

1 APPROVAL OF THE CITY OF SAN DIEGO, A)
PURCHASE AND SALE AGREEMENT (PSA))
2 BY AND AMONG THE CITY OF SAN DIEGO)
(CITY), FIFTH AVENUE LANDING (FAL) AND)
3 THE SAN DIEGO UNIFIED PORT DISTRICT)
(DISTRICT) FOR: (1) THE DISTRICT TO)
4 PURCHASE FROM FAL ITS INTEREST IN THE)
PROPERTY LOCATED AT FIFTH AVENUE)
5 LANDING AND MARINA PARK WAY (SITE))
FOR UP TO \$33.2 MILLION, SUBJECT TO)
6 TITLE CONDITIONS AND RECEIPT OF THE)
CITY’S PAYMENTS TO THE DISTRICT; THE)
7 CITY TO PURCHASE FROM THE DISTRICT)
LEASEHOLD INTEREST AND AN OPTION IN)
8 THE SITE FOR \$28.2 MILLION IN)
ANTICIPATION OF THE SAN DIEGO)
9 CONVENTION CENTER PHASE III)
EXPANSION SUBJECT TO THE PASSAGE OF)
10 THE “FOR A BETTER SAN DIEGO” CITIZEN’S)
BALLOT MEASURE, (COLLECTIVELY,)
11 ALTERNATIVE A CLOSING), OR (2) IF THE)
ALTERNATIVE A CLOSING DOES NOT)
12 OCCUR, FOR THE DISTRICT TO ENTER INTO)
LEASE AMENDMENTS AND AGREEMENTS)
13 WITH FAL, SUBJECT TO CERTAIN TITLE)
CONDITIONS (COLLECTIVELY,)
14 ALTERNATIVE B CLOSING); AND (iv))
RELATED ACTIONS,)
15)
Defendants.)
16

17
18 Plaintiff SAN DIEGO WATERFRONT COALITION alleges as follows in this Second
19 Amended Complaint for Declaratory and Injunctive Relief:

20 **Parties**

21 1. Plaintiff is a non-profit, public-benefit organization formed and operating under the laws
22 of the State of California. At least one of Plaintiff’s members (i) resides and pays taxes in or near the
23 City of San Diego, California; (ii) has an interest in protecting the region’s air quality, minimizing and
24 ameliorating traffic, ensuring informed and responsible growth, and promoting other environment-
25 related quality-of-life issues, including those issues involving San Diego Bay and its waterfront; and
26 (iii) has an interest in, among other things, ensuring open, transparent, and accountable government
27 decision-making, protecting the region’s environment, and avoiding government waste in pursuit of
28 those goals.

1 ANY RELATED CLAIMS BETWEEN THE CITY AND FAL, AND APPROVING CERTAIN
2 RELATED ACTIONS.”

3 C. PORT passed a “RESOLUTION APPROVING, SUBJECT TO APPROVAL OF
4 THE CITY OF SAN DIEGO, A PURCHASE AND SALE AGREEMENT (PSA) BY AND AMONG
5 THE CITY OF SAN DIEGO (CITY), FIFTH AVENUE LANDING (FAL) AND THE SAN DIEGO
6 UNIFIED PORT DISTRICT (DISTRICT) FOR: (1) THE DISTRICT TO PURCHASE FROM FAL
7 ITS INTEREST IN THE PROPERTY LOCATED AT FIFTH AVENUE LANDING AND MARINA
8 PARK WAY (SITE) FOR UP TO \$33.2 MILLION, SUBJECT TO TITLE CONDITIONS AND
9 RECEIPT OF THE CITY’S PAYMENTS TO THE DISTRICT; THE CITY TO PURCHASE FROM
10 THE DISTRICT LEASEHOLD INTEREST AND AN OPTION IN THE SITE FOR \$28.2 MILLION
11 IN ANTICIPATION OF THE SAN DIEGO CONVENTION CENTER PHASE III EXPANSION
12 SUBJECT TO THE PASSAGE OF THE “FOR A BETTER SAN DIEGO” CITIZEN’S BALLOT
13 MEASURE, (COLLECTIVELY, ALTERNATIVE A CLOSING), OR (2) IF THE ALTERNATIVE
14 A CLOSING DOES NOT OCCUR, FOR THE DISTRICT TO ENTER INTO LEASE
15 AMENDMENTS AND AGREEMENTS WITH FAL, SUBJECT TO CERTAIN TITLE CONDITIONS
16 (COLLECTIVELY, ALTERNATIVE B CLOSING).”

17 7. Resolution no. R-311809 and Resolution no. R-311810 are collectively identified in this
18 pleading as “CITY Resolutions.”

19 **Jurisdiction, Venue, and Exhaustion of Administrative Remedies**

20 8. Plaintiff is bringing this action and seeks review by and relief from this Court under
21 Code of Civil Procedure Sections 526a, 860 *et seq.*, 1060 *et seq.*, and 1084 *et seq.* However, Plaintiff
22 does not have sufficient information at this time to allege that this lawsuit should be prosecuted as a
23 reverse-validation lawsuit under Section 860 and is doing so solely in an abundance of caution.¹

24 _____

25 ¹ No matter how any portion of this pleading’s allegations or prayer is construed, in no way does
26 Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1)
27 Plaintiff does not seek any relief greater than or different from the relief sought for the general public
28 or for a class of which Plaintiff’s members residing within CITY’s and/or the State of California’s
geographical jurisdiction are themselves members. (2) This lawsuit seeks to enforce at least one
important right affecting the public interest and to confer at least one significant benefit, whether
pecuniary or non-pecuniary, on the general public or a large class of persons. (3) Private enforcement
is necessary and places a disproportionate financial burden on Plaintiff in relation to its stake in the
matter. The causes of action alleged in this pleading are examples and are not intended to set forth

1 legally valid, the initiative would provide CITY with a substantial portion of the funding needed to
2 satisfy CITY's financial obligations under the written agreements.

3 B. The initiative contemplates an expansion of the San Diego Convention Center
4 in a location that has not yet been subject to environmental review under the California Environmental
5 Quality Act.

6 C. CITY and SDCCC's collective liability to FAL in the lawsuit is substantially less
7 than CITY and/or SDCCC will pay to FAL under the written agreements.

8 14. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
9 comply with all applicable laws. By way of example and not limitation (including alternative theories
10 of liability):

11 A. The CITY Resolutions and/or the PORT Resolution violate(s) Section 6 of
12 Article 16 of the California Constitution, ~~Section 93 of the San Diego City Charter, and/or Government~~
13 ~~Code Section 8314~~. For example:

14 1. The \$5 million (or more) to be paid by CITY is purportedly consideration
15 for the dismissal of FAL's lawsuit against CITY and SDCCC and for CITY's right to exercise an option
16 over FAL's leasehold interest in certain tidelands within PORT's jurisdiction.

17 2. Neither CITY nor SDCCC has any liability whatsoever to FAL as alleged
18 in FAL's lawsuit against them. Any suggestion that the money to be paid by CITY to FAL is
19 consideration given to FAL for its dismissal of the lawsuit is illusory, collusive, and fraudulent because
20 CITY and SDCCC know that they have no liability to FAL. The parties to the contracts contemplated
21 by the Resolutions, with the active participation and assistance of SDCCC, have conspired and colluded
22 to fabricate a phony claim by FAL against CITY that would be pursued in litigation in order to provide
23 a pretext for paying money to FAL, to rationalize the expenditure of public funds that could not
24 otherwise be lawfully authorized.

25 3. The value of the option rights over FAL's leasehold interest acquired by
26 CITY pursuant to the Resolutions is substantially less than \$5 million. FAL's leasehold interest expires
27 on June 30, 2024, at which point it automatically converts to a month-to-month lease, and the lease
28 agreement expressly provides that PORT has no obligation to give any approvals for any redevelopment

1 before or after the expiration date. CITY failed to obtain an objective appraisal of the leasehold’s value
2 through June 30, 2024, in its current condition (*i.e.*, without assuming redevelopment of the leased
3 premises).

4 4. Pursuant to one or more of the contracts contemplated by the Resolutions,
5 public money will be spent by CITY, PORT, and/or SDCCC, under the pretext of a “settlement” or
6 “option” payment to FAL, to influence the outcome of a ballot measure over the expansion of the San
7 Diego Convention Center. In the absence of FAL’s commitment not to oppose such a ballot measure
8 and disbanding of its political action committee to defeat the measure, CITY, PORT, SDCCC, and/or
9 and the other proponents of the ballot measure would have to expend additional monies to counter the
10 opposition funded by FAL. FAL’s political silence is being purchased through the Resolutions.

11 15. There is a good-faith dispute between Plaintiff, on the one hand, and Defendants, on the
12 other hand, as to whether the preceding allegations in this cause of action are true. Plaintiff contends
13 that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that
14 Defendants contend that none of them is true. The parties therefore require a judicial determination of
15 the issue.

16 **SECOND CAUSE OF ACTION:**
17 ***Resolutions’ Non-Compliance with San Diego City Charter Section 93***
18 ***(Against All Defendants)***

19 16. The preceding paragraphs are incorporated into this paragraph by reference.

20 17. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
21 comply with all applicable laws. By way of example and not limitation (including alternative theories
22 of liability):

23 A. The CITY Resolutions and/or the PORT Resolution violate(s) ~~Section 6 of~~
24 ~~Article 16 of the California Constitution; Section 93 of the San Diego City Charter; and/or Government~~
25 ~~Code Section 8314.~~ For example:

26 1. The \$5 million (or more) to be paid by CITY is purportedly consideration
27 for the dismissal of FAL’s lawsuit against CITY and SDCCC and for CITY’s right to exercise an option
28 over FAL’s leasehold interest in certain tidelands within PORT’s jurisdiction.

1 **(Against All Defendants)**

2 19. The preceding paragraphs are incorporated into this paragraph by reference.

3 20. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
4 comply with all applicable laws. By way of example and not limitation (including alternative theories
5 of liability):

6 A. The CITY Resolutions and/or the PORT Resolution violate(s) ~~Section 6 of~~
7 ~~Article 16 of the California Constitution, Section 93 of the San Diego City Charter, and/or Government~~
8 Code Section 8314. For example:

9 1. The \$5 million (or more) to be paid by CITY is purportedly consideration
10 for the dismissal of FAL's lawsuit against CITY and SDCCC and for CITY's right to exercise an option
11 over FAL's leasehold interest in certain tidelands within PORT's jurisdiction.

12 2. Neither CITY nor SDCCC has any liability whatsoever to FAL as alleged
13 in FAL's lawsuit against them. Any suggestion that the money to be paid by CITY to FAL is
14 consideration given to FAL for its dismissal of the lawsuit is illusory, collusive, and fraudulent because
15 CITY and SDCCC know that they have no liability to FAL. The parties to the contracts contemplated
16 by the Resolutions, with the active participation and assistance of SDCCC, have conspired and colluded
17 to fabricate a phony claim by FAL against CITY that would be pursued in litigation in order to provide
18 a pretext for paying money to FAL, to rationalize the expenditure of public funds that could not
19 otherwise be lawfully authorized.

20 3. The value of the option rights over FAL's leasehold interest acquired by
21 CITY pursuant to the Resolutions is substantially less than \$5 million. FAL's leasehold interest expires
22 on June 30, 2024, at which point it automatically converts to a month-to-month lease, and the lease
23 agreement expressly provides that PORT has no obligation to give any approvals for any redevelopment
24 before or after the expiration date. CITY failed to obtain an objective appraisal of the leasehold's value
25 through June 30, 2024, in its current condition (*i.e.*, without assuming redevelopment of the leased
26 premises).

27 4. Pursuant to one or more of the contracts contemplated by the Resolutions,
28 public money will be spent by CITY, PORT, and/or SDCCC, under the pretext of a "settlement" or

1 “option” payment to FAL, to influence the outcome of a ballot measure over the expansion of the San
2 Diego Convention Center. In the absence of FAL’s commitment not to oppose such a ballot measure
3 and disbanding of its political action committee to defeat the measure, CITY, PORT, SDCCC, and/or
4 and the other proponents of the ballot measure would have to expend additional monies to counter the
5 opposition funded by FAL. FAL’s political silence is being purchased through the Resolutions.

6 21. There is a good-faith dispute between Plaintiff, on the one hand, and Defendants, on the
7 other hand, as to whether the preceding allegations in this cause of action are true. Plaintiff contends
8 that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that
9 Defendants contend that none of them is true. The parties therefore require a judicial determination of
10 the issue.

11 **FOURTH CAUSE OF ACTION:**
12 ***Resolutions’ Non-Compliance with San Diego City Charter Section 99***
13 ***(Against All Defendants)***

14 22. The preceding paragraphs are incorporated into this paragraph by reference.

15 23. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
16 comply with all applicable laws. By way of example and not limitation (including alternative theories
17 of liability):

18 A. The CITY Resolutions violate Section 99 of the San Diego City Charter. For
19 example:

20 1. CITY’s financial obligations include the incurring of indebtedness that
21 exceeds its income and revenue for the fiscal year in which the indebtedness is incurred. However,
22 CITY did not obtain voter approval of the indebtedness, did not levy a tax to cover the interest that
23 accrues on the indebtedness, and has not established a sinking fund to cover the principal on the
24 indebtedness.

25 2. CITY’s financial obligations under one or more of the written agreements
26 contemplated by the Resolutions will exceed five years. However, CITY did not approve any of those
27 written agreements by ordinance; they were approved only by resolution.

28 24. There is a good-faith dispute between Plaintiff, on the one hand, and Defendants, on the
other hand, as to whether the preceding allegations in this cause of action are true. Plaintiff contends

1 that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that
2 Defendants contend that none of them is true. The parties therefore require a judicial determination of
3 the issue.

4 **FIFTH CAUSE OF ACTION:**
5 ***Resolutions' Non-Compliance with Government Code Section 1090***
6 ***(Against All Defendants)***

7 25. The preceding paragraphs are incorporated into this paragraph by reference.

8 26. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
9 comply with all applicable laws. By way of example and not limitation (including alternative theories
10 of liability):

11 A. The CITY Resolutions and/or the PORT Resolution violate(s) Government Code
12 Section 1090 ~~and/or the common-law prohibition against conflicts of interest.~~ For example:

13 1. At least one officer or employee of CITY, PORT, and/or SDCCC has a
14 financial interest in one or more of the contracts contemplated by the Resolutions and participated in
15 the making of the contract(s).

16 27. There is a good-faith dispute between Plaintiff, on the one hand, and Defendants, on the
17 other hand, as to whether the preceding allegations in this cause of action are true. Plaintiff contends
18 that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that
19 Defendants contend that none of them is true. The parties therefore require a judicial determination of
20 the issue.

21 **SIXTH CAUSE OF ACTION:**
22 ***Resolutions' Non-Compliance with Common Law's Conflict-of-Interest Prohibition***
23 ***(Against All Defendants)***

24 28. The preceding paragraphs are incorporated into this paragraph by reference.

25 29. Plaintiff is informed and believes and on that basis alleges that the Resolutions do not
26 comply with all applicable laws. By way of example and not limitation (including alternative theories
27 of liability):

28 A. The CITY Resolutions and/or the PORT Resolution violate(s) ~~Government Code~~
~~Section 1090 and/or the common-law prohibition against conflicts of interest.~~ For example:

1 Defendants contend that none of them is true. The parties therefore require a judicial determination of
2 the issue.

3 **Prayer**

4 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against
5 Defendants (and any and all other parties who may oppose Plaintiff in this proceeding) as the Court
6 deems appropriate:

7 A. A judgment determining or declaring that the Resolutions do not comply with all
8 applicable laws in at least some respect, rendering the Resolutions null and void, invalid, or otherwise
9 without legal effect;

10 B. Injunctive relief prohibiting Defendants from taking any of the action contemplated by
11 the Resolutions unless and until Defendants comply with all applicable legal requirements, as
12 determined by the Court;

13 C. Issuance of a writ of mandate requiring CITY and PORT to rescind the Resolutions,
14 unless and until CITY and PORT have fully complied with all other applicable laws as determined by
15 this Court;

16 D. A constructive trust in favor of CITY and/or PORT on all monies paid out under the
17 authority of the Resolutions, and an order directing each recipient thereof jointly and severally to make
18 restitution to CITY and/or PORT for all such monies as determined by the Court;

19 E. All legal fees and other expenses incurred in connection with this proceeding, including
20 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure; and

21 F. Any and all further relief that this Court may deem appropriate.

22 Date: March 5, 2019.

Respectfully submitted,

23 BRIGGS LAW CORPORATION

24 By: Cory J. Briggs
25 Cory J. Briggs

26 Attorneys for Plaintiff San Diego Waterfront Coalition
27
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Second Amended Complaint for Declaratory and Injunctive Relief etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of San Diego Waterfront Coalition

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on March 5, 20 19, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Diane Coombs Type or Print Name

Diane Coombs Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

on in this action by placing the true copies thereof enclosed in scaled envelopes addressed as stated on the attached mailing list: by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL I deposited such envelope in the mail at, California. The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California. (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California. (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG) (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

PROOF OF SERVICE

1. My name is Monica Manriquez. I am over the age of eighteen. I am employed in the State of California, County of San Diego.

2. My business _____ residence address is Briggs Law Corporation, 4891 Pacific Highway, Suite 104, San Diego, CA 92110.

3. On March 8, 2019, I served _____ an original copy a true and correct copy of the following documents: Second Amended Complaint for Declaratory and Injunctive Relief Under Code of Civil Procedure Sections 526a (Taxpayer Waste), 860 ET SEQ. (Reverse Validation), 1060 ET SEQ. (Declaratory Relief), and 1084 ET SEQ. (Mandamus); Petition for Writ of Mandate

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

_____ *by personal service*. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

_____ *by U.S. mail*. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

_____ deposited the envelope/package with the U.S. Postal Service

_____ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of San Diego, California.

_____ *by overnight delivery*. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

_____ *by facsimile transmission*. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

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

Date: March 8, 2019

Signature: 

SERVICE LIST

San Diego Waterfront Coalition v. City of San Diego, et al.
San Diego Superior Court Case No. 37-2018-00031832-CU-MC-CTL

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