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5 Attorneys for Defendants
 6 TUTOR-SALIBA CORPORATION; TUTOR-SALIBA PERINI &
 7 BUCKLEY, J.V.; PERINI CORPORATION; BUCKLEY &
 8 COMPANY, INC. and RONALD N. TUTOR

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 CITY AND COUNTY OF SAN FRANCISCO, a)
 12 municipal corporation and a political subdivision)
 13 of the State of California and DENNIS J.)
 14 HERRERA, City Attorney for San Francisco, on)
 15 behalf of the PEOPLE OF THE STATE OF)
 16 CALIFORNIA,)

14 Plaintiffs,

15 vs.

16 TUTOR-SALIBA CORPORATION; a California)
 17 corporation; TUTOR-SALIBA PERINI &)
 18 BUCKLEY, J.V., a California joint venture;)
 19 PERINI CORPORATION, a Massachusetts)
 20 corporation; BUCKLEY & COMPANY INC., a)
 21 Pennsylvania corporation; AMERICAN HOME)
 22 INSURANCE COMPANY, a New York)
 23 corporation; FIDELITY AND DEPOSIT)
 24 COMPANY OF MARYLAND, a Maryland)
 25 corporation; SWISS REINSURANCE)
 26 AMERICA CORPORATION, a New York)
 27 corporation; THE AETNA CASUALTY AND)
 28 SURETY COMPANY, a Connecticut)
 corporation; and RONALD N. TUTOR,)

24 Defendants.

Case No. C 02 5286 CW (EWC)

**DECLARATION OF ROBERT NIDA
 FILED IN SUPPORT OF
 MOTION TO ENFORCE PRIOR
 ORDER AND MOTION FOR
 CONTEMPT OF COURT FOR
 FAILURE TO COMPLY WITH ORDER
 OF THE SPECIAL MASTER TO
 CERTIFY PRODUCTION OF
 DOCUMENTS (DOCKET 717)**

Complaint Filed: November 1, 2002

Trial Date Set: January 30, 2007

**Date: TBD
 Time: TBD
 Location: JAMS
 2 Embarcadero Center
 Suite 1100
 San Francisco, California**
**Before: Special Master
 Justice Daniel M. Hanlon,**

**[FILED CONCURRENTLY WITH THE
 NOTICE OF MOTION AND MOTION;
 AND PROPOSED ORDER]**

1 I, ROBERT NIDA declare:

- 2 1. I am an associate for the firm Castle & Associates, attorneys of record for
3 Defendants Tutor-Saliba Corporation, (“Tutor-Saliba”); Tutor-Saliba Perini &
4 Buckley, J.V., (“TSPB”); Perini Corporation, (“Perini”); Buckley & Company,
5 Inc., (“Buckley”), and Ronald N. Tutor, (“Mr. Tutor”), (hereinafter sometimes
6 collectively referred to as “Defendants”) in this action.
- 7 2. I am duly licensed to practice law in all of the courts of the State of California and
8 before the United States District Court for the Northern District of California.
- 9 3. I make this declaration of my own personal knowledge and if called as a witness
10 herein, I could and would competently testify to all of the facts stated below.
- 11 4. On August 11, 2005, the Special Master filed Docket 717, a recommendation
12 requiring Plaintiffs to file a pleading affirming that Plaintiffs have produced all
13 documents associated with Priorities One through Seven of Defendants’ First
14 Request to Produce Documents. A copy of the recommendation of the Special
15 Master is attached hereto as Exhibit 1. The recommendation concerned a Motion
16 filed by the Tutor Defendants concerning the production of documents requested
17 on October 24, 2003. The Motion was heard on March 11, 2005.
- 18 5. On August 26, 2005, Magistrate Judge Chen filed Document Number 731, an
19 Ordering affirming the decision of the Special Master. A copy of the Order of the
20 District Court is attached hereto as Exhibit 2.
- 21 6. Since the filing of the Special Master’s Recommendation and Order of Judge
22 Chen, the Tutor Defendants have attempted to have Plaintiffs comply with the
23 Order and produce the required affirmation. Plaintiffs have ignored Defendants’
24 requested, refused to comply and/or made false promises when Plaintiffs’ would
25 comply.
- 26 7. Most recently, on December 16, 2005, I (along with David Romyn of Castle &
27 Associates) participated in a telephonic meet and confer session with Kristine

1 Poplawski, counsel for Plaintiffs. Defendants participated in good faith in hopes
2 of having Plaintiffs finally comply with the Order of the Court. One of the issues
3 discussed was Plaintiffs continual failure to comply with the requirements of
4 Plaintiffs to file an affirmation confirming that all documents have been produced.
5 Plaintiffs promised to comply by January 6, 2006. Despite having waited for
6 months for compliance, Defendants again waited until that date for the affirmation.
7 The meet and confer was confirmed in my letter to Plaintiffs dated December 20,
8 2005. A true and complete copy of my letter is attached hereto as Exhibit 3.

9 8. On January 6, 2006, Defendants did not receive the affirmation due months ago
10 and again promised by January 6, 2006.

11 9. Since January 6, 2006, we have notified Plaintiffs of their failure to comply. True
12 and complete copies of letters are attached hereto as Exhibit 4. To date, however,
13 Plaintiffs have continued to ignore our letters and demands for compliance or seek
14 continuance from Defendants or the Special Master.

15 10. Finally, my opinion, and based on same, the actions of Plaintiffs by failing to
16 produce documents, failing to file the required affirmation, failing to produce
17 witnesses, withholding documents on false privileges, and stalling other aspects of
18 this case is deeply troubling. It is clear from Defendants perspective that Plaintiffs
19 are engaging in a practice of denying discovery to Defendants in hopes of running
20 the clock on the discovery cut-off date. As such, Defendants believe a
21 reevaluation of the discovery deadline dates and trial dates is appropriate.
22 Defendants will raise this issue in a separate motion at the appropriate time.

23 I declare that the foregoing is true and correct under penalty of perjury under the laws of
24 the State of California and the United States of America.

25 Executed this 12th day of January 2006, at Los Angeles, California.

26 _____
27 Robert Nida