1 2 3 4 5 6 7 8 9	BRIGGS LAW CORPORATION [FILE: 1434.19] Cory J. Briggs (State Bar no. 176284) Anthony N. Kim (State Bar no. 283353) 99 East "C" Street, Suite 111 Upland, CA 91786 Telephone: 909-949-7115 Attorneys for Plaintiff San Diego Waterfront Coalition SUPERIOR COURT OF THE S SAN DIEGO COUNTY –	HALL OF JUSTICE
10	SAN DIEGO WATERFRONT COALITION, )	CASE NO. 37-2018-00031832-CU-MC-CTL
11	Plaintiff,	SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
12	VS.	RELIEF UNDER CODE OF CIVIL PROCEDURE SECTIONS 526a
<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> </ol>	AVENUE LANDING, LLC; and ALL PERSONS () INTERESTED IN THE MATTER OF ( <i>i</i> ) A) RESOLUTION OF THE COUNCIL OF THE CITY () OF SAN DIEGO STATING FOR THE RECORD () THAT THE CITY COUNCIL HAS REVIEWED () AND CONSIDERED THE INFORMATION () CONTAINED IN THE ADDENDUM TO THE () FINAL ENVIRONMENTAL IMPACT REPORT () FOR THE SAN DIEGO CONVENTION CENTER () PHASE III EXPANSION AND ADJACENT () EXPANSION HOTEL, AND CONCURS WITH () THE CONCLUSIONS IN THE ADDENDUM; ( <i>ii</i> ) () A RESOLUTION OF THE COUNCIL OF THE () CITY OF SAN DIEGO APPROVING () TRANSACTION DOCUMENTS AMONG THE () CITY OF SAN DIEGO, THE SAN DIEGO () UNIFIED PORT DISTRICT, AND FIFTH () AVENUE LANDING, LLC (FAL), FOR THE () CITY'S ACQUISITION OF A LONG-TERM () LEASEHOLD INTEREST IN TIDELANDS () PROPERTY NEEDED FOR THE SAN DIEGO () CONVENTION CENTER PHASE III () EXPANSION AND THE SETTLEMENT OF ()	<pre>(TAXPAYER WASTE), 860 ET SEQ. (REVERSE VALIDATION), 1060 ET SEQ. (DECLARTORY RELIEF), AND 1084 ET SEQ. (MANDAMUS); PETITION FOR WRIT OF MANDATE Action Filed: June 26, 2018 Department: C-73 (Wohlfeil)</pre>

1	APPROVAL OF THE CITY OF SAN DIEGO, A ) PURCHASE AND SALE AGREEMENT (PSA) )
	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 )
0	LEASEHOLD INTEREST AND AN OPTION IN )
8	THE SITE FOR \$28.2 MILLION IN)
0	ANTICIPATION OF THE SAN DIEGO)
9	CONVENTION CENTER PHASE III)
10	EXPANSION SUBJECT TO THE PASSAGE OF )
10	THE "FOR A BETTER SAN DIEGO" CITIZEN'S )
11	BALLOT MEASURE, (COLLECTIVELY,)
11	ALTERNATIVE A CLOSING), OR (2) IF THÉ ) ALTERNATIVE A CLOSING DOES NOT )
12	OCCUR, FOR THE DISTRICT TO ENTER INTO )
12	LEASE AMENDMENTS AND AGREEMENTS )
13	WITH FAL, SUBJECT TO CERTAIN TITLE )
15	CONDITIONS (COLLECTIVELY,)
14	ALTERNATIVE B CLOSING); AND ( <i>iv</i> )
17	RELATED ACTIONS, (IV)
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Defendants.

Amended Complaint for Declaratory and Injunctive Relief:

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Parties 1. Plaintiff is a non-profit, public-benefit organization formed and operating under the laws of the State of California. At least one of Plaintiff's members (*i*) resides and pays taxes in or near the City of San Diego, California; (*ii*) has an interest in protecting the region's air quality, minimizing and ameliorating traffic, ensuring informed and responsible growth, and promoting other environmentrelated quality-of-life issues, including those issues involving San Diego Bay and its waterfront; and (*iii*) has an interest in, among other things, ensuring open, transparent, and accountable government

Plaintiff SAN DIEGO WATERFRONT COALITION alleges as follows in this Second

(*iii*) has an interest in, among other things, ensuring open, transparent, and accountable government
decision-making, protecting the region's environment, and avoiding government waste in pursuit of
those goals.

2. Defendant CITY OF SAN DIEGO ("CITY") is a charter city under the laws of the State of California, took some of the action that is challenged in this lawsuit, and otherwise has an interest in the subject matter of this lawsuit.

3. Defendant SAN DIEGO UNIFIED PORT DISTRICT ("PORT") was created by the
California Legislature to manage San Diego Bay and its surrounding waterfront land, took some of the
action that is challenged in this lawsuit, and otherwise has an interest in the subject matter of this
lawsuit.

8 4. Defendant SAN DIEGO CONVENTION CENTER CORPORATION, INC.
9 ("SDCCC"), is a non-profit corporation wholly owned and controlled by CITY and has an interest in
10 the subject matter of this lawsuit.

5. Defendant FIFTH AVENUE LANDING, LLC ("FAL"), is a limited liability company
 formed and operating under the laws of the State of California and has an interest in the subject matter
 of this lawsuit.

### **Background Information**

6. On or about June 15, 2018, and without holding a public hearing:

A. CITY passed Resolution no. R-311809, "A RESOLUTION OF THE COUNCIL
OF THE CITY OF SAN DIEGO STATING FOR THE RECORD THAT THE CITY COUNCIL HAS
REVIEWED AND CONSIDERED THE INFORMATION CONTAINED IN THE ADDENDUM TO
THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SAN DIEGO CONVENTION
CENTER PHASE III EXPANSION AND ADJACENT EXPANSION HOTEL, AND CONCURS
WITH THE CONCLUSIONS IN THE ADDENDUM."

B. CITY passed Resolution no. R-311810, "A RESOLUTION OF THE COUNCIL
OF THE CITY OF SAN DIEGO APPROVING TRANSACTION DOCUMENTS AMONG THE CITY
OF SAN DIEGO, THE SAN DIEGO UNIFIED PORT DISTRICT, AND FIFTH AVENUE
LANDING, LLC (FAL), FOR THE CITY'S ACQUISITION OF A LONG-TERM LEASEHOLD
INTEREST IN TIDELANDS PROPERTY NEEDED FOR THE SAN DIEGO CONVENTION
CENTER PHASE III EXPANSION AND THE SETTLEMENT OF PENDING LITIGATION AND

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ANY RELATED CLAIMS BETWEEN THE CITY AND FAL, AND APPROVING CERTAIN
 RELATED ACTIONS."

C. 3 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 UNIFIED PORT DISTRICT (DISTRICT) FOR: (1) THE DISTRICT TO PURCHASE FROM FAL 6 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 THE DISTRICT LEASEHOLD INTEREST AND AN OPTION IN THE SITE FOR \$28.2 MILLION 10 11 IN ANTICIPATION OF THE SAN DIEGO CONVENTION CENTER PHASE III EXPANSION SUBJECT TO THE PASSAGE OF THE "FOR A BETTER SAN DIEGO" CITIZEN'S BALLOT 12 MEASURE, (COLLECTIVELY, ALTERNATIVE A CLOSING), OR (2) IF THE ALTERNATIVE 13 A CLOSING DOES NOT OCCUR, FOR THE DISTRICT TO ENTER INTO LEASE 14 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."

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## Jurisdiction, Venue, and Exhaustion of Administrative Remedies

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

<sup>&</sup>lt;sup>1</sup> No matter how any portion of this pleading's allegations or prayer is construed, in no way does Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1) Plaintiff does not seek any relief greater than or different from the relief sought for the general public 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

9. Venue in this Court is proper because the obligations, liabilities, and violations of law
 alleged in this pleading occurred in the City of San Diego.

3 10. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its members and other members of the public will suffer irreparable harm as a result of Defendants' 4 5 violations of the law, as alleged in this pleading. The Resolutions also rest on Defendants' failure to 6 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Defendants 7 are permitted or required by law to exercise their discretion in approving projects under those laws, they 8 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a 9 manner consistent with those laws. Defendants have had and continue to have the capacity and ability 10 to pass the Resolutions within the limits of and in a manner consistent with those laws, but Defendants 11 have failed and refuse to do so and have exercised their discretion beyond the limits of and in a manner that is not consistent with those laws. 12

13 11. Plaintiff and its members also have a beneficial right and interest in Defendants'
14 fulfillment of all their legal and public duties, as alleged in this pleading.

#### **FIRST CAUSE OF ACTION:** Resolutions' Non-Compliance with California Constitution (Against All Defendants)

12. The preceding paragraphs are incorporated into this paragraph by reference.

18 13. Plaintiff is informed and believes and on that basis alleges that the Resolutions authorize
19 the execution of various written agreements by CITY and PORT. In addition:

A. At least \$5 million in public money will be paid to FAL in exchange for, among other things, its dismissal of a lawsuit against CITY and SDCCC; its assignment of its leasehold interest in certain tidelands controlled by PORT to CITY and/or SDCCC; its agreement to refrain from opposing the "For a Better San Diego" citizens' initiative proposing to raise CITY's transient occupancy tax; and its dissolution of FAL's existing political action committee formed to oppose the initiative. The initiative is purportedly sponsored by private citizens. If passed and determined to be

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SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ETC.

an exhaustive list of every act or omission that renders the CITY Resolutions and/or the PORT Resolution illegal and invalid.

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

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

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

The \$5 million (or more) to be paid by CITY is purportedly consideration
 for the dismissal of FAL's lawsuit against CITY and SDCCC and for CITY's right to exercise an option
 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.

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

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ETC.

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 "option" payment to FAL, to influence the outcome of a ballot measure over the expansion of the San 6 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 Defendants contend that none of them is true. The parties therefore require a judicial determination of 14 15 the issue.

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

SECOND CAUSE OF ACTION: Resolutions' Non-Compliance with San Diego City Charter Section 93

(Against All Defendants)

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

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

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

2. Neither CITY nor SDCCC has any liability whatsoever to FAL as alleged 1 2 in FAL's lawsuit against them. Any suggestion that the money to be paid by CITY to FAL is 3 consideration given to FAL for its dismissal of the lawsuit is illusory, collusive, and fraudulent because 4 CITY and SDCCC know that they have no liability to FAL. The parties to the contracts contemplated 5 by the Resolutions, with the active participation and assistance of SDCCC, have conspired and colluded to fabricate a phony claim by FAL against CITY that would be pursued in litigation in order to provide 6 7 a pretext for paying money to FAL, to rationalize the expenditure of public funds that could not 8 otherwise be lawfully authorized.

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

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

18. 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
that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that
Defendants contend that none of them is true. The parties therefore require a judicial determination of
the issue.

### THIRD CAUSE OF ACTION: Resolutions' Non-Compliance with Government Code Section 8314

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ETC.

#### (Against All Defendants)

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

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

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

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

2 2. Neither CITY nor SDCCC has any liability whatsoever to FAL as alleged 3 in FAL's lawsuit against them. Any suggestion that the money to be paid by CITY to FAL is 4 consideration given to FAL for its dismissal of the lawsuit is illusory, collusive, and fraudulent because 5 CITY and SDCCC know that they have no liability to FAL. The parties to the contracts contemplated 6 by the Resolutions, with the active participation and assistance of SDCCC, have conspired and colluded 7 to fabricate a phony claim by FAL against CITY that would be pursued in litigation in order to provide 8 a pretext for paying money to FAL, to rationalize the expenditure of public funds that could not 9 otherwise be lawfully authorized.

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

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

"option" payment to FAL, to influence the outcome of a ballot measure over the expansion of the San 1 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 and the other proponents of the ballot measure would have to expend additional monies to counter the 4 5 opposition funded by FAL. FAL's political silence is being purchased through the Resolutions.

21. 6 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 that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that Defendants contend that none of them is true. The parties therefore require a judicial determination of the issue.

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## FOURTH CAUSE OF ACTION:

#### Resolutions' Non-Compliance with San Diego City Charter Section 99 (Against All Defendants)

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

Plaintiff is informed and believes and on that basis alleges that the Resolutions do not 23. 14 comply with all applicable laws. By way of example and not limitation (including alternative theories 15 16 of liability):

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example:

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The CITY Resolutions violate Section 99 of the San Diego City Charter. For A.

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

2. 24 CITY's financial obligations under one or more of the written agreements 25 contemplated by the Resolutions will exceed five years. However, CITY did not approve any of those 26 written agreements by ordinance; they were approved only by resolution.

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

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.

#### **FIFTH CAUSE OF ACTION:** Resolutions' Non-Compliance with Government Code Section 1090 (Ágainst All Defendants)

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

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

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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:

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1. At least one officer or employee of CITY, PORT, and/or SDCCC has a financial interest in one or more of the contracts contemplated by the Resolutions and participated in

the making of the contract(s). 14

There is a good-faith dispute between Plaintiff, on the one hand, and Defendants, on the 15 27. 16 other hand, as to whether the preceding allegations in this cause of action are true. Plaintiff contends that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that 17 18 Defendants contend that none of them is true. The parties therefore require a judicial determination of 19 the issue.

# SIXTH CAUSE OF ACTION:

### Resolutions' Non-Compliance with Common Law's Conflict-of-Interest Prohibition (Against All Defendants)

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

29. 23 Plaintiff is informed and believes and on that basis alleges that the Resolutions do not 24 comply with all applicable laws. By way of example and not limitation (including alternative theories 25 of liability):

Α. The CITY Resolutions and/or the PORT Resolution violate(s) Government Code 26 27 Section 1090 and/or the common-law prohibition against conflicts of interest. For example:

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

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

#### SEVENTH CAUSE OF ACTION: Resolutions' Non-Compliance with Laws Prohibiting Taxpayer Waste (Against All Defendants)

31. The preceding paragraphs are incorporated into this paragraph by reference.

32. Plaintiff is informed and believes and on that basis alleges that CITY's payment of any
money under one or more of the contracts contemplated by the Resolutions would constitute an illegal
waste of taxpayer. For example:

A. An essential assumption in adopting the CITY Resolutions and authorizing the
contracts was that a ballot measure to raise CITY's transient occupancy tax to provide funding for an
expansion of the San Diego Convention Center would be on the November 2018 ballot.

B.

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No such ballot measure was on the November 2018 ballot.

C. Whatever benefits (if any) CITY anticipated from voter approval of such ballot
 measure in November 2018 when CITY approved the Resolutions and authorized the contracts will
 never materialize.

D. Based on the failure of the essential assumption to be true, CITY's expenditure of money under the contracts contemplated by the Resolutions will provide no public benefit whatsoever.

33. 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
that they are at least partly true. Plaintiff is informed and believes and on that basis alleges that

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

Prayer

FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against 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 determined by the Court; 12

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

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

Date: March 5, 2019.

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Respectfully submitted,

BRIGGS LAW CORPORATION

By:

Cory J. Briggs

Attorneys for Plaintiff San Diego Waterfront Coalition

### VERIFICATION

# STATE OF CALIFORNIA, COUNTY OF San Diego

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

		its contents.				
7	CHECK APPLICABLE PARAGRAPH					
	I am a party to this action. The matters stated in the foregoing document are true of my own knowledge					
X	those matters which are stated on information and belief, and as to those matters I believe them to be the $I_{am}$ is a portror of san Diego Water					
•••	I am 🕱 an Officer 🗆 a partner 🗌 a of <u>San Diego Water</u>	TIOIL				
Coalition         a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for reason. □ I am informed and believe and on that ground allege that the matters stated in the foregoing document true. □ The matters stated in the foregoing document are true of my own knowledge except as to those matters 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 this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege the matters stated in the foregoing document are true.						
	· ·	, California				
	Executed on March 5, 20, 19, at Upland I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	, cumonina				
	Diane Coombs Type or Print Name PROOF OF SERVICE Signature	1				
	STATE OF CALIFORNIA, COUNTY OF					
		f California				
	I am over the age of 18 and not a party to the within action; my business address is,	i California				
	On, 20, I served the foregoing document described as					
	on i by placing the true copies thereof enclosed in scaled envelopes addressed as stated on the attached mailing list:	n this action				
	by placing $\square$ the original $\square$ 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 Under that practice it would be deposited with U.S. postal service on that same day with postage thereon full					
	California in the ordinary course of business. I am aware that on n party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day deposit for mailing in affidavit.	notion of th after date of				
	Executed on, 20, at, 20, at, et (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.	, California				
		, California				
	<ul> <li>(State) I declare under penalty of perjury under the laws of the State of California that the above is true a declare that I am employed in the office of a member of the bar of this court at whose direction the made.</li> </ul>	nd correct. service was				

Type or Print Name

Signature

.

<sup>\* (</sup>By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT. BOX. OR BAG)

<sup>\*\*(</sup>FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

#### **PROOF OF SERVICE**

- My name is <u>Monica Manriquez</u>. I am over the age of eighteen. I am employed in the State of California, County of <u>San Diego</u>.
- 2. My ✓ business residence address is Briggs Law Corporation, 4891 Pacific Highway, Suite 104, San Diego, CA 92110
- 3. On <u>March 8</u>, <u>2019</u>, I served <u>an original copy</u> <u>√</u> a true and correct copy of the following documents: <u>Second Amended Complaint for Declaratory and Injunctive Relief Under Code</u> 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  $\checkmark$  of the State of California that the foregoing is true and correct.

Date: <u>March 8</u>, 2019

Signature: <u>K</u>	$\frown$	$ \wedge $
		$\bigcirc$

#### 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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