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THE SAN FRANCISCO LAW LIBRARY

**ENDORSED  
FILED**  
Superior Court of California  
County of San Francisco

MAR 1 2 2012

**CLERK OF THE COURT**  
BY: ROSSALY DE LA VEGA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

THE SAN FRANCISCO LAW LIBRARY,  
Petitioner and Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO;  
NAOMI KELLY, IN HER CAPACITY AS CITY  
ADMINISTRATOR; THE SAN FRANCISCO  
WAR MEMORIAL AND PERFORMING ARTS  
CENTER; THE SAN FRANCISCO WAR  
MEMORIAL AND PERFORMING ARTS  
CENTER BOARD OF TRUSTEES AND EACH  
INDIVIDUAL TRUSTEE IN HIS OR HER  
CAPACITY AS TRUSTEE, NAMELY, THE  
HONORABLE EDWIN M. LEE, MAYOR;  
MAJOR GENERAL J. MICHAEL MYATT  
(RET.); WILKES BASHFORD; NANCY H.  
BECHTLE; BELVA DAVIS; THOMAS E. HORN;  
CLAUDE M. JARMAN, JR.; MRS. GEORGE R.  
MOSCONE; PAUL F. PELOSI; CHARLOTTE  
MAILLIARD SHULTZ; JAMES W. STAFFORD;  
DIANE B. WILSEY; and DOES 1 THROUGH 15,

Respondents and Defendants.

No. CPF-13-512769

**FIRST AMENDED PETITION FOR  
WRIT OF MANDATE AND  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

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1 INTRODUCTION

2 1. Petitioner and Plaintiff San Francisco Law Library (the "Library" or "Petitioner"), seeks  
3 a writ of mandate commanding Respondents to provide complete, adequate, readily accessible and  
4 suitable space and facilities for the Library, as required by the San Francisco City Charter and State  
5 law. For close to two decades, Respondents have failed to provide these facilities while purportedly  
6 negotiating various solutions, all of which were ultimately unsuitable or not feasible. The imminent  
7 closure of the Library's current location in the War Memorial Veterans Building ("Veterans  
8 Building") in May 2013, and Respondents' refusal to provide suitable new quarters threaten to  
9 render the Library literally homeless. The relief sought in this Petition is proper and necessary  
10 because Petitioner has no other adequate legal remedy and Respondents have failed to provide such  
11 space and facilities as they are specifically required by law to do.

12 2. The Library is a non-profit public corporation which has served San Francisco's legal  
13 community and inhabitants, including those less advantaged, for more than 140 years. Until City  
14 Hall closed in 1995 as a result of the extensive damage caused by the 1989 Loma Prieta earthquake,  
15 the Library shared part of the fourth floor of City Hall with the Superior Courts, and also had  
16 additional space in the building. In January 1994, the City Architect, on behalf of the City and  
17 County of San Francisco (the "City"), advised the Library's Board of Trustees (the "Board") that the  
18 Library would be moved out of City Hall into the Veterans Building for two or three years while  
19 City Hall was closed for seismic repairs, after which time the Library would return to its quarters in  
20 a restored City Hall. The City Architect further advised the Board that upon the Library's return, it  
21 might obtain, in addition to its previous space, some of the City Hall space that was being vacated  
22 by the courts. The City, however, did not fulfill its 1994 commitments and to this day the Library  
23 remains without a permanent home, with much of its material in storage.

24 3. The Library has located what may be the only currently available suitable space at 1200  
25 Van Ness and has drastically reduced the size of its collection in an effort to reach a compromise  
26 with the City and fit into the approximately 30,000-35,000 gross square feet available at that  
27 location. Thirty thousand gross square feet, which is significantly less than professional space  
28 planners previously projected, is consistent with the City's 2010 assessment that the Library will

1 need approximately 35,000 gross square feet. It is also consistent with the space accorded to county  
2 law libraries in other major metropolitan areas in California. *See* Paragraph 26, *infra*. The City,  
3 however, has refused to fund even this bare minimum amount of space, and instead has proposed  
4 that the Library needs no more than 20,000 net rentable square feet—a woefully inadequate amount  
5 of space for a full service law library in a populous commercial and legal center like San Francisco.  
6 With any less than 30,000 gross square feet, the Library will be unable to provide essential services  
7 and will be forced to discard a large portion of its collection.

8 4. Although City officials have recognized the inadequacy of the Library’s current quarters  
9 and have been aware of the impending closure for some time, they nonetheless have failed and  
10 refused to take steps to remedy the situation. Despite the urgency of the May 2013 deadline, the  
11 City has refused to fund adequate space in the new location and also refused to pay for the cost of  
12 necessary furniture, fixtures and equipment, moving expenses and the like. In doing so, the City has  
13 violated the City Charter and State law, and breached its obligations to the Library, the legal  
14 community and the general public.

#### 15 16 **THE PARTIES**

17 5. Petitioner and Plaintiff is the San Francisco Law Library, a California public non-profit  
18 corporation located in San Francisco. The Library is a creature of both statute and charter.  
19 Although it has a role within the City and County government, the Library is a separate legal entity  
20 organized under special State legislation adopted on March 10, 1870, which established it as a  
21 public corporation. *See* 1869-70 Cal. Stat. at 235 (the “1870 Act”). The California legislature later  
22 repealed the 1870 Act, but that repeal was prospective only; therefore, the 1870 Act is still effective  
23 and remains good law as to the Library. Subsequent City Charters, including the present Charter,  
24 have recognized the continuing effect of the 1870 Act and incorporated its requirements. The  
25 present Charter provides that “[t]he San Francisco Law Library shall be under the management and  
26 control of the Board of Trustees, as established by act of Legislature approved March 9, 1870,” and  
27 that the City and County of San Francisco must “provide suitable and sufficient quarters for the Law  
28 Library, fix up and furnish the same and provide for the supply of necessary light, heat, stationery

1 and other conveniences. The library shall be so located as to be readily accessible to the judges and  
2 officers of the courts.” Charter of the City and County of San Francisco (“Charter”) art. VIII, §8.103  
3 (1996) (“Section 8.103”). As a public corporation distinct from the City government, the Library  
4 has standing to sue the City.

5 6. Respondents and Defendants are the City, the City Administrator, Naomi Kelly, in her  
6 official capacity, the San Francisco War Memorial and Performing Arts Center, and the San  
7 Francisco War Memorial and Performing Arts Center Board of Trustees (“War Memorial Board of  
8 Trustees”), and each individual trustee in his or her capacity as trustee, namely, the Honorable  
9 Edwin M. Lee, Mayor, Major General J. Michael Myatt, USMC (Ret.), President Wilkes Bashford,  
10 Vice President Nancy H. Bechtle, Belva Davis, Thomas E. Horn, Claude M. Jarman, Jr., Mrs.  
11 George R. Moscone, Paul F. Pelosi, Charlotte Mailliard Shultz, James W. Stafford and Diane B.  
12 Wilsey. Respondents and Defendants the City, the City Administrator, the San Francisco War  
13 Memorial and Performing Arts Center and the War Memorial Board of Trustees and each individual  
14 trustee are collectively referred to herein as “Respondents.”

15 7. Under the Charter, the City Administrator, as the director of the Department of  
16 Administrative Services, “shall manage all public buildings, facilities and real estate of the City and  
17 County [of San Francisco].” Charter art. IV, §4.129. The San Francisco Administrative Code  
18 further states that the City Administrator, as the Director of Administrative Services, “shall have  
19 charge of all public buildings . . . of the City and County . . . including the allocation of office space  
20 therein . . . .” San Francisco Admin. Code §4.1. As a result, the City Administrator is the officer  
21 primarily responsible for the allocation of public office space, and owes a duty to the Library and the  
22 public to provide the Library accommodations suitable under the Charter and statutory provisions.

23 8. The San Francisco War Memorial and Performing Arts Center and the War Memorial  
24 Board of Trustees are joined as Respondents and Defendants because they are parties with an  
25 interest in the Veterans Building. The San Francisco War Memorial and Performing Arts Center is a  
26 department of the City and County of San Francisco. The War Memorial Board of Trustees, the  
27 governing board of the War Memorial and Performing Arts Center, consists of eleven trustees  
28 appointed by the Mayor for four-year terms, and the Mayor. Charter §5.106. The current trustees

1 on the War Memorial Board of Trustees are the Honorable Edwin M. Lee, Mayor, Major General J.  
2 Michael Myatt, USMC (Ret.), President Wilkes Bashford, Vice President Nancy H. Bechtle, Belva  
3 Davis, Thomas E. Horn, Claude M. Jarman, Jr., Mrs. George R. Moscone, Paul F. Pelosi, Charlotte  
4 Mailliard Shultz, James W. Stafford and Diane B. Wilsey. The Board of Trustees is responsible for  
5 the construction, administration, management, superintendence and operation of the War Memorial  
6 and Performing Arts Center. The War Memorial Board of Trustees appoints a Managing Director  
7 and an Assistant Managing Director/Executive Secretary. Petitioner is informed and believes and  
8 therefore alleges that the Director of Property of the City and County of San Francisco has a  
9 continuing "Memorandum of Understanding" with the War Memorial Board dated October 26,  
10 1994, to accommodate the "continued, temporary use and occupancy" of space in the Veterans  
11 Building for various City offices, including the Law Library, until such time as the building is  
12 closed for seismic retrofitting or until such time as the space is otherwise required by the Board of  
13 Trustees. While the City holds the title to the Veterans Building, Petitioner is informed and believes  
14 and therefore alleges that the City claims that the War Memorial Board of Trustees is authorized to  
15 determine occupancies of the Veterans Building, and Petitioner anticipates that Respondents will  
16 attempt to evict the Library from the Veterans Building on or around May 31, 2013. The Special  
17 Committee for the Veterans Building Project is composed of War Memorial Trustees Thomas E.  
18 Horn (Chair), Wilkes Bashford, Nancy H. Bechtle, Belva Davis and Paul Pelosi.

19 9. The real names and capacities of Does 1 through 15 are unknown to Petitioner at this  
20 time, and for that reason they are sued here under fictitious names. Petitioner will ask leave of this  
21 Court to amend this Petition and Complaint to add such names and capacities, along with  
22 appropriate charging allegations, when the same are ascertained.

#### 23 24 **ROLE OF THE LIBRARY AND ITS BOARD OF TRUSTEES**

25 10. The history of the San Francisco Law Library traces back to 1865, when leading  
26 members of the San Francisco bar formed the San Francisco Law Library Association, a  
27 subscription membership organization. By 1869, when the Library could no longer meet the  
28 demands of the City's rapidly expanding legal community, leaders of the local bar and judiciary

1 petitioned the State Legislature for a law establishing the San Francisco Law Library as a public law  
2 library, amending the 1863 legislation under which the Law Library Association was formed. The  
3 ensuing 1870 Act was very specific about the Library's role, stating:

4       Whereas, In the great and-rapidly increasing City of San Francisco, a large and more  
5 complete law library, which shall be conveniently located, and at all appropriate times  
6 be readily accessible to the various Courts, the bar, the municipal officers, and litigants,  
7 is essential to the orderly, speedy and correct administration . . . of justice therein; and  
8 whereas, in view of such want it is deemed important for the complete and perfect  
accomplishment of the public purposes for which the municipal government of the City  
and County of San Francisco is organized and maintained, that a complete public law  
library should be established, and its use secured to the various Courts, the bar, the  
municipal authorities, and the citizens of San Francisco. (1869-70 Cal. Stat. at 235-36)

9  
10       11. The Charter grants the San Francisco Law Library Board of Trustees "complete  
11 authority to manage its affairs consistent with this Charter and state law." Section 8.103. The  
12 Charter also provides that "[t]he judiciary, City, County and state officials, members of the Bar, and  
13 all inhabitants of the City and County shall have free access, use and enjoyment of the Law Library,  
14 subject to the rules and regulations of the Trustees." *Id.*; see also 1869-70 Cal. Stat. at 236 (granting  
15 citizens of San Francisco and members of the California bar "free access to and the full and entire  
16 use and enjoyment of said law library"). Thus, under both the Charter and California State law, the  
17 Board of Trustees has a duty to the legal community, the judiciary, City, County and State officials,  
18 and all residents of San Francisco to provide access to the Library's collection and adequate  
19 facilities for its operations.

20       12. The Library shared the fourth floor of City Hall with the Superior Courts from the day  
21 City Hall opened in 1914 until it closed for seismic repairs in 1995. The Library's location, flanked  
22 on both sides by trial courtrooms, prevented it from expanding as its collection grew. But the use of  
23 exceptionally tall bookshelves, the basement, and attic space beneath the dome of City Hall enabled  
24 the Library to accommodate 250,000 volumes as of 1995.

25       13. The City's failure to provide adequate space since 1995 has prevented the Board of  
26 Trustees from performing its duty to the legal community, the judiciary, the municipal authorities  
27 and the public. As a public non-profit corporation, the Board of Trustees must perform its duties in  
28 good faith, in a manner each Trustee believes is in the best interests of the Library, and with such

1 care as an ordinarily prudent person in a like position would use under similar circumstances. As  
2 such, under the rules applicable to non-profit corporations, the Board must act regarding the  
3 Library's needs for adequate, accessible and suitable space. More specifically, the Board must  
4 exercise reasonable efforts to ensure that the City meets its responsibilities and obligations under the  
5 Charter and State law. The Board's duty includes seeking judicial relief to remedy the City's  
6 ongoing failure and refusal to provide adequate, accessible and suitable space. That situation is now  
7 critical, because the Veterans Building is scheduled to close for seismic upgrades in May 2013, and  
8 the Library's current inadequate space will not even be available when the Veterans Building  
9 reopens.

10  
11 **ROLE OF THE CITY**

12 14. The specific duties of the City and County of San Francisco regarding the Library were  
13 first articulated in Section 8 of the 1870 Act, which reads:

14 The City and County of San Francisco is hereby authorized and required to provide, fit  
15 up and furnish, and provide with fuel, lights, stationery and all necessary conveniences  
16 and care, rooms convenient and accessible to the Courts, sufficient for the use and  
17 accommodation of said law library and those who have occasion for its use. And the  
18 Board of Supervisors of the City and County of San Francisco are hereby authorized,  
19 empowered and required to appropriate, allow and order paid out of the General Fund  
20 such sums as may be necessary for the purposes aforesaid . . . . (1869-70 Cal. Stat. at  
21 238)

19 The basic duty articulated by the 1870 Act was later explicitly incorporated in Section 8.103 of the  
20 City Charter, which now states in relevant part:

21 The City and County shall provide suitable and sufficient quarters for the Law Library,  
22 fix up and furnish the same and provide for the supply of necessary light, heat,  
23 stationery and other conveniences. The library shall be so located as to be readily  
24 accessible to the judges and officers of the courts. (Section 8.103)

24 **ONGOING FAILURE OF THE CITY TO PROVIDE ADEQUATE SPACE**

25 15. In October 1995, while the Library was "temporarily" located in the Veterans Building,  
26 the City informed the Library that if the Library returned to City Hall, it would not be allocated any  
27 additional space and would in fact be allocated even less space than it had occupied prior to the  
28 retrofit. More importantly, the City told the Library that the tall shelf units it had been using could

1 no longer be permitted under more recent safety and seismic regulations, and that it could no longer  
2 use any part of the attic. The City's position meant that substantial shelf space would also be lost.  
3 The Library objected to these arrangements as grossly inadequate.

4 16. On March 13, 1996, the Library's director, Marcia Bell, sent a memorandum to the  
5 City's Department of Real Estate stating the Library's space requirements and noting the City's  
6 failure to provide adequate space at City Hall. The letter specifically outlined the City's duties  
7 under the Charter, enclosing the relevant Charter provisions. On March 25, 1996 (after the City  
8 failed to make any commitment regarding the Library's location), the Board sent a letter to the  
9 City's Chief Administrative Officer advising him of the Library's space requirements and requesting  
10 that the City locate the Library in the Civic Center. In April 1996, the Mayor of San Francisco  
11 informed the Library and former City Hall departments that the Library would return to City Hall.  
12 But in July 1997, the City determined that space would not be made available in the new City Hall  
13 and instead the Library would be housed in a new building, to be constructed at 525 Golden Gate  
14 Avenue. The Department of Administrative Services told the Board that it would recommend that  
15 the Library be provided the full amount of space needed, which at that time was approximately  
16 35,865 net square feet. The projected opening date was Spring 2000.

17 17. Despite these representations, development was repeatedly postponed over the course of  
18 almost four years, during which City officials continued to assure the Library that it would be  
19 moved into the new building. In May 2001, the Board learned inadvertently that the Library was no  
20 longer on the prospective tenant list for the new building. Following discussions with then-Director  
21 of Administrative Services Ryan Brooks and the acting City Architect, the City reinstated the  
22 Library on the prospective tenant list and asked the Library to supply data regarding its space needs.  
23 But shortly thereafter the project manager for 525 Golden Gate Avenue informed the Library that  
24 there would be no room for the Library in the new building.

25 18. The City ultimately abandoned its plans to tear down and rebuild the 525 Golden Gate  
26 Avenue building. Subsequently, the Library, representatives from the Bar Association of San  
27 Francisco and others concerned about the Library's space crisis brought their concerns to the Mayor,  
28 who led a collaborative effort to obtain a suitable space sufficient to meet the Library's present and

1 future needs. The Mayor's task force determined that it was economically and structurally feasible  
2 to renovate the 525 Golden Gate Avenue building to house the Library, a "Justice Center" and other  
3 uses. In 2004, the Board of Supervisors passed an unanimous resolution in support of the project,  
4 and the City obtained an amended environmental impact review and permits. Once again, however,  
5 the City failed to take the project forward. (The City eventually sold the property, so it is no longer  
6 an option for the Library.)

7 19. The Library explored and proposed other prospective properties in addition to 525  
8 Golden Gate Avenue, including the Culinary Academy at 625 Polk Street, 690 Van Ness Avenue,  
9 the Merchandise Mart at 1355 Market Street, Van Ness at Grove, the basement of Brooks Hall, and  
10 several other Civic Center properties, all without success. For several years in the mid-2000's, the  
11 AAA building at 150 Van Ness Avenue was a potential location, but ultimately the City decided not  
12 to acquire the property.

13 20. In Fall 2011, the City recommended leasing 155 Hayes Street for the Library, but by  
14 early 2012 the property had been sold and was no longer an option. In March 2012, the City's  
15 Department of Real Estate proposed the Bank of America Data Center at 1455 Market Street as a  
16 strong prospect, but by June 2012 the City had abandoned that option. In July 2012, City officials  
17 informed the Library that the City would not approve the expenditure of funds for a commercial  
18 lease and that there were no public buildings available, effectively leaving the Library with no viable  
19 options. The City also informed the Library that it had unilaterally contacted the Ninth Circuit  
20 Court of Appeals Law Library, the San Francisco Public Library and the University of California,  
21 Hastings School of Law, with a proposal that one of these libraries absorb the Library, such that the  
22 Library would cease to exist as an independent organization. Upon information and belief, these  
23 organizations informed the City that they were unable to do so.

24 21. During 2010, 2011 and 2012, the Library worked continuously and diligently without  
25 success to initiate collaborative efforts with the City to assess the Library's space needs and identify  
26 suitable properties for the Library's permanent home. As a result of the City's lack of support, the  
27 Library was unable to make any substantive progress toward securing a viable site. The City not  
28 only showed a lack of support and interest, but City officials made erroneous assessments of the

1 space analyses that the Library provided in 2010, 2011 and 2012. In sum, for nearly 18 years, the  
2 Library Board of Trustees has attempted to work with the City to obtain suitable quarters for the  
3 Library, and for nearly 18 years the Board has seen the City fail time and time again to provide  
4 appropriate quarters. Indeed, even now, when the Library has succeeded in identifying a suitable  
5 location, and only a few months from the impending closure of the Veterans Building, the City still  
6 refuses to fund even the most minimally sufficient amount of space.

7 22. On March 5, 2013, after the Library had filed this lawsuit, the City belatedly came  
8 forward with a new proposed resolution to support rental of 20,000 net rentable square feet at 1200  
9 Van Ness Avenue for the Law Library. That resolution incorrectly claims that the City found the  
10 1200 Van Ness location for the Library; in fact, the Library found it through a real estate firm it had  
11 engaged in desperation. After locating the property and determining that it was potentially suitable,  
12 the Library then asked the City for support for that site. The City originally suggested that it would  
13 be willing to fund 22,000 square feet at 1200 Van Ness—already an inadequate amount—but now  
14 has reduced that amount even further to just 20,000 net rentable square feet. This further reduction  
15 has come about without explanation of any kind and, like the 22,000 square feet, does not have any  
16 evidentiary support or objective basis.

17 23. The Library's "temporary" quarters in the Veterans Building cannot be used as a  
18 baseline standard because they are, and always have been, insufficient and inadequate in multiple  
19 ways, including but not limited to the following:

20 (a) Constructed in the early 1930's, the building is seismically unsafe, which puts  
21 staff and patrons at high risk if and when there is an earthquake. In the event of an earthquake, the  
22 walls and stairwells are likely to fail, and there are no alternate means of exit from the building.  
23 Substantial property loss could also occur. "The risk of structural and non-structural building  
24 component collapse and loss of life are possible even in a moderate earthquake."<sup>1</sup>

25 (b) The amount of shelf space is grossly inadequate.  
26

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27 <sup>1</sup>Tom Eliot Fisch, Inc., *Executive Summary, War Memorial Veterans Building Life Safety*  
28 *Study* at 3 (Nov. 1, 2004).

1 (c) The conditions are poor. The area of the stacks and the patron reading room has  
2 little or no air circulation. They are subject to extreme glare, which is exacerbated by unfiltered  
3 skylights in the ceiling. Even on moderately sunny days, the temperature can reach or exceed 85  
4 degrees Fahrenheit. In the winter, lack of direct heat circulation and unprotected skylights often  
5 result in room temperatures in the low 60s. Such unpleasant environmental conditions have resulted  
6 in early closure of the Library, patron complaints and even health problems.

7 (d) The poor conditions damage the books.

8 (e) Lighting throughout the Library is indirect and poor, making it difficult for  
9 patrons to read. Staff workspace lighting is inadequate. Since most of the present lighting is  
10 provided by skylights rather than electrical lighting, there is very low lighting during the darkest part  
11 of year.

12 (f) Numerous ceiling leaks exist.

13 (g) There is inadequate workspace for the technical services staff and some  
14 workspaces have to be shared.

15 (h) Seating is inadequate. At City Hall, the Library had seating for 87 users, in  
16 contrast to only 32 seats in the current space, limited primarily to five tables. Reference interviews  
17 are conducted in the lobby, because there are no private areas for patrons to meet with the librarians.

18 (i) Space and wiring constraints permit only nine public access computer terminals  
19 for use of the catalog, internet and electronic resources. This is entirely inadequate to serve the  
20 Library's user population.

21 (j) Much of the Library's material—about two-thirds of its collection—is in closed  
22 storage and hence completely inaccessible to staff and patrons. The materials in storage include  
23 archival materials that are largely unavailable to patrons anywhere else in the Bay Area and which  
24 are regularly requested by patrons. In addition to being inaccessible, the storage conditions are poor,  
25 and the Library's collection is suffering permanent damage due to rats, dust and insect infestation.  
26 The books are packed in boxes that are deteriorating and improperly stacked, which results in the  
27 boxes collapsing and crushing the books. (In an earlier storage location, a portion of the collection  
28 was destroyed by water leaks.)

1 (k) The Library owns an extraordinary and very valuable rare law book collection  
2 dating back to the 15th century, which includes the first compilation of English law (dated 1490),  
3 16th and 17th century legal texts, of which only a few copies exist in the world, as well as early  
4 American reports, and a unique collection of Canon law. This collection, which totals  
5 approximately 11,000 volumes, must be preserved in environmentally safe conditions. After City  
6 Hall closed, it initially was stored in preservation conditions at the University of California book  
7 storage facility, but this arrangement was meant to be temporary. When the City announced that the  
8 Library could not return to City Hall, the collection had to be moved out of the University of  
9 California facility. It is now stored in non-archival cardboard boxes in a crate in a warehouse in  
10 South San Francisco. Needless to say, these conditions fail to meet rare book preservation standards  
11 and the collection's very existence is in jeopardy.

12 (l) The current space does not have room for the normal growth of legal materials,  
13 despite extensive weeding, conversions from print to electronic formats, cancellations and discards  
14 of hundreds of law reviews, reporters, and other sets and subscriptions. The shelf space at the  
15 Veterans Building was intended to accommodate the Library's needs only for a brief two- or three-  
16 year retrofit period in the 1990's. The Library has long since run out of shelf space, forcing it to  
17 discard materials that normally would have been archived, and to store other materials on carts, in  
18 boxes or on shelves in various offices at City Hall.

19 (m) The Veterans Building lacks adequate security to protect the Library's collection.

20 24. The Library requires sufficient space to accommodate its full scope of services and its  
21 print and electronic collections. Both as a practical matter and as a matter of law, the Library's  
22 mission and the important role it serves in providing access to legal resources cannot be reduced to a  
23 handful of computer terminals. Digital media is an important resource that saves space, and the  
24 Library has significantly reduced its space needs by replacing print collections with digital  
25 collections. But digital resources do not eliminate the need for print legal materials—there are large  
26 gaps in online sources of essential legal information that must be provided in print. Many archival  
27 materials are not available electronically and will not be retrospectively digitized. The Library  
28 provides free access to essential legal databases and print materials that a majority of individuals, lay

1 or professional, cannot obtain on their own. Legal publishers do not provide free access to their  
2 databases, and both print and electronic subscriptions and licenses are extremely costly and beyond  
3 the ability of many lawyers and the public to afford. Electronic publishers also have stringent  
4 licensing restrictions and do not permit Library patrons to access the databases off-site; they must  
5 use them within the Library. Print collections also are necessary to ensure equal access for all, not  
6 just those who are able to use electronic resources and can afford the cost of printing research  
7 results, but also those who cannot.

8 25. To function properly and to meet the needs of the San Francisco community, the Library  
9 must maintain a comprehensive print and digital collection that includes state, local and federal  
10 laws, ordinances, regulations and cases; legal forms; self-help materials; legal treatises, texts and  
11 practice manuals; legal periodicals; legal finding aids and reference tools; and legal databases. The  
12 Library also must archive and retain precedential material, and continually add materials as the law  
13 changes and new resources are developed. The Library's collection conforms to the County Public  
14 Law Library Standards issued by the American Association of Law Libraries in July 2008,<sup>2</sup> but  
15 also—and perhaps more importantly—meets the needs of the community it serves. San Francisco is  
16 a national and international commercial and legal center. As such, it requires and deserves a  
17 comprehensive, full-service public law library.

18 26. Reasonably comfortable facilities and adequate workspaces are necessary to productive  
19 legal research. The 20,000 net rentable square feet proposed by the City would render the Library a  
20 grossly substandard public law library, particularly in comparison to other large metropolitan areas  
21 and to county law libraries of similar and even smaller print collection sizes and attorney  
22 populations, such as Alameda, Orange and San Diego Counties. The Library serves 19,555  
23 attorneys and has approximately 263,480 volumes in its collection, but currently has only 14,310  
24 gross square feet of accessible space and the City proposes increasing that to only 20,000 net  
25 rentable square feet. The main branch of the Alameda County Law Library serves 8,680 attorneys

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26  
27 <sup>2</sup>American Association of Law Libraries, *County Public Law Library Standards* (July 2008),  
28 <http://www.aallnet.org/main-menu/Leadership-Governance/policies/PublicPolicies/policy-county-standards.html>.

1 and has only 100,267 volumes located in 30,000 gross square feet of accessible space. The Orange  
2 County Law Library occupies a comfortable 47,454 gross square feet to house a collection of  
3 approximately 162,784 volumes, and serves 18,445 attorneys. The San Diego County Public Law  
4 Library is housed in 35,000 gross square feet with a collection of approximately 120,265 volumes  
5 and serves 17,923 attorneys.<sup>3</sup>

6 27. To provide a full service library, the Library needs, at a minimum, 30,000 gross square  
7 feet. Less than 30,000 gross square feet would infringe on the core functions of the Library and  
8 compromise its mission. This space requirement takes into account the size of the Library's current  
9 collection, ongoing weeding, discards, cancellations and reductions in print subscriptions,  
10 conversions from print to electronic resources as they become available, the standards of the  
11 American Association of Law Libraries for a public county law library, the Library's retention and  
12 weeding policy, weeding of the collections currently held in storage, reductions in linear shelf  
13 growth rates and shelving needs over time, the proliferation of digitalized content, and space  
14 requirement data from comparable California county law libraries.

15 28. Library patrons include members of the public; attorneys, many of whom are solo  
16 practitioners or members of small law firms; small business owners; non-profits and legal services  
17 organizations, advocacy groups, minority and other bar association members, City and County  
18 officials; and non-attorney personnel from law firms and government agencies in the San Francisco  
19 area. Many of these patrons rely on the Library as their sole source of legal information and  
20 resources; the majority of the materials and services provided by the Library are not available to the  
21 public, at the San Francisco Public Library or otherwise.

22 29. As related in Paragraph 3, the Library has located property at 1200 Van Ness Avenue  
23 that may well be the only even marginally suitable property to house the Library after the Veterans  
24 Building closes this coming May 2013. The landlord is willing to lease approximately 30,000-  
25 35,000 gross square feet to the City for use by the Library, and the Library has succeeded in having

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27 <sup>3</sup>Attorney populations provided by the State Bar of California, [http://members.calbar.ca.gov/search/demographics\\_counties.aspx](http://members.calbar.ca.gov/search/demographics_counties.aspx) (last visited Mar. 7, 2013). Volume counts and square  
28 footage assessments provided by the county law libraries.

1 the City participate in negotiations about acquiring that space under a lease. However, the City is  
2 unwilling to fund more than 20,000 net rentable square feet. The Library has carefully considered  
3 whether it can accommodate itself and perform its services to the public within that space limitation  
4 and has concluded that it cannot do so. See Paragraphs 24-28, *supra*. It has communicated that  
5 conclusion to the City, but the City refuses to move from its position. The City's failure to fund  
6 even a minimum of 30,000 gross square feet at 1200 Van Ness Avenue violates its duty under the  
7 Charter and State law. See Section 8.103; 1869-70 Cal. Stat. at 238. This impasse between the City  
8 and the Library may cause the negotiations for the leasehold at 1200 Van Ness to fail, unless this  
9 Court orders the City to rent between 30,000 and 35,000 gross square feet of space (depending on  
10 the landlord's and architects' designs for the property) for the Library's use at that location.

11 30. The Library lacks sufficient funds to arrange for its own occupancy needs. Instead, it is  
12 wholly dependent on the City, which is charged under the Charter with providing for these needs.

13 31. The Charter does not permit the City or the City Administrator to provide the Library  
14 with such inadequate, unsuitable and inaccessible quarters. By failing to act to cure the problem, the  
15 City and the City Administrator have abused their discretion and failed to meet their mandatory duty  
16 to provide suitable, sufficient and readily accessible space for the Library.

17 32. Most importantly, the Veterans Building is scheduled to close for seismic upgrades in  
18 May 2013, and the Library's current space will not be available when the building re-opens. The  
19 plan to close the Veterans Building in May of this year has been long anticipated, but even now, less  
20 than three months before the impending closure of the Veterans Building, the City has not agreed to  
21 a new location or indicated what will happen to the Library if the Veterans Building closes on  
22 schedule. Even assuming the Library will be able to move into some amount of space at 1200 Van  
23 Ness at any point in the near future, it will take months to plan, coordinate and execute the complex  
24 relocation of the Library and complete any tenant improvements. Moving a library is no easy task  
25 and typically requires two to three years of advance planning. Necessary tenant improvements at  
26 any new location will take months and will not be completed prior to the noticed move-out date of  
27 May 31, 2013. (Colleen Burke-Hill, the Facilities Administrator for the San Francisco War  
28 Memorial & Performing Arts Center, has informed the Library that tenants are scheduled to be

1 completely out by May 1, 2013. According to Ms. Burke-Hill, the Library may be able to stay until  
2 May 31, 2013, but no later than that.) Despite repeated requests for information, not a soul in the  
3 City government has spoken with the Library about where and how the Library would serve its  
4 function if it is forced to vacate the Veterans Building in May as scheduled. The Library anticipates  
5 that Respondents will attempt to evict the Library from the Veterans Building when it finally closes  
6 for construction on May 31, 2013.

7 33. Pursuant to the City Charter and State law, the City must locate, “fix up” and furnish  
8 suitable, accessible quarters for the Library; yet another inadequate “temporary” solution will not  
9 suffice. The City’s failure to meet its obligations under the Charter and State law, together with the  
10 imminent closure of the Veterans Building and Respondents’ misguided efforts to force the Library  
11 into unsuitable facilities and an inadequate amount of space, have caused an immediate crisis and  
12 threatened the future of the Library.

### 13 14 **REMEDIES**

15 34. Mandate will lie to correct an abuse of discretion by a government or an official thereof.  
16 Section 1085(a) of the California Code of Civil Procedure provides for review of governmental acts  
17 through mandate or mandamus. That section provides that a writ of mandate will issue “to any  
18 inferior tribunal, corporation, board, or person, to compel the performance of an act which the law  
19 specifically enjoins . . .” Code Civ. Proc. §1085(a). In this case, the City is required by the Charter  
20 and statute to provide “suitable,” “complete,” “sufficient” and “readily accessible” quarters for the  
21 Library, and the City Administrator, as the Director of Administrative Services, is charged under the  
22 Charter and the City’s Administrative Code with allocating office space to City agencies and  
23 departments. See Charter art. VIII, §8.103, art. IV, §4.129; San Francisco Admin. Code §4.1.  
24 Accordingly, the City and the City Administrator are both proper respondents in an application for a  
25 writ of mandate by the Library seeking to compel them to provide the Library with “suitable,”  
26 “complete,” “sufficient” and “readily accessible” quarters, and to “fix up and furnish the same.” In  
27 failing to provide such quarters for the Library, the City and the City Administrator have abused  
28 their discretion and are in violation of the Charter and State law.



1 in the foregoing paragraphs.

2 38. Respondents have a clear and present duty under statute and Charter to provide and  
3 furnish adequate and suitable quarters for the Library in a location readily accessible to the judges  
4 and officers of the San Francisco courts. Respondents' failure to carry out this duty and to provide  
5 suitable quarters for the Library violates Section 8.103 of the City Charter and the 1870 Act.

6 39. Petitioner is directly and beneficially interested in Respondents' performance of their  
7 duties. Petitioner is entitled to a writ of mandate under Code of Civil Procedure Section 1085  
8 enjoining Respondents' failure and refusal to reestablish the Library in an adequate, readily  
9 accessible and suitable location in accordance with the mandates of the law. At all times relevant to  
10 this action, Respondents have had the ability to fulfill their duties under the law.

11 40. Over the course of the past 18 years, written demand has been repeatedly made upon  
12 Respondents to perform their duties. In direct contravention of the law and Petitioner's demands,  
13 Respondents have failed and refused to perform duties expressly mandated by law, despite their  
14 ability to carry out those duties and despite repeated and unfulfilled promises to do so from many  
15 and various officials up to and including the Mayor then in office. As a result of Respondents'  
16 inaction, the Library now faces a crisis that threatens its existence as an independent entity and as a  
17 valuable resource for the public. If the City continues to refuse to provide suitable housing for the  
18 Library, then as of May 2013, the Library will literally be homeless.

19 41. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law.  
20 Unless this Court grants the relief requested, Respondents will continue to fail and refuse to perform  
21 their legal duties. No money damages or other legal remedy could adequately compensate  
22 Petitioner, the members of the Bar or the public for the hardship caused by Respondents' failure to  
23 perform their legal duties.

24 **SECOND CAUSE OF ACTION**  
25 **(Injunctive Relief For Violation of Charter Section 8.103 and the 1870**  
26 **Act)**

27 42. Petitioner realleges and incorporates by reference each and every allegation contained in  
28 the foregoing paragraphs.

43. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law.

1 Monetary damages cannot adequately compensate for the irreparable injuries caused by  
2 Respondents' actions in violation of Section 8.103 of the City Charter and the 1870 Act, or  
3 Respondents' anticipated eviction of the Library on May 31, 2013, without an adequate new space  
4 to house it.

5 44. Unless enjoined by this Court, Respondents will continue to violate Section 8.103 and  
6 the 1870 Act by failing to house and maintain the Library in adequate, accessible and suitable space.

7 45. Petitioner is entitled to preliminary and permanent injunctive relief in the form of an  
8 order enjoining Respondents from continuing to fail and refuse to provide adequate, readily  
9 accessible and suitable facilities for the Library in accordance with the mandates of the law. At least  
10 30,000 gross square feet is required for any space to be at least minimally adequate. Absent  
11 intervention by the Court, Petitioner, the members of the legal profession, the judiciary, municipal  
12 officials and the members of the public will continue to suffer irreparable harm in that they will not  
13 have ready access to adequate library resources as required by the Charter and State law.

14 46. Petitioner is also entitled to preliminary and permanent injunctive relief in the form of  
15 an order enjoining Respondents from evicting the Library from its current location in the Veterans  
16 Building unless and until a lease or purchase of complete, adequate, readily accessible and suitable  
17 space and facilities for the Library has been finalized and the City has moved the Library into the  
18 new location.

19  
20 **THIRD CAUSE OF ACTION**  
21 **(Declaratory Relief For Violation of Charter Section 8.103 and the 1870**  
22 **Act)**

23 47. Petitioner realleges and incorporates by reference each and every allegation contained in  
24 the foregoing paragraphs.

25 48. An actual controversy exists between Petitioner and Respondents because Petitioner  
26 contends that Respondents' refusal to provide adequate, readily accessible and suitable space for the  
27 Library constitutes an ongoing violation of Section 8.103 of the City Charter and the 1870 Act.  
28 Respondents continue to refuse to provide adequate and suitable quarters for the Library and indeed  
have threatened its continued existence as an independent institution.



1 DATED: March 13, 2013.

2 Respectfully,

3 ARNOLD & PORTER LLP

4 By: 

5 \_\_\_\_\_  
DENIS T. RICE

6 Attorneys for Petitioner and Plaintiff  
7 SAN FRANCISCO LAW LIBRARY

8  
9 **VERIFICATION**

10 I, Kurt W. Melchior, state that I am President of the Board of Trustees of the San Francisco  
11 Law Library, that I have read the foregoing First Amended Petition for Writ of Mandate and  
12 Complaint for Injunctive and Declaratory Relief and am familiar with its contents. All facts alleged  
13 in therein are true and correct of my own personal knowledge.

14 I declare under penalty of perjury that the foregoing is true and correct and that this  
15 verification is made on March 13, 2013, in San Francisco, California.

16  
17   
18 \_\_\_\_\_  
Kurt W. Melchior