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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/15/2021** at 04:20:00 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

5 *Attorney for Defendant Wilmington Trust,*  
*National Association, as trustee of CGA*  
6 *Capital Credit Lease-Backed Pass-Through*  
*Trust, Series 2017 CTL-1*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF SAN DIEGO CENTRAL DIVISION**

9 **CITY OF SAN DIEGO**, a Municipal  
10 corporation,

11 Plaintiff,

12 v.

13 **101 ASH, LLC**, a Delaware limited liability  
company; **WILMINGTON TRUST,**  
14 **NATIONAL ASSOCIATION**, an unknown  
business entity, as trustee of CGA CAPITAL  
15 **CREDIT LEASE-BACKED PASS-THROUGH**  
**TRUST, SERIES 2017-CTL-1; and DOES 1**  
16 **THROUGH 20**, inclusive,

17 Defendants.

18 **WILMINGTON TRUST, NATIONAL**  
**ASSOCIATION**, as trustee of CGA CAPITAL  
19 **CREDIT LEASE-BACKED PASS-THROUGH**  
**TRUST, SERIES 2017-CTL-1,**

20 Cross-Complainant,

21 v.

22 **CITY OF SAN DIEGO**, a Municipal  
23 corporation; **WEST COAST GENERAL**  
**CORPORATION**, a California corporation;  
24 **ARGUS CONTRACTING LP**, a  
Pennsylvania limited partnership;  
25 **ENVIROAPPLICATIONS INC.**, a California  
corporation,

26 Cross-Defendants.  
27  
28

CASE NO. 37-2020-00036247-CU-CO-CTL

**DEFENDANT WILMINGTON TRUST,**  
**NATIONAL ASSOCIATION, AS**  
**TRUSTEE OF CGA CAPITAL CREDIT**  
**LEASE-BACKED PASS-THROUGH**  
**TRUST, SERIES 2017 CTL-1'S CROSS-**  
**COMPLAINT AGAINST CITY OF SAN**  
**DIEGO, WEST COAST GENERAL**  
**CORPORATION, ARGUS**  
**CONTRACTING LP, AND**  
**ENVIROAPPLICATIONS INC.**

**IMAGED FILE**  
(UNLIMITED CIVIL CASE)

**JURY TRIAL DEMANDED**

Complaint Filed: October 9, 2020  
Trial Date: Not Yet Set

Dept: D-73  
Judge: Hon. Joel R. Wohlfeil

1 Cross-Complainant WILMINGTON TRUST, NATIONAL ASSOCIATION, AS  
2 TRUSTEE OF CGA CAPITAL CREDIT LEASE-BACKED PASS-THROUGH TRUST,  
3 SERIES 2017 CTL-1 (hereinafter, “Cross-Complainant”) alleges and avers as follows:

4 **GENERAL ALLEGATIONS**

5 1. This lawsuit arises out of Plaintiff City of San Diego’s (“the City’s” or “Tenant’s”)   
6 lease of commercial property located at 101 Ash Street, San Diego, CA (the “101 Ash Street   
7 Building,” “Premises,” or “Building”), the City’s unauthorized alterations to the 101 Ash Street   
8 Building performed by West Coast General Corporation, Argus Contracting LP, and   
9 EnviroApplications Inc. causing (in the City’s consultant’s opinion) over \$115 million in damages,   
10 and the City’s subsequent decision to forego payments of monthly rent.

11 2. Cross-Complainant asserts that jurisdiction and venue are proper before this Court   
12 for its causes of action against the City, West Coast General Corporation, Argus Contract, LP, and   
13 EnviroApplications Inc. given the events underlying this lawsuit occurred within the City of San   
14 Diego and County of San Diego.

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

17 4. West Coast General Corporation is a California corporation with a business address   
18 of 13700 Stowe Dr., Suite 100, Poway, CA 92064.

19 5. Argus Contracting LP is a Pennsylvania limited partnership with a business address   
20 of 2340 E. Artesia Blvd., Long Beach, CA 90805.

21 6. EnviroApplications Inc. is a California corporation with a business address of 2831   
22 Camino del Rio S. Suite 213, San Diego, CA 92108.

23 7. Cross-Complainant has a principal place of business in Maryland.

24 **I. The City Identifies a Public Benefit to Entering into Lease-to-Own Arrangement for**  
25 **the 101 Ash Street Building.**

26 8. In late 2014, the City identified that 49% of its current leased space for City   
27 employees would expire within the subsequent few years, including:

- 28 • 141,888 square feet of space located at 1010 2nd Ave., San Diego, CA   
expiring June 30, 2019;

- 1 • 90,778 square feet of space located at 525 B St., San Diego, CA expiring  
2 June 30, 2019; and
- 3 • 22,216 square feet of space located at 1122 Broadway, San Diego, CA  
4 expiring September 30, 2020.

5 9. With over 250,000 square feet of space set to expire in the upcoming years, the City  
6 grew concerned about the increasing lease rents for space in Downtown San Diego and estimated  
7 that Downtown San Diego rental rates would soon reach \$4.00 per square foot of Class A office  
8 space and \$3.00 per square foot for Class B office space.

9 10. In 2015, the City (primarily through its Real Estate Assets Department (“READ”))  
10 determined it was in the public’s interest to look at arrangements beyond a typical lease structure  
11 for long-term placement of its workforce.

12 11. In 2016, the City began considering a lease-to-own arrangement for the 314,545  
13 square feet of office space at the 21-story 101 Ash Street Building (formerly known as the Sempra  
14 Energy Building).

15 12. Under the proposed lease-to-own arrangement, the City would lease the 101 Ash  
16 Street building for 20 years and at the end of the 20-year term, the City would own the 101 Ash  
17 Street building, which the City estimated would have a residual value of \$112 million by the end  
18 of the lease term.

19 13. On October 17,2016, City READ Director Cybele Thompson and City Deputy  
20 Chief Operating Officer Ronald Villa presented to the San Diego City Council (“City Council”)  
21 about the benefits of the lease-to-own arrangement, touting the following advantages:

- 22 • An estimated savings in occupancy expenses of over \$44.4 million to the  
23 City over a 20-year period;
- 24 • The City could control its expenses at a time of record-breaking rent  
25 increases for the downtown market at comparable Class A office space  
26 citywide;
- 27 • Critical operations of the City would be centralized to one building as  
28 opposed to spread out across several buildings, allowing for cost savings  
and improved service to the public;
- Substantially improved working conditions for City employees; and
- Increased accessibility for the public.

1           14.     An October 13, 2016 memorandum drafted by READ staff sent to the City Council  
2 elaborated on the alternatives available to the City if it did not enter into the lease-to-own  
3 arrangement:

4           The City will continue to be forced to pay market rates for future office rental space.  
5 There is no indication that prices will stabilize or decline in the next 5 to 8 years  
6 and could, in fact, increase by 50% or more. There is estimated savings of \$44  
7 million over 20 years by occupying 101 Ash Street instead of existing or other  
8 market spaces. City department operations will continue to be located throughout  
9 various buildings and City staff will be required to maintain operations in buildings  
10 that have documented deficiencies including plumbing and HVAC issues.

11           15.     In contrast to the “deficient” condition of the buildings in which the City was  
12 housing its employees, the condition of the 101 Ash Street Building was characterized much more  
13 favorably in the October 13, 2016 memorandum:

14           The previous occupant, Sempra Energy, was meticulous in their maintenance and  
15 care of the property over their several decades of occupancy. In fact, the [Property  
16 Condition Report (“PCR”) from Advantage Environmental Consultants, LLC  
17 (“AEC”)] estimates that “this Site’s estimated remaining useful life (ERUL) should  
18 be at least an additional 40 years barring any natural disasters.” . . . The PCR  
19 summarized that “AEC did not identify any obvious items of deferred routine  
20 maintenance that warrant mention” and their only recommendation for immediate  
21 repair was an amount of \$10,000 to clean, caulk and pressure wash the exterior of  
22 the building.”

23           16.     The PCR referenced in the City’s October 13, 2016 memorandum informed the  
24 City that it “is not a building code, safety, regulatory or environmental compliance  
25 inspection. . . . The findings in this report are not based on a comprehensive engineering  
26 study. . . . AEC did not perform any destructive testing or operate any specific equipment.”

27           17.     The City also performed extensive diligence on the 101 Ash Street Building,  
28 including, but not limited to, consideration of:

- 29           •     An appraisal performed by DF Davis dated September 8, 2016;
- 30           •     A broker opinion of value by Jones Lang LaSalle;
- 31           •     Asbestos files by floor, summarizing historic improvements and  
32 remediation performed on each floor (along with other inspection reports  
33 relating to asbestos);
- 34           •     Preliminary reports of building area calculations and an ALTA survey;
- 35           •     Site survey(s);

- 1 • Original architectural and structural plans;
- 2 • Property tax filings and bills;
- 3 • Sempra electric and water bills;
- 4 • Single-tenant office user existing furniture and furnishings (Sempra left  
many of its furnishings in the building and the City planned to use the  
furniture and furnishings at a major savings to the public);
- 5 • Third-party reports, including various phase 1 environmental site  
6 assessments, property condition assessment reports, scenario expected loss  
assessment, and a zoning and site requirements survey; and
- 7 • Title report.

8 18. In addition to reviewing asbestos files, a March 10, 2016 property condition report  
9 informed the City of the presence of asbestos in the 101 Ash Street Building that could be an issue  
10 depending on the City’s intended use of the Building.

11 19. On October 17, 2016, the City Council approved the lease-to-own agreement for  
12 the 101 Ash Street Building (the “Lease”) **unanimously** via Ordinance No. 20745.

13 20. On November 15, 2016, the City Council approved the Lease on a second reading  
14 and on November 17, 2016, Mayor Kevin Faulconer signed Ordinance No. 20745.

15 21. On December 19, 2016, City Attorney Mara Elliott approved the Lease with 101  
16 Ash Street, LLC as landlord and an effective date of January 3, 2017.

17 22. On January 3, 2017, the Effective Date of the Lease, Landlord 101 Ash, LLC  
18 assigned its right, title, and interest in, to, and under the Lease to Cross-Complainant as security  
19 of its obligations under a loan agreement, as reflected in a January 3, 2017 Deed of Trust, Security  
20 Agreement, Assignment of Leases and Rents and Fixture Filing as well as a January 3, 2017  
21 Assignment of Lease and Rents (the “Assignment”).

22 23. Under the terms of the Assignment, Cross-Complainant has an “immediate and  
23 continuing right” to:

- 24 • “[C]laim for, collect, receive and receipt for all Rents”;
- 25 • “[M]ake all waivers, consents and agreements of any kind regarding the  
Leases”;
- 26 • Generally “accept or reject any Condemnation awards or insurance  
27 proceeds payable in a Destruction”; and
- 28 • “[T]ake such action upon the happening of a default under the Leases,  
including the commencement, conduct and consummation of proceedings

1 at law or in equity as shall be permitted under any provision of the Leases  
2 or by law in equity including, declaring defaults under the Leases,” among  
3 other rights.

4 **II. Under The Lease, the City has *Sole Responsibility* for Releases of Asbestos, and the**  
5 **Lease Includes Safeguards to Prevent Damage to the 101 Ash Street Building.**

6 **A. The City Represents It Is Familiar with the 101 Ash Street Building’s**  
7 **Condition (Including the Presence of Asbestos) and Accepts Sole**  
8 **Responsibility for the Condition.**

9 24. The Lease is a triple-net lease, meaning the City, as tenant, has sole responsibility  
10 for the 101 Ash Street Building’s operating costs, expenses, and condition; conversely, the  
11 landlord has no responsibility for the Building’s operating costs, expenses, and condition.

12 25. Similarly, the Lease is an “AS-IS”/“WHERE-IS” lease, under which  
13 “LANDLORD SHALL NOT BE DEEMED TO HAVE MADE AS OF THE EFFECTIVE DATE,  
14 AND LANDLORD HEREBY DISCLAIMS, ANY WARRANTY OR REPRESENTATION  
15 EXPRESS OR IMPLIED OR OTHERWISE WITH RESPECT TO THE SAME OR THE  
16 LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE  
17 FOR ANY PARTICULAR PURPOSES, CONDITION OR DURABILITY THEREOF.” (Lease  
18 Section 1(b)). Instead, “ALL RISKS INCIDENT THERETO, EXCEPT AS OTHERWISE SET  
19 FORTH HEREIN, ARE TO BE BORN BY TENANT.” (Lease Section 1(b)).

20 26. The City accepted the 101 Ash Street Building on the “AS-IS”/“WHERE-IS” basis  
21 after representing that it was “sufficiently familiar with and knowledgeable about the physical  
22 condition of the Premises including any elements of deferred maintenance or the presence of any  
23 Hazardous Materials,” defined to include asbestos and asbestos-containing materials, and after  
24 finding the condition of the 101 Ash Street Building “satisfactory for all purposes.” (Lease,  
25 Section 1(a)).

26 27. The City further agreed to:

27 [P]ay, protect, indemnify and save harmless [Cross-Complainant] . . . from and  
28 against[] any and all liabilities . . . , losses, damages, costs, expenses (including  
reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands,  
or judgments of any nature . . . (b) directly or indirectly arising or alleged to arise  
from or in connection with . . . (ii) the ownership, use, condition (including, without

1 limitation, latent and other defects whether or not discoverable by Landlord),  
2 design, occupancy, lease, sublease, construction, maintenance, repair or rebuilding  
3 of the Premises, any part thereof or any adjoining property, sidewalks, streets or  
4 ways, . . . (vi) the actual or alleged presence, use, storage, generation or release of  
5 any Hazardous Materials [defined to include asbestos and asbestos-containing  
6 materials] on, under, from or at the Premises . . . *whether prior to or during the*  
7 *term of this Lease.*

8 (Lease, Section 8 (emphasis added)). In other words, the City agreed it was *fully responsible* for  
9 losses and costs directly or indirectly resulting from the release of asbestos at the 101 Ash Street  
10 Building *regardless* of the cause of the release of asbestos or when the release occurred.

11 28. The City’s sole responsibility for losses and costs arising from any asbestos release  
12 at the 101 Ash Street Building “shall not be limited or affected by any other provision of this Lease  
13 requiring [the City] to carry liability insurance.”

14 29. The City’s sole responsibility for losses and costs arising from asbestos releases is  
15 repeated in different forms throughout the Lease, including, but not limited to:

- 16 • **Lease Section 6(b):** “Tenant shall *at its sole expense* . . . comply with and  
17 cause the Premise to comply with (i) all laws and other governmental  
18 statutes, codes, ordinances, rules, orders, permits, licenses, authorizations,  
19 directions and determinations now or hereafter enacted, whether or not  
20 presently contemplated, including without limitation all Environmental  
21 laws (as hereinafter defined) (collectively, “Legal Requirements”),  
22 applicable to the Premises or the use thereof, and (ii) all contracts,  
23 agreements, ground leases, insurance policies, permits, licenses and  
24 restrictions applicable to the Premises or the ownership, occupancy or use  
25 thereof, including but not limited to all such Legal Requirements, contracts,  
26 insurance policies, agreements, ground leases, permits, licenses and  
27 restrictions which (x) require structural, unforeseen or extraordinary  
28 changes or (y) *related to environmental protection or Hazardous*  
*Materials matters*, and in the case of (i) and (ii), where noncompliance  
therewith may reasonably be expected to have an adverse effect upon  
Tenant’s use and occupancy of the Premises in accordance with Section 2  
above, except where the necessity of compliance is contented in good faith  
by appropriate proceedings.” (emphasis added)
- **Lease Section 6(c):** “If, at any time during the Term, *Hazardous Materials*  
[defined to include “asbestos” and “asbestos-containing materials and/or  
products”] *shall be found to have been released*, placed, stored, brought  
*onto, into or under the Premises* by a Tenant Responsible Party or any  
Third-Party, then Tenant shall (*at Tenant’s sole expense*), or shall cause  
such responsible Third Parties to, *promptly commence and diligently*  
*prosecute to completion all investigation, site monitoring, containment,*  
*cleanup, removal, restoration or other remedial work of any kind or*  
*nature* . . . to the extent required by Environmental Laws, and in  
compliance with Environmental Laws, and at Tenant’s sole cost.”  
(emphasis added).

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- **Lease Section 6(c)(ii)** (in all bolded, capital letters): **TENANT SHALL BE SOLELY RESPONSIBLE FOR AND TO THE MAXIMUM EXTENT PERMITTED BY LAW SHALL ... HOLD LANDLORD PARTIES [defined to include Cross-Complainant] HARMLESS FROM AND AGAINST ALL ... LOSSES, DAMAGES, LIABILITIES, INVESTIGATIONS, WRITTEN NOTICES, COSTS AND EXPENSES OF ANY KIND ... ARISING OUT OF, IN RESPECT OF OR IN CONNECTION WITH... (D) THE RELEASE, THREATENED RELEASE OR PRESENCE OF ANY HAZARDOUS MATERIALS AT, ON, UNDER OR FROM THE PREMISES BY A TENANT RESPONSIBLE PARTY OR ANY THIRD PARTY BEFORE OR DURING THE TERM OF THIS LEASE REGARDLESS OF HOW DISCOVERED BY TENANT, LANDLORD OR ANY THIRD PARTY, (E) ANY REMEDIAL WORK REQUIRED TO BE PERFORMED PURSUANT TO ANY ENVIRONMENTAL LAW OR THE TERMS HEREOF WITH RESPECT TO MATTERS ARISING OR OCCURRING PRIOR TO OR DURING THE TERM, OR (F) ANY MATTERS ARISING UNDER OR RELATING TO ANY ENVIRONMENTAL LAW AND RELATING TO THE TENANT OR THE PREMISES.”; and**
- **Lease, Section 9(b)**: “Tenant, at its own expense, will maintain all parts of the Premises ... in a clean and safe condition, in compliance with applicable Legal Requirements [defined to include asbestos regulations and orders] ... and will make all structural and nonstructural, foreseen and unforeseen and ordinary and extraordinary changes, replacements and repairs which may be required to keep all parts of the Premises in a clean and safe condition ... . All repairs, replacements and renewals shall be performed promptly and in a good and workmanlike manner and in compliance with applicable Legal Requirements.”

**B. The Lease Requires the City to Pay Rent Each Month.**

30. The City agreed under the Lease to pay “Rent” (defined to include both “Base Rent” of \$534,726.50 and “Additional Rent” of other costs incurred by Landlord) on the first day of each month of the Lease’s term. (Lease, Section 4).

31. With respect to the amount of Rent it agreed to pay, the City represented that it had “fully investigated options and alternatives to the lease of the Premises, including rental rates, terms and conditions, and has utilized the services of commercial real estate leasing professionals familiar with local market conditions and that, as of the Effective Date of this Lease, the total Rent during any twelve (12)-month period during the Term ... is not in excess of the total fair rental value of the Premises.” (Lease, Section 4(e)).



1           32.     The City further certified when it signed the Lease that the agreed-upon monthly  
2 Rent, including the cost of maintaining the 101 Ash Street Building satisfied the “pay as you go”  
3 principle underlying the so-called California constitutional debt limit. (Lease, Section 4(d)).

4           33.     The Lease contains a general prohibition against the City’s ability to abate (i.e.,  
5 withhold) payments of Rent, recognizing that the City shall not “be entitled to any abatement or  
6 reduction, set-off, counterclaim, defense or deduction with respect to any Rent, nor, shall the  
7 obligations of [the City] hereunder be affected, by reason of . . . any damage to or destruction of  
8 the Premises.” (Lease, Section 5(a)).

9           34.     The Lease contains no right to abate Base Rent premised on the release of asbestos.

10          35.     Rather, the sole and limited right to abate Base Rent under the Lease is in the event  
11 “of loss, damage or destruction, whether by fire or hazard or other casualty to all or any portion of  
12 the Premises (a ‘Casualty’) that is caused by a peril which is or should have been covered by a  
13 policy of insurance described in Section 12 of this Lease” and leads to “substantial interference  
14 with the use and occupancy by [the City] of any portion of the Premises.” (Lease, Sections 11(a),  
15 (i) (emphasis omitted)).

16          36.     Under Lease Section 11, Base Rent is abated in the event of a “Casualty” (which  
17 cannot include the release of asbestos) only “to the extent that the annual fair rental value of the  
18 portion of the Premises in respect of which there is no substantial interference is less than the  
19 annual Base Rent payments and Additional Rent, in which case rental payment shall be abated  
20 only by an amount equal to the difference.” (Lease, Section 11(i)).

21          37.     Lease Section 12 lists various insurance policies the City is required to maintain (or  
22 ensure are maintained).

23          38.     To the extent the City “does not maintain, in whole or in part, insurance of the types  
24 and in the amounts set forth in [Lease] Section 12, or if the insurances maintained by [the City] do  
25 not satisfy the requirements of [Lease] Section 12, [the City] shall be deemed to have elected to  
26 self-insure as to such insurances.” (Lease, Section 12(d)).

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1           **C.     The City Agrees to Both Obtain Landlord Consent Before Making Alterations**  
2           **to the Premises and Retain Third-Party Property Management Services.**

3           39.     Under the Lease, the City is limited in its ability to alter or renovate the 101 Ash  
4 Street Building.

5           40.     If the City seeks to make Alterations, it must deliver to Landlord:

6           A written statement identifying [any] Alterations being made, when they are being  
7           made and their costs and certifying that (i) the Fair Market Value . . . of the  
8           Premises shall not be lessened thereby other than in a deminimus (*sic*) manner and  
9           such Alterations will not permanently reduce the square footage of the  
10          Improvements [defined to include the Premises], (ii) such Alterations ***shall be***  
11          ***completed in a good and workmanlike manner***, free of Liens and ***in compliance***  
12          ***with all applicable Legal Requirements*** and all insurance policies required to be  
13          maintained by Tenant hereunder, and (iii) such ***Alterations will not adversely affect***  
14          ***the building systems or structural integrity of the Premises.***

15          (Lease, Section 10(a) (emphasis added)).

16          41.     The City agreed to obtain Landlord’s ***written consent*** for all Alterations exceeding  
17          \$2,000,000. (Lease, Section 10(a)).

18          42.     Further, the City agreed to “obtain, at its sole cost . . . all necessary permits and  
19          approvals required to perform the proposed Alteration” ***before*** commencing any Alterations of the  
20          101 Ash Street Building. (Lease, Section 10(a)).

21          43.     The City also is required to, “at its own expense, throughout this Lease Term,  
22          contract and pay for third party property management services for the Premises; said third party  
23          property management services shall be from an experienced, qualified and professional  
24          management company.” (Lease, Section 9(a)).

25           **III.   Without Notice to Landlord or Cross-Complainant, the City Performs Extensive**  
26           **Alterations to “Fit as Many Employees as Possible” in the 101 Ash Street Building,**  
27           **Delaying Its Occupation of the Building.**

28          44.     As the City later admitted, at the time the City Council approved the Lease, “there  
had been no detailed space planning for each floor of [the] 101 Ash Street [Building], other than  
to ensure that Development Services Department (DSD) staff could be accommodated in the

1 building and the first floor contained enough square footage to serve as the one-stop customer  
2 service permitting center.”

3 45. After the City Council approved the Lease, the City retained Gensler, an  
4 architectural firm, to provide space planning for the 101 Ash Street Building with the directive “to  
5 fit as many employees as possible.”

6 46. Although the 101 Ash Street Building was move-in ready, the City’s goal “to fit as  
7 many employees as possible” in the building required substantial alterations.

8 47. As the City planned throughout 2017 for the substantial alterations, the 101 Ash  
9 Street Building sat unoccupied by the City.

10 48. While the City initially planned to occupy the 101 Ash Street Building in July 2017,  
11 the City continued to push back its occupation date due to various delays.

12 49. Around December 2017, faced with “deteriorating conditions” in the City’s other  
13 leased spaces and having yet to engage a contractor to perform alterations twelve months after the  
14 effectiveness of the Lease, the City decided to include a rigorous 24 hours-per-day/7 days-per-  
15 week work schedule in the 101 Ash Street Building alterations construction project bid.

16 50. In February 2018, the City began allowing bids for the 101 Ash Street Building  
17 alterations, which would primarily reconfigure the Building’s mechanical systems to support the  
18 City’s desire “to fit as many employees as possible” into the Building.

19 51. The City received few bids—which City staff suggested was likely due to its  
20 demand for a 24 hours-per-day/7 days-per-week work schedule—and received the lowest bid from  
21 West Coast General Corporation of \$21,679,484.

22 52. Around May 2018, City staff began presenting four options for alterations to the  
23 City Council: (1) Occupy the 101 Ash Street Building “as is”; (2) Perform limited alterations to  
24 the first floor of the 101 Ash Street Building; (3) Perform alterations to five floors of the 101 Ash  
25 Street Building; or (4) Perform alterations to all floors of the 101 Ash Street Building.

26 53. In August 2018, citing the desire to fit “as many City employees as possible” in the  
27 101 Ash Street Building, the City Council rejected the option to occupy the 101 Ash Street  
28 Building “as is” or to perform limited alterations to the Building. Instead, the City Council decided

1 at a minimum to perform alterations on five floors and potentially perform alterations work to all  
2 floors of the Building.

3 54. In or around September 2018, the City received approval from the City’s Public  
4 Works Department to perform alterations “to all 19 floors of the building,” and the City  
5 commenced work on Alterations (as defined by the Lease) using contractor West Coast General  
6 Corporation and estimating the Alterations would be complete in summer 2019.

7 55. In addition to West Coast General Corporation, Argus Contracting LP and  
8 EnviroApplications Inc. also performed work on the Alterations.

9 56. Despite the Lease’s requirement to do so, the City did not obtain (or request)  
10 Landlord’s or Cross-Complainant’s consent before beginning construction of Alterations to the  
11 101 Ash Street Building.

12 57. Nor did the City provide Landlord or Cross-Complainant written notice that it was  
13 beginning construction of Alterations that would not adversely affect the 101 Ash Street Building’s  
14 systems or the fair market value of the Building, as required by the Lease.

15 **IV. The City and Its Contractors Deficiently Perform the Unauthorized Alterations**  
16 **Causing (What Its Consultant Estimates to Be) Over \$115 Million in Damages to the**  
17 **Building.**

18 58. On August 14, 2019, almost one-year into the City’s Alterations work to the 101  
19 Ash Street Building, the San Diego County Air Pollution Control District (“APCD”) issued a  
20 Notice of Violation to the City for its failure to remove all regulated asbestos-containing material  
21 (“RACM”) from the Building *before starting activity that would break up, dislodge, or disturb*  
22 *such materials.*

23 59. The APCD’s Notice of Violation further cited the City for its:

- 24 • “Failure to deposit all RACM/[Asbestos-Containing Waste Material  
25 (“ACWM”)] as soon as practical at a waste disposal site in accordance with  
26 the provisions of 40CFR, Part 61, Section 61.154. Specifically,  
27 RACM/ACWM found on various floors inside the building was not  
28 disposed of properly in accordance with the provisions of 40CFR, Part 61,  
Section 61.154”;
- “[A]llow[ance] [of] visible emissions to be discharged into the outside air  
from collection, mixing, wetting, and handling of ACWM. Specifically,  
visible emissions were found on various floors inside the building that were  
exposed to the outside air.”

- 1           •       “Failure to keep [ACWM] adequately wet until sealed in a clear, leak-tight  
2                   containers or leak-tight wrapping. Specifically, ACWM was found dry and  
3                   not sealed in leak-tight containers or clear leak-tight wrapping on various  
4                   floors inside the building.”

5           60.       APCD also served the same Notice of Violation on the City’s contractors West  
6           Coast General Corporation (APCD2019-NOV-000704), Argus Contracting (APCD2019-NOV-  
7           000706), and EnviroApplications Inc. (APCD2019-NOV-000804), all of which performed work  
8           on the Alterations alongside or under the supervision of the City.

9           61.       The Notice of Violation required the City to correct the violations or otherwise  
10          notify the APCD of why the City did not believe the identified violations of APCD Rules occurred.

11          62.       Instead of correcting for the violations, the City amassed additional APCD Notices  
12          of Violation, including Notices of Violation issued on August 15, 2019, September 10, 2019,  
13          January 16, 2020, January 17, 2020, and January 28, 2020.

14          63.       In all, within *five months*, the City received *five Notices of Violation* (many of  
15          which listed multiple violations) relating to its illegal and careless handling and remediation of  
16          asbestos and asbestos-containing materials during its Alterations to the 101 Ash Street Building.

17          64.       On December 16, 2019, as APCD was in the midst of issuing further Notices of  
18          Violation against the City, the City permitted its employees to move into the 101 Ash Street  
19          Building.

20          65.       On January 14, 2020, the APCD again found asbestos disturbed by the City’s  
21          Alterations and because the asbestos “was located in an area accessible to City employees,” the  
22          APCD determined the presence of asbestos constituted a public nuisance and issued a Notice of  
23          Violation to the City a few days later.

24          66.       On January 18, 2020, after receiving a further Notice of Violation, the City  
25          relocated its employees out of the 101 Ash Street Building.

26          67.       Despite the City choosing not to occupy the 101 Ash Street Building for the  
27          duration of its Alterations work (nearly two years) and later moving its employees out of the  
28          Building, the City paid Rent for 44 months, from January 2017 through August 2020.

1 **V. The City Investigates—Instead of Remediating—Its Deficient Alterations**

2 68. In January 2020, the City Council authorized various third-party consultants to  
3 investigate the 101 Ash Street Building Alterations work and earlier aspects of the City’s plans  
4 related to the Building.

5 69. James C. Parker, an attorney from Hugo Parker, LLP, was one of the City’s third-  
6 party consultants; Mr. Parker concluded that the City’s decision to acquire the Building was  
7 reasonable.

8 70. Mr. Parker further concluded that the City bore *all risk* through the “AS  
9 IS”/“WHERE IS” Lease, but he noted the 101 Ash Street Building was a structurally sound and  
10 well-maintained building when the City entered into the Lease.

11 71. As to the asbestos, Mr. Parker informed the San Diego City Council during a City  
12 Council meeting that the presence of asbestos in the 101 Ash Street Building was known to the  
13 City “at all times.” Mr. Parker elaborated in a report to the City that “the City knew before it  
14 acquired the property that the building at 101 Ash contained unabated, decades-old asbestos,” and  
15 that the City knew this fact “[t]hrough multiple sources.”

16 72. Mr. Parker further noted that the City had been warned prior to entering into the  
17 Lease “that an EPA-level assessment would be needed if renovation work was planned” and that  
18 “disturbing the asbestos could create risks.”

19 73. Mr. Parker concluded that “[t]he vibrations and shaking created during a year’s  
20 worth of [the City’s] renovations work likely loosened the brittle, decades-old asbestos-containing  
21 fireproofing, causing some to detach from the beams in the plenum spaces above the ceiling tiles.”

22 74. Another third party consultant hired by the City, Kitchell Corporation, estimated  
23 that the City would need to spend **\$115.2 million** to remediate the Building following the City’s  
24 deficient Alterations.

25 75. Meanwhile, with the November 2020 City election around the corner and with  
26 nobody but itself to blame for the cost of remediation following its poor Alterations work, the City  
27 abruptly halted payments of Rent on September 1, 2020, citing an inability to occupy the 101 Ash  
28 Street Building.

1           76.     In its September 1, 2020 letter, the City characterized the damage to the 101 Ash  
2 Street Building as a “widespread and negligent disturbance of asbestos.”

3           77.     That the City was not occupying the 101 Ash Street Building was nothing new—  
4 the City made **44 consecutive monthly payments of Rent** beginning in January 2017 and without  
5 interruption despite only occupying the Building for approximately one month.

6           78.     The City has not remediated the released asbestos in the 101 Ash Street Building  
7 despite receiving the public nuisance Notice of Violation from APCD *one year ago*.

8 **VI.   The City Council Acknowledges It Breached the Lease and Continues to Do So By**  
9 **Terminating Third-Party Property Management Services for the Premises.**

10          79.     In fall 2020, the City Council opted not to renew the contract of CBRE Group, Inc.,  
11 the third-party property management company hired to manage the 101 Ash Street Building.

12          80.     Before the City Council vote, an Assistant City Attorney warned the City Council  
13 that “there is a risk of breach of the 101 Ash Lease requirements for a third-party property  
14 manager” if the City Council did not renew the CBRE contract.

15          81.     City Councilmember Christopher Ward responded to the Assistant City Attorney  
16 that “The Mayor *unilaterally has already breached the contract* by refusing to pay rent on the  
17 building.” (emphasis added).

18          82.     Despite further appeals from the City’s Risk Management Department Director that  
19 failing to continue to have a third-party property management company manage the 101 Ash Street  
20 Building, the City could be operating in violation of the Vacant Building Policy adopted by the  
21 City’s insurer, PRISM, the City Council voted against renewing CBRE’s contract to manage the  
22 Building.

23          83.     Upon information and belief, the City has not retained a different third-party  
24 property management company (as required by the Lease) to manage the 101 Ash Street Building.

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1 **CAUSES OF ACTION**

2 **First Cause of Action**

3 **(Breach of Lease Agreement – Failure to Pay Rent Against the City)**

4 84. Cross-Complainant hereby incorporates by reference and realleges each allegation  
5 above as though fully set forth herein.

6 85. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
7 LLC’s assignment to Cross-Complainant) governing the parties’ rights and obligations with  
8 respect to the 101 Ash Street Building.

9 86. Pursuant to Sections 4 and 5 of the Lease, the City is required to pay Rent to Cross-  
10 Complainant in an amount of at least \$534,726.50 per month.

11 87. No event or provision of the Lease has excused the City from its requirement to pay  
12 Rent.

13 88. The City has not paid Rent since September 2020 and continues to withhold  
14 payment of Rent in the amount of \$534,726.50 per month.

15 89. Cross-Complainant and 101 Ash, LLC have performed all of their material  
16 obligations required under the Lease.

17 90. Cross-Complainant has been harmed in the amount of at least \$2,711,776.93 in  
18 addition to the interest on unpaid Rent under Lease Section 4(c).

19 91. Cross-Complainant has been further harmed in an amount to be proved at trial.

20 92. Cross-Complainant has provided the City notice required under Lease Section 16  
21 of this ongoing breach, and the City is now under Default of its obligations to pay Rent.

22 93. Cross-Complainant has filed a notice of claim with the City related to damages  
23 sought in this cause of action, to which the City did not respond within 45 days; regardless, Cross-  
24 Complainant is not required to comply with the Government Claims Act. *See Krainock v. Superior*  
25 *Court* (1990) 216 Cal.App.3d 1473, 1478.

26 94. In addition to damages, the City is responsible for Cross-Complainant’s attorneys’  
27 fees and other costs, as provided under Lease Sections 8, 16 and 17, among other sections, and  
28 applicable law.



1 **Second Cause of Action**

2 **(Breach of Lease Agreement – Unauthorized Alterations Against the City)**

3 95. Cross-Complainant hereby incorporates by reference and realleges each allegation  
4 above as though fully set forth herein.

5 96. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
6 LLC’s assignment to Cross-Complainant) governing the parties’ rights and obligations with  
7 respect to the 101 Ash Street Building.

8 97. Pursuant to Section 10 of the Lease, the City is required to obtain written consent  
9 from Landlord before commencing construction of Alterations exceeding \$2,000,000.

10 98. Pursuant to Section 10 of the Lease, the City is required to deliver a written  
11 statement to Landlord identifying the Alterations being made and providing important information  
12 and guarantees or representations to the Landlord.

13 99. Pursuant to Section 10 of the Lease, the City is required to obtain “all necessary  
14 permits and approvals required to perform the proposed Alteration.”

15 100. The City performed Alterations exceeding \$2,000,000 without obtaining  
16 Landlord’s written consent, without delivering a written statement to Landlord identifying the  
17 Alterations it would perform, and without obtaining approvals from APCD, among other  
18 government bodies.

19 101. That the City did not obtain approvals from APCD resulted in a Notice of Violation  
20 from APCD nearly one year after beginning the Alterations citing the City for failing to remove  
21 asbestos-containing materials “before starting any activity that would break up, dislodge, or  
22 disturb” such materials.

23 102. Cross-Complainant and 101 Ash, LLC have performed all of their material  
24 obligations required under the Lease.

25 103. Cross-Complainant has been harmed in the amount of at least \$115,200,000.00,  
26 which is the amount of money the City’s third-party consultant Kitchell Corporation estimated it  
27 would cost to remediate the 101 Ash Street Building as a result of the City’s botched Alterations.  
28

1 104. In addition, to the extent the Court finds that the City's release of asbestos  
2 constitutes a Casualty under the Lease, Cross-Complainant has been further harmed in the amount  
3 of unpaid Rent, which exceeds \$2,711,776.93 in addition to the interest on unpaid Rent under  
4 Lease Section 4(c).

5 105. Cross-Complainant has been further harmed in an amount to be proved at trial.

6 106. Had the City complied with the notice, consent, and approval requirements before  
7 beginning work on its Alterations, the damages caused by the Alterations would have been  
8 avoided.

9 107. Cross-Complainant has provided the City notice required under Lease Section 16  
10 of this ongoing breach, and the City is now in Default of its obligations under the Lease relating  
11 to its unauthorized Alterations.

12 108. The City has not responded to the notice provided by Cross-Complainant within 45  
13 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
14 *See Krainock*, 216 Cal.App.3d at 1478.

15 109. In addition to damages, the City is responsible for Cross-Complainant's attorneys'  
16 fees and other costs, as provided under Lease Sections 8, 16 and 17, among other sections, and  
17 applicable law.

### 18 Third Cause of Action

#### 19 **(Breach of Lease Agreement – Third-Party Property Management Company Against the** 20 **City)**

21 110. Cross-Complainant hereby incorporates by reference and realleges each allegation  
22 above as though fully set forth herein.

23 111. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
24 LLC's assignment to Cross-Complainant) governing the parties' rights and obligations with  
25 respect to the 101 Ash Street Building.

26 112. Pursuant to Section 9(a) of the Lease, the City is required to "contract and pay for  
27 third party property management services for the Premises; said third party property management  
28 services shall be from an experienced, qualified and professional management company."

1 113. Upon information and belief, the City has discontinued retention of the third-party  
2 property management services required under the Lease.

3 114. Cross-Complainant and 101 Ash, LLC have performed all of their material  
4 obligations required under the Lease.

5 115. Cross-Complainant has been harmed by the nonperformance of routine  
6 maintenance and other services provided by third-party property management companies.

7 116. Cross-Complainant has been further harmed in an amount to be proved at trial.

8 117. Cross-Complainant has provided the City notice required under Lease Section 16  
9 of this ongoing breach, and the City is now under Default of its obligations relating to its failure  
10 to retain third-party property management services.

11 118. The City has not responded to the notice provided by Cross-Complainant within 45  
12 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
13 *See Krainock*, 216 Cal.App.3d at 1478.

14 119. In addition to damages, the City is responsible for Cross-Complainant's attorneys'  
15 fees and other costs, as provided under Lease Sections 8, 16 and 17, among other sections, and  
16 applicable law.

17 **Fourth Cause of Action**

18 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against the City)**

19 120. Cross-Complainant hereby incorporates by reference and realleges each allegation  
20 above as though fully set forth herein.

21 121. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
22 LLC's assignment to Cross-Complainant) governing the parties' rights and obligations with  
23 respect to the 101 Ash Street Building.

24 122. Implied in the Lease is a requirement that the City to act fairly and in good faith.

25 123. Cross-Complainant and 101 Ash, LLC have performed all of their material  
26 obligations required under the Lease.

27 124. The City has acted unfairly and not in good faith by failing to pay Rent under the  
28 Lease, failing to: obtain Landlord's written consent before commencing work on Alterations,

1 provide Landlord written notice related to the Alterations, obtain approvals required before  
2 commencing work on Alterations, and retain third-party management services for the full term of  
3 the Lease.

4 125. The City has further acted unfairly and not in good faith by providing Cross-  
5 Complainant an estoppel certificate (required under Lease Section 22) that was materially  
6 misleading and inaccurate.

7 126. Cross-Complainant has been harmed in the amount of at least \$115,200,000.00,  
8 which is the amount of money the City's third-party consultant Kitchell Corporation estimated it  
9 would cost to remediate the 101 Ash Street Building from the City's botched Alterations.

10 127. In addition, to the extent the Court finds that the City's release of asbestos  
11 constitutes a Casualty under the Lease, Cross-Complainant has been further harmed in the amount  
12 of unpaid Rent, which exceeds \$2,711,776.93 in addition to the interest on unpaid Rent under  
13 Lease Section 4(c).

14 128. Cross-Complainant has been further harmed in an amount to be proved at trial.

15 129. Cross-Complainant has provided the City notice required under Lease Section 16  
16 of this ongoing breach (to the extent required).

17 130. The City has not responded to the notice provided by Cross-Complainant within 45  
18 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
19 *See Krainock*, 216 Cal.App.3d at 1478.

20 131. In addition to damages, the City is responsible for Cross-Complainant's attorneys'  
21 fees and other costs, as provided under Lease Sections 16 and 17, among other sections, and  
22 applicable law.

23 **Fifth Cause of Action**

24 **(Trespass Against the City)**

25 132. Cross-Complainant hereby incorporates by reference and realleges each allegation  
26 above as though fully set forth herein.

27  
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1 133. Cross-Complainant has an interest in the 101 Ash Street Building by virtue of 101  
2 Ash, LLC's assignment to Cross-Complainant and has been assigned 101 Ash, LLC's interest in  
3 the Lease.

4 134. The City intentionally, recklessly, or negligently failed to obtain Landlord consent  
5 before performing (or retaining a third-party to perform) over \$2,000,000 in Alterations to the 101  
6 Ash Street Building.

7 135. The City's Alterations to the 101 Ash Street Building exceeded the scope of its  
8 right of use for the 101 Ash Street Building (regardless the Lease's constitutionality).

9 136. Cross-Complainant has been harmed in the amount of at least \$115,200,000.00,  
10 which is the amount of money the City's third-party consultant Kitchell Corporation estimated it  
11 would cost to remediate the 101 Ash Street Building from the City's botched Alterations.

12 137. In addition, Cross-Complainant has been further harmed in the amount of unpaid  
13 Rent, which exceeds \$2,711,776.93 in addition to the interest on unpaid Rent.

14 138. Cross-Complainant has been further harmed in an amount to be proved at trial.

15 139. The City has not responded to the notice provided by Cross-Complainant within 45  
16 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
17 *See Krainock*, 216 Cal.App.3d at 1478.

18 140. To the extent the Court finds that the City is entitled to abate payment of Rent under  
19 the Lease, the City is nonetheless liable for trespass under Lease Section 8.

20 141. In addition to damages, the City is responsible for Cross-Complainant's attorneys'  
21 fees and other costs, as provided under applicable law.

22 **Sixth Cause of Action**

23 **(Negligence Against the City, West Coast General Corporation, Argus Contracting LP, and**  
24 **EnviroApplications Inc)**

25 142. Cross-Complainant hereby incorporates by reference and realleges each allegation  
26 above as though fully set forth herein.

1 143. The City, West Coast General Corporation, Argus Contracting LP, and  
2 EnviroApplications Inc. owed Cross-Complainant a duty to exercise due care with regard to  
3 performing Alterations on the 101 Ash Street Building.

4 144. The City, West Coast General Corporation, Argus Contracting LP, and  
5 EnviroApplications Inc. breached their duty to exercise due care in performing Alterations, which  
6 has caused over \$115,200,000.00 in damages to the 101 Ash Street Building (the amount estimated  
7 by the City’s consultant, Kitchell) in addition to over \$2,711,776.93 plus interest of unpaid Rent  
8 damages.

9 145. As the City admitted in its September 1, 2020 letter, the damage to the 101 Ash  
10 Street Building was caused by “negligen[ce].”

11 146. Cross-Complainant has been further harmed by City’s, West Coast General  
12 Corporation’s, Argus Contracting LP’s, and EnviroApplications Inc.’s negligence in an amount to  
13 be proved at trial.

14 147. The City has not responded to the notice provided by Cross-Complainant within 45  
15 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
16 *See Krainock*, 216 Cal.App.3d at 1478.

17 148. To the extent the Court finds that the City is entitled to abate payment of Rent under  
18 the Lease, the City is nonetheless liable for its negligence under Lease Section 8.

19 149. In addition to damages, the City, West Coast General Corporation, Argus  
20 Contracting LP, and EnviroApplications Inc. are responsible for Cross-Complainant’s attorneys’  
21 fees and other costs, as provided under applicable law.

22 **Seventh Cause of Action**

23 **(Negligent Hiring/Supervision Against the City)**

24 150. Cross-Complainant hereby incorporates by reference and realleges each allegation  
25 above as though fully set forth herein.

26 151. Cross-Complainant hired contractors, including West Coast General Corporation,  
27 Argus Contracting LP, and EnviroApplications Inc. (collectively “City’s Contractors”), to perform  
28 some portion of Alterations on the 101 Ash Street Building.

1           152. Upon information and belief, the City’s Contractors were unfit or incompetent to  
2 perform work on the 101 Ash Street Building, as evidenced by multiple Notices of Violation issued  
3 by APCD relating to the Alterations.

4           153. The City knew or should have known that the City’s Contractors were unfit or  
5 incompetent to perform work on the 101 Ash Street Building before and/or during the time the  
6 Alterations were performed on the Building.

7           154. The City’s Contractors’ unfitness or incompetence created a significant risk to the  
8 101 Ash Street Building as well as to the health and safety of those with an interest in the Building.

9           155. The City’s Contractors’ unfitness or incompetence has caused over  
10 \$115,200,000.00 in damages to the 101 Ash Street Building (the amount estimated by the City’s  
11 consultant, Kitchell) in addition to over \$2,711,776.93 plus interest of unpaid Rent damages.

12           156. The City’s Contractors’ unfitness or incompetence has caused further harm to  
13 Cross-Complainant in an amount to be proved at trial.

14           157. The City’s negligence in hiring, supervising, and/or retaining the City’s Contractors  
15 was a substantial factor in causing Cross-Complainant’s harm.

16           158. The City has not responded to the notice provided by Cross-Complainant within 45  
17 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
18 *See Krainock*, 216 Cal.App.3d at 1478.

19           159. To the extent the Court finds that the City is entitled to abate payment of Rent under  
20 the Lease, the City is nonetheless liable for its negligence under Lease Section 8.

21           160. In addition to damages, the City is responsible for Cross-Complainant’s attorneys’  
22 fees and other costs, as provided under applicable law.

23                                   **Eighth Cause of Action**

24                   **(Private Nuisance Against the City, West Coast General Corporation, Argus Contracting**  
25                   **LP, and EnviroApplications Inc.)**

26           161. Cross-Complainant hereby incorporates by reference and realleges each allegation  
27 above as though fully set forth herein.  
28

1           162. Cross-Complainant has an interest in the 101 Ash Street Building by virtue of 101  
2 Ash, LLC's assignment to Cross-Complainant and has been assigned 101 Ash, LLC's interest in  
3 the Lease.

4           163. The City, West Coast General Corporation, Argus Contracting LP, and  
5 EnviroApplications Inc.—through their unauthorized Alterations to the 101 Ash Street Building—  
6 caused \$115,200,000.00 of damage to the Building (the amount estimated by the City's consultant,  
7 Kitchell) that is now harmful to the health of any visitor, as evidenced by APCD's Notices of  
8 Violation.

9           164. The City's, West Coast General Corporation's, Argus Contracting LP's, and  
10 EnviroApplications Inc.'s conduct in making their unauthorized Alterations was intentional and  
11 unreasonable or, alternatively, unintentional but negligent or reckless, as is evidenced by the  
12 Notices of Violations issued by APCD related to their work.

13           165. The City's, West Coast General Corporation's, Argus Contracting LP's, and  
14 EnviroApplications Inc.'s unauthorized Alterations to the 101 Ash Street Building have  
15 substantially interfered with Cross-Complainant's use and enjoyment of the Building.

16           166. An ordinary person would reasonably be annoyed or disturbed by the City's, West  
17 Coast General Corporation's, Argus Contracting LP's, and EnviroApplications Inc.'s unauthorized  
18 Alterations.

19           167. The City's, West Coast General Corporation's, Argus Contracting LP's, and  
20 EnviroApplications Inc.'s unauthorized Alterations have caused over \$115,200,000.00 in damages  
21 to the 101 Ash Street Building (the amount estimated by the City's consultant, Kitchell) in addition  
22 to over \$2,711,776.93 plus interest of resulting unpaid Rent damages.

23           168. The City's, West Coast General Corporation's, Argus Contracting LP's, and  
24 EnviroApplications Inc.'s actions have caused further harm to Cross-Complainant in an amount to  
25 be proved at trial.

26           169. The seriousness of harm caused by the City's, West Coast General Corporation's,  
27 Argus Contracting LP's, and EnviroApplications Inc.'s unauthorized Alterations outweighs the  
28 public benefit of those Alterations, especially given the unauthorized Alterations have been



1 deemed a public nuisance by the APCD and have potentially exposed the City’s own employees  
2 to asbestos.

3 170. The City has not responded to the notice provided by Cross-Complainant within 45  
4 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
5 *See Krainock*, 216 Cal.App.3d at 1478.

6 171. In addition to damages, the City, West Coast General Corporation, Argus  
7 Contracting LP, and EnviroApplications Inc. are responsible for Cross-Complainant’s attorneys’  
8 fees and other costs, as provided under applicable law.

9 **Ninth Cause of Action**

10 **(Declaratory Relief Against the City)**

11 172. Cross-Complainant hereby incorporates by reference and realleges each allegation  
12 above as though fully set forth herein.

13 173. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
14 LLC’s assignment to Cross-Complainant) governing the parties’ rights and obligations with  
15 respect to the 101 Ash Street Building.

16 174. Pursuant to Sections 4 and 5 of the Lease, the City is required to pay Rent to Cross-  
17 Complainant in an amount of at least \$534,726.50 per month.

18 175. The City has not paid Rent since September 2020 and continues to not pay Rent in  
19 the amount of \$534,726.50 per month.

20 176. Cross-Complainant and 101 Ash, LLC have performed all of their material  
21 obligations required under the Lease.

22 177. To the extent the Court finds that the City is entitled to abate payment of Rent under  
23 the Lease, the City should be deemed to have self-insured under Lease Section 12 given (upon  
24 information and belief) it does not “maintain, in whole or in part” the insurance permitting it to  
25 abate payment of Rent.

26 178. Given Cross-Complainant is an additional insured under the Lease, the City is  
27 Cross-Complainant’s insurer for all losses, including over \$115,200,000.00 in damages to the 101  
28

1 Ash Street Building (the amount estimated by the City’s consultant, Kitchell) caused by the City’s  
2 unauthorized Alterations in addition to over \$2,711,776.93 plus interest of unpaid Rent damages.

3 179. By reason of the foregoing, a dispute has arisen and an actual controversy exists  
4 between the City and Cross-Complainant relating to their legal rights and duties, specifically as to  
5 whether the City is deemed to have self-insured and the amount the City must subsequently pay  
6 Cross-Complainant as an additionally insured party.

7 180. Cross-Complainant therefore asks this Court for a declaration of the respective  
8 rights, duties, and obligations of the City and Cross-Complainant with respect to the Lease. There  
9 is no plain, adequate, or speedy remedy at law. It is therefore fair, just, and appropriate that the  
10 Court determine the relative rights and obligations of said parties in this proceeding.

11 181. In addition to damages, the City is responsible for Cross-Complainant’s attorneys’  
12 fees and other costs, as provided under Lease Sections 8, 16 and 17, among other sections, and  
13 applicable law.

14 **Tenth Cause of Action**

15 **(Indemnification Against the City)**

16 182. Cross-Complainant hereby incorporates by reference and realleges each allegation  
17 above as though fully set forth herein.

18 183. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
19 LLC’s assignment to Cross-Complainant) governing the parties’ rights and obligations with  
20 respect to the 101 Ash Street Building.

21 184. Pursuant to Sections 4 and 5 of the Lease, the City is required to pay Rent to Cross-  
22 Complainant in an amount of at least \$534,726.50 per month.

23 185. The City has not paid Rent since September 2020 and continues to not pay Rent in  
24 the amount of \$534,726.50 per month.

25 186. Cross-Complainant and 101 Ash, LLC have performed all of their material  
26 obligations required under the Lease.

27  
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1           187. To the extent the Court finds that the City is entitled to abate payment of Rent under  
2 the Lease, the City is nonetheless required to indemnify Cross-Complainant under Lease Section  
3 8 for all losses associated the release of asbestos.

4           188. Under the Lease’s indemnification provision, the City is required to indemnify  
5 Cross-Complainant for all losses, including over \$115,200,000.00 in damages to the 101 Ash  
6 Street Building (the amount estimated by the City’s consultant, Kitchell) caused by the City’s  
7 unauthorized Alterations (which released asbestos and asbestos-containing materials) in addition  
8 to over \$2,711,776.93 plus interest of unpaid Rent damages.

9           189. The City’s must indemnify Cross-Complainant for other losses indirectly or  
10 directly arising from the release of asbestos in an amount to be proved at trial.

11           190. Further, given the instant action “arises from or in connection with” the Lease, the  
12 City must indemnify Cross-Complainant for all of Cross-Complainant’s attorneys’ fees and costs  
13 arising out of the instant action.

14           191. Similarly, given the action styled *Gordon v. 101 Ash LLC et al.*, San Diego Superior  
15 Court Case No. 37-2020-00028837-CU-FR-CTL also “arises from or in connection with” the  
16 Lease and Cross-Complainant is a defendant in that action, the City must indemnify Cross-  
17 Complainant for all of Cross-Complainant’s attorneys’ fees and costs arising out of the *Gordon*  
18 action.

19           192. The City has not responded to the notice provided by Cross-Complainant within 45  
20 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
21 *See Krainock*, 216 Cal.App.3d at 1478.

22           193. The City is responsible for Cross-Complainant’s attorneys’ fees and other costs, as  
23 provided under Lease Sections 8, 16 and 17, among other sections, and applicable law.

24   **Eleventh Cause of Action**  
25   **(Reformation Against the City)**

26           194. Cross-Complainant hereby incorporates by reference and realleges each allegation  
27 above as though fully set forth herein.

28

1 195. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
2 LLC's assignment to Cross-Complainant) governing the parties' rights and obligations with  
3 respect to the 101 Ash Street Building.

4 196. The parties agreed and intended for the Lease to comply with all applicable laws,  
5 including Article 16, Section 18(a) of the California Constitution.

6 197. To further ensure the Lease complied with all applicable laws, the parties included  
7 a severability clause (Lease Section 25) providing that each provision of the Lease is only  
8 enforceable to the extent permitted under law.

9 198. To the extent any provision of the Lease is held to violate Article 16, Section 18(a)  
10 of the California Constitution (including Sections 5, 11, and 16) and the Court finds the offending  
11 provision (or portion thereof) is not severable, the Lease does not truly express the intention of the  
12 parties.

13 199. Accordingly, if a provision of the Lease violates Article 16, Section 18(a) of the  
14 California Constitution and the provision is not severable, Cross-Complainant requests judicial  
15 reformation of the Lease to ensure the provision complies with applicable law.

16 **Twelfth Cause of Action**

17 **(Unjust Enrichment Against the City)**

18 200. Cross-Complainant hereby incorporates by reference and realleges each allegation  
19 above as though fully set forth herein.

20 201. Cross-Complainant and the City are parties to the Lease (by virtue of 101 Ash,  
21 LLC's assignment to Cross-Complainant) governing the parties' rights and obligations with  
22 respect to the 101 Ash Street Building.

23 202. To the extent the Court finds the Lease unconstitutional but declines to reform the  
24 Lease (as requested by both the City and Cross-Complainant), the City has been unjustly enriched.

25 203. The City has been enriched in an amount greater than \$2,711,776.93 plus interest  
26 of unpaid Rent damages, which the parties agree is the fair market value of Rent for the 101 Ash  
27 Street Building.

28 204. The City has further been enriched in an amount to be proved at trial.

1           205. To the extent the Lease does not govern the parties’ relationship, Cross-  
2 Complainant has no adequate remedy at law.

3           206. The City’s acceptance of the benefit is inequitable without paying Cross-  
4 Complainant for the value conferred.

5           207. The City has not responded to the notice provided by Cross-Complainant within 45  
6 days; regardless, Cross-Complainant is not required to comply with the Government Claims Act.  
7 *See Krainock*, 216 Cal.App.3d at 1478.

8   **Thirteenth Cause of Action**

9   **(Promissory Estoppel Against the City)**

10           208. Cross-Complainant hereby incorporates by reference and realleges each allegation  
11 above as though fully set forth herein.

12           209. The City, in signing the Lease, promised to make monthly payments of Rent and  
13 maintain the 101 Ash Street Building in a “clean and safe condition,” among other promises.

14           210. The City should reasonably expect that Cross-Complainant relied on the City’s  
15 promise, and the Cross-Complainant did rely on the City’s promise.

16           211. The City now—after making 44 months of rent payments and only after inflicting  
17 what the City’s consultant estimates to be over \$115,200,000.00 in damages to the 101 Ash Street  
18 Building—suggests that California case law (in cases of which it was a party) may render the Lease  
19 unconstitutional. *See, e.g., Rider v. City of San Diego* (1998) 18 Cal.4th 1035; *City of San Diego*  
20 *v. Rider* (1996) 47 Cal.App.4th 1473; *San Diegans for Open Gov’t v. City of San Diego* (2015)  
21 242 Cal.App.4th 416.

22           212. The City had knowledge of this case law (and other case law the City cites) upon  
23 signing the Lease (which was approved by City Attorney Mara Elliott—the same person now  
24 arguing the Lease she approved may be unconstitutional), and the City should have reasonably  
25 known about effect of that case law on the Lease at the time the City approved and executed the  
26 Lease.



1 **ON THE SECOND CAUSE OF ACTION:**

- 2 1. Economic damages, according to proof;
- 3 2. An award of interest, including prejudgment interest, as provided by law and the
- 4 Lease, according to proof;
- 5 3. Reasonable attorneys' fees, according to proof;
- 6 4. Costs of suit herein incurred; and
- 7 5. For any other and further relief as the Court may deem just and proper.

8 **ON THE THIRD CAUSE OF ACTION:**

- 9 1. Economic damages, according to proof;
- 10 2. An award of interest, including prejudgment interest, as provided by law and the
- 11 Lease, according to proof;
- 12 3. Reasonable attorneys' fees, according to proof;
- 13 4. Costs of suit herein incurred; and
- 14 5. For any other and further relief as the Court may deem just and proper.

15 **ON THE FOURTH CAUSE OF ACTION:**

- 16 1. Economic damages, according to proof;
- 17 2. An award of interest, including prejudgment interest, as provided by law and the
- 18 Lease, according to proof;
- 19 3. Reasonable attorneys' fees, according to proof;
- 20 4. Costs of suit herein incurred; and
- 21 5. For any other and further relief as the Court may deem just and proper.

22 **ON THE FIFTH CAUSE OF ACTION:**

- 23 1. Economic damages, according to proof;
- 24 2. An award of interest, including prejudgment interest, as provided by law, according
- 25 to proof;
- 26 3. Reasonable attorneys' fees, according to proof;
- 27 4. Costs of suit herein incurred; and
- 28 5. For any other and further relief as the Court may deem just and proper.

1 **ON THE SIXTH CAUSE OF ACTION:**

- 2 1. Economic damages, according to proof;
- 3 2. An award of interest, including prejudgment interest, as provided by law, according
- 4 to proof;
- 5 3. Reasonable attorneys' fees, according to proof;
- 6 4. Costs of suit herein incurred; and
- 7 5. For any other and further relief as the Court may deem just and proper.

8 **ON THE SEVENTH CAUSE OF ACTION:**

- 9 1. Economic damages, according to proof;
- 10 2. An award of interest, including prejudgment interest, as provided by law, according
- 11 to proof;
- 12 3. Reasonable attorneys' fees, according to proof;
- 13 4. Costs of suit herein incurred; and
- 14 5. For any other and further relief as the Court may deem just and proper.

15 **ON THE EIGHTH CAUSE OF ACTION:**

- 16 1. Economic damages, according to proof;
- 17 2. An award of interest, including prejudgment interest, as provided by law, according
- 18 to proof;
- 19 3. Reasonable attorneys' fees, according to proof;
- 20 4. Costs of suit herein incurred; and
- 21 5. For any other and further relief as the Court may deem just and proper.

22 **ON THE NINTH CAUSE OF ACTION:**

- 23 1. For a judicial declaration that the City is deemed to have self-insured and a
- 24 declaration as to the amount the City must subsequently pay Cross-Complainant as
- 25 an additional insured party
- 26 2. Reasonable attorneys' fees, according to proof;
- 27 3. Costs of suit herein incurred; and
- 28 4. For any other and further relief as the Court may deem just and proper.



1 **ON THE TENTH CAUSE OF ACTION:**

- 2 1. Economic damages, according to proof;
- 3 2. An award of interest, including prejudgment interest, as provided by law and the
- 4 Lease, according to proof;
- 5 3. Reasonable attorneys' fees, according to proof;
- 6 4. Costs of suit herein incurred; and
- 7 5. For any other and further relief as the Court may deem just and proper.

8 **ON THE ELEVENTH CAUSE OF ACTION:**

- 9 1. For reformation of the Lease to include a provision rendering the Lease
- 10 constitutional (if necessary);
- 11 2. Reasonable attorneys' fees, according to proof;
- 12 3. Costs of suit herein incurred; and
- 13 4. For any other and further relief as the Court may deem just and proper.

14 **ON THE TWELFTH CAUSE OF ACTION:**

- 15 1. Economic damages, according to proof;
- 16 2. An award of interest, including prejudgment interest, as provided by law,
- 17 according to proof;
- 18 3. Reasonable attorneys' fees, according to proof;
- 19 4. Costs of suit herein incurred; and
- 20 5. For any other and further relief as the Court may deem just and proper.

21 **ON THE THIRTEENTH CAUSE OF ACTION:**

- 22 1. Economic damages, according to proof;
- 23 2. An award of interest, including prejudgment interest, as provided by law,
- 24 according to proof;
- 25 3. Reasonable attorneys' fees, according to proof;
- 26 4. Costs of suit herein incurred; and
- 27 5. For any other and further relief as the Court may deem just and proper.
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DATED this 15th day of January, 2021.

**BALLARD SPAHR LLP**

By: /s/ Craig S. Ganz  
Craig S. Ganz  
2029 Century Park East, Suite 1400  
Los Angeles, CA 90067-2915  
*Attorney for Defendant Wilmington Trust,  
National Association, as Trustee of CGA  
Capital Credit Lease-Backed Pass-Through  
Trust, Series 2017 CTL-1*

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**PROOF OF SERVICE**

I am over the age of eighteen years, and not a party to the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite 1400, Los Angeles, CA 90067-2915. On January 15, 2021, I served the following documents:

**DEFENDANT WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE OF CGA CAPITAL CREDIT LEASE-BACKED PASS-THROUGH TRUST, SERIES 2017 CTL-1'S CROSS-COMPLAINT AGAINST CITY OF SAN DIEGO, WEST COAST GENERAL CORPORATION, ARGUS CONTRACTING LP, AND ENVIROAPPLICATIONS INC.**

- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail addressed as set forth below.
- BY E-MAIL:** by attaching an electronic copy of the document(s) listed above to the e-mail address listed below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

Mara W. Elliott  
James McNeill, [jmcneill@saniego.gov](mailto:jmcneill@saniego.gov)  
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 15, 2021.

/s/ Craig S. Ganz  
Craig S. Ganz