September 6, 2020

VIA EMAIL

Tom Jones
NBC Universal
TomJ@nbculi.com
9680 Granite Ridge Drive
San Diego, California 92123

Re: Online Article dated September 3, 2020 Regarding 101 Ash Street

Dear Mr. Jones:


This Article includes what is allegedly Footnote 15 from a Memorandum my partner Mark Austin and I submitted to Assistant City Attorney James McNeill regarding our review of the 101 Ash Street Lease Agreement which was effective January 3, 2017.

As I confirmed in my telephone conversation with you and Mr. Westerheide on September 3, 2020 after the Article was published, Footnote 15 is completely fabricated (hereafter “Fabricated Footnote 15”) and was not included in our Memorandum to the City in any of the text of the Memorandum or in any footnotes in the Memorandum. I told you and Mr. Westerheide that our Memorandum was doctored to add Fabricated Footnote 15.

I told you and Mr. Westerheide that Fabricated Footnote 15 refers to September 16, 2016 events and that I have no knowledge of those alleged events. Fabricated Footnote 15 has a sentence which begins: “The discussions during the update ....” I told you and Mr. Westerheide that have no knowledge of any such alleged discussions.

I told you and Mr. Westerheide that the following sentence in the Article quoting from Fabricated Footnote 15 is completely false: “However, we were unable to obtain the
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City Attorney’s approval to interview Mr. Gloria or his staff (all of whom are no longer in the employ of the City).” I told you and Mr. Westerheide that neither the City Attorney nor anyone else at the City ever told me that they would not give me approval to interview anyone.

Finally, the Article acknowledges that the authors of the Article were informed by the City about Footnote 15 before the Article was published of the following which appears at the very end of the Article (see attached pdf page 12 of the Article):

“NBC 7 Investigates also asked City Attorney Mara Elliott why she would not allow investigators to talk with Gloria, who is an independently elected official. In a statement, Elliott’s spokesperson also denied allegations that City Attorney Elliott refused to allow investigators a chance to interview Gloria and suggested the reports cited by NBC were altered.”

“We’re told by Burke Williams Law Firm that this is not their work product or information,” reads the statement from spokesperson Hillary Nemchik. “This is not consistent with any conversation they had with our Office. They don’t know where this language came from and suspect the document has been doctored.”

I acknowledge that you did send me an email on September 3, 2020 at 6:53 pm in which you stated:

I am reaching out regarding your firm’s statement that our story published today on 101 Ash was citing a memo that you believe is fabricated. We take this very seriously.

Would your office be willing to share with us the version of the memo that you believe is authentic, and any evidence you have that this version is fabricated?

Attached are the pages of the report that we’ve posted online in our story. Please let me know if we can find a time to discuss this further.

When I spoke with you and Mr. Westerheide on September 3, 2020, I did not say that I “believe” there was a fabrication in the memo. I do not “believe” Footnote 15 is fabricated. I know that Footnote 15 which you included in the Article was fabricated and I told you and Mr. Westerheide that when we spoke on September 3, 2020.
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As you know, we spoke shortly after your September 3, 2020 email referenced above and I explained that any Memorandum that Burke may have written to the City would be privileged as an attorney client communication. However, attached are signed Declarations from my partner Mark Austin and I confirming that the Footnote 15 which is included in the Article is fabricated which is more than sufficient to establish that the Memorandum you quoted from in the Article has been doctored to add Fabricated Footnote 15.

Demand is hereby made that you immediately correct the record. The Burke Memorandum did not include Fabricated Footnote 15.

We look forward to you immediately taking all necessary actions to correct the record.

Thank you for your anticipated cooperation.

Sincerely,

Brian A. Pierik

cc: Chuck Westerheide via email: chuck.westerheide@nbuni.com
Attachments:
Pdf of September 3, 2020 Article
Declaration of Brian Pierik
Declaration of Mark Austin
DECLARATION OF BRIAN A. PIERIK

1. I am a partner in the law firm of Burke, Williams & Sorensen, LLP. ("Burke"). I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, I could and would testify competently thereto under oath.

2. I have reviewed the news article (the "Article") that appeared online on September 3, 2020, by Dorian Hargrove and Tom Jones, which I accessed via the following link: https://www.nbcsandiego.com/news/investigations/investigation-into-101-ash-looked-at-whether-city-staff-former-councilmember-todd-glora-misled-public/2398394/

3. The Article references, and contains a screenshot of, what is allegedly a footnote number 15 from a Memorandum my partner, Mark Austin, and I submitted to Assistant City Attorney James McNeill of the City of San Diego ("City") regarding a Lease Agreement for the property at 101 Ash Street, between the City and 101 Ash, LLC, effective January 3, 2017.

4. Footnote 15 as it appeared and was presented in the Article (hereinafter, the "Fabricated Footnote 15") is completely and totally fabricated, and was not included in any Memorandum from the Burke firm to the City. The only persons at Burke who drafted any portion of the Memorandum were myself and Mr. Pierik, and neither he nor I ever included that language, or anything like it, in the Memorandum. It is absolutely clear that our Memorandum has been doctored to add the Fabricated Footnote 15.

5. Fabricated Footnote 15 refers to alleged events from September of 2016 that I have no knowledge of, and regarding which I was never provided any information by the City or anyone else. Fabricated Footnote 15 has a sentence which begins: "The discussions during the update..." I have no knowledge or information regarding any such alleged discussions referenced in that sentence or anywhere else in Fabricated Footnote 15.
6. Fabricated Footnote 15 also states: “However, we were unable to obtain the City Attorney’s approval to interview Mr. Gloria or his staff (all of whom are no longer in the employ of the City).” This is completely false. My office never requested to interview Mr. Gloria or his staff, and neither the City Attorney nor anyone else at the City ever told me that they would not give me approval to interview Mr. Gloria or anyone else.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and further declare that this Declaration was executed on the 6th day of September, 2020, in Camarillo, California.

__________________________
BRIAN A. PIERIK
DECLARATION OF MARK J. AUSTIN

1. I am a partner in the law firm of Burke, Williams & Sorensen, LLP ("Burke"). I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would testify competently thereto under oath.

2. I have reviewed the news article (the "Article") that appeared online on September 3, 2020, by Dorian Hargrove and Tom Jones, which I accessed via the following link: https://www.nbcsandiego.com/news/investigations/investigation-into-101-ash-looked-at-whether-city-staff-former-councilmember-todd-gloria-misled-public/2398394/

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ever told me that they would not give me approval to interview Mr. Gloria or anyone else.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and further declare that this Declaration was executed on the 6th day of September, 2020, in Irvine, California.

MARK J. AUSTIN
101 ASH STREET

Investigation Into 101 Ash Looked At Whether City Staff, Former Councilmember Todd Gloria Misled Public

Reports, emails reveal city executives made a property deal despite knowing the building was not worth the cost.

By Dorian Hargrove and Tom Jones • Published 3 hours ago • Updated 3 hours ago

Newly obtained emails and documents reveal that high-level officials inside the city of San Diego's Real Estate Assets Department potentially misled councilmembers about the city's $127 million deal to lease a vacant, asbestos-ridden high-rise in downtown San Diego.
An internal investigation obtained by NBC 7 Investigates also confirms that outside attorneys had been looking into allegations that former city councilmember and mayoral candidate, Todd Gloria, promoted the controversial purchase to fellow councilmembers, despite potentially knowing of the financial problems.

The investigation of the purchase by an outside law firm was one of three ordered by the mayor to review the 101 Ash Street transaction. But efforts by those outside attorneys to question Gloria about his role in the costly real estate deal were hindered when, according to the law firm’s review, City Attorney Mara Elliot’s office refused to let them interview Gloria. Elliot’s office claims the draft investigation report NBC 7 is citing was "doctored" and that they never refused an interview.

But outside investigators were concerned with others involved as well. That law firm was also investigating whether high-level officials from within the city’s Real Estate Assets Department misled councilmembers by stating that the city could be sued if it pursued a less expensive purchase agreement.

Officials in the Real Estate Assets Department had claimed to councilmembers, and the city’s Independent Budget Analyst, that an unspecified "legal threat" had prevented the city from purchasing the building outright, and that they had to move forward with a lease-to-own transaction. NBC 7 asked the city to provide documentation of the "legal threat" but they said no such documentation exists, that the threat was "verbal" and that they could not provide any further details on what the threat entailed.

But emails sent by those officials, obtained by NBC 7, suggest the primary reason for the city choosing the lease-to-own option was due to the fact that the city was unable to obtain bond financing given that the building’s appraisal value was $13 million less than what the city agreed to pay.

As a result of what officials disclosed to councilmembers in 2016, the council approved the lease-to-own agreement for the 101 Ash Street building that is now costing taxpayers $127 million over the next twenty years for a high-rise with an appraised value of just $62 million. In addition, the former Sempra Energy headquarters building requires more than $145 million in repairs; and is currently costing taxpayers $18,000 a day in lease costs, while it remains empty.
During the course of the past two months, NBC 7 Investigates has reported that city officials ignored warning signs about the true condition of the building as well as entered into a contract which essentially released the seller from any liability.

The new documents obtained by NBC 7 Investigates show that high ranking officials such as former Deputy Director Ronald Villa, Director Cybele Thompson, Mayor Kevin Faulconer’s former Chief Operating Officer Scott Chadwick, and Faulconer’s then Chief of Staff Stephen Puetz, were not only aware of the appraisals but failed to inform city councilmembers of the appraised value of 101 Ash back in 2016.

**THE APPRAISAL**

From even before Sempra vacated its former headquarters located at 101 Ash Street, city real estate officials had their eye on turning the building into San Diego’s “new city hall.”

But not long after entering into negotiations with the building owner, Sandor Shapery, emails show that city consultants tasked with trying to lessen San Diego’s dependence on expensive leases quickly found that the owner wanted far more than the building’s appraised value.

“Knowing the owner, the price doesn’t surprise me,” wrote city real estate specialist, John Casey, in a September 4, 2014, email in response to Shapery’s offer which pegged the building at $84 million. “We could conceivably pay more but I would start the negotiations at the $52 million range.”

After a year of failed negotiations with owner Sandor Shapery, in July 2016, city officials struck a deal. They agreed to buy the building directly for $72.5 million and pay an extra $5 million for tenant improvements. To facilitate the deal, the city used a third-party developer, Cisterra Partners.

The details of the transaction were laid out in two draft staff reports, dated July 12, 2016, and August 29, 2017, both obtained by NBC 7.
REQUESTED ACTION:

1. Authorize the City to enter into a purchase agreement between the City and ---, LLC, a Delaware limited liability company ("---, LLC") for a purchase of the real property and improvements located at 101 Ash Street. The City will also have options to either terminate the escrow and pay ---, LLC any expenses they have incurred related to this purchase or to enter into a 20 year lease-to-own agreement with ---, LLC with ownership of 101 Ash Street automatically transferring to the City upon lease expiration.

July 12, 2016, draft staff report showing the city's plan to purchase 101 Ash outright.

In the report, staff celebrated the purchase as a way for the city to save on the cost of ever-increasing downtown office space, as well as an opportunity to move employees into what they called a "Class A" building, replete with "excellent... interior finishes, and upgraded mechanical systems." (Years later, contractors would find the building's interior was anything but in 'excellent condition.' [Read more about that here.])
But the celebration was short-lived.

In an email dated September 1, 2016, former director for Real Estate Assets Ronald Villa, informed others that there was a major setback: The appraisal of 101 Ash was far below the $77.5 purchase price. As a result, the city could not obtain funding to buy the building.

"Based on the recent appraisal that came in for the building it is our belief that we will not be able to achieve approval for a purchase at the $72 million price," wrote Villa. "I would like to regroup and reexamine the potential for a straight lease with a future purchase option."

In that same email, Villa acknowledged, "...the fact remains that the general public and policymakers may not be able to get behind paying more for the building than the 'appraised value.'"
Email from Ron Villa informing that appraisal for 101 Ash fell short, preventing the city from obtaining funding.

Paying more for the building than what it was appraised for may have looked like a favorable option for taxpayers, given city leaders were wrestling with the fact that the current city hall building was in poor condition, and that the city was in desperate need of more office space for employees.

But another email obtained by NBC 7 reveals that Villa’s subordinates may have been trying to inflate the building’s value.

“[T]he final appraised value was $67.1 million - [we were] able to get the appraiser up from his original $62 million ;),” read an email from the now-former director of San Diego’s Real Estate Assets Department, Cybele Thompson, with an accompanying emoticon.
City email showing staff's efforts at raising the appraised value of 101 Ash.

(Villa and Thompson have since resigned their positions over the fallout from the 101 Ash purchase. Read more about that here.)

The new appraisal was still too low to obtain funding, so Villa and city staffers moved to Plan B.

In a September 7, 2016, email, Villa wrote that “purchase negotiations broke down and we had to revert to our second option.”
From: Villa, Ron  
Sent: Wednesday, September 07, 2016 3:29 PM  
To: Jarl-Veltz, Abby <Alarj@sandiego.gov>; von Kalinowski, Judy <Kalinsonski@sandiego.gov>; Kirby, Roy <RKirby@sandiego.gov>  
Cc: Thompson, Cybele <ThompsonC@sandiego.gov>  
Subject: 101 Ash St - Update

Plans have changed regarding this building. The City will no longer be pursuing a direct purchase and instead will be entering into a lease-to-own similar to CCP. This change was made after purchase negotiations broke down and we had to revert to our second option. A lot of extenuating circumstances contributed to this current approach but it will still benefit our City EEs and our customers.

This means that we will no longer be exploring the use of City staff for the building maintenance as it will be contracted by the building owner for the next 20 years. After 20 years, the City will assume ownership and then it will become a City asset.

We are scheduled to take this to SGLU on 9/21 and would look forward to having at a minimum of 145 and MEA present to show their support for our employees. Let me know if I need to reach out to them personally to answer their questions.

Excerpt from an email sent by Villa on September 7, 2016.

That option was the lease-to-own deal that would cost the city, after financing, a total of $127 million, without necessary renovations.

But another problem surfaced: the cost to lease the building was too high when looking at comparable lease prices in downtown.

In order to get the funding needed to enter into the lease, documents and emails suggest officials in the city's Real Estate Assets Department needed to try and boost the value of 101 Ash, monetarily and politically.

In terms of monetary actions, during the September 21, 2016, committee meeting Villa and Thompson told city councilmembers that the lease per-square-foot for city-occupied buildings could rise to as much as $4 per square foot in the future. As for the push politically, Villa memorialized it in a September 7, 2016, email
asking for "145 employees and the municipal employees union to be present [at the committee meeting] to show their support for employees."

**GETTING POLITICAL SUPPORT**

In the days leading up to a crucial September 21, 2016, city council committee meeting, Villa and Thompson arranged for council members to meet with them and Mayor Kevin Faulconer's top staff.

According to a calendar entry obtained by NBC 7 through a public record request for Todd Gloria – now a state assembly member and mayoral candidate – the former councilmember met with Thompson and Villa on September 16, 2016, for what was labeled as an "Ash Street Update."

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**From:** Microsoft Outlook on behalf of Martinez, Adriana  
**To:** Gloria, Todd  
**Subject:** Meeting Forward Notification: Meeting w/Cybele Thompson re: 101 W Ash Street Update Staff: Steve & Jamie Memo: Steve

Your meeting was forwarded

Martinez, Adriana <mailto:AdrianaM@sandiego.gov> has forwarded your meeting request to additional recipients.

Meeting  
Meeting w/Cybele Thompson re: 101 W Ash Street Update Staff: Steve & Jamie Memo: Steve

Meeting Time  
Friday, September 16, 2016 10:00 AM-10:30 AM

Recipients  
Thompson, Cybele <mailto:ThompsonC@sandiego.gov>

All times listed are in the following time zone: (UTC-08:00) Pacific Time (US & Canada)

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Sent by Microsoft Exchange Server

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Screenshot of calendar entry for then-Councilmember Todd Gloria.

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As part of the investigation into the 101 Ash Street transaction ordered by Mayor Kevin Faulconer, investigators with one of the law firms wanted to find out more about that September 16, 2016, meeting between Gloria and city officials in the days leading up to council approval.

"One question is whether Ms. Thompson, Deputy COO Ron Villa, and COO Scott Chadwick, and a member of the City Council misrepresented the transaction to the public and other members of the City Council," reads a portion of an investigative report written by the Burke Williams Sorensen Law Firm and obtained by NBC 7 Investigates.
Former San Diego City Councilmember and mayoral candidate Todd Gloria,

The report also refers directly to the September 16, 2016, meeting between Gloria, city real estate directors, and mayoral staffs.

However, the investigators said they hit a roadblock when trying to find out more information about that meeting and possible public misrepresentations by Gloria.

That roadblock was San Diego City Attorney Mara Elliott’s office.

“...The discussions during the update could be informative about why the city went forward with the transaction despite the unfavorable language in the lease agreement, the due diligence materials available to the city, and the substantially higher cost of the lease-to-own structure,” the investigator notes. "However, we were unable to obtain the City Attorney's approval to interview Mr. Gloria or his staff."
One question is whether Ms. Thompson, Deputy COO Ron Villa, COO Scott Chadwick, and a member of the City Council misrepresented the transaction to the public and other members of the City Council. According to an email from Mr. Villa on September 1, 2016, there was a belief that "we will not be able to achieve approval for a purchase at the $72m price" and "the fact remains that the general public and policy makers may not be able to get behind paying more for the building than the appraised value." Apparently on September 16, before the revised transaction was scheduled to be presented to a City Council Committee, Ms. Thompson and Mr. Villa met with Council President Todd Gloria and two of his staff members for an "update" on the transaction; Mr. Gloria had previously been skeptical about the lease-to-own structure when it was used for a prior acquisition, but was supportive of the 101 Ash transaction when it came to the Committee and made the Council motion to approve the Lease Agreement. The discussions during the update could be informative about why the City went forward with the transaction despite the unfavorable language in the Lease Agreement, the due diligence materials available to the City, and the substantially higher cost of the lease-to-own structure. However, we were unable to obtain the City Attorney’s approval to interview Mr. Gloria or his staff (all of whom are no longer in the employ of the City).

According to Ms. Thompson, for Cisterra to secure the Property, it had to have a proposed tenant in place at the time it closed. Thus, based on the timing of Cisterra’s purchase at the end of 2016, the City did not have sufficient time to secure bond financing for its own immediate purchase.

When the city's Real Estate Assets Department pitched the transaction to councilmembers for approval on September 21, 2016, Thompson told Gloria and other committee members that lease rates for downtown office space were expected to rise to as much as $4 per square foot, which justified the $3 per square foot cost of the lease-to-own deal for the Ash Street building.

Thompson did not reveal to councilmembers any information about the building’s appraised value, and challenges with securing bond financing for purchasing the building outright.

"This (is) a lease-to-own (transaction)," Gloria said at the meeting. "Was a straight purchase considered?" he then asked Thompson.

"A direct purchase was deemed not the best option for the city," Thompson replied.

Added Gloria, "It is an older building, I have been in it, and it is very well-maintained. Relative to [City Hall]...it's perfection. I appreciate the time you spent in my office to understand this a bit better."

Recordings of the September 21, 2016, council committee meeting where council members voted to approve the lease-to-own transaction show that Gloria did not disclose the September 16 meeting with the
city's Real Estate Assets Department or any additional information about his involvement in the transaction.

In a previous statement to NBC 7, a spokesman for Todd Gloria said, “At the time, the building came with a report to the council that indicated it was a Class A building, employees could move in immediately, and it would save the City $44 million over 20 years. Todd understood at that time that this was the City’s plan—almost immediate occupancy with minor improvements needed or planned. Todd and the other members of the council relied upon city staff and the contractors and consultants hired to provide accurate and sufficient information to make their decision.”

As for whether the outside investigators ever asked to interview him, Gloria’s spokesperson denied any such request was made. As far as the meeting with city staff before the council committee meeting, Gloria’s spokesperson said it was routine.

“The meeting you reference was four years ago and was a routine briefing to a Councilmember on a project in his district that was legally noticed on his publicly-available calendar,” reads the statement from Gloria’s spokesperson. "No investigators have ever attempted to contact Assemblymember Gloria, but he remains 100% open to speaking to anyone, including investigators, about the 101 Ash Street purchase."

NBC 7 Investigates also asked City Attorney Mara Elliott why she would not allow investigators to talk with Gloria, who is an independently elected official. In a statement, Elliott’s spokesperson also denied allegations that City Attorney Elliott refused to allow investigators a chance to interview Gloria and suggested the reports cited by NBC 7 were altered.

"We're told by Burke Williams Law Firm that this is not their work product or information," reads the statement from spokesperson Hilary Nemchik. "This is not consistent with any conversation they had with our Office. They don't know where this language came from and suspect the document has been doctored."

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.
As to the actual claims that the City Attorney refused to allow outside investigators to interview Gloria, Elliott's spokesperson denied this ever happened.

“In any instance of those reviewing the transaction expressing a desire to interview an individual, our Office assisted in securing those interviews...” reads a portion of a statement from the City Attorney's office.
The City Attorney also addressed the options before the city, when it came to purchasing the building outright versus the lease-to-own option.

"It appears that the City attempted for some time to reach an agreement on the direct purchase of the property from the owner. After those discussions concluded without success, Cisterra was able to secure an agreement with the owner to purchase the property... City Attorney Goldsmith identified risks of an assignment inherent in the terms of Cisterra's Purchase and Sale Agreement with the owner in a confidential memorandum to the City on the subject. Following unsuccessful efforts by the City to address those risks with Cisterra, the City instead moved forward with a lease-to-purchase agreement."

In regards to city officials citing a "legal threat" as the reason to pursue the lease-to-own option, the City Attorney's statement reads, "Regarding a legal threat, our Office heard rumors of such, but the rumors have never been confirmed."

Meanwhile, the fallout inside the city over 101 Ash continues. On Tuesday, September 1, 2020, Voice of San Diego was first to report a memo from the city’s Chief Financial Officer stating the city would no longer make its lease payments on the building, given potential violations of state law preventing taxpayer waste.

A spokesman for Mayor Faulconer said, "The Mayor approved moving forward with this agreement after he was presented with the same information as the City Council that it would provide quality workspace for employees and save $44 million by eliminating costly office leases. That's what the Mayor approved."

Added the spokesperson, "Mayor Faulconer directed investigators to interview anyone with information relevant to their forensic review. It’s also important to note that the forensic review is 'preliminary only.' In the preliminary review, investigators indicate 'there are many witnesses to whom we have not yet spoken and documents we have not yet reviewed. No doubt more information and context will be provided through such interviews and documents.'"