

1 MICHAEL A. CONGER, ESQUIRE (State Bar #147882)  
2 LAW OFFICES OF MICHAEL A. CONGER  
3 2169 First Avenue  
4 San Diego, CA 92101  
5 Telephone (619) 234-1511  
6 Facsimile (619) 230-1074

7 Attorneys for Plaintiffs WILLIAM J. CORBETT;  
8 DONALD B. ALLEN; LEONARD LEE MOORHEAD;  
9 and GORDON L. WILSON; individually, and on behalf of  
10 all others similarly situated

FILED  
STEPHEN THUNBERG  
Clerk of the Superior Court

MAY 19 2000

By: L. JONES, Deputy

MAY 15 '00 4:33

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

11 WILLIAM J. CORBETT; DONALD B. ALLEN; )  
12 LEONARD LEE MOORHEAD; and GORDON L. )  
13 WILSON; individually, and on behalf of )  
14 all others similarly situated, )

15 Plaintiffs, )

16 v. )

17 CITY EMPLOYEES' RETIREMENT SYSTEM; )  
18 and DOES 1 through 50, inclusive, )

19 Defendants. )

20 CITY OF SAN DIEGO, )

21 Real Party in Interest. )

22 CITY EMPLOYEES' RETIREMENT SYSTEM )  
23 and CITY OF SAN DIEGO, )

24 Cross-Complainants, )

25 v. )

26 WILLIAM J. CORBETT; DONALD B. ALLEN; )  
27 LEONARD LEE MOORHEAD; AND GORDON )  
28 L. WILSON; individually and on behalf of all )  
others similarly situated, and DOES 1 through )  
10,000, inclusive, )

Cross-Defendants. )

CASE NO: 722449

I/C Judge: Robert E. May

Dept: 63

Action Date: July 16, 1998

**NOTICE OF ENTRY OF  
JUDGMENT**

[CCP §664.5(a)]


1 AND RELATED COMPLAINTS IN )  
INTERVENTION BY INTERVENERS SAN )  
2 DIEGO MUNICIPAL EMPLOYEES' )  
ASSOCIATION; SAN DIEGO CITY )  
3 FIREFIGHTERS LOCAL 145, IAAF, AFL-CIO; )  
LOCAL 127, AMERICAN FEDERATION OF )  
4 STATE, COUNTY AND MUNICIPAL )  
EMPLOYEES, AFL-CIO; AND SAN DIEGO )  
5 POLICE OFFICERS ASSOCIATION. )  
6

7 **TO: DEFENDANT, CROSS-COMPLAINANTS AND REAL PARTY IN INTEREST,**  
8 **AND THEIR ATTORNEYS OF RECORD:**

9 NOTICE IS HEREBY GIVEN that on the 17th day of May, 2000, judgment was entered  
10 in the above-entitled action. A conformed copy of the Judgment is attached to this Notice of  
11 Entry of Judgment.

12  
13 Dated: May 19, 2000

**LAW OFFICES OF MICHAEL A. CONGER**

14  
15 By:   
16 MICHAEL A. CONGER  
17 Attorneys for Plaintiffs and Cross-Defendants,  
18 William J. Corbett, Donald B. Allen, Leonard Lee  
19 Moorhead and Gordon L. Wilson  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT #1**

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

**F I L E D**  
STEPHEN THUNBERG  
Clerk of the Superior Court

**MAY 17 2000**

BY: BARBARA J. JONES, Deputy  
RECU MAY 15 2000 PM 4:17

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

WILLIAM J. CORBETT; DONALD B. ALLEN; LEONARD LEE MOORHEAD; and GORDON L. WILSON; individually, and on behalf of all others similarly situated,  
  
Plaintiffs,

v.  
CITY EMPLOYEES' RETIREMENT SYSTEM; and DOES 1 through 50, inclusive,  
  
Defendants.

CITY OF SAN DIEGO,  
  
Real Party in Interest.

CITY EMPLOYEES' RETIREMENT SYSTEM and CITY OF SAN DIEGO,  
  
Cross-Complainants,

v.  
WILLIAM J. CORBETT; DONALD B. ALLEN; LEONARD LEE MOORHEAD; AND GORDON L. WILSON; individually and on behalf of all others similarly situated, and DOES 1 through 10,000, inclusive,  
  
Cross-Defendants.

CASE NO: 722449  
  
I/C Judge: Robert E. May  
Dept: 63  
Action Date: July 16, 1998

~~PROPOSED~~  
ORDER AND JUDGMENT  
APPROVING SETTLEMENT  
OF CLASS ACTION

1 AND RELATED COMPLAINTS )  
 IN INTERVENTION BY INTERVENERS )  
 2 SAN DIEGO MUNICIPAL )  
 EMPLOYEES' ASSOCIATION; SAN DIEGO )  
 3 CITY FIREFIGHTERS LOCAL 145, IAAF, )  
 AFL-CIO; LOCAL 127, )  
 4 AMERICAN FEDERATION OF STATE, )  
 COUNTY AND MUNICIPAL EMPLOYEES, )  
 5 AFL-CIO; AND SAN DIEGO POLICE )  
 OFFICERS ASSOCIATION. )  
 6

---

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This matter comes on for a hearing this 12th day of May, 2000, in Department 63 of the Superior Court of the State of California, in and for the County of San Diego, the Honorable Robert E. May, on a motion brought concurrently by each party and intervener to approve the terms of a settlement. Appearing for the plaintiffs and plaintiffs in intervention were Michael A. Conger, Ann M. Smith, Ann M. Smith specially appearing for Anthony R. Segall, Joel N. Klevens, and Richard H. Castle. David B. Hopkins appeared for the defendant, the real party in interest and cross-complainants.

Based on the arguments and evidence presented, and after due consideration of the factors as set forth in *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801, and of the four objections the court has received to the proposed settlement,

IT IS ORDERED, ADJUDGED AND DECREED that the proposed settlement as set forth in the "Notice of Proposed Settlement of Class Action," filed April 4, 2000 (and attached at Tab #1), clarified by the terms set forth in the "Clarification of Settlement Terms" (attached at Tab #2) is approved by the court.

Date:           MAY 17 2000          

**ROBERT E. MAY**  
 \_\_\_\_\_  
 HON. ROBERT E. MAY  
 Superior Court of The State of California  
 County of San Diego

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

**F I L E D**  
STEPHEN THUNBERG  
Clerk of the Superior Court

**APR 04 2000**

By: BARBARA J. JONES, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO (CENTRAL DIVISION)

WILLIAM J. CORBETT; DONALD B. ALLEN;  
LEONARD LEE MOORHEAD; AND GORDON L.  
WILSON; individually and on behalf of those similarly  
situated,

Plaintiffs,

vs.

CITY EMPLOYEES' RETIREMENT SYSTEM and  
DOES 1 through 50, inclusive.,

Defendants.

CASE NO. 722449

NOTICE OF  
PROPOSED SETTLEMENT  
OF CLASS ACTION

CITY OF SAN DIEGO,

Real Party in Interest.

RELATED COMPLAINTS IN INTERVENTION BY  
INTERVENERS SAN DIEGO MUNICIPAL  
EMPLOYEES' ASSOCIATION; SAN DIEGO CITY  
FIREFIGHTERS LOCAL 145, IAAF, AFL-CIO; LOCAL  
127, AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, AFL-CIO; AND SAN  
DIEGO POLICE OFFICERS ASSOCIATION

I/C Judge Robert E. May  
Dept. 63  
Date May 12, 2000  
Time: 11:30 a.m.  
Complaint Filed: July 16, 1998

AND RELATED CROSS-ACTIONS.

**NOTICE TO CLASS MEMBERS OF PROPOSED SETTLEMENT  
IMPORTANT NOTICE ABOUT YOUR RETIREMENT BENEFITS  
FROM THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

## I.

**INTRODUCTION**

1  
2  
3 Please read this Notice carefully if you either currently receive, or will be entitled to receive  
4 in the future, retirement benefits from the San Diego City Employees' Retirement System  
5 ("SDCERS") as a result of employment with the City of San Diego ("THE CITY"), or are otherwise  
6 a member of the "PLAINTIFF CLASS," as described below. A copy of this Notice will also be  
7 posted on THE CITY's web site: [www.ci.san-diego.ca.us](http://www.ci.san-diego.ca.us); go to City Hall and then to the City  
8 Attorney Section.

9 The named parties and their counsel of record have reached a proposed Settlement of this  
10 case. To become effective, the proposed Settlement must be approved by the Court. To determine  
11 whether the Court should approve the proposed Settlement, there will be a hearing on May 12, 2000,  
12 at 11:30 a.m. before the Honorable Robert E. May in Department 63 of the Superior Court for the  
13 State of California, County of San Diego, located at 330 West Broadway, San Diego, California  
14 92101. The hearing will continue through the lunch hour, and thereafter until it is completed.

15 If you are a member of the "PLAINTIFF CLASS" and wish to object to the proposed  
16 Settlement, you have an opportunity to do so by following the procedures set out in this Notice. You  
17 may attend the May 12 hearing in any event, whether you object to the proposed Settlement or not.  
18 It is possible that there will also be a hearing on or before that date on the issue of attorneys' fees.  
19 If so, you will be advised by a separate Notice. Attorneys' fees are discussed more completely  
20 below, starting on page 9.

21 If the Settlement is approved by the Court, and if you are a member of the "PLAINTIFF  
22 CLASS," the Settlement will be binding on you whether or not you have objected to the Settlement.  
23 If the Settlement is approved, the "PLAINTIFF CLASS" will receive certain increased retirement  
24 benefits or disability retirement benefits, and each member is giving up his/her right to trial and  
25 giving up all claims which could have been brought or pursued in this lawsuit concerning the  
26 definition of Compensation, base compensation, Compensation Earnable or Final Compensation  
27 under the Municipal Code for purposes of calculating retirement benefits payable by SDCERS.

28 ///

1 THE PLAINTIFF CLASS CONSISTS OF ALL PERSONS WHO MAY CLAIM ANY  
2 RIGHT, WHETHER OR NOT CURRENTLY VESTED, TO RECEIVE RETIREMENT BENEFITS  
3 FROM THE SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM ("SDCERS") AS A  
4 RESULT OF EMPLOYMENT BY THE CITY OF SAN DIEGO ("THE CITY"), INCLUDING BUT  
5 NOT LIMITED TO ALL SUCH CURRENT EMPLOYEES OF THE CITY (INCLUDING THOSE  
6 WHO HAVE ELECTED TO PARTICIPATE IN THE DEFERRED RETIREMENT OPTION PLAN  
7 ("DROP")), FORMER EMPLOYEES OF THE CITY WHOSE RETIREMENT BENEFITS MAY  
8 BE DEFERRED, RETIRED FORMER EMPLOYEES OF THE CITY CURRENTLY RECEIVING  
9 RETIREMENT BENEFITS FROM SDCERS, ALL CURRENT MEMBERS OF SDCERS AS A  
10 RESULT OF EMPLOYMENT BY THE CITY, AND PERSONS WHO MAY CLAIM  
11 RETIREMENT BENEFITS FROM SDCERS AS A RESULT OF SOME OTHER PERSON'S  
12 CURRENT OR PAST EMPLOYMENT BY THE CITY, SUCH AS AS A BENEFICIARY,  
13 SURVIVOR, SUCCESSOR IN INTEREST, OR AS A PAYEE UNDER A DOMESTIC  
14 RELATIONS ORDER ("DRO") RELATING TO THE RETIREMENT BENEFITS OF ANOTHER  
15 PERSON WHO IS OR WAS A CURRENT OR FORMER EMPLOYEE OF THE CITY. THE  
16 LAWSUIT CONCERNS THE CALCULATION OF RETIREMENT BENEFITS PAID BY  
17 SDCERS TO ALL MEMBERS OF THE CLASS AS A RESULT OF ANY EMPLOYMENT WITH  
18 THE CITY, AND THE CONTRIBUTIONS REQUIRED TO BE PAID TO RECEIVE THOSE  
19 BENEFITS.

20 II.

21 PROCEDURAL HISTORY AND NATURE OF THE CLAIMS

22 Plaintiffs William J. Corbett, Donald B. Allen, Leonard Lee Moorhead and Gordon L. Wilson  
23 filed this action on July 16, 1998 and filed a First Amended Complaint on October 28, 1998.  
24 Generally, plaintiffs alleged that retirement benefits paid by SDCERS as a result of employment by  
25 THE CITY had not been properly calculated in light of the California Supreme Court's August 1997  
26 decision in Ventura County Deputy Sheriff's Association v. Board of Retirement of Ventura County  
27 Employees' Retirement Association.

28 ///



1 In Ventura, the California Supreme Court ruled that the Retirement Board in that case was  
2 required to classify certain payments made by the County of Ventura to its employees over and above  
3 their basic salaries as "compensation earnable" and to include those payments in "final  
4 compensation" used to calculate the amount of monthly pension benefits payable to the retired  
5 employees under the County Employees' Retirement Law of 1937 ("CERL"), Government Code  
6 Section 31450, *et seq.* Plaintiffs in this case allege that the same rationale should be applied to  
7 certain payments made by THE CITY.

8 On February 3, 1999, Defendant SDCERS and Real Party in Interest THE CITY filed an  
9 Answer and Cross-Complaint alleging, generally, that retirement benefits have been properly  
10 calculated and paid under applicable law and according to agreements and long-standing practices  
11 and, in the alternative, that, if retirement benefits must be increased to certain payees, the Court must  
12 also determine the allocation among the parties of the costs of those increased benefits.

13 Thereafter, the following four unions intervened on behalf of their bargaining units. The  
14 union plaintiffs in intervention are: the Municipal Employees Association (MEA); Firefighters  
15 Local 145; AFSCME Local 127; and the San Diego Police Officer's Association (POA). Generally,  
16 each of the four unions asserts that, as the exclusive bargaining agent for certain active employees,  
17 it has an interest in the outcome of this litigation and the issues presented herein.

18 On November 19, 1999, the Court signed an order certifying this case as a class action,  
19 because the outcome of the case was likely to impact all SDCERS members who claim any right to  
20 receive retirement or disability retirement benefits from SDCERS as a result of employment by THE  
21 CITY, whether they were actively involved in the case or not. The Court also ordered that all  
22 members of the PLAINTIFF CLASS be notified that this case was pending and could affect the  
23 rights of members of the PLAINTIFF CLASS. A Notice of Pendency of Class Action was approved  
24 by the Court and delivered to members of the PLAINTIFF CLASS in February and March 2000.  
25 On March 10, 2000, the Court scheduled a hearing on the plaintiffs' planned petition for a writ of  
26 mandate for May 26, 2000.

27 On March 1 and March 13, 2000, all of the parties and counsel in this case participated in a  
28 mediation with Howard B. Wiener, a retired Justice of the Court of Appeal of the State of California.

1 As a result of the mediation, the parties and counsel were able to reach an agreement to settle the  
2 case. Each of the parties and counsel recognized that the litigation presented risks, and that the case  
3 could result in an outcome more favorable or less favorable to any party.

4 III.

5 DESCRIPTION OF THE SETTLEMENT

6 A. **Proposed Settlement for All Class Members (or Their Beneficiaries) who are**  
7 **Vested Retired Members of SDCERS as a Result of Employment with the City**  
**or Retired From Employment by the City of San Diego on or Before July 1, 2000.**

8 If you are receiving retirement benefits, or disability retirement benefits, from SDCERS as  
9 a result of active employment with THE CITY that terminated on or before July 1, 2000 (including  
10 former DROP participants who have ceased active employment prior to July 1, 2000), or if you are  
11 a vested deferred member of SDCERS as a result of employment with THE CITY, your retirement  
12 benefit payment (with the exception of the Supplemental COLA adjustment and the Annual  
13 Supplemental Benefit (the "13<sup>th</sup> check")) will increase by a simple seven per cent (7%), both  
14 prospectively and retroactively. This seven per cent (7%) will apply to all such retirement benefit  
15 payments you (or your DROP account) have received since July 1, 1995, and will receive in the  
16 future. You will receive the retroactive payment in a single lump sum payment in approximately late  
17 October, 2000 at the time the Annual Supplemental Benefit (the "13<sup>th</sup> check") is normally  
18 distributed. If you have chosen to leave the balance of your DROP account retained by SDCERS,  
19 you may elect to have your retroactive payment deposited in that account.

20 Each year, these payments are contingent on SDCERS having sufficient Surplus  
21 Undistributed Earnings to pay them under the section of the Municipal Code concerning the use of  
22 SDCERS Surplus Undistributed Earnings (SDMC § 24.1502) after the Annual Supplemental Benefit  
23 (the "13<sup>th</sup> check"). To the extent these amounts are not paid in any year because there are insufficient  
24 Surplus Undistributed Earnings, they will be carried forward as a contingent liability which will be  
25 paid in future years in which there are sufficient Surplus Undistributed Earnings to pay them under  
26 the statute. Liabilities carried forward will be paid in the order in which they accrued.

27 Each year, the right to receive these payments will be accrued monthly. However, they will  
28 be paid annually, subject to the contingency, approximately five months after the close of SDCERS

1 fiscal year (at the time the Annual Supplemental Benefit (the "13<sup>th</sup> check") is normally distributed).  
 2 Thus, subject to the contingency, in approximately October 2000, the retroactive payment will be  
 3 distributed and in approximately October 2001, the seven percent (7%) increased benefit for the  
 4 fiscal year July 1, 2000 through June 30, 2001 will be distributed.

5        Payments pursuant to this proposed Settlement will be paid with respect to estates of retired  
 6 members only in the event there is a designated beneficiary eligible for a continuance (hereinafter,  
 7 "Beneficiary") to the retirement benefit and, in that event, will be paid only to the designated  
 8 Beneficiary at the time the payment is made. As a hypothetical example, if a member who was  
 9 retired prior to July 1, 1995 died on June 30, 1997 and designated a Beneficiary, the retroactive  
 10 payment paid to the Beneficiary will be seven percent (7%) of the full retirement benefit for the two-  
 11 year period from July 1, 1995 through June 30, 1997 and seven percent (7%) of the Beneficiary's  
 12 benefit for the remaining three years of the retroactive period. (In both instances, the retirement  
 13 benefit excludes any Supplemental COLA adjustment and the Annual Supplemental Benefit (the  
 14 "13<sup>th</sup> check")). Similarly, as another hypothetical example, if a retired member should die on  
 15 December 15, 2000 and designate a Beneficiary, and there are sufficient Surplus Undistributed  
 16 Earnings to pay the seven percent (7%) increase for the fiscal year starting July 1, 2000, the  
 17 Beneficiary will receive, in approximately October 2001, a sum equal to seven percent (7%) of the  
 18 full retirement benefit for the five-month period July through November 2000 and seven percent  
 19 (7%) of the Beneficiary benefit for the seven-month period December 2000 through June 2001.  
 20 (Again, in both instances, the retirement benefit is calculated with the exception of the Supplemental  
 21 COLA Adjustment and the Annual Supplemental Benefit (the "13<sup>th</sup> check")). If there is no  
 22 designated Beneficiary with respect to the account, there will be no payments under the proposed  
 23 Settlement with respect to any estate of a retired member who dies prior to a payment date.

24        The increased retirement benefit payment described in this section will not be paid to Special  
 25 Safety Class members (also known as "the fluctuaters") or their beneficiaries because their  
 26 retirement benefits are not based on the Municipal Code provisions concerning the definition of  
 27 Compensation, base compensation, Compensation Earnable or Final Compensation.

28 ///

1 The seven percent (7%) increase in retirement benefits paid to retired members of the  
2 PLAINTIFF CLASS is less than the ten percent (10%) increase that active employees may elect to  
3 receive (as described below), because retired employees did not make contributions to SDCERS  
4 during the period of their employment for these increased benefits, while active employees will make  
5 contributions for their increased benefits in the future.

6 **B. Proposed Settlement for All Active Employee "Safety Members" as Defined by**  
7 **the San Diego Municipal Code.**

8 If you are employed by THE CITY at any time on or after July 1, 2000, and are classified as  
9 a Lifeguard or a Safety Member of SDCERS, you will be allowed, as a vested benefit, to make an  
10 election at the time of your retirement between the following two choices for the calculation of your  
11 retirement benefit (with the exception of the Supplemental COLA adjustment and the Annual  
12 Supplemental Benefit (the "13<sup>th</sup> check")):

- 13 1. Your Retirement Calculation Factor will be increased from 2.5% (2.2% for  
14 Lifeguards) at age 50 to 3.0% at age 50 and all subsequent years; or
- 15 2. Your retirement benefit will be calculated on the basis of the Retirement Calculation  
16 Factors in effect on June 30, 2000, and your retirement benefit (with the exclusion of  
17 the Supplemental COLA adjustment and the annual Supplemental Benefit (the "13<sup>th</sup>  
18 check")) so computed will be increased by ten per cent (10%).

19 Starting on July 1, 2001, which is one year after the Effective Date of the Settlement (July 1,  
20 2000), your employee contribution to SDCERS will increase by an amount to be determined by  
21 SDCERS' actuary (currently estimated to be 1.23% for Lifeguards and .53% for other Safety  
22 members) as the employee normal contribution to fund the payment of additional retirement benefits.  
23 Your employee contribution will not increase to pay for the additional cost of the choice described  
24 above (currently estimated to be .16%). That amount will be paid from an existing SDCERS reserve  
25 for employee benefits until that reserve is exhausted (estimated to occur in approximately 20 years).

26  
27  
28 ///

1 **C. Proposed Settlement for All Active Employee "General Members" as Defined in**  
2 **the San Diego Municipal Code.**

3 If you are employed by THE CITY at any time on or after July 1, 2000, and are classified as  
4 a General Member of SDCERS, you will be allowed, as a vested benefit, to make an election at the  
5 time of your retirement between the following two choices for the calculation of your retirement  
6 benefit (with the exception of the Supplemental COLA adjustment and the Annual Supplemental  
7 Benefit (the "13<sup>th</sup> check")):

- 8 1. Your Retirement Calculation Factor will be increased from 2.0% at age 55 (stepping  
9 up to 2.55% at age 65 and all subsequent years) to 2.25% at age 55 (stepping up to  
10 2.55% at age 65 and all subsequent years); or
- 11 2. Your retirement benefit will be calculated on the basis of the Retirement Calculation  
12 Factors in effect on June 30, 2000, and your retirement benefit (with the exclusion of  
13 the Supplemental COLA adjustment and the Annual Supplemental Benefit (the "13<sup>th</sup>  
14 check")) so computed will be increased by ten per cent (10%).

15 Starting on July 1, 2001, which is one year after the Effective Date of the Settlement (July 1,  
16 2000), your employee contribution to SDCERS will increase by an amount to be determined by  
17 SDCERS' actuary (currently estimated to be .49%) as the employee normal contribution to fund the  
18 payment of additional retirement benefits. Your employee contribution will not increase to pay for  
19 the additional cost of the choice described above (currently estimated to be .16%). That amount will  
20 be paid from an existing SDCERS reserve for employee benefits until that reserve is exhausted  
21 (estimated to occur in approximately 20 years.)

22 **D. Proposed Settlement for All Active Employee "Legislative Members" as Defined**  
23 **in the San Diego Municipal Code.**

24 If you are employed by THE CITY at any time on or after July 1, 2000, and are classified as  
25 a Legislative Member of SDCERS, your retirement benefit will be calculated on the basis of the  
26 Retirement Calculation Factors in effect as of June 30, 2000 and your retirement benefit (with the  
27 exclusion of the Supplemental COLA adjustment and the Annual Supplemental Benefit (the "13<sup>th</sup>  
28 check")) so computed will be increased by ten per cent (10%), as a vested benefit. Your employee

1 contribution will increase to pay for this increased benefit in the same amounts as are currently  
2 estimated for General Members (.49%, plus .16%), which will be paid in the same manner and on  
3 the same schedule as for General Members.

4 **E. Proposed Settlement for All Currently Employed DROP Participants.**

5 If you have elected, or elect prior to July 1, 2000, to participate in THE CITY's Deferred  
6 Retirement Option Program ("DROP"), and are still actively employed by THE CITY as of July 1,  
7 2000, any retirement benefit payments payable into your DROP account prior to July 1, 2000 (with  
8 the exception of any Supplemental COLA adjustment and the Annual Supplemental Benefit (the  
9 "13<sup>th</sup> check")) will be increased by seven per cent (7%) (the "Retroactive Payment"), and all such  
10 retirement benefit payments to be made on or after July 1, 2000, into your DROP account or  
11 otherwise, will be increased by ten per cent (10%) (the "Prospective Payment"). Your Retroactive  
12 Payment will be paid in approximately October 2000 at the time the Annual Supplement Benefit (the  
13 "13<sup>th</sup> check") is normally distributed. Your Retroactive Payment is contingent on SDCERS having  
14 sufficient Surplus Undistributed Earnings to pay it under the section of the Municipal Code  
15 concerning the use of SDCERS Surplus Undistributed Earnings (SDMC § 24.1502) after the Annual  
16 Supplemental Benefit (the "13<sup>th</sup> check"). To the extent the Retroactive Payment is not paid in any  
17 year because there are insufficient Surplus Undistributed Earnings, it will be carried forward as a  
18 contingent liability which will be paid in future years in which there are sufficient Surplus  
19 Undistributed Earnings to pay it under the statute. Liabilities carried forward will be paid in the  
20 order in which they accrued. Your ten percent (10%) Prospective Payment described above is not  
21 contingent and is a vested benefit.

22 **F. Payment of Attorneys' Fees.** SDCERS and THE CITY have tentatively agreed with counsel  
23 for Plaintiffs and the Intervenors to pay them a specific total amount in satisfaction of all their claims  
24 for attorneys' fees and costs incurred and to be incurred with respect to this case. The tentative  
25 agreement is subject only to the approval of the governing bodies of SDCERS and THE CITY,  
26 respectively, at meetings scheduled to take place during the week of April 10, 2000. If the tentative  
27 agreement regarding attorneys' fees and costs is approved, you will not have to pay any attorneys'

28 ///

1 fees or costs with respect to this case, nor will there be any deductions from payments you receive  
2 pursuant to the proposed settlement.

3 Starting the afternoon of April 14, 2000, you may learn whether the tentative agreement  
4 regarding reasonable attorneys' fees has been approved and, if so, the amount of the reasonable  
5 attorneys' fees and costs to be paid collectively by SDCERS and THE CITY, by accessing THE  
6 CITY'S web site at [www.ci.san-diego.ca.us](http://www.ci.san-diego.ca.us) and going first to City Hall and then to the City Attorney  
7 Sections. In the alternative, you can receive that information starting the afternoon of April 14, 2000  
8 by calling 619-236-7373 to receive a recorded message.

9 If the tentative agreement regarding attorneys' fees and costs is NOT approved, in addition  
10 to being so advised on the web site, you will also be advised of the schedule on which the Court will  
11 hear motion(s) to be filed by Counsel for the PLAINTIFF CLASS and SUB-CLASSES to recover  
12 reasonable attorneys' fees and costs, and how this issue might affect the proposed Settlement.

#### 13 IV.

#### 14 TIMING, PROCEDURES, CONDITIONS AND EFFECTIVE DATE

15 A condition precedent to the Settlement is confirmation from the SDCERS actuary that the  
16 terms of the proposed Settlement will not cause the SDCERS funded ratio to fall below 90% as of  
17 July 1, 2000. This condition has been satisfied with respect to the payments to be made to the  
18 PLAINTIFF CLASS.

19 This Notice contains the terms of the proposed Settlement. Once approved by the Court, this  
20 Notice becomes the Settlement and this Notice becomes the formal and complete Settlement  
21 Agreement.

22 If the proposed Settlement is approved by the Court, THE CITY must pass necessary  
23 ordinances to implement it. Conditions subsequent to the Settlement will be the approval of those  
24 ordinances by the SDCERS membership as required by the San Diego Municipal Code, and a  
25 determination by counsel for the PLAINTIFF CLASS and SUB-CLASSES that the ordinances  
26 effectively implement the Settlement.

27 Nothing in this Settlement shall be deemed to grant to any party any approval rights over any  
28 other actions of THE CITY. All parties acknowledge that THE CITY is considering changing

1 portions of the Municipal Code affecting the SDCERS Retirement Plan, including changing or  
 2 eliminating the provisions concerning Compensation, base compensation, Compensation Earnable,  
 3 and/or Final Compensation, and that nothing in this Settlement shall affect in any way the power of  
 4 THE CITY to do so or the negotiating right of THE CITY's labor organizations.

5 If the conditions subsequent are not satisfied, the Settlement is void and the litigation will  
 6 resume.

7 If the Court approves the Settlement, the effective date will be July 1, 2000, and all  
 8 entitlements to payments under the Settlement will accrue as of that date. Nevertheless, SDCERS  
 9 may not make payments as required under the Settlement until after the conditions subsequent have  
 10 been satisfied.

11 V.

12 THE SETTLEMENT HEARING AND OPTIONS OF CLASS MEMBERS

13 Because of the nature of this lawsuit, you will not have an opportunity to be excluded from  
 14 the Settlement of this case if it is approved by the Court. That means that, if and when the  
 15 Settlement is approved by the Court, you will be bound by it. If you wish you may, however, object  
 16 to the terms of the Settlement.

17 If you object to the terms of the Settlement, you may appear in person or through your  
 18 attorney and be heard in opposition. You may object on the grounds of the fairness, reasonableness,  
 19 and adequacy of the Settlement by delivering no later than May 4, 2000 to counsel for your SUB-  
 20 CLASS at the address set out below documentary proof that you are a member of the Settlement  
 21 class and a written statement of the basis of your objection. Mr. Conger will provide to the Court  
 22 and all other counsel copies of any objections, together with an index, by May 8, 2000.

23 VI.

24 NOTICE OF ATTORNEYS OF RECORD

25 If you submit any objections or other papers regarding the proposed Settlement, a copy should  
 26 be sent to the attorney for your Sub-Class at the address listed below:

27

28 ///



1 **1. Michael A. Conger, Esq., Law Offices of Michael Conger, 2169 First Avenue, San Diego,**  
 2 **CA 92101, phone (619) 234-1511, fax (619) 230-1074; e-mail: congermike@aol.com, attorney for**  
 3 **both "Sub-classes A and F," which consist of:**

4 **Sub-class A: All former employees of the CITY who are classified**  
 5 **as retired by SDCERS (including those who have elected to participate**  
 6 **in the Deferred Retirement Option Plan ("DROP")); and**

7 **Sub-class F: All other persons not included in Sub-classes A, B, C,**  
 8 **D, or E, as described here, who are in the class (that is, all persons**  
 9 **who may claim any right, whether or not currently vested, to receive**  
 10 **retirement benefits from SDCERS as a result of employment by the**  
 11 **CITY), but who are not members of any of Sub-classes A through E.**  
 12 **This sub-class includes current employees who are legislative officers,**  
 13 **unclassified employees and unrepresented employees (including those**  
 14 **who have elected to participate in the Deferred Retirement Option**  
 15 **Plan ("DROP")). This sub-class also includes all persons who may**  
 16 **claim any right, whether or not currently vested, to receive retirement**  
 17 **benefits from SDCERS as a result of any other person's current or past**  
 18 **employment by the CITY (including those who have elected to**  
 19 **participate in the Deferred Retirement Option Plan ("DROP")),**  
 20 **including as a current or former employee's beneficiary, survivor, or**  
 21 **successor in interest, or as a payee under a Domestic Relations Order**  
 22 **relating to the retirement benefits of some other person currently or**  
 23 **formerly employed by the CITY.**

24 **2. Ann M. Smith, Esq. of Tosdal Levine Smith & Steiner, 600 B Street, Suite 2100, San Diego,**  
 25 **CA 92101, phone (619) 239-7200, fax (619) 239-6048; e-mail ASMITH@tlsslaw.com, attorney for**  
 26 **"Sub-class B," which consists of:**

27 **All current employees of the CITY (including those who have elected**  
 28 **to participate in the Deferred Retirement Option Plan ("DROP"))**  
 29 **employed in positions within any of the following bargaining units**  
 30 **represented by San Diego Municipal Employees' Association**  
 31 **("MEA") as exclusive bargaining agent: (1) Administrative and Field**  
 32 **Support, or (2) Technical, or (3) Professional, or (4) Supervisory.**  
 33 **Plaintiff in Intervention MEA shall be the representative of all**  
 34 **members of Sub-Class B.**

35 **3. Joel N. Klevens, Esq. of Fogel, Feldman, Ostrov, Ringler & Klevens, 1620 26<sup>th</sup> St., Ste. 100**  
 36 **South Tower, Santa Monica, CA 90404-6711, phone (310) 453-6711, fax (310) 828-2191; e-mail:**  
 37 **JoelK@FFORK.com, attorney for "Sub-class C," which consists of:**

38 **All current employees of the CITY (including those who have elected**  
 39 **to participate in the Deferred Retirement Option Plan ("DROP")) who**  
 40 **are represented by San Diego City Firefighters Local 145, IAAF,**  
 41 **AFL-CIO ("Firefighters Local 145") as exclusive bargaining agent and**  
 42 **are employed as either a: (1) Fire Recruit; (2) Fire Fighter I; (3) Fire**  
 43 **Fighter II; (4) Fire Engineer; (5) Fire Captain; (6) Fire Battalion Chief;**

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

(7) Fire Prevention Inspector I; (8) Fire Prevention Inspector II; (9) Fire Prevention Supervisor; (10) Assistant Fire Marshall; (11) Emergency Medical Technician; (12) Paramedic I; (13) Paramedic II; or (14) Medical Operations Coordinator. Plaintiff in Intervention Firefighters Local 145 shall be the representatives of all members of Sub-Class C.

4. Anthony R. Segall, Esq. of Rothner, Segall & Greenstone 200 East Del Mar Boulevard, Suite 200, Pasadena, CA 91105-2544, phone (626) 796-7555, fax (626) 577-0124, attorney for Sub-Class D, which consists of:

All current employees of the CITY (including those who have elected to participate in the Deferred Retirement Option Plan ("DROP")) employed in positions within the Maintenance, Labor, Skilled Trades and Equipment Operator Unit represented by Local 127, American Federation of State, County and Municipal Employees, AFL-CIO, ("AFSCME Local 127") as exclusive bargaining agent.

5. Richard H. Castle, Jr., Esq., of Castle & Krause, 41877 Enterprise Circle North, Suite 140, Temecula, CA 92590, phone (909) 694-8884, fax (909) 699-8634, attorney for Sub-Class E, which consists of:

All current employees of the CITY of San Diego (including those who have elected to participate in the Deferred Retirement Option Plan ("DROP")) who are represented by the San Diego Police Officers Association ("POA") as exclusive bargaining agent.

6. David B. Hopkins, Esq., Hillyer & Irwin, 500 West C Street, Suite 1600, San Diego, CA 92101, phone (619) 234-6121, fax (619) 595-1313, attorney for SDCERS and THE CITY.

**VII.**

**CHANGE OF ADDRESS**

If you move after receiving this notice or if it was misaddressed, and if you are a deferred or retired member, beneficiary, survivor or successor in interest of any member of SDCERS who claims benefits as a result of employment with THE CITY, you should supply your name and correct address to the San Diego City Employees' Retirement System. If you are an active employee of THE CITY, you should supply that information to the payroll department of the City of San Diego. **THIS IS IMPORTANT SO THAT FUTURE NOTICES REACH YOU.**

///

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

VIII.

**EXAMINATION OF PAPERS AND INQUIRIES**

The pleadings and all of the records of this litigation may be examined and copied at any time during regular office hours of the Clerk of the Superior Court at the Hall of Justice, Second Floor, Room 225 (Civil Records and Filings), 330 West Broadway, San Diego, California 92101.

**IF YOU HAVE QUESTIONS OR COMMENTS, DO NOT CALL OR WRITE TO THE COURT OR THE CLERK OF THE COURT. PLEASE ADDRESS ALL INQUIRIES IN WRITING TO THE COUNSEL FOR YOUR SUB-CLASS, STATED ABOVE.**

Date: APR 04 2000

ROBERT E. MAY

HON. ROBERT E. MAY  
Superior Court of The State of California  
County of San Diego

**SO APPROVED AS THE SETTLEMENT AGREEMENT, SUBJECT TO COURT APPROVAL:**

Date: 3/31/00

LAW OFFICES OF MICHAEL CONGER

Michael A. Conger  
Michael A. Conger  
Attorney for Sub-classes A and F

Date: April 3, 2000

TOSDAL LEVINE SMITH & STEINER

Ann M. Smith  
Ann M. Smith  
Attorney for Sub-class B

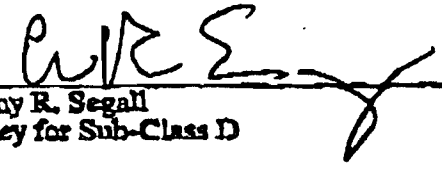
Date: 4/3/2000

FOGEL, FELDMAN, OSTROV, RINGLER & KLEVENS, a Law Corporation

Joel N. Klevens  
Joel N. Klevens  
Attorney for Sub-class C

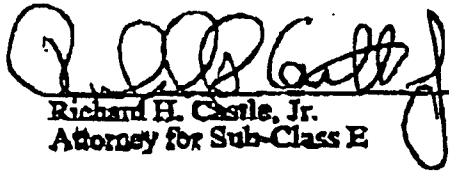
1 Date: March 31, 2000

ROTHNER, SEGALL & GREENSTONE

  
Anthony R. Segall  
Attorney for Sub-Class D

6 Date: March 31, 2000

CASTLE & KRAUSE

  
Richard H. Castle, Jr.  
Attorney for Sub-Class E

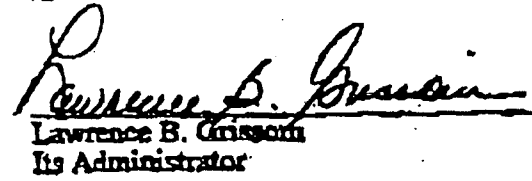
11 Date: March 31, 2000

HILLYER & IRWIN

  
David B. Hopkins  
Attorney for SDCERS and THE CITY

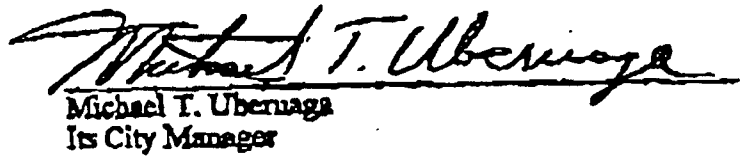
16 Date: March 31, 2000

SDCERS RETIREMENT BOARD OF  
ADMINISTRATION

  
Lawrence B. Grissom  
Its Administrator

21 Date: March 31, 2000

CITY OF SAN DIEGO

  
Michael T. Uberuaga  
Its City Manager

28

**EXHIBIT # 2**

## **CLARIFICATION OF SETTLEMENT TERMS**

*Corbett, et al v. City Employees' Retirement System, et al, Case # 722449*

The terms of the settlement agreement as set forth in the "Notice of Proposed Settlement of Class Action," filed April 4, 2000, are clarified as follows:

1. **Supplemental COLA.** Payments made under the *Corbett* settlement will not reduce the supplemental cost of living increase given to eligible SDCERS retirees.

2. **Reciprocity Agreements.** The settlement affects only the retirement benefits to be paid by SDCERS to a class member. If a class member receives (either now or in the future) retirement benefits from both SDCERS and from some other reciprocating body, the increased retirement benefits resulting from the *Corbett* settlement apply to the benefits to be paid by SDCERS, but not to the benefits to be paid by any other reciprocating entity which is not a party to the settlement. Similarly, the settlement affects only the contribution rates of class members related to their employment with the City, and not with any other reciprocating entity.

3. **General Member Retirement Calculation Factors Starting at Age 55.** The exact steps for increasing the Retirement Calculation Factor from 2.25% at age 55 up to 2.55% at age 65 and all subsequent years which general members may elect at the time of retirement are as follows:

Age	Retirement Calculation Factor
55-59	2.25%
60	2.3%
61	2.35%
62	2.4%
63	2.45%
64	2.5%
≥65	2.55%

4. **Estimated Dates for Contingent Payments.** The contingent payments to class members who are retired as of June 30, 2000, and the contingent payments to DROP participants for the period prior to July 1, 2000 will be made "in approximately November" of the applicable year, as opposed to "in approximately October."

5. **Costs and Attorneys' Fees.** Costs and attorneys' fees in the total amount of \$1.2 million are to be paid by the City and SDCERS to counsel for the plaintiff sub-classes.

**F I L E D**  
STEPHEN THUNBERG  
Clerk of the Superior Court

**DECLARATION OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO MAY 19 2000**

**Corbett, et al. v. City Employees' Retirement System, et al.** By: **L. JONES, Deputy**

**Superior Court Case Number 722449**

I declare as follows:

I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 2169 First Avenue, San Diego, California 92101.

On March 16, 2000, I served the foregoing document(s) described as:

**1. NOTICE OF ENTRY OF JUDGMENT;**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**David B. Hopkins, Esquire  
Hillyer & Irwin  
550 West C Street, 16<sup>th</sup> Floor  
San Diego, CA 92101-3568  
(619) 234-6121  
(619) 595-1313 (Fax No.)**

**Attorneys for Defendant City  
Employees Retirement System  
and Real Party in Interest  
City of San Diego**

**Ann M. Smith, Esquire  
Tosdal, Levine, Smith & Steiner  
600 "B" Street, Suite 2100  
San Diego, CA 92101  
(619) 239-7200  
(619) 239-6048 (Fax No.)**

**Attorneys for Intervenor San  
Diego Employees Association**

**Joel N. Klevens, Esquire  
Fogel, Feldman, Ostrov, Ringler & Klevens  
1620 26<sup>th</sup> Street, Suite 100 South Tower  
Santa Monica, CA 90404-4040  
(310) 453-6711  
(310) 828-2191 (Fax No.)**

**Attorneys for Intervenor San  
Diego City Firefighters, Local  
145, IAFF, AFL-CIO**

**Anthony R. Segall, Esquire  
Rothner, Segall & Greenstone  
200 East Del Mar Boulevard  
Pasadena, CA 91105-2544  
(626) 796-7555  
(626) 577-0124 (Fax No.)**

**Attorneys for Intervenor  
Local 127, American  
Federation of State, County  
And Municipal Employees,  
AFL-CIO**



1  
2 **Richard H. Castle, Jr., Esquire**  
3 **Castle & Krause**  
4 **28645 Old Town Front Street**  
5 **Temecula, CA 92590**  
6 **(909) 694-8884**  
7 **(909) 699-8634 (Fax No.)**

**Attorneys for Police Officers  
Association**

8 **Kathleen Furness, Esquire**  
9 **Browning & Furness, LLP**  
10 **402 West Broadway, Suite 1240**  
11 **San Diego, CA 92101**  
12 **(619) 234-2194**  
13 **(619) 234-2197 (Fax No.)**

14 (X) BY MAIL - I am readily familiar with the firm's practice of collection and processing  
15 of correspondence for mailing with the United States Postal Service, and that the  
16 correspondence shall be deposited with the United States Postal Service this same day  
17 in the ordinary course of business pursuant to Code of Civil Procedure § 1013a.

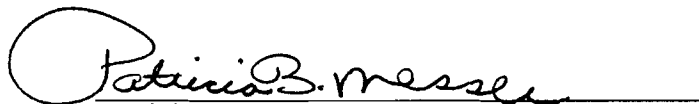
18 ( ) BY FAX - A copy of said documents were delivered by facsimile transmission to the  
19 addressee pursuant to Code of Civil Procedure §1013(e). The transmissions were  
20 reported as complete and without error on May 19, 2000, at \_\_\_\_\_ a.m., \_\_\_\_\_  
21 a.m., \_\_\_\_\_ a.m., \_\_\_\_\_ a.m., \_\_\_\_\_ a.m. and \_\_\_\_\_ a.m., respectively,  
22 from the fax machine located at (619) 230-1074. The attached transmission reports  
23 were properly issued by the transmitting machine.

24 ( ) BY PERSONAL SERVICE - I hand-delivered said document(s) to the addressee  
25 pursuant to Code of Civil Procedure §1011.

26 ( ) FEDERAL EXPRESS - I caused said document(s) to be deposited in a box or other  
27 facility regularly maintained by the express service carrier providing overnight delivery  
28 pursuant to Code of Civil Procedure §1013(c).

Executed on May 19, 2000, at San Diego, California.

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

21   
22 Patricia B. Messer