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JOHN A. GORDON, an individual,

Plaintiff,

v.

101 ASH, LLC, a Delaware limited liability  
company; 101 ASH MEMBER  
PARTNERS, LLC, a California limited  
liability company; CISTERRA  
DEVELOPMENT, LLC, a California  
limited liability company; SHAPERY  
DEVELOPERS GAS & ELECTRIC  
PROPERTY, LP, a California Limited  
Partnership; SHAPERY DEVELOPERS  
GAS & ELECTRIC CORP.; a California  
corporation; GAS & ELECTRIC  
HEADQUARTERS BUILDING – SAN  
DIEGO, L.P., a California Limited  
Partnership; CITY OF SAN DIEGO, a  
municipal corporation; ROLANDO  
CHARVEL, sued in his official capacity as  
City of San Diego's Chief Financial Officer;

Case No.

COMPLAINT FOR WASTE OF PUBLIC  
FUNDS AND FRAUD

1 and DOES 1 to 100, INCLUSIVE,  
2 Defendants.

3  
4 **INTRODUCTION**

5 1. This taxpayer lawsuit seeks to stop the waste of, and to recover, the City of San  
6 Diego's public funds in what has been called "the city's worst land deal ever": the \$120 million  
7 lease-to-own agreement for the Sempra building on 101 Ash Street (Ash Street Building) in San  
8 Diego, California. The City of San Diego was defrauded and induced to enter into a 20-year  
9 lease-to-own agreement for the Ash Street Building based on false information and concealment  
10 of material facts about the building on which the City relied, and that if those facts were not  
11 concealed or misrepresented, the City would not have entered into the lease-to-own agreement  
12 related to the building.

13 2. The City was induced to enter into the transaction by misrepresentations that the  
14 City would save \$44 million, and that the building was in good condition fit for occupancy by  
15 City staff. The misrepresentations and concealment of material facts by Defendants who held  
16 property interests were relied upon by the City and induced the City to enter into the agreement to  
17 spend its budget funds over a protracted period of time for an asset that provides no beneficial use  
18 to the City and does not fit within the debt limit laws for such a transaction.

19 **JURISDICTION AND VENUE**

20 3. This Court has jurisdiction over the action because this is a civil action wherein the  
21 matter in controversy exceeds the jurisdictional minimum of the Court.

22 4. The acts and omissions complained of in this action took place in San Diego,  
23 California. Venue is proper because the acts and/or omissions complained of took place, in whole  
24 or in part, within the venue of this Court.

25 5. Plaintiff brings this action pursuant to CCP § 526a to restrain Defendants from  
26 illegally expending and wasting public funds under Code Civ. Proc. § 526a. Specifically, Plaintiff  
27 seeks to obtain a judgment, restraining and preventing any illegal expenditure of waste of injury  
28 to the funds or other property of a local agency regarding the building and property located at 101

1 Ash Street, San Diego CA 92101, and for the City to recover costs and damages proximately  
2 caused by the wrongful acts alleged herein.

### 3 **PARTIES AND KEY PLAYERS**

4 6. Plaintiff John A. Gordon is a resident of the City of San Diego and has paid taxes  
5 that fund the City of San Diego.

6 7. Defendant Cisterra Development, LLC (Cisterra) was organized as a limited  
7 liability company on June 9, 2015. Cisterra does business in the State of California, County of  
8 San Diego. Defendant Cisterra had a prior relationship with the City relating to a successful lease-  
9 to-own property, and used that affinity to fraudulently induce the City to enter into the transaction  
10 that is the subject of this lawsuit.

11 8. Cisterra Development is the name generally used by Steven Black and his series of  
12 affiliate companies, with David Dick and Nicole Cutler (identified as Controller) executing  
13 documents for Cisterra. Jason Wood is an employee and agent of the Cisterra companies and  
14 made representations on behalf of Cisterra to the City of San Diego.

15 9. Cisterra Development operates under the names including Cisterra Development,  
16 LLC (cancelled three months after the subject lease agreement); Cisterra Partners, LLC, a  
17 California limited liability company, identifies its business as Real Estate  
18 Development/Management; Cisterra Investors, LLC, a Delaware limited liability company  
19 operating in California identifying its business as Investment; Cisterra Development-Gov, LLC, a  
20 California corporation formed October 4, 2016 (just before the proposed lease was considered by  
21 the San Diego City Council), canceled July 20, 2020 – the same time as a Preliminary Report on  
22 101 Ash Street was released.

23 10. Defendant 101 Ash, LLC was formed as a Delaware limited liability company on  
24 September 8, 2016, and registered in California as a foreign limited liability company on  
25 December 1, 2016. 101 Ash, LLC, a business owned by Defendant Cisterra and which Steven  
26 Lyle Black is its Manager and member. Defendant 101 Ash, LLC does business in the State of  
27 California, County of San Diego and is the current owner of the building located at 101 Ash  
28

1 Street, San Diego CA 92101. David Dick is its authorized agent and Nicole Cutler of Cisterra  
2 Development is its controller.

3 11. 101 Ash Member Partners, LLC is a California limited liability company first  
4 registered on December 13, 2016, identifying its business as Real Estate Investment, and is an  
5 affiliate of 101 Ash, LLC formed for effectuating the lease to own transaction with the City.

6 12. The business and mailing address for each Cisterra entity set forth above,  
7 including the 101 Ash Street entities, is 3580 Carmel Mountain Road, Suite 460, San Diego,  
8 California 92130. Steven Black is identified as a manager or other authorized agent of each  
9 entity; David Dick is identified as an agent and organizer, and Nicole Cutler is identified as an  
10 agent and/or Controller.

11 13. Defendant Shapery Developers Gas & Electric Property, L.P. (Shapery Developers  
12 LP) was organized as a California limited partnership on October 28, 1993. Shapery Developers  
13 Gas & Electric Corp. (Shapery Developers Corp.) was at all material times the general partner of  
14 Shapery Developers LP, doing business in the State of California, County of San Diego. Shapery  
15 Developers LP, owned the property located at 101 Ash Street. On January 3, 2017, Defendants  
16 Shapery Developers LP and Gas & Electric Headquarters Building – San Diego, L.P. (Gas &  
17 Electric LP) transferred title of 101 Ash Street property to Defendant Cisterra through its  
18 company 101 Ash, LLC. The same day, Defendant Cisterra -- through its company Defendant  
19 101 Ash, LLC -- entered into a twenty-year lease with the City for the building located at 101 Ash  
20 Street, San Diego CA 92101. Then on June 8, 2017, Shapery Developers LP, through its sole  
21 general partner Shapery Developers Corp. and its President Sandor W. Shapery, filed a statement  
22 of cancellation.

23 14. Defendant Shapery Developers Gas & Electric Corp. (Shapery Developers Corp.)  
24 is a California corporation incorporated on October 27, 1993. Sandor W. Shapery is President and  
25 Chief Executive Officer. Shapery Developers Corp. at all material times was the general partner  
26 of Shapery Developers Limited Partnership.

27 15. Defendant Gas & Electric Headquarters Building – San Diego, L.P. (Gas &  
28 Electric LP) was organized as a California limited partnership on November 3, 1986 under its

1 prior name, Shapery Center Developers, Ltd.. The sole general partner of Gas & Electric LP is  
2 Shapery Developers Gas & Electric Corp. (Shapery Developers Corp.). Defendant Gas & Electric  
3 LP does business in the State of California, County of San Diego, and owned the property located  
4 at 101 Ash Street. On January 3, 2017, Gas & Electric LP and Shapery Developers LP  
5 transferred title to Defendant Cisterra through its company 101 Ash, LLC. The same day,  
6 Defendant Cisterra through its company 101 Ash, LLC, entered into a twenty-year lease-purchase  
7 with the City for the building located at 101 Ash Street, San Diego CA 92101.

8 16. Defendant City of San Diego, a municipal corporation of the State of California, is  
9 required to comply with the applicable provisions of the laws of its Charter and the Constitution  
10 of the State of California. The City of San Diego is named as a necessary defendant for purposes  
11 of the relief sought.

12 17. Defendant Rolando Charvel is sued in his official capacity as the Chief Financial  
13 Officer of the City of San Diego and as a necessary defendant for purposes of the relief sought.  
14 Defendant Charvel is in charge of debt management and responsible for expending public funds  
15 for rent, operating expenses, and anything else required under the City's lease-to-own agreement  
16 for the building located at 101 Ash Street, San Diego CA 92101. Specifically, Defendant Charvel  
17 has been authorized to transfer public funds from the Real Estate Assets Operating Department  
18 Budget to the Citywide Program Expenditures Department and expend those funds for rent,  
19 operating expenses, improvements, and other requirements under the City-leasehold. Defendant  
20 Charvel is also authorized to establish a restricted Capital Improvement Program "CIP" fund for  
21 capital improvements relating specifically to 101 Ash Street, San Diego CA 92101.

22 18. DOE DEFENDANTS 1-20, acting together on behalf of the non-City Defendants,  
23 participated in the scheme to provide false information to City representatives in order to induce  
24 the City to enter into the lease-to-own agreement in violation of the debt limit laws within the  
25 California Constitution and the City charter.

26 19. DOE DEFENDANTS 1-30 possessed an interest in the non-City Defendants and  
27 used their power to obtain funds from the City to ultimately benefit them. Veil piercing is proper  
28 here where the ends of justice require disregarding the separate nature of the partnership and/or

1 corporate entities, especially where Shapery Developers LP and certain Cisterra entities filed for  
2 dissolution after the City was induced by fraud to enter into the transactions at issue herein.

3 20. DOE DEFENDANTS 31-50 are charged with responsibilities concerning the City  
4 of San Diego 101 Ash Street lease and payments for the City of San Diego and are sued as parties  
5 necessary to the requested relief.

6 21. Plaintiff is informed and believes, and thereupon alleges, that at all times relevant  
7 and mentioned herein, Defendants and DOES 1 through 100, inclusive, and each of them, were  
8 the agents, servants, employees, independent contractors, co-conspirators, retailers, distributors,  
9 wholesalers, management companies, subsidiaries and/or joint ventures of the remaining  
10 Defendants, and each of them, and were at all times material hereto acting within the authorized  
11 course, scope and purpose of said agency and employment, and/or that all of said acts were  
12 subsequently performed with the knowledge, acquiescence, ratification and consent of the  
13 respective principals, and the benefits thereof accepted by said principals.

14 22. The true names and/or capacities, whether individual, corporate, governmental,  
15 associate, or otherwise, of Defendant DOES 1 through 100, inclusive, and each of them, are  
16 unknown to Plaintiff, who therefore sue said Defendants by such fictitious names. Plaintiff is  
17 informed and believes, and thereon alleges, that each Defendant fictitiously named herein as a  
18 DOE is legally responsible as alleged herein, for the events and damages hereinafter referred to,  
19 and which legally caused the injuries and damages to Plaintiff as hereinafter alleged. Plaintiff will  
20 seek leave of Court to amend this Complaint to insert the true names and/or capacities of such  
21 fictitiously named Defendants when the same have been ascertained.

## 22 **GENERAL ALLEGATIONS**

23 23. This taxpayer action is brought because San Diego City officials have failed to  
24 vindicate the rights of Plaintiff and other San Diego taxpayers to stop the waste of funds and to  
25 recover funds already wasted relating to the 101 Ash Street building.

26 24. Sempra Energy is a utility holding company; its principal asset is San Diego Gas  
27 & Electric (SDG&E). Sempra and SDG&E operated out of the Ash Street Building from 1968  
28

1 through 2015 when both companies moved to a new high-rise building at 488 Eighth Ave in East  
2 Village San Diego. Sempra headquarters buildings are shown here:



6 Old Ash Street  
7 Sempra Building



8 New East Village  
9 Sempra Building

10 25. The old Sempra building on Ash Street has 21 stories and is 315,545 square feet.  
11 The new Sempra building on 8th Ave has 16 stories and is 393,322 square feet.

12 26. The new Sempra building in East Village cost \$165 million and has been leased to  
13 Sempra for 25 years. The old Sempra building (Ash Street Building) cost the City of San Diego  
14 \$127.8 million in a 20- year lease-to-own agreement.

15 27. On January 23, 2013, San Diego Union Tribune’s Roger Showley reported  
16 Sempra was thinking of building a new downtown office tower.<sup>1</sup>

17 28. On March 7, 2013, San Diego real estate firm Dannecker & Associates reported  
18 the building Sempra was planning to move into was a 16-story building in the East Village  
19 neighborhood of downtown San Diego that Cisterra Development was planning to build.<sup>2</sup>

20 29. On May 1, 2013, Roger Showley reported Sempra was considering moving out of  
21 the Ash Street Building and that Sempra “may be leaning toward moving out of its headquarters  
22 to a new building downtown.” Showley reported Sandor Shapery, Sempra’s landlord for the Ash  
23 Street Building, “said he’d offer the building to the city for its office needs, currently located in  
24 several buildings downtown.” Reporter Showley quoted Shapery: “I think it would make a  
25 wonderful city hall.”<sup>3</sup>

26 <sup>1</sup> Roger Showley, *Sempra moving into new offices?*, SAN DIEGO UNION-TRIBUNE (Jan. 23, 2013),  
27 <https://www.sandiegouniontribune.com/business/growth-development/sdut-sempra-office-new-construction-renew-lease-2013jan23-htmlstory.html>.

28 <sup>2</sup> Dannecker & Associates, *New Sempra Energy Building East Village*, (Mar. 7, 2013),  
<http://www.welcometosandiego.com/2013/03/new-sempra-energy-building-east-village/>.

<sup>3</sup> Roger Showley & Jason Hughes, *Sempra Favorable to Moving*, HUGHES MARINO (May 1, 2013),  
<https://hughesmarino.com/new-york/blog/2013/05/01/sempra-favorable-to-moving/>.

1           30.     On August 28, 2013, San Diego Union Tribune’s Roger Showley reported Sempra  
2 had committed “to moving to a new 16-story headquarters in two years in downtown's East  
3 Village.” Showley reported “Sempra signed a 25-year lease with Cisterra Development for the  
4 entire 300,000-square-foot building.”<sup>4</sup>

5           31.     On January 3, 2017, Shapery through his companies, Shapery Developers LP and  
6 Gas & Electric LP, transferred the property to 101 Ash, LLC, a company of Cisterra  
7 Development. Also, on January 3, 2017, Cisterra Development through its company 101 Ash  
8 LLC, conveyed a lease in the Ash Street property to the City of San Diego.

9           32.     The two-step transaction used to transfer the property from Shapery Developers to  
10 the City of San Diego is shown here:



11  
12  
13  
14           33.     Shapery and Cisterra formed a joint venture for the purpose of moving the old 101  
15 Ash Street tenant (Sempra) into new headquarters while securing a new buyer or tenant (City of  
16 San Diego) for the Ash Street Building. The joint venture was formed for the purpose of inducing  
17 the City of San Diego to enter into the lease-to-own agreement for Shapery and Cisterra’s profit  
18 and so as to offload the building onto the City.

19           34.     Six months prior to the property transference of January 2017, City of San Diego  
20 Director of Real Estate Assets, Cybele Thompson, signed a letter on July 21, 2016, expressing the  
21 mutual intention of and agreement between Cisterra Development and the City of San Diego with  
22 respect to the pending purchase by Cisterra, and the possible purchase agreement assignment or  
23 lease-to-own option by the City for the Ash Street Building. This letter also states Cisterra was  
24 unable to recover their escrow deposits and were not able to “recover the various due diligence  
25 and transactional costs we incurred investigating the Property and putting the transaction together,  
26

27 \_\_\_\_\_  
28 <sup>4</sup> Roger Showley, *Sempra getting new HQ in 2015*, SAN DIEGO UNION-TRIBUNE (Aug. 28, 2013),  
<https://www.sandiegouniontribune.com/business/growth-development/sdut-sempra-cisterra-east-village-office-2013aug28-htmlstory.html>.

1 such as fees paid to consultants and other professionals.” Cisterra provided the City with three  
2 options:

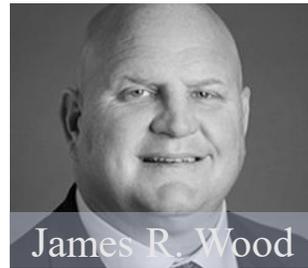
- 3 a. **Option 1** – City would have the right to take an assignment of Cisterra’s  
4 New Purchase Agreement. The City would also have to pay Cisterra’s initial  
5 unrecovered expenses (\$11,270), option payment (\$100,000 upon execution  
6 of the contract and \$100,000 per month until closing) and additional  
7 expenses (\$39,000)
- 8 b. **Option 2** – City would have the right to enter into a 20-year lease of the  
9 entire Ash Street Building. This option had flat rental rates and a \$5 million  
10 tenant improvement allowance, ownership by the City at the end of the  
11 lease, and similar terms and conditions as the Civic Center Plaza lease. The  
12 rent will be determined based on interest rates and spreads once the City  
13 selects this option and the interest rates could be locked. If the City selected  
14 the option the day of the letter, the rent would total approximately  
15 \$126,070,000 over the 20-year term.
- 16 c.
- 17 d. **Option 3** – City could terminate the transaction at any time and  
18 concurrently reimburse Cisterra for all Unrecovered Expenses, Options  
19 Payments and Additional Expenses.

20 35. City Council members considered the Shapery-Cisterra proposal to acquire the old  
21 Ash Street Building by a 20-year lease to own agreement in a committee meeting September 21,  
22 2016, and a City Council meeting on October 17, 2016. In the committee and council meetings,  
23 City Staff conveyed the information they obtained from Shapery and Cisterra to support the  
24 Council decision to decide in favor of the City acquiring the Ash Street building by way of the  
25 20-year lease-to-own agreement. The Committee and Council relied on the information Shapery  
26 and Cisterra provided to City staff.

27 36. At the time Cisterra was inducing the City of San Diego with its representations,  
28 the entity that would later consummate the deal, Cisterra’s 101 Ash, LLC, had not yet been  
formed. The City Council meeting took place on October 17, 2016, whereas filings before the  
California Secretary of State relating to 101 Ash, LLC were not filed until December 1, 2016 –  
after the Shapery-Cisterra-City of San Diego agreement to lease-to-own.

37. The information provided by Shapery and Cisterra representatives was recorded in  
San Diego City Staff Report 16-070-Revised. Sandor Shapery of Shapery Developers and James  
R. Wood of Cisterra provided information to the City of San Diego to induce City officials to

1 enter into the 20-year lease to own agreement Cisterra. Mr. Shapery and Mr. Wood are shown  
2 here:



7  
8 38. Mr. Shapery and Mr. Wood provided the following information to induce the San  
9 Diego City Council to authorize the Mayor to execute a 20-year lease-to-own agreement (Lease)  
10 between the City of San Diego and 101 Ash, LLC, one of the entities defendants Cisterra and  
11 Shapery used to convey the Ash Street Building to the City of San Diego.

12 39. Defendants Shapery and Cisterra successfully convinced San Diego City staff that  
13 under the 20-year lease to own transaction, the transaction would save the City \$44 million.  
14 Defendants Shapery and Cisterra also convinced City Staff to proceed with the 20-year lease-to-  
15 own agreement with a March 2016 Condition Report that represented the Ash Street Building  
16 “was observed to be in good condition” and had a “remaining useful life of at least an additional  
17 40 years barring any natural disasters.” The report’s “only recommendation for immediate repair  
18 was an amount of \$10,000 to clean, caulk and pressure wash the exterior.”

19 40. Cisterra and Shapery Defendants commissioned a report and provided information  
20 to the City of San Diego representing it was truthful and with the intent it be relied upon by the  
21 City. It was relied upon by the City; the facts represented were false.

22 41. Shapery and Cisterra Defendants knew the City needed space for its Development  
23 Services Department, amongst other staff and City services, because the City’s property known as  
24 “COB” had become insufficient. The defendants knew the City needed to move employees into  
25 the Ash Street Building within months of closing on the transaction.

26 42. Cisterra had a relationship with the City of San Diego based on a then-recent  
27 lease-to-own agreement relating to the Civic Center Plaza. Cisterra used this affinity to induce the  
28

1 City of San Diego to proceed with a lease-to-own agreement to get around the California debt  
2 limit laws imposed upon municipalities in California Constitution Art. XVI, Sec. 18.

3 43. In reliance on the foregoing statements, the City of San Diego spent \$4,183,448.50  
4 in Fiscal Year 2017 in connection with the lease-to-own agreement between the City of San  
5 Diego and 101 Ash, LLC. In addition, the City in reliance on the foregoing statements spent  
6 \$2,673,633 for operating expenses and \$1,509,816 for rent. The City spent in reliance on the  
7 foregoing statements significant additional sums for necessary remedial work to the Ash Street  
8 Building in an attempt, albeit unsuccessful to date, to make it safe for human occupancy and City  
9 staff.

10 44. Defendants' misrepresentations were fraudulent as the condition of the Ash Street  
11 Building was in such a state of disrepair the City could not use or occupy the building at the time  
12 of the execution of the lease-to-own agreement. Defendants Shapery and Cisterra provided nearly  
13 all the documents the City relied on to enter into the lease-to-own agreement for the Ash Street  
14 Building. Defendants' documents and statements failed to represent that the Ash Street Building  
15 was in need of major repair including a significant amount of asbestos abatement and major  
16 repairs to the building's electrical, plumbing, lighting, HVAC and ceiling systems.

17 45. Defendants' misrepresentations were also contrary to written testimony provided  
18 to the California Public Utilities Commission by James C. Seifert, Manager of Corporate Real  
19 Estate, Land Services and Facilities for former tenant Sempra's SDG&E, where he admitted the  
20 building would need "a minimum of \$3 million of building infrastructure capital repairs that  
21 would be required to keep the building operational." Seifert also admitted the building would  
22 "potentially need \$12 to \$15 million in unspecified repairs." Significantly, Seifert admitted in his  
23 written testimony: "to remove the existing asbestos and rebuild the impacted space was estimated  
24 to cost \$16 to \$25 million."

25 46. Due to the extensive amount of remedial work and major repairs actually required  
26 to make the Ash Street Building safe for human occupancy and operational for City workers and  
27 the public, the City has not been able to use or occupy the Ash Street Building for over three and  
28 a half years since its lease was effective in January 2017. The City has and continues to lease the

1 building that cannot be used or occupied at an unabated rent price of \$534,726.50 per month.  
2 Over the 42 months since the lease was executed, the City has expended more than \$20 million  
3 solely for rental costs of a building the City cannot use or occupy, and will not be able to use or  
4 occupy the property in the foreseeable future. This amount does not include the millions of  
5 dollars of City funds spent and wasted in a futile attempt to remediate and repair.

6 47. Based on and because of the above misleading statements of Shapery and  
7 Cisterra's agents, City decisionmakers formed a conception of the facts that was materially  
8 mistaken. City decisionmakers believed the Sempra building could house City work force  
9 members starting in January 2019. City decisionmakers so developed another mistaken belief the  
10 lease payments under the lease purchase agreement represented the fair rental value for use of the  
11 Ash Street building, when in fact, the lease payments far exceeded the fair market value of the  
12 Ash Street building, which the City has not been able to occupy to date.

13 48. From at least August to December 2019, the County of San Diego's Air Pollution  
14 Control District identified ongoing problems with the Building's abatement of asbestos.

15 49. In January 2020, the City attempted to use and occupy the Ash Street Building and  
16 started transitioning City workers and operations to the Ash Street Building.

17 50. On January 16, 2020, the County Air Pollution Control District issued a Public  
18 Nuisance Violation for asbestos found in an area accessible to City employees. The County Air  
19 Pollution Control District stated the building should be shut down because the building was  
20 unsafe for human occupancy.

21 51. To date, the City has been unable to use or occupy the Ash Street Building because  
22 it is still unsafe for human occupancy and has cost the City millions of dollars in remedial work.

### 23 **FIRST CAUSE OF ACTION**

#### 24 **Fraudulent Misrepresentation** 25 **(Against All Non-City Defendants and DOE Defendants)**

26 52. Plaintiff realleges each allegation above as though set forth herein.

27 53. The statements defendants Shapery and Cisterra made to the City Staff were false.  
28 The Shapery and Cisterra defendants knew their representations to the City Staff were false.





1 public funds regarding 101 Ash Street. Plaintiff also seeks damages.

2 68. As detailed above, the City-leasehold for the building at 101 Ash Street was a  
3 result of fraud and negligent misrepresentation and is a waste of public funds because it is a  
4 dilapidated building unsafe for human occupancy and does not provide any kind of benefit or use  
5 for the City of San Diego or public.

6 69. The building located at 101 Ash Street Building does not have any public benefit  
7 nor useful purpose because it cannot be used for its intended purposes—providing City services  
8 to the public. Since the building is unsafe for human occupancy, and the extensive of amount of  
9 remedial work required to make the building safe, the public will not be able to use the building  
10 in the foreseeable future.

11 70. The leasehold for the building located at 101 Ash Street has resulted in an  
12 unnecessary duplication of City-leased buildings and serves no useful purpose.

13 71. The leasehold for the building located at 101 Ash Street has and will cost a great  
14 deal more than alternative plans considered, without any finding of an additional public benefit.

15 72. As a result of Shapery and Cisterra Defendants' fraudulent and negligent  
16 misrepresentations regarding leasing the building located at 101 Ash Street, the City now has  
17 immediate and present indebtedness that exceeds the fair market value of the property and will  
18 exceed the City's yearly income and revenue. If required to remedy the damages caused as a  
19 result of Defendants' fraud and negligent misrepresentations, future fiscal years will be  
20 responsible for paying indebtedness in violation of Cal. Art. XVI, Sec. 18.

21 73. The lease obligations are immediate and present because Defendant Rolando  
22 Charvel, as the City's Chief Financial Officer, is authorized to expend all funds for rent, operating  
23 expenses required by the City-leasehold. Defendant Charvel is also authorized to transfer public  
24 funds from the Real Estate Assets Operating Department Budget to the Citywide Program  
25 Expenditures Department and expend those funds for rent, operating expenses, improvements,  
26 and other requirements under the City-leasehold. Defendant Charvel is also authorized to  
27 establish a restricted Capital Improvement Project "CIP" fund for capital improvements relating  
28 specifically to 101 Ash Street, San Diego CA 92101.

