



Office of the San Diego City Attorney

Mara W. Elliott
City Attorney

October 19, 2021

Mr. Jeff Light
Publisher and Editor, San Diego Union-Tribune
600 B Street, Suite 1201
San Diego, CA 92101

Sent via email

Re: Our Friday, October 15 Discussion

Dear Mr. Light,

Thank you for adjusting your schedule to meet with me on Friday, October 15, and for including Managing Editor Lora Cicalo in our discussion. During our call, I described to the both of you my concern about the San Diego Union-Tribune's (SDUT) coverage of 101 Ash. At your request, I am recounting our conversation in writing.

To recap, we discussed an article that the SDUT published online on October 13, that was prominently displayed in its print edition and on its website for several days thereafter. The article was titled "Ash Street memo containing infamous 'Footnote 15' resurfaces, rekindling debate over San Diego city failures" on the Union-Tribune website and "DEBATE RESTARTS ON ASH STREET MEMO" in the October 14, 2021, print edition, where it was the top story in the Local section. The article references a memo by the City's outside legal, Burke Williams Sorensen (BWS), in which BWS assesses the City's liabilities and risks with regard to the purchase of 101 Ash Street. As we discussed, the San Diego City Council has not waived the privilege associated with BWS's confidential memo, and California's ethical rules prohibit me from confirming or denying the authenticity of the memo that the SDUT apparently has in hand. While I cannot comment on the authenticity of that memo, I can read it like anyone else, and I can compare what the memo says with what the SDUT claimed it said.

As described in the Scope of Analysis on the first page of the memo, its purpose was to "...review and analyze the facts and documents **leading to the City's decision** to enter a lease-to-own agreement..." (emphasis added). As you know, Jan Goldsmith was City Attorney during the period leading to the City's decision on the 101 Ash deal. I took office after the deal was unanimously approved by the City Council and signed by Mayor Kevin Faulconer. I did not work on Ash Street until after I was sworn in as City Attorney.

The memo holds true to BWS's description of its scope, and yet the third paragraph of last week's article states:

"Its bottom line message: city officials, including Elliott and former Councilman Todd Gloria, failed to perform basic scrutiny of the \$200 million-plus Ash Street deal back in 2016."

This is false. The memo says no such thing.

Upon reviewing the memo, you will note the following:

- (a) Nowhere does the memo claim that I failed to perform "basic scrutiny."
- (b) Every action analyzed in the memo occurred before I was City Attorney.
- (c) The memo does not even mention my name - or even that of Todd Gloria - except in the fabricated Footnote 15, which has been discredited, and does not concern "basic scrutiny" of the deal.

In sum, there is nothing in the BWS memo that supports SDUT's "bottom line" claim. The article is based on a false premise and serves no recognizable purpose other than to advance that false premise.

Before the article was published, my Communications Director said in a statement provided to, but not published by, your newsroom: "The inexplicable fixation on Mara Elliott ignores the fact that the 101 Ash transaction was proposed by Mayor Faulconer, approved unanimously by the City Council, and signed by Mayor Faulconer -- all before Mara Elliott even took office." I have enclosed a copy of that email correspondence.

I explained to you that our efforts to correct stories by the SDUT on 101 Ash Street are treated as adversarial rather than as an opportunity to work together to provide your readers with accurate information. I was disappointed by the SDUT's recent request for a correction made by my Office. I described to you an incident in which Director Nemchik attempted to correct an inaccuracy in an Ash Street related story. In response, she received a text message as follows: "I take a lot of arrows from the subjects of my stories, which is fine. But you (Gerry) take the cake in trying to manufacture errors in my reporting. Every. Single. Time. Well done, I guess." Director Nemchik responded with the following email to the reporter and his editor: "I received your text. I'm sorry that you feel this way. It's certainly not our intent. We share your interest in ensuring your readers get the most up-to-date and accurate info possible. You and I work together a lot, and I value our relationship. Perhaps you, me, and Denise can sit down and talk this through? It sounds like we could use a reset."

In response, the reporter wrote "I'd be happy to reset in any way you think will help, but disclosing what are assumed private communications may not be an effective start." Communications that involve City business are public records. Although our invitation to meet was initially embraced, we were ignored after the SDUT learned of my interest in participating.

When we receive a question from the SDUT, we drop everything and respond not just in writing, but supplement our statements with information in support. It takes a great deal of resources to be so responsive, but we now find ourselves questioning whether these efforts make sense if the information provided is simply ignored, cherry-picked to fit a desired outcome, or intentionally misconstrued. I shared that we now tweet the responses we provide to the SDUT about 101 Ash Street to ensure balance. At your suggestion, my Office recently attempted to post in the Comments section on the SDUT website the full statement we provided to your reporter before publication. However, the website still has not posted our comment, and efforts to contact SDUT's web team by email have gone unanswered. This was another lost opportunity to provide SDUT readers with information they cannot get through your newspaper.

As I shared with you and Ms. Cicalo, articles that are based on false information not only mislead your readers, but damage reputations, including mine. The SDUT's false claim that I failed to perform "basic scrutiny" casts a shadow on an otherwise flawless 27-year career. To the extent feasible, I ask that you take corrective action, and that you do so in a manner having at least as much visibility in print and online as you gave to the defamatory article.

I very much appreciate your offer to set the record straight, and I am available to provide you with the facts needed to support the claims I've made regarding this story. And, despite the frustration I expressed to you during our call, I look forward to working with you and your SDUT colleagues to ensure that your readers are provided with verified facts about our City's most troubling real estate transaction, or any other City matter. Facts matter to me, and I know that they matter to you.

Sincerely,



Mara W. Elliott
San Diego City Attorney

Nemchik, Hilary

From: Nemchik, Hilary
Sent: Thursday, September 2, 2021 9:44 AM
To: Amos, Denise; McDonald, Jeffrey
Subject: RE: Correction

Hi Denise,

Thanks for your willingness to sit down with me. I let the City Attorney know that we'll be meeting and she would like to join the conversation as well. I defer to you on whether you'd like to include anyone else from your team. Would Thursday, 9/9 at 11:00 a.m. work for you via Zoom? If so, I'll send you the link.

Best,

Hilary

From: Amos, Denise <denise.amos@sduniontribune.com>
Sent: Wednesday, September 1, 2021 1:29 PM
To: McDonald, Jeffrey <jeff.mcdonald@sduniontribune.com>; Nemchik, Hilary <HNemchik@san Diego.gov>
Subject: [EXTERNAL] RE: Correction

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I'm open to meeting with you. When is a good day and time for you, Hilary?

From: McDonald, Jeffrey <jeff.mcdonald@sduniontribune.com>
Sent: Wednesday, September 1, 2021 1:18 PM
To: Nemchik, Hilary <HNemchik@san Diego.gov>; Amos, Denise <denise.amos@sduniontribune.com>
Subject: Re: Correction

Denise, below is the message I sent Hilary privately, so we are all on the same page. FYI, Gerry is a former UT colleague who now serves as the City Attorney's chief of staff; he has been a hostile source since I reported millions of public tax dollars were wasted by a charity he worked with that was supposed to celebrate the Balboa Park centennial back in 2015.

Hilary, I'd be happy to reset any way you think will help but disclosing what are assumed private communications may not be an effective start.

Here's my text to Hilary:

I take a lot of arrows from the subjects of my stories, which is fine. But you (Gerry) take the cake in trying to manufacture errors in my reporting. Every. Single. Time. Well done, I guess.

Jeff

Get Outlook for iOS

From: Nemchik, Hilary <HNemchik@sandiego.gov>

Sent: Wednesday, September 1, 2021 1:06:40 PM

To: McDonald, Jeffrey <jeff.mcdonald@sduniontribune.com>; Amos, Denise <denise.amos@sduniontribune.com>

Subject: RE: Correction

EXTERNAL SOURCE

Hi Jeff,

I received your text. I'm sorry that you feel this way. It's certainly not our intent. We share your interest in ensuring your readers get the most up-to-date and accurate info possible. You and I work together a lot, and I value our relationship. Perhaps you, me, and Denise can sit down and talk this through? It sounds like we could use a reset.

Best,

Hilary

Hilary Nemchik

Director of Communications

Office of City Attorney Mara W. Elliott

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From: McDonald, Jeffrey <jeff.mcdonald@sduniontribune.com>

Sent: Wednesday, September 1, 2021 11:51 AM

To: Nemchik, Hilary <HNemchik@sandiego.gov>; Amos, Denise <denise.amos@sduniontribune.com>

Subject: [EXTERNAL] RE: Correction

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Hi,

Thank you for your note. You have requested a correction so I will of course defer to my editor here, but I feel obliged to point out that the story notes in multiple places higher up that the city is indeed seeking to recover millions of dollars in allegedly illegal lease payments. The section of this story that you are citing as incorrect clearly refers to the initial 2020 lawsuit that did not seek any damages.

All best

Jeff McDonald | Reporter

O: +1 (619) 293-1708

jeff.mcdonald@sduniontribune.com

600 B Street, Suite 1201, San Diego, CA 92101

**The San Diego
Union-Tribune**

From: Nemchik, Hilary <HNemchik@sandiego.gov>

Sent: Wednesday, September 1, 2021 11:42 AM

To: Amos, Denise <denise.amos@sduniontribune.com>; McDonald, Jeffrey <jeff.mcdonald@sduniontribune.com>

Subject: Correction

EXTERNAL SOURCE

Hi Jeff and Denise,

I caught the story in today's paper and found a factual error that needs to be corrected.

This statement is false:

The city also has sued Cisterra and others involved in the Ash Street lease, but not in an effort to recover the tens of millions of dollars it spent to lease the vacant building.

On June 29, 2021, the City submitted a [motion to amend the 101 Ash complaint](#), which has since been granted and the amended complaint filed, and filed a separate [complaint regarding Civic Center Plaza](#), which each seek a judicial declaration that the contracts are void and respectively seek reimbursement to the City of \$24 million paid in rent for 101 Ash Street and \$20 million paid in rent for Civic Center Plaza.

You reported this fact in your June 29 story as well:

Elliott said Hughes would be added as a defendant in a lawsuit the city filed last year over the 101 Ash Street agreement and that she would seek to recover more than \$44 million from the sellers.

<https://www.sandiegouniontribune.com/news/watchdog/story/2021-06-29/san-diego-sues-to-get-out-of-ash-street-civic-center-plaza-deals-and-seeks-millions-in-refunds>

Can you please confirm that a correction will be made online and in print so that readers understand that the City is seeking the reimbursement of the \$44 million it has spent on rent on void leases for these buildings? Thank you.

Best,

Hilary

Hilary Nemchik

Director of Communications

Office of City Attorney Mara W. Elliott

1200 Third Avenue, Suite 1620

San Diego, CA 92101-1406

Tel: (619) 533-6176

Email: HNemchik@sandiego.gov

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