEY AT LAW

Scott Peters
November 7, 2007
Page 2

- (4) Opinion of the Fourth District Court of Appeals in Torres v. City of San Diego, Case No. D049111, affirming the Rulings of Judge Quinn with regard to the payment of attorney fees in the three (3) above-entitled matters;
- (5) Order of Supreme Court of California denying the Petition for Review filed by the City Attorney, dated October 24, 2007.

I had previously provided the Court Rulings and Opinions to Jay Goldstone on August 20, 2007, and thought they may be of importance in your consideration of this matter. Your attention to this matter is greatly appreciated.

Sincerely yours,



Frank T. Vecchione
Attorney at Law

FTV:lnh
Enclosures

501 West Broadway
Suite 400
San Diego, California 92101
(619) 232-0800
FAX (619) 232-0107

RECEIVED
NOV 01 2007
COUNCIL MEMBER
SCOTT PETERS

Cathleen G. Fitch
Barbara Howe Murray
Daniel A. Kaplan
Earl M. Pott
Stacie L. Patterson
Harold C. Trimmer

R.J. Coughlan, Jr.*
Robert F. Semmer**
Michael L. Lipman***
* Also admitted in District of Columbia,
Maryland and Virginia
** Also admitted in Illinois
*** Also admitted in New York

November 1, 2007

R.J. Coughlan, Jr.
rcoughlan@cslaw.com

VIA HAND DELIVERY

Mayor Jerry Sanders
City of San Diego
11th Floor, 202 "C" Street
San Diego, CA 92101

VIA HAND DELIVERY

Scott Peters, President
San Diego City Council
202 "C" Street, MS #10A
San Diego, CA 92101

Re: ***SDCERS v. Aguirre***
San Diego Superior Court Case No. GIC841845

People v. Grissom
San Diego Superior Court Case No. GIC850246

Torres v. City
San Diego Superior Court Case No. GIC852293

Gentlemen:

On October 24, 2007, the California Supreme Court rejected the City of San Diego's petition for review in *Torres v. City*, GIC852293, thus finalizing the Court of Appeal ruling that the City must pay our clients' legal fees and costs in all the captioned matters. As you will recall, these are the two matters in which the City Attorney sued several former board members of SDCERS, only to later dismiss the cases or to lose them, and the matter in which those former board members were forced to sue the City to recover their fees and costs.

Over the years, these board members, acting through counsel, have repeatedly requested payment of their legal fees and costs in defending the frivolous legal actions which the City Attorney brought against them. Nonetheless, rather than paying these legitimate requests, the City Attorney fought and lost in the Superior Court, appealed and lost in the Court of Appeal, and sought review and lost in the Supreme Court. All of that litigation is now final with the Supreme Court's issuance of its Order on October 24, and there is no legal excuse remaining for the City not to pay these bills in accordance with the Court orders and Judgment. So there can be no misunderstanding, we quote from the Judgment:

Mayor Jerry Sanders
Scott Peters
November 1, 2007
Page 2

Plaintiffs are entitled to recover from Defendant the City of San Diego all attorneys' fees and costs of suit incurred by them, or to be incurred by them, in defense of those claims filed against them in those lawsuits styled as: (1) *People of the State of California v. Grissom, et al.*, San Diego Superior Court Case No. GIC 850246; and (2) *San Diego City Employees' Retirement System v. Aguirre, et al.*, San Diego Superior Court Case No. GIC 841845.

We enclose for your review Frank T. Vecchione's letter on behalf of all of our clients dated August 20, 2007 to Jay Goldstone requesting payment of the fees and costs. (We are not enclosing another copy of all the supporting materials Mr. Vecchione sent to Mr. Goldstone. Please contact Mr. Vecchione immediately if you need further copies of those backup materials.) We note that Mr. Vecchione received no response from Mr. Goldstone to his letter. At that time, perhaps Mr. Goldstone viewed the matter as not yet being final because the City Attorney had petitioned for review in the Supreme Court. However, that is no longer the case because the case has been finally decided.

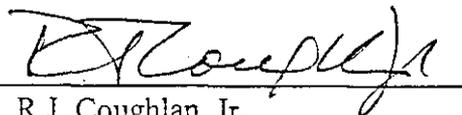
Please accept this letter as our demand for prompt payment of all attorneys' fees, costs and interest as submitted by Mr. Vecchione on August 20, 2007, and fees, costs and interest since then. We are confident the City does not want to incur more interest or legal fees and costs. Nor do our clients. Thus, we assume you will work with us promptly to see that full and current payment is made in the immediate future.

However, if we do not hear from you or your representatives by November 13, 2007, it is our intention to take appropriate enforcement action to collect these debts. We look forward to hearing from you promptly. Please feel free to call Jerry Coughlan (619-232-0800) in response or to email, call or write any of us.

Very truly yours,

COUGHLAN, SEMMER & LIPMAN, LLP

By: _____



R.J. Coughlan, Jr.

Attorneys for Ronald L. Saathoff

LAW OFFICE OF FRANK T. VECCHIONE

By: Frank T. Vecchione by ETC
Frank T. Vecchione
Attorneys for Teresa A. Webster

SHEPPARD MULLIN RICHTER & HAMPTON
LLP

By: Frank J. Polek for
Frank J. Polek
Attorneys for John A. Torres

DAMIANI LAW GROUP

By: Lisa J. Damiani by ETC
Lisa J. Damiani
Attorneys for Sharon K. Wilkinson

GIBSON, DUNN & CRUTCHER, LLP

By: Nicola T. Hanna by ETC
Nicola T. Hanna
Attorneys for Cathy Lexin

HAHN & ADEMA

By: David Hahn by ETC
David Hahn
Attorneys for Mary Vattimo

FRANK T. VECCHIONE
ATTORNEY AT LAW
THE SENATOR BUILDING
105 WEST F STREET, SUITE 215
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 231-3653
FACSIMILE (619) 239-0056

August 20, 2007.

Mr. Jay Goldstone
Chief Financial Officer
Office of the Mayor
City Administration Building
202 C Street, 11th Floor
San Diego, CA 92101

Re: Court Ordered Attorney Fees

Dear Mr. Goldstone:

Please be advised that I represent Terri Webster, former SDCERS board member and acting City Auditor, and am writing you on her behalf as well as five former SDCERS board members and/or city employees (John Torres, Ron Saathoff, Cathy Lexin, Sharon Wilkinson and Mary Vattimo) and their respective counsel.

We are submitting request for payment of attorney fees and costs at this time because litigation involving two lawsuits filed by the City Attorney, SDCERS v. Aguirre, Case No. GIC841845 (cross-complaint) and People v. Grissom, Case No. GIC 850246, as well as a third lawsuit necessarily instituted by these six (6) individuals to recover attorney fees for the defense of the two underlying lawsuits, Torres v. City, Case No. GIC 852293, have reached conclusion. All three lawsuits have been resolved in favor of our clients with attorney fees and costs ordered by the Courts. Court Orders are enclosed.

We are submitting these bills to your office for payment because the City Attorney, who frequently approves attorney billings for payment, is opposing counsel on all three of these cases, and would be the inappropriate party to approve these bills. Submission of these billing statements should maintain the attorney-client and work product privileges. It should be noted that the City Attorney's Office has not contested the reasonableness of the fees incurred in any of these cases, as is noted in the attached Ruling of Judge Quinn (June 23, 2006) and Opinion of the Court of Appeal. The City Attorney has contested the

Mr. Jay Goldstone

August 20, 2007

Page 2

liability of the City with regard to payment of these fees for ex-board members and/or prior city employees, however, the Courts have uniformly found in favor of our clients and ordered payment in all three cases.

Enclosed please find the following:

- (1) Ruling of Judge Linda Quinn granting Summary Judgment and ordering payment of attorney fees in SDCERS, Grissom and Torres (January 20, 2006) (See Tab 1);
- (2) Judgment by Court ordering payment of attorney fees in SDCERS, Grissom, and Torres (March 6, 2006) (See Tab 2);
- (3) Ruling of Judge Linda Quinn granting motion for payment of attorney fees in Torres v. City (June 29, 2006) (See Tab 3);
- (4) Opinion of the Fourth District Court of Appeals dismissing the appeal of the City from the attorney fees award in SDCERS and Grissom and affirming the Ruling of Judge Quinn awarding attorney fees in Torres (July 25, 2007) (See Tab 4);
- (5) Itemized Billing Statements for the representation of the six individuals on the three above-mentioned cases (See Tabs 5 - 10).

I have also attached a summary to this letter indicating the amount of fees owed to each law firm, on each case, with a totalization of the amounts owing to each firm.

Mr. Jay Goldstone
August 20, 2007
Page 3

The litigation has finally ended and we respectfully ask you to review the enclosed Court Orders and Statements and approve these bills for payment. Your consideration and courtesy is greatly appreciated. Should you have any questions, please feel free to contact me at your convenience.

Sincerely yours,



Frank T. Vecchione
Attorney at Law

FTV:lnh
Enclosures

cc: David Hahn, Esq.
Jerry Coughlan, Esq.
Lisa J. Damiani, Esq.
Nicola T. Hanna, Esq.
Robert D. Rose, Esq.

SUMMARY

ATTORNEY FEES AND COSTS

<u>ATTORNEY</u>	<u>SDCERS</u>	<u>GRISSOM</u>	<u>TORRES</u>	<u>TOTAL</u>
COUGHLAN, SEMMER & LIPMAN (SAATHOFF)	\$147,475.02	\$114,586.63	\$3,242.50	\$265,304.15
DAMIANI LAW GROUP (WILKINSON)	\$44,715.96	\$28,286.83	\$18,529.75	\$102,646.57 (Includes interest)
FRANK T. VECCHIONE (WEBSTER)	\$94,419.98	\$64,323.33	\$21,117.50	\$179,860.81
GIBSON, DUNN & CRUTCHER (LEXIN)	\$54,576.35	\$108,388.78	\$14,186.10	\$177,151.23
HAHN and ADEMA (VATTIMO)	\$60,141.69	NO CLAIM	\$15,369.71	\$75,511.40
SHEPPARD, MULLIN, RICHTER & HAMPTON (TORRES)	\$236,585.86	\$207,947.53	\$188,315.49	\$706,603.21 (Includes interest)
TOTAL	\$637,914.86	\$523,533.10	\$260,761.05	\$1,507,077.37

RECEIPT

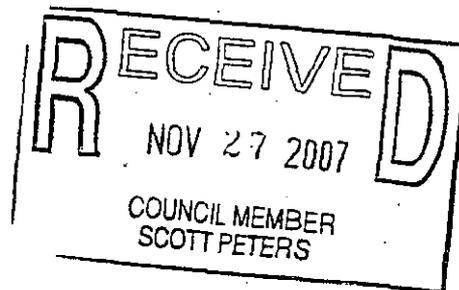
I, Mae Owens, received from attorney Frank T. Vecchione's office, a package addressed to Mr. Jay Goldstone regarding Court Ordered Attorney Fees.

Dated: August 20, 2007

Mae Owens

SCHWARTZ SEMERDJIAN HAILE
BALLARD & CAULEY LLP
Attorneys at Law

DICK A. SEMERDJIAN
Telephone: (619) 236-8821
E-mail address: das@sshbclaw.com



November 26, 2007

Via Hand Delivery

Council President Scott H. Peters
San Diego City Council
202 C Street, MS #10A
San Diego, CA 92101

**Re: Legal Fees for Bruce Herring in *Torres v. City of San Diego*
San Diego Superior Court Case No. GIC 852293**

Dear Council President Peters:

This letter is to follow-up upon our three earlier letters to you related to this matter and to follow-up on the November 1 letter that you and Mayor Sanders received from attorney Jerry Coughlan regarding the legal fees for the parties involved in these matters.

As we previously advised, our law firm represents Bruce Herring as a plaintiff-in-intervention in the action entitled *Torres v. City of San Diego*, San Diego Superior Court Case No. 852293. As you know, the *Torres* case arose out of the City of San Diego's refusal to pay for Mr. Herring's defense (and others) in *People of the State of California v. Grissom, et al.*, Case No. GIC 850246. Mr. Herring hired Procopio Cory Hargreaves & Savitch to defend him in *Grissom* and our law firm to represent him in the *Torres* action for declaratory relief.

We have previously sent to you unredacted invoices from our firm which reflect Mr. Herring's legal defense costs in the *Torres* action through the period ending April 30, 2006. Those invoices substantiate Judge Quinn's ruling that Mr. Herring has incurred at least \$26,948.00 in attorneys' fees and \$1,715.54 in costs during this time frame.

Furthermore, now that *Torres* appeal remittitur has been issued, Mr. Herring is entitled to receive reimbursement of the \$9,119.00 in fees and \$294.36 in costs he has incurred since May 1, 2006. An unredacted report reflecting all invoice entries since we began representing Mr. Herring and through October 31, 2007, is attached.

Accordingly, a total of \$38,076.90 is now due. If the City pays this amount now, it can avoid paying additional fees to prepare Mr. Herring's motion to claim these fees under California Rules of Court, Rule 3.1702(c)(1). Thus, please remit immediate payment as soon as possible.

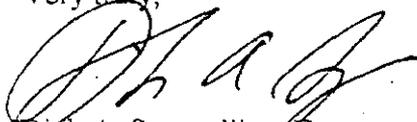
If the City chooses not to immediately remit payment to us, we request that this payment demand be discussed and addressed at the January City Council meeting at which (as we understand it) all outside attorneys fees bills will be considered and addressed.

Please advise if you have any questions about the foregoing. Otherwise, we look forward to hearing from you soon, as we are confident the City does not want to incur more unnecessary

Council President Scott H. Peters
San Diego City Council
November 26, 2007
Page 2

legal fees or costs.

Very truly,



Dick A. Semerdjian, Esq.
**SCHWARTZ SEMERDJIAN HAILE
BALLARD & CAULEY LLP**

Enclosure

cc: Mayor Jerry Sanders
Michael J. Aguirre, City Attorney
Sharon Spivak, Deputy City Attorney
R.J. Coughlan, Jr.
Bruce Herring



City of San Diego
COUNCIL PRESIDENT SCOTT PETERS
DISTRICT ONE

MEMORANDUM

DATE: March 2, 2007
TO: Mayor Jerry Sanders
FROM: Council President Scott Peters 
SUBJECT: Attorneys' Fees Incurred by City Attorney's Lawsuits

Attached are the two letters I referenced at the February 28, 2007, Budget Committee meeting regarding attorneys' fees owed to legal representatives of former City officials and employees in several pension-related lawsuits filed by the City Attorney without the City Council's authorization.

The letter from Frank Vecchione details the \$1,316,518 sought by the defendants as a result of court rulings in the cases of *People v. Grissom*, *Torres v. City of San Diego*, and *SDCERS v. San Diego City Attorney Michael J. Aguirre, et. al.* The letter from Earl Pott seeks \$107,000 for *Zucchet, et al. v. City of San Diego*.

Since the City Council will consider mid-year budget adjustments on March 19, 2007, and will adopt a FY 2008 budget effective July 1, 2007, it is important that the City anticipate the financial impacts of these court room losses on the City's general fund. I respectfully request that the public liability fund reflect the likely payout of these claims.

Thank you very much for your assistance.

Attachments

CC: Honorable City Councilmembers
Honorable City Attorney Michael Aguirre
Ronne Froman, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst
Jay Goldstone, Chief Financial Officer
Greg Levin, Comptroller
Greg Bych, Risk Management Director

FRANK T. VECCHIONE
ATTORNEY AT LAW
THE SENATOR BUILDING
105 WEST F STREET, SUITE 215
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 231-3653
FACSIMILE (619) 239-0056

January 29, 2007

Council President Scott Peters
San Diego City Hall
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: Attorneys' Fees Incurred in Pension Cases

Dear President Peters:

As you know, I represent Terry Webster, a City of San Diego employee who was sued twice by City Attorney Michael Aguirre because of her former service as an SDCERS Trustee.

I have heard that the City Council will meet in closed session this week to consider the City Attorney's request for additional funds to employ yet another outside attorney in one or more of the pension cases. In considering such a request and its attendant costs, you should be brought up-to-date on the legal expenses incurred by Ms. Webster and certain other former SDCERS Board members. The sums identified below are obligations of the City, arising from its own resolution and state law. You and your fellow Council members need to know what is owed, before the City Attorney adds to the debt.

The City Attorney announced that he wishes to hire yet another lawyer to help settle a lawsuit. Meanwhile, the City owes approximately \$1,316,518 to seven law firms, whose retention by former City employees was court-approved. This amount relates to just three of the myriad of lawsuits involving the City's funding of its pension obligations. The \$1,316,518 bill was entirely caused by the City Attorney's ill-advised and unauthorized decisions to sue seven former city employees, to prolong the suits such that expenses continued to rise, and then to abruptly dismiss them while accomplishing nothing. His current effort in the Appellate Court

FRANK T. VECCHIONE
ATTORNEY AT LAW

Council Member Scott Peters
January 29, 2007
Page 2

involves the spending of additional City and tax payer dollars to prolong the inevitable; the trial court has ordered the payment of attorney fees by the City for these former employees.

The six other law firms represent Ronald Saathoff, John Torres, Mary Vattimo, Sharon Wilkinson, Cathy Lexin and Bruce Herring. The expenses were incurred in the City Attorney's unauthorized cross-complaint in the *SDCERS* matter and in the related case of *People v. Grissom*.¹ A total of approximately \$614,000 was incurred in the *SDCERS* matter; approximately \$584,000.00 was incurred in *People v. Grissom*. The City Attorney filed many, many amended complaints in these matters, even after demurrers were sustained. Then each of the lawsuits against the individuals was *dismissed* by the City Attorney without explanation.

The City refused to pay for its employees' legal expenses, largely due to representations and threats made by the City Attorney.² (Actually, the City Council voted four to two in favor of payment of attorney fees, coming up one vote short of the required majority.) As a result, the employees were forced to sue the City and obtained summary judgment from Judge Quinn. Judge Quinn also awarded these employees an additional \$188,518.66 for their fees and costs incurred in that enforcement action.

The amount the City will ultimately have to pay continues to grow, because the City Attorney has appealed from Judge Quinn's rulings. The appeal will soon be fully briefed. A decision will likely be issued within a few months.

¹ Mary Vattimo was not sued in *Grissom*. Bruce Herring was not sued in *SDCERS*.

² Strangely, the City did pay Mr. Herring's attorneys' fees and costs following his dismissal in the *Grissom* case, but only those fees incurred in that case. His bill for prosecuting the *Torres v. City* action remain unpaid. Presumably, the City must have paid his fees in *Grissom* on the same basis as Judge Quinn has ordered that the City pay for the defense of all in *SDCERS* and *Grissom*: a City Council resolution and Government Code § 995. If Mr. Herring's fees in *Grissom* deserve to be paid, then certainly the remaining six defendants should have their fees paid in *Grissom* and *SDCERS*, as Judge Quinn has ordered.

FRANK T. VECCHIONE
ATTORNEY AT LAW

Council Member Scott Peters
January 29, 2007
Page 3

We anticipate a favorable ruling, as the City's opposition to our summary judgment motion was weak and nearly devoid of evidence. This is the City's second appeal. The first was dismissed because it was late. The issue of the timeliness of the current appeal remains a live issue before the Court of Appeal. There is also the possibility that the decision will be published, resulting in embarrassing precedent adverse to the City.

We are now in 2007. The City Attorney's independent acts over the past two years will cost the City more than \$1.3 million in just these three cases. Nothing was accomplished. This money surely could have been put to better use.

Sincerely yours,



Frank T. Vecchione
Attorney at Law

cc: Robert D. Rose, Esq.
Nicola T. Hanna, Esq.
R.J. Coughlan, Jr., Esq.
David Hahn, Esq.
Lisa J. Damiani, Esq.
Kristen Dalessio, Esq.

COUGHLAN, SEMMER & LIPMAN, LLP

Attorneys at Law

501 West Broadway
Suite 400
San Diego, California 92101
(619) 232-0800
FAX (619) 232-0107

RECEIVED
FEB 02 2007
COUNCIL MEMBER
SCOTT PETERS

R.J. Coughlan, Jr.*
Robert F. Semmer**
Michael L. Lipman***

*Also admitted in District of Columbia,
Maryland and Virginia

**Also admitted in Illinois

***Also admitted in New York

January 31, 2007

Cathleen G. Fitch
Barbara Howe Murray
Daniel A. Kaplan
Earl M. Pott
Stacie L. Patterson

Council President Scott Peters
San Diego City Hall
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: Attorneys' Fees
Zucchet, et al. v. City of San Diego, GIC 857389

Dear President Peters:

As you may be aware, this firm represents Michael Zucchet, Ralph Inzunza, and Mayor Richard Murphy in the above referenced action which seeks enforcement of the City's obligation to pay attorneys fees in an underlying case, *City of San Diego v. Richard Murphy, et al.*, GIC 854373 ("the underlying case"). We write to urge the City to dismiss the above-referenced case and pay the fees and costs incurred by our clients in both cases.

In the underlying case, City Attorney Mike Aguirre filed suit against our clients, without City Council approval, in an ill-conceived and patently vindictive effort to force them to disgorge pension benefits earned pursuant to the Elected Officials Retirement Plan, which was duly enacted by the Council. Our clients were represented at that time by Steve Strauss and Paul Tyrell of Procopio, Hargreaves & Savitch.

In October 2005, while the underlying case was still pending, Steve Strauss appeared before the Council seeking payment of our clients' attorneys fees pursuant to Government Code section 995. Over the opposition of Mr. Aguirre, the Council voted 4-2 in favor of the provision of fees, but one vote short of the five votes required for passage.

In November 2005, Messrs. Zucchet, Murphy, and Inzunza filed a demurrer to the complaint in the underlying case. A visiting judge heard the arguments the next month and advised the City that he was inclined to grant the demurrer without leave to amend - a severe result reflective of the feeble reasoning underlying the complaint - but gave the City three weeks to file further points and authorities in opposition to the judge's intended action. Instead, Mr. Aguirre dismissed.

Thereafter, we filed suit for declaratory relief under Government Code section 995 to compel the City to live up to its obligation to fund our clients' defense of the underlying case. We also filed a claim for our own attorneys fees under Government Code section 800 and California Code of Civil Procedure section 128.5. Unwilling to yield, despite his dismissal of the underlying action, Mr. Aguirre, on behalf of the City, opposed our effort. Incredibly, the assigned deputy city attorney personally advised me that Mr. Aguirre was not open to any settlement discussion on the matter.

On May 22, 2006, however, the Court granted summary judgment in our favor. In so granting the motion, the Court rejected the City's position that our clients should be forced to incur all their fees and costs and then return to the City Council to seek reimbursement of fees pursuant to Government Code section 996.4 before petitioning the Court. The judge's words were unequivocal:

I just think that's ridiculous. I mean, that is certainly no adequate remedy at law. And ... it flies in the face of the rest of the structure of the statute which is to provide defense in a timely manner. And ... if the Council's unwilling or unable to make a finding, a determination as required by 995.2, it's incumbent upon this court ... to force them to obey the statute and comply with their duty.

The City has appealed. Presently, we are engaged in drafting a response, adding to the mounting fees and costs for which we will seek reimbursement from the City. Prior to our engaging in any appellate-related work, the approximate outstanding fees and costs for the three firms which have worked on either the instant or underlying case were as follows:

Procopio	\$63,000
Cooley Godward ¹	\$18,000
Coughlan	\$26,000

Our fees and costs have obviously increased and will do so substantially by the time the appeal has run its course.

¹ During the pendency of the underlying case, Mr. Strauss left Procopio to join Cooley Godward.

Council President Scott Peters

January 31, 2007

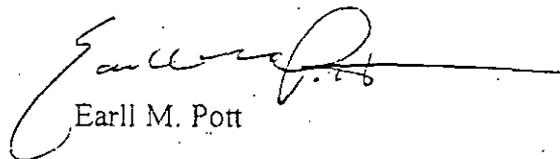
Page 3

We feel that now is a propitious time for the City to stanch the financial bleeding caused by all the unnecessary litigation undertaken by the City Attorney's office. We feel that our case is easily resolved with a commitment to pay fees to date and dismiss the pending appeal. Otherwise, the City will incur even more litigation fees and costs and likely suffer a judgment equal to or worse than the one already rendered in this case.

Thank you for your time and consideration.

Very truly yours,

COUGHLAN, SEMMER & LIPMAN, LLP

A handwritten signature in black ink, appearing to read "Earll M. Pott", with a long horizontal line extending to the right.

Earll M. Pott

cc: Joseph Cordileone, Esq.

@PFDesktop\ODMA\PCDOCS\CSL\61188\1

5502

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

2800426

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
Council President Scott Peters

3. DATE:
11/29/2007

4. SUBJECT: PAYMENT OF COURT ORDERED LEGAL FEES FOR *SDCERS v. Aguirre* (No. GIC 841845), *People v. Grissom* (No. GIC 850246), and *Torres v. City* (No. GIC 852293)

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Betsy Kinsley, 236-6687, MS 10A

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Christina Cameron, 236-6611, MS 10A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	100	SEE ATTACHED		
DEPT.	602			
ORGANIZATION				
OBJECT ACCOUNT	48818			
JOB ORDER				
C.I.P. NUMBER				
AMOUNT	\$2,219,500.18			

9. ADDITIONAL INFORMATION / ESTIMATED COST:

Total Payment of:
\$1,650,203.22

See attached allocation

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Elizabeth Kinsley</i> ELIZABETH KINSLEY, CHIEF OF STAFF	11/30/07	8	DEPUTY CHIEF		
2	AUDITOR AND COMPTROLLER	<i>Mary McCraner</i> GREG LEVIN	11/30/07	9	COO	<i>Jay Goldstone</i> JAY GOLDSTONE	11/29/07
3	RISK MANAGEMENT	GREG BYCH	11-30-07	10	CITY ATTORNEY		
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT	<i>Elizabeth Kinsley</i> ELIZABETH KINSLEY, CHIEF OF STAFF	11/30/07
5	FINANCIAL MANAGEMENT	MARY LEWIS <i>Mary Lewis</i>	11/30/07	DOCKET COORD: _____ COUNCIL LIAISON: _____ <input type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 12/04/07			
6							
7							

11. PREPARATION OF:

- RESOLUTION(S)
 ORDINANCE(S)
 AGREEMENT(S)
 DEED(S)

11A. STAFF RECOMMENDATIONS:

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): CITYWIDE

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A "PROJECT" AND IS THEREFORE NOT SUBJECT TO CEQA PER CEQA GUIDELINES SECTION 15060(C)(2).

HOUSING IMPACT: NONE

OTHER ISSUES:

1. Payment of court ordered legal fees for Plaintiff Ron L. Saathoff in the amount of \$287,947.65 to Coughlin, Semmer and Lipman for their work in *SDCERS v. Aguirre* (NO. GIC 841845), *People v. Grissom* (NO. GIC 850246), and *Torres v. City* (NO. GIC 852293).
2. Payment of court ordered legal fees for Plaintiff Sharon K. Wilkinson in the amount of \$107,802.50 to Damiani Law Group for their work in *SDCERS v. Aguirre* (NO. GIC 841845), *People v. Grissom* (NO. GIC 850246), and *Torres v. City* (NO. GIC 852293).
3. Payment of court ordered legal fees for Plaintiff Terri A. Webster in the amount of \$179,860.81 to Frank T. Vecchione for his work in *SDCERS v. Aguirre* (NO. GIC 841845), *People v. Grissom* (NO. GIC 850246), and *Torres v. City* (NO. GIC 852293).
4. Payment of court ordered legal fees for Plaintiff Cathy Lexin in the amount of \$179,014.63 to Gibson, Dunn & Cruthcher for their work in *SDCERS v. Aguirre* (NO. GIC 841845), *People v. Grissom* (NO. GIC 850246), and *Torres v. City* (NO. GIC 852293).
5. Payment of court ordered legal fees for Plaintiff Mary Vattimo in the amount of \$76,853.38 to Hahn and Adema for their work in *SDCERS v. Aguirre* (NO. GIC 841845) and *Torres v. City* (NO. GIC 852293).
6. Payment of court ordered legal fees for Plaintiff John A. Torres in the amount of \$780,647.35 to Sheppard, Mullin, Richter & Hampton for their work in *SDCERS v. Aguirre* (NO. GIC 841845), *People v. Grissom* (NO. GIC 850246), and *Torres v. City* (NO. GIC 852293).
7. Payment of court ordered legal fees for Plaintiff Bruce Herring in the amount of \$38,076.90 to Schwartz, Semerdjian, Haile, Ballard & Cauley LLP. for their work in *People v. Grissom* (NO. GIC 850246) and *Torres v. City* (NO. GIC 852293).
8. Authorize the City Comptroller to transfer \$2,219,500.18 from Dept. 602, General Fund Appropriated Reserves, to Dept. 601, Citywide Expenditures, General Fund, Fund 100, for payment of above and future court ordered legal fees.
9. Authorize the City Comptroller to allocate legal fee expenditures across all funds using the attached allocation.
10. Direct the City Attorney to draft appropriate resolutions.

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800426

ORIGINATING

DEPT. NO.: District 1

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$2,219,500.18

Vendor: Various

Purpose: Authorize the City Comptroller to transfer \$2,219,500.18 from Dept 602, General Fund Appropriated Reserves, to Dept 601, General Fund Citywide Expenditures, for payment of current and future court ordered legal fees relating to SDCERS v. Aguirre, People v. Grissom, and Torres v. City. Authorizes City Comptroller to allocate legal fees expenditures across all funds per FTE allocation.

Date: November 30, 2007 By: Jacqueline

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	100	602		48818	000602				\$2,219,500.18
TOTAL AMOUNT										\$2,219,500.18

FUND OVERRIDE

AC 2800426

Total Amount of AC/DP/Invoice: **\$ 2,219,500.18**

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Litigation Expense-Public Liability		4151	082240	73.90%	1,640,210.63
002	0	41400	730	Golf Course	100	4151	002150	0.89%	19,753.55
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	1,553.65
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.35%	7,768.25
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.77%	17,090.15
006	0	41200	753	Resource Management	010	4151	002000	0.16%	3,551.20
007	0	41200	754	Collection Services	020	4151	004229	0.08%	1,775.60
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.15%	3,329.25
009	0	41210	757	Collection Services	020	4151	004229	0.98%	21,751.10
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	665.85
011	0	41210	759	Resource Management	010	4151	002010	0.12%	2,663.40
012	0	41500	760	Water	163	4151	000163	7.91%	175,562.46
013	0	41506	776	MWWD-Administration	795	4151	776260	8.51%	188,879.47
014	0	41100	720	Airports	2000	4151	001101	0.18%	3,995.10
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.12%	24,858.40
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.42%	9,321.90
017	0	41300	1300	Developmental Service Enterprise	1111	4151	001110	4.36%	96,770.22
TOTAL								100.00%	2,219,500.18

Payment of Court Ordered Legal Fees for SDCERS v. Aguirre

Total Amount

\$ 1,650,203.22

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Litigation Expense-Public Liability		4151	082240	73.90%	1,219,500.18
002	0	41400	730	Golf Course	100	4151	002150	0.89%	14,686.81
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	1,155.14
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.35%	5,775.71
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.77%	12,706.56
006	0	41200	753	Resource Management	010	4151	002000	0.16%	2,640.33
007	0	41200	754	Collection Services	020	4151	004229	0.08%	1,320.16
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.15%	2,475.30
009	0	41210	757	Collection Services	020	4151	004229	0.98%	16,171.99
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	495.06
011	0	41210	759	Resource Management	010	4151	002010	0.12%	1,980.24
012	0	41500	760	Water	163	4151	000163	7.91%	130,531.07
013	0	41506	776	MWWD-Administration	995 455	4151	776260	8.51%	140,432.29
014	0	41100	720	Airports	2000	4151	001101	0.18%	2,970.37
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.12%	18,482.28
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.42%	6,930.85
017	0	41300	1300	Developmental Service Enterprise	1111 4400	4151	001110	4.36%	71,948.86
TOTAL								100.00%	1,650,203.20