



**COUNCIL PRESIDENT PRO TEM BARBARA BRY
CITY OF SAN DIEGO
DISTRICT 1**

MEMORANDUM

DATE: February 27, 2020
TO: Interim City Auditor, Kyle Elser
FROM: Council President Pro Tem Barbara Bry
SUBJECT: 101 Ash Street Lease/Sale Agreement Allegations

Barbara Bry

I request that the City Auditor expand its pending investigation of the 101 Ash Street lease/sale agreement to include allegations that the Lessor was aware of serious asbestos issues associated with the building before the lease/sale agreement was approved, including an analysis of why the transaction was rushed, what impact the timing of the transaction had on the financial interests of the Lessor, and any communications that occurred between city officials and the Lessor.

The lease/sale agreement was approved before I was on the City Council (Council). But I began to ask questions when concerns were raised about delays in occupying the building. Since then, it has become clear city administration repeatedly withheld information from the Council and the public.

I am providing you with details of a pending lawsuit (Attachments 1 and 2) that appear to shed new light on this transaction, including the allegation that the Lessor was aware of serious asbestos issues prior to approval of the lease/sale. These documents, coupled with the “first page” disclosures in the lease/sale agreement, suggest that someone may have known a great deal more than was publicly disclosed at the time of approval.

In fact, despite the clear “first page” disclosures, the property was described during the Council hearing as in “unusually good condition.” I want to know the basis for this statement.

The Lessor may have exercised full and complete disclosure. If so, we need to know that. And, we need to know why the City went forward despite those disclosures.

Finally, I want to know the full range of options available to the City, including the option to terminate the lease.

I also want to see the Charter Section 225 disclosure, a disclosure document required by the Charter to be filed prior to closure that describes all of the economically interested parties in the transaction, including the actual owners of corporate entities.

Thank you, Mr. Elser for your attention to this serious issue.

cc:

Honorable Mayor Kevin Falconer

City Attorney, Mara Elliott

Independent Budget Analyst, Andrea Tevlin

Kris Michell, Chief Operating Officer

Aimee Faucett, Chief of Staff

Jessica Lawrence, Director of Policy and Council Affairs

Attachments

ORIGINAL

CIVIL JUSTICE OFFICE
CENTRAL DIVISION

2020 JAN 23 PM 4:41

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

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Attorneys for ADAM ATTIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

SANDOR SHAPERY, an individual;

Plaintiff,

v.

ADAM ATTIA, an individual; and DOES
1-20, inclusive,

Defendants.

Case No. 37-2019-00066948-CU-BT-CTL

DECLARATION OF ADAM ATTIA IN
SUPPORT OF SPECIAL MOTION TO
STRIKE THE COMPLAINT

[CCP §§425.16, 438]

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Date: February 20, 2019
Time: 9:30 a.m.

By Fax

I, Adam Attia do hereby declare:

1. I am the defendant in the above referenced case. This declaration is in support of a special motion to strike and is based upon my personal knowledge.

2. In June 2018, I was a commercial real estate broker with Marcus and Millichap (NYSE: MMD), a nationally traded firm, where I was leading a team of agents and controlled approximately \$150,000,000 worth of exclusively listed real estate. I was Marcus & Millichap's Broker of Record for the state of Hawaii.

3. I was selling a number of grocery anchored shopping centers in Hawaii and met plaintiff Sandor Shapery while negotiating the sale of one of those shopping centers.

1 4. I worked on several projects with Plaintiff including the negotiations of offers I brought to
2 Plaintiff from In-N-Out and 7-Eleven to lease a parking lot he owned.

3 5. In July of 2018, Plaintiff's employee of 22 years suddenly retired and Plaintiff's home on
4 the Big Island was lost to the Kilauea volcano eruption. Plaintiff claimed to be in a 1033
5 exchange and with two years remaining to replace \$75,000,000 in real estate. Plaintiff and I
6 began discussions about working for him to place his exchange proceeds. Plaintiff was actively
7 seeking a replacement employee and already paid an executive head-hunter a \$10,000 retainer.
8

9 6. Plaintiff hired me and agreed to pay me with equity in each property acquired to satisfy
10 plaintiff's exchange along with a small salary to cover my basic living expenses.

11 7. Based upon Plaintiff's representations, in July 2018, I left Marcus and Millichap and
12 agreed to work for Plaintiff.
13

14 8. Only after I began work, Plaintiff drafted an "Independent Contractor Agreement" which
15 plaintiff and I signed on July 30, 2018. Attached as Exhibit I is a true and correct copy.

16 9. Paragraph 3 of the Independent Contractor Agreement provides me with preferred equity
17 participation and a 9% preferential return for properties in which I am the procuring cause (i.e.
18 the finder) and the offer includes a brokerage commission contributed to the ownership.
19

20 10. Paragraph 4 of the Independent Contractor Agreement provides for an imputed
21 commission contributed to the ownership by Plaintiff on my behalf and a 9% preferential return
22 for properties in which I procure but the offer does not include a brokerage commission payable
23 to me.

24 11. Paragraph 5 of the Independent Contractor Agreement provides a profit interest for
25 properties not located by me but for which I participate in the acquisition process and
26 management of the property. The amount of the profit interest is identified in the profit schedule
27 in paragraph 9.
28

1 12. I began working pursuant to the terms of our oral and written agreements. I worked on
2 the acquisition and management of several properties including but not limited to:

- 3 a. 400 West Broadway, San Diego, California 92101
4 b. 527-535 F Street, San Diego, California 92101
5 c. 1460, 1470 and 1490 Island Avenue, San Diego, California 92101
6 e. 399 Front Street, Lahaina, Hawaii 96761
7 f. 510 & 516 Keawaiki Road, Captain Cook, Hawaii 96704
8 g. 560 Spruce Street, Aspen, Colorado 81611

9 13. Despite repeated demands, I have not received documentation to confirm my interest in
10 the properties.

11 14. After I completed work for plaintiff's acquisition of Island Avenue, plaintiff prepared and
12 we both signed the "Agreement for Profit Interest in 1460-1490 Island Avenue" dated September
13 21, 2018. Attached as Exhibit 2 is a true and correct copy.

14 15. The Island Avenue Agreement documented my 2.5% profits interest in accordance with
15 the schedule in paragraph 9 of the Independent Contractor Agreement.

16 16. I was the finder and the broker of record for the purchase of 527-535 F Street. I agreed to
17 credit my commission of \$109,812.50 to plaintiff/buyer to obtain a preferred equity interest and
18 preferred equity returns in the property. Attached as Exhibit 3 is a true and correct copy of the
19 settlement statement.

20 17. Pursuant to paragraph 3 of the Independent Contractor Agreement, I acquired an equity
21 interest in F Street and am entitled to a preferential return. I have not received payment or an
22 equity interest nor any documentation of my equity interest. I have demanded many times that
23 Plaintiff provide documentation of my equity interest but Plaintiff refuses.

24 18. I participated in the acquisition and management of the Spruce Street property. Plaintiff
25 and I participated in the acquisition of a duplex on Spruce street in Aspen, Colorado. Plaintiff
26 negotiated for the seller to pay me a commission of \$50,000 but credited the commission towards
27 closing costs. The true nature of the credit was not disclosed to the seller or the lender which I
28

1 believe would not meet the lender's guidelines. A true and correct copy of the settlement
2 statement is attached hereto as Exhibit 4.

3 19. Pursuant to paragraph 3 of the Independent Contractor Agreement, I acquired an equity
4 interest in Spruce Street and am entitled to preferred equity and preferential returns. I have not
5 received payment or an equity interest nor any documentation of my equity interest. I have
6 demanded many times that Plaintiff provide documentation of my equity interest but Plaintiff
7 refuses.
8

9 20. When I have repeatedly asked Plaintiff to document my equity interest in these
10 properties, his response was that the Buyer in the 1033 exchange must remain the owner of record
11 for one year after the purchase and thereafter I would be added to title. I suspect this is tax fraud.
12

13 21. In May of 2019 I learned that Plaintiff was being audited by the IRS because he
14 hadn't paid employment taxes for the prior employee whom I replaced. The employee had been
15 paid as an independent contractor for approximately 22 years. I learned this from a CPA Jodi
16 Barthhold who worked for our firm on a temporary basis to assist with the audit. Mrs. Barthhold,
17 plaintiff and I reviewed a list of the IRS's employee criteria and she determined and explained to
18 plaintiff and I that I was not properly classified as an independent contractor. Plaintiff did not
19 change my compensation structure and I continued to receive payment as an independent
20 contractor. Instead Plaintiff demanded additional independent contractor agreements be prepared,
21 post-dated and signed.
22

23 22. While working for Plaintiff, I witnessed and was asked to participate in illegal
24 acts, including, but not limited to tax fraud, bank fraud, insurance fraud, illegal drug use, unlawful
25 removal and concealment of harmful contaminants, making substantial building improvements
26 without adequate permits and concealing major property defects from potential buyers.
27

28 ///

1 23. One of the larger and more public issues was plaintiff's sale of the Sempra Energy
2 Building, a high-rise building located at 101 Ash Street, to the City of San Diego. Plaintiff
3 claimed a 1033 exchange rather than a 1031 exchange based upon the alleged threat of
4 condemnation which allowed plaintiff to enjoy relaxed tax deferral provisions and timelines
5 which resulted in significant financial gains. I am informed and believe there was no threat of
6 condemnation and plaintiff illegally availed himself of the benefits of a 1033 exchange. I also
7 suspect Plaintiff withheld the existence of harmful contaminants in the property before selling it
8 to a government municipality, therefore defrauding the public and publicly elected officials.

9
10 24. Plaintiff wanted to remodel the property in Aspen. He obtained permits to rebuild
11 the staircase for the exterior of the building which would be visible to code enforcement officers
12 but did not obtain permits for the addition of three bathrooms to the interior of the building which
13 were not visible from the street.

14
15 25. On the Island Avenue property, Plaintiff obtained detailed reports identifying lead-
16 based paint throughout the entire interior and exterior of the property. Legal remediation efforts
17 would be to hire CDPH Certified Lead Workers and follow a strict Asbestos/Lead-Based Paint
18 Operations and Maintenance Plan overseen by the California Department of Public Health. A true
19 and correct copy of the HM Pitt report is attached hereto as Exhibit 5.

20
21 26. Rather than properly abating the lead-based paint, plaintiff bought sandblasting
22 equipment and hired unlicensed laborers to sandblast the interior and exterior of the building on
23 nights and weekends without a permit and without proper precautions for his workers or the
24 surrounding environment.

25 27. Plaintiff's second home on the big island of Hawaii was destroyed by a volcano.
26 Plaintiff used the insurance proceeds to purchase a Maui property but reported the purchase in his
27 1033 exchange without using proceeds from the 1033 exchange. Plaintiff also deceived the
28

1 plaintiff's insurance company and claimed both the lost property and its replacement property
2 were income producing properties when in fact they were not. Plaintiff collected loss of business
3 income, was reimbursed for travel and vacation expenses and improperly reported the income
4 loss to the Internal Revenue Service.

5
6 28. I was required to assist Plaintiff with the sale of a ten-unit apartment home
7 property downtown called Victoria Square, though I was not the broker of record or a principal to
8 the transaction. Plaintiff was under contract with a buyer who obtained a property condition
9 report and foundation report in October and November of 2019.

10 29. Plaintiff hired a roofer to bid a new roof on the project. The roofer was afraid to
11 walk on the roof given the weak structure holding up the roof. Plaintiff instructed me to attend
12 the foundation inspection and gather my own photos of each foundation by crawling beneath the
13 buildings. Plaintiff was vacationing in Hawaii at the time. Plaintiff instructed me to engage a
14 framing contractor and for me and the framer to suggest the cheapest possible band aid repairs of
15 the roof and foundation. Neither I nor the framer are engineers or are qualified to design,
16 recommend or perform such work. Plaintiff became hostile and insisted it was done. He even
17 capped the repair work at \$7,500.

18
19 30. The buyer requested a price reduction based upon these reports and Plaintiff
20 refused and cancelled the transaction. Plaintiff later went under contract to sell Victoria Square to
21 a new buyer. Plaintiff instructed his broker and I to conceal the property condition report and
22 foundation inspection report from the second buyer.

23
24 31. During this same time, Plaintiff and I were negotiating a buyout of my interest in
25 the Island Avenue property and instead of arriving at the originally agreed amount, Plaintiff
26 offered me 51% of the agreed amount and agreed to make payment to me on November 19th of
27 2019.

1 ///

2 32. On November 19, 2019, the agent for the new buyer of Victoria Square learned of
3 the undisclosed property condition report and requested a copy. Plaintiff instructed me not to
4 produce the report. He then insisted I prepare an email with detailed photos of the shoddy work
5 performed by the framing contractor and suggest to the buyer that the work was satisfactory, and
6 the foundation and roofing conditions were safe. When I refused to do so, Plaintiff withdrew his
7 offer to make the buyout payment for the Island Avenue property. I declined participation in the
8 fraud at 10 a.m. and we had a 12 p.m. lunch meeting with the buyer and agent.
9

10 33. I refused to attend the lunch meeting and told Plaintiff I was going home sick.
11 Plaintiff and I then had a text message exchange where Plaintiff tried to extort and bribe me to
12 send the fraudulent email and attend the lunch by again threatening that he would not buy me out
13 of the Island Avenue property unless I cooperated in his scheme. Attached hereto as Exhibit 6 is
14 a true and correct copy of the texts on Tuesday November 19, 2019.
15

16 34. As a result of my refusal to participate in Plaintiff's continuing unethical and
17 illegal acts our relationship became further strained. I was concerned about my reputation, my
18 professional licenses, my employment and my equity interest in the shared properties.
19

20 35. On the same day, November 19, 2019 at 1:42 p.m., I wrote an email to Plaintiff
21 asking to have a meeting to discuss my employment compensation and classification, and to
22 document my equity interests in the properties. A true and correct copy of the email is attached
23 hereto as Exhibit 7.
24

25 36. On November 20, 2019, I met with Plaintiff and he refused to buy out my equity
26 interests, refused to restructure me as an hourly employee and refused to document my equity
27 interests.
28

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1 37. On November 22, 2019, at 11:12 a.m., I wrote an email to Plaintiff regarding some
2 of my concerns over his recent fraudulent practices. A true and correct copy of the email is
3 attached hereto as Exhibit 8.

4 38. On November 22, 2019 at 11:30 a.m. Plaintiff responded to my allegation of fraud.

5 39. On November 22, 2019 at 3:00 p.m., in retaliation, Plaintiff fired me. Plaintiff did
6 not pay me my wages for work prior to termination or allow me to pick up my personal property.
7 Plaintiff personally escorted me out of the building and parking structure and confiscated my key
8 and building access card.
9

10 40. After I was terminated, I engaged an attorney who began confidential settlement
11 communication for the buyout of my equity interest in the properties. Plaintiff and I did not agree
12 upon the value of my interests and we were unable to settle. Plaintiff attempted to blackmail me
13 into accepting only \$50,000 in exchange for a signed a confidentiality agreement not to report his
14 unethical and fraudulent activities or he would hire a legal team of top attorneys to "punish" me.
15

16 41. On December 10, 2019 I filed complaints and reported plaintiff's illegal activities
17 to the Bureau of Real Estate, the Internal Revenue Service and the Attorney General.

18 I declare under the penalty of perjury of the laws of the State of California that the
19 foregoing is true and correct and if called as a witness I could competently testify thereto.
20

21
22
23 Dated: 1-22-2020

Adam Attia
Adam Attia

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7 Attorneys for Plaintiff Sandor Shapery

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10 SANDOR SHAPERY, an individual;

11 Plaintiff,

12 v.

13 ADAM ATTIA, an individual; and DOES 1-20,
14 inclusive,

15 Defendants.
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County of San Diego

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By E- Filing, Deputy Clerk

CASE NO. 37-2019-00066948-CU-BT-CTL

**DECLARATION OF SANDOR
SHAPERY IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT ADAM ATTIA'S
MOTION TO STRIKE THE
COMPLAINT**

Date: February 20, 2020

Time: 9:30 a.m.

Dept: C-73

Judge: Hon. Joel R. Wohlfeil

Complaint Filed: December 17, 2019

IMAGED FILE

1 I, Sandor Shapery, declare as follows:

2 1. I am over the age of eighteen (18) years old.

3 2. I have personal knowledge of the facts set forth below, with the exception of those
4 matters stated on information and belief, and as to those matters, I believe them to be true. If called
5 upon to testify I could and would testify as follows:

6 3. Because Defendant Adam Mohammed Attia has put my business dealings and
7 reputation in the center of this controversy as the basis and justification for his actions, I believe it
8 is necessary to begin with a background on me.

9 4. I am an attorney licensed in the State of California and have practiced before the
10 Supreme Court of the United States. I am a graduate with Honors-Cum Laud from the University
11 of San Diego School of Law in 1971 and an honor's graduate from San Diego State University in
12 1968.

13 5. I practiced law in the State of California from 1972 until the early 1990's when I
14 designed, developed and managed operation of the iconic high-rise The Emerald Shapery Center
15 now known as the Emerald Plaza, a one million square foot mixed-use high rise office building and
16 Westin Hotel on top of which I have resided for the past 29 years in the project's only residence.
17 Since completion of that project and my retirement from the practice of law (I am currently an
18 Inactive licensee with the State Bar of California), I have been actively developing real estate
19 projects, developed transportation infrastructure, obtained patents in the field of magnetic levitation
20 currently licensed to Hyperloop Transportation Technologies, participated jointly with NASA in
21 the design and development of vertical take-off aircraft, was invited by NASA to and participated
22 in the design of the X-PRIZE for vertical take-off and landing aircraft, made other investments
23 primarily in San Diego and have been active in civic and charitable organizations, including being
24 a member of the Board of Directors of what is now known as the Sanford-Burnham Cancer Center,
25 Vice President of the San Diego Chapter of the American Cancer Society, a member of the
26 Chamber of Commerce Infrastructure Committee, a member of the SANDAG Transportation
27 Committee, Vice chairman for the SANDAG Stakeholders Working Group designing the 2030
28 county transportation plan, and a member of the Board of Directors of the La Jolla Institute for

1 Immunology to name some of the more recent ones. During all this time, I have never been
2 involved in any litigation calling into question my business integrity or ethics. I have, until this
3 involvement with Mr. Attia, an untarnished business reputation and believe I am a highly regarded
4 member of the community.

5 6. This action involves claims for extortion and fraud against Mr. Attia resulting from
6 a short-lived association wherein he was contracted to work with me locating, writing offer on and
7 participating in the acquisition of various real estate projects pursuant to the terms of a written
8 agreement between the parties.

9 7. I met Mr. Attia on or about November 4, 2017, when he was marketing a property
10 for sale through Marcus and Millichap which he hoped I would purchase. After that time and until
11 he suggested that he come work more closely with me, Mr. Attia sent me numerous property
12 offerings listed by a number of other brokers. On or about July 18, 2018, Mr. Attia approached me
13 about an opportunity when he heard that my assistant of 23 years was retiring due to advancing
14 challenges from Multiple Sclerosis. Mr. Attia indicated that if I could cover his current expenses
15 of \$7,000 per month, he would be willing to provide his services and potentially gain equity by
16 investing his commissions into projects along with me.

17 8. On or around July 23, 2018, I entered into an Independent Contractor Agreement
18 with Adam Attia (the "Agreement"). A true and correct copy of the Agreement is attached hereto
19 as **Exhibit A**.

20 9. In addition to providing brokerage services, one of Mr. Attia's responsibilities under
21 the Agreement was to provide property management services for properties that I own, either
22 directly or indirectly through entities that I control (the "Properties"). As a result, Mr. Attia
23 obtained keys and access codes to the Properties, including the George Hill building located at 527-
24 535 F Street in San Diego, California.

25 10. After entering into the Agreement, Mr. Attia was granted access to my business and
26 financial records, many of which were stored on my business laptop. I provided this laptop to Mr.
27 Attia, who assigned his fingerprint as the biometric-based security to unlock the laptop.

28 11. On and around November 2019, Mr. Attia made multiple demands that I pay him

1 substantially more money than was provided for under the Agreement.

2 12. On or around November 22, 2019, I terminated the Agreement. Mr. Attia's counsel,
3 Matthew Seltzer, confirmed to me in writing that the Agreement was terminated effective
4 November 22, 2019.

5 13. After the Agreement was terminated, Mr. Attia refused to return the keys or provide
6 the access codes for the Properties. Mr. Attia also refused to unlock my laptop so I could access
7 my financial and business records and other data stored therein.

8 14. On December 3, 2019, Mr. Attia sent an email correspondence to me informing me
9 that he would unlock the laptop in exchange for a check in the amount of \$3,500. A true and
10 correct copy of this email is attached hereto as **Exhibit B**.

11 15. I am informed and believe that when Mr. Attia arrived, he grabbed the check from
12 my assistant and ran off without unlocking the computer. Mr. Attia then cashed the check. I
13 emailed Mr. Attia about these events, and Mr. Attia confusingly responded, "Writing hot checks is
14 the crime Sandy." A true and correct copy of this email chain between me and Mr. Attia is
15 attached hereto as **Exhibit C**.

16 16. On December 9, 2019, more than two weeks after my contract with Mr. Attia was
17 terminated, Mr. Attia sent an email to my brokers that were working to lease one of the Properties,
18 known as the George Hill building, under the guise that he was still working with me and
19 instructed them to "discontinue" their efforts to lease the property. In the same email, Mr. Attia
20 stated he planned on "occupying the entire 3rd floor." A true and correct copy of this email dated
21 December 9, 2019 is attached hereto as **Exhibit D**.

22 17. I have not granted Mr. Attia permission to occupy or place any property in the
23 George Hill building. Nonetheless, Mr. Attia apparently entered the George Hill building without
24 permission and has placed furniture in the offices he said he planned to occupy. In addition to
25 furniture, Mr. Attia left other property in those offices, including two firearm magazines loaded
26 with bullets, boxes of ammunition, and a pair of handcuffs. A true and correct copy of a photo of
27 these loaded firearm magazines is attached hereto as **Exhibit E**. A true and correct copy of a photo
28 of the boxes of ammunition and handcuffs is attached hereto as **Exhibit F**. My wife and I took this

1 as an implied threat.

2 18. Attached hereto as **Exhibit G** is a true and correct copy of a December 6, 2019
3 email from Mr. Attia copying me on an email to his attorney at the time, wherein Mr. Attia states
4 that two suites in the George Hill building were his “new office.” In the same email, Mr. Attia also
5 tells his attorney at the time: “Let’s move forward with filing the action asap.”

6 19. Attached hereto as **Exhibit H** is a true and correct copy of a December 10, 2019
7 email sent from a title company in response to efforts by Mr. Attia to interfere with a number of my
8 escrows for several of my business transactions.

9 20. Mr. Attia has threatened to instigate baseless investigations by the Internal Revenue
10 Service and the Attorney General. Attached as **Exhibit I** is a true and correct copy of a screenshot
11 of a text message from Mr. Attia to me, wherein Mr. Attia states:

12 Ok it appears there will be no buyout of any interest and we are in it for
13 the long haul. Please distribute draft operating agreements for my review
14 as well as my severance pay, final paycheck and personal items.
15 Wrongful termination and employment misclassification penalty’s run in
the \$25,000-\$50,000 per employee. IRS and attorney general
investigations are much costlier. . . .

16 21. Attached hereto as **Exhibit J** is a true and correct copy of an email from Mr. Attia to
17 me and my spouse, dated December 11, 2019, wherein Mr. Attia warned: “You’re about to
18 experience my marketing skills first hand.”

19 22. Attached hereto as **Exhibit K** is a true and correct copy of another email from Mr.
20 Attia to me and my spouse, dated December 11, 2019, wherein Mr. Attia sent a message with a
21 snapshot of Linkedin connections and stated: “16,604 connections and personal email addresses to
22 EVERY single real estate professional in Southern California,” which I reasonably believe was
23 intended to threaten me with spreading his falsehoods to the southern California real estate
24 brokerage community if I didn’t succumb to his ransom demands.

25 23. Attached hereto as **Exhibit L** is a true and correct copy of a December 11, 2019
26 email from Mr. Attia to Betsy Brennan, with me and my spouse copied on the email. In the email,
27 Mr. Attia tells Ms. Brennan that he “would like to call the board together to discuss what [he]
28 believe[s] to be fraud within the Shapery Enterprises organization.”

1 24. On December 11, 2019, Mr. Attia copied me and my spouse on an email to
2 San Diego Mayor Kevin Faulconer requesting that the mayor meet with him to discuss his dispute
3 with me. Mr. Attia stated he was going to tell the Mayor that I defrauded the city and the IRS on
4 the sale of the Semptra high rise to the city unless I paid him a large amount of money.

5 25. Attached hereto as **Exhibit M** is a true and correct copy of a December 11, 2019
6 email from Mr. Attia to Sign King, with my counsel, my spouse, and I copied on the email. In the
7 email, Mr. Attia requests a quote for large banners displaying my name with the words "Tax
8 Fraud," "Bank Fraud," "Insurance Fraud," "Illegal Drug Use," "Illegal Building Without Permits,"
9 "Lead Based Paint," "Employee Exploitation," and "Worker Exploitation."

10 26. Attached hereto as **Exhibit N** is a true and correct copy of a January 14, 2020 email
11 from Mr. Attia to me, forwarding a prior email from December 10, 2019. In the email, Mr. Attia
12 states: "I'm going to watch you spend \$200k on your team of lawyers before explaining your fraud
13 to a jury with San Diego watching. Mine is working on a contingency and his track record is more
14 impressive than yours."

15 27. Mr. Attia informed me that he had saved \$250,000 in his prior brokerage capacity
16 but had kept that information from his wife. I mentioned that she had a right to half of those
17 earnings if they occurred during marriage without a prenuptial agreement. His response was that
18 he had only been married a short time and her interest was minimal. On information and belief,
19 Mr. Attia did not disclose that information to his wife's attorney during his recent divorce, nor did
20 she know of his claimed equity in the George Hill building which will be discussed below.

21 28. I had begun work with Mr. Attia based on the expressed hope he could be groomed
22 to someday take over my business once I decided to cut back on my workload. During the past 18
23 months we worked together, I was surprised to see him take four lavish vacations, one with his
24 family to Hawaii, two personal surfing trips to Indonesia and a personal trip to Dubai. I was
25 beginning to believe he either lied to me about his living expenses or was using up the \$250,000
26 cash he had saved or even lied about the savings.

27 29. On or about the first week of November 2019, Mr. Attia indicated that he was
28 running about \$4,000 per month negative and was looking to me to cover his deficit living costs by

1 modifying our contract to increase his draw from \$84,000 to \$128,000 per year. My response was
2 that this was a far cry from his earlier statement that his expenses were \$7,000 per month. He then
3 said he wanted to purchase a home and was willing to sell his interest in the Island Avenue
4 property. I indicated that his rights to the property hadn't yet vested pursuant to our contract
5 because his involvement was the result of him being invited to participate in the project instead of
6 him contributing any direct commission credit, and the project was not completed and not able to
7 be put into service as there were still construction permit requirements preventing us from having it
8 occupied by any tenants. We proceeded to compute the value of his interest once the property was
9 put in service on the expectation that the project could be completed and put into service within
10 several months from that time, thus creating a right to participate in the income from the property
11 once it was put into service.

12 30. The only property in which Mr. Attia could potentially claim an interest in is the
13 ownership entity created in connection with the purchase of the George Hill building, a three-story
14 historic office and restaurant building located downtown. A true and correct copy of the operating
15 agreement for this ownership entity, F6Hill, LLC, is attached hereto as **Exhibit O**. A true and
16 correct copy of the independent contractor agreement between F6Hill, LLC and Mr. Attia is
17 attached hereto as **Exhibit P**.

18 31. The George Hill building when purchased was 100% leased; however, the largest
19 tenant occupying one and a half of the three-floors moved out shortly after purchase. The
20 restaurant tenant occupying the entire first floor is in default under his lease and will likely be
21 vacating very soon leaving a substantially empty building in a tough market area for restaurants or
22 office users. Add to this that the \$4.5 Million financing requires the building income be
23 maintained at a certain level or the financing will need to be paid down at a substantial penalty or
24 paid off. When the value of the empty building is determined, any claimed interest would be
25 substantially reduced from the original investment or could possibly be nonexistent.

26 32. Contrary to Mr. Attia's claim to profits from the George Hill (F Street) building as
27 stated in his January 22, 2020 declaration (the "Declaration") at Paragraph 17, as pointed out
28 above, there are no profits and an accounting has been requested to determine the value of the

1 building and the amount, if any, that may be owed to Mr. Attia for his claimed interest.

2 33. Contrary to Mr. Attia's Declaration, which is fraught with misstatements,
3 mischaracterizations and outright lies, Mr. Attia's services for which he was paid \$7000 per month
4 did not, pursuant to the terms of the above-quoted contract, entitle him to any claim to any of the
5 properties listed in Paragraph 12 of his Declaration.

6 34. Mr. Attia, in an attempt to extort over \$1 Million dollars from me, has fabricated
7 evidence, falsely alleged criminal behavior, threatened to expose me with false claims of tax fraud,
8 threatened to expose me with allegations of fraud on the City of San Diego in real estate dealings,
9 threatened to expose me with false claims of construction violations involving the improper
10 handling of hazardous materials, threatened to expose me with false claims of knowingly doing
11 construction work without proper permits, threatened to allege fraudulent insurance claims on a
12 property lost from a volcanic eruption in Hawaii, falsely claimed entitlement to compensation that
13 is in direct contradiction to our written agreement, alleged imaginary verbal agreements when our
14 written agreement specifically excludes any alleged verbal agreements, threatened to falsely allege
15 that I committed tax fraud, bank fraud, illegal drug use and other illegal acts and place them on
16 banners in public places unless I paid him a large ransom, falsely claimed that fabricated
17 conversations occurred involving me in support of his lies, falsely claimed he observed me
18 drinking excessively and taking drugs, falsely claimed I induce employees to become independent
19 contractors to avoid employee taxes, falsely claimed I ordered Mr. Attia to illegally doctor
20 postdated independent contractor agreements, falsely claimed I induced an agent of the City of San
21 Diego and a partner of mine, Cisterra Development, to commit tax fraud in a sale of the former
22 Sempra Energy Corporate Headquarters high-rise building to the City of San Diego, falsely
23 claimed I induced an accountant Jodi Barthold working for the Robert Half Accounting Company
24 to wrongfully claim she was an independent contractor when her company was hired to do
25 accounting work for me, falsely claimed entitlement to commission compensation in direct
26 contradiction to his independent contractor contract, threatened to falsely claim I committed the
27 above acts to a San Diego Union Tribune reporter, falsely claimed I shouted at Mr. Attia
28 demanding he deny the existence of defects in real estate I was selling when no such defects

1 existed, falsely claimed I signed false and misleading financial statements to my banks and other
2 lenders, falsely claimed I fired him for bringing his attorney to a meeting to discuss his financial
3 needs, falsely claimed entitlement to hundreds of thousands of dollars of income when his
4 agreement was to the contrary, all for the purpose of extorting a ransom from me.

5 35. Regarding Mr. Attia's claim in Paragraph 14 of his Declaration to a right of
6 participation in the profits from property located at 1460-1490 Island Avenue, the property has not
7 been completed and has not gone into service. Not to mention there are no profits in the first place.

8 36. Contrary to Mr. Attia's claim to a right to participate in the Spruce Street home I
9 acquired in Aspen as he alleges in Paragraph 23 of his Declaration, he did not locate said property,
10 did not write any offers and was not invited to participate in an interest in the property, all as
11 required by the terms of our written contract.

12 37. I purchased the Aspen property from an old friend, a Colorado real estate broker
13 that I have known for 41 years and has worked with me on a number of real estate transactions.
14 The document Mr. Attia included in Exhibit 4 to his Declaration as a commission agreement is not
15 a part of the closing documents. A true and correct copy of the redacted closing documents for the
16 Aspen property is attached hereto as **Exhibit Q**. The documents indicate a seller credit to the
17 buyer for \$50,000 for needed repairs, and there is no mention of a commission.

18 38. The commission agreement for the Aspen property was originally contemplated
19 between me and the seller who is also my broker to obtain a reduction in the purchase price to
20 cover the discovery of required repairs, not as a means to compensate Mr. Attia. On information
21 and belief, Mr. Attia understood and acknowledged that he was not entitled to a commission as he
22 did not locate the property nor was he involved in any offers on the property. Mr. Attia appears to
23 explicitly acknowledge his lack of a right to commission on the fourth page of Exhibit 4 attached to
24 his Declaration, where he states in what appears to be his own handwriting: "This is not a part of
25 any deal I'm in."

26 39. There was no commission paid on the Aspen property, although at one time it was
27 discussed as a way to adjust the purchase price due to its poor condition. However, my lender was
28 agreeable to a straight credit to me from the seller. I am informed that the seller, Mr. Donald

1 DeLise, will confirm this to be true. My lender was fine with a straight credit from the seller to the
2 buyer, so the use of any type of commission credit was not required to obtain the adjust in the
3 purchase price. Mr. Attia appears to have cut and pasted unrelated documents to create the
4 "settlement statement" he attaches as Exhibit 4 to his Declaration.

5 40. Notwithstanding Mr. Attia's claim to a commission where none was due, on
6 information and belief, it would have been in violation of Colorado law as Mr. Attia was not a
7 licensed real estate broker in the state of Colorado.

8 41. Mr. Attia misrepresented that I was being audited for not paying employment taxes
9 on a former employee in Paragraph 21 of his Declaration. That is not true. Rather, I was being
10 audited because the IRS asked for backup support for about \$200,000 in travel expenses for
11 business related travel while also questioning the technical right to deduct professional fees from
12 my parent company instead of allocating the costs to the various business entities. I also believe
13 Mr. Attia is trying to distort and lie about facts involving an auditor I hired to prepare my year-end
14 accounting through the Robert Half Company, who suggested that I have Mr. Attia and any other
15 independent contractors I hired, including her, to clearly delineate the various projects they worked
16 on by executing a separate independent contractor agreement of each separate project since the
17 State had recently passed some new independent contractor requirements. I accepted the
18 accountant's suggestion and entered into separate contracts with each independent contractor,
19 including her, Mr. Attia and my part-time independent bookkeeper for each project.

20 42. On information and belief, Mr. Attia knows his statements in Paragraph 23 of his
21 Declaration are false. Per my communications with a government official, I had knowledge of a
22 chance the government agency would condemn the property thorough their power of eminent
23 domain sufficient to create the reasonable belief required in me to comply with the requirements of
24 the IRS code section 1033, thus allowing me additional time to locate replacement properties. I
25 was so informed by a government official. On information and belief, the City of San Diego's
26 broker also confirmed this fact to the other party involved in the transaction, Cisterra Development
27 Company.

28 43. On information and belief, Mr. Attia was further aware of the fact that all parties to

1 this transaction would need to approve its tax structure by their own tax counsel. Multiple
2 accounting experts to this transaction, consisting of four tax attorneys, along with three
3 accountants, reviewed the transaction for correctness. I strenuously disagree with the suggestion
4 any tax fraud was involved in that transaction, and given his knowledge that multiple tax attorneys
5 and accountants were involved, Mr. Attia cannot plausibly say he had reason to believe any tax
6 fraud occurred.

7 44. Mr. Attia representations in Paragraph 23 of his Declaration where he alleges I
8 defrauded the public by concealing harmful contaminants located in the former Sempra Building
9 are false. On information and belief, because Mr. Attia had access to all the records in the
10 transaction including a complete asbestos monitoring program done by Sempra Energy throughout
11 their occupancy and detailed analysis of all asbestos located in the building, Mr. Attia knows that
12 this information was given to both Cisterra and the City of San Diego, and his representations are
13 false.

14 45. On information and belief, Mr. Attia knows the statements in his Paragraph 24
15 declaration are false. I have had extensive communications with the Aspen building department
16 officials to first identify the particular type of work I was doing, and then determine to what extent
17 permits are required as each municipality has their own interpretation of the building codes and
18 their own added sections.

19 46. Recently, I received an email from the Aspen building department inquiring if
20 unpermitted work was being done on my home as they received multiple complaints from a party
21 about such work. I was told that Mr. Attia was the individual that contacted the building
22 department and made the unfounded claim. On information and belief, Mr. Attia has never been to
23 Aspen property and has no personal knowledge of the work being done on the property.

24 47. On information and belief, Mr. Attia knows the statements made in Paragraph 25 of
25 his Declaration are false. I obtained an environmental report done by a former owner in 2012
26 indicating that lead-based paint was present on the parts of the building located at 1460 Island
27 Avenue, but only located in certain limited areas on prior existing walls. Much of the lead-based
28 paint in those interior areas had apparently been removed by previous owners subsequent to the

1 2012 report. Lead-based paint was also reported to exist on the exterior windows that were
2 removed and replaced and on the front of the building that was repainted, which I understand to be
3 an acceptable solution to secure the potential hazard. I engaged a contractor, Shootz Construction,
4 to chemically strip the columns where the lead-based paint was reported to exist to remove all the
5 lead-based paint, which I understand to be permissible. I also engaged a framing contractor,
6 Quality Framers, to install new lumber on top of the lead-based painted trim boards, which I
7 understand is recognized as an acceptable form of encapsulation of lead-based paint.

8 48. On information and belief, Mr. Attia's knows the statements made in Paragraph 26
9 of his Declaration are false. The fact that certain work was done at night and on weekends was not
10 to hide violations, but simply a function of the size of the project and the desire to complete the
11 work in a timely manner in addition to the fact that sandblasting dust makes any nearby
12 automobiles quite dirty, so weekend work creates less complaints from people parking their cars in
13 the vicinity. On information and belief, Mr. Attia knows that this project was done with permits
14 and still requires additional work before it can be put in service and occupied by a tenant.

15 49. Mr. Attia's allegation that I withheld certain previously received disclosure reports
16 regarding property corrections from a previous purchaser is false. The opposite is actually the
17 case. The property referenced, four historic apartment buildings in downtown San Diego known as
18 Victoria Square, was under contract to sell to a previous potential buyer. On information and
19 belief, in connection with its due diligence, the prospective buyer hired a company whose primary
20 job was to find fault in the structure of the project, then provided expensive repair estimates, thus
21 creating the opportunity to negotiate a substantial discount to the price.

22 50. The report did, however, provide information concerning previously-unknown
23 conditions that should be corrected. First, the roof on several buildings had several broken rafters
24 which required nailing of new boards to the broken and cracked ones. It was also found that the
25 original framing construction done 110 years ago did not follow the best construction techniques of
26 today. And, finally, the foundation columns had not been strapped to the floor frame which was
27 common when the building was constructed. I had a framing contractor, Quality Framers, repair
28 the cracked or broken rafters, better secure the roofing system, and strap the foundation columns to

1 the floor frame. I was told that those upgrades did not require a building permit. It is my
2 understanding that Mr. Attia had firsthand knowledge of these facts, so his misrepresentations with
3 respect to such matters are inexcusable.

4 51. Mr. Attia's statements in Paragraph 27 of his Declaration are again false. Not only
5 does Mr. Attia fail to grasp the difference between an IRS 1033 exchange and 1031 exchanges, but
6 Mr. Attia's statements that the properties were not income producing are clearly false. Attached as
7 **Exhibit R** is a true and correct copy of the redacted lease for the tenant who occupied the
8 replacement property.

9 52. Mr. Attia also asserted that I committed fraud because I allegedly concealed the
10 third party-generated structural evaluation report from the buyer of the Victoria Square property.
11 Once again, the opposite is actually the case. The information, along with all the photographs of
12 the work done, was presented to the buyer through their broker. A true and correct copy of the
13 email presented to the buyer with the information and photographs of the work done is attached
14 hereto as **Exhibit S**. In fact, I have been involved in multiple transactions with the same buyer and
15 the buyer's general manager recently sent me an email thanking me for my "thoughtfulness, class,
16 and professionalism." A true and correct copy of this email is attached hereto as **Exhibit T**.

17 53. Mr. Attia's statements in Paragraph 38 of his Declaration are not supported by any
18 facts or text documentation attached as an exhibit. On information and belief, Mr. Attia didn't feel
19 good that day because I told him I was not willing to modify the contractual payments. I further
20 informed Mr. Attia that under California law I didn't think a third-party report not ordered by the
21 seller in a failed prior transaction of a commercial property was required to be given to a new
22 potential purchaser although I was going to provide it anyway—as I did. His allegations of my
23 threat to not buy out his alleged interest just didn't occur and is yet another one of Mr. Attia's
24 outlandish, self-serving fabrications.

25 54. Mr. Attia's own words reveal that his accusations are not based on anything I have
26 done wrong, but on his own financial difficulties. For example, after I told Mr. Attia I was not
27 interested in changing Mr. Attia's payments under the contract, and two days preceding my
28 termination of his contract, Mr. Attia sent me an email, wherein he stated: ~~(\$4,000 per month) payment~~

1 I want you to know that I've had a change of heart. I'm very appreciative
2 of both the wage and the equity I've earned over the last 18 months. More
3 importantly I value the lessons and the mentorship. It's a shame I let my
4 personal short-term challenges interfere with our common long-term
5 objectives.

6 I apologize to you. I'll be at work in full force bright and early.

7 A true and correct copy of this email from Mr. Attia is attached hereto as **Exhibit U**. This email
8 supports my contention that Mr. Attia is nothing more than a disgruntled person who after being
9 terminated concocted an elaborate scheme to extract money based upon revenge that resulted in
10 threats and extortion.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 5th day of February, 2020, at San Diego, California.

14 
15 Sandor Shapery