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9 Attorneys for PLAINTIFF DORIAN HARGROVE
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DORIAN HARGROVE, an individual,
13
14 Plaintiff,

15 v.

16 CITY OF SAN DIEGO, a Municipal
Corporation; MARA ELLIOTT in her
17 individual capacity and in her official
capacity as City Attorney for the City
of San Diego; JOHN HEMMERLING
18 in his individual capacity and as
Assistant City Attorney for the City of
19 San Diego; and DOES 1 through 100,
inclusive,
20
21 Defendants.

CASE NO.

COMPLAINT FOR:

1. **CIVIL RIGHTS VIOLATION (42 U.S.C. § 1983);**
2. **DEFAMATION;**
3. **NEGLIGENT AND INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
4. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

1 PLAINTIFF DORIAN HARGROVE (hereinafter “PLAINTIFF”) hereby
2 complains and alleges against DEFENDANTS CITY OF SAN DIEGO, a Municipal
3 Corporation, MARA ELLIOTT in her individual and official capacity as City
4 Attorney for the City of San Diego, JOHN HEMMERLING in his individual and
5 official capacity as Assistant City Attorney for the City of San Diego, and DOES 1
6 through 100, inclusive (collectively “DEFENDANTS”), and each of them, as
7 follows:

8 INTRODUCTION

9 1. This is a Federal civil rights case brought pursuant to 42 U.S. Code
10 § 1983 and under the First and Fourth Amendments of the United States
11 Constitution as applied to the States under the United States Constitution’s
12 Fourteenth Amendment for the DEFENDANTS’ individual and collective personal,
13 malicious and unlawful violations under color of state law of PLAINTIFF’S
14 individual constitutional rights to free speech as well as state civil rights claims for
15 violation of California Civil Code § 52.1, and state tort claims for civil conspiracy,
16 defamation, intentional and/or negligent interference with prospective economic
17 advantage, and intentional infliction of emotional distress.

18 2. DEFENDANTS committed these unlawful violations of PLAINTIFF’S
19 constitutional and state rights under color of law in bad faith and with malicious
20 purpose in reckless, wanton, and willful disregard of PLAINTIFF’S safety and
21 property rights.

22 JURISDICTION

23 3. PLAINTIFF brings this action pursuant to 42 U.S.C. § 1983 for
24 violations of civil rights under the First, Fourth and Fourteenth Amendments to the
25 United States Constitution.

26 4. This Court has subject-matter jurisdiction over this matter pursuant to
27 28 U.S.C. § 1331 (Federal question) and 28 U.S.C. § 1343(a)(3) (civil rights); 28
28 U.S.C. § 1367 provides supplemental jurisdiction over state law claims that arise

1 from the same common nuclei of facts.

2 5. Venue is proper in this judicial district and division pursuant to 20
3 U.S.C. § 1391(b). DEFENDANTS' primary employment is in this District and
4 Division, and DEFENDANTS' independent and collective malicious and unlawful
5 violations under color of law of PLAINTIFF'S constitutional rights giving rise to
6 the claims herein accrued within this District and Division.

7 6. At all material times, DEFENDANTS committed these unlawful
8 violations under color of law in bad faith and with malicious purpose in reckless,
9 wanton and willful disregard of PLAINTIFF'S human safety and property rights.

10 7. At all material times, DEFENDANTS and each of them conspired to
11 commit these unlawful violations under color of law for the purpose of threatening
12 and intimidating PLAINTIFF and others similarly situated in bad faith and with
13 malicious purpose in reckless, wanton and willful disregard of PLAINTIFF'S
14 human safety and property rights for the purpose of quashing the lawful and
15 protected exercise of his right to freedom of speech guaranteed under the U.S. and
16 California State Constitutions.

17 8. These constitutional law violations as alleged hereinbelow are "capable
18 of repetition, yet evading review," thus entitling PLAINTIFF to injunctive and/or
19 declaratory relief. *Roe v. Wade*, 410 U.S. 113, 125 (1973) (citing *Southern Pacific*
20 *Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911), *Moore v. Ogilvie*, 394 U.S. 814,
21 816 (1969), *Carroll v. Princess Anne*, 393 U.S. 175, 178-179 (1968), *United States*
22 *v. W.T. Grant Co.*, 345 U.S. 629, 632-633 (1953).

23 **THE PARTIES**

24 9. PLAINTIFF is an investigative reporter working for NBC7 San Diego,
25 and residing in the City of San Diego, County of San Diego, State of California
26 within this Court's jurisdiction.

27 10. DEFENDANT CITY OF SAN DIEGO is a Municipal Corporation
28 organized under the laws of the State of California, with its principal place of

1 business in the City of San Diego, State of California.

2 11. DEFENDANT MARA ELLIOTT is an individual serving as the City
3 Attorney for the City of San Diego who resides within this Court's jurisdiction.

4 12. DEFENDANT JOHN HEMMERLING is an individual serving as
5 Assistant City Attorney for the City of San Diego who resides within this Court's
6 jurisdiction.

7 13. DEFENDANT DOES 1-70, inclusive, are unknown persons or entities
8 who individually and collectively conspired to commit the unlawful constitutional
9 violations under color of state law as alleged herein.

10 14. DEFENDANT DOES 35-85, inclusive, are unknown persons or entities
11 acting individually or collectively to defame PLAINTIFF as alleged herein.

12 15. DEFENDANT DOES 50-100, inclusive, are unknown persons or
13 entities acting individually or collectively to interfere in PLAINTIFF'S prospective
14 economic advantage as alleged herein.

15 **FIRST CLAIM FOR RELIEF**
16 **VIOLATION OF U.S.C. § 1983**

17 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, MARA**
18 **ELLIOTT INDIVIDUALLY AND AS CITY ATTORNEY FOR**
19 **THE CITY OF SAN DIEGO, JOHN HEMMERLING**
20 **INDIVIDUALLY AND AS ASSISTANT CITY ATTORNEY FOR**
21 **THE CITY OF SAN DIEGO,**
22 **AND DOES 1-70, INCLUSIVE)**

23 16. DEFENDANT CITY OF SAN DIEGO is a local municipality
24 responsible for the lease purchase of the 101 Ash Street high rise office building in
25 or about January 2017, and thereafter acted as exclusive tenant and project owner
26 for the remodeling and remediation of the building to the present.

27 17. DEFENDANT MARA ELLIOTT has been the City Attorney for the
28 City of San Diego from December 2016 to the present and in her individual capacity

1 was a candidate for re-election in the November 2020 General Election.

2 18. DEFENDANT JOHN HEMMERLING is the Assistant City Attorney
3 for San Diego at all times relevant herein, who reported to MARA ELLIOTT in her
4 official capacity as the City Attorney for the CITY OF SAN DIEGO.

5 19. MARA ELLIOTT and JOHN HEMMERLING are state actors under
6 color of the legal authority of a municipal entity with legal authority, and as such the
7 United States Constitution governs their individual and collective conduct when
8 acting on behalf of the CITY OF SAN DIEGO.

9 20. The CITY OF SAN DIEGO'S formal and informal policies allowed,
10 encouraged, authorized and/or permitted MARA ELLIOTT and JOHN
11 HEMMERLING to violate PLAINTIFF'S constitutional rights and conspire to
12 commit the constitutional violations as alleged herein. Furthermore, CITY OF SAN
13 DIEGO has subsequently ratified and approved of CO-DEFENDANTS' wrongful
14 conduct as alleged herein.

15 21. DOES 1-70 are as yet unknown individuals or entities acting under
16 color of state authority who violated PLAINTIFF'S constitutional rights and/or
17 conspired with DEFENDANTS to commit the constitutional violations alleged
18 herein. Their actions were undertaken with the contemporaneous authorization,
19 knowledge and consent of the CITY OF SAN DIEGO which furthermore
20 subsequently ratified and approved of their conduct.

21 22. This action is brought by PLAINTIFF, a news reporter for NBC7 San
22 Diego, who was investigating various aspects of the failed real estate transaction
23 involving the former Sempra Building located at 101 Ash Street, San Diego, CA
24 (hereinafter "101 Ash Street"), which investigation coincidentally coincided with
25 the 2020 political campaign for City Attorney by MARA ELLIOTT.

26 23. The facts underlying the 101 Ash Street controversy are of great public
27 concern. As a public entity, the CITY OF SAN DIEGO'S formal and informal
28 policies, practices and procedures relative to freedom of the press and reporters'

1 freedom of speech especially when investigating and reporting on matters of public
2 corruption and fraud have great impact on its community and the sanctity of its
3 electoral process. Moreover, the flagrant abuse of apparent authority to threaten,
4 harass and intimidate reporters and their employers in order to discourage or prevent
5 the investigation and publication of news stories, including the reliance upon
6 whistleblowers or confidential informants, who may cast elected politicians and
7 candidates in a poor light has the effect of undermining legitimacy of both the legal
8 authority of the office being used improperly and the elections. What happened to
9 PLAINTIFF is not a one-off occasion of abuse by the CITY OF SAN DIEGO, but
10 rather fits within a pattern of corruption and cover-up of 101 Ash Street that
11 includes abuse of power by multiple officials in various official capacities to
12 retaliate against a number of whistle blowers and intimidate multiple reporters
13 covering the 101 Ash Street story so as to discourage adverse reporting, including
14 demands that news station employers of reporters take adverse employment action
15 against investigative reporters who refused to back off.

16 24. 101 Ash Street is the subject of multiple State Court actions by
17 taxpayers against the CITY OF SAN DIEGO for fraud, conflict of interest and
18 unconstitutionality (see, e.g., *John Gordon v. CITY OF SAN DIEGO, et. al.* San
19 Diego Superior Court Case No. 37-2020-00028837), as well as various actions by
20 whistleblowers and workers related to asbestos contamination/exposure, and actions
21 for unlawful detainer by principal lenders in the real estate deal. The CITY OF
22 SAN DIEGO has itself now reluctantly alleged that the transaction was so riddled
23 with fraud and conflicts of interest that it is void ab initio entitling the CITY OF
24 SAN DIEGO the return of all expenditures and rent. In total the matters have a
25 potential amount in dispute of \$150 million, if not more, without including claims
26 by three whistleblowers who claim they were retaliated against by the CITY OF
27 SAN DIEGO and over 50 construction workers who claim they were willfully
28 exposed to asbestos by the CITY OF SAN DIEGO.

1 25. 101 Ash Street has captivated the attention of the public and
2 government watchdog media and is the subject of many news stories, but in the
3 Summer of 2020 when the violations alleged herein occurred, most of the
4 information was still obscured by various cover-up strategies employed by the CITY
5 OF SAN DIEGO and others to hide the true facts from the public. In 2020,
6 PLAINTIFF was one of the, if not the most, relentless and skeptical of all the
7 investigative reporters on the story, who published many articles and TV news
8 stories and issued dozens of probing California Public Records Requests to the
9 CITY OF SAN DIEGO. Anyone focused on 101 Ash Street at the time knew
10 PLAINTIFF was the reporter most engaged and his stories became reference-level
11 white papers on facts known and unknown as this public fraud was gradually
12 coming to light over the Spring and Summer of 2020. Poignant examples of
13 PLAINTIFF’s reporting can be accessed via these hyperlinks: Whistleblower
14 Claims City Ignored Warnings About Asbestos and Fire Safety at Downtown High
15 Rise – NBC 7 San Diego (nbcсандiego.com); New Cracks Emerge On City
16 Purchase of Former Sempra Building at 101 Ash Street – NBC 7 San Diego
17 (nbcсандiego.com); City Officials Knew 101 Ash St. Was Riddled With Asbestos
18 — So Why Were Hazards Ignored? – NBC 7 San Diego (nbcсандiego.com); City
19 Failed to Conduct Basic Review of 101 Ash St. Property: Outside Review – NBC 7
20 San Diego (nbcсандiego.com); City Official at Forefront of 101 Ash Purchase
21 Resigns – NBC 7 San Diego (nbcсандiego.com); No Good Options: Did Taxpayers
22 Get Burned In 101 Ash Street Deal? – NBC 7 San Diego (nbcсандiego.com); Fraud
23 or Incompetence? Taxpayers Sue Over Botched \$300 Million High Rise Deal –
24 NBC 7 San Diego (nbcсандiego.com); City Workers Moved Into 101 Ash Despite
25 Concerns of Polluted Water, Failing Sewer Pipes, and Inoperable Fire Alarm
26 (msn.com).

27 26. The lease purchase transaction for 101 Ash Street is personally and
28 politically embarrassing to MARA ELLIOTT and Mayor Todd Gloria because of

1 their critical roles. Todd Gloria was the San Diego City Council member who led
2 City Council approval of the transaction and he was the member who made the
3 motion to approve the transaction. MARA ELLIOTT was the City Attorney at the
4 time the transaction was signed and is subject to criticism for her role as the CITY
5 OF SAN DIEGO'S legal counsel approving the legal agreements. As the public
6 became captivated with the 101 Ash Street scandal during the Summer of 2020,
7 political polling for MARA ELLIOTT and Todd Gloria fell in favor of their
8 challengers in the November 2020 election, who campaigned on the basis of holding
9 them accountable for 101 Ash Street and for political reform of the processes
10 allowing this transaction to occur. New poll: Mayor's race neck and neck
11 (10news.com).

12 27. In large part, revelation of the fraud and corruption inherent in the 101
13 Ash Street real estate deal and the political cover-up of the problems discovered
14 during construction was the product of tireless investigation and the courage of
15 investigative journalists, including PLAINTIFF, who were willing to ask tough
16 questions, demand answers and publish stories that were not flattering of powerful
17 local politicians, including then candidates Todd Gloria and MARA ELLIOTT.

18 28. As campaigns neared conclusion in the late Summer of 2020, so did
19 the conclusion of experts retained by the CITY OF SAN DIEGO that 101 Ash Street
20 was not capable of safe occupancy and would need \$115 million in additional new
21 money repairs to the plumbing, electrical, HVAC mechanical, and asbestos
22 remediation. City neglected due diligence ahead of Ash Street deal, independent
23 review finds - The San Diego Union-Tribune (sandiegouniontribune.com)

24 29. At the same time, PLAINTIFF was about to publish an additional
25 investigative news article revealing that the CITY OF SAN DIEGO had knowingly
26 exposed workers to asbestos contamination, and had moved over 1000 of its own
27 employees and invited the public into the building knowing it had not secured a
28 valid certificate of occupancy because the building could not pass mechanical

1 inspection due to the inoperability of the systems for HVAC control in the event of a
2 fire. In addition, PLAINTIFF had received information from an informant that the
3 investigation report the CITY OF SAN DIEGO was publishing was in fact
4 incomplete, inaccurate, misleading and/or false. PLAINTIFF was engaged in
5 communications with the CITY OF SAN DIEGO in reference to this investigation.

6 30. The investigation reports released in the Summer of 2020 were paid for
7 by taxpayers with the commitment that they would be used to disclose the facts --
8 good, bad or indifferent. Ten days after evacuating the building due to asbestos and
9 other public dangers inherent in the poor condition of the building, at a City Council
10 meeting on January 28, 2020, Kris Michell, then City Chief Operating Officer,
11 advised the public of the following: *“We are in the process of hiring a forensic
12 consultant on an emergency basis and as a top priority to perform a forensic
13 analysis of what went wrong on this project. Simply put who knew what when and
14 who has the obligation to assist us in solving this problem. [...] We are treating this
15 as an emergency given the scope of the uncertainty and the need for experts to guide
16 the city on the best possible course of action going forward. [...] I cannot tell you
17 today what those options will be, but I can tell you that the forensic findings will be
18 made public.”*

19 31. Three law firms, Burke, Williams & Sorenson, Procopio, Cory,
20 Hargreaves & Savitch, and Hugo Parker were retained by the CITY OF SAN
21 DIEGO to provide analyses of 101 Ash Street with one of the three firms’ reports
22 intended to be released to the public, the Hugo Parker report (hereinafter the “Parker
23 Report”), as the promised public disclosure of the 101 Ash Street investigation.

24 32. By July 2020 it became apparent to insiders at the CITY OF SAN
25 DIEGO including MARA ELLIOTT that the results of the internal investigation
26 would be extraordinarily embarrassing because they would reveal deep flaws in the
27 acquisition due diligence protocols, contracting, and thereafter in the construction
28 management. Furthermore, they could reveal to the public that the building may

1 have been acquired due to public corruption and fraud placing key politicians in
2 personal jeopardy.

3 33. In late July 2020, in a desperate political effort to salvage the 101 Ash
4 Street narrative, which had by then become toxic due to expose articles published by
5 journalists, and predominately PLAINTIFF, then Mayor Kevin Faulconer and
6 MARA ELLIOTT planned to release the results of the “independent” investigation
7 of 101 Ash Street by outside counsel. From the start, the release of the Parker
8 Report was riddled with confusion and controversy. Version Two of the Parker
9 Report dated July 29, 2020, was released by Craig Gustafson, Communications
10 Director, City of San Diego, to Voice of San Diego on July 28, 2020.

11 34. On July 29, 2020, at approximately 3:16 p.m., PLAINTIFF on behalf of
12 NBC7 advised CITY OF SAN DIEGO that a confidential source had sent the three
13 outside counsel reports, including Version One of the Parker Report dated July 25th
14 which contained important information that had been omitted from Version Two
15 dated July 29th, and immediately raised legitimate questions regarding the veracity
16 of the report and whether it was being edited before publication for political
17 purposes by the CITY OF SAN DIEGO and/or MARA ELLIOTT, in order to
18 conceal politically embarrassing information about the original transaction to
19 acquire the building.

20 35. Version One of the Parker Report dated July 25th also raised questions
21 about the completeness of the information being shared by MARA ELLIOTT with
22 City Council, which incidentally was one of the root causes of the failed acquisition
23 in the first place.

24 36. The revelation that the version of the Parker Report shared with City
25 Council in closed session and released to the press on July 29th (Version Two) may
26 have been edited to conceal critical information from City Council and public was
27 politically embarrassing to MARA ELLIOTT and the CITY OF SAN DIEGO and
28 immediately triggered MARA ELLIOTT to release Version Three of the Parker

1 Report dated August 3, 2020. Version Three is the version now actually published
2 on the City website as the official version of the Parker Report.

3 37. Thereafter on July 29, 2020, at approximately 5:00 p.m., the CITY OF
4 SAN DIEGO emailed Version Two of the Parker Report dated July 29th to
5 PLAINTIFF at NBC7 San Diego with the following quote from then Mayor
6 Faulconer: *“I called for this independent review because City Hall has a very long
7 and troubled history with managing its property and sweeping problems under the
8 rug, and I didn’t want that culture to persist. This report could have been put on a
9 shelf or delayed so other people would have to deal with it, but it is my
10 responsibility to share information with the public and propose corrective actions
11 that get to the root of the problem.”* The email further states that Version Two (July
12 29th) is the version that will be discussed publicly during the upcoming City Council
13 meeting on August 4th.

14 38. At approximately 4:00 p.m. on July 29, 2020, NBC7 published a story
15 entitled *City Failed to Conduct Basic Review of 101 Ash St. Property Outside*
16 *Review*. In this story, portions of two of the three outside counsel reports that
17 PLAINTIFF had obtained through a confidential source were published revealing
18 for the first time that the CITY OF SAN DIEGO had failed to conduct reasonable
19 due diligence before entering into the transaction to purchase 101 Ash Street and
20 that the CITY OF SAN DIEGO was made aware of life safety deficiencies in the
21 building in which the fire system was so old and non-serviceable that the employees
22 were put at risk of serious injury or death in the event of a fire. According to the
23 story, *“As recently as April 2020, [property management firm CBRE] reported to
24 the city that the building alarm system did not interface with any fire suppression
25 prevention systems at 101 Ash, some fire-rated doors were likely still missing, and
26 there is a lack of any stairwell pressurization systems,”* quoting one of the reports.
27 The article further reported that *“In addition, fire officials also alerted the city about
28 the asbestos inside. In an email from Chief Deputy Fire Marshal Antony Tosca to*

1 *Fire Marshall Douglas Perry, Toscano wrote, 'It came to our attention that there*
2 *are no plans to remediate the asbestos in the air return system. Apparently it's not*
3 *in the budget???* *There's also asbestos particles and residue from the ceiling and*
4 *exposed tile that has been disturbed... I don't think it's being mitigated*
5 *appropriately and wanted to bring it to your attention.'* The article also included a
6 foreshadowing of what is now known of the extraordinary profits made by sellers
7 when the deal was converted from an outright purchase to a lease to own, "'Overall,
8 *these facts give rise to the potential that Cisterra received a better deal from the city*
9 *that the city could have otherwise negotiated...and Cisterra made a substantial*
10 *profit merely by acting as a conduit.'*" These facts were not included in the watered
11 down Parker Report Version One at this point despite the CITY OF SAN DIEGO'S
12 pledge to provide "absolute transparency" when commissioning these
13 investigations, thus the article was embarrassing especially on the same day the
14 CITY OF SAN DIEGO had issued broad statements about its commitment to
15 transparency when it released the Parker Report Version One, "I [Mayor
16 *Faulconer] called for this independent review because City Hall has a very long*
17 *and troubled history with managing its property and sweeping problems under the*
18 *rug, and I didn't want that culture to persist. This report could have been put on a*
19 *shelf or delayed so other people would have to deal with it, but it is my*
20 *responsibility to share information with the public and propose corrective actions*
21 *that get to the root of the problem.'*"

22 39. The CITY OF SAN DIEGO immediately went into damage control
23 mode given that it was now revealed the City Attorney may have once again
24 concealed material information from City Council and the public, to wit that City
25 Council may have been deceived during the initial transaction due to concealment of
26 the failure of the building to appraise for the purchase price being paid and that the
27 net effective purchase price was \$15m higher than the price that had been disclosed
28 to City Council or the public, which still had not been reported on by either the

1 CITY OF SAN DIEGO or PLAINTIFF. At about 6:00 p.m. on July 29th, two hours
2 after the publication of PLAINTIFF’S most recent investigative news story,
3 meetings occurred involving the City Attorney’s Office and the Hugo Parker law
4 firm presumably to again edit the Parker Report to add back in the deleted Section
5 II(B). Thereafter, on August 3, 2020, the CITY OF SAN DIEGO published Version
6 Three of the Parker Report which includes Section II(B) disclosing for the first time
7 that 101 Ash Street cost \$92m (net present value), not the \$72m that had been
8 disclosed to City Council and the public at the time the transaction was approved.

9 40. Version One of the Parker Report dated July 25th also includes the
10 following additional information not contained in the earlier versions published to
11 City Council or the public which led multiple journalists to conclude the earlier
12 Version One (July 25th) had been edited by DEFENDANTS to shield the potentially
13 responsible politicians from additional public embarrassment as the 2020 election
14 campaigns for MARA ELLIOTT and Todd Gloria neared conclusion:

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16 1. *“A subsequent asbestos abatement plan estimates that full
17 abatement will cost millions of dollars and take a year or more
18 to complete.”*

19 2. *“Unfortunately, no one seems to have realized that
20 asbestos debris from easily crumbled (friable), desiccated
21 fireproofing above ceiling tiles and in window cassettes would
22 stubbornly persist ...”*

23 3. *“As discussed below, however, the failure to appreciate
24 the extent of the pre-existing asbestos may have meant that the
25 building-wide, year-long work in 2019 was not performed with
26 sufficient care.”*

27 4. *“... A purchase was a substantially better deal financially
28 for the city ... Cisterra required a timetable that effectively
prevented the city from obtaining bond financing ... the city also
accepted a clause in the lease that effectively prevents the city
from refinancing the transaction ... Finally, Cisterra’s position
as a middleman between the city and the long-time owner of the
building may act to legally shield Cisterra and the prior owners
from liability for non-disclosure.”*

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5. *“The exact extent of the abatement is not known and cannot be readily determined from the abatement records maintained at 101 Ash.”*

6. *Footnote: “Seifert’s (CPUC) testimony did not come to the city’s attention until early 2020 when it was sent to the city by a media outlet seeking comment.”*

7. *“.. The mayor wanted DSD to remain downtown... Why did Cisterra act as a middleman? Why not acquire the property from Shapery directly?”*

8. *“The nonbinding letter agreement acknowledged that the city preferred a direct purchase financed by the issuance of bonds ... Cisterra explicitly represented that it ‘is able and willing to assign its rights’ ... (but) the City Attorney’s Office later concluded (it) could not be assigned without risk of a lawsuit from Shapery.”*

9. *“Upon reviewing the PSA, the City Attorney’s Office promptly voiced a concern that the language was ambiguous because the definition of ‘city transaction’ referred to the city occupying, not owning, the building ... Cisterra was unwilling to represent in writing that the assignment would be valid.”*

10. *“No serious preliminary space planning was performed prior to the transaction closing ... Later, in its May 2018 look-back report, staff conceded that the ‘city’s experience designing and constructing major public works projects is not sufficient.”*

11. *“Cisterra claimed a 5% fee against the total price of \$91.8M, or \$4.5M... If so, then Cisterra’s fee and its loan interest payments account for around \$10M, which leaves \$4M to \$5M not specifically accounted for.”*

41. Once the July 29th NBC story was published by PLAINTIFF, DEFENDANTS were facing the unfathomable twist in the transparency narrative that not only was 101 Ash Street the worst real estate deal in City history led by Kevin Faulconer (then Mayor and future candidate for Governor) and Todd Gloria (then Assemblyman and candidate for Mayor) over the signature of MARA ELLIOTT (City Attorney and candidate for re-election), which deal approval may have been accomplished in part because material information had been concealed from City Council, and where the sellers may have made off with previously undisclosed profits of as much as \$15m, but also the investigation report the CITY

1 OF SAN DIEGO commissioned to finally come clean with the public was
2 immediately mired in controversy due to new evidence of a continuing cover-up,
3 which once again implicated MARA ELLIOTT. For candidate MARA ELLIOTT,
4 the Parker Report concealment was fanning persistent doubt about the extent of her
5 involvement in the original transaction and her professional candor. It was also
6 apparent to DEFENDANTS that the investigative journalist who uncovered this
7 latest concealment of the truth regarding 101 Ash Street was once again
8 PLAINTIFF, whom DEFENDANTS concluded must be stifled. Moreover, it was
9 evidence alerting DEFENDANTS that there were one or more new informants
10 within the CITY OF SAN DIEGO who must be intimidated into silence.

11 42. Therefore, on July 30, 2020, JOHN HEMMERLING in his official
12 capacity as Assistant City Attorney signed a letter from MARA ELLIOTT in her
13 capacity as City Attorney addressed to PLAINTIFF stating that NBC7 had contacted
14 MARA ELLIOTT for a statement concerning the various versions of the Parker
15 Report. MARA ELLIOTT then asserted as the basis for the threats contained
16 therein that PLAINTIFF was in unlawful possession of documents shared with City
17 Council in closed session, which MARA ELLIOTT knew to be a false statement.
18 The letter further asserted that the confidential documents from closed session in
19 PLAINTIFF'S possession are protected from disclosure under The Brown Act, the
20 City's Ethics Ordinance, California Government Code and California Penal Code,
21 which were additional baseless statements because these statutes were known to be
22 inapplicable to PLAINTIFF under these circumstances. Further, it states, "*I (MARA*
23 *ELLIOTT) have opened a criminal investigation into these matters and would*
24 *appreciate your assistance and cooperation. I request that you return documents*
25 *that are the property of the City of San Diego, including any unauthorized copies, to*
26 *the City Attorney's Office. If you delay or refuse to comply, I ask that you preserve*
27 *the documents and refrain from destroying or altering them in any way. Doing so*
28 *will constitute a separate crime of destroying evidence in a criminal investigation.*"

1 This statement is patently baseless and in bad faith; there was no investigation
2 opened relative to PLAINTIFF nor would a criminal investigation as to PLAINTIFF
3 be lawful under these circumstances. The threats utilized false predicates: (1) that
4 there existed a criminal investigation applicable to PLAINTIFF, and (2) that
5 PLAINTIFF was in unlawful possession of reports, which were included in order to
6 conceal the absence of legal authority. The statement further threatened PLAINTIFF
7 that he was in violation of various criminal statutes, which was known to
8 DEFENDANTS to be a false statement lacking in legal basis or merit, so as to
9 intimidate PLAINTIFF and discourage further reporting in the exercise of his right
10 to free speech. These baseless, bad faith actions were taken under color of legal
11 authority by a City Attorney and Assistant City Attorney and are believed to have
12 been undertaken with the contemporaneous knowledge, approval and/or subsequent
13 ratification of all other DEFENDANTS named in this cause of action.

14 43. PLAINTIFF is informed and believes and on that basis alleges that
15 there was in fact no criminal investigation opened by the City Attorney's Office or
16 any other City investigative office concerning PLAINTIFF. The sole purpose of the
17 letter sent by JOHN HEMMERLING and MARA ELLIOTT was to make false and
18 baseless statements threatening a criminal investigation to intimidate PLAINTIFF
19 because he is a journalist investigating DEFENDANTS' potential corruption, to
20 discourage further investigative reporting which may be embarrassing to
21 DEFENDANTS, and to make an example of PLAINTIFF to the rest of the local
22 media to discourage their investigative reporting on 101 Ash Street.

23 44. PLAINTIFF immediately published the threatening letter dated July
24 30th on Twitter, causing an uproar among local journalists. After immediate,
25 universal condemnation by the local media for threatening PLAINTIFF, on July 31,
26 2020, MARA ELLIOTT retracted the letter dated July 30th. The full text of MARA
27 ELLIOTT'S statement in retraction was:

28

Statement on Retraction of Letter to NBC

The letter my Office sent earlier to an NBC reporter never should have been sent. My Office has never – and will never – prosecute a journalist or compel them to reveal confidential sources. This was a standard form letter the Criminal Division of my Office often sends and is appropriate for many potential witnesses, but not the press.

I’ve retracted the letter and I’ve personally called the reporter to assure him he is not under investigation in this matter, nor will he ever be.

*My Office has a duty to investigate potential violations of ethics laws – including the unauthorized disclosure of City documents by City officials that compromises our ability to hold contractors accountable for wrongdoing – but under my watch that investigation will never involve the press or undermine reporters’ ability to report the news.
[Tweeted by @CityAttorneySD July 31, 2020]*

Pursuant to this retraction, MARA ELLIOTT, on behalf of herself, and in her official capacity as City Attorney, on behalf of the CITY OF SAN DIEGO and JOHN HEMMERLING, admits the following: (1) the threatening letter dated July 30th should never have been sent to PLAINTIFF by the City Attorney’s Office;(2) the CITY OF SAN DIEGO will never prosecute a journalist under these circumstances because there is no criminal statute implicated; and (3) PLAINTIFF is not and never will be under any kind of criminal investigation under these circumstances.

45. The media was unimpressed with MARA ELLIOTT’S retraction. On August 6, 2020, the San Diego Union Tribune Editorial Board published an opinion which leads, “*Let’s be clear: It was outrageous for San Diego City Attorney Mara Elliott to threaten NBC7 San Diego journalist Dorian Hargrove last Friday saying a criminal investigation was pending over his possession of confidential city documents related to the Ash Street office building fiasco. The threat was quickly withdrawn after he posted the letter on Twitter. But he never should have been*

1 *threatened for doing his job and doing it well. He should be thanked. This is the*
2 *City's worst land deal ever."* MARA ELLIOTT then is quoted in the article as
3 having told the Editorial Review Board, "I genuinely regret it [sending the
4 threatening letter]." Editorial: Mara Elliott's feud with the City Council just got
5 worse - The San Diego Union-Tribune (sandiegouniontribune.com).

6 46. These actions to threaten PLAINTIFF were consistent with other bad
7 faith and baseless actions taken by the CITY OF SAN DIEGO against another
8 reporter and media outlet concerning reporting on 101 Ash Street during the same
9 time period. As such, the threats against PLAINTIFF were part of a general policy
10 of DEFENDANTS in the Summer of 2020 to intimidate journalists who were
11 reporting adverse and embarrassing stories revealing the 101 Ash Street scandal and
12 were undertaken in a concerted manner as part of a conspiracy by DEFENDANTS
13 herein undertaken in bad faith and lacking good cause for the purpose of
14 intimidating journalists to prevent the exercise of their right to freedom of speech
15 guaranteed under the U.S. and California State Constitutions..

16 47. Thereafter on September 3, 2020, NBC7 San Diego published a news
17 story titled, *101 Ash St. Investigation Looked At Whether City Staff, Former Council*
18 *Member Gloria Misled Public*, which can be found here post redaction as detailed
19 hereinbelow: [https://www.nbcsandiego.com/news/investigations/nbc-retracting-](https://www.nbcsandiego.com/news/investigations/nbc-retracting-story-on-gloria-and-101-ash-street-investigation/2398394/)
20 [story-on-gloria-and-101-ash-street-investigation/2398394/](https://www.nbcsandiego.com/news/investigations/nbc-retracting-story-on-gloria-and-101-ash-street-investigation/2398394/)

21 48. The September 3, 2020, story published by PLAINTIFF detailed
22 additional new information derived from new internal emails given to NBC7 by
23 confidential sources, which emails had never before been produced by
24 DEFENDANTS despite many Public Records Requests on the subject, including the
25 following:

26 a. High level officials in City of San Diego Real Estate Assets
27 Department ("CSD-REA") misled City Council members about the reason why 101
28 Ash Street was leased instead of being purchased outright, which allowed the value

1 of the building to be inflated from \$67-72 million to \$92 million to the enrichment
2 of sellers;

3 b. The reason given for leasing, that the seller would not assign the
4 contract to purchase the building was false; the true reason was the building failed to
5 appraise for the \$72 million purchase price;

6 c. CSD-REA told City Council the purchase would allow
7 employees to be moved into a “Class A building, replete with ‘excellent interior
8 finishes, and upgraded mechanical systems.’” Contractors later determined the
9 building was anything but in excellent condition;

10 d. CSD-REA admitted in internal emails that the public would not
11 be able to get behind a deal to purchase a building for more than the “appraised
12 value.”

13 e. The reason given to City Council for the lease purchase (which
14 yielded a purchase price of \$92 million), that the sellers would not assign their rights
15 under the contract was pretextual; the real reason was the deal would allow
16 additional monies to be paid to the sellers without disclosure to the public that the
17 purchase price was in excess of the appraised value.

18 49. Once again PLAINTIFF disclosed new and damaging facts in the
19 September 3, 2020, article which had not been disclosed to the public in the Parker
20 Report or elsewhere, and they were particularly embarrassing to DEFENDANTS
21 because: (1) they began to reveal the basis for public corruption and fraud in the
22 transaction; and (2) they revealed internal emails never before disclosed that Ron
23 Villa, CSD-REA had concealed the appraisal from City Council as the reason for the
24 shift to the lease purchase deal, which also happened to result in an extra \$15
25 million to Cisterra which they could use to do such nefarious things as to pay the
26 City’s broker, Jason Hughes \$4.5 million under the table for helping to convince the
27 CITY OF SAN DIEGO to buy 101 Ash Street. It is the payment of Jason Hughes by
28 Cisterra that forms the basis of the revised legal strategy to invalidate the 101 Ash

1 Street transaction pursuant to California Government Code § 1090.

2 50. Also included in the September 3rd story was a series of three footnotes
3 containing detailed information about the transaction that had also never before been
4 disclosed. The nature of the information contained in these footnotes indicates that
5 the person who wrote the footnotes likely had inside information as to the
6 transaction and gave rise to a reasonable inference that this source was someone
7 inside the CITY OF SAN DIEGO.

8 51. PLAINTIFF had a number of confidential sources at the time inside the
9 CITY OF SAN DIEGO and the documents in his possession were ostensibly
10 accurate in nearly all respects, including the body of the reports as had been reported
11 in the July 29th investigative news story which DEFENDANTS never disputed.

12 52. Included in the September 3rd story was a footnote 15 to the Burke
13 Williams Sorenson report which stated, among other things, that MARA ELLIOTT
14 had been asked by Burke Williams to be allowed to interview Todd Gloria as the
15 person on City Council who made the motion to approve the deal and who led City
16 Council in the approval process, but the request for Todd Gloria's interview was
17 denied by MARA ELLIOTT in her role as City Attorney.

18 53. MARA ELLIOTT and Burke Williams Sorenson then demanded the
19 September 3rd NBC7 story be retracted on the basis that the document relied upon
20 was a forgery, alleging footnote 15 was not prepared by Burke Williams Sorenson
21 and did not appear in the original version they sent to MARA ELLIOTT in Word
22 file format.

23 54. MARA ELLIOTT further alleged that the existence of footnote 15
24 raised questions about the authenticity of the entire document, but DEFENDANTS
25 have never been put to proof on that point, which given the many edits the Parker
26 Report underwent, raised reasonable questions regarding the authenticity of the
27 version of the Burke Williams Sorenson report in PLAINTIFF'S possession.

28 55. MARA ELLIOTT and Todd Gloria then went on the offensive using

1 feigned outrage over the footnote to gain the upper hand to finally quash further
2 investigative reporting on 101 Ash Street in the final two months of their 2020
3 campaigns. They demanded an investigation by NBC7, which MARA ELLIOTT
4 did under color of her authority as City Attorney as an extension of the
5 “investigation” she falsely stated she attempted to initiate on July 30, 2020, but was
6 forced to retract because it was untrue, in bad faith and lacked any legal basis.

7 56. PLAINTIFF alleges on information and belief that footnote 15, along
8 with the other two footnotes at issue, were likely added by a person inside the CITY
9 OF SAN DIEGO with detailed knowledge of previously undisclosed specific and
10 material facts derived from a complex real estate transaction involving many
11 departments and high-level City personnel. Furthermore, the likely source of the
12 footnote edit is a person with inside the CITY OF SAN DIEGO access to the Word
13 file Burke Williams Sorenson originally used to transmit the report to the City
14 Attorney such that insertions of footnotes could be embedded into the document
15 without losing its formatting, design and layout. The subject footnote 15 reads:

16
17 *15. One question is whether Ms. Thompson, Deputy COO Ron*
18 *Villa, COO Scott Chadwick and a member of the City Council*
19 *misrepresented the transaction to the public and other members of*
20 *the City Council. According to an email from Mr. Villa on*
21 *September 1, 2016, there was a belief that “we will not be able to*
22 *achieve approval for a purchase at the \$72m price” and “the fact*
23 *remains that the general public and policy makers may not be*
24 *able to get behind paying more for the building then (sic.) the*
25 *‘appraised value.’” Apparently, on September 16, before the*
26 *revised transaction was scheduled to be presented to a City*
27 *Council Committee, Ms. Thompson and Mr. Villa met with*
28 *Council President Todd Gloriq and two of his staff members for*
an “update” on the transaction; Mr. Gloria had previously been
skeptical about the lease-to-own structure when it was used for a
prior acquisition, but was supportive of the 101 Ash agreement.
The discussions during the update could be informative about why
the City went forward with the transaction despite the unfavorable
language in the Lease Agreement, the due diligence materials

1 *available to the City, and the substantially higher cost of the*
2 *lease-to-own structure. However, we were unable to obtain the*
3 *City Attorney's approval to interview Mr. Gloria or his staff (all*
4 *of whom are no longer in the employ of the City.)*

5 57. PLAINTIFF further alleges on information and belief that MARA
6 ELLIOTT and CITY OF SAN DIEGO were aware of the likelihood that documents
7 in PLAINTIFF'S possession were accurate copies of the original investigation
8 reports, that PLAINTIFF was accurate in reporting that these reports had been
9 edited by DEFENDANTS to conceal embarrassing information from City Council
10 and/or the general public, and that the footnotes in dispute were likely created by an
11 undisclosed person in the CITY OF SAN DIEGO who wished to ensure that the true
12 facts were disclosed and that persons involved in the original transaction, including
13 Todd Gloria were accountable. Further, with respect to footnote 15, MARA
14 ELLIOTT was further aware that there was a question whether Cybele Thompson,
15 Scott Chadwick, Ron Villa and/or Todd Gloria misrepresented the transaction to the
16 public and City Council in a number of respects, that Ron Villa had written in a
17 previously undisclosed email dated September 1, 2016 that without the appraisal it
18 would be difficult to get the people behind a transaction for even \$72m which fact
19 was never disclosed publicly before the articles written by PLAINTIFF on July 29th
20 and September 3rd, that the prior appraisal was also never disclosed to the City
21 Council or the public, that there was a status update meeting with Todd Gloria on
22 September 16, 2016, in which Mr. Gloria apparently decided to support the shift to
23 lease to own, that this shift allowed the sellers to pocket an extra \$15m which was
24 also never disclosed to the public or City Council, that the additional money
25 received by the sellers funded Cisterra's undisclosed payment of \$4.5m to the City's
26 volunteer broker which would constitute a GC 1090 violation, that Todd Gloria is a
27 material and necessary witness to any reasonable investigation seeking to
28 understand the critical events leading up to the presentation to City Council,

1 including the extent to which Mr. Gloria or the rest of the City Council may have
2 been involved in a public corruption or fraud conspiracy, either as victims or
3 participants, and that Mr. Gloria had not been interviewed by Burke Williams
4 Sorenson, despite their role as independent investigative counsel to discover and
5 disclose all material facts relating to the transaction and that MARA ELLIOTT had
6 full control over the scope of the Burke Williams investigation, including final say
7 over what persons were to be interviewed,¹ all of which were facts disclosed in
8 footnote 15 that were not in the public domain and were closely held within the
9 highest levels of City management, including Burke Williams and the City
10 Attorney's office.

11 58. Without any significant independent investigation and without the
12 ability to make any specific findings of fact related to the origins or authenticity of
13 footnote 15, NBC7 capitulated to the demands and threats by DEFENDANTS as
14 originally articulated in the July 30th letter alleged hereinabove and concluded that
15 the September 3, 2020, story be retracted limited only to the footnote 15 discussion.
16 The remainder of the September 3, 2020, story, including that CSD-REA concealed
17 the existence of the non-appraisal as the reason for converting the transaction from a
18 purchase at the price of \$72 million to a lease purchase with a net effective purchase
19 price of \$92 million, which facts had not been previously disclosed in the Parker
20 Report, was not retracted and remains published by NBC7.

21 59. PLAINTIFF is informed and believes and on that basis alleges that
22 DEFENDANTS used their positions of ostensible authority under color of the law to
23 accomplish what they had attempted unsuccessfully earlier with regard to
24 PLAINTIFF in the July 30th threatening letter and had attempted with other
25 investigative reporters for other media outlets reporting on the 101 Ash Street story,
26 demanding that NBC7 prevent PLAINTIFF from ever again reporting on 101 Ash

27
28 ¹ See Ash Street investigation findings were edited before they were released to public, records show - The San Diego Union-Tribune (sandiegouniontribune.com)

1 Street or with regard to any City of San Diego matters.

2 60. These actions taken by DEFENDANTS relative to PLAINTIFF were
3 consistent with other bad faith and baseless actions taken by CITY OF SAN DIEGO
4 against another reporter and media outlet reporting on 101 Ash Street during the
5 same time period. As such PLAINTIFF alleges the threats against PLAINTIFF were
6 part of a general policy of DEFENDANTS in the Summer of 2020 to intimidate
7 journalists who were reporting adverse and embarrassing stories revealing the 101
8 Ash Street scandal and to encourage their employers to take adverse employment
9 action against reporters as a means of censoring and/or retaliating against reporters
10 investigating public corruption and fraud, including cover-ups of same respecting
11 101 Ash Street. PLAINTIFF therefore alleges on the basis of information and belief
12 that the retaliatory actions directed at him were undertaken by DEFENDANTS as
13 part of a general practice, policy or conspiracy undertaken by DEFENDANTS in
14 bad faith and lacking legal basis for the purpose of intimidating, retaliating against
15 and/or censoring journalists to prevent the exercise of their right to freedom of
16 speech guaranteed under the U.S. and California State Constitutions.

17 61. Unlike its peers, NBC7 capitulated to DEFENDANTS' threats and took
18 adverse employment action against PLAINTIFF, which included barring him from
19 further reporting regarding the CITY OF SAN DIEGO, thereby censoring
20 PLAINTIFF from writing any more stories concerning public corruption and fraud
21 associated with 101 Ash Street. By their actions, DEFENDANTS had accomplished
22 their censorship goal: the journalist who had written the vast majority of stories
23 exposing public corruption, fraud and subsequent cover-up that has captivated the
24 city, was suddenly and permanently silenced.

25 62. PLAINTIFF is informed and on that basis alleges that DEFENDANTS
26 demanded that NBC7 announce this adverse employment action publicly to retaliate
27 against PLAINTIFF for the exercise of his Constitutionally protected speech for
28 having published stories embarrassing to DEFENDANTS. Moreover, the public

1 disclosure of adverse employment action was demanded to project to the community
2 the irreparable harm DEFENDANTS caused PLAINTIFF as an example to the
3 journalist community of the consequences of publishing stories on this topic or
4 relying upon confidential informants from the CITY OF SAN DIEGO, thereby
5 censoring and threatening the media to chill its exercise of First Amendment
6 freedom of speech. Finally, it was designed to intimidate informants and/or
7 witnesses from coming forward to journalists with information damaging to
8 DEFENDANTS, thereby censoring and interfering with their exercise of
9 Constitutionally protected speech.

10 63. MARA ELLIOTT and the CITY OF SAN DIEGO thereafter published
11 false and defamatory statements concerning PLAINTIFF on the San Diego City
12 Attorney Twitter account:

13 *Our Democracy is under attack from many directions, and*
14 *reckless lies like this are designed to undermine public trust, San*
15 *Diegans deserve to know the truth about who was behind this*
smear campaign, and how they got away with it for so long. [...]

16 [Tweet and attached statement sent by @CityAttorneySD
17 September 11, 2020]

18 64. These statements were false in that the September 3, 2020, article as
19 well as all previous articles were accurate in nearly all respects. The actions taken
20 by PLAINTIFF were not reckless; they were reasonable under the circumstances
21 and had been reviewed by PLAINTIFF'S supervisors and lawyers at NBC to ensure
22 the story was in accord with NBC's established policies and procedures prior to
23 publication. Further there was no campaign as falsely stated. Of all the news
24 reports filed by PLAINTIFF regarding 101 Ash Street there was only one small
25 portion in a single story that needed to be retracted and the gravamen of that story,
26 that the City Council had been prevented from knowing the building did not
27 appraise, was not cast in doubt and was never retracted. The statement, regarding
28 how "they" got away with it for so long implies a conspiracy PLAINTIFF was a part

1 of which is false, as there was no conspiracy or group of people aligned with
2 PLAINTIFF in connection with his 101 Ash Street reporting other than journalists
3 seeking the truth. The reasonable implication is that MARA ELLIOTT and CITY
4 OF SAN DIEGO were alleging falsely that there was a group of people, including
5 PLAINTIFF, which was working together to smear MARA ELLIOTT and that it
6 had been doing so over a period of time. None of those facts were true. The stories
7 that had been published by NBC and PLAINTIFF were independent of any third
8 party, subject to the careful editorial and legal oversight of NBC. Moreover, the
9 stories published over the course of 2020 were all based on good faith, thorough and
10 accurate investigative reporting; there had not been a single retraction or request for
11 retraction with the exception of footnotes in the September 3rd story. Any negative
12 impacts PLAINTIFF'S reporting may have had on DEFENDANTS was caused by
13 the revelation of accurate facts that there was public corruption and fraud associated
14 with the 101 Ash Street transaction and a subsequent cover-up.

15 65. MARA ELLIOTT then published additional false and defamatory
16 statements concerning PLAINTIFF:

17 *No one is going to intimidate Mara Elliott as she fights to protect*
18 *taxpayers and clean up the 101 Ash Street mess she inherited.*

19 *NBC7 suspended Dorian Hargrove after its internal*
20 *investigation found he wrote a phony story based on a fabricated*
21 *document. The only defamation was the false story itself, a wild*
22 *and baseless smear orchestrated to swing an election.*

23 *San Diegans still need to know who helped Hargrove write his*
24 *story, and who sought to benefit politically or otherwise from the*
25 *lies it spread about the City Attorney and Todd Gloria.*

26 [Tweet and attached statement sent by @MaraElliott October 7,
27 2020]

28 66. These statements were false in that the NBC7 internal investigation did
not conclude the September 3rd story was phony. In fact, the story remains

1 published with only that portion of the story referencing footnote 15 retracted
2 without any finding: (a) that the footnote was false; (b) that the footnote was not part
3 of an official edit of the final report occurring within the CITY OF SAN DIEGO; (c)
4 that the footnote was not inserted as part of an official edit within the CITY OF
5 SAN DIEGO and then removed before a draft became final; or d) that the footnote
6 was inserted by someone lacking authority at the CITY OF SAN DIEGO to edit but
7 having access to both the true facts pertaining to the transaction and the original
8 Word file in which the report was transmitted. There was also no finding whether
9 DEFENDANTS had information that the confidential source of the footnote
10 versions was known to DEFENDANTS. There also was no finding in the NBC7
11 investigation that the body of the document relied upon for the story was fabricated.
12 The body of the version of the report available to PLAINTIFF has never been placed
13 in doubt by any party in any particulars. Even as to the questioned footnotes, the
14 editing and document management protocols of the City Attorney's Office
15 evidenced by the many versions of the Parker Report that have been published leave
16 reasonable doubt as to where and how this footnoted version was created, or
17 whether they exist on CITY OF SAN DIEGO servers, including reasonable doubt as
18 to whether the footnotes were in fact created by an attorney within the City
19 Attorney's Office or any number of other officials at CITY OF SAN DIEGO with
20 access to the original Word file. The statement also falsely asserts the story was part
21 of an "orchestrated" plot to affect the outcome of the election, when in fact the story
22 was one of many in an uninterrupted line of legitimate investigative news stories
23 written by NBC7 and many other media outlets concerning a matter of keen public
24 importance which DEFENDANTS have never questioned or sought to be retracted.
25 Finally, by characterizing it as a "plot," the statement suggests there was a
26 conspiracy of many who sought to benefit politically from statements published by
27 PLAINTIFF regarding MARA ELLIOTT and/or Todd Gloria. In fact, MARA
28 ELLIOTT had no basis for stating PLAINTIFF participated in a plot, that there was

1 a conspiracy of many or that the September 3rd story was fabricated let alone
2 published for political purposes, as opposed to just investigative news written by a
3 promising young reporter who had done a commendable job of uncovering public
4 corruption and malfeasance by City Officials. These false statements were made by
5 MARA ELLIOTT using the platform of her official Twitter account by and on
6 behalf of the CITY OF SAN DIEGO which has adopted and ratified these
7 statements and authorized the use of this account to promulgate and publish them
8 without regard for their truthfulness.

9 67. On information and belief, PLAINTIFF further alleges that additional
10 defamatory oral statements were made by DEFENDANTS and each of them during
11 non-disclosed telephone or other conferences with PLAINTIFF's employer, NBC7,
12 for the purpose of convincing it to retract a portion of the September 3rd story
13 pertaining to footnote 15, to have NBC7 take adverse employment action against
14 PLAINTIFF and to cause NBC7 to prevent PLAINTIFF from exercising his right to
15 freedom of speech to publish future news stories concerning 101 Ash Street or
16 pertaining to any subject involving the CITY OF SAN DIEGO. Further,
17 PLAINTIFF alleges on information and belief that these conversations also
18 demanded NBC7 issue a public statement announcing the adverse employment
19 action taken against PLAINTIFF to permanently damage his reputation in
20 retribution for his reporting on 101 Ash Street, and to prevent PLAINTIFF from
21 being able to work at another media location where he could continue to publish
22 investigative news that cast DEFENDANTS in a poor light.

23 68. Said defamatory statements were part of a course of conduct by
24 DEFENDANTS and each of them commencing with the retracted false threats
25 contained in the July 30th letter and were published by DEFENDANTS, and each of
26 them, for the purpose of threatening, intimidating, and causing harm to PLAINTIFF
27 so as to prevent his further publication of investigative news stories which may cast
28 DEFENDANTS in a bad light with respect to the public corruption and fraud

1 inherent in the 101 Ash Street acquisition and cover-up. Said statements were
2 further intended to create the atmosphere of a public rebuke of PLAINTIFF to
3 discourage other journalists from continuing to report damaging information
4 concerning the public corruption and fraud associated with 101 Ash Street. Further,
5 they were intended to publicly intimidate and threaten current and future
6 whistleblowers or informants from coming forward and/or to prevent other
7 journalists from relying upon future whistleblowers or informants with respect to
8 101 Ash Street investigations.

9 69. PLAINTIFF is informed and believes and on that basis alleges that
10 DEFENDANTS had a practice of contacting media corporation employers to
11 retaliate against reporters on the 101 Ash Street story and threaten their employers
12 with adverse consequences if they do not take action to prevent their journalists
13 from publishing stories revealing public corruption and fraud associated with 101
14 Ash Street, including demands that the employer take damaging adverse
15 employment action against the journalists, which actions were taken at about the
16 same time as these actions as alleged herein were taken against PLAINTIFF.

17 70. The primary purpose of the threatening letter of July 30, and the
18 defamatory statements alleged herein, as well as DEFENDANTS' coercion of
19 NBC7 and other media corporations to take adverse employment action against
20 journalists was to intimidate, threaten, cajole, quash, censor, and/or punish the free
21 exercise of speech by PLAINTIFF and the local journalism community guaranteed
22 by the U.S. Constitution so as to conceal embarrassing information relative to 101
23 Ash Street from coming to light.

24 71. CITY OF SAN DIEGO is liable under *Monell v. Dept. of Social*
25 *Services*, 436 U.S. 658 (1978), because MARA ELLIOTT and JOHN
26 HEMMERLING acted as final policymaking authority for the CITY OF SAN
27 DIEGO concerning the actions alleged to have caused the particular constitutional
28 violation alleged herein and was the policymaker for the CITY OF SAN DIEGO for

1 the purposes of these actions. Alternatively, if these restrictions are found to duly
2 arise from DEFENDANTS' existing policy framework, DEFENDANTS remain
3 liable under *Morell* due to their unconstitutional enforcement of these restrictions.

4 72. As a proximate result of the actions taken by DEFENDANTS and each
5 of them, PLAINTIFF has suffered and will continue to suffer damage to his
6 reputation and employability as a news investigative reporter and has suffered past
7 and future loss of earnings and earning capacity.

8 73. As a further proximate result of the actions taken by DEFENDANTS
9 and each of them, PLAINTIFF has suffered and will continue to suffer general
10 damages in the form of pain and suffering and severe emotional distress and
11 associated bodily injury including past and future medical bills in an amount
12 according to proof at trial.

13 74. PLAINTIFF further alleges that these actions were knowingly
14 undertaken by MARA ELLIOTT in her individual capacity with actual malice
15 and/or with conscious disregard for the harm that would be caused entitling
16 PLAINTIFF to punitive or exemplary damages in an amount necessary to punish or
17 make an example of DEFENDANT according to proof at trial.

18 75. As a further direct and proximate consequence of violations of
19 PLAINTIFF'S Federal civil rights under 42 U.S.C. § 1983 and the First
20 Amendment, PLAINTIFF has suffered and will continue to suffer irreparable injury
21 that cannot fully be compensated by an award of monetary damages.

22 76. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFF is entitled to
23 declaratory judgment and temporary, preliminary and permanent injunctive relief
24 restraining DEFENDANTS from arbitrary and capricious application of their
25 investigative authority to threaten, cajole, punish or intimidate journalists from
26 utilizing confidential informants, whistleblower informants, or reporting on public
27 corruption including without limitation 101 Ash Street.

28 77. PLAINTIFF found it necessary to engage the services of private

1 counsel to vindicate his rights under the law and is therefore entitled to an aware of
2 attorneys' fees pursuant to 42 U.S.C. § 1988.

3 **SECOND CLAIM FOR RELIEF**

4 **DEFAMATION**

5 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, MARA**

6 **ELLIOTT AND DOES 35-85, INCLUSIVE)**

7 78. PLAINTIFF hereby incorporates all previous allegations set forth
8 hereinabove as though stated again here in full.

9 79. PLAINTIFF has complied with all Claim Reporting Requirements of
10 the Government Code relative to this filing against the CITY OF SAN DIEGO.

11 80. PLAINTIFF is a non-public figure.

12 81. Said false statements of fact as alleged herein constitute defamation per
13 se to the extent they directly impugn the character, veracity and integrity of an
14 investigative news reporter concerning a matter of keen public interest, thereby
15 rendering PLAINTIFF incapable of meaningfully continuing in his current
16 occupation.

17 82. Said defamatory statements were made by DEFENDANTS negligently
18 in that DEFENDANTS failed to exercise reasonable care to ensure accuracy with
19 reasonable foreseeability that publication may cause harm to PLAINTIFF'S
20 reputation, occupation, business and person.

21 83. As a proximate result of the publication of said defamatory statements,
22 PLAINTIFF has suffered permanent and irreparable damage to his reputation,
23 occupation, or business causing past and future loss of income and permanent
24 damage to his employability in an amount according to proof at trial.

25 84. As a further proximate result of the publication of these defamatory
26 statements, PLAINTIFF has suffered and will continue to suffer from severe
27 emotional distress and associated physical injury sustaining past and future medical
28 expenses in an amount according to proof at trial.

1 85. Said defamatory statements were published and or made by
2 DEFENDANTS alleged herein with actual knowledge of their falsity, with reckless
3 or conscious disregard for their accuracy, and/or with actual malice toward
4 PLAINTIFF to cause irreparable harm to PLAINTIFF in retribution for his
5 investigative reporting on 101 Ash Street, and/or to force PLAINTIFF to cease
6 exercising his right to freedom of speech. Further said defamation was made for the
7 purpose of publicly harming PLAINTIFF to serve as a public example discouraging
8 other journalists from continuing to vigorously investigate and report on 101 Ash
9 Street and/or to prevent other whistleblowers or informants from coming forward to
10 journalists and to discourage journalists from relying upon whistleblowers or
11 informants. PLAINTIFF is therefore entitled to an award of punitive or exemplary
12 damages against MARA ELLIOTT and DOES 35-60, inclusive, to punish or make
13 an example out of them in an amount according to proof at trial.

14 **THIRD CLAIM FOR RELIEF**
15 **NEGLIGENT AND INTENTIONAL INTERFERENCE WITH**
16 **PROSPECTIVE ECONOMIC ADVANTAGE**
17 **(AGAINST DEFENDANTS MARA ELLIOTT, CITY OF SAN**
18 **DIEGO AND DOES 50-100, INCLUSIVE)**

19 86. PLAINTIFF hereby incorporates all previous allegations set forth
20 hereinabove as though restated here in full.

21 87. PLAINTIFF has complied with all Claim Reporting Requirements of
22 the Government Code relative to this filing against CITY OF SAN DIEGO.

23 88. At the time of said conduct by DEFENDANTS and each of them,
24 PLAINTIFF was an investigative journalist in good standing, employed NBC7 San
25 Diego and had a long and prosperous career ahead of him.

26 89. The conduct of DEFENDANTS as alleged herein relative to
27 PLAINTIFF'S employment with NBC7 San Diego was undertaken without
28 reasonable care for the foreseeable harm it may cause to PLAINTIFF.

1 90. The conduct of DEFENDANTS as alleged herein relative to
2 PLAINTIFF'S employment with NBC7 San Diego was further undertaken with
3 reckless or conscious disregard for the harm they may cause to PLAINTIFF, and/or
4 with actual malice toward PLAINTIFF to cause irreparable harm to PLAINTIFF in
5 retribution for his exercise of his right to freedom of speech guaranteed under the
6 U.S. Constitution, specifically his investigative reporting on 101 Ash Street, and/or
7 to force PLAINTIFF to cease exercising his freedom of speech. Further, said
8 conduct was undertaken for the purpose of publicly harming PLAINTIFF for the
9 exercise of his freedom of speech and to make PLAINTIFF a public example to
10 discourage other journalists from continuing to vigorously investigate and report on
11 101 Ash Street and/or to prevent other whistleblowers or informants from coming
12 forward to journalists, including PLAINTIFF, and to discourage journalists from
13 relying upon whistleblowers or informants in the exercise of their freedom of
14 speech. The harm caused by DEFENDANTS to PLAINTIFF was for the express
15 purpose of punishing or making an example of PLAINTIFF for the exercise of his
16 freedom of speech and the degree of harm was intended by DEFENDANTS to be
17 severe enough and public enough to prevent other journalists from exercising their
18 freedom of speech and to intimidate whistleblowers or informants from continuing
19 to come forward with information revealing the extent of corruption inside the CITY
20 OF SAN DIEGO relative to 101 Ash Street. PLAINTIFF is therefore entitled to an
21 award of punitive or exemplary damages from MARA ELLIOTT in her individual
22 capacity and DOES 50-100, inclusive, to punish or make an example of them in an
23 amount according to proof at trial.

24 91. As a further proximate result of the conduct of DEFENDANTS as
25 alleged herein, PLAINTIFF has suffered and will continue to suffer past and future
26 lost earnings and earning capacity, severe emotional distress, associated bodily
27 injury including past and future medical expenses and such other special or general
28 damages according to proof.

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FOURTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

92. PLAINTIFF hereby incorporates all previous allegations set forth herein as though stated here in full.

93. PLAINTIFF has complied with all Claim Reporting Requirements of the California Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

94. As a proximate result of the conduct of DEFENDANTS as alleged herein, PLAINTIFF has suffered and will continue to suffer past and future lost earnings and earning capacity, severe emotional distress, associated bodily injury including past and future medical expenses and such other special or general damages according to proof.

95. The actions of DEFENDANTS, and each of them, were undertaken with actual malice toward PLAINTIFF and/or with reckless or conscious disregard for the injuries they may cause to PLAINTIFF entitling PLAINTIFF to punitive or exemplary damages against all DEFENDANTS other than the CITY OF SAN DIEGO, in an amount necessary to punish or make an example of them, according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against all DEFENDANTS, and each of them, as follows:

1. For general damages in an amount according to proof at trial and beyond the jurisdictional minimum of this Court;
2. For special damages in an amount according to proof at trial and beyond the jurisdictional minimum of this Court;
3. For economic losses in an amount according to proof at trial;
4. For costs of the suit herein;

- 1 5. For applicable statutory interest as provided by law;
- 2 6. For attorneys’ fees as provided by law;
- 3 7. For declaratory judgment that DEFENDANTS’ actions complained of
- 4 herein:
- 5 a. Violate the First Amendment of the United States Constitution;
- 6 b. Violate the Fourteenth Amendment of the United States
- 7 Constitution; and
- 8 c. Violate the California Public Records Act, Cal. Gov. Code
- 9 Section 6250, et. seq.
- 10 8. For temporary, preliminary and/or permanent injunction enjoining
- 11 DEFENDANTS, and each of them, their agents, attorneys and employees from:
- 12 a. Restricting the rights of PLAINTIFF and the press from
- 13 reporting on public corruption and fraud involving DEFENDANTS including
- 14 without limitation regarding 101 Ash Street;
- 15 b. Interfering in the employment relationships of journalists who
- 16 report on public corruption and fraud involving DEFENDANTS, including without
- 17 limitation regarding 101 Ash Street; and
- 18 c. Destroying, altering, concealing, failing to maintain or
- 19 unlawfully withholding public records requests pertaining to 101 Ash Street.
- 20 9. For such other and further relief as the Court may deem just and proper.
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FURTHERMORE, PLAINTIFF prays for judgment against DEFENDANTS with the exception of CITY OF SAN DIEGO, MARA ELLIOTT IN HER OFFICIAL CAPACITY AS CITY ATTORNEY and JOHN HEMMERLING IN HIS OFFICIAL CAPACITY AS ASSISTANT CITY ATTORNEY as follows:

10. For punitive or exemplary damages in an amount according to proof.

Dated: August 20, 2021

LAW OFFICE OF LAWRENCE SHEA

By: /s/ Lawrence W. Shea, II

Lawrence W. Shea, II
Attorneys for PLAINTIFF DORIAN HARGROVE

Dated: August 20, 2021

CALLAHAN & BLAINE, APLC

By: /s/ John D. Van Ackeren

Edward Susolik
John D. Van Ackeren
Attorneys for PLAINTIFF DORIAN HARGROVE

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JURY DEMAND

PLAINTIFF hereby demand a trial by jury on all claims so triable.

Dated: August 20, 2021

LAW OFFICE OF LAWRENCE SHEA

By: /s/ Lawrence W. Shea, II

Lawrence W. Shea, II
Attorneys for PLAINTIFF DORIAN
HARGROVE

Dated: August 20, 2021

CALLAHAN & BLAINE, APLC

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