

1 JAN I. GOLDSMITH, City Attorney
DONALD R. WORLEY, Assistant City Attorney
2 M. TRAVIS PHELPS, Deputy City Attorney
California State Bar No. 258246
3 Office of the City Attorney
1200 Third Avenue, Suite 1100
4 San Diego, California 92101-4100
Telephone: (619) 533-5800
5 Facsimile: (619) 533-5856
E-Mail Address: mphelps@sandiego.gov
6

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7 DANIEL C. BORT (State Bar # 60623)
SARAH C. MARRIOTT (State Bar # 241301)
ORRICK, HERRINGTON & SUTCLIFFE LLP
8 The Orrick Building
405 Howard Street
9 San Francisco, California 94105
Telephone: (415) 773-5700
10 Facsimile: (415) 773-5759
E-Mail Address: dbort@orrick.com
11

12 MICHAEL C. WEED (State Bar # 199675)
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
13 Sacramento, California 95814-4497
Telephone: (916) 447-9200
14 Facsimile: (916) 329-4900
E-Mail Address: mweed@orrick.com
15

16 Attorneys for Plaintiff,
CITY OF SAN DIEGO

17 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

18 CITY OF SAN DIEGO, a California municipality,) Case No. **37-2012-00097148-CU-MC-CTL**
19 Plaintiff,) **COMPLAINT FOR VALIDATION OF**
20 v.) **CONVENTION CENTER FACILITIES**
21 ALL PERSONS INTERESTED IN THE MATTER) **DISTRICT SPECIAL TAX AND**
of the validity of the proceedings forming) **OTHER AUTHORIZATIONS**
22 Convention Center Facilities District No. 2012-1,)
City of San Diego, County of San Diego, State of)
23 California; the validity of the special tax authorized)
by the Convention Center Facilities District; the)
24 validity of the authorization to issue bonds to be)
secured and repaid by the special tax; the)
25 establishment of the appropriations limit for the)
Convention Center Facilities District; including the)
26 validity of the landowner election,)
27 Defendants.)
28

1 Plaintiff, City of San Diego, for its complaint to validate certain proceedings against all
2 interested persons pursuant to California Code of Civil Procedure Sections 860, *et seq.* and
3 Government Code Sections 53510, *et seq.*, alleges as follows:

4 **PRELIMINARY ALLEGATIONS**

5 1. Plaintiff, City of San Diego (the “City”) is and, at all times relevant herein, was, a
6 municipal corporation and charter city duly organized and existing under a charter pursuant to
7 which the City has the right and power to make and enforce all laws and regulations in respect to
8 municipal affairs and certain other matters in accordance with and as more particularly provided
9 in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter
10 of the City. Plaintiff is a “public agency” authorized to bring this action pursuant to California
11 Code of Civil Procedure Section 860 and Government Code Sections 53359 and 53511.

12 2. The defendants named herein (the “Defendants”) are all persons interested in the
13 matter of the validity of certain proceedings leading up to and including the landowner-voter
14 approval and authorization of a special tax, sufficient to pay for specified facilities and incidental
15 expenses related to the San Diego Convention Center, to be levied upon hotel property (as
16 defined in the San Diego Municipal Code) within Convention Center Facilities District No.
17 2012-1, City of San Diego, County of San Diego, State of California (the “Convention Center
18 Facilities District”); and the authorization to issue bonds to be repaid by the special tax; and the
19 creation and voter approval of the appropriations limit (Art. 13B, Calif. Const.) for the
20 Convention Center Facilities District. Defendants, and each of them, are named in this
21 Complaint as directed in Sections 861, 861.1 and 862 of the California Code of Civil Procedure.

22 3. Venue is proper in the County of San Diego pursuant to Section 860 of the
23 California Code of Civil Procedure, as the principal office of the Plaintiff is located within the
24 County of San Diego.

25 **FORMATION OF THE CONVENTION CENTER FACILITIES DISTRICT**

26 4. Division 27 of Article 1 of Chapter 6 (the “Division”) of the San Diego Municipal
27 Code, which incorporates many of the provisions of the Mello-Roos Community Facilities Act of
28 1982 (codified at California Government Code Sections 53311 and following) (the “Act”), was

1 added to the San Diego Municipal Code by final passage of Ordinance Number O-20106 (New
2 Series) with a date of final passage of November 2, 2011, and provides that the City is authorized
3 to form a convention center facilities district to finance the acquisition, construction,
4 reconstruction, replacement, rehabilitation, upgrade and maintenance of the San Diego
5 Convention Center.

6 5. The formation of the Convention Center Facilities District, the levy and collection
7 of the special tax authorized thereby, the issuance and repayment of bonds authorized by the
8 Convention Center Facilities District, and the expansion and improvement of the San Diego
9 Convention Center are all municipal affairs of the City, and within its charter powers to regulate
10 by means of the Division.

11 6. In the exercise of the City's municipal affairs, the City Council of the City (the
12 "City Council") formed the Convention Center Facilities District pursuant to the Division.

13 7. City Resolution No. R-307193, passed by the City Council on December 6, 2011
14 and signed by the Mayor on December 15, 2011, among other things, approved the Boundary
15 Map of the Convention Center Facilities District, and the Boundary Map was recorded on
16 December 19, 2011 in the Book of Maps of Assessment and Community Facilities Districts
17 maintained by the County Recorder of the County of San Diego in Book 43 at Page 71, as
18 Instrument Number 2011-0681154.

19 8. As required by the Division, the City Council passed preliminary resolutions
20 containing the proposed powers to be conferred upon the City Council by the Convention Center
21 Facilities District, and setting a public hearing at least 30 but not more than 60 days distant on all
22 of the proposed powers. The City Council adopted the preliminary resolutions on December 6,
23 2011 and they were signed by the Mayor on December 15, 2011, and the public hearing was
24 scheduled for January 24, 2012. The preliminary resolutions were: the above-mentioned
25 Resolution No. R-307193, the Resolution of Intention to Form the Convention Center Facilities
26 District; and Resolution No. R-307194, Resolution to Incur Bonded Indebtedness.

27 9. Proper notice of the hearing by publication, as required by the Act, was provided
28 by the City, in that the Notice of Public Hearing was published in the *SAN DIEGO DAILY*

1 *TRANSCRIPT* on January 13, 2012. In addition, although it is optional under the Act, the City
2 mailed notice of the hearing to the owners of property within the Convention Center Facilities
3 District – except in cases where the land was owned by a public agency in which case the
4 mailing was to the lessee of the public agency (defined as a landowner for purposes of the
5 proceedings in Section 61.2705 of the Division). The City also mailed notice of the hearing to
6 operators of hotels (who might not be the owners of the hotel real property) of whom the City
7 was aware through the administration of the City’s transient occupancy tax.

8 10. On January 24, 2012, the public hearing was held as noticed. Written protests
9 were submitted by the holders of less than a majority of the votes (as allocated by Section
10 61.2710 of the Division) within the Convention Center Facilities District. Under the provisions
11 of the Division, therefore, the City Council was not precluded from proceeding further with the
12 formation of the Convention Center Facilities District.

13 11. The City Council then, also on January 24, 2012, passed its Resolution No.
14 307243, the Resolution of Formation of the Convention Center Facilities District (the
15 “Resolution of Formation”), in which the City Council specified the types of public facilities and
16 incidental expenses proposed to be authorized to be financed; set forth the Rate and Method of
17 Apportionment of the special tax to be used to pay for all such facilities and incidental expenses,
18 including the repayment of bonds or other debt obligations issued to finance the authorized
19 public facilities, to be levied upon all taxable parcels within the Convention Center Facilities
20 District; and specified the Convention Center Facilities District’s proposed appropriations limit.
21 The Mayor signed the Resolution of Formation on January 30, 2012.

22 12. At the same meeting the City Council also passed its Resolution No. 307244,
23 Resolution Deeming it Necessary to Incur Bonded Indebtedness (the “Resolution Deeming it
24 Necessary”), in which the City Council proposed that the Convention Center Facilities District
25 authorize the issuance of up to \$575 million in bonds to be repaid, both as to principal and
26 interest, by the special tax revenues. The Mayor signed the Resolution Deeming it Necessary on
27 January 30, 2012.

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1 13. In the Resolution of Formation, the City Council proposed that the annual
2 appropriations limit of the Convention Center Facilities District, pursuant to Article 13B of the
3 California Constitution, be fifty-million dollars for the 2012-2013 fiscal year.

4 **THE CONVENTION CENTER FACILITIES DISTRICT ELECTION**

5 14. The City Council then determined to submit the authorizations contained in the
6 Resolution of Formation and the Resolution Deeming it Necessary to a vote of the qualified
7 electors within the Convention Center Facilities District, and did so, still in its meeting on
8 January 24, 2012, by adopting its Resolution No. 307245, Resolution Calling Special Mailed-
9 Ballot Election (“Resolution Calling Election”). The Resolution Calling Election included a
10 statement that under the City Charter it was not subject to Mayoral veto and thus its date of final
11 passage was January 24, 2012. The Division provides that the City Clerk shall in all cases be the
12 elections official. [§ 61.2710(b)]

13 15. As authorized by Section 53353.5 of the Act, the three questions – (1) the
14 authorization to levy the special tax for specified facilities, (2) the authorization of the bonds,
15 and (3) the establishment of the appropriations limit – were combined into a single ballot
16 proposition for submittal to the qualified electors of the Convention Center Facilities District.

17 16. Section 53326(c) of the Act authorizes an election by landowners, rather than
18 registered voters, irrespective of the number of registered voters residing within a community
19 facilities district, in cases where the special tax will, by its own terms, not be apportioned in any
20 tax year on any portion of property in residential use in that tax year. Hotel property, and
21 transitory occupancy of hotel rooms, by definitions in the San Diego Municipal Code, are not
22 residential properties or residential uses. Closely following this provision of the Act, the
23 Division includes both restrictions that special taxes authorized under its provisions may only be
24 levied on hotel properties [§ 61.2706(i) and § 61.2712], and a provision that the qualified
25 electors “shall in all cases be the Landowners.” [§ 61.2710(a)] “Landowners” is defined, in
26 Section 61.2705 of the Division, as “the owner of the real property upon which a Hotel is
27 located, except that if the fee owner of the real property is a governmental entity, Landowner
28 means the lessee of the governmental entity.”

1 17. Where the Act provides that each landowner may cast one vote for each acre or
2 portion of an acre that the landowners owns, the Division provides that votes “shall be allocated
3 to each Landowner on the basis of one vote for each dollar of special tax that would have been
4 the obligation of that parcel (as determined by the City Council) if the proposed special tax had
5 been in place for the 12-month period ending at the end of the month which is three months prior
6 to the month in which the resolution calling the special, mailed ballot-election is adopted by the
7 City Council.” [§ 61.2710(c)] The same section of the Division also provided for adjustments to
8 be made to the number of votes for hotels that had not operated at full capacity during that
9 twelve-month period. Six hotels applied for adjustments and adjustments were made by the City
10 Council in five cases.

11 18. These provisions of the Division are within the municipal affairs of the City, and
12 are legal, valid and binding provisions of the Division which the City lawfully and properly
13 utilized in forming the Convention Center Facilities District under the Division.

14 19. Section 53326(a) of the Act provides that the City Council may submit the ballot
15 measure to the qualified electors “in a special election to be held, notwithstanding any other
16 requirement, including any requirement that elections be held on specified dates, contained in the
17 elections Code, at least 90 days, but not more than 180 days, following the adoption of the
18 resolution of formation.” The Resolution Calling Election set the election date as April 23, 2012,
19 which is 90 days after the Resolution of Formation was passed by the City Council, but only 84
20 days after its date of final passage (when it was signed by the Mayor). It is thus possible that the
21 90 day minimum time period was inadvertently not strictly followed. Section 61.2717 of the
22 Division provides: “Any proceedings taken, special tax levied or bonds issued pursuant to this
23 Division shall not be held invalid for failure to comply with the provisions of this Division
24 provided such failure is not a constitutional defect.” Section 53315 of the Act also provides: “No
25 error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken
26 under this chapter, which does not directly affect the jurisdiction of the legislative body to order
27 the installation of the facility or the provision of service, shall void or invalidate such proceeding
28 or any levy for the costs of such facility or service.”

1 20. The City Clerk published notice of the election and deadline for submitting ballot
2 arguments in the *SAN DIEGO DAILY TRANSCRIPT*, on January 31, 2012.

3 21. The election was conducted by the City Clerk in accordance with the Resolution
4 Calling Election and, in all respects, in accordance with the requirements of the Division and of
5 California law.

6 22. As appears from a Certificate of Mailing Special Election Ballots, executed on
7 March 27, 2012, Willdan Financial Services, on behalf of the City Clerk, mailed the ballots and
8 ballot pamphlets to the qualified electors within the statutorily prescribed time limits.

9 23. The City Clerk received such of the ballots as were returned to her by the deadline
10 of 8:00 p.m. on April 23, 2012. On April 24, 2012, the City Clerk tallied the votes cast on the
11 returned ballots and then reported the results of her canvass to the City Council at its meeting on
12 May 7, 2012. That report showed that 19,454,222.42 votes were actually cast, and of those
13 17,904,588.30 votes were cast "YES," and 1,549,634.12 were cast "NO." Thus, the percentage
14 of votes cast that were cast "YES," was 92.0%, which is in excess of the two-thirds vote required
15 by the Division.

16 24. The City Council then declared, by its Resolution No. 307413, Resolution
17 Declaring Election Results, adopted May 7, 2012, that the ballot proposition had been approved.
18 Under the Division, the passage of the ballot proposition conferred upon the City Council
19 authority to levy the special tax to finance the authorized facilities and authority to issue the
20 bonds. Passage also established the appropriations limit of the Convention Center Facilities
21 District. The Resolution Declaring Election Results stated that it was not subject to Mayoral
22 veto.

23 25. The recording of the Notice of Special Tax Lien in the official records of the San
24 Diego County Recorder, required by California Streets and Highways Code Section 3114.5, was
25 accomplished on May 9, 2012, as Document # 2012-0273917.

26 26. The Division provides, in § 61.2713, that the special taxes imposed pursuant to
27 the Division "shall be due and remitted with the Operator's payment of the transient occupancy
28 tax." The Resolution of Formation provided for levy of the special tax in accordance with the

1 Division, and for its calculation (based on a percentage of rent charged for the hotel rooms) and
2 collection in accordance with the Division. This provision of the Division is within the
3 municipal affairs of the City, and is a legal, valid and binding means of levying and collecting
4 the special tax.

5 27. In the Resolution of Formation, in accordance with Section 53325.1 of the Act,
6 the City Council found and determined “that all proceedings conducted and approved by the City
7 Council with respect to the establishment of the Convention Center Facilities District, up to and
8 including the adoption of this Resolution and the other Resolutions adopted this date in
9 connection with the Convention Center Facilities District, are valid and in conformity with the
10 requirements of the Division, and this determination is final and conclusive for all purposes and
11 is binding upon all persons.”

12 28. The election was in all respects valid and binding and in accordance with law.
13 The special tax is in all respects legal, valid and binding. The bonds of the Convention Center
14 Facilities District have been properly and legally authorized.

15 **STATUTORY AUTHORIZATION FOR**
16 **INSTITUTION OF VALIDATION PROCEEDINGS**

17 29. On May 7, 2012, the City Council, by its Resolution No. 307414, authorized this
18 validation action. Resolution No. 307414 was signed by the Mayor on May 7, 2012.

19 30. Section 860 of the California Code of Civil Procedure provides that a public
20 agency may bring an *in rem* action to determine the validity of any matter which under any other
21 law is authorized to be determined pursuant to Sections 860, *et seq.*, in the Superior Court of the
22 county in which the principal office of the agency is located. Plaintiff is a “public agency”
23 authorized to bring this action pursuant to California Government Code Sections 53359 and
24 53511.

25 31. The principal office of the City is located in San Diego County, California.

26 32. This action is properly brought by the City as an *in rem* proceeding pursuant to
27 Section 860 of the California Code of Civil Procedure for the judicial examination, approval and
28 confirmation of the validity of the special tax authorized by the Convention Center Facilities

1 District, for the validity of the authorization to issue bonds conferred by the Convention Center
2 Facilities District, and for the validity of the establishment of the appropriations limit of the
3 Convention Center Facilities District.

4 33. All such proceedings by and for the City and all agreements authorized or
5 contemplated by the City Council, were, are and will be in conformity with the requirements of
6 all applicable provisions of all laws and enactments at any time in force or controlling upon such
7 proceedings, whether imposed by law, constitution, statute, charter or ordinance, and whether
8 federal, state or municipal, and were, are and will be fully in conformity with all applicable
9 requirements of all regulatory bodies, agencies or officials having or asserting authority over said
10 proceedings or any part thereof.

11 **SERVICE BY PUBLICATION**

12 34. The *SAN DIEGO DAILY TRANSCRIPT*, is a newspaper of general circulation published
13 daily in the City of San Diego, California and is the newspaper most likely to give notice to
14 persons interested in these proceedings. Publication of Summons in this newspaper should be
15 ordered by the Court pursuant to Section 861 of the California Code of Civil Procedure and
16 Section 6063 of the Government Code. The only other notice reasonably practicable is (a) by
17 mailing a letter to all landowners within the Convention Center Facilities District, advising them
18 of the filing of this action and that they may request that copies of the Summons and Complaint
19 be mailed to them, (b) by posting a copy of the Summons in two public places within the City
20 and (c) by mailing copies of the Summons and Complaint to those persons, if any, or their
21 attorneys of record, who, not later than ten (10) days after publication of Summons is complete,
22 or such other time as the Court may order, either have expressly notified in writing Plaintiff's
23 attorneys of record of their interest in this matter or have filed and served actions against Plaintiff
24 challenging *inter alia* the validity of the proceedings of the City Council in respect of the
25 Convention Center Facilities District.

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1 **FIRST CAUSE OF ACTION**

2 (Judgment of Validity)

3 35. Plaintiff hereby incorporates the foregoing paragraphs 1 through 34 as if fully
4 restated herein.

5 36. Based upon the foregoing, the City is entitled to a judgment declaring that:

6 (a) this action is properly brought under Sections 860, *et seq.* of the California
7 Code of Civil Procedure;

8 (b) all proceedings by and for the City in connection with the formation of the
9 Convention Center Facilities District pursuant to the Division, and the authorization of the
10 special tax to finance the specified facilities, the authorization of the issuance of bonds, and the
11 establishment of the appropriations limit, were and are valid, legal and binding and were and are
12 in conformity with the applicable provisions of all laws and enactments at any time in force or
13 controlling upon such proceedings, whether imposed by law, constitution, statute, charter or
14 ordinance, and whether federal, state or municipal;

15 (c) the legal proceedings for formation of the Convention Center Facilities
16 District and conduct of the special election were and are in conformity with all requirements of
17 law, including with respect to due process and/or equal protection under the State or Federal
18 Constitution;

19 (d) all voter approval requirements of the California Constitution, and any
20 other provision of California law or the Division, have been satisfied in the proceedings;

21 (e) the levy, collection and expenditure of the special tax does not and will not
22 violate any limitation contained in Article 13B of the California Constitution;

23 (f) the timing of the election and the election were and are valid;

24 (g) the findings in the Resolution of Formation are valid and correct and
25 binding upon all persons;

26 (h) all conditions, things and acts required by law to exist, happen or be
27 performed precedent to the levy of the special tax, the authorization to issue bonds, the
28 establishment of the appropriations limit for the Convention Center Facilities District, and the

1 terms and conditions thereof, have existed, happened and been performed in the time, form and
2 manner required by law; and

3 (i) the City Council has the authority under California law and the Division to
4 levy the special tax, to issue the bonds, and to execute and deliver all contracts and agreements
5 related thereto.

6 37. California Code of Civil Procedure Section 870(a) requires that the judgment
7 rendered in an *in rem* validation action brought under California Code of Civil Procedure
8 Sections 860 and following shall permanently enjoin the institution by any person of any action
9 or proceeding raising any issue as to which the judgment is binding and conclusive. The
10 provision also states that the judgment shall be forever binding and conclusive as to all matters
11 adjudicated or which at the time could have been adjudicated against the City and against all
12 other persons.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for entry of judgment as follows:

15 1. That the Court order that the jurisdiction over all interested persons has been
16 lawfully obtained (a) by publication of the Summons pursuant to Section 861 of the California
17 Code of Civil Procedure and Section 6063 of the Government Code and the Order of the Court in
18 the *SAN DIEGO DAILY TRANSCRIPT*, (b) by mailing a letter to all landowners within the Convention
19 Center Facilities District advising them of the filing of this action and that they may request that
20 copies of the Summons and Complaint be mailed to them, (c) by posting a copy of the Summons
21 in two public places within the City and (d) by mailing copies of the Summons and Complaint to
22 those persons, if any, or their attorneys of record, who, not later than ten (10) days after
23 publication of Summons is complete, or such other time as the Court may order, either have
24 expressly notified in writing Plaintiff's attorneys of record of their interests in this matter or have
25 filed and served actions against Plaintiff challenging *inter alia* the validity of any matter alleged
26 herein.

27 2. That the Court find that this action is properly brought under California Code of
28 Civil Procedure Sections 860, *et seq.* in the Superior Court for the County of San Diego.

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3. That judgment be entered determining and declaring that:

(a) this action is properly brought under Sections 860, *et seq.* of the California Code of Civil Procedure;

(b) all proceedings by and for the City in connection with the formation of the Convention Center Facilities District pursuant to the Division, and the authorization of the special tax to finance the specified facilities, the authorization of the issuance of bonds, and the establishment of the appropriations limit, were and are valid, legal and binding and were and are in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute, charter or ordinance, and whether federal, state or municipal;

(c) the legal proceedings for formation of the Convention Center Facilities District and conduct of the special election were and are in conformity with all requirements of law, including with respect to due process and/or equal protection under either the State or Federal Constitution;

(d) the voter approval requirements of the California Constitution, and any other provision of California law or the Division, have been satisfied in the proceedings;

(e) the levy, collection and expenditure of the special tax does not and will not violate any limitation contained in Article 13B of the California Constitution;

(f) the timing of the election and the election were and are valid;

(g) the findings in the Resolution of Formation are valid and correct and binding upon all persons;

(h) all conditions, things and acts required by law to exist, happen or be performed precedent to the levy of the special tax, the issuance of bonds, the establishment of the appropriations limit for the Convention Center Facilities District, and the terms and conditions thereof, have existed, happened and been performed in the time, form and manner required by law; and

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(i) the City Council has the authority under California law and the Division to levy the special tax, to issue the bonds, and to execute and deliver all contracts and agreements related thereto.

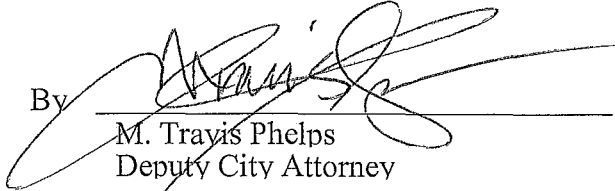
4. That judgment be entered ordering that all persons are thereby permanently enjoined and restrained from the institution of any action or proceeding challenging, *inter alia*, the validity of the proceedings of the City in forming the Convention Center Facilities District, the validity of the special tax, the validity of the authorization to issue the bonds, the establishment of the appropriations limit, or any other matters herein adjudicated or which at this time could have been adjudicated against the City or any other persons.

5. For costs incurred herein.

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

Dated: May 10, 2012

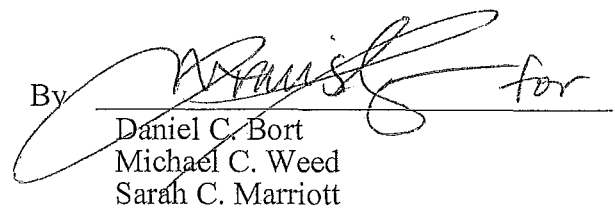
JAN I. GOLDSMITH, City Attorney

By 
M. Travis Phelps
Deputy City Attorney

Attorneys for Plaintiff,
CITY OF SAN DIEGO

Dated: May 10, 2012

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By  for
Daniel C. Bort
Michael C. Weed
Sarah C. Marriott

Attorneys for Plaintiff,
CITY OF SAN DIEGO