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# San Diego City Attorney Jan I. Goldsmith

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## NEWS RELEASE

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Contact: Gina Coburn, Communications Director: (619) 533-6181

### **CITY ATTORNEY'S OFFICE SEEKS TRANSIENT OCCUPANCY TAXES FROM ON-LINE TRAVEL COMPANIES**

**San Diego, CA:** On May 28, 2010, the Administrative Hearing Officer issued a decision in favor of the City of San Diego against the Online Travel Companies ("OTC's") in the amount of \$21,264,218.75. This amount reflects an aggregate principal of \$17,011,375.00 and a delinquency penalty of \$4,252,843.75.

From 2000 through 2008, the OTC's have failed to remit to the city \$17 million in taxes collected from transients. "This money is tax revenue that belongs in the City's general fund," said Deputy City Attorney Jon Taylor. "That is the expectation that people have when they pay taxes for hotel stays."

The city estimates that it is losing over \$3 million per year in the differential between the amount collected by the OTC's and the amount remitted to the city.

The OTCs' main business model is their *preferred* merchant model. Under the *preferred* merchant model, the OTCs contract with hotels for the right to sell hotel room rentals to transients. The OTC's then advertise and offer the rooms for sale to the public on their web sites. The OTC's act as the merchant-of-record in the transactions, collecting funds from transients and controlling subsequent distribution of those funds. When a transient purchases a hotel room rental from an OTC, the OTC charges the transient a marked-up retail room rate and collects taxes on the retail rate. The OTC then pays the hotel a lesser, wholesale "net rate" and taxes based on the net rate and not the retail room rate paid by the transient.

The San Diego action is currently consolidated with cases from Los Angeles, Anaheim and San Francisco that are pending in Los Angeles Superior Court under a Judicial Council Coordinated Proceeding (JCCP No. 4772). In their filing on July 30, 2010, the OTC's attached the San Diego Administrative Decision, thus making it a public record, and indicated that they would be filing a writ of administrative mandamus challenging the administrative decision in the San Diego action.

The City of San Diego is being represented by three outside law firms, McKool Smith, Baron & Budd, and Kiesel Boucher & Larson. These firms are representing numerous municipalities in similar litigation throughout the United States. Attached is a copy of the news release from McKool Smith.

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**1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220**