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VIA EMAIL
Mr. Mike McKinnon, President & General Manager
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Re: Jason Hughes – Civic Center Plaza and 101 Ash Street

Dear Mr. McKinnon and Ms. Sowards:

This law firm is litigation counsel to Jason Hughes. We write concerning the article published by KUSI News 9 ("KUSI") on June 20, 2022 at https://www.kusi.com/mayor-todd-gloria-reveals-proposed-settlement-on-101-ash-street-real-estate-deal/, relating to Mr. Hughes's role in the City of San Diego's (the "City") transactions for the Civic Center Plaza ("CCP") and 101 Ash Street properties, and the compensation received by Mr. Hughes in connection therewith (the "Article").

The Article's statements regarding Mr. Hughes's involvement in the transactions is extremely unfair and biased, and fails to adequately present facts that overwhelmingly support Mr. Hughes's position or to address the many benefits that Mr. Hughes's work conferred upon the City. It is beyond dispute that each of these transactions created tens of millions of dollars in additional value for the City, all of which is a direct result of Mr. Hughes's work.

It is extremely important to Mr. Hughes that KUSI provide its readers, and foreseeable re-publishers, with fair and balanced reporting regarding this matter. Accordingly, we are writing to inform KUSI of the following facts relating to the lawsuits filed by the City against Mr. Hughes, among others, to the extent KUSI was not already aware of them.

First, the City's claims against Mr. Hughes are plainly barred by the applicable statute of limitations, a fact known to the City prior to filing these suits. The City has sued under California Government Code section 1090, a conflict-of-interest statute that contains a four-year statute of limitations. *See* Gov. Code § 1092(b). That period begins to run when the City "discovered, or in the exercise of reasonable care should have discovered, a violation . . . ." *Id.* In other words, the

standard is "inquiry notice," and it is beyond debate that the City knew about Mr. Hughes's compensation as early as fall 2014.

As you know, Mr. Hughes disclosed his intent to be compensated to *six separate senior City Officials* between August and November 2014. These officials included Mayor Kevin Faulconer, Chief of Staff Stephen Puetz, Chief Financial Officer Mary Lewis, Assistant Chief Operating Officer Ron Villa, Director of Real Estate Assets Cybele Thompson, and Asset Manager Brad Bennett. It is *undisputed* that these disclosures occurred, and recent deposition testimony confirms City employees knew Mr. Hughes would receive compensation:

- In early August 2014, Mr. Hughes met and then emailed with Mr. Villa and Mr. Bennett, informing them that the lease-to-own option he had created for any potential City acquisition was complex and would fall outside Mr. Hughes's traditional role with the City of San Diego. Based on the emails presented to him at his deposition, Mr. Villa agreed—unequivocally—that Mr. Hughes "disclosed an intent to seek compensation on these City transactions . . . ." *See* Villa Transcript[1] ("Tr.") at 106:2-6 ("[**Q.** Based on the e-mail -- e-mails that we've seen from Mr. Hughes, you agree that [he] disclosed an intent to seek compensation on these City transactions; correct? **A.** Correct.")

- In October 2014, after the City began to explore Mr. Hughes's lease-to-own option in more detail, Mr. Hughes *again* disclosed his intent to be compensated, this time to the City's CFO, Mary Lewis, with a copy to Mr. Villa, Ms. Thompson, and Mr. Bennett. During her first deposition, Ms. Lewis admitted to forwarding the email to her subordinate, Lakshmi Kommi, and to discussing with her Mr. Hughes's compensation. *See* Lewis Tr. (*Gordon*) at 174:20-175:1. During her second deposition, Ms. Lewis testified—again unequivocally—that she knew Mr. Hughes would be paid on the lease-to-own transactions. *See* Lewis Tr. (*101 Ash*) at 119:6-12 ("**Q.** Ms. Lewis, you knew that Mr. Hughes would get paid in connection with a lease-to-own transaction for the CCP building; correct? . . . **A.** Yes.").

- Ms. Thompson testified during her deposition that Mr. Hughes had likewise disclosed his intent to seek compensation to her earlier in the CCP transaction. *See* Thompson Tr. at 492:19-493:3 ("**Q.** Do you recall -- let me ask you this. Do you recall ever discussing with Mr. Hughes his plan to be compensated on the City's lease-to-own transactions? **A.** There was a day -- and I don't -- it was sometime within the first couple of months of me coming to the City when he made a comment that he may seek compensation from some party in the future related to CCP, but it wouldn't cost the City anything and it wouldn't affect their lease rate.")

[1] Upon request, we can provide KUSI with copies of any transcripts, and any other documents referenced in this letter, that KUSI does not already have in its possession.

- Ms. Thompson believed these disclosures were notable enough that she should report them to her supervisor, Mr. Villa. *See* Thomson Tr. at 495:16-497:2. In recalling this conversation with Ms. Thompson, Mr. Villa described Mr. Hughes's disclosures as "no news" because (a) Mr. Hughes had previously disclosed his intent to be compensated to Mr. Villa and Mr. Bennett, and (b) the City was not on the hook for Mr. Hughes's compensation, which was his only concern. *See* Villa Tr. at 106:2-6, 141:5-24, 142:6-12, 145:21-146:3. Neither Mr. Villa nor Ms. Thompson took any further action.

- Having disclosed his compensation to four senior officials on multiple occasions, Mr. Hughes also met with then-Mayor Faulconer and his Chief of Staff Stephen Puetz on October 13 and November 19, 2014, meetings that are corroborated by the Mayor's official calendar. During the meeting on October 13, the Mayor and Mr. Puetz approved Mr. Hughes's compensation plan, and directed him to prepare a formal letter agreement regarding his compensation. During the meeting on November 19, the Mayor and Mr. Puetz directed Mr. Hughes to present the letter to Ms. Thompson for her signature. It is undisputed that Mr. Hughes did so. The selection of Ms. Thompson to sign the formal approval was not a random decision; as the Mayor and Mr. Puetz knew, Ms. Thompson was the City's highest ranking real estate official with direct responsibility for the specific City projects on which Mr. Hughes intended to seek compensation.

- Ms. Thompson testified during her depositions on April 15 and again on April 28 that she signed the letter formally approving Mr. Hughes's compensation. *See* Thompson Tr. at 355:21-356:1; 518:8-18 ("**Q.** Okay. On this letter, do you see Mr. Hughes's signature there? **A.** Yes. **Q.** And at the bottom, do you recognize your own signature? **A.** Yes. **Q.** And is that, in fact, your signature? **A.** It appears to be. **Q.** You don't have any reason to doubt that that's your signature; correct? **A.** No.")

Not a single one of the six senior City officials who were well aware that Mr. Hughes intended to seek compensation ever objected or asked Mr. Hughes for additional details on his compensation. Nor did those officials reach out to the City Attorney's Office or any other ethics body to determine whether Mr. Hughes was permitted to be paid. *See, e.g.,* Thompson Tr. at 537:11-22 ("**Q.** After you signed the November 19th letter, did you ever ask Mr. Hughes any questions about his compensation? **A.** No. **Q.** You told me a few minutes ago that the letter says he would seek compensation; correct? **A.** Yes. **Q.** Did you ever ask him if he got compensation? **A.** No. **Q.** Did you ever ask Mr. Hughes how much he was paid, if anything? **A.** No."); Villa Tr. at 145:3-9 ("**Q.** Okay. If anything about what Ms. Thompson reported to you had seemed inappropriate or illegal or sinister, would you have reported it up the chain of command that you were in? **A.** Absolutely. **Q.** But you didn't? **A.** No.")

This failure by City officials to follow up on Mr. Hughes's transparent disclosures is fatal to the City's claims under the relevant four-year statute of limitations. This is because, when a party becomes "aware of facts which would make a reasonably prudent person suspicious, [the party] had a duty to investigate, and [is] charged with knowledge of matters which would have

been revealed by such an investigation." *Krolikowski v. San Diego City Empls.' Ret. Sys.* (2018) 24 Cal.App.5th 537, 562. While the City's statutory period arguably began running as early as August 2014, even using the date of Mr. Hughes's payments as the start date, the City's deadline to bring claims related to CCP and 101 Ash expired in June 2019 and January 2021, respectively.

The City's decision to file lawsuits against Mr. Hughes was reckless at the time and is even more irresponsible today. It does not deserve the unquestioning support of media outlets like KUSI. Through presentations and letters, the City was on notice prior to filing its lawsuit that its claims were time-barred. Yet the City still pushed forward regardless, myopically focused on burying from public attention its own role in the botched remodel of 101 Ash. Mr. Hughes intends to bring legal action against the City for malicious prosecution, once the Court has granted summary judgment. The City's claims are time-barred, and the City knew it when it wasted taxpayer dollars by filing its frivolous lawsuit.[2]

Second, section 1090 does not apply to Mr. Hughes, an informal advisor with no contract, no governmental decision-making power, and no formal role with the City of San Diego. Mr. Hughes does not fall within the scope of section 1090, a statute that, by its unambiguous terms, applies only to "city officers or employees." While it is true that the statute has been extended in recent years to cover independent contractors, it has ***never***—not once in the history of section 1090—been applied to someone like Mr. Hughes, an informal advisor with no contract. The failure of the City to identify even a single legal authority to support its position is telling.

Instead, the City's argument appears to rely on a document from 2013 in which then-Mayor Filner appointed Mr. Hughes as a "special assistant." What the City neglects to mention is that this "position" expired upon the conclusion of the Filner administration, at which point Mr. Hughes returned to his undefined position providing informal advice when asked. On multiple occasions thereafter, Mr. Hughes reached out to City staff—including the Assistant Chief Operating Officer under then-Interim Mayor Gloria on September 11, 2013—to inquire whether the Filner letter should be renewed or whether there was any other paperwork he should complete to document his role with the City. He was ignored each time. The City cannot have it both ways: ignoring Mr. Hughes's repeated requests for clarification as to his role, while arguing he is unambiguously covered by a state conflict-of-interest statute.

Importantly, every disinterested party to examine these transactions—including the City Auditor's Office—has concluded it was the City, not Mr. Hughes, that failed in its obligations. In his report last year, for example, the City Auditor made clear that "the Mayor's Chief of Staff [was] responsible for documenting a Mayoral consultant's range of duties, along with a determination of the extent of their economic disclosure requirements." City Auditor's Report at 31. Despite this clear assignment of responsibility, the Mayor's Office routinely failed to "document [Hughes's] duties and determine whether [Hughes] should disclose his economic interests . . . ." *Id.* The Mayor's Office also failed to require Mr. Hughes to sign any "general contract terms" that would have required him to "disclose [his] relevant financial interests in a

[2] The same is true of the City's add-on claims for fraud and breach of fiduciary duty.

statement of economic interests." *Id*. at 32. Because the Mayor's Office neglected to ensure Mr. Hughes was under contract, the Auditor concluded that Mr. Hughes was "not subjected to these contract conditions." *Id*.

For his part, Stephen Puetz, the Mayor's Chief of Staff at the time, freely agreed during his deposition that he did not document either Mr. Hughes's role with the City or his economic disclosure obligations. *See* Puetz Tr. at 102:2-12 ("**Q.** As you sit here today, do you agree with the statement that the Mayor's Chief of Staff is responsible for making a determination of the extent of a mayoral consultant's economic disclosure requirements? **A.** I have no reason to dispute it. **Q.** What did you do to document the duties of Mr. Hughes in connection with the service to Mayor Faulconer? **A.** I don't know that there was any formal documentation."); 113:22-25 ("**Q.** Did you take any steps to confirm that Mr. Hughes was under contract such that those provisions [of federal, state, and local law] were applicable to him? **A.** No.")

This failure by the City administration to give Mr. Hughes guidance as to his role and his disclosure obligations was not only a disservice to Mr. Hughes, it also led to confusion among other senior officials. Mr. Villa testified, for example, that Mr. Hughes had no "specific job description . . . because there was no contract." *See* Villa Tr. at 168:8-13 ("Mr. Hughes's role was -- was as -- in my mind, was as a goodwill ambassador in the real estate transactions that the City did. I don't think that there was any specific -- because there was no contract, there was no specific job description on what his role could be or should be.") Ms. Thompson likewise testified as to this ambiguity. *See* Thompson Tr. 524:4-8 ("**Q.** . . . You have no understanding one way or the other, then or now, as to what 'special assistant' means as used by Mr. Hughes in this letter that you signed. **A.** Correct."). For the City to now argue that Mr. Hughes's role was somehow defined and fell within state conflict-of-interest statutes is false and disingenuous.

Further, regardless of how Mr. Hughes's role with the City is characterized, that role was fundamentally altered when Mr. Hughes developed the lease-to-own idea in 2014. He was crystal clear with every City official he spoke with that this idea was complex, akin to an "investment banking type transaction," and distinct from his traditional role informally advising the City on traditional leases. *See*, e.g., Thompson Dep. Exs. 71, 78 (Hughes's October 21, 2014 Email Disclosure to Mary Lewis and November 19, 2014 Disclosure Letter Signed by Cybele Thompson); Villa Dep. Ex. 05 (Hughes's August 4, 2014 Email Disclosure to Brad Bennett). Each of those six officials had ample opportunity to decline Mr. Hughes's offer or to instruct him that he could not seek compensation. But across the board, they did not. The City's self-serving position now, that he is covered by section 1090, is baseless and meritless. In short, Mr. Hughes was an informal advisor not covered by section 1090.

Third, even if the City could somehow show that Mr. Hughes acted as a "contractor" for the City—which it cannot—recent case law establishes that he would not be covered by section 1090 because of the numerous disclosures set forth above. In *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, the California Supreme Court extended section 1090 to cover independent contractors, but it specifically held that this rule "might give way in circumstances where a

contractor reasonably believed he or she was not expected to subordinate his or her financial interests to the public's." *Id.* at 240. What more could Mr. Hughes have done to express his intent to be compensated than to disclose it to six separate senior City officials over the span of five months? Any one of those officials could have simply told Mr. Hughes "No", but they did not. Mr. Hughes did not believe he was under any obligation to undertake a complex, highly specialized and time-consuming business transaction for free, nor did any of the six City officials. It was not until the City saw Mr. Hughes as a convenient scapegoat for the City's own incompetence in handling the 101 Ash remodel, that the City changed its position.

In light of the foregoing, KUSI is on notice of the true facts with respect to the matters addressed above. Many of these facts are found in publicly available records and court proceedings. Please be advised that any publication by KUSI of any false and defamatory statements regarding these matters would give rise to claims for, among others, libel, tortious interference with contract and prospective economic advantage, and intentional infliction of emotional distress. Even if a court were to find Hughes to be a public figure, actual malice still would be established because KUSI has consciously disregarded all of the above cited facts. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 682 (1989) (finding actual malice where defendant was aware of significant evidence contradicting its claims and yet still went ahead with publication).

In addition, we demand that KUSI update the Article to include the following on-the-record statement on behalf of Mr. Hughes, and contact counsel for Mr. Hughes, Mike Attanasio at Cooley LLP, prior to publishing any further articles or airing any further stories regarding the CCP and 101 Ash Street transactions, to enable Mr. Hughes to have a meaningful opportunity to comment on the same:

> **Jason Hughes is not a party to any settlements involving 101 Ash Street or Civic Center Plaza for one simple reason. He had written approval to be compensated by the most senior real estate official in City government, Cybele Thompson, and he also disclosed his intent to be compensated on lease-to-own transactions to five other senior City officials, including the then-Mayor, his chief-of-staff, the City's CFO and Deputy COO who oversaw the City's real estate department. Mr. Hughes did nothing wrong, and the City's ongoing attempt to damage his reputation and to harm the San Diego company that he built should be seen for what it is – a cynical attempt to divert attention from the City's own failings. Mr. Hughes looks forward to his day in court and a fair review of <u>all</u> the facts.**

Any publication of false facts, the failure to comply with the foregoing demands, and any continued interference with Mr. Hughes's business relationships, would have the natural and foreseeable consequence of causing him to suffer tremendous long-term monetary damages, in the millions of dollars. This would leave Mr. Hughes with no alternative but to consider instituting immediate legal proceedings against KUSI and all persons and entities involved in the publication

of such defamatory statements. Should that occur, Mr. Hughes would assert all available causes of action and seek the maximum available compensatory damages and punitive damages.

This letter is not intended as a full or complete statement of all relevant facts or applicable law, and nothing herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of my client's rights, remedies, claims or causes of action, all of which are hereby expressly reserved.

Sincerely,

RYAN J. STONEROCK Of
HARDER LLP

cc: Mr. Jason Hughes
Charles J. Harder, Esq.
Steven H. Frackman, Esq.