

#600
03/22/2023

(R-2023-503)

RESOLUTION NUMBER R- **314693**

DATE OF FINAL PASSAGE **MAR 22 2023**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT
AND MUTUAL RELEASE (SETTLEMENT AGREEMENT)
CLAIMS BETWEEN THE CITY OF SAN DIEGO AND JASON
HUGHES AND HUGHES MARINO.

WHEREAS, in October 2020, City filed a lawsuit designated as San Diego Superior Court Case No. 37-2020-00036247-CU-CO-CTL against 101 Ash, LLC and Wilmington Trust, National Association, as trustee of CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017 CTL-1 (101 Ash Lender), alleging claims for declaratory relief and reformation based upon article 16, section 18 of the California Constitution with respect to City's lease to own arrangement as described in City's lease of the improved real property located at 101 Ash Street in downtown San Diego, California (101 Ash Lawsuit); and

WHEREAS, in August 2021, City filed a First Amended Complaint in the 101 Ash Lawsuit against 101 Ash, LLC, 101 Ash Lender, Cisterra Partners, LLC, Jason Hughes, West Coast General Corporation (WCGC), and Argus Contracting L.P. (Argus), alleging claims including violation of Government Code section 1090 (against Cisterra Partners, 101 Ash, LLC, and Jason Hughes), fraud – intentional misrepresentation (against Jason Hughes), breach of fiduciary duty (against Jason Hughes), fraud – concealment (against Cisterra Partners, 101 Ash, LLC, and Jason Hughes), return of monies had as a result of section 1090 violation (against 101 Ash Lender), rescission (against 101 Ash, LLC and 101 Ash Lender), declaratory relief – constitutional debt limitation (against 101 Ash, LLC and 101 Ash Lender), reformation (against 101 Ash, LLC and 101 Ash Lender), and negligence (against WCGC and Argus). City filed a doe amendment naming Hughes Marino as a defendant to the claims for violation of Government

Code section 1090, breach of fiduciary duty, fraud – intentional misrepresentation, and fraud – concealment. City has also filed amendments naming various contractors and subcontractors as additional defendants (collectively, “Contractor Defendants”); and

WHEREAS, in June 2021, City filed a lawsuit designated as San Diego Superior Court Case No. 37-2021-00028026-CU-FR-CTL against CCP 1200, LLC, Cisterra Partners, LLC, Wilmington Trust, National Association, as trustee of CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2015 CTL-1 (CCP Lender), and Jason Hughes, alleging claims including violation of Government Code section 1090 (against Cisterra Partners, CCP 1200, LLC, and Jason Hughes), fraud – intentional misrepresentation (against Jason Hughes), breach of fiduciary duty (against Jason Hughes), fraud – concealment (against Cisterra Partners, CCP 1200, LLC, and Jason Hughes), return of monies had as a result of section 1090 violation (against CCP Lender), and rescission (against CCP 1200, LLC and CCP Lender) with respect to City’s lease to own arrangement as described in the City’s lease of the improved real property known as the Civic Center Plaza site and the King-Chavez Community High School site located at 1200 Third Avenue and 201 A Street, respectively, in downtown San Diego, California (CCP Lawsuit). City filed a doe amendment naming Hughes Marino as a defendant to the claims for violation of Government Code section 1090, breach of fiduciary duty, fraud – intentional misrepresentation, and fraud – concealment.; and

WHEREAS, the Offices of the Mayor and the City Attorney have recommended that the San Diego City Council (Council) approve a proposed Settlement Agreement and Mutual Release (Settlement Agreement) negotiated during confidential mediation discussions by and among the following parties (collectively, Settling Parties): (a) the City of San Diego; (b) Jason

Hughes; and (c) Hughes Marino (Jason Hughes and Hughes Marino are referred to collectively as Hughes); and

WHEREAS, the Settlement Agreement is included as Attachment B to the staff report accompanying this Resolution (Staff Report); and

WHEREAS, through the Settlement Agreement, the Settling Parties will agree to the following key terms: (a) the City of San Diego will dismiss with prejudice the claims it has alleged against Hughes in pending litigation involving the Civic Center Plaza property located at 1200 Third Avenue and 201 A Street in downtown San Diego (CCP Property) and the 101 Ash Street property in downtown San Diego (101 Ash Property) (collectively, the Dispute); (b) the Settling Parties will release known and unknown claims against each other with respect to the CCP Property and the 101 Ash Property (collectively, Properties); (c) Hughes will pay the aggregate total of \$9,433,872.30 (which represents 100 percent of the funds Hughes received on the CCP Property and 101 Ash Property transactions), to or for the benefit of City within ten (10) business days of the Effective Date of the Settlement Agreement; and (d) the City will have no obligation to pay any portion of fees and costs incurred by Hughes in the defense of the Dispute, the mediation of the Dispute, or the negotiation of the Settlement Agreement; and

WHEREAS, the Settlement Agreement will not result in the dismissal or resolution of claims that the City has or may have against various other persons or entities, including, but not limited to any contractors involved in the 101 Ash Renovations (i.e., the renovations and reconfigurations in the office building at the 101 Ash Property that occurred after signature of the 101 Ash Lease); and

WHEREAS, the Council has held a public hearing, and has reviewed and considered the written and verbal testimony and evidence presented at or before the public hearing, regarding the subject matter of this Resolution; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The Council approves the Settlement Agreement on the terms and conditions set forth therein.
2. The Mayor or designee is authorized, on the City's behalf, to sign and deliver the Settlement Agreement and to effectuate the purposes and intent of this Resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By


M. Travis Phelps
Assistant City Attorney

MTP:jsm
03/21/2023
Doc. No.

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 22 2023.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 03/22/2023
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on MAR 22 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 22 2023.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

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