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Elliott Sues to Void Building Deals and Recoup City Money

City Attorney cites secret payments that trigger California anti-corruption law

City Attorney Mara W. Elliott today took legal action to void the City's lease-to-own agreements for the 101 Ash Street and Civic Center Plaza buildings and recoup more than \$44 million from the sellers.

Elliott cited evidence that commercial real estate broker Jason Hughes, a principal of Hughes Marino, Inc., who was acting as then-Mayor Kevin Faulconer's "special volunteer for real estate services," violated California anti-corruption laws by negotiating the two deals on behalf of the City and then receiving \$9.4 million in unreported compensation from the seller.

The lawsuits seek monetary and punitive damages from Hughes, who failed to disclose to the City Council that he was secretly paid by other parties for his work. At all times, Hughes publicly held himself to be providing free representation to the City out of a sense of civic duty. The City did not become aware of the secret payments until Elliott began to subpoena documents as part of discovery in litigation over the 101 Ash Street deal.

The lawsuits also seek a judicial declaration that the contracts are void and the City is entitled to reimbursement of \$24 million paid in rent for 101 Ash Street and \$20 million paid in rent for Civic Center Plaza.

California Government Code section 1090 is an anti-corruption law that strictly prohibits public officials from participating in making contracts in which they have a financial interest. It also prohibits private parties from providing compensation to public officials that would create a financial interest. The penalty for violating section 1090 is that the contract is null and void and all monies must be returned. By law, Hughes was a public official even though he performed his role for the City as a "special volunteer."

The allegations concerning the 101 Ash Street building are contained in the First Amended Complaint to the City's lawsuit against Hughes, Cisterra Partners LLC, 101 Ash Street LLC, and others involved in the 2016 transaction, which was originally filed on October 9, 2020. The lawsuit is amended to add new causes of action, including: Violation of Government Code section 1090 (against Hughes); Fraud-Intentional Misrepresentation (against Hughes); Breach of Fiduciary Duty (against Hughes); and Fraud – Concealment (against Cisterra, 101 Ash LLC, and Hughes).

"It's now clear why the 101 Ash Street deal has been shrouded in secrecy: at its heart is a massive betrayal of the public trust and a clear violation of California's anti-corruption laws," City Attorney Mara W. Elliott said. **"Questions still remain about who else knew of the secret payment to Jason Hughes and what other laws may have been broken. We will continue to dig for answers and to use every tool we can to return taxpayer funds to the city treasury."**

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“When I was elected Mayor, I vowed to get to the bottom of the 101 Ash Street fiasco. After months of looking into this transaction with the City Attorney, we believe we have found wrongdoing,” Mayor Todd Gloria said. **“From the beginning, the public and the members of the then-City Council, including myself, were deceived. We are seeking justice to void this transaction, hold those bad actors accountable, and recoup taxpayer dollars.”**

In 2013, the City engaged Hughes as a Special Volunteer for Real Estate Services under then-Mayor Bob Filner. He was retained in that role after Mayor Kevin Faulconer took office in 2014, and he participated on behalf of the City in making leases for spaces at four locations, including Civic Center Plaza and 101 Ash Street.

The 101 Ash Street lawsuit contains a number of allegations against Hughes over his role in the deal. They include:

- At all times, Hughes publicly held himself to be providing volunteer pro bono representation and confirmed in writing that neither he nor his company, Hughes Marino, Inc., were taking commissions for their services on behalf of the City.
- In 2014, Hughes engaged in one-on-one negotiations with Sandor Shapery and Douglas Manchester, who then owned the 101 Ash Street building, identifying himself to them in written correspondence as the “exclusive representative for the City of San Diego.” He made recommendations to the City on potential lease terms, responded to counter-offers, and participated in walk-throughs of the building on the City’s behalf.
- When protracted negotiations did not result in an agreement, Hughes commenced negotiations with Cisterra regarding a lease-to-own agreement the City would enter into if Cisterra acquired the building from Shapery and Manchester. Key communications between Cisterra and the City occurred through Hughes.
- The terms of the lease were recommended, negotiated, and affirmed by Hughes on behalf of the City and in his official capacity with the City.
- Hughes assisted in preparing the materials that the Faulconer administration presented to the City Council when it approved the transaction on October 17, 2016. Hughes attended the meeting, presumably on behalf of the City.
- Through litigation the City learned that Hughes received a payment of \$4.4 million that was not reflected on any public document, was not disclosed to the City Council, and was not disclosed by Hughes on a Form 700, which provides the public with information about the discloser’s financial interests to ensure public decisions are made in the best interest of the public and not enhancing personal finances or triggering conflicts of interest.
- Hughes made false representations that he was not being compensated for his work on 101 Ash Street transactions, publicly touting that he was a volunteer assistant to the City acting out of a sense of public duty, while having a prohibited financial interest in the contract he advised the City to enter into.

- Hughes's conflict of interest prohibited the City from receiving impartial advice regarding alternative locations and better leasing terms. Had the City Council known about the payment to Hughes it reasonably would have behaved differently.

In addition, the lawsuit seeks damages for negligence by defendants West Coast General Corporation and Argus Contracting LP related to their failure to exercise due care with work they performed at the 101 Ash Street building, resulting in significant asbestos contamination that has rendered the building inoperable for the City's intended purpose.

In the related action authorized by the City Council this morning, the City is seeking to have the court void the lease-to-own agreement under which it occupies Civic Center Plaza at 1200 Third Avenue, a contract that Hughes also negotiated with Cisterra on behalf of the City in his capacity as an adviser to Mayor Faulconer. The City has discovered that, as a result of the CCP transactions, Hughes received \$5 million that was not disclosed to the City Council or the public. While the City has occupied CCP without incident, state anti-corruptions laws require the 2015 transaction be voided and all monies returned to the City. The City seeks the return of more than \$20 million in rent paid to the entity Wilmington Trust, National Association, as well as monetary and punitive damages from Hughes.

The lawsuits were filed on behalf of the City of San Diego by Chief Deputy City Attorney M. Travis Phelps and by outside counsel Dick Semerdjian and John A. Schena, partners with the San Diego law firm of Schwartz Semerdjian Cauley & Evans LLP.

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