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Re: *Gordon v. 101 Ash, LLC, et al.*
San Diego County Superior Court case no. 37-2020-00028837-CU-FR-CTL
Our File No. 1223.20001

Dear Counsel:

I have been engaged to represent 101 Ash, LLC ("Landlord") in connection with the above-referenced matter.

I understand you have not yet served the lawsuit on Landlord or any of the other named defendants. I write to encourage you to dismiss the lawsuit without ever serving it.

As detailed below, the City's outside counsel James Parker of Hugo Parker LLP has conducted a thorough forensic review of the matter and advised the City Council in public session:

> I think the city has to be very, very careful in this contract.... It protects [Landlord] in full. And a decision to claim that [Landlord] committed fraud, or that there is some legal method to stop the payments because of dissatisfaction ... poses I think **great legal risks to the City** and is something that **I would urge the council to be very, very careful** about. I am loath in public to provide you legal counsel here in this setting, but I think I hope I've conveyed the concern I have with that sort of action.

(August 6, 2010, Council video record circa 6:36 [emphasis added].) Mr. Gordon's lawsuit has no legal merit. Proceeding with the case would put the City at great financial risk.

Overview

One fundamental and incurable flaw in Mr. Gordon's complaint is that it seeks to allow a single citizen to arrogate the executive discretion vested by law in the City of San Diego. There are multiple separate and independent reasons why no rational municipality would authorize the pursuit of a civil fraud case against Landlord under the facts of this matter, including but not limited to:

- The forensic review commissioned by Mayor Faulconer and completed by the law firm Hugo Parker LLP unequivocally concludes that the City knew of the asbestos in the building before acquiring it: "**Through multiple sources, the City knew before it acquired the property that the building at 101 Ash contained unabated, decades-old asbestos.**" (Hugo Parker LLP "Preliminary Report on 101 Ash Street" ("HP Report") at I.B [emphasis added].)
- The same HP Report concludes that, while Landlord "owned 101 Ash only long enough to execute the lease-to-own arrangement with the City," it provided the City with various reports prepared for others that "together provide notice of the presence of significant asbestos incorporated into various products used in the original construction of the building and indicated that the asbestos in the building was not presently posing a threat while cautioning that disturbing the asbestos could create risks. **One report even warned that an EPA-level assessment would be needed if renovation work was planned.**" (*Id.* at I.E [emphasis added].)
- The HP Report notes that the "final PSA [Purchase and Sale Agreement] between [Landlord] and the property owners was provided to the City in August 2016, in advance of the acquisition." That document expressly notified the City both that "**the building contains asbestos**" and that Sempra maintained an asbestos monitoring program. It also stated the names of the selling entities as well as the price Landlord was paying to acquire the building. (*Id.* at III.C [emphasis added].)
- The Lease Agreement – approved as to form by the City Attorney and authorized by City ordinance enacted by a unanimous City Council – states on page 1: "Tenant acknowledges that it is sufficiently familiar with and knowledgeable about the physical condition of the Premises, including any elements of deferred maintenance or the presence of any Hazardous Materials and **is not relying on any representation or warranty by Landlord with regard to the condition of the Premises**, and Tenant finds all of the same satisfactory for all purposes." (Lease at p. 1.)

- The Lease Agreement continues to expressly state in ALL CAPS beginning on page 1:

  > TENANT EXPRESSLY AGREES TO LEASE THE PREMISES AND EACH PART THEREOF "AS IS" AND "WHERE IS". LANDLORD SHALL NOT BE DEEMED TO HAVE MADE AS OF THE EFFECTIVE DATE, AND LANDLORD HEREBY DISCLAIMS, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OF THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSES, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR AS TO LANDLORD'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO, EXCEPT AS OTHERWISE SET FORTH HEREIN, ARE TO BE BORNE BY TENANT. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PREMISES OR ANY PROPERTY OR FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OF LATENT, EXCEPT AS OTHERWISE STATED HEREIN, LANDLORD SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTON 1(b) HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR ANY PROPERTY OR FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

- The HP Report summarizes the City's legal commitments to Landlord: "The Lease also imposes on the City several additional sets of requirements to protect the Landlord:

  1. Full Release of Landlord: the City fully releases the Landlord from any claims arising out of the condition of the property, including any 'Hazardous Material and other environmental matters, and *any right to disclosures* from Landlord of any 'condition or circumstance affecting' the property' (Lease Section 1(c).)
  2. Full Compliance with Environmental Rules: at its sole expense, City was to cause 101 Ash to comply with all laws including Environmental Laws

defined to include OSHA and 'all other federal, state and local laws ... and regulations ... relating to '*asbestos and/or asbestos-containing materials in any form that is or could be friable*,' and also with respect to Hazardous Materials, defined to include asbestos. (Lease Section 6(b)-(c).)

3. Notice to Landlord: Subsection 6(c) goes on for over three pages detailing the City's mandatory obligations to Hazardous Materials, including asbestos. If at 'any time' Hazardous Materials, including asbestos, 'shall be found to have been released,' by the City or any of its contractors, then the City 'shall' at is [sic] 'sole expense' 'promptly commence and diligently prosecute to completion all investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature ... to the extend required by Environmental laws ... and at Tenant's sole costs.' ..."

(HP Report at III.D [italics and punctuation original.)

- The Lease Agreement goes on to require City to defend and hold Landlord harmless from any claims brought against Landlord. (Lease at pp. 11-12.) That is, the City will have to pay all of my legal fees.
- The City and its lawyers were perfectly familiar with those provisions of the Lease Agreement, both because they are essentially identical to the terms of the City's earlier Civic Center Plaza lease-to-own transaction (described by in the HP Report as "successfully negotiated") and because those lease terms are industry-standard provisions in similar lease agreements. The lease-to-own transaction is a form of public financing that enables government entities to spread out the cost of acquiring capital assets over time without the complexities and delays inherent in traditional bond financing. The lease terms are imposed on the transaction by the holders of participation certificates issued by CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017-CTL-1, the single-purpose trust that advanced 100% of the City's acquisition cost. **Those certificate holders are only willing to make such a loan because the City puts its credit rating on the line**, committing to what some refer to as a "bondable" lease (that is, the City's commitment to making the monthly payments required by the Lease Agreement is so unequivocal that investors consider it the equivalent of a municipal bond). The City's internal legal and finance teams include experts in exactly this sort of municipal financing.
- Because the lease-to-own transaction is a form of public financing, the monthly payments do not go to Landlord but rather, pursuant to a publicly-recorded Assignment of Lease and Rents, to Wilmington Trust as trustee for the registered

> certificate holders of the CGA-sponsored trust. (San Diego County Recorder Official Records DOC# 2017-0002648.) Those certificate holders are amongst the country's largest buyers of public debt, and **a decision to withhold payments owed to those institutions would negatively impact if not totally eliminate the City's access to the public debt markets for years to come.**

Those are just some of the facts that compelled attorney James Parker of Hugo Parker to warn the City Council that any action challenging or breaching the duly-authorized lease-to-own agreement for 101 Ash Street would present "great legal risks to the City." Mr. Parker is a master of understatement.

You, on the other hand, have either ignored or misrepresented the publicly available information that belies the allegations of Mr. Gordon's complaint, and taken it upon yourselves to file a meritless lawsuit that presents the same "great legal risks" to the City, including both liability for the legal fees Landlord will incur defending Mr. Gordon's baseless lawsuit and potential lasting damage to the City's ability to access the capital markets. Respectfully, that is not a decision that Mr. Gordon has the legal authority to make for the City. Nor is it a decision that is in the best interests of the City or its taxpayers.

For each of the following separate and independent reasons, Mr. Gordon's complaint fails to state a claim.

No Standing

Mr. Gordon is a total stranger to the Lease Agreement. He does not, because he cannot, allege he had any communication or transaction with Landlord. A claim for fraudulent misrepresentation must specifically plead facts establishing all of the following elements:

> (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the **plaintiff**; (4) the **plaintiff** justifiably relied on the misrepresentation; and (5) the **plaintiff** suffered resulting damages."

(*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 [emphasis added].) "The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the misrepresentation without reasonable ground for believing it to be true." (*Id.*)

In his complaint, Mr. Gordon does not – and could not – plead facts sufficient to establish the third, fourth, and fifth elements for fraudulent or negligent misrepresentation, because Mr. Gordon was not the recipient of the alleged misrepresentations, was not the one who supposedly relied on the alleged misrepresentations, and was not the one who allegedly suffered damages.

Only the victim of a fraudulent or negligent misrepresentation may sue for relief. (*Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1088-89 ["It is settled that a plaintiff, to state a cause of action for deceit based on a misrepresentation, must plead that he or she actually relied on the misrepresentation. ... The law appears always to have been so in this state."]; see also *Summers v. Colette* (2019) 34 Cal.App.5th 361, 367 ["[o]nly a real party in interest has standing to prosecute an action, except as otherwise provided by statute"] and *Chapman v. Skype Inc.* (2013) 220 Cal. App. 4th 217, 231-32, quoting *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1063 ("To allege actual reliance on misrepresentations with the required specificity for a fraud count, 'the plaintiff must plead that **he** believed the representations to be true . . . and that in reliance thereon (or induced thereby) **he** entered into the transaction.'") [emphasis added]. By his own allegations, Mr. Gordon admits that he was not the victim of any alleged wrong.

No Illegal Action

Mr. Gordon's lack of standing is not cured by Section 526a. Section 526a provides a limited procedural mechanism by which a taxpayer can bring an action to restrain or prevent illegal expenditure, waste, or injury to public funds or property. (C.C.P. § 526a(a).) The section simply does not permit a taxpayer to stand in a governmental body's shoes, without the government's knowledge or consent, to sue on the government's behalf, for a tort allegedly committed against the government.

Mr. Gordon's lack of standing to challenge legal governmental conduct under Section 526a is a matter of black letter law:

> A person lacks standing as a taxpayer to challenge legal conduct by government officials (even if private parties illegally procured that conduct). "A taxpayer action does not lie where the challenged governmental conduct is legal." [*Lyons v. Santa Barbara County Sheriff's Office* (2014) 231 CA4th 1499, 1502—no taxpayer standing to sue sheriff and county recorder to challenge allegedly fraudulent nonjudicial foreclosure and eviction since government officials acted legally in relying on paperwork filed with them]

(M. Asimow et al, California Practice Guide: Administrative Law, Ch. 14-D, para. 14:284 (The Rutter Group November 2019 Update).)

The City's decision to enter into the lease-to-own transaction for 101 Ash Street is entirely legal, and the lease agreement was duly executed by Mayor Faulconer as authorized and instructed by Ordinance Number O-20745, passed by unanimous vote of the San Diego City Council. That duly enacted City ordinance legally authorizes the City's Chief Financial Officer "to expend all funds for rent, operating expenses and as otherwise required by the Lease Agreement." The City's fulfillment of its obligations

under a legally authorized contract cannot constitute "waste" within the meaning of Section 526a.

No Void or Illegal Contract

Mr. Gordon's lack of standing is not cured by his demonstrably false allegation that the lease-to-own transaction was induced by fraud. "Taxpayers have standing under section 526a to sue 'to set aside void or illegal contracts,' including by bringing suit against a private entity to disgorge public funds paid by a local entity on an allegedly illegal public contract." (A.*J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 689. Here, however, Plaintiff's complaint does not, and cannot, allege that the contract at issue is void or illegal. To the contrary, the complaint admits City officials were "authorized" to "expend those funds for rent, operating expenses, improvements and other requirements under the City-leasehold." (Complaint at para. 17.) Plaintiff's complaint instead alleges that Defendants fraudulently induced the City to enter into the lease-to-own contract. (Complaint at 2:7-12.)

Fraud in the inducement "renders [a contract] voidable but not void." (*Fed. Deposit Ins. Corp. v. Dureau* (1989) 212 Cal.App.3d 956, 964 (emphasis added). A "voidable" contract "is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance." (*Yvanova v. New Century Mortgage* Corp. (2016) 62 Cal.4th 919, 930. "It may be declared void but is not void in itself." (Id.) Thus, even accepting as true Mr. Gordon's demonstrably false allegations that the City was fraudulently induced to enter into the lease-to-own agreement, the lease-to-own agreement is neither void nor illegal. Instead, the City would have to make the executive decision to either void the contract or ratify it. In other words, the City would have discretion to act.

> The rule is that the municipality, through its governing body, has control of the property and general supervision over the ordinary business of the corporation; and there would be utter confusion in such matters if every citizen and taxpayer had the general right to control the judgment of such body, or usurp the office. **Where the thing in question is within the discretion of such body to do or not to do, the general rule is that then neither by mandamus, quo warranto, or other judicial proceeding, can either the state or a private citizen question the action or nonaction of such body; nor in such cases can a private citizen rightfully undertake to do that which he thinks such body ought to do.** It is only where performance of the thing requested is enjoined as a duty upon said governing body that such performance can be compelled, or that a private citizen can step into the place of such body and himself perform it.

(*Gilbane Building Co. v. Super. Ct.* (2014) 223 Cal.App.4th 1527, 1532-33 [emphasis added].)

> [Under section 526a] a taxpayer may sue to enjoin expenditures by state agencies . . . and also to enforce the government's duty to collect funds due the State. . . [But] a taxpayer suit is authorized only if the governing body has a duty to act and has refused to do so. **If the governing body has discretion and decided not to act, then the court is prohibited from substituting its discretion for the discretion of the governing body**.

(*Cates v. Cal. Gambling Control Comm'n* (2007) 154 Cal.App.4th 1302, 1308 [emphasis added].)

As the case law makes clear, Plaintiff has no standing to bring an action under 526a to challenge an action (or non-action) that the City has discretion to take. That is true as a matter of law. But Mr. Gordon's attempt to arrogate to himself the City's discretionary authority to decide whether or not to mount a legal challenge to the lease-to-own transaction is especially galling where the City's outside counsel has conducted a detailed forensic review of the transaction and concluded:

1. The City knew in advance of the lease transaction that the 101 Ash Street building contained asbestos;
2. Any failure to properly handle that asbestos during the City's remodeling effort was the result of the post-transaction conduct of the City or its contractors; and
3. Any effort to stop payment or mount a legal challenge to the City's lease-to-own transaction presents "great legal risks to the City and is something that I would urge the council to be very, very careful about."

While no sober City official would authorize a legal challenge to the lease-to-own transaction under the facts of this matter, including those summarized in the HP Report, the decision of whether or not to take on those "great legal risks to the City" is a matter of executive discretion entrusted to City officials on advice of the City Attorney and the City's outside lawyers and consultants.

Critically, while it is beyond the scope of the HP Report, **any rational City official tempted to ignore the facts and conclusions in the HP Report and threaten for political reasons to default on the City's obligations would have to consider the impact of such conduct on the City's credit rating and its ability to access the capital markets**. The certificate holders who extended tens of millions of dollars of credit on the strength of the City's duly authorized and wholly legal commitment to the "bondable" lease-to-own agreement include some of the biggest financial institutions in the world. No City official should play political games with a decision affecting the City's ability to

access the capital markets. Mr. Gordon certainly does not have the legal authority to make such a catastrophic decision on behalf of the City.

Plaintiff cannot maintain an action under Section 526a challenging the City's exercise of its discretion to decide whether to ratify or disavow the City's legal obligations under the lease-to-own transaction. (*Daily Journal Corp. v. Cnty. Of Los Angeles* (2009) 172 Cal. App.4th 1550, 1558 ["The term 'waste' under section 526a 'means something more than an alleged mistake of public officials involving the exercise of judgment or wide discretion.'"], quoting *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1138; see also *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 857 ("No claim [under section 526a] will 'lie where the challenged governmental conduct is legal.'").

Section 526a does not permit Mr. Gordon, or any other individual taxpayer, to usurp the City's executive discretion over whether the City should assume the "great legal risk" of suing Landlord over the Lease Agreement to acquire 101 Ash Street.

No Receipt of Public Funds by Landlord

Section 526a, on its face, only permits taxpayers to sue governmental bodies or agencies and their officers. (C.C.P. § 526a [526a action "may be maintained against any officer [of a local agency], or any agent, or other person, acting in its behalf"].) The vast majority of actions brought under section 526a are indeed brought against governmental bodies and their officers. However, courts have held that taxpayers have standing to also sue "a private entity [under section 526a] *to disgorge public funds* paid by a local entity on an allegedly illegal public contract." (A.*J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 689 [collecting cases] [italics added]. As explained above, the City's commitment to the lease-to-own transaction was duly authorized and entirely legal. But the structure documented in public records demonstrates that no public funds were paid to Landlord.

To reiterate, the Lease Agreement is a form of public financing. Per the terms of the transaction, the City makes all monthly payments to Wilmington Trust as trustee for the registered certificate holders of the CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017-CTL-1, pursuant to a publicly-recorded Assignment of Lease and Rents. (San Diego County Recorder Official Records DOC# 2017-0002648.) All City payments due under the lease-to-own agreement go to the certificate holders. None is paid to Landlord. And, based upon documents subject to judicial notice, Mr. Gordon cannot allege Landlord has received or will in the future receive public funds subject to disgorgement under Section 526a.

No Possible Specific Allegation of Intentional or Negligent Misrepresentation by Landlord

Despite Mr. Gordon's legal obligation to plead his claims of fraud with specificity, the complaint is notably devoid of any specific allegation of misrepresentation by Landlord or its representatives. (*Small v. Fritz Cos., Inc.* (2003) 30 Cal.4th 167, 184 [fraud "must be pled specifically; general and conclusory allegations do not suffice. . . . This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'"]) Rather, you appear to paraphrase a City staff report and baldly assert that unidentified individuals "successfully convinced" staff to reach some of the conclusions contained in the staff report by delivering an unspecified third-party "report." Those allegations are not merely impermissibly vague and non-specific. Mr. Gordon's allegations knowingly misstate the publicly available facts summarized in the HP Report.

No competent California attorney would accuse a seller or landlord of "fraud" based upon nothing more than the seller or landlord passing on to a prospective tenant a property condition report prepared by a third party (in the absence of demonstrable actual knowledge of the report's inaccuracy). You know, and you certainly must have advised Mr. Gordon, that a landlord or seller could be accused of fraud if it *failed to* pass on such a report. And no attorney or plaintiff acting without malice would allege the "fraud" asserted in Mr. Gordon's complaint when the publicly-available HP Report confirms that Landlord provided the City with various reports prepared for others that "together provide notice of the presence of significant asbestos incorporated into various products used in the original construction of the building and indicated that the asbestos in the building was not presently posing a threat while cautioning that disturbing the asbestos could create risks. **One report even warned that an EPA-level assessment would be needed if renovation work was planned.**" (Emphasis added.)

I appreciate that attorneys sometimes need to work with incomplete information. But this is not such a case. The public record is clear, and you and Mr. Gordon are more than experienced enough to know that you have not pled, and cannot in good faith plead, actionable fraud or deceit against Landlord with the specificity required by law.

No Possible Specific Allegation of Justifiable Reliance by City

The complaint is notably devoid of any allegation that the City *justifiably* relied on any alleged misstatement by Landlord. That is another legal insufficiency that cannot be corrected by good faith amendment, as the City-approved lease recites that City is "not relying on any representation or warranty by Landlord with regard to the condition of the Premises." (Evid. Code § 622 ["The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest; but this rule does not apply to the recital of a consideration."].)

Nor could the complaint be amended to allege that the City justifiably relied upon AEC Consultants' 2016 "draft" Property Conditions Report to disclose any environmental issues. That report was commissioned at lender's request, and properly included in Landlord's disclosures to the City. As noted in the HP Report:

> Like AEI's 2014 report, **AEC's 2016 report** was prepared in accordance with ASTM E-2018-08 and **disclaims any effort at identifying environmental issues**: "This report is based on a Site visit, in which ADC performed a visual, non-intrusive and nondestructive evaluation of various external and internal building components .... *The Property Condition Report is not a building code, safety, regulatory or environmental compliance inspection.*" ... [¶] Neither of these third-party property reports should have been taken as disclosing or even addressing potential asbestos issues. ...

(HP Report, III.A.2 [italics original to HP Report, emphasis added].) No attorney acting in good faith would contend that the City could reasonably or justifiably rely upon the AEC report to disclose environmental issues.

Untimely "Reverse Validation" Action

Even if Mr. Gordon had standing to assert a claim under section 526a against Landlord, and could allege a viable claim, the deadline to bring such an action has long passed. Though section 526a does not itself contain a limitations period, actions brought under section 526a that are in the nature of a reverse validation action are subject to the 60-day statute of limitations for a validation action. (*McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1165 ["The McLeods assert their action has no statute of limitations since 526a contains no limitations period. . . . We are persuaded, however, by the District's contention that under the circumstances here, the action is subject to the 60-day statute of limitations for a validation action."].)

"The gravamen of a complaint and the nature of the right sued upon, rather than the form of the action or relief demanded, determine which statute of limitations applies." (*Id.*, quoting *Embarcadero Mun. Improvement Dist. V. Cnty. of Santa Barbara* (2001) 88 Cal. App.4th 781, 789.) Here, Mr. Gordon is suing to challenge the validity of a City contract – the Lease Agreement for 101 Ash. (Complaint at 1:4-11 ["This taxpayer lawsuit seeks to stop the waste of, and to recover, the City of San Diego's public funds in what has been called 'the city's worst land deal ever': the $120 million lease-to-own agreement for the Sempra building on 101 Ash Street[.]"). Plaintiff alleges that the agreement is not valid because the City was fraudulently induced to enter into it. (Id. ["The City of San Diego was defrauded and induced to enter into a 20-year lease-to-own agreement for the Ash Street Building."].)

The validation statutes impose a 60-day statute of limitations for validation and reverse validation actions. (C.C.P. § 860.) "For purposes of [section 860 et seq.], bonds, warrants, contracts, obligations, and evidences of indebtedness shall be deemed to be in existence upon their authorization." (C.C.P. § 864.) According to Plaintiff's complaint, the City's lease-to-own agreement for 101 Ash was authorized no later than January 3, 2017 – more than three years ago. (Complaint at 4:15-20.) Government contracts "which could have been adjudicated in a validation action . . . must be raised within the statutory limitations period in section 860 et seq. or they are waived." (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 846-47.) Plaintiff did not file this action within 60 days of January 3, 2017, so his challenge is untimely.

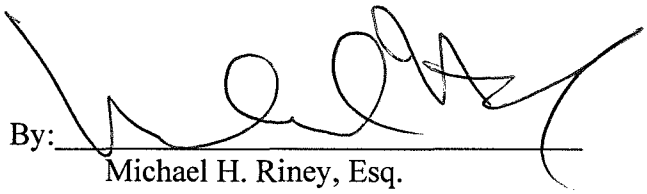
Conclusion

For all of the foregoing reasons, the complaint fails to state a valid claim by Mr. Gordon against Landlord. Those defects cannot be cured by any amended allegation that could be pled in good faith. Please confirm no later than close of business on Tuesday September 1, 2020, that Mr. Gordon will promptly dismiss his complaint against Landlord and its affiliated entities with prejudice as to each of the three alleged causes of action.

Please also take note that my clients would view the service of Mr. Gordon's lawsuit as an act of malicious prosecution. In the event you reject our demand that you promptly dismiss Mr. Gordon's complaint with prejudice, my clients intend to take all legal action necessary to hold you and Mr. Gordon liable for all resulting damages.

Very truly yours,

VANTAGE LAW GROUP, A.P.C.



By: Michael H. Riney, Esq.

cc: Kenneth M. Fitzgerald, Esq.
James S. McNeill, Esq.