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*Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego*

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10 Attorneys for Plaintiff
11 CITY OF SAN DIEGO

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO CENTRAL DIVISION**

14 CITY OF SAN DIEGO, a Municipal
15 corporation;

16 Plaintiff,

17 v.

18 101 ASH, LLC, a Delaware limited liability
company; WILMINGTON TRUST,
19 NATIONAL ASSOCIATION, an unknown
business entity, as trustee of CGA CAPITAL
20 CREDIT LEASE-BACKED PASS-THROUGH
TRUST, SERIES 2017-CTL-1; and DOES 1
21 through 20, inclusive,

22 Defendants.

23 AND ALL RELATED CROSS-ACTIONS.
24

Case No. 37-2020-00036247-CU-CO-CTL

**PLAINTIFF CITY OF SAN DIEGO'S
NOTICE OF MOTION AND MOTION FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[IMAGED FILE]

Date: August 27, 2021
Time: 9:00 a.m.
Reservation No.: 2395508

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Complaint Filed: October 9, 2020
Trial Date: January 20, 2023

1 PLEASE TAKE NOTICE that, on August 27, 2021, at 9:00 a.m., or as soon thereafter as
2 the matter may be heard, in Department 73 of the San Diego County Superior Court, Central
3 Division – Hall of Justice, located at 330 West Broadway San Diego, California 92101, Plaintiff
4 City of San Diego (the “City”) will, and hereby does, move this Court for an order granting leave
5 to file a First Amended Complaint (“FAC”). By way of the FAC, the City seeks to add the
6 following parties as defendants: (i) Cisterra Partners, LLC; (ii) Jason Hughes; (iii) West Coast
7 General Corporation; and (iv) Argus Contracting LP. In addition, the City seeks to add the
8 following causes of action: (i) Violation of California Government Code Section 1090; (ii) Fraud
9 – Intentional Misrepresentation; (iii) Breach of Fiduciary Duty; (iv) Fraud – Concealment; (v)
10 Return of Monies Had as a Result of Government Code Section 1090 Violation; (vi) Rescission
11 Pursuant to Civil Code Section 1688 *et seq.*; and (vii) Negligence.

12 This Motion is made pursuant to California Code of Civil Procedure §§ 473(a)(1) and 576,
13 and Rule 3.1324 of the California Rules of Court, on the grounds that the proposed FAC is in the
14 furtherance of justice, California favors liberal allowance of amendments, and defendants will
15 suffer no substantial prejudice if the Motion is granted, while the City and the public will suffer
16 great prejudice if the Motion is denied.

17 This Motion is based upon this Notice of Motion and the attached Memorandum of Points
18 and Authorities, the Declaration of John A. Schena and exhibits thereto, including the proposed
19 FAC, and all pleadings, records, evidence, and oral argument as may be presented at the hearing
20 on this motion.

21
22 Dated: June 29, 2021

SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP

23
24 By: 

Dick A. Semerdjian
John A. Schena
Attorneys for Plaintiff
CITY OF SAN DIEGO

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff City of San Diego (“City”) seeks leave to file a First Amended Complaint to add
4 the following newly named defendants (i) Cisterra Partners, LLC; (ii) Jason Hughes; (iii) West
5 Coast General Corporation; and (iv) Argus Contracting LP.¹ In addition, the City seeks to add the
6 following causes of action: (i) Violation of California Government Code Section 1090; (ii) Fraud
7 – Intentional Misrepresentation; (iii) Breach of Fiduciary Duty; (iv) Fraud – Concealment; (v)
8 Return of Monies Had as a Result of Government Code Section 1090 Violation; (vi) Rescission
9 Pursuant to Civil Code Section 1688 *et seq.*; and (vii) Negligence. The proposed amendment
10 comes as a result of newly discovered information regarding the underlying transaction. The
11 amendment is necessary and proper and will further justice because adding the additional
12 defendants and causes of action will put all issues regarding the 101 Ash Street building and lease
13 transaction at issue in one action.

14 The City’s proposed First Amendment Complaint will not prejudice defendants because
15 discovery has recently commenced, the trial date is over sixteen months away, and defendants will
16 have ample time to conduct any necessary discovery with respect to the new parties and claims.

17 For these reasons and as more fully explained below, the City respectfully requests that the
18 Court grant leave to file the proposed pleading

19 **II. ARGUMENT**

20 **A. The Court Should Grant Plaintiff’s Motion Because It Is in the Furtherance of**
21 **Justice.**

22 Pursuant to California Code of Civil Procedure § 473(a)(1), the Court has discretion to
23 allow an amendment to any pleading in furtherance of justice:

24 The court may, in furtherance of justice, and on any terms as may be
25 proper, allow a party to amend any pleading or proceeding by
26 adding or striking out the name of any party, or by correcting a
27 mistake in the name of a party, or a mistake in any other respect; and
may, upon like terms, enlarge the time for answer or demurrer. The
court may likewise, in its discretion, after notice to the adverse

28 ¹ West Coast General Corporation and Argus Contracting LP are already parties to this action,
named in the cross-complaint filed by Wilmington Trust National Association.

1 party, allow, upon any terms as may be just, an amendment to any
2 pleading or proceeding in other particulars; and may upon like terms
allow an answer to be made after the time limited by this code.

3 CODE CIV. PROC. § 473(a)(1).

4 Additionally, California Code of Civil Procedure section 576 provides that “[a]ny judge, at
5 any time before or after commencement of trial, in the furtherance of justice, and upon such terms
6 as may be proper, may allow the amendment of any pleading or pretrial conference order.”

7 Here, the interest of justice weighs heavily in favor of granting the City leave to file its
8 proposed first amended complaint. The City’s proposed amendment will further justice because it
9 will result in all claims regarding the 101 Ash St. transaction being at issue in the same action. The
10 new claims involve California Government Code Section 1090, the conflict of interest provision,
11 and if proven may result in a return in excess of \$20 million to the public treasury as well
12 avoidance of the twenty year lease-to-own transaction. Accordingly, the City’s motion is in the
13 furtherance of justice and should be granted.

14 **B. California Public Policy Favors Liberal Allowance of Amendments.**

15 The California Supreme Court stated in *Mesler v. Bragg Management Co.* (1985) 39
16 Cal.3d 290, 297 that “there is a strong policy in favor of liberal allowance of amendments.”
17 California’s public policy favoring amendments is so compelling that it is an exceptional case in
18 which denial of leave to amend can be justified. So long as a motion for leave to amend is timely
19 made and the granting of the motion will not prejudice the opposing party, it is error to refuse
20 leave to amend; where the refusal also results in a party being deprived of the right to assert a
21 meritorious cause of action, such deprivation constitutes an abuse of discretion. *Morgan v.*
22 *Superior Court* (1959) 172 Cal.App.2d 527, 530; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596.
23 Trial courts “are to liberally permit such amendments, at any stage of the proceeding...rest[ing] on
24 the fundamental policy that ‘cases should be decided on their merits.’” *Hirsa v. Superior Court*
25 (1981) 118 Cal.App.3d 486, 488-489 (internal citations omitted) (emphasis in original).

26 Here, public policy strongly weighs in favor of granting the City leave to file the proposed
27 pleading. As explained above, allowing the pleading will result in deciding important governance
28 issues on the merits. Furthermore, as explained below, the City’s proposed amendment will not

1 prejudice defendants. Pursuant to California’s liberal allowance of amendments, the Court should
2 permit Plaintiff to file its proposed pleading.

3 **C. The Court Should Grant Plaintiff’s Motion Because Defendants Will Suffer**
4 **No Substantial Prejudice If the Motion Is Granted, While the City and its**
5 **Constituents Will Suffer Great Prejudice If the Motion Is Denied.**

6 When a motion for leave to amend is timely made and granting said motion will not
7 prejudice the opposing party, “it is error to refuse permission to amend.” *Morgan*, 172 Cal.App.2d
8 at 530; *see also Berman*, 56 Cal.App.4th at 945 (“[I]t is an abuse of discretion to deny leave to
9 amend where the opposing party was not misled or prejudiced by the amendment”). Here, there is
10 no prejudice to defendants if leave to file City’s proposed pleading is granted.

11 The City’s proposed pleading will not affect defendants’ ability to defend the lawsuit. The
12 facts alleged in the proposed pleading involve the same underlying transaction. The current trial
13 date in this matter is for January 2023, over sixteen months away. As such, ample time exists to
14 conduct discovery related to the allegations.

15 While defendants will not be prejudiced by the filing of the proposed pleading, the City
16 will suffer great prejudice if leave to amend is denied. The City’s claims in the proposed pleading
17 seek to invalidate the twenty-year lease and seek recoupment of over \$20 million dollars as a
18 result of a violation of California Government Code Section 1090. Notably, the claims against
19 West Coast General Corporation and Argus Contracting LP closely resemble those already on file
20 in the cross-complaint of defendant Wilmington Trust National Association.

21 **D. The City’s Proposed Changes to the Operative Complaint.**

22 Both a clean and a redlined version of the proposed First Amended Complaint are
23 submitted as Exhibits A and B to the Declaration of John A. Schena In Support of Plaintiff’s
24 Motion for Leave to File First Amended Complaint, filed concurrently with this motion.

25 **III. CONCLUSION**

26 For all the foregoing reasons, the City respectfully requests that the Court grant leave to
27 file the proposed First Amended Complaint.

1 Dated: June 29, 2021

SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP

2
3 By: 

4 Dick A. Semerdjian
5 John A. Schena
6 Attorneys for Plaintiff
7 CITY OF SAN DIEGO
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20 CREDIT LEASE-BACKED PASS-THROUGH
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21 through 20, inclusive,

22 Defendants.

23 AND ALL RELATED CROSS-ACTIONS.
24

Case No. 37-2020-00036247-CU-CO-CTL

**DECLARATION OF JOHN A. SCHENA IN
SUPPORT OF PLAINTIFF CITY OF SAN
DIEGO'S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

[IMAGED FILE]

Date: August 27, 2021
Time: 9:00 a.m.
Reservation No.: 2395508

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Complaint Filed: October 9, 2020
Trial Date: January 20, 2023

1 I, John A. Schena, declare as follows:

2 1. I am counsel of record for plaintiff City of San Diego in the above-entitled action.
3 The following facts are based on my own personal knowledge. If called as a witness, I could and
4 would testify competently to the contents of this declaration.

5 2. I provide this declaration in support of City of San Diego’s Motion for Leave to
6 File First Amended Complaint.

7 3. Plaintiff filed their initial Complaint on October 9, 2020, alleging the following
8 causes of action: (1) Declaratory Relief; and (2) Reformation.

9 4. Plaintiff’s Proposed FAC seeks to add the following newly named defendants (i)
10 Cisterra Partners, LLC; (ii) Jason Hughes; (iii) West Coast General Corporation; and (iv) Argus
11 Contracting LP. In addition, the City seeks to add the following causes of action: (i) Violation of
12 California Government Code Section 1090; (ii) Fraud – Intentional Misrepresentation; (iii) Breach
13 of Fiduciary Duty; (iv) Fraud – Concealment; (v) Return of Monies Had as a Result of
14 Government Code Section 1090 Violation; (vi) Rescission Pursuant to Civil Code Section 1688 et
15 seq.; and (vii) Negligence.

16 5. This amendment is necessary and proper because information was discovered
17 related to the subject transaction during discovery and discussions with parties in the action.

18 6. The amendment was not made earlier because the City only recently received the
19 information contained in the amendment and has been evaluating the claims.


20 7. I have not met and conferred and sought stipulation to file the first amended
21 complaint prior to filing this motion as it contains highly sensitive information that required action
22 be taken quickly.

23 8. I intend to request a stipulation to take the motion off calendar once the information
24 contained therein has become public by filing this Motion.

25 9. A clean version of the proposed first amended complaint is attached hereto as
26 Exhibit A.

27 10. A redlined version delineating the differences between the original complaint and
28 the proposed first amended complaint is attached hereto as Exhibit B.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration is executed on this 29th day of June 2021, at
3 San Diego, California.

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John A. Schena

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Exhibit A

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Case No. 37-2020-00036247-CU-CO-CTL

**FIRST AMENDED COMPLAINT OF
PLAINTIFF CITY OF SAN DIEGO**

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Complaint Filed: October 9, 2020
Trial Date: January 20, 2023

1 Comes now Plaintiff City of San Diego (the “City”) and alleges as follows:

2 **NATURE OF ACTION**

3 1. California Government Code section 1090 *et seq.* (“Section 1090”) strictly
4 prohibits public officials from participating in the making of contracts in which they have a
5 pecuniary interest. The conflict of interest provision prohibits private parties from providing
6 benefits to public officials that would create a financial interest. Section 1090 penalizes any party
7 that provides benefits to a public official through automatic disgorgement of all monies received
8 as a result of the void contract without restoration of the benefits received or offset for the value of
9 services provided.

10 2. “Officials make contracts in their official capacities within the meaning of section
11 1090 if their positions afford them the opportunity to ... influence execution [of the contracts]
12 directly or indirectly to promote [their] personal interests and they exploit those opportunities.
13 And officials cannot hide behind labels and titles or ‘change hats’ to obscure the substance of their
14 actions.” *People v. Sup. Ct. (Sahlolbei)* (2017) 3 Cal.5th 230, 245-246 (internal citations omitted).
15 Under the right circumstances, an independent contractor is a public official or employee subject
16 to the conflict of interest prohibitions of Section 1090. *Id.*

17 3. Through this action, plaintiff City of San Diego requests a judicial declaration that
18 the lease-to-own contract it entered into with respect to the 101 Ash St. building (at times the
19 “Premises”) is void under the conflicts of interest law. The void contract resulted in certain
20 defendants identified hereinafter as receiving compensation from the public treasury totaling in
21 excess of \$24,000,000; public funds which the City now seeks remittance in relief.

22 4. In the alternative, and as a result of the condition of the Premises, the City requests
23 a judicial order confirming that the language of the subject lease permits abatement of rental
24 payments during a period that the leased premises cannot be occupied, as an alternative reading of
25 the lease would violate the prohibitions detailed in Article 16, Section 18(a), of the California
26 Constitution, known as the constitutional debt limitation.

27 5. Furthermore, the City seeks damages related to the negligence of contractor
28 defendants West Coast General Corporation and Argus Contracting LP related to their failure to

1 exercise due care with regard to work performed at the 101 Ash St. building that resulted in
2 significant asbestos contamination that has rendered the building inoperable for the City's
3 intended purpose.

4 **FACTUAL ALLEGATIONS**

5 **A. The City Engages Jason Hughes as a Special Volunteer for Real Estate Services**

6 6. Commencing in 2013, the City engaged commercial real estate broker Jason
7 Hughes ("Hughes") as its volunteer Special Assistant for Real Estate Services and authorized him
8 to advise it on leasing strategies, negotiate with its potential landlords and property sellers, and
9 represent it in negotiating the terms of any contract or lease for its downtown San Diego office
10 needs.

11 7. At all times, Hughes publicly held himself to be providing volunteer pro-bono
12 representation and confirmed in writing that neither he nor his company, Hughes Marino, Inc.,
13 were taking commissions for their services on behalf of the City. Hughes informed the press that
14 his pro-bono work on behalf of the City was as a result of his sense of civic duty.

15 8. As part of his purported volunteer representation, Hughes represented the City in
16 identifying potential locations for downtown office space, advising the City on its strategy for
17 housing its significant number of employees, negotiating with landlords and owners, conducting
18 due diligence, and participating in the making of contracts for its real estate needs. Hughes
19 participated on behalf of the City in making leases for spaces located at 525 B St., 1010 Second
20 Avenue, 1200 Third Avenue (Civic Center Plaza), and eventually 101 Ash St.

21 **B. Hughes Identifies and Negotiates 101 Ash Transaction on City's Behalf**

22 9. Beginning in 2014, Hughes engaged in negotiations with the then-owners of a 21-
23 story building located at 101 West Ash St., San Diego (at times the "101 Ash Building") on behalf
24 of the City. At the time, the 101 Ash Building was owned and operated by entities controlled by
25 individuals, Sandor Shapery and Douglas Manchester. In writings to Shapery and Manchester,
26 Hughes identified himself as the "exclusive representative for the City of San Diego." Importantly,
27 Hughes also again confirmed in writings that he would forego any commission on a transaction
28 resulting from the negotiations.

1 10. The negotiations between Shapery and Manchester, on the one hand, and the City,
2 on the other hand, occurred through Hughes and with his direct involvement and consultation.
3 Hughes participated in one-on-one negotiations on the City’s behalf. Hughes made
4 recommendations to the City as to potential lease terms including rate and duration, responded to
5 counter-offers, and advised regarding potential alternative locations. Hughes participated in walk-
6 throughs of the 101 Ash Building on the City’s behalf.

7 11. The protracted negotiations with Shapery and Manchester did not result in a lease
8 or sale of the 101 Ash Building to the City. Accordingly, Shapery and Manchester explored selling
9 the 101 Ash Building to a third party.

10 12. Hughes thereafter commenced negotiations purportedly on the City’s behalf with
11 Cisterra Partners, LLC (“Cisterra”) regarding a lease-to-own structure the City would enter into if
12 Cisterra acquired Shapery's and Manchester’s interests.

13 13. On July 21, 2016, City of San Diego Director of Real Estate Assets, Cybele
14 Thompson, executed a letter of intent with Cisterra expressing an intention to enter into a lease-to-
15 own arrangement for the 101 Ash Building in the event that Cisterra acquired the property.
16 Hughes advised and represented the City on the deal and negotiated the terms of the lease-to-own.
17 All communications between Cisterra and City occurred through Hughes.

18 14. Hughes assisted in preparation of materials to present to San Diego City Council to
19 approve a lease-to-own arrangement to acquire the 101 Ash Building.

20 15. On October 17, 2016, the proposed transaction between Cisterra and City was
21 presented to City Council. Jason Wood of Cisterra provided information to the Council regarding
22 the transaction while Hughes was in attendance purportedly on behalf of the City. Council
23 approved proceeding with the transaction.

24 16. On January 3, 2017, Shapery and Manchester’s entities, The Gas & Electric
25 Headquarters Building – San Diego, L.P. and Shapery Developers Gas & Electric Property, L.P.,
26 sold the 101 Ash St. property to Cisterra.

27 17. Contemporaneously, Cisterra created the entity 101 Ash, LLC for the purposes of
28 leasing the 101 Ash Building to the City.

1 **C. The City Enters Into a Lease-To-Own Arrangement for 101 Ash and Makes \$24**
2 **Million in Rental Payments**

3 18. The Lease Agreement between 101 Ash, LLC and The City of San Diego is dated
4 to be effective as of January 3, 2017 (the “101 Ash St. Lease”). The terms of the 101 Ash St.
5 Lease were negotiated by Hughes as the City’s representative.

6 19. In total, Cisterra acquired the 101 Ash Building for \$72.4 million. Cisterra passed
7 \$19.5 million in costs on to the City through monthly Lease payments, making the total
8 acquisition price of 101 Ash Building to the City approximately \$92 million.

9 20. The 101 Ash St. Lease contains a number of terms negotiated by Hughes including
10 an “AS IS” clause whereby landlord 101 Ash, LLC attempts to disclaim any warranty or
11 representation regarding the condition of the building.

12 21. The 101 Ash St. Lease is a triple-net lease, meaning the City has sole responsibility
13 for rent, operating costs, expenses and condition.

14 22. The 101 Ash St. Lease has a duration of twenty (20) years and requires City to pay
15 \$534,726.50 per month in rent.

16 23. On the same day as the sale to Cisterra and the 101 Ash St. Lease, defendant 101
17 Ash, LLC assigned its right, title, and interest in, to, and under the 101 Ash St. Lease to defendant
18 Wilmington Trust, National Association as the trustee of CGA Capital Credit Lease-Backed Pass-
19 Through Trust, Series 2017-CTL-1 (“Wilmington Trust”).

20 24. Accordingly, the City by and through the 101 Ash. St. Lease and the subsequent
21 assignment have paid rents pursuant to the 101 Ash St. Lease to defendant Wilmington Trust.

22 25. To date, the City has paid Wilmington Trust forty-four (44) months of rent from
23 January 2017 through August 2020 for a total of \$23,527,966.00.

24 **D. The City Engages Contractors Whose Negligence Renders the 101 Ash Building**
25 **Inoperable, Uninhabitable, and Unfit for Its Intended Purposes**

26 26. Commencing in September 2018, the City engaged contractors to provide tenant
27 improvements, including West Coast General Corporation and Argus Contracting L.P.

28

1 27. West Coast General Corporation and Argus Contracting L.P. commenced work
2 pursuant to agreement with the City.

3 28. On August 14, 2019, the San Diego County Air Pollution Control District
4 (“APCD”) issued a Notice of Violation to the City related to the failure to remove asbestos-
5 containing material from the 101 Ash Building.

6 29. Under the direction of and as a result of services provided by West Coast General
7 Corporation and Argus Contracting L.P., the City received a total of five Notices of Violation
8 from the San Diego County relating to asbestos at the Premises.

9 30. On January 16, 2020, the County Air Pollution Control District issued its fifth
10 Notice of Violation regarding asbestos at the Premises. Thereafter the Premises were shut down as
11 unsafe for human occupancy.

12 31. Since January 16, 2020, the City has not been able to occupy the Premises and it
13 remains unoccupied.

14 32. On September 1, 2020, the City, through the Mayor of San Diego, announced it
15 would be suspending further lease payments for the Premises, and in furtherance thereof, the City
16 advised the landlord of the Premises of same, citing that the City could not occupy the building
17 and use the building for the purposes which were intended.

18 **E. Cisterra Paid Hughes Millions of Dollars Related to the 101 Ash Transaction**

19 33. The City has discovered through this litigation that defendant Hughes received four
20 million, four hundred, ten thousand dollars (\$4,410,000) directly from Cisterra, 101 Ash, LLC,
21 and/or its owners as a result of the series of 101 Ash St. transactions described herein.

22 34. The payment by Cisterra, 101 Ash, LLC, and/or its owners to the City’s exclusive
23 representative Hughes was not properly disclosed or authorized.

24 35. California Government Code section 87200 *et seq.*, as it existed during the
25 operative time period, required that any individual who serves in a position that makes or
26 participates in making governmental decisions file a Form 700. The Form 700 provides necessary
27 information to the public about the discloser’s financial interests to ensure that public decisions
28

1 are made in the best interest of the public and not enhancing personal finances or triggering
2 conflicts of interest.

3 36. Relatedly, Section 225 of the San Diego City Charter, as it existed during the
4 operative time period, stated that

5 No right, title or interest in the City's real or personal property, nor any right, title,
6 or interest arising out of a contract or lease, may be granted or bargained pursuant
7 to the city's general municipal powers or otherwise... unless the person apply or
8 bargaining therefor makes a full and complete disclosure of the name and identity
of any and all persons directly or indirectly involved in the application or proposed
transaction and the precise nature of all interests of all persons therein.

9 37. None of the publicly released documents regarding the 101 Ash St. Lease reflect
10 Hughes receiving any money, commission or other payment for services.

11 38. Hughes did not disclose his financial interest in the 101 Ash St. building or
12 transaction on any public filing or form, including a Form 700.

13 39. Hughes did not disclose to the San Diego City Council that he received
14 remuneration as a result of the 101 Ash St. series of transactions.

15 40. Cisterra and 101 Ash, LLC did not disclose Hughes's financial interest in the 101
16 Ash Building or transaction on any public filing or form. Cisterra and 101 Ash, LLC did not
17 disclose that either entity or its owners paid Hughes directly as a result of the transaction.

18 41. Cisterra and 101 Ash, LLC did not disclose Hughes's financial interest in the 101
19 Ash Building or transaction to San Diego City Council. Cisterra and 101 Ash, LLC did not
20 disclose that either entity or its owners paid Hughes directly as a result of the transaction.

21 42. To the contrary, publicly Hughes has touted that he was a volunteer assistant to the
22 City while advising it to enter into deals that resulted in his receipt of millions of dollars.

23 **PARTIES, JURISDICTION, AND VENUE**

24 43. The City asserts that jurisdiction and venue are proper before this Court as the
25 events which underlie this lawsuit occurred within the City of San Diego and County of San
26 Diego.

27 44. The City is, and at all times herein mentioned was, a California Charter City, duly
28 organized and existing by virtue of the laws of the State of California.

1 45. The City is informed and believes, and thereon alleges, that defendant 101 Ash,
2 LLC is a limited liability company existing under the laws of the State of Delaware, registered to
3 do business in the State of California, with its principal place of business located in San Diego
4 County, California.

5 46. The City alleges that defendant Wilmington Trust, National Association, an
6 unknown business entity, is the trustee of CGA Capital Credit Lease-Backed Pass-Through Trust,
7 Series 2017-CTL-1, and has a principal place of business in Baltimore, Maryland.

8 47. The City is informed and believes, and thereon alleges, that defendant Cisterra
9 Partners, LLC is a limited liability company existing under the laws of the State of Delaware,
10 registered to do business in the State of California, with its principal place of business located in
11 San Diego County, California.

12 48. The City is informed and believes, and thereon alleges, that defendants 101 Ash,
13 LLC and Cisterra have common ownership, membership, management, and control groups.

14 49. The City is informed and believes, and thereon alleges, that defendant Jason
15 Hughes is an individual residing and providing services in San Diego County, California. The
16 City alleges that Hughes is a licensed broker registered with the California Department of Real
17 Estate.

18 50. The City is informed and believes, and thereon alleges, that defendant West Coast
19 General Corporation is a California corporation with a business address of 13700 Stowe Dr., Suite
20 100, Poway, California 92064.

21 51. The City is informed and believes, and thereon alleges, that defendant Argus
22 Contracting LP is a Pennsylvania limited partnership with a business address of 2340 E. Artesia
23 Blvd., Long Beach, California 90805.

24 52. The true names and capacities of Defendants named as DOES 1 through 50,
25 inclusive, whether individual, corporate, or otherwise, are unknown to the City, which is informed
26 and believes, and therefore alleges, that each of said fictitiously named Defendants is liable to the
27 City on the causes of action herein alleged, and, therefore, the City sues such Defendants by said
28

1 fictitious names. The City will move to amend this complaint when the true names and capacities
2 of said fictitiously named Defendants have been ascertained.

3 53. The City is informed and believes, and thereon alleges, that at all times herein
4 mentioned each of the Defendants was the agent and/or employee of each of their Co-Defendants,
5 and in doing the things herein mentioned, was acting within the scope and course of the authority
6 of such agency and/or employment, and with the express or implied permission and consent of
7 their Co-Defendants.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 1090**

10 **(Against Defendants CISTERRA, 101 ASH, LLC, HUGHES, and DOES 1 through 10)**

11 54. The City hereby incorporates by reference and realleges each allegation above as
12 though fully set forth herein.

13 55. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective
14 January 3, 2017.

15 56. The 101 Ash St. Lease was recommended, negotiated, and affirmed by defendant
16 Hughes such that it was made by Hughes in his official capacity subject to Section 1090.

17 57. At the time of the negotiations and implementation of the 101 Ash St. Lease,
18 Hughes had a financial interest in the contract such that he received over four million dollars.

19 58. The financial interest in the contract was created by defendants Cisterra, 101 Ash,
20 LLC and their representatives.

21 59. The City, and its decision-making body, did not know Hughes was to be
22 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
23 this litigation.

24 60. Pursuant to California Government Code Section 1090 *et seq.*, the 101 Ash St.
25 Lease is void due to the City's exclusive representative, defendant Hughes, having a prohibited
26 financial interest in the contract he participated in making as evidenced herein.

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1 61. Pursuant to California Government Code Section 1090 *et seq.*, defendants must
2 restore all benefits to City received pursuant to the 101 Ash St. Lease without offset. Defendants
3 must restore the benefits to the public treasury.

4 **SECOND CAUSE OF ACTION**

5 **FRAUD – INTENTIONAL MISREPRESENTATION**

6 **(Against Defendant HUGHES, and DOES 5 through 10)**

7 62. The City hereby incorporates by reference and realleges each allegation above as
8 though fully set forth herein.

9 63. Defendant Hughes represented to the City, and its decision-making body the City
10 Council, and its representatives that he was not being compensated for his work on the 101 Ash
11 series of transactions, that he and his firm were to receive no commissions as a result of the work,
12 and that he had no financial interest in the City's decision to lease or not lease 101 Ash.

13 64. Defendant Hughes's representations were false.

14 65. Defendant Hughes knew that the representations were false because he agreed to
15 receive an undisclosed payment in excess of four million from Cisterra, 101 Ash, LLC, and/or its
16 owners.

17 66. Defendant Hughes intended the City to rely upon his representations and trust his
18 expertise as an independent advisor, when in reality he had an undisclosed financial interest.

19 67. The City, and its decision-making body the City Council, relied upon Hughes's
20 representations and entered into the 101 Ash St. Lease under his advice and pursuant to terms that
21 he negotiated.

22 68. The City, and its decision-making body, did not know Hughes was to be
23 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
24 this litigation.

25 69. As a result of reasonable reliance upon Hughes's misrepresentations, the City and
26 the public treasury sustained harm and damages, including entering into the 101 Ash St. Lease on
27 unfavorable terms, paying additional monies for 101 Ash St. that went to Hughes, and losing other
28 leasing opportunities. The damages are to be proven at trial.

1 70. The aforementioned acts by Hughes were intentional and willful, and by engaging
2 in the aforementioned acts and conduct, Hughes acted maliciously, oppressively, fraudulently, and
3 in conscious disregard of the City. As such, the City is entitled to an award of punitive damages
4 against Hughes in an amount according to proof.

5 **THIRD CAUSE OF ACTION**

6 **BREACH OF FIDUCIARY DUTY**

7 **(Against Defendant HUGHES, and DOES 11 through 20)**

8 71. The City hereby incorporates by reference and realleges each allegation above as
9 though fully set forth herein.

10 72. Defendant Hughes represented the City as its commercial real estate broker and
11 submitted offers and counter-offers to potential lessors and landlords stating he was the City's
12 exclusive tenant representative.

13 73. Defendant Hughes owed the City fiduciary duties at all times during his
14 representation as the City's exclusive representative.

15 74. Hughes owed the City fiduciary duties including the duty of undivided loyalty.
16 "During the course of his agency, he may not undertake or participate in activities adverse to the
17 interests of his principal." *Sequoia Vacuum Systems v. Stransky* (1964) 229 Cal.App.2d 281, 287.
18 As a fiduciary, a broker must act in the "highest good faith" toward its principal and may not
19 obtain any advantage over the principal in any transaction arising out of the agency relationship.
20 *Wyatt v. Union Mort. Co.* (1979) 24 Cal.3d 773, 782; *Roberts v. Lomanto* (2003) 112 Cal.App.4th
21 1553, 1563.

22 75. Hughes knowingly acted against the City's interests in connection with the
23 negotiations detailed herein by failing to disclose material terms of the 101 Ash St. deal to the
24 City, including that he was being paid by Cisterra and/or its owners and how much he was being
25 paid. Hughes's actions created an irreparable conflict of interest.

26 76. Hughes's conflict of interest prohibited the City from receiving proper advice
27 regarding potential alternative locations and potential better leasing terms.

28

1 77. As a result of Hughes's breaches of fiduciary duty, the City and the public treasury
2 sustained harm and damages, including entering into the 101 Ash St. Lease on unfavorable terms,
3 paying additional monies for 101 Ash St. that went to Hughes, and losing other leasing
4 opportunities. The damages are to be proven at trial.

5 78. The City, and its decision-making body, did not know Hughes was to be
6 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
7 this litigation.

8 79. The aforementioned acts by Hughes were intentional and willful, and by engaging
9 in the aforementioned acts and conduct, Hughes acted maliciously, oppressively, fraudulently, and
10 in conscious disregard of the City. As such, the City is entitled to an award of punitive damages
11 against Hughes in an amount according to proof.

12 **FOURTH CAUSE OF ACTION**

13 **FRAUD – CONCEALMENT**

14 **(Against Defendants CISTERRA, 101 ASH, LLC, HUGHES, and DOES 21 through 30)**

15 80. The City hereby incorporates by reference and realleges each allegation above as
16 though fully set forth herein.

17 81. Defendant Hughes was in a fiduciary relationship with the City that required
18 transparency with the City.

19 82. Defendant Hughes actively concealed from the City, and its decision-making body
20 the City Council, that he was to be paid by Cisterra, 101 Ash, LLC, and/or its owners as a result of
21 the 101 Ash transaction.

22 83. Defendants Cisterra and 101 Ash, LLC knew that Hughes was to be paid as a result
23 of the transaction and knew that the City was not informed of the material term, but failed to
24 inform the City, and its decision-making body the City Council, and actively concealed that
25 information through failures to adhere to the mandated financial disclosure laws.

26 84. The City, and its decision-making body, did not know Hughes was to be
27 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
28 this litigation.

1 85. Defendants Hughes, Cisterra, and 101 Ash, LLC intended to deceive the City by
2 concealing the payment to Hughes.

3 86. Had the City known about the payment to Hughes it reasonably would have
4 behaved differently.

5 87. As a result of reasonable reliance of the information provided by defendants, the
6 City and the public treasury sustained harm and damages, including entering into the 101 Ash St.
7 Lease on unfavorable terms, paying additional monies for 101 Ash St. that went to Hughes, and
8 losing other leasing opportunities. The damages are to be proven at trial.

9 88. The aforementioned acts by Hughes, 101 Ash, LLC, and Cisterra were intentional
10 and willful, and by engaging in the aforementioned acts and conduct, Hughes, 101 Ash, LLC, and
11 Cisterra acted maliciously, oppressively, fraudulently, and in conscious disregard of the City. As
12 such, the City is entitled to an award of punitive damages against Hughes, 101 Ash, LLC, and
13 Cisterra in an amount according to proof.

14 **FIFTH CAUSE OF ACTION**

15 **RETURN OF MONIES HAD AS A RESULT OF SECTION 1090 VIOLATION**

16 **(Against Defendants Wilmington TRUST and DOES 31 through 35)**

17 89. The City hereby incorporates by reference and realleges each allegation above as
18 though fully set forth herein.

19 90. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective
20 January 3, 2017. The same day the 101 Ash St. Lease was assigned to defendant Wilmington
21 Trust.

22 91. The City has paid Wilmington Trust forty-four (44) months of rent from January
23 2017 through August 2020 for a total of \$23,527,966.00.

24 92. The 101 Ash St. Lease is void as a matter of law as a result of the Section 1090
25 violations described herein.

26 93. Pursuant to Section 1090 *et seq.*, the City is entitled to automatic disgorgement of
27 monies paid pursuant to the voided contract. Accordingly, the City is entitled to restitution of
28 monies had and received by Wilmington Trust.

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SIXTH CAUSE OF ACTION

RESCISSION PURSUANT TO CIVIL CODE SECTION 1688 *et seq.*

(Against Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)

94. The City hereby incorporates by reference and realleges each allegation above as though fully set forth herein.

95. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective January 3, 2017. The same day the 101 Ash St. Lease was assigned to defendant Wilmington Trust.

96. As described herein, the 101 Ash. St. Lease was obtained through mistake, fraud, undue influence and is unlawful such that it is subject to rescission pursuant to Civil Code section 1689.

97. The public interest will be prejudiced if the 101 Ash St. Lease is permitted to stand.

98. The City has paid Wilmington Trust forty-four (44) months of rent from January 2017 through August 2020 for a total of \$23,527,966.00.

99. Pursuant to Civil Code section 1688 *et seq.*, the City is entitled to disgorgement of monies paid pursuant to the rescinded contract. Accordingly, the City is entitled to restitution of monies had and received by Wilmington Trust.

SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF – CONSTITUTIONAL DEBT LIMITATION

(Against Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)

100. The City hereby incorporates by reference and realleges each allegation above as though fully set forth herein.

101. The City and 101 Ash, LLC entered into the subject 101 Ash St. Lease pertaining to the rights and obligations of each with respect to the premises, a 21-story commercial office building located at 101 Ash Street, San Diego, California.

102. Pursuant to Section 5(a), Section 5(b), Section 11(a), and Section 11(i) of the 101 Ash St. Lease, certain events give rise to abatement of rent such that the City is not obligated to pay rent to Wilmington Trust or 101 Ash, LLC.

1 103. Section 11(a) defines a “Destruction” of the Premises as “an event of loss, damage
2 or destruction, whether by fire or hazard or other casualty to all or any portion of the Premises (a
3 “Casualty”) that is caused by a peril which is or should have been covered by a policy of insurance
4 described in Section 12 of [the] Lease.”

5 104. Section 12(a) of the 101 Ash St. Lease identifies specific insurances that the City is
6 required to maintain including risk property insurance, commercial general liability, and business
7 interruption insurance.

8 105. Section 11(i) states that “during any period in which, by reason of an event of
9 Destruction, there is substantial interference with the use and occupancy by Tenant of any portion
10 of the Premises, payments of Base Rent due hereunder with respect to the Premises shall be
11 abated” to the extent of the loss.

12 106. An event of loss, damage, or destruction has occurred at the premises that was
13 caused by a peril that should be covered by insurance.

14 107. The event of loss, damage, or destruction has resulted in substantial interference
15 with the use and occupancy by the City of the premises, such that the City is not able to occupy
16 any portion of the premises as envisioned by the 101 Ash St. Lease.

17 108. The premises are therefore unusable for the purposes intended and thereby confer
18 no value to the City.

19 109. Defendants are aware of the destructive event, that the City is not occupying the
20 building, and that the purpose of the 101 Ash St. Lease is not being achieved, but nonetheless have
21 continued to demand that rental payments be made on a monthly basis.

22 110. By reason of the foregoing, a dispute has arisen and an actual controversy exists
23 between the City and Defendants relating to their legal rights and duties, specifically as to whether
24 the City is entitled to rent abatement pursuant to the 101 Ash. St. Lease during the period of time it
25 is not able to use and occupy the Premises as envisioned by the 101 Ash St. Lease.

26 111. To the extent defendants deny that the 101 Ash St. Lease permits rent abatement
27 during the period of time the City is not able to use and occupy the premises, the rental payments
28 would be in violation of Article 16, Section 18(a), of the California Constitution’s debt limitation

1 provision as the payments are not “contingent on receipt of some additional, contemporaneous
2 consideration, such as the [City’s] ongoing use and occupancy of the building.” *Rider v. City of*
3 *San Diego* (1998) 18 Cal.4th 1035, 1049, *citing Dean v. Kuchel* (1950) 35 Cal.2d 444, 445.

4 112. The City therefore asks this Court for a declaration of the respective rights, duties,
5 and obligations of the City and defendants 101 Ash, LLC and Wilmington Trust with respect to
6 the 101 Ash St. Lease. There is no plain, adequate, or speedy remedy at law. It is therefore fair,
7 just, and appropriate that the Court determine the relative rights and obligations of said parties in
8 this proceeding.

9 **EIGHTH CAUSE OF ACTION**

10 **REFORMATION**

11 **(Against Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)**

12 113. The City hereby incorporates by reference and realleges each allegation above as
13 though fully set forth herein.

14 114. The City and 101 Ash, LLC entered into the subject 101 Ash St. Lease pertaining
15 to the rights and obligations of each with respect to the premises, a 21-story commercial office
16 building located at 101 Ash Street, San Diego, California.

17 115. The parties agreed and intended for the 101 Ash St. Lease to comply with all
18 applicable laws, including Article 16, Section 18(a) of the California Constitution.

19 116. Article 16, Section 18(a) of the California Constitution requires, *inter alia*, that the
20 obligation of the City to pay rent be contingent upon the continued use of the leased property. *See,*
21 *e.g., Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1055.

22 117. To the extent that Sections 5(a), 5(b), 11(a), and/or 11(i) of the Ash St. Lease do
23 not permit abatement of rent in the circumstance where the City is not able to occupy the premises
24 as envisioned by the 101 Ash St. Lease, the parties have made a mutual mistake when reducing the
25 agreement to writing in drafting an impermissibly narrow abatement provision. The 101 Ash St.
26 Lease therefore does not truly express the intention of the parties.

1 118. Accordingly, the City requests judicial reformation of the 101 Ash St. Lease to
2 include a provision that permits abatement of the rent where the City is not able to occupy the
3 premises as envisioned by the 101 Ash St. Lease.

4 **NINTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 **(Against Defendants West Coast General Corporation, Argus Contracting L.P., and DOES**
7 **41-50)**

8 119. The City hereby incorporates by reference and realleges each allegation above as
9 though fully set forth herein.

10 120. Defendants West Coast General Corporation and Argus Contracting L.P. owed a
11 duty of care to the City to undertake the work and supervision in the 101 Ash Building with due
12 care, including but not limited to, (i) being on site to properly supervise the work of the
13 subcontractors (ii) to use proper materials, (iii) use proper construction means and methods to
14 prevent mistakes, errors, and physical defects that caused physical damage to the property; (iv)
15 ensure proper construction techniques in quality control inspections; and (v) set forth and describe
16 the work being performed in a detailed and understandable manner.

17 121. Defendants West Coast General Corporation and Argus Contracting L.P. violations
18 of their duty of care include but are not limited to (i) causing asbestos containing material to be
19 disturbed in such a manner that a nuisance has been created; and (ii) performing work
20 inadequately, incompletely, or in such a defective manner that significant portions of the property
21 have been damaged and the work must be demolished or redone.

22 122. As a direct and proximate result of the negligence, acts or omissions, carelessness,
23 lack of supervision, breach of duty of care and acts and omissions to act, the City has suffered
24 damages including but not limited to payment for work having to be redone, payment of fees and
25 costs that should not have been incurred, costs of repair of improperly done work, including
26 resulting damages to the City's personal and real property, diminution in value, and loss of use of
27 enjoyment of the premises. The extent and nature of the amount is not yet known and is subject to
28 proof at trial.

PRAYER FOR RELIEF

WHEREFORE, City prays for judgment against Defendants as follows:

1. On the First Cause of Action

- a. For a judgment declaring the 101 Ash St. Lease is void pursuant to California Government Code Section 1090 *et seq.*;
- b. For restoration of benefits without offset provided by the City in an amount to be proven at trial pursuant to California Government Code Section 1090 *et seq.*;

2. On the Second, Third, and Fourth Causes of Action

- a. For an award of general, special, incidental and consequential damages to be determined;
- b. For an award of punitive damages in an amount appropriate to punish and make an example of named defendants and to deter similar conduct in the future;

3. On the Fifth Cause of Action

- a. For a judgment in the amount of money had and received, with prejudgment interest;

4. On the Sixth Cause of Action

- a. For a judicial declaration that the 101 Ash St. Lease is void and rescinded;
- b. For a judgment in the amount of money had and received, with prejudgment interest;

5. On the Seventh Cause of Action

- a. In the alternative to the 101 Ash St. Lease being declared void, a judicial declaration that City's rent payments under the 101 Ash St. Lease shall be abated so long as the insured loss causes substantial interference with City's use and occupancy of the Premises;

6. On the Eighth Cause of Action

- a. In the alternative to the 101 Ash St. Lease being declared void, for reformation of the Lease to include a provision that permits abatement of the rent where City is not able to occupy the Premises as envisioned by the 101 Ash St. Lease;

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7. On the Ninth Cause of Action

- a. For general, special, incidental and consequential damages to be determined at trial;
- b. For prejudgment interest;
- c. For compensation for damages for the loss of property, in an amount to be proven at the time of trial;

8. On All Causes of Action

- a. For costs of suit incurred herein;
- b. For reasonable attorneys' fees incurred as provided by statute; and
- c. For such other and further relief as the Court may deem just and proper.

Dated: June 29, 2021

SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP

By: _____

Dick A. Semerdjian
John A. Schena
Attorneys for Plaintiff
CITY OF SAN DIEGO

Exhibit B

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*Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego*

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13 Attorneys for Plaintiff
14 CITY OF SAN DIEGO

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN DIEGO CENTRAL DIVISION

17 CITY OF SAN DIEGO, a Municipal
18 corporation;

18 Plaintiff,

19 v.

20 101 ASH, LLC, a Delaware limited liability
21 company; WILMINGTON TRUST,
22 NATIONAL ASSOCIATION, an unknown
23 business entity, as trustee of CGA CAPITAL
24 CREDIT LEASE-BACKED PASS-THROUGH
25 TRUST, SERIES 2017-CTL-1; and DOES 1
26 through 20, inclusive,

24 Defendants.

Case No. 37-2020-00036247-CU-CO-CTL

FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND
REFORMATION OF PLAINTIFF CITY OF
SAN DIEGO

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

Complaint Filed: October 9, 2020

Trial Date: January 20, 2023

25 AND ALL RELATED CROSS-ACTIONS.

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1 Comes now Plaintiff City of San Diego (the “City”) and alleges as follows:

2 **NATURE OF ACTION**~~GENERAL ALLEGATIONS~~

3 1. California Government Code section 1090 et seq. (“Section 1090”) strictly
4 prohibits public officials from participating in the making of contracts in which they have a
5 pecuniary interest. The conflict of interest provision prohibits private parties from providing
6 benefits to public officials that would create a financial interest. Section 1090 penalizes any party
7 that provides benefits to a public official through automatic disgorgement of all monies received
8 as a result of the void contract without restoration of the benefits received or offset for the value of
9 services provided.

10 2. “Officials make contracts in their official capacities within the meaning of section
11 1090 if their positions afford them the opportunity to ... influence execution [of the contracts]
12 directly or indirectly to promote [their] personal interests and they exploit those opportunities.
13 And officials cannot hide behind labels and titles or ‘change hats’ to obscure the substance of their
14 actions.” *People v. Sup. Ct. (Sahlolbei)* (2017) 3 Cal.5th 230, 245-246 (internal citations omitted).
15 Under the right circumstances, an independent contractor is a public official or employee subject
16 to the conflict of interest prohibitions of Section 1090. *Id.*

17 3. Through this action, plaintiff City of San Diego requests a judicial declaration that
18 the lease-to-own contract it entered into with respect to the 101 Ash St. building (at times the
19 “Premises”) is void under the conflicts of interest law. The void contract resulted in certain
20 defendants identified hereinafter as receiving compensation from the public treasury totaling in
21 excess of \$24,000,000; public funds which the City now seeks remittance in relief.

22 4. City comes now before the Court requesting an order confirming that the language
23 of its lease with Defendants~~In the alternative, and as a result of the condition of the Premises, the~~
24 City requests a judicial order confirming that the language of the subject lease permits abatement
25 of rental payments during a period that the leased premises cannot be occupied, as an alternative
26 reading of the lease would violate the prohibitions detailed in Article 16, Section 18(a), of the
27 California Constitution, known as the constitutional debt limitation.

28 5. Furthermore, the City seeks damages related to the negligence of contractor

1 defendants West Coast General Corporation and Argus Contracting LP related to their failure to
2 exercise due care with regard to work performed at the 101 Ash St. building that resulted in
3 significant asbestos contamination that has rendered the building inoperable for the City's
4 intended purpose.

5 FACTUAL ALLEGATIONS

6 A. The City Engages Jason Hughes as a Special Volunteer for Real Estate Services

7 6. Commencing in 2013, the City engaged commercial real estate broker Jason
8 Hughes ("Hughes") as its volunteer Special Assistant for Real Estate Services and authorized him
9 to advise it on leasing strategies, negotiate with its potential landlords and property sellers, and
10 represent it in negotiating the terms of any contract or lease for its downtown San Diego office
11 needs.

12 7. At all times, Hughes publicly held himself to be providing volunteer pro-bono
13 representation and confirmed in writing that neither he nor his company, Hughes Marino, Inc.,
14 were taking commissions for their services on behalf of the City. Hughes informed the press that
15 his pro-bono work on behalf of the City was as a result of his sense of civic duty.

16 8. As part of his purported volunteer representation, Hughes represented the City in
17 identifying potential locations for downtown office space, advising the City on its strategy for
18 housing its significant number of employees, negotiating with landlords and owners, conducting
19 due diligence, and participating in the making of contracts for its real estate needs. Hughes
20 participated on behalf of the City in making leases for spaces located at 525 B St., 1010 Second
21 Avenue, 1200 Third Avenue (Civic Center Plaza), and eventually 101 Ash St.

22 B. Hughes Identifies and Negotiates 101 Ash Transaction on City's Behalf

23 9. Beginning in 2014, Hughes engaged in negotiations with the then-owners of a 21-
24 story building located at 101 West Ash St., San Diego (at times the "101 Ash Building") on behalf
25 of the City. At the time, the 101 Ash Building was owned and operated by entities controlled by
26 individuals, Sandor Shapery and Douglas Manchester. In writings to Shapery and Manchester,
27 Hughes identified himself as the "exclusive representative for the City of San Diego." Importantly,
28 Hughes also again confirmed in writings that he would forego any commission on a transaction

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1 resulting from the negotiations.

2 10. The negotiations between Shapery and Manchester, on the one hand, and the City,
3 on the other hand, occurred through Hughes and with his direct involvement and consultation.
4 Hughes participated in one-on-one negotiations on the City's behalf. Hughes made
5 recommendations to the City as to potential lease terms including rate and duration, responded to
6 counter-offers, and advised regarding potential alternative locations. Hughes participated in walk-
7 throughs of the 101 Ash Building on the City's behalf.

8 11. The protracted negotiations with Shapery and Manchester did not result in a lease
9 or sale of the 101 Ash Building to the City. Accordingly, Shapery and Manchester explored selling
10 the 101 Ash Building to a third party.

11 12. Hughes thereafter commenced negotiations purportedly on the City's behalf with
12 Cisterra Partners, LLC ("Cisterra") regarding a lease-to-own structure the City would enter into if
13 Cisterra acquired Shapery's and Manchester's interests.

14 13. On July 21, 2016, City of San Diego Director of Real Estate Assets, Cybele
15 Thompson, executed a letter of intent with Cisterra expressing an intention to enter into a lease-to-
16 own arrangement for the 101 Ash Building in the event that Cisterra acquired the property.
17 Hughes advised and represented the City on the deal and negotiated the terms of the lease-to-own.
18 All communications between Cisterra and City occurred through Hughes.

19 14. Hughes assisted in preparation of materials to present to San Diego City Council to
20 approve a lease-to-own arrangement to acquire the 101 Ash Building.

21 15. On October 17, 2016, the proposed transaction between Cisterra and City was
22 presented to City Council. Jason Wood of Cisterra provided information to the Council regarding
23 the transaction while Hughes was in attendance purportedly on behalf of the City. Council
24 approved proceeding with the transaction.

25 16. On January 3, 2017, Shapery and Manchester's entities, The Gas & Electric
26 Headquarters Building – San Diego, L.P. and Shapery Developers Gas & Electric Property, L.P.,
27 sold the 101 Ash St. property to Cisterra.

28 17. Contemporaneously, Cisterra created the entity 101 Ash, LLC for the purposes of

1 leasing the 101 Ash Building to the City.

2 **C. The City Enters Into a Lease-To-Own Arrangement for 101 Ash and Makes \$24**
3 **Million in Rental Payments**

4 18. The Lease Agreement between 101 Ash, LLC and The City of San Diego is dated
5 to be effective as of January 3, 2017 (the "101 Ash St. Lease"). The terms of the 101 Ash St.
6 Lease were negotiated by Hughes as the City's representative.

7 19. In total, Cisterra acquired the 101 Ash Building for \$72.4 million. Cisterra passed
8 \$19.5 million in costs on to the City through monthly Lease payments, making the total
9 acquisition price of 101 Ash Building to the City approximately \$92 million.

10 20. The 101 Ash St. Lease contains a number of terms negotiated by Hughes including
11 an "AS IS" clause whereby landlord 101 Ash, LLC attempts to disclaim any warranty or
12 representation regarding the condition of the building.

13 21. The 101 Ash St. Lease is a triple-net lease, meaning the City has sole responsibility
14 for rent, operating costs, expenses and condition.

15 22. The 101 Ash St. Lease has a duration of twenty (20) years and requires City to pay
16 \$534,726.50 per month in rent.

17 23. On the same day as the sale to Cisterra and the 101 Ash St. Lease, defendant 101
18 Ash, LLC assigned its right, title, and interest in, to, and under the 101 Ash St. Lease to defendant
19 Wilmington Trust, National Association as the trustee of CGA Capital Credit Lease-Backed Pass-
20 Through Trust, Series 2017-CTL-1 ("Wilmington Trust").

21 24. Accordingly, the City by and through the 101 Ash, St. Lease and the subsequent
22 assignment have paid rents pursuant to the 101 Ash St. Lease to defendant Wilmington Trust.

23 25. To date, the City has paid Wilmington Trust forty-four (44) months of rent from
24 January 2017 through August 2020 for a total of \$23,527,966.00.

25 **D. The City Engages Contractors Whose Negligence Renders the 101 Ash Building**
26 **Inoperable, Uninhabitable, and Unfit for Its Intended Purposes**

27 26. Commencing in September 2018, the City engaged contractors to provide tenant
28 improvements, including West Coast General Corporation and Argus Contracting L.P.

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1 27. West Coast General Corporation and Argus Contracting L.P. commenced work
2 pursuant to agreement with the City.

3 28. On August 14, 2019, the San Diego County Air Pollution Control District
4 ("APCD") issued a Notice of Violation to the City related to the failure to remove asbestos-
5 containing material from the 101 Ash Building.

6 29. Under the direction of and as a result of services provided by West Coast General
7 Corporation and Argus Contracting L.P., the City received a total of five Notices of Violation
8 from the San Diego County relating to asbestos at the Premises.

9 30. On January 16, 2020, the County Air Pollution Control District issued its fifth
10 Notice of Violation regarding asbestos at the Premises. Thereafter the Premises were shut down as
11 unsafe for human occupancy.

12 31. Since January 16, 2020, the City has not been able to occupy the Premises and it
13 remains unoccupied.

14 32. On September 1, 2020, the City, through the Mayor of San Diego, announced it
15 would be suspending further lease payments for the Premises, and in furtherance thereof, the City
16 advised the landlord of the Premises of same, citing that the City could not occupy the building
17 and use the building for the purposes which were intended.

18 **E. Cisterra Paid Hughes Millions of Dollars Related to the 101 Ash Transaction**

19 33. The City has discovered through this litigation that defendant Hughes received four
20 million, four hundred, ten thousand dollars (\$4,410,000) directly from Cisterra, 101 Ash, LLC,
21 and/or its owners as a result of the series of 101 Ash St. transactions described herein.

22 34. The payment by Cisterra, 101 Ash, LLC, and/or its owners to the City's exclusive
23 representative Hughes was not properly disclosed or authorized.

24 35. California Government Code section 87200 et seq., as it existed during the
25 operative time period, required that any individual who serves in a position that makes or
26 participates in making governmental decisions file a Form 700. The Form 700 provides necessary
27 information to the public about the discloser's financial interests to ensure that public decisions
28 are made in the best interest of the public and not enhancing personal finances or triggering

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1 conflicts of interest.

2 36. Relatedly, Section 225 of the San Diego City Charter, as it existed during the
3 operative time period, stated that

4 No right, title or interest in the City's real or personal property, nor any right, title,
5 or interest arising out of a contract or lease, may be granted or bargained pursuant
6 to the city's general municipal powers or otherwise... unless the person apply or
7 bargaining therefor makes a full and complete disclosure of the name and identity
8 of any and all persons directly or indirectly involved in the application or proposed
9 transaction and the precise nature of all interests of all persons therein.

10 37. None of the publicly released documents regarding the 101 Ash St. Lease reflect
11 Hughes receiving any money, commission or other payment for services.

12 38. Hughes did not disclose his financial interest in the 101 Ash St. building or
13 transaction on any public filing or form, including a Form 700.

14 39. Hughes did not disclose to the San Diego City Council that he received
15 renumeration as a result of the 101 Ash St. series of transactions.

16 40. Cisterra and 101 Ash, LLC did not disclose Hughes's financial interest in the 101
17 Ash Building or transaction on any public filing or form. Cisterra and 101 Ash, LLC did not
18 disclose that either entity or its owners paid Hughes directly as a result of the transaction.

19 41. Cisterra and 101 Ash, LLC did not disclose Hughes's financial interest in the 101
20 Ash Building or transaction to San Diego City Council. Cisterra and 101 Ash, LLC did not
21 disclose that either entity or its owners paid Hughes directly as a result of the transaction.

22 42. To the contrary, publicly Hughes has touted that he was a volunteer assistant to the
23 City while advising it to enter into deals that resulted in his receipt of millions of dollars.

24 **PARTIES, JURISDICTION, AND VENUE**

25 +

26 2-43. The City asserts that jurisdiction and venue are proper before this Court as the
27 events which underlie this lawsuit occurred within the City of San Diego and County of San
28 Diego.

3-44. The City is, and at all times herein mentioned was, a California Charter City, duly
organized and existing by virtue of the laws of the State of California.

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1 4-45. The City is informed and believes, and thereon alleges, that ~~Defendant-defendant~~
2 101 Ash, LLC is a limited liability company existing under the laws of the State of Delaware,
3 registered to do business in the State of California, with its principal place of business located in
4 San Diego County, California.

5 5-46. The City alleges that ~~Defendant-defendant~~ Wilmington Trust, National Association
6 (“Wilmington Trust”), an unknown business entity, is the trustee of CGA Capital Credit Lease-
7 Backed Pass-Through Trust, Series 2017-CTL-1, and has a principal place of business in
8 Baltimore, Maryland.

9 47. The City is informed and believes, and thereon alleges, that defendant Cisterra
10 Partners, LLC is a limited liability company existing under the laws of the State of Delaware,
11 registered to do business in the State of California, with its principal place of business located in
12 San Diego County, California.

13 48. The City is informed and believes, and thereon alleges, that defendants 101 Ash,
14 LLC and Cisterra have common ownership, membership, management, and control groups.

15 49. The City is informed and believes, and thereon alleges, that defendant Jason
16 Hughes is an individual residing and providing services in San Diego County, California. The
17 City alleges that Hughes is a licensed broker registered with the California Department of Real
18 Estate.

19 50. The City is informed and believes, and thereon alleges, that defendant West Coast
20 General Corporation is a California corporation with a business address of 13700 Stowe Dr., Suite
21 100, Poway, California 92064.

22 51. The City is informed and believes, and thereon alleges, that defendant Argus
23 Contracting LP is a Pennsylvania limited partnership with a business address of 2340 E. Artesia
24 Blvd., Long Beach, California 90805.

25 6-52. The true names and capacities of Defendants named as DOES 1 through 2050,
26 inclusive, whether individual, corporate, or otherwise, are unknown to the City, which is informed
27 and believes, and therefore alleges, that each of said fictitiously named Defendants is liable to the
28 City on the causes of action herein alleged, and, therefore, the City sues such Defendants by said

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1 fictitious names. The City will move to amend this complaint when the true names and capacities
2 of said fictitiously named Defendants have been ascertained.

3 ~~7-53. The~~ City is informed and believes, and thereon alleges, that at all times herein
4 mentioned each of the Defendants was the agent and/or employee of each of their Co-Defendants,
5 and in doing the things herein mentioned, was acting within the scope and course of the authority
6 of such agency and/or employment, and with the express or implied permission and consent of
7 their Co-Defendants.

8 ~~8. On November 15, 2016, City approved a "Lease Agreement" relating to the 101~~
9 ~~Ash Street building, as set forth in Ordinance OO 20745, and effective January 3, 2017~~
10 ~~(hereinafter the "Lease").~~

11 ~~9. The Lease grants the City certain tenancy rights and obligations with respect to a~~
12 ~~21-story commercial office building located at 101 Ash Street, San Diego, California (the~~
13 ~~"Premises") with 101 Ash, LLC having certain landlord rights and obligations.~~

14 ~~10. On January 3, 2017, 101 Ash, LLC and Wilmington Trust entered into an~~
15 ~~Assignment of Lease and Rents with respect to the Premises. The Assignment of Lease and Rents~~
16 ~~is notarized in San Diego, California and contains a selection of law clause and a jurisdiction~~
17 ~~clause in favor of California.~~

18 ~~11. Pursuant to the Assignment of Lease and Rents, City was directed to make rental~~
19 ~~payments under the Lease directly to Wilmington Trust and did in fact make rental payments~~
20 ~~directly to Wilmington Trust.~~

21 ~~12. On January 16, 2020, the County Air Pollution Control District issued a Public~~
22 ~~Nuisance Violation for asbestos found in the Premises. The County Air Pollution Control District~~
23 ~~stated the Premises should be shut down because the Premises was unsafe for human occupancy.~~

24 ~~13. Since January 16, 2020, City has not been able to occupy the 101 Ash Street~~
25 ~~building and it remains unoccupied.~~

26 ~~14. City made rental payments from January 2017 through August 2020 as set forth in~~
27 ~~the Lease.~~

28 ~~15. On September 1, 2020, City, through the Mayor of San Diego, announced it would~~

1 ~~be suspending further lease payments for the Premises, and in furtherance thereof, City advised the~~
2 ~~landlord of the Premises of same, citing that the City could not occupy the building and use the~~
3 ~~building for the purposes which were intended.~~

4 ~~#~~
5 ~~#~~
6 ~~#~~

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 1090**

9 **(Against Defendants CISTERRA, 101 ASH, LLC, HUGHES, and DOES 1 through 10)**

10 54. The City hereby incorporates by reference and realleges each allegation above as
11 though fully set forth herein.

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12 55. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective
13 January 3, 2017.

14 56. The 101 Ash St. Lease was recommended, negotiated, and affirmed by defendant
15 Hughes such that it was made by Hughes in his official capacity subject to Section 1090.

16 57. At the time of the negotiations and implementation of the 101 Ash St. Lease,
17 Hughes had a financial interest in the contract such that he received over four million dollars.

18 58. The financial interest in the contract was created by defendants Cisterra, 101 Ash,
19 LLC and their representatives.

20 59. The City, and its decision-making body, did not know Hughes was to be
21 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
22 this litigation.

23 60. Pursuant to California Government Code Section 1090 et seq., the 101 Ash St.
24 Lease is void due to the City's exclusive representative, defendant Hughes, having a prohibited
25 financial interest in the contract he participated in making as evidenced herein.

26 61. Pursuant to California Government Code Section 1090 et seq., defendants must
27 restore all benefits to City received pursuant to the 101 Ash St. Lease without offset. Defendants
28 must restore the benefits to the public treasury.

1 SECOND CAUSE OF ACTION

2 FRAUD – INTENTIONAL MISREPRESENTATION

3 (Against Defendant HUGHES, and DOES 5 through 10)

4 62. The City hereby incorporates by reference and realleges each allegation above as
5 though fully set forth herein.

6 63. Defendant Hughes represented to the City, and its decision-making body the City
7 Council, and its representatives that he was not being compensated for his work on the 101 Ash
8 series of transactions, that he and his firm were to receive no commissions as a result of the work,
9 and that he had no financial interest in the City’s decision to lease or not lease 101 Ash.

10 64. Defendant Hughes’s representations were false.

11 65. Defendant Hughes knew that the representations were false because he agreed to
12 receive an undisclosed payment in excess of four million from Cisterra, 101 Ash, LLC, and/or its
13 owners.

14 66. Defendant Hughes intended the City to rely upon his representations and trust his
15 expertise as an independent advisor, when in reality he had an undisclosed financial interest.

16 67. The City, and its decision-making body the City Council, relied upon Hughes’s
17 representations and entered into the 101 Ash St. Lease under his advice and pursuant to terms that
18 he negotiated.

19 68. The City, and its decision-making body, did not know Hughes was to be
20 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
21 this litigation.

22 69. As a result of reasonable reliance upon Hughes’s misrepresentations, the City and
23 the public treasury sustained harm and damages, including entering into the 101 Ash St. Lease on
24 unfavorable terms, paying additional monies for 101 Ash St. that went to Hughes, and losing other
25 leasing opportunities. The damages are to be proven at trial.

26 70. The aforementioned acts by Hughes were intentional and willful, and by engaging
27 in the aforementioned acts and conduct, Hughes acted maliciously, oppressively, fraudulently, and
28

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1 in conscious disregard of the City. As such, the City is entitled to an award of punitive damages
2 against Hughes in an amount according to proof.

3 **THIRD CAUSE OF ACTION**

4 **BREACH OF FIDUCIARY DUTY**

5 **(Against Defendant HUGHES, and DOES 11 through 20)**

6 71. The City hereby incorporates by reference and realleges each allegation above as
7 though fully set forth herein.

8 72. Defendant Hughes represented the City as its commercial real estate broker and
9 submitted offers and counter-offers to potential lessors and landlords stating he was the City's
10 exclusive tenant representative.

11 73. Defendant Hughes owed the City fiduciary duties at all times during his
12 representation as the City's exclusive representative.

13 74. Hughes owed the City fiduciary duties including the duty of undivided loyalty.
14 "During the course of his agency, he may not undertake or participate in activities adverse to the
15 interests of his principal." *Sequoia Vacuum Systems v. Stransky* (1964) 229 Cal.App.2d 281, 287.
16 As a fiduciary, a broker must act in the "highest good faith" toward its principal and may not
17 obtain any advantage over the principal in any transaction arising out of the agency relationship.
18 *Wyatt v. Union Mort. Co.* (1979) 24 Cal.3d 773, 782; *Roberts v. Lomanto* (2003) 112 Cal.App.4th
19 1553, 1563.

20 75. Hughes knowingly acted against the City's interests in connection with the
21 negotiations detailed herein by failing to disclose material terms of the 101 Ash St. deal to the
22 City, including that he was being paid by Cisterra and/or its owners and how much he was being
23 paid. Hughes's actions created an irreparable conflict of interest.

24 76. Hughes's conflict of interest prohibited the City from receiving proper advice
25 regarding potential alternative locations and potential better leasing terms.

26 77. As a result of Hughes's breaches of fiduciary duty, the City and the public treasury
27 sustained harm and damages, including entering into the 101 Ash St. Lease on unfavorable terms.

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1 paying additional monies for 101 Ash St. that went to Hughes, and losing other leasing
2 opportunities. The damages are to be proven at trial.

3 78. The City, and its decision-making body, did not know Hughes was to be
4 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
5 this litigation.

6 79. The aforementioned acts by Hughes were intentional and willful, and by engaging
7 in the aforementioned acts and conduct, Hughes acted maliciously, oppressively, fraudulently, and
8 in conscious disregard of the City. As such, the City is entitled to an award of punitive damages
9 against Hughes in an amount according to proof.

10 **FOURTH CAUSE OF ACTION**

11 **FRAUD – CONCEALMENT**

12 **(Against Defendants CISTERRA, 101 ASH, LLC, HUGHES, and DOES 21 through 30)**

13 80. The City hereby incorporates by reference and realleges each allegation above as ←
14 though fully set forth herein.

15 81. Defendant Hughes was in a fiduciary relationship with the City that required
16 transparency with the City.

17 82. Defendant Hughes actively concealed from the City, and its decision-making body
18 the City Council, that he was to be paid by Cisterra, 101 Ash, LLC, and/or its owners as a result of
19 the 101 Ash transaction.

20 83. Defendants Cisterra and 101 Ash, LLC knew that Hughes was to be paid as a result
21 of the transaction and knew that the City was not informed of the material term, but failed to
22 inform the City, and its decision-making body the City Council, and actively concealed that
23 information through failures to adhere to the mandated financial disclosure laws.

24 84. The City, and its decision-making body, did not know Hughes was to be
25 compensated for his role in the 101 Ash transaction and did not become aware until discovery in
26 this litigation.

27 85. Defendants Hughes, Cisterra, and 101 Ash, LLC intended to deceive the City by
28 concealing the payment to Hughes.

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1 86. Had the City known about the payment to Hughes it reasonably would have
2 behaved differently.

3 87. As a result of reasonable reliance of the information provided by defendants, the
4 City and the public treasury sustained harm and damages, including entering into the 101 Ash St
5 Lease on unfavorable terms, paying additional monies for 101 Ash St. that went to Hughes, and
6 losing other leasing opportunities. The damages are to be proven at trial.

7 88. The aforementioned acts by Hughes, 101 Ash, LLC, and Cisterra were intentional
8 and willful, and by engaging in the aforementioned acts and conduct, Hughes, 101 Ash, LLC, and
9 Cisterra acted maliciously, oppressively, fraudulently, and in conscious disregard of the City. As
10 such, the City is entitled to an award of punitive damages against Hughes, 101 Ash, LLC, and
11 Cisterra in an amount according to proof.

12 **FIFTH CAUSE OF ACTION**

13 **RETURN OF MONIES HAD AS A RESULT OF SECTION 1090 VIOLATION**

14 **(Against Defendants Wilmington TRUST and DOES 31 through 35)**

15 89. The City hereby incorporates by reference and realleges each allegation above as ←
16 though fully set forth herein.

17 90. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective
18 January 3, 2017. The same day the 101 Ash St. Lease was assigned to defendant Wilmington
19 Trust.

20 91. The City has paid Wilmington Trust forty-four (44) months of rent from January
21 2017 through August 2020 for a total of \$23,527,966.00.

22 92. The 101 Ash St. Lease is void as a matter of law as a result of the Section 1090
23 violations described herein.

24 93. Pursuant to Section 1090 et seq., the City is entitled to automatic disgorgement of
25 monies paid pursuant to the voided contract. Accordingly, the City is entitled to restitution of
26 monies had and received by Wilmington Trust.

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1 SIXTH CAUSE OF ACTION

2 RESCISSION PURSUANT TO CIVIL CODE SECTION 1688 et seq.

3 (Against Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)

4 94. The City hereby incorporates by reference and realleges each allegation above as
5 though fully set forth herein.

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6 95. The City entered into the 101 Ash St. Lease with defendant 101 Ash, LLC effective
7 January 3, 2017. The same day the 101 Ash St. Lease was assigned to defendant Wilmington
8 Trust.

9 96. As described herein, the 101 Ash. St. Lease was obtained through mistake, fraud,
10 undue influence and is unlawful such that it is subject to rescission pursuant to Civil Code section
11 1689.

12 97. The public interest will be prejudiced if the 101 Ash St. Lease is permitted to stand.

13 98. The City has paid Wilmington Trust forty-four (44) months of rent from January
14 2017 through August 2020 for a total of \$23,527,966.00.

15 99. Pursuant to Civil Code section 1688 et seq., the City is entitled to disgorgement of
16 monies paid pursuant to the rescinded contract. Accordingly, the City is entitled to restitution of
17 monies had and received by Wilmington Trust.

18 SEVENTH CAUSE OF ACTION

19 DECLARATORY RELIEF – CONSTITUTIONAL DEBT LIMITATION

20 (Against ~~All~~ Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)

21 ~~16-100.~~ The City hereby incorporates by reference and realleges each allegation
22 above as though fully set forth herein.

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23 ~~17-101.~~ The City and 101 Ash, LLC entered into the subject Lease pertaining to the
24 rights and obligations of each with respect to the Premises, a 21-story commercial office building
25 located at 101 Ash Street, San Diego, California.

26 ~~18-102.~~ Pursuant to Section 5(a), Section 5(b), Section 11(a), and Section 11(i) of
27 the Lease, certain events give rise to abatement of rent such that the City is not obligated to pay
28 rent to ~~Defendants~~ Wilmington Trust or 101 Ash, LLC.

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1 ~~19-103.~~ Section 11(a) defines a "Destruction" of the Premises as "an event of loss,
2 damage or destruction, whether by fire or hazard or other casualty to all or any portion of the
3 Premises (a "Casualty") that is caused by a peril which is or should have been covered by a policy
4 of insurance described in Section 12 of [the] Lease."

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5 ~~20-104.~~ Section 12(a) of the ~~101 Ash St.~~ Lease identifies specific insurances that the
6 City is required to maintain including risk property insurance, commercial general liability, and
7 business interruption insurance.

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8 ~~21-105.~~ Section 11(i) states that "during any period in which, by reason of an event
9 of Destruction, there is substantial interference with the use and occupancy by Tenant of any
10 portion of the Premises, payments of Base Rent due hereunder with respect to the Premises shall
11 be abated" to the extent of the loss.

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12 ~~22-106.~~ An event of loss, damage, or destruction has occurred at the ~~Premises~~
13 ~~premises~~ that was caused by a peril that should be covered by insurance.

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14 ~~23-107.~~ The event of loss, damage, or destruction has resulted in substantial
15 interference with the use and occupancy by the City of the Premises, such that City is not able to
16 occupy any portion of the Premises as envisioned by the Lease.

17 #

18 ~~24-108.~~ The ~~Premises-premises~~ are therefore unusable for the purposes intended and
19 thereby confer no value to ~~the~~ City.

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20 ~~25-109.~~ Defendants are aware of the destructive event, that ~~the~~ City is not occupying
21 the building, and that the purpose of the ~~101 Ash St.~~ Lease is not being achieved, but nonetheless
22 have continued to demand that rental payments be made on a monthly basis.

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23 ~~26-110.~~ By reason of the foregoing, a dispute has arisen and an actual controversy
24 exists between ~~the~~ City and Defendants relating to their legal rights and duties, specifically as to
25 whether ~~the~~ City is entitled to rent abatement pursuant to the ~~101 Ash St.~~ Lease during the period
26 of time it is not able to use and occupy the Premises as envisioned by the ~~101 Ash St.~~ Lease.

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27 ~~27-111.~~ To the extent ~~Defendants-defendants~~ deny that the ~~101 Ash St.~~ Lease
28 permits rent abatement during the period of time ~~the~~ City is not able to use and occupy the

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1 ~~Premises~~premises, the rental payments would be in violation of Article 16, Section 18(a), of the
2 California Constitution's debt limitation provision as the payments are not "contingent on receipt
3 of some additional, contemporaneous consideration, such as the [City's] ongoing use and
4 occupancy of the building." *Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1049, citing *Dean*
5 *v. Kuchel* (1950) 35 Cal.2d 444, 445.

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6 ~~28-112.~~ 28-112. The City therefore asks this Court for a declaration of the respective rights,
7 duties, and obligations of the City and ~~Defendants~~defendants 101 Ash, LLC and Wilmington
8 Trust with respect to the 101 Ash St. Lease. There is no plain, adequate, or speedy remedy at law.
9 It is therefore fair, just, and appropriate that the Court determine the relative rights and obligations
10 of said parties in this proceeding.

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11 SECOND CAUSE OF ACTION

12 REFORMATION

13 (Against ~~the~~Defendants 101 Ash, LLC, Wilmington Trust, and DOES 36-40)

14 ~~29-113.~~ 29-113. The City hereby incorporates by reference and realleges each allegation
15 above as though fully set forth herein.

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16 ~~30-114.~~ 30-114. The City and 101 Ash, LLC entered into the subject 101 Ash St. Lease
17 pertaining to the rights and obligations of each with respect to the ~~Premises~~premises, a 21-story
18 commercial office building located at 101 Ash Street, San Diego, California.

19 ~~31-115.~~ 31-115. The parties agreed and intended for the 101 Ash St. Lease to comply with
20 all applicable laws, including Article 16, Section 18(a) of the California Constitution.
21

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22 ~~32-116.~~ 32-116. Article 16, Section 18(a) of the California Constitution requires, *inter alia*,
23 that the obligation of the City to pay rent be contingent upon the continued use of the leased
24 property. *See, e.g., Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1055.

25 ~~33-117.~~ 33-117. To the extent that Sections 5(a), 5(b), 11(a), and/or 11(i) of the Lease do not
26 permit abatement of rent in the circumstance where the City is not able to occupy the ~~Premises~~
27 premises as envisioned by the 101 Ash St. Lease, the parties have made a mutual mistake when
28

1 reducing the agreement to writing in drafting an impermissibly narrow abatement provision. The
2 101 Ash St. Lease therefore does not truly express the intention of the parties.

3 118. Accordingly, City requests judicial reformation of the 101 Ash St. Lease to include
4 a provision that permits abatement of the rent where City is not able to occupy the ~~Premises~~
5 premises as envisioned by the 101 Ash St. Lease.

6 NINTH CAUSE OF ACTION

7 NEGLIGENCE

8 (Against Defendants West Coast General Corporation, Argus Contracting L.P., and DOES

9 41-50)

10 119. The City hereby incorporates by reference and realleges each allegation above as
11 though fully set forth herein.

12 120. Defendants West Coast General Corporation and Argus Contracting L.P. owed a
13 duty of care to the City to undertake the work and supervision in the 101 Ash Building with due
14 care, including but not limited to, (i) being on site to properly supervise the work of the
15 subcontractors (ii) to use proper materials, (iii) use proper construction means and methods to
16 prevent mistakes, errors, and physical defects that caused physical damage to the property; (iv)
17 ensure proper construction techniques in quality control inspections; and (v) set forth and describe
18 the work being performed in a detailed and understandable manner.

19 121. Defendants West Coast General Corporation and Argus Contracting L.P. violations
20 of their duty of care include but are not limited to (i) causing asbestos containing material to be
21 disturbed in such a manner that a nuisance has been created; and (ii) performing work
22 inadequately, incompletely, or in such a defective manner that significant portions of the property
23 have been damaged and the work must be demolished or redone.

24 122. As a direct and proximate result of the negligence, acts or omissions, carelessness,
25 lack of supervision, breach of duty of care and acts and omissions to act, the City has suffered
26 damages including but not limited to payment for work having to be redone, payment of fees and
27 costs that should not have been incurred, costs of repair of improperly done work, including
28 resulting damages to the City's personal and real property, diminution in value, and loss of use of

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1 enjoyment of the premises. The extent and nature of the amount is not yet known and is subject to
2 proof at trial.

3 ~~34. —~~

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, City prays for judgment against Defendants as follows:

6 1. On the First Cause of Action

7 a. For a judgment declaring the 101 Ash St. Lease is void pursuant to California

8 Government Code Section 1090 et seq.;

9 b. For restoration of benefits without offset provided by the City in an amount to

10 be proven at trial pursuant to California Government Code Section 1090 et seq.;

11 2. On the Second, Third, and Fourth Causes of Action

12 a. For an award of general, special, incidental and consequential damages to be

13 determined;

14 b. For an award of punitive damages in an amount appropriate to punish and make

15 an example of named defendants and to deter similar conduct in the future;

16 3. On the Fifth Cause of Action

17 a. For a judgment in the amount of money had and received, with prejudgment

18 interest;

19 4. On the Sixth Cause of Action

20 a. For a judicial declaration that the 101 Ash St. Lease is void and rescinded;

21 b. For a judgment in the amount of money had and received, with prejudgment

22 interest;

23 5. On the Seventh Cause of Action

24 a. In the alternative to the 101 Ash St. Lease being declared void, For a judicial

25 declaration that City's rent payments under the 101 Ash St. Lease shall be

26 abated so long as the insured loss causes substantial interference with City's use

27 and occupancy of the Premises;

28 6. On the Eighth Cause of Action

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a. In the alternative to the 101 Ash St. Lease being declared void, for reformation of the Lease to include a provision that permits abatement of the rent where City is not able to occupy the Premises as envisioned by the 101 Ash St. Lease;

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~~1.~~

~~2. For reformation of the Lease to include a provision that permits abatement of the rent where City is not able to occupy the Premises as envisioned by the Lease;~~

7. On the Ninth Cause of Action

a. For general, special, incidental and consequential damages to be determined at trial;

b. For prejudgment interest;

c. For compensation for damages for the loss of property, in an amount to be proven at the time of trial;

8. On All Causes of Action

~~3~~-a. For costs of suit incurred herein;

~~4~~-b. For reasonable attorneys' fees incurred; and

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

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~~5.~~

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Dated: June 29, 2021

SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP

By: 

Dick A. Semerdjian
John A. Schena
Alison K. Adelman
Attorneys for Plaintiff
CITY OF SAN DIEGO

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO CENTRAL DIVISION**

CITY OF SAN DIEGO, a Municipal corporation;

Plaintiff,

v.

101 ASH, LLC, a Delaware limited liability company; WILMINGTON TRUST, NATIONAL ASSOCIATION, an unknown business entity, as trustee of CGA CAPITAL CREDIT LEASE-BACKED PASS-THROUGH TRUST, SERIES 2017-CTL-1; and DOES 1 through 20, inclusive,

Defendants.

AND ALL RELATED CROSS-ACTIONS.

Case No. 37-2020-00036247-CU-CO-CTL

**[PROPOSED] ORDER GRANTING
PLAINTIFF CITY OF SAN DIEGO'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

[IMAGED FILE]

Date: August 27, 2021
Time: 9:00 a.m.
Reservation No.: 2395508

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Complaint Filed: October 9, 2020
Trial Date: January 20, 2023

1 **[PROPOSED] ORDER**

2 The Court, having considered Plaintiff City of San Diego’s Motion for Leave to File First
3 Amended Complaint (“Motion”), all papers submitted in support thereof and in opposition thereto,
4 all oral argument of counsel, and the pleadings and records on file herein, and for good cause
5 appearing, hereby orders as follows:

- 6 1. Plaintiff’s Motion for Leave to File First Amended Complaint is **GRANTED**;
- 7 2. Plaintiff shall file and serve the First Amended Complaint, attached as Exhibit A to the
8 Declaration of John A. Schena, no later than twenty court days after receiving this Order; and
- 9 4. Plaintiff shall give notice of this Order.

10
11 **IT IS SO ORDERED.**

12
13 DATED: _____

14 Hon. Joel R. Wohlfeil
15 Judge of the Superior Court

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: Dick A. Semerdjian (SBN 123630)/John A. Schena (SBN 269597)/ NAME Owen M. Praskievicz (SBN 292439) FIRM NAME: SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP STREET ADDRESS: 101 West Broadway, Suite 810 CITY: San Diego STATE: CA Z P CODE: 92101 TELEPHONE NO.: 619.236.8821 FAX NO.: 619.236.8827 E-MAIL ADDRESS: das@sscelaw.com; john@sscelaw.com; owen@sscelaw.com ATTORNEY FOR (name): Plaintiff CITY OF SAN DIEGO	FOR COURT USE ONLY CASE NUMBER: 37-2020-00036247-CU-CO-CTL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND Z P CODE: San Diego, CA 92101 BRANCH NAME: Central Division	
PLAINTIFF/PETITIONER: CITY OF SAN DIEGO DEFENDANT/RESPONDENT: 101 ASH, LLC, et al.	JUDICIAL OFFICER: Hon. Joel R. Wohlfeil DEPARTMENT: C-73
PROOF OF ELECTRONIC SERVICE	

1. I am at least 18 years old.

a. My residence or business address is (specify):
 101 West Broadway, Suite 810, San Diego, CA 92101

b. My electronic service address is (specify):
 marie@sscelaw.com

2. I electronically served the following documents (exact titles):

The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:

a. Name of person served:
 On behalf of (name or names of parties represented, if person served is an attorney):

b. Electronic service address of person served :

c. On (date): June 29, 2021

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
 (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: June 29, 2021

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

Marie E. Landeros

 (TYPE OR PRINT NAME OF DECLARANT)



 (SIGNATURE OF DECLARANT)

CASE NAME: CITY OF SAN DIEGO v. 101 ASH, LLC, et al.	CASE NUMBER: 37-2020-00036247-CU-CO-CTL
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (DOCUMENTS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

The documents that were served are as follows (describe each document specifically):

PLAINTIFF CITY OF SAN DIEGO'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

DECLARATION OF JOHN A. SCHENA IN SUPPORT OF PLAINTIFF CITY OF SAN DIEGO'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

[PROPOSED] ORDER GRANTING PLAINTIFF CITY OF SAN DIEGO'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

SHORT TITLE: CITY OF SAN DIEGO v. 101 ASH, LLC, et al.	CASE NUMBER: 37-2020-00036247-CU-CO-CTL
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u>	<u>Electronic Service Address</u>	<u>Date of Electronic Service</u>
Craig S. Ganz, Esq. Ballard Spahr LLP 2029 Century Park East, Ste. 1400 Los Angeles, CA 90067 Attorneys for Defendant WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee of CGA CAPITAL CREDIT LEASE-BACKED PASS-THROUGH TRUST, SERIES 2017-CTL-1	ganzc@ballardspahr.com strobelm@ballardspahr.com TurbensonM@ballardspahr.com morganv@ballardspahr.com	Date: <u>June 29, 2021</u>
Michael H. Riney, Esq. Vantage Law Group, A.P.C. 2223 Avenida de la Playa, Ste. 212 La Jolla, CA 92037 Attorneys for Defendant 101 ASH, LLC	riney@vantagelaw.com doherty@vantagelaw.com	Date: <u>June 29, 2021</u>
Mara Elliott, Esquire, City Attorney George F. Schaefer, Assistant City Attorney M. Travis Phelps, Chief Deputy City Attorney Office of the City Attorney 1200 Third Avenue, 16 th Floor San Diego, CA 92101 Co-Counsel for Plaintiff CITY OF SAN DIEGO	MPhelps@sandiego.gov	Date: <u>June 29, 2021</u>
Patrick J. Mendes, Esq. David P. Ramirez, Esq. Richard D. Seely Stephen W. Poirier, Esq. TYSON & MENDES, LLP 5661 La Jolla Boulevard La Jolla, California 92037 Attorneys for Cross-Defendant ARGUS CONTRACTING, LP	dramirez@tysonmendes.com spoirier@tysonmendes.com rseely@tysonmendes.com rtorres@tysonmendes.com kbustamante@tysonmendes.com	Date: <u>June 29, 2021</u>
Frederick C. Phillips, Esq. 605 C. Street, Suite 30 San Diego, CA 92101 Attorneys for Cross-Defendant Enviroapplications, Inc.	fcp@philaw.com	Date: <u>June 29, 2021</u>

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 Judicial Council of California
 POS-050(P)/EFS-050(P)
 [Rev. February 1, 2017]

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)
(Proof of Service/Electronic Filing and Service)

SHORT TITLE: CITY OF SAN DIEGO v. 101 ASH, LLC, et al.	CASE NUMBER: 37-2020-00036247-CU-CO-CTL
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u>	<u>Electronic Service Address</u>	<u>Date of Electronic Service</u>
Joseph Barbarie, Esq. 3232 Governor Drive, Suite A San Diego, CA 92122 Attorneys for Cross-Defendant Enviroapplications, Inc.	sandblaw@gmail.com	Date: <u>June 29, 2021</u>
P. Randolph Finch, Esq. David W. Smiley, Esq. Finch Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, CA 92121-3107 Attorneys for Cross-Defendant West Coast General Corporation	pfinch@ftblaw.com dsmiley@ftblaw.com sfaller@ftblaw.com	Date: <u>June 29, 2021</u>
Garth N. Ward, Esq. Lewis Brisbois Bisgaard & Smith, LLP 550 West C Street, Suite 1700 San Diego, CA 92101 Attorneys for Cross-Defendant West Coast General Corporation	garth.ward@lewisbrisbois.com	Date: <u>June 29, 2021</u>
Michael J. Aguirre, Esq. Maria C. Severson, Esq. Elijah T. Gaglio, Esq. AGUIRRE & SEVERSON, LLP 501 West Broadway, Suite 1050 San Diego, CA 92101 Attorneys for Plaintiff John. A Gordon (SDSC Case No. 2020- 28837)	maguirre@amslawyers.com mseverson@amslawyers.com egaglio@amslawyers.com mbyrnes@amslawyers.com	Date: <u>June 29, 2021</u>
Thomas V. Girardi, Esq. GIRARDI KEESE 1126 Wilshire Blvd Los Angeles, CA, 90017 Attorneys for Plaintiff John. A Gordon (SDSC Case No. 2020- 28837)	tgirardi@girardikeese.com	Date: <u>June 29, 2021</u>
Lawrence W. Shea, II, Esq. LAW OFFICE OF LAWRENCE W. SHEA P.O. Box 6353 San Diego, CA 92166 Attorneys for Plaintiff John. A Gordon (SDSC Case No. 2020- 28837)	lshea@lawrenceshea.com	Date: <u>June 29, 2021</u>

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