

1 LAWRENCE W. SHEA, II, State Bar No. 126976
2 Law Office of Lawrence Shea
3 P.O. Box 6353
4 San Diego, California 92166
5 Telephone: (858) 263-1726
6 lshea@lawrenceshea.com

7 Attorneys for PLAINTIFF

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Clerk of the Superior Court
By Amy Woolf, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, VISTA COURT

10 LUIS GUERRERO, an individual,

11 PLAINTIFF,

12 V.

13 CITY OF SAN DIEGO, a Municipal
14 Corporation, 101 ASH, LLC, and DOES 1
15 through 100, inclusive,

16 DEFENDANTS.

Case No. 37-2021-00001137-CU-PO-NC

COMPLAINT FOR DAMAGES

1. **Dangerous Condition of Property;**
2. **Intentional Exposure to Asbestos;**
3. **Negligent Interference with Prospective Economic Advantage;**
4. **Intentional Interference with Prospective Economic Advantage;**
5. **Whistle Blower Retaliation in Violation of Public Policy;**
6. **Intentional Infliction of Emotional Distress**

17
18 **DEMAND FOR JURY TRIAL**

19
20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 COMES NOW PLAINTIFF LUIS GUERRERO (hereinafter "PLAINTIFF") for alleged causes of
22 action against CITY OF SAN DIEGO, a Municipal Corporation, and DOES 1 through 100,
23 inclusive, (collectively "DEFENDANTS") and each of them, does hereby complain and allege as
24 follows:
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I.

INTRODUCTION

1. This action is brought by LUIS GUERRERO, a Hispanic worker employed by CBRE, Inc., as the Senior Building Engineer at 101 Ash St., San Diego, California (hereinafter, “101 ASH”).

2. In or about August, 2019, Mr. GUERRERO came forward to request the San Diego County Air Pollution Control District (hereinafter “APCD”) to investigate concerns that material found on the worksite that the CITY OF SAN DIEGO had been denying was asbestos was in fact toxic asbestos which was potentially exposing workers including himself to potential bodily injury.

3. The APCD immediately investigated the work site conditions, collected samples and made the independent determination that the work site was contaminated with toxic asbestos and cited the CITY OF SAN DIEGO for various regulatory violations requiring the construction project to be suspended and licensed abatement professionals to clean the building before workers could return.

4. Unbeknown to Mr. GUERRERO at the time, CITY OF SAN DIEGO had been exposed to irregularities relating to the purchase of 101 ASH which are the subject of extensive litigation in this Court in related matters: John A. Gordon v. 101 Ash, LLC, et. al., Case No. 37-2020-00028837-CU-FR-CTL, and City of San Diego v. 101 Ash, LLC, et. al., Case No. 37-2020-00036247-CU-CO-CTL. Due to these irregularities, CITY OF SAN DIEGO faced the prospect the building would not be capable of being occupied rendering the transaction unconstitutional as is more fully alleged and litigated in these related actions.

5. Unfortunately for all concerned, the existence and extent of asbestos contamination exposure to construction workers was so extensive so as to prevent the remodeling project from continuing without the delay and expense of abatement, testing and appropriate worker protection. Whenever Mr. GUERRERO or other workers raised concerns to the City about the nature and extent of asbestos contamination present or the need for abatement or worker protection, the CITY OF SAN DIEGO belittled their concerns, falsely denied the existence of

1 asbestos contamination, falsely reassured the workers of their safety, and falsely denied the need
2 for worker protection measures, all designed to keep the project on track, on budget and capable
3 of being lawfully occupied or the entire transaction may result in massive monetary losses to the
4 City.

5 6. After the construction project was temporarily closed for cleaning in August, 2020,
6 due to extensive asbestos violations relating to worker safety, construction resumed by the City in
7 heightened earnest so as to still meet an arbitrary self-imposed deadline for the CITY OF SAN
8 DIEGO to occupy 101 ASH no later than December, 2019.

9 7. When construction resumed in September, 2019, the problem of asbestos
10 contamination of the work area reappeared and persisted because the root cause of these problems
11 is the failure of asbestos containment since it like the rest of the building is so old. When
12 construction resumed, APCD continued its periodic monitoring, found more asbestos and more
13 worker safety violations, and issued more citations to THE CITY OF SAN DIEGO. APCD
14 consistently found during its own testing unsafe levels of asbestos contamination endangering
15 workers despite the CITY claiming all its testing was within normal limits. This continued from
16 August when APCD first examined the project until January, 2020, when APCD declared the
17 building a public nuisance.

18 8. The violation notices by APCD causing construction delays and costs to the City
19 became a sore subject within the CITY OF SAN DIEGO which announced its own investigation
20 to uncover which disloyal whistle blower disclosed to APCD the hazardous asbestos conditions
21 causing their investigation. In construction progress meetings and safety meetings conducted by
22 the CITY OF SAN DIEGO after APCD was tipped off, City construction management persons
23 made it clear to all workers that it would determine which one of them told APCD about the
24 conditions at 101 Ash implying the City would retaliate against that whistle blower for causing an
25 investigation resulting in numerous APCD violations notices, work stoppages and costs.

26 9. On or about November 22, 2019, LUIS GUERRERO, came forward to advise
27 upper management of his employer, CBRE, Inc., of the asbestos violations that had been
28 determined by APCD, and more particularly of concerns that exposure of up to 100 unprotected

1 predominately temporary Hispanic janitors was about to occur over Thanksgiving weekend when
2 the HVAC system was to be re-activated for the first time causing asbestos debris to be blown
3 into the workspaces, and also of concerns that the CITY OF SAN DIEGO had not been acting
4 with appropriate diligence and candor with regard to asbestos dangers to workers, and that CBRE
5 as the property management company needed to be aware the overall building condition included
6 serious life safety issues which were not being addressed making occupancy dangerous to the
7 City employees and to the public doing business there with the City.

8 10. CBRE, Inc., immediately began an extensive investigation of these whistle blower
9 concerns brought forward by Mr. GUERRERO, conducted by independent outside counsel,
10 including extensive outside expert investigation of the asbestos abatement and containment
11 practices of the City and other life safety concerns, and thereafter notified the City that it found
12 Mr. GUERRERO's concerns to be valid in every particular, that CBRE had developed its own
13 concerns regarding the lack of candor and/or diligence of the City in regards to how it handled
14 CBRE's inquiries during its investigation, and that it believed the City's conduct with regard to
15 retaliation against Mr. Guerrero was a violation of public policy.

16 11. On or about November 22, 2019, Upon learning of Mr. GUERRERO coming
17 forward as a whistle blower and the general nature of his concerns being reported, the CITY OF
18 SAN DIEGO immediately retaliated against him by banning him from returning to his assigned
19 place of work at 101 Ash despite knowledge that Mr. GUERRERO's reporting was both truthful
20 and lawfully protected. The City persisted in retaliation against Mr. GUERRERO through
21 November, 2020, eventually causing his termination despite later knowing that CBRE had
22 concluded after its investigation that Mr. GUERRERO's concerns were valid and despite publicly
23 acknowledging that the City's own independent experts had concluded all the life safety issues
24 raised by Mr. GUERRERO were in fact truthful.

25 12. Despite receiving weekly notices of new asbestos violations being found by APCD
26 and its own independent awareness that the fire safety, HVAC, plumbing and other life safety
27 issues raised by Mr. GUERERRO had not been resolved, the CITY OF SAN DIEGO pushed
28 forward to move approximately 1300 City employees into 101 ASH by late December, 2019.

1 These City employees and the public were placed in clear and present danger due to the building
2 lacking basic fire protection, air supply, HVAC, and having contaminated plumbing.
3 Additionally, at the time 101 Ash was occupied, the CITY OF SAN DIEGO was aware of
4 continuous asbestos contamination being found in the work spaces due to the failure of the
5 asbestos containment coatings and the faulty HVAC ducting. Despite actual knowledge of these
6 conditions, and with full appreciation for the seriousness of the danger to life safety these
7 conditions presented, management of the CITY OF SAN DIEGO made the conscious decision to
8 disregard the safety of employees and the public and occupy the building. These same managers
9 were believed to be responsible for false reporting of asbestos conditions to workers, concealment
10 of conditions from regulators, and for ordering retaliation be taken against Mr. GUERRERO.

11 13. Upon learning the CITY OF SAN DIEGO was occupying the building despite the
12 asbestos contamination, the County of San Diego, APCD, took the extraordinary step of declaring
13 101 ASH a public nuisance and posted County notices on all entrances declaring that the building
14 was contaminated with asbestos endangering all who entered. Once these notices were posted the
15 CITY OF SAN DIEGO was forced to accept the public humiliation of having to move the 1300
16 City employees out of the building that they had just moved in three weeks prior and to disclose
17 to the public that 101 Ash was likely uninhabitable.

18 14. The whistle blower disclosures by Mr. GUERRERO saved the lives of many
19 people and led to an unbroken chain of adverse admissions by the City and others culminating in
20 the City's suspension of all payments under the lease with 101 ASH LLC effective September,
21 2020, and City filing its own suit against the seeking a determination that the lease is void as
22 written due to the building condition being so poor as to render 101 Ash uninhabitable.

23 15. The City also initiated its own internal investigation and engaged its own legal and
24 expert teams which determined the reason 101 Ash is not inhabitable is due to the very issues
25 brought forward by Mr. GUERRERO as a whistle blower; namely, that the building condition
26 was not safe for occupation; that the conclusions by CBRE's team that Mr. GUERRERO's
27 disclosures were credible is in fact accurate; and that the CITY OF SAN DIEGO's management
28 level employees had wrongfully retaliated against Mr. GUERRERO in violation of public policy.

1 Despite actual knowledge of these additional facts by August, 2020, the CITY OF SAN DIEGO
2 still persisted in its punitive and resentful retaliation against Mr. GUERRERO eventually
3 resulting in his termination by CBRE in November, 2020.

4 16. Mr. GUERRERO comes now and brings his individual lawsuit against CITY OF
5 SAN DIEGO and others for their willful and/or negligent exposure of him to toxic asbestos, for
6 tortious interference with his employment in retaliation for his honest reporting, and for
7 intentional infliction of emotional distress, seeking compensatory and punitive damages against
8 those individuals, including Doe City employees, who prove to have been primarily responsible
9 for these retaliatory actions taken against him.

10 **II.**

11 **JURISDICTION AND VENUE**

12 17. Venue is proper in the County of San Diego pursuant to Section 395(a) of the *Code*
13 *of Civil Procedure* because PLAINTIFF LUIS GUERRERO resides in the City of San Diego,
14 County of San Diego, CA; DEFENDANT CITY OF SAN DIEGO is a municipal corporation
15 with its principal place of business in San Diego, CA, DEFENDANT 101 ASH, LLC., is and all
16 acts giving rise to this complaint occurred in the City of San Diego, County of San Diego,
17 California.

18 18. The amount in controversy exceeds the jurisdictional minimum of this Court.

19 **III.**

20 **THE PARTIES**

21 19. PLAINTIFF LUIS GUERRERO is an individual residing in the City of San Diego,
22 County of San Diego, CA. At the time of the alleged incident he was employed by CBRE, Inc.,
23 as a Senior Engineer at 101 Ash St., San Diego, CA.

24 20. DEFENDANT CITY OF SAN DIEGO is a Municipal Corporation located in San
25 Diego, CA, and from January, 2017, until the present, was the sole and exclusive lessee of 101
26 Ash St., San Diego, CA.

27 21. DEFENDANT 101 ASH, LLC, was formed as a Delaware limited liability
28 company on September 8, 2016, and registered in California as a foreign limited liability

1 company on December 1, 2016. DEFENDANT 101 ASH, LLC, does business in the State of
2 California, County of San Diego and from January, 2017, until the present is the legal owner of
3 the building located at 101 Ash Street, San Diego CA 92101 (hereinafter The Sempra Building).

4 22. DEFENDANT DOES 1-20 acting individually or together on behalf of the CITY
5 OF SAN DIEGO were contractors, agents or employees responsible for monitoring, testing and
6 reporting of toxic conditions at The Sempra Building including appropriate work stoppages and
7 or warnings to workers like Mr. GUERRERO so as to prevent the unreasonable risk of harmful
8 exposure to dangerous conditions including toxic substances including asbestos.

9 23. DEFENDANT DOES 21-40 acting individually or together on behalf of 101 ASH
10 LLC were contractors, agents or employees responsible for testing and reporting of toxic
11 conditions at The Sempra Building including appropriate work stoppages and or warnings to
12 workers like Mr. GUERRERO so as to prevent the unreasonable risk of harmful exposure to
13 dangerous conditions including toxic substances including asbestos.

14 24. DEFENDANT DOES 41-60 acting individually or together were agents,
15 contractors, agents or employees of CITY OF SAN DIEGO who acted with malice, oppression or
16 fraud in connection with knowingly false testing and/or reporting of toxic conditions, and did
17 knowingly, maliciously and with conscious disregard for the safety of PLAINTIFF fail to
18 properly warn of the risk of exposure to asbestos.

19 25. DEFENDANT DOES 61-80 acting individually or together were agents,
20 contractors or employees of 101 ASH LLC who acted with malice, oppression or fraud in
21 connection with knowingly false testing and/or reporting of toxic conditions, and did knowingly,
22 maliciously and with conscious disregard for the safety of PLAINTIFF fail to properly warn of
23 the risk of exposure to asbestos.

24 26. DEFENDANT DOES 81-100 acting individually or together were agents,
25 contractors or employees of CITY OF SAN DIEGO who acted with malice, oppression or fraud
26 in connection with retaliation against PLAINTIFF LUIS GUERRERO for lawful reporting of
27 potentially dangerous conditions at The Sempra Building affecting the life safety of CBRE
28 employees/contractors, third party construction workers, City employees and/or the general

1 public.

2 27. Plaintiff is informed and believes, and thereupon alleges, that at all times relevant
3 and mentioned herein, Defendants and DOES 1 through 100, inclusive, and each of them, were
4 the agents, servants, employees, independent contractors, co-conspirators, management
5 companies, subsidiaries and/or joint ventures of the remaining Defendants, and each of them, and
6 were at all times material hereto acting within the authorized course, scope and purpose of said
7 agency and employment, and/or that all of said acts were subsequently performed with the
8 knowledge, acquiescence, ratification and consent of the respective principals, and the benefits
9 thereof accepted by said principals.

10 28. The true names and/or capacities, whether individual, corporate, governmental,
11 associate, or otherwise, of Defendant DOES 1 through 100, inclusive, and each of them, are
12 unknown to Plaintiff, who therefore sue said Defendants by such fictitious names. Plaintiff is
13 informed and believes, and thereon alleges, that each Defendant fictitiously named herein as a
14 DOE is legally responsible as alleged herein, for the events and damages hereinafter referred to,
15 and which legally caused the injuries and damages to Plaintiff as hereinafter alleged. Plaintiff will
16 seek leave of Court to amend this complaint to insert the true names and/or capacities of such
17 fictitiously named Defendants when the same have been ascertained.

18 **FIRST CAUSE OF ACTION**

19 **DANGEROUS CONDITION OF PROPERTY**

20 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, 101 ASH, LLC, And DOES 1-100,**
21 **Inclusive)**

22 29. PLAINTIFF hereby incorporates all previous allegations as though stated here in
23 full.

24 30. PLAINTIFF has complied with all Claim Reporting Requirements of the
25 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

26 31. The incident that serves as the basis of this claim concerns repeated exposure to
27 asbestos fiber in and around the building leased, owned, operated, controlled and occupied by
28 DEFENDANTS CITY OF SAN DIEGO and 101 ASH, LLC, and each of them, located at 101

1 Ash St., San Diego, CA, referred to herein as “The Sempra Building.”

2 32. PLAINTIFF was employed by CBRE, Inc., as a Senior Engineer pursuant to a
3 contract between CBRE, INC., and DEFENDANT CITY OF SAN DIEGO, and was assigned to
4 The Sempra Building where he worked under the supervision of DEFENDANT CITY OF SAN
5 DIEGO. The precise dates of exposure are unknown to PLAINTIFF due to actions taken by
6 DEFENDANTS, and each of them, to secrete, hide, obscure, and/or misrepresent the existence
7 and extent of asbestos contamination present so as to deceive and/or prevent discovery of the
8 contamination by inspectors, regulators, employees, the public and workers, including
9 PLAINTIFF.

10 33. All actions of employees of DEFENDANTS as alleged herein were within the
11 scope of their employment and/or were undertaken for the purpose of performing a lawful and
12 approved government purpose, namely to finalize the remodeling and reconstruction of The
13 Sempra Building according to plans, specifications, budgets and other regulations applicable for
14 occupancy of this space by DEFENDANT CITY OF SAN DIEGO, and/or were undertaken with
15 the knowledge and approval of DEFENDANTS, and/or were subsequently ratified by
16 DEFENDANTS, for which DEFENDANTS are vicariously liable.

17 34. All actions of independent contractors as alleged herein were within the scope of
18 their contract with DEFENDANTS for the remodeling and reconstruction of The Sempra
19 Building according to plans, specifications, budgets and other regulations applicable for
20 occupancy of this space by DEFENDANT CITY OF SAN DIEGO, and/or were undertaken with
21 the knowledge and approval of DEFENDANTS, and/or were subsequently ratified by
22 DEFENDANTS, for which DEFENDANTS are vicariously liable.

23 35. At all times alleged herein to the present, DEFENDANTS and each of them knew
24 of should have known of the likely exposure of PLAINTIFF and others to toxic asbestos, knew of
25 should have known of their negligent conduct as alleged herein, and knew of their willful,
26 malicious and callously indifferent conduct as alleged fully herein, further DEFENDANTS, and
27 each of them, knew or should have known that PLAINTIFF had been reasonably relying upon
28 them for testing, accurate reporting of testing results, warnings of potential asbestos exposure and

1 warnings of actual exposure. With knowledge of falsity, DEFENDANTS have been making false
2 representations to workers, including PLAINTIFF, that there was no unsafe level of asbestos
3 exposure, that there was no basis for concern, and that there was no need for warnings, that there
4 was no need for protective gear. In addition to causing workers to engage in activity putting them
5 at personal risk to minimize construction costs and avoid construction delays, said
6 misrepresentations were made for the purpose of and/or had the effect of discouraging workers,
7 including PLAINTIFF, from bringing forward claims before the expiration of applicable statute
8 of limitations deadlines.

9 36. PLAINTIFF physically worked at The Sempra Building daily from September 1,
10 2018, to November 22, 2019, with the permission and knowledge of DEFENDANTS under
11 DEFENDANT CITY OF SAN DIEGO's daily supervision.

12 37. PLAINTIFF is informed and on that basis alleges The Sempra Building contains
13 asbestos throughout its structures which at all times relevant herein was being disturbed and
14 disseminated in the air and throughout the work areas of the building as uncontained dust and
15 debris. The existence of uncontained asbestos contamination at The Sempra Building was of the
16 type, quantity and duration likely to cause harm to unprotected workers therein, including
17 PLAINTIFF, and constitutes a dangerous condition of real property.

18 38. PLAINTIFF is informed and on that basis alleges DEFENDANTS created the
19 dangerous condition by their actions in causing construction to disturb asbestos, in preventing
20 proper abatement from occurring, in directing disposal of asbestos as non-hazardous waste, in
21 failing to warn to workers of potential asbestos contamination, in failing to ensure proper worker
22 protection to be in place, and in misrepresenting the existence of contamination to contractors,
23 workers, regulators and others responsible for worker and/or public safety.

24 39. PLAINTIFF is informed and on that basis alleges DEFENDANTS were
25 independently aware of the existence of the dangerous condition which was obvious and observed
26 during regular inspection and/or testing of The Sempra Building, and were also advised of the
27 dangerous condition by third party contractors, independent testing labs, and government
28 regulators who repeatedly warned DEFENDANTS of the contamination and/or who assessed

1 fines against DEFENDANTS for repetitive violations of environmental and workplace safety
2 laws.

3 40. PLAINTIFF is informed and on that basis alleges DEFENDANTS were also
4 aware of the health hazard uncontained asbestos created for unprotected workers, including
5 PLAINTIFF, was aware that workers, including PLAINTIFF, had not been provided complete or
6 accurate information about the extent of contamination known to DEFENDANTS, and that
7 workers, including PLAINTIFF, were working unprotected in areas known to be contaminated.
8 In fact on many occasions DEFENDANT CITY OF SAN DIEGO, and DOES 1-100 directed
9 work to be done by unprotected workers in areas known by CITY to be contaminated. Such
10 actions were foreseeable to expose workers, including PLAINTIFF, to dangerous and life
11 threatening levels of asbestos fiber which exposure was foreseeable to cause injury.

12 41. As a proximate result of said dangerous conditions of property, PLAINTIFF was
13 exposed to dangerous levels of asbestos contamination causing him physical harm, disease and
14 severe emotional distress in an amount according to proof.

15 **SECOND CAUSE OF ACTION**

16 **WILLFUL EXPOSURE TO TOXIC CONDITIONS**

17 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, 101 ASH, LLC, And DOES 1-100,**
18 **Inclusive)**

19 42. PLAINTIFF hereby incorporates all previous allegations as though stated here in
20 full.

21 43. PLAINTIFF has complied with all Claim Reporting Requirements of the
22 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

23 44. PLAINTIFF is informed and on that basis alleges that at all times relevant herein,
24 DEFENDANTS 101 ASH LLC and DOES 21-40 and/or 61-80, and each of them, were aware
25 that The Sempra Building contained high levels of asbestos, that the asbestos containment
26 coatings had ceased to be functional due to their extreme age as well as the long term effect of the
27 building being in constant use, that the asbestos coatings had not been properly inspected or
28 maintained, that the representations made these DEFENDANTS to DEFENDANT CITY OF

1 SAN DIEGO concerning the poor conditions in the building including the condition of the
2 asbestos were in fact false, incomplete and/or misleading, that the CITY OF SAN DIEGO would
3 reasonably rely upon these knowingly incorrect representations in allowing workers to enter the
4 building without adequate warnings or protection, that in fact the CITY OF SAN DIEGO did rely
5 on these misrepresentations to the detriment of workers, that workers were in fact being placed in
6 work spaces where these asbestos conditions were likely present, and that the failure to
7 adequately warn the CITY OF SAN DIEGO and the workers of these known dangers, including
8 PLAINTIFF, would unreasonably expose them to toxic asbestos in dosage and duration likely to
9 cause great bodily harm or death. Said misrepresentations by DEFENDANTS 101 ASH LLC and
10 DOES 21-40 and 61-80 were made with knowledge of their falsity and/or reckless disregard for
11 their accuracy with knowledge that these false representations and would be relied upon by the
12 CITY OF SAN DIEGO in setting minimum requirements for worker safety. PLAINTIFF further
13 alleges that said misrepresentations were made in conscious disregard for the safety of workers
14 who would be placed at risk subjecting these DEFENDANTS to punitive or exemplary damages
15 according to proof.

16 45. PLAINTIFF is further informed and on that basis alleges that by August, 2019,
17 DEFENDANT CITY OF SAN DIEGO and DOES 1-20, 41-60, and 81-100, and each them,
18 became aware of the dangerous asbestos conditions present during construction and that workers,
19 including PLAINTIFF, had been and were being placed in dangerous conditions without adequate
20 warnings or protection. By June, 2019, these DEFENDANTS were aware that independent
21 asbestos testing contractors had become so overly concerned about air quality and potential
22 asbestos contamination of the work areas that they began systematically stopping work.
23 Beginning in August, 2019, these DEFENDANTS further became aware that their agents and/or
24 management employees had been falsely testing, reporting and concealing asbestos conditions
25 from the workers and/or regulators to conceal these conditions from workers so as to prevent the
26 expense and delay of ensuring appropriate abatement, training and personal protective practices
27 and/or equipment. By November, 2019, these DEFENDANTS were further aware that
28 PLAINTIFF LUIS GUERRERO, had come forward with evidence including his personal

1 observations as a Senior Engineer that workers were likely being unreasonably exposed to
2 asbestos without their knowledge and that CITY OF SAN DIEGO management level employees
3 were aware of these conditions, and may be actively concealing them from regulators or workers.
4 By December, 2019, CITY OF SAN DIEGO had become further aware that the County of San
5 Diego had made findings of continuing violations due to asbestos in the work place and had been
6 citing City for these violations on a weekly basis. Also by December 2019, City had become
7 aware that other contractors had hired independent testing experts because of concerns City
8 employees were being untruthful regarding asbestos conditions and these experts determined
9 asbestos reporting by City management level employees was being knowingly falsified resulting
10 in additional workers being placed in hazardous conditions without warnings or protective gear.
11 Despite knowledge of the hazardous conditions present in the work site at 101 Ash, the fact
12 workers were being placed in danger without their knowledge, without proper training and
13 without adequate personal protective gear, knowledge that DEFENDANTS' statements to
14 workers as to the safety of the work place had been proven false on repeated occasions without
15 correction or subsequent warnings to workers placed at risk, the fact that weekly inspections by
16 the County of San Diego were resulting in continuous violations notices due to unsafe asbestos
17 levels in the work place, the fact that PLAINTIFF, the Senior Engineer at the building, had come
18 forward to report serious potential workplace safety concerns relating to asbestos contamination
19 and exposure, DEFENDANTS persisted in continuing to assert falsely that the workplace was
20 safe, that workers, including PLAINTIFF were not at risk of asbestos contamination, did not need
21 personal protective gear, did not need additional asbestos safety training. Furthermore, CITY OF
22 SAN DIEGO continued to direct workers, including PLAINTIFF into work areas which it knew
23 were contaminated with asbestos. All such conduct was undertaken by management-level
24 employees of the CITY OF SAN DIEGO with full knowledge of its falsity, knowing it was thus
25 exposing workers, including PLAINTIFF to dangerous levels of asbestos, with malicious intent to
26 harm and with callous indifference to the harm that would be caused to workers, including
27 PLAINTIFF.

28 46. As a proximate result of said dangerous conditions of property, PLAINTIFF was

1 exposed to dangerous levels of asbestos contamination causing him physical harm, disease and
2 severe emotional distress in an amount according to proof.

3 47. For willful and knowing exposure of PLAINTIFF to toxic asbestos and callous
4 disregard for the safety of workers, including PLAINTIFF, by all DEFENDANTS as alleged
5 herein, PLAINTIFF further seeks punitive or exemplary damages against DEFENDANTS 101
6 ASH LLC and DOES 1-100, in an amount necessary to punish or make an example of them,
7 according to proof.

8 **THIRD CAUSE OF ACTION**

9 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
10 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, And DOES 1-100 Inclusive)**

11 48. PLAINTIFF hereby incorporates all previous allegations as though stated here in
12 full.

13 49. PLAINTIFF has complied with all Claim Reporting Requirements of the
14 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

15 50. Upon learning that PLAINTIFF had retained counsel to assist in reporting worker
16 safety issues to his employer, CBRE, Inc., as alleged herein, DEFENDANTS CITY OF SAN
17 DIEGO and DOES 1-100 retaliated against PLAINTIFF as a bonafide whistleblower by
18 interfering with his employment, by cancelling PLAINTIFF's ability to return to The Sempra
19 Building where he was the Senior Engineer, by falsely impugning to CBRE, Inc., the accuracy of
20 PLAINTIFF's reporting and the competency, character and veracity of PLAINTIFF, immediately
21 resulting in the termination of PLAINTIFF as Senior Engineer at 101 Ash, and eventually
22 resulting in PLAINTIFF's termination of employment at CBRE, Inc.

23 51. Said retaliatory conduct was made by DEFENDANTS with knowledge that the life
24 safety issues reported by PLAINTIFF were in fact truthful, that workers, City employees and the
25 public were in imminent danger if the building were to be occupied, that predominately Hispanic,
26 unprotected and asbestos danger naïve janitors were in imminent danger of asbestos exposure
27 when PLAINTIFF came forward, that construction workers were being consistently lied to about
28 the nature and extent of asbestos contamination in the workplace and were knowingly being

1 exposed to asbestos without their knowledge or personal protection. Further said conduct by
2 DEFENDANTS was undertaken to retaliate against PLAINTIFF, who was an employee of
3 CBRE, Inc., in good standing with an excellent reputation for subject matter competence, veracity
4 and safety, and to make an example of him to discourage other workers at from also coming
5 forward as whistle blowers and reporting the same or other life safety issues at The Sempra
6 Building.

7 52. PLAINTIFF believes and thereupon alleges said retaliatory conduct was continued
8 with full knowledge that independent experts retained by CITY OF SAN DIEGO had voiced
9 similar concerns about the asbestos contamination in the construction work areas, and that the life
10 safety issues reported by PLAINTIFF as alleged herein including without limitation, the HVAC,
11 Fire Safety, ducting, and plumbing systems, were substantiated by the CITY's own outside
12 experts and lawyers' independent investigations.

13 53. PLAINTIFF believes and thereupon alleges said retaliatory conduct was further
14 made with prior knowledge by these DEFENDANTS that the CITY OF SAN DIEGO had been
15 cited repeatedly by APCD for asbestos contamination of the work place, that independent testing
16 experts had voiced serious concerns about worker safety due to asbestos and air quality resulting
17 in work stoppages, that APCD had declared The Sempra Building to be a public nuisance, and
18 that the City had to incur the public humiliation of moving 1300 city employees in and out of the
19 building within three weeks due to constant asbestos contamination.

20 54. PLAINTIFF believes and thereupon alleges said retaliatory conduct was further
21 made and continued with prior knowledge that CITY OF SAN DIEGO had been advised by
22 CBRE, Inc., that it had retained independent lawyers and investigative experts to determine the
23 accuracy of PLAINTIFF's reporting and had concluded his reporting was factually accurate and
24 that serious questions were raised as to the veracity of City in terms of its response to the
25 investigation as well as the asbestos testing date it had proffered.

26 55. PLAINTIFF believes and thereupon alleges said retaliatory conduct was further
27 made with prior knowledge that CITY OF SAN DIEGO had been advised by CBRE, Inc. that it
28 believed CITY's retaliation against PLAINTIFF was against public policy and that CITY had no

1 right under existing contracts to preclude his ability to work.

2 56. As a proximate result of DEFENDANTS conduct as alleged herein, PLAINTIFF
3 has suffered and will continue to suffer lost earnings and earning capacity, severe emotional
4 distress and such other special and/or general damages according to proof.

5 **FOURTH CAUSE OF ACTION**

6 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**

7 **ADVANTAGE**

8 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, And DOES 1-100, Inclusive)**

9 57. PLAINTIFF hereby incorporates all previous allegations as though stated here in
10 full.

11 58. PLAINTIFF has complied with all Claim Reporting Requirements of the
12 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

13 59. PLAINTIFF believes and thereupon alleges said retaliatory conduct by
14 DEFENDANTS and each of them was made with knowledge that PLAINTIFF was being
15 truthful, that the life safety issues raised were in fact legitimate, that by interfering with
16 PLAINTIFF's ability to work at his place of employment, DEFENDANTS were violating public
17 policy protecting whistleblowers, and that by publishing this decision DEFENDANTS were
18 intending to discourage other whistleblowers from coming forward either to support
19 PLAINTIFF's allegations with evidence they had or to also come forward as whistleblowers
20 reporting life safety issues at The Sempra Building. As such, DEFENDANTS, and each of them
21 acted maliciously and with conscious disregard for PLAINTIFF and further with the intent of
22 causing him harm or with indifference to his suffering harm.

23 60. As a proximate result of DEFENDANTS conduct as alleged herein, PLAINTIFF
24 has suffered and will continue to suffer lost earnings and earning capacity, severe emotional
25 distress and such other special and/or general damages according to proof.

26 61. For malicious and or callously indifferent interference with PLAINTIFF's
27 employment in retaliation for PLAINTIFF coming forward as a whistle blower to report life
28 safety issues at The Sempra Building, by all DEFENDANTS as alleged herein, PLAINTIFF

1 further seeks punitive or exemplary damages against DOES 1-100, in an amount necessary to
2 punish or make an example of them, in an amount according to proof.

3 **FIFTH CAUSE OF ACTION**

4 **WHISTLEBLOWER RETALIATION IN VIOLATION OF PUBLIC POLICY**
5 **(AGAINST DEFENDANTS CITY OF SAN DIEGO, And DOES 1-100, Inclusive)**

6 62. PLAINTIFF hereby incorporates all previous allegations as though stated here in
7 full.

8 63. PLAINTIFF has complied with all Claim Reporting Requirements of the
9 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

10 64. As a proximate result of DEFENDANTS conduct as alleged herein, PLAINTIFF
11 has suffered and will continue to suffer lost earnings and earning capacity, severe emotional
12 distress and such other special and/or general damages according to proof.

13 65. For malicious and or callously indifferent interference with PLAINTIFF's
14 employment in retaliation for PLAINTIFF coming forward as a whistle blower to report life
15 safety issues at The Sempra Building, by all DEFENDANTS as alleged herein, PLAINTIFF
16 further seeks punitive or exemplary damages DOES 1-100, in an amount necessary to punish or
17 make an example of them, in an amount according to proof.

18 **SIXTH CAUSE OF ACTION**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
20 **(AGAINST ALL DEFENDANTS)**

21 66. PLAINTIFF hereby incorporates all previous allegations as though stated here in
22 full.

23 67. PLAINTIFF has complied with all Claim Reporting Requirements of the
24 Government Code relative to this filing against DEFENDANT CITY OF SAN DIEGO.

25 68. As a proximate result of DEFENDANTS conduct as alleged herein, PLAINTIFF
26 has suffered and will continue to suffer lost earnings and earning capacity, severe emotional
27 distress and such other special and/or general damages according to proof.

28 69. For malicious and or callously and intentionally inflicting emotional distress upon

1 PLAINTIFF as alleged herein, PLAINTIFF further seeks punitive or exemplary damages against
2 all DEFENDANTS, with the exception of DEFENDANT CITY OF SAN DIEGO, in an amount
3 necessary to punish or make an example of them, in an amount according to proof.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against all DEFENDANTS, and each of
6 them, as follows:

7 1. For general damages in an amount according to proof at trial and beyond the
8 jurisdictional minimum of this Court;

9 2. For special damages in an amount according to proof at trial and beyond the
10 jurisdictional minimum of this Court;

11 3. For economic losses in an amount according to proof at trial;

12 4. For costs of the suit herein;

13 5. For applicable statutory interest as provided by law;

14 6. For attorney's fees as provided by law;

15 7. For such other and further relief as the Court may deem just and proper.

16 FURTHERMORE, PLAINTIFF prays for judgment against all DEFENDANTS with the
17 exception of the CITY OF SAN DIEGO, as follows:

18 8. For punitive or exemplary damages in an amount according to proof.

19 DATED: January 11, 2021

LAW OFFICE OF LAWRENCE SHEA

22 By: /s/ Lawrence W. Shea

23 LAWRENCE W. SHEA, II
24 Attorney for PLAINTIFF
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JURY DEMAND

PLAINTIFF hereby demands a trial by jury on all claims so triable.

DATED: January 11, 2021

LAW OFFICE OF LAWRENCE SHEA

By: /s/ Lawrence W. Shea
LAWRENCE W. SHEA, II
Attorney for PLAINTIFF