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11 Attorneys for Defendant and
12 Cross-Complainant, City of San Diego

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN DIEGO

16 CHARGERS FOOTBALL COMPANY, LLC,
a California limited liability company,

17 Plaintiff,

18 v.

19 CITY OF SAN DIEGO, a municipal
20 corporation,

21 Defendant.

22 CITY OF SAN DIEGO, a municipal
23 corporation,

24 Cross-Complainant,

25 v.

26 CHARGERS FOOTBALL COMPANY,
27 LLC, a California limited liability company,
and ROES 1-50,

28 Cross-Defendants.

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2004 JAN 26 A 11: 56

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

Case No. GIC 824587

**CITY OF SAN DIEGO'S ANSWER TO
COMPLAINT FOR DECLARATORY
RELIEF**

Dept: 66

Judge: Charles R. Hayes

1 Defendant City of San Diego ("City") answers the Complaint of Chargers Football Company
2 LLC ("Chargers") as follows:

3 Under the provisions of Section 431.30 of the Code of Civil Procedure, the City denies,
4 generally and specifically, each and every allegation and cause of action contained in the Complaint.

5 **AFFIRMATIVE DEFENSES**

6 The City alleges the following affirmative defenses in the alternative as separate and distinct
7 affirmative defenses to the Complaint and to each and every purported cause of action in the
8 Complaint:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Allegations of Cross-Complaint)**

11 For a first, separate and affirmative defense, the City hereby incorporates each and every
12 allegation contained in its Cross-Complaint in the above-captioned action.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Actual Present Controversy)**

15 For a second, separate and affirmative defense, the City alleges that the declaration sought by
16 the Chargers encompasses matters which are not the subject of an actual, present controversy.

17 **THIRD AFFIRMATIVE DEFENSE**

18 **(Conditions Precedent)**

19 For a third, separate and affirmative defense, the City alleges that the existence of certain
20 conditions and/or the performance on the Chargers' part are conditions precedent to the Chargers'
21 ability to exercise alleged contractual rights and that such conditions have not arisen and/or the
22 Chargers have not performed.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Equitable Defenses)**

25 For a fourth, separate and affirmative defense, the City alleges that, the Chargers should be
26 barred from recovering against the City by the equitable doctrines of "unclean hands" and *in pari*
27 *delicto*, and other equitable defenses which may appear upon further discovery and investigation.

28

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Uncertainty)**

3 For a fifth, separate and affirmative defense, the City alleges that the Complaint is uncertain,
4 vague, ambiguous, improper and unintelligible.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Additional Defenses)**

7 For a sixth, separate and affirmative defense, the City alleges that it presently has insufficient
8 knowledge or information upon which to form a belief as to whether it may have additional, yet
9 unasserted, affirmative defenses. The City therefore reserves the right to assert additional affirmative
10 defenses in the event that additional investigation and/or discovery indicate it would be appropriate.

11 **WHEREFORE**, the City prays for judgment as follows:

- 12 1. For judgment in favor of the City and against the Chargers;
13 2. For declarations as set forth in the City's Cross-Complaint;
14 3. For costs of suit, and
15 4. For such other and further relief as the Court may deem proper.

16 DATED: January 26, 2004

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

17
18 By: Steven M. Strauss

19 Steven M. Strauss
20 Michael S. Levinson
21 Paul A. Tyrell
22 Attorneys for Defendant and Cross-Complainant,
23 City of San Diego
24
25
26
27
28

3 **PROOF OF SERVICE** 2004 JAN 26 A 11: 56

4 I am a resident of the State of California, over the age of eighteen years, and not a party to
5 the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH
6 LLP, 530 B Street, Suite 2100, San Diego, California 92101. On January 26, 2004 I served the
7 within documents:

8 **CITY OF SAN DIEGO'S ANSWER TO COMPLAINT FOR DECLARATORY RELIEF**

9 by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the
10 fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission
11 confirmation report is attached hereto.

12 by placing the document(s) listed above in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at San Diego, California addressed as set forth below. I
14 am readily familiar with the firm's practice of collection and processing correspondence
15 for mailing. Under that practice it would be deposited with the U.S. Postal Service on the
16 same day with postage thereon fully prepaid in the ordinary course of business. I am
17 aware that on motion of the party served, service is presumed invalid if postal
18 cancellation date or postage meter date is more than one day after date of deposit for
19 mailing an affidavit.

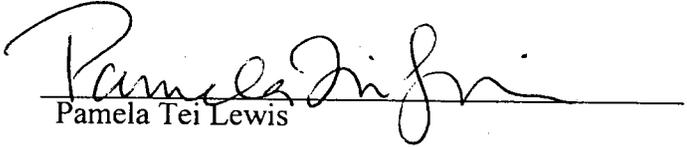
20 by placing the document(s) listed above in a sealed overnight envelope and depositing it
21 for overnight delivery at San Diego, California, addressed as set forth below. I am
22 readily familiar with the practice of this firm for collection and processing of
23 correspondence for processing by overnight mail. Pursuant to this practice,
24 correspondence would be deposited in the overnight box located at 530 "B" Street, San
25 Diego, California 92101 in the ordinary course of business on the date of this declaration.

26 by personally delivering the document(s) listed above to the person(s) at the address(es)
27 set forth below.

28 Harriet S. Posner
Carl Alan Roth
Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Tel: 213-687-5000
Fax: 213-687-5600
Attorneys for Chargers Football Company, LLC

29 (State) I declare under penalty of perjury under the laws of the State of California that
30 the above is true and correct.

31 Executed on January 26, 2004, at San Diego, California.

32 
33 Pamela Tei Lewis

1 Steven M. Strauss, State Bar No. 099153
Michael S. Levinson, State Bar No. 104155
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12 Attorneys for Defendant and Cross-Complainant
City of San Diego

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO

16 CHARGERS FOOTBALL COMPANY, LLC,
a California limited liability company,

Case No. GIC 824587

17 Plaintiff,

**CROSS-COMPLAINT FOR
DECLARATORY RELIEF,
ACCOUNTING AND INJUNCTIVE
RELIEF**

18 v.

19 CITY OF SAN DIEGO, a municipal
20 corporation,

Dept. 66
Judge: Charles R. Hayes

21 Defendant.

22 CITY OF SAN DIEGO, a municipal
23 corporation,

24 Cross-Complainant,

25 v.

26 CHARGERS FOOTBALL COMPANY,
27 LLC, a California limited liability company,
and ROES 1-50,

28 Cross-Defendants.

1 Cross-Complainant City of San Diego ("the City") alleges as follows:

2 **NATURE OF THE CASE**

3 1. This case arises out of the contractual relationship between the City and the
4 Chargers Football Company, LLC ("the Chargers"). The City and the Chargers (as successors to
5 Chargers Football Company, a California limited partnership) are parties to the 1995 Agreement
6 for Partial Use and Occupancy of San Diego Jack Murphy Stadium, as supplemented ("the Use
7 Agreement"). Among other things, the Use Agreement provides that the Chargers must play their
8 home games at Qualcomm Stadium (formerly Jack Murphy Stadium, "the Stadium") until the year
9 2020 and pay roughly 10% of their gross stadium income to the City. In return, the City spent
10 more than \$78 million on stadium improvements and a new Chargers practice facility.

11 2. On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City,
12 claiming that a "Triggering Event" had occurred under the "Renegotiation Rights" provision of the
13 Use Agreement, Section 31. The Chargers requested that the City commence to negotiate,
14 pursuant to Section 31, to "offset the impact on the Chargers" of the purported Triggering Event.
15 The Chargers calculated that a Triggering Event had purportedly occurred by a margin of
16 \$4.3 million; notwithstanding that calculation, the Chargers claimed that the City was required to
17 provide a new stadium *or* annual payments of \$20 million to "offset the impact" of the purported
18 Triggering Event. The \$20 million figure was based on a supposed disparity in gross local
19 revenues between the Chargers and other NFL teams.

20 3. In its First Cause of Action, the City seeks a declaration that the Renegotiation
21 Notice is invalid. Section 31 provides that the Chargers may *only* send a Renegotiation Notice
22 upon the occurrence of a "Triggering Event," which is determined by applying an artificial
23 mathematical formula set forth in Section 31. The City believes the Renegotiation Notice is
24 invalid because a Triggering Event did not occur.

25 4. In its Second Cause of Action, the City seeks an alternative declaration interpreting
26 the phrase "impact on the Chargers of the Triggering Event." A valid Renegotiation Notice
27 requires the parties to negotiate in good faith for 90 days on the limited subject of amending the
28 Use Agreement to "offset the impact on the Chargers of the Triggering Event." The City and the

1 Chargers disagree on the meaning of the phrase "impact on the Chargers of the Triggering Event."
2 As a result, the parties are at odds over whether there is any "impact" and, if so, the subject matter
3 and scope of the required negotiations. Therefore, even if the Court finds that the Renegotiation
4 Notice was valid, the City seeks an alternative declaration interpreting the phrase "impact on the
5 Chargers of the Triggering Event." Specifically, the City asks the Court for a declaration
6 interpreting that phrase as referring to actual financial hardship suffered by the Chargers, if any.
7 Such an interpretation is consistent with the parties' intent and will provide the parties with
8 direction as to the proper subject matter and scope of the renegotiations, if any are required.

9 5. In its Third Cause of action, the City seeks an accounting because the Chargers have
10 not provided information sufficient to allow the City to fully assess the Chargers' assertion that a
11 Triggering Event occurred or that the Chargers have been financially impacted.

12 6. Finally, in its Fourth Cause of Action, the City seeks injunctive relief to prevent the
13 Chargers from asserting or invoking contractual rights they do not have.

14 **PARTIES**

15 7. The City is, and at all times herein mentioned was, a California municipal
16 corporation chartered pursuant to the Constitution and laws of the State of California and located in
17 the County of San Diego, California.

18 8. The Chargers are, and at all times herein mentioned were, a California limited
19 liability company with its principal place of business in San Diego, California. The Chargers own
20 and operate the San Diego Chargers, a professional football franchise and member of the National
21 Football League ("the NFL").

22 9. The City is ignorant of the true names and capacities of the cross-defendants sued
23 herein as Roes 1-50, inclusive, and therefore sues those cross-defendants by such fictitious names.
24 The City will amend this cross-complaint to allege their true names and capacities when they are
25 ascertained. The City is informed and believes and thereon alleges that each of the fictitiously
26 named cross-defendants is responsible in some manner for the occurrences herein alleged and that
27 the City's injuries as herein alleged were proximately caused by such cross-defendants.
28

1 (i) the actual "Team Salary" (as such terms are defined in Article XXIV,
2 Section 6 of the 1993 Collective Bargaining Agreement except as calculated
on a cash basis) of the Chargers for such year; plus

3 (ii) the total actual benefit payments provided by the Chargers to its players
4 for such year; plus

5 (iii) the total actual benefit payments provided by the NFL to Chargers'
6 players for such year.

7 14. "Team Salary Cap" and "Defined Gross Revenues" are defined in Section 31(a) as
8 follows:

9 **'Team Salary Cap'** shall mean for any year, on a cash basis, 75% of the
10 Defined Gross Revenues for such year, divided by the number of teams
11 playing in the NFL during such year.

12 **'Defined Gross Revenues'** shall mean the aggregate revenues received or
13 to be received on an accrual basis, for or with respect to any 'League Year'
14 ... during the term of this Agreement by the NFL and all NFL Teams (and
15 their designees), from the following sources only: (i) regular season, pre-
16 season, and post-season gate receipts ...; and (ii) proceeds from the sale,
17 license, or other conveyance of the right to broadcast for exhibit NFL pre-
18 season, regular season, and play-off games on network and national cable
19 television....

20 15. Pursuant to Section 31(b)(ii), upon the occurrence of a Triggering Event, the
21 Chargers have 60 days after December 1 of the Triggering Year to provide the City with a
22 Renegotiation Notice, which starts a 90-day renegotiation period (herein, "the renegotiation
23 period"). With respect to the Renegotiation Notice issued by the Chargers in March 2003, the
24 parties have agreed to extend the renegotiation period to May 1, 2004. (See Exhibit 5.) During the
25 renegotiation period, the parties must negotiate "in good faith for an amendment to [the Use]
26 Agreement to offset the impact on the Chargers of the Triggering Event."

27 16. If there is an impact and the parties do not agree on an amendment during the
28 renegotiation period, then the provisions of Section 31(b)(iii) take effect. Section 31(b)(iii)
provides that the Chargers may, at any time in the ensuing 18 months, sign a letter of intent with a
third party for relocation to a new stadium. Section 31(b)(iii) further provides that, if such a letter
of intent is signed, the City has 90 days to "execute an amendment ... which meets the financial
and overall economic terms of the proposed third party transaction." If the City does not execute

1 such an amendment within that time, the Chargers may terminate the Use Agreement at any time
2 within 60 days thereafter.

3 17. If the Chargers then elect to terminate the Use Agreement, they must send written
4 notice of termination and pay a termination fee to the City. If the Chargers do not give written
5 notice of termination, or fail to make the required payment, the Use Agreement remains in full
6 force and effect.

7 **The Chargers' March 4, 2003 Renegotiation Notice.**

8 18. The Chargers claim that a Triggering Event occurred on December 1, 2002 and that
9 the 60-day period for the Chargers to send a Renegotiation Notice began on that date. The parties
10 agreed to toll the commencement of the 60-day period until March 1, 2003, subject to the City's
11 reservation of all rights under the Use Agreement to challenge the occurrence and timing of the
12 alleged Triggering Event. (See Exhibit 2.)

13 19. On March 4, 2003, the Chargers purported to "pull the Trigger" by delivering a
14 Renegotiation Notice to the City. The Renegotiation Notice stated that a Triggering Event had
15 occurred and that the renegotiation period had commenced. (A copy of the Renegotiation Notice is
16 attached as Exhibit 6.) That same day, the Chargers (1) sent a letter to the Mayor and City Council,
17 (2) sent a separate letter to their fans and (3) issued a press release, all stating that negotiations for
18 a new stadium were needed to "ensure the long term future of the team in San Diego." (Copies of
19 the above-described letters and press release are attached as Exhibits 7, 8 and 9.)

20 20. The Chargers have stated that they do not intend to engage in negotiations with third
21 parties regarding relocation to another stadium.

22 21. On March 12, 2003, the Chargers produced a 4-page document entitled "San Diego
23 Chargers Trigger Event Calculation Summary" in which the Chargers claimed that they met the
24 criteria for a Triggering Event by \$4,413,559. (A copy of the Chargers' March 12 summary is
25 attached as Exhibit 10.) On March 24, 2003, the Chargers provided an amended Triggering Event
26 calculation in which they contended that they met the criteria for a Triggering Event by \$4,325,084
27 and provided more detailed information concerning their calculation. (A copy of the March 24
28 Triggering Event calculation summary is attached as Exhibit 11.)

1 **The Renegotiation Notice Is Invalid.**

2 22. The City has asked to review source and back-up information supporting the
3 Chargers' Triggering Event calculation. Some information has been provided by the Chargers, but
4 despite the City's repeated requests for further information, the Chargers have not provided
5 sufficient information to support their Triggering Event calculation.

6 23. Based on the limited information provided to date, as set forth in Paragraphs 24-28,
7 below, it appears that in order to satisfy the Triggering Event formula, the Chargers have
8 improperly inflated their expenses by adding some that the formula does not permit. As such, no
9 Triggering Event has occurred and the Renegotiation Notice is invalid. Moreover, the Chargers'
10 failure, and perhaps inability, to provide sufficient information to support their calculation should
11 be sufficient to invalidate the Renegotiation Notice. The apparent errors in the Chargers'
12 Triggering Event calculation include at least the following:

13 24. First, the Chargers claimed a "Team Salary" of \$76.5 million. That number is
14 grossly overstated because a substantial percentage of that amount (more than \$20 million) was
15 paid after the December 1, 2002 cut-off date in the Use Agreement. The post-December 1
16 payments are improper and must not be included in the Triggering Event calculation because the
17 Use Agreement calls for the Chargers' Team Salary (and benefit payments) to be measured on a
18 *cash* basis "on December 1" of the Triggering Year.

19 25. Second, like Team Salary, the Chargers failed to apply the December 1 cut-off date
20 to their calculation of benefit payments to Charger players. Of the \$12.7 million in total benefit
21 payments claimed by the Chargers, the City presently estimates that close to \$3 million was paid
22 after December 1, 2002. Benefit payments made after December 1, 2002 must not be included in
23 the Triggering Event calculation.

24 26. Third, more than \$10 million of the \$12.7 million of benefit payments must be
25 excluded because they were not made to Chargers' players as specified by the Triggering Event
26 definition. The Triggering Event definition limits allowable benefits to those payments provided
27 "to Chargers' players." Ignoring that limitation, the Chargers' calculation lists such items as
28 workers compensation (\$2.8 million), payroll taxes (\$1.6 million), player pension plan

1 (\$1.5 million), player medical plan (\$800,000) and supplemental disability plan (\$200,000), none
2 of which are payments provided to Chargers' players. Instead, those payments are provided *to*
3 third parties such as insurance companies, government agencies, trustees and administrators.
4 Payments not provided to Chargers' players must not be included in the Triggering Event
5 calculation.

6 27. Fourth, the Chargers included in their calculation of benefit payments a "Minimum
7 Salary Benefit" of \$848,530. "Minimum Salary Benefit" is neither a "benefit" nor within the
8 definition of "Team Salary" notwithstanding the Chargers' attempt to characterize it otherwise.
9 The "Minimum Salary Benefit" must not be included in the Triggering Event calculation.

10 28. Fifth, the Chargers claimed a "Team Salary Cap" of almost \$85 million. The
11 Chargers have not provided sufficient information to demonstrate the accuracy of that amount,
12 especially with regard to television revenues.

13 29. For at least the reasons stated in the preceding paragraphs, a Triggering Event has
14 not occurred and, therefore, the Renegotiation Notice is invalid.

15 **The Parties' Dispute Regarding "Impact."**

16 30. Even if a Triggering Event occurred, the subject matter of negotiations required
17 during the renegotiation period is limited to the "impact on the Chargers of the Triggering Event,"
18 if any:

19 Upon the delivery of a Renegotiation Notice, the parties hereto shall
20 negotiate in good faith ... to agree upon mutually acceptable terms
21 for *an amendment to this Agreement to offset the impact on the
Chargers of the Triggering Event....* (Use Agreement, § 31(b)(ii),
emphasis added.)

22 31. The Chargers have acknowledged that the phrase "offset the impact on the Chargers
23 of the Triggering Event" is ambiguous and subject to different interpretations. The City asks the
24 Court to issue declaratory relief as to the interpretation of that phrase.

25 32. The Chargers claimed during negotiations that the "impact on the Chargers of the
26 Triggering Event" is equal to the Chargers' shortfall in gross local revenue compared to the NFL
27 average. The Chargers further claimed that the annual amount of this "impact" is \$20 million, and
28 that it must be "offset" by a new stadium deal or by \$20 million in annual payments by the City to

1 the Chargers.

2 33. The City disputes the Chargers' proffered interpretation of "impact on the Chargers
3 of the Triggering Event." The City contends that the term "impact on the Chargers of the
4 Triggering Event" must be construed in accordance with the intent of the parties. Because the
5 Renegotiation Rights provision was intended to protect the Chargers only in the event of true
6 financial hardship, the purpose of the renegotiation period is to determine whether the Chargers
7 were suffering actual financial hardship and, if necessary, accommodate that financial impact. If
8 the Chargers are not suffering financial hardship, i.e., losing money, there is nothing to negotiate.

9 34. The basis and support for the Chargers' impact calculation is unknown to the City.
10 The City cannot ascertain if and to what extent the Chargers have suffered financial hardship
11 without financial information of the Chargers' revenues and expenses (for all years from 1994—
12 the year of initial negotiation of the Use Agreement—through the present). To that end, the City
13 requested information regarding the "impact on the Chargers of the Triggering Event." This
14 included requests for profit and loss information. The Chargers flatly refused to produce profit and
15 loss information.

16 35. Due to the disputes regarding the validity of the Renegotiation Notice and the
17 interpretation of the "impact" language, the City cannot determine with certainty whether the
18 Chargers are in breach of the Use Agreement and whether the City may be entitled to additional
19 relief arising from the issuance of the Renegotiation Notice or the Chargers refusal to negotiate
20 regarding certain issues.

21 36. This cross-complaint for declaratory relief, accounting and injunctive relief is
22 proper according to the terms of the Use Agreement which provides, in Section 25(a), that the City
23 is entitled to assert any and all rights and remedies at law or in equity.

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief re Renegotiation Notice – Against All Cross-Defendants)**

26 37. The City repleads and incorporates Paragraphs 1 through 36.

27 38. An actual controversy has now arisen between the Chargers and the City regarding
28 the Use Agreement and the rights and obligations of the parties thereunder.

1 appropriate in order that the City may ascertain its rights and obligations under the Use Agreement,
2 whether or not those rights and obligations have been properly exercised and/or met in this
3 instance and whether the Chargers are in breach of the Use Agreement. Specifically, the City
4 requests the following declarations from the Court:

5 a. The phrase “impact on the Chargers of the Triggering Event” as set forth in
6 Section 31(b)(ii) does not refer to the Chargers’ shortfall in local gross revenues;

7 b. The phrase “impact on the Chargers of the Triggering Event” as set forth in
8 Section 31(b)(ii) refers to the financial hardship, if any, being suffered by the Chargers;

9 c. No renegotiations are required pursuant to Section 31(b)(ii) if the Chargers
10 are not suffering financial hardship;

11 d. The Chargers may not invoke Section 31(b)(iii) or exercise any rights
12 thereunder (including negotiating or entering into a letter of intent with third parties for relocation)
13 if there is no “impact on the Chargers of the Triggering Event”;

14 e. With respect to the Renegotiation Notice delivered by the Chargers on
15 March 4, 2003, there has been no “impact on the Chargers of the Triggering Event”.

16 **THIRD CAUSE OF ACTION**

17 **(Accounting – Against All Cross-Defendants)**

18 45. The City repleads and incorporates Paragraphs 1 through 44.

19 46. The Chargers’ March 4, 2003 renegotiation notice asserts that a Triggering Event
20 has occurred which would require negotiations pursuant to Section 31(b). Pursuant to
21 Section 31(b)(ii), “Upon delivery of a Renegotiation Notice, the parties hereto shall negotiate in
22 good faith ... to agree upon mutually acceptable terms for an amendment to this [Use] Agreement
23 *to offset the impact on the Chargers of the Triggering Event...*” (emphasis added).

24 47. The Chargers’ assertion that a Triggering Event has occurred involves complex
25 accounts and disputes concerning the construction of the Section 31, application of the Triggering
26 Event formula, determinations of “Team Salary Cap,” “Team Salary” and “benefit payments” to
27 Chargers’ players, the “impact on the Chargers” of the alleged Triggering Event, and the Chargers’
28 profitability, among other things.

1 On the Third Cause of Action for Accounting:

2 1. For an accounting of the books and records of the Chargers relating to the Chargers’
3 assertion that a Triggering Event has occurred, including an accounting of the Chargers’ revenues
4 and expenses;

5 2. For an accounting of all books and records of the Chargers which relate to the
6 impact on the Chargers from the alleged Triggering Event including the Chargers’ profit and loss
7 information for all years from 1994 through the present, and such other information as is relevant
8 to a determination of whether there has been financial hardship.

9 On the Fourth Cause of Action for Injunctive Relief:

10 For an order enjoining and restraining the Chargers, their agents, attorneys and
11 representatives from engaging in any further wrongful actions as described herein, including
12 without limitation:

13 1. commencing or attempting to commence the running of the renegotiation period
14 pursuant to Section 31(b)(ii);

15 2. negotiating or entering into a letter of intent with third parties concerning relocation
16 unless the Court finds that the Renegotiation Notice was valid and construes the phrase “impact on
17 the Chargers of the Triggering Event” as requested by the City’s second cause of action for
18 declaratory relief; and/or

19 3. commencing or attempting to commence the exercise of any rights granted pursuant
20 to Section 31(b)(iii) unless the Court finds that the Renegotiation Notice was valid, construes the
21 phrase “impact on the Chargers of the Triggering Event” and until the parties have thereafter
22 negotiated in good faith for at least 90 days pursuant to Section 31(b)(ii) for an amendment to the
23 Use Agreement to offset such “impacts” in accordance with the Court’s construction.

24 In addition, if the Court finds that any renegotiations are required pursuant to
25 Section 31(b)(ii), the City requests that the Court issue an order restarting the renegotiation period
26 so that the parties may engage in meaningful renegotiations based on the Court’s declaration.

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On all causes of action:

1. For costs of suit herein incurred;
2. For such other and further relief as this Court deems just and proper.

DATED: January 26, 2004

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

By: Steven M. Strauss
Steven M. Strauss
Michael S. Levinson
Paul A. Tyrell
Attorneys for Defendant and Cross-Complainant
City of San Diego

3 **PROOF OF SERVICE**

2004 JAN 26 A 11: 57

4 I am a resident of the State of California, over the age of eighteen years, and not a party to
5 the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAWITCH
6 LLP, 530 B Street, Suite 2100, San Diego, California 92101. On January 26, 2004 I served the
7 within documents:

8 **CROSS-COMPLAINT FOR DECLARATORY RELIEF, ACCOUNTING AND**
9 **INJUNCTIVE RELIEF**

10 by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the
11 fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission
12 confirmation report is attached hereto.

13 by placing the document(s) listed above in a sealed envelope with postage thereon fully
14 prepaid, in the United States mail at San Diego, California addressed as set forth below. I
15 am readily familiar with the firm's practice of collection and processing correspondence
16 for mailing. Under that practice it would be deposited with the U.S. Postal Service on the
17 same day with postage thereon fully prepaid in the ordinary course of business. I am
18 aware that on motion of the party served, service is presumed invalid if postal
19 cancellation date or postage meter date is more than one day after date of deposit for
20 mailing an affidavit.

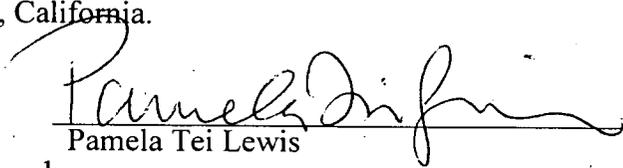
21 by placing the document(s) listed above in a sealed overnight envelope and depositing it
22 for overnight delivery at San Diego, California, addressed as set forth below. I am
23 readily familiar with the practice of this firm for collection and processing of
24 correspondence for processing by overnight mail. Pursuant to this practice,
25 correspondence would be deposited in the overnight box located at 530 "B" Street, San
26 Diego, California 92101 in the ordinary course of business on the date of this declaration.

27 by personally delivering the document(s) listed above to the person(s) at the address(es)
28 set forth below.

Harriet S. Posner
Carl Alan Roth
Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Tel: 213-687-5000
Fax: 213-687-5600
Attorneys for Chargers Football Company, LLC

29 (State) I declare under penalty of perjury under the laws of the State of California that
30 the above is true and correct.

31 Executed on January 26, 2004, at San Diego, California.

32 
Pamela Tei Lewis