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11 SAN FRANCISCO LAW LIBRARY

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

MAR 1 2 2013

CLERK OF THE COURT

BY: ROSSALY DE LA VEGA
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 CITY AND COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 THE SAN FRANCISCO LAW LIBRARY,

12
13 Petitioner and Plaintiff,

14 v.

15 CITY AND COUNTY OF SAN FRANCISCO;
16 NAOMI KELLY, IN HER CAPACITY AS CITY
17 ADMINISTRATOR; THE SAN FRANCISCO
18 WAR MEMORIAL AND PERFORMING ARTS
19 CENTER; THE SAN FRANCISCO WAR
20 MEMORIAL AND PERFORMING ARTS
21 CENTER BOARD OF TRUSTEES AND EACH
22 INDIVIDUAL TRUSTEE IN HIS OR HER
23 CAPACITY AS TRUSTEE, NAMELY, THE
24 HONORABLE EDWIN M. LEE, MAYOR;
25 MAJOR GENERAL J. MICHAEL MYATT
26 (RET.); WILKES BASHFORD; NANCY H.
27 BECHTLE; BELVA DAVIS; THOMAS E. HORN;
28 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

**NOTICE OF MOTION AND MOTION
FOR ISSUANCE OF PEREMPTORY
WRIT OF MANDATE**

Date: April 5, 2013

Time: 9:30 a.m.

Dep't: 302

Judge: The Honorable Marla Miller

Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 5, 2013 at 9:30 a.m., or as soon thereafter as the
3 matter can be heard, in Department 302 of this Court, located at 400 McAllister Street,
4 San Francisco, California 94102, Plaintiff and Petitioner San Francisco Law Library will and hereby
5 does move for issuance of a peremptory writ pursuant to Code of Civil Procedure §§1085(a), 1086
6 and 1087; 1869-70 Cal. Stat. 235; the Charter of the City and County of San Francisco ("Charter")
7 art VIII, §8.103, art. IV, §4.129; and San Francisco Admin. Code §4.1.

8 Petitioner the San Francisco Law Library respectfully requests that this Court issue a
9 peremptory writ of mandate commanding Respondents the City and County of San Francisco and
10 the City Administrator to immediately provide, fix up and furnish (including providing for tenant
11 improvements, furniture, fixtures and equipment, and moving costs) complete, adequate, readily
12 accessible and suitable space and facilities for Petitioner the San Francisco Law Library that consist
13 of between 30,000 and 35,000 gross square feet, as required by the Charter and State law. Petitioner
14 also asks this Court to find that (a) the 20,000 net rentable square feet proffered by the City at 1200
15 Van Ness is inadequate under the Charter and State law and contrary to the needs of the San
16 Francisco community; and (b) less than 30,000-35,000 gross square feet would prevent the Library
17 from fulfilling its mission and constitute an abuse of discretion under the Charter and State law.
18 Petitioner further requests that the Court retain jurisdiction until the writ has been carried out.

19 The Motion is and will be based on this Notice of Motion and Motion for Issuance of
20 Peremptory Writ of Mandate; the accompanying Memorandum of Points and Authorities in support
21 thereof; Request For Judicial Notice; Appendix of Declarations and Exhibits in support of the
22 Motion (Volumes I and II), which includes the Declarations of Marcia R. Bell, Allan Besbris,
23 Rommel Bondoc, John Brown, Hilary Burg, Katharine Chao, David Churton, Eric Cohen, D. Inder
24 Comar, Karen Cook, Sara Dudley, Joanne Dumapay, Mark E. Estes, Arlo Garcia Uriarte, Ruth
25 Geos, Mary Hays, David K. Ismay, Benjamin Elliott Kaplan, David Korsunsky, William Maguire,
26 Chuck Marcus, Fernando Martinez, Kurt Melchior, John Murray, John E. O'Grady, Amy Orgain,
27 Dmitri Pikman, Julio J. Ramos, Kathleen Skinner, Mary Staats, Michael E. Turner, Jean Wenger,
28 and Doug Zucker, and the Expert Witness Declarations of John W. Adkins, Marcia J. Koslov and

1 Maryruth Storer; the concurrently filed Notice of Motion and Motion for Preliminary Injunction and
2 Memorandum of Points and Authorities in support thereof; the files and records of this Court; and
3 such other pleadings, evidence and argument as may be submitted to the Court before or at the
4 hearing.

5
6
7 DATED: March 13, 2013.

Respectfully,

8 ARNOLD & PORTER LLP

9
10 By: 

DENIS T. RICE

11 Attorneys for Petitioner and Plaintiff
12 SAN FRANCISCO LAW LIBRARY
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DIANE B. WILSEY; and DOES 1 THROUGH 15,

Respondents and Defendants.

No. CPF-13-512769

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ISSUANCE OF
PEREMPTORY WRIT OF MANDATE**

Date: April 5, 2013
Time: 9:30 a.m.
Dep't: 302
Judge: The Honorable Marla Miller

Trial Date: None Set

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INTRODUCTION

Nearly 150 years ago, the California Legislature recognized that a “large and more complete” public law library was “essential to the orderly, speedy and correct administration . . . of justice” in San Francisco.¹ That remains true today, but for close to two decades the City and County of San Francisco and the City Administrator (together, “the City”) have failed to provide suitable space for the San Francisco Law Library (the “Library”), as required by the City Charter and State law. Lacking sufficient funds to arrange for its own facilities, the Library has worked diligently for the past 18 years to reach a resolution with the City. The imminent closure of the Library’s current location in the War Memorial Veterans Building (“Veterans Building”) in May 2013 and the City’s refusal to fund even the most minimally sufficient amount of space now threaten the Library’s very existence.² The Library seeks a writ of mandate compelling the City to fulfill its legal duties and provide the Library with a permanent and suitable new home.³

The Library located space at 1200 Van Ness that the parties agree is suitable, but the amount of space the City has agreed to fund is insufficient. Without any explanation or evidentiary support of any kind, the City arbitrarily determined that the Library requires only 20,000 net rentable square feet—a woefully inadequate amount of space for a public law library in a populous commercial and legal center like San Francisco. In an effort to reach a compromise, the Library has requested a minimum of 30,000-35,000 gross square feet, which is consistent with the City’s prior assessment that the Library will need approximately 35,000 gross square feet and with the space accorded to comparable county law libraries. With less than 30,000 gross square feet, core components of the Library’s programming and facilities would be lost, rendering the Library substandard under industry guidelines.

¹ 1869-70 Cal. Stat. at 235-236.

²The Veterans Building is scheduled to close for seismic upgrades in May 2013, and the Library’s current space will not be available when the building re-opens. Appx. 271 at ¶10. Despite repeated requests for information, the City has given no indication of what will happen to the Library if the Veterans Building closes as scheduled. *Id.* 269 at ¶6(b). Citations to “Appx.” are citations to the Appendix of Declarations and Exhibits filed concurrently herewith. The materials in the Appendix are consecutively paginated; citations are to the page number in the Appendix. For ease of use, we have dropped the leading zeros.

³The Library has filed a motion for a preliminary injunction concurrently with this motion.

1 The City has abused its discretion in refusing to fund even this bare minimum amount of
2 space. The City has also abused its discretion in refusing to pay for the cost of necessary furniture,
3 fixtures and equipment, moving expenses and the like. The Court should issue a writ of mandate to
4 correct these abuses of discretion and allow the Library, after spending 18 years in admittedly
5 inadequate quarters, to move into a suitable, sufficient and permanent new space.

6 STATEMENT OF FACTS

7 A. The City Has Recognized The Need For A Full Service Law Library, But Since 8 1995 Has Failed To Provide Suitable Permanent Quarters For The Library.

9 From 1914 until 1995, the Library shared the fourth floor of City Hall with the San
10 Francisco Superior Court. Appx. 268 at ¶4; 34 at ¶6.⁴ When City Hall closed for seismic repairs in
11 1995, the City moved the Library to the Veterans Building as a temporary location until the Library
12 could return to City Hall. *Id.*⁵ However, in July 1997, the City determined that the Library would
13 be housed in a new building, to be constructed at 525 Golden Gate Avenue. *Id.* After several false
14 starts, in 2004, the Board of Supervisors passed an unanimous resolution in support of the project,
15 stating that the City was “committed to access to justice for all people, including the poor and under-
16 represented.” Request for Judicial Notice (“RJN”) ¶2 & Ex. 2 at 1 (SF Board of Supervisors
17 Resolution No. 09-04).

18 In the 2004 resolution, the Board of Supervisors admitted that “[a] full-service law library
19 and justice center facility would promote access to justice by bringing together in one facility the
20 legal resources and services needed by the people of San Francisco to enable them to preserve their
21 rights and adjudicate their claims.” The Board also admitted that “[t]he San Francisco Law Library
22 *is necessary to serve the people of San Francisco by providing access to local, state and federal*
23 *legal information resources and services in order that they may preserve their rights and conduct*
24 *their legal affairs.*” RJN ¶2 & Ex. 2 at 1. (emphasis added). The Board also admitted that “[t]he

25 ⁴Unless otherwise noted, all declarations and the request for judicial notice are in support of
26 the Library’s Motion for Issuance of Peremptory Writ of Mandate and Motion For Preliminary
Injunction.

27 ⁵As a result, much of the Library’s material—about two-thirds of its collection—is in closed
28 storage. The materials in storage include archival materials that are largely unavailable to patrons
elsewhere in the Bay Area and which are regularly requested by patrons. Appx. 43 at ¶24(j).

1 legal needs and skills of the people of San Francisco vary and many residents cannot determine and
2 advocate their legal rights based on legal texts alone,” and as a result, “San Francisco is devoted to
3 establishing a law library justice center that would provide access to *the full panoply of legal*
4 *information resources and services*, as well as legal intake, self-help, and translation services,
5 research training programs, alternative dispute facilities, conference, meeting and interview rooms,
6 exhibit space, and other legal support services for individuals, the poor, and the community.” *Id.* at
7 2 (emphasis added). The Board also found that the Library’s location in “inadequate temporary
8 quarters” at the Veterans Building was “*jeopardizing the Law Library’s ability to completely fulfill*
9 *its mission and creating a significant crisis and hardship for the community and for the people it*
10 *serves.*” *Id.* (emphasis added).

11 Despite the Board’s unequivocal recognition of the need for a full service public law library,
12 the City failed to move forward with the 525 Golden Gate project. Appx. at 268-69 at ¶5; 35-36 at
13 ¶9. In the following years, the Library explored other potential locations and worked diligently to
14 initiate and maintain collaborative efforts with the City and to identify and obtain suitable properties
15 for the Library’s permanent home. *Id.* 34-37 at ¶¶6-12 (detailing the Library’s attempts to obtain
16 suitable permanent quarters); *see also id.* 268-69 at ¶¶5-6. But due to the City’s lack of support, the
17 Library was unable to make any substantive progress toward securing a viable site. *Id.* 268-71 at
18 ¶¶5-9; 37 at ¶12.

19
20 **B. The Library Requires A Minimum of 30,000-35,000 Gross Square Feet To**
21 **Fulfill Its Mission As A Public County Law Library.**

22 The minimally sufficient amount of space for a public county law library in a major
23 metropolitan area like San Francisco is 30,000-35,000 gross square feet. *See* Appx. 30-31 at ¶17; 21
24 at ¶18; 8-9 at ¶16; 40-41 at ¶21; 271 at ¶10; 324-25 at ¶5 & 341. This figure is based on
25 fundamental considerations: (1) the collection, facilities and services required for a full service
26 public law library in a major metropolitan area; and (2) the space needed to house the required
27 collection, facilities and services.
28

1 1. **A Public County Law Library In A Sophisticated Metropolitan Area**
2 **Must Provide A Comprehensive Print And Digital Collection, Adequate**
3 **Workspace And Appropriate Services And Trainings.**

4 As a national and international commercial and legal center, San Francisco requires a full
5 service public law library. Appx. 37-38 at ¶13; 271 at ¶10. Library patrons include members of the
6 public; attorneys, many of whom are solo practitioners or members of small law firms; medium-
7 sized and large national or international law firms with offices in San Francisco; small business
8 owners and start-ups; non-profits and legal services organizations; advocacy groups; minority
9 special interest and other bar association members; City and County departments; state and federal
10 government agencies, judges and law clerks; students; other libraries; and non-attorney personnel
11 from law firms and government agencies in the San Francisco area. *Id.* at ¶13; 235 at ¶3.⁶ Many of
12 these patrons rely on the Library as their sole source of legal information and resources; the majority
13 of the materials and services provided by the Library are not available to the public at the San
14 Francisco Public Library or elsewhere. *Id.*⁷ The Library does not have an automated gate count, but
15 manual counts by Library staff indicate usage of approximately 30,000 patrons per year. *Id.* at 37-
16 38 at ¶13. Usage is likely depressed by the inadequate and often uncomfortable conditions, *id.*; *see*
17 *also id.* 251 at ¶7, but could increase significantly in a more suitable and permanent location, and
18 with the development of additional community programs. *Id.* 30 at ¶16; 8 at ¶15; 37-38 at ¶13; *see*
19 *also id.* 20-21 at ¶17.

20 **Functional Space.** The Library's functional space should be comprised of public space,
21 administrative space, staff space, special use areas and stacks. Appx. 26-27 at ¶8; 14-15 at ¶8; 5 at
22 ¶8; 38 at ¶14. **Public areas** should include: entry and security; an information and circulation desk;
23 casual seating; user seating and workspaces; a document processing center with public copy
24 machines and supplies; public computer terminals and a public printer; a self-help area with space

25 ⁶*See also* Appx. 200 at ¶1, 203 at ¶1, 255 at ¶1, 258 at ¶1, 276 at ¶1, 284 at ¶1, 221 at ¶1 (solo
26 practitioners); 206 at ¶1, 212 at ¶1, 250 at ¶1, 296 at ¶1 (small firm practitioners); 247 at ¶1 (mid-
27 large commercial law firm); 218 at ¶1 (Immigrant Legal Resource Center); 224 at ¶1 (Presidio
28 Trust); 281 at ¶1, 279 at ¶1 (AIDS Legal Referral Panel); 230 at ¶1, 265 at ¶1, 287 at ¶1; 290 at ¶1
 (law firm librarians).

⁷*See also* Appx. 224 at ¶2; 230 at ¶2; 261-62 at ¶¶3, 5; 274 at ¶2 (wholly dependent on
Library); 290 at ¶2.

1 for children; the reference desk, space for confidential reference interviews and an office for the
2 head reference librarian; a reserve collection room; and public restrooms. *Id.* **Administrative space**
3 should include: a reception area and offices for the Library director and assistant director; a file and
4 supply room with workspace for administrative support; and a conference room or board room. *Id.*
5 **Staff areas** should include space for technical services, a staff break room, storage and janitorial
6 space. *Id.* **Special use areas** should include conference rooms, seminar/community rooms and an
7 electronic classroom, a rare book room, a server room and kitchen space. *Id.*

8 **Print Collection.** To meet the needs of the San Francisco community and the standards for a
9 full service public law library, the Library must maintain a comprehensive collection that includes
10 state, local and federal laws, ordinances, regulations and cases; legal forms; self-help materials; legal
11 treatises, texts and practice manuals; legal periodicals; legal finding aids and reference tools; and
12 legal databases. Appx. 27 at ¶9; 15-16 at ¶9; 5-6 at ¶9; 38-39 at ¶16. The Library must archive and
13 retain precedential material, and continually add materials as the law changes and new resources are
14 developed, and discard materials that are no longer relevant or current. *Id.* The Library's collection
15 and retention policy conform to the *County Public Law Library Standards* issued by the American
16 Association of Law Libraries, but also—and perhaps more importantly—meets the needs of the
17 community it serves. *Id.* at ¶9; 15-16 at ¶9; 5-6 at ¶9; 38-39 at ¶16 & 80-95 (San Francisco Law
18 Library Retention Policy). For example, patrons often request historical and archival materials not
19 readily available elsewhere. *Id.* 238-39 at ¶11; *see also, e.g., id.* 224 at ¶2; 262 at ¶5; 287 at ¶2.

20 As a result of efforts to compromise with the City (including the discard of non-essential
21 items and a conservative approach to maintaining older materials), as well as the anticipated damage
22 to the volumes in storage, the Library's print collection likely will be reduced to 138,980 volumes.
23 Appx. 242 at ¶3. At present, however, the Library holds a total of 263,480 volumes in its print
24 collections, including an extraordinary rare law book collection that is currently stored in non-
25 archival cardboard boxes. *Id.*; 43 at ¶24(k). Major public law libraries keep older superseded legal
26 materials; they are used to determine the law as it applied at a specific past date in time. *Id.* 28 at
27 ¶11; *see also id.* 16 at ¶10 (archival legal information and rare books "are not just 'old' law. They
28 play an important role in the development of precedential information and historical knowledge that

1 is required for an understanding of current law"). The nature and size of the Library's print
2 collection reflects recent reductions due to ongoing weeding, discards, cancellations and reductions
3 in print subscriptions, conversions from print to electronic resources as they become available, the
4 standards of the American Association of Law Libraries for a public county law library, the
5 Library's retention and weeding policy, and the proliferation of digitalized content. *Id.* 242 at ¶3.

6 ***Electronic and Online Resources.*** In addition to its print collection, the Library provides
7 free access to essential online and electronic materials, including online databases such as Westlaw
8 and Lexis. Appx. 39 at ¶17; 235-36 at ¶¶3, 4; 262 at ¶4. Legal publishers do not provide free access
9 to their databases, and both print and electronic subscriptions and licenses are extremely costly and
10 beyond the ability of many lawyers and the public to afford. *Id.* 39 at ¶17; *see also, e.g., id.* 252 at
11 ¶10; 284 at ¶3; 297 at ¶7. Electronic publishers also have stringent licensing restrictions and do not
12 permit Library patrons to access the databases off-site; they must use them within the Library. *Id.*
13 39 at ¶17. As digital resources increase, more public computers are required. *Id.* 28 at ¶11; 6 at
14 ¶10; *see also id.* 16-17 at ¶11. As a county public law library, the Library must have sufficient
15 computers, printers, copy machines, wireless internet access and wired work stations to make online
16 resources accessible and useful. *Id.* 28 at ¶11; 16-17 at ¶11; 6 at ¶10.

17 ***Reference Services, Educational Programs and Trainings.*** Law libraries have a different
18 function than in the past. Appx. 28-29 at ¶12; 6-7 at ¶11. In addition to providing legal resources,
19 public law libraries now have an increased assistance and training function. *Id.* Both attorney and
20 non-attorney patrons require reference assistance to navigate the law and find the information and
21 resources they need. *Id.* 39-40 at ¶18; 28-29 at ¶12; 17-18 at ¶12; 6-7 at ¶11.⁸ Non-lawyers
22 typically require more assistance because they are not familiar with the legal process, which can be
23 extremely complex and confusing. *Id.* 39-40 at ¶18; 238 at ¶9; 28-29 at ¶12; 17-18 at ¶12; 6-7 at
24 ¶11.⁹ Many non-attorney patrons are self-represented litigants using the Library for civil litigation

25
26 ⁸*See also* Appx. 237-40 at ¶¶8, 15; 206 at ¶2; 212 at ¶2; 263 at ¶7; 274 at ¶2; 290 at ¶3, 221 at
27 ¶2; 230 at ¶3; 251 at. ¶8; 255 at ¶2; 276 at ¶2; 258 at ¶2; 265 at ¶3; 282 at ¶¶3-4; 284 at ¶2; 287 at
28 ¶3; 296-97 at ¶5

⁹*See also* Appx. 263 at ¶7; 282 at ¶4.

1 matters, but a significant number use the Library for other purposes, such as drafting their own
2 contracts and wills, organizing businesses, managing rental property and even completing academic
3 assignments. *Id.* In addition, both attorneys and non-attorneys use the Library to prepare for
4 criminal proceedings, trials and appeals. *Id.* The Library's staff provides many different types of
5 reference services, including orientations regarding the use of print and electronic legal resources,
6 bibliographies, pathfinders, trainings and seminars. *Id.* 39-40 at ¶18; 239-40 at ¶15.

7 The Library also should provide educational seminars and programs for attorneys and the
8 public, including substantive trainings focusing on a specific area of law, trainings regarding court
9 procedures and advocacy, and legal research trainings. Appx. 29 at ¶13; 18 at ¶14; 7 at ¶12. These
10 trainings are invaluable. *Id.* Without proper instruction, online legal databases such as Lexis and
11 Westlaw are difficult to use, and large portions of the public are not aware of free legal resources
12 available on the Internet. *Id.* Programs that focus on a particular area of law or on helping lay
13 persons navigate the legal system are also an integral part of the services a public law library must
14 provide. *Id.* Seminars such as these and legal research trainings are an efficient way to address
15 knowledge gaps and answer questions about a specific topic, as well as provide the public with
16 information and tools to protect their rights, represent their clients and/or manage their affairs
17 effectively. *Id.* Accordingly, the Library needs at least one large seminar room and preferably an
18 additional electronic classroom for online research trainings. *Id.* A public county law library
19 should, and with adequate space, resources and staff, the San Francisco Law Library also could,
20 provide trainings for public library staff who routinely receive law-related questions, court clerks,
21 paralegals and legal secretaries, and partner with self-help centers at the state and federal courts. *Id.*
22 at ¶14; 18-19 at ¶15; 7 at ¶13; *see also id.* 40 at ¶19.

23 **Other services.** The Library must also provide document delivery and circulation services,
24 both of which require sufficient personnel and staff workspace, as well as conference and meeting
25 rooms. Appx. 30 at ¶15; 18-19 at ¶¶13, 16; 8 at ¶14. Conference rooms are particularly important
26 for solo practitioners and other patrons who may be working with others or require facilities for a
27 meeting. *Id.* 30 at ¶15; 18-19 at ¶15; 8 at ¶14. The Library should offer private areas for
28 confidential meetings and to allow patrons to conduct conversations without disturbing others. *Id.*

1
2 **2. A Minimum Of 30,000-35,000 Gross Square Feet Is Required To House**
3 **The Library Without Jeopardizing Its Mission.**

4 The collections, facilities and services incorporated in architect Doug Zucker's test fit (a
5 rough preliminary space plan) are necessary and appropriate, and conform to the standards outlined
6 by several law library experts and the *California County Law Library Space Recommendations*
7 issued by the Council of California County Law Librarians. Appx. 30-31 at ¶17; 20 at ¶18; 8 at ¶16.
8 The minimum amount of space required to house the necessary collections, facilities and services is
9 30,000-35,000 gross square feet. *See id.* 324-25 at ¶5 & 341; 30-31 at ¶17; 20 at ¶18; 8-9 at ¶16.
10 Working with its architect, the Library has carefully considered whether it can accommodate itself
11 and perform its services to the public within the 20,000 net rentable square feet proposed by the City
12 and has concluded that it cannot do so. *Id.* 40-41 at ¶21; 271 at ¶10. With less than 30,000 gross
13 square feet, valuable core components of the Library's programming and facilities would be lost,
14 preventing the Library from fulfilling its mission and rendering it substandard under industry
15 guidelines and in comparison to comparable county law libraries. *Id.* 30-31 at ¶17; 20 at ¶18; 8-9 at
16 ¶16; 40-41 at ¶21.

17 **C. Suitable Space Is Available At 1200 Van Ness, But The City Will Not Agree To**
18 **Fund 30,000 Gross Square Feet.**

19 The Library has located property at 1200 Van Ness Avenue that may well be the only
20 suitable property to house the Library, and the City agrees that the property is appropriate. Appx. at
21 ¶21; 271 at ¶10; 215 at ¶4. Few properties are suitable for libraries because of the structural
22 requirements and floor loading capacity, and there are very few properties available within a
23 reasonable distance from Civic Center and the Superior Courts. *Id.* 215 at ¶3. The landlord is
24 willing to lease approximately 30,000-35,000 gross square feet to the City for use by the Library,
25 and the Library has succeeded in having the City participate in negotiations about acquiring that
26 space under a lease. *See id.* 215 at ¶4; 324-25 at ¶5 & 341. However, the City is willing to fund
27 only 20,000 net rentable square feet, *see* RJN ¶3 & Ex. 3 at 1, while the Library requires at least
28 30,000 gross square feet. *See* Appx. 324-25 at ¶5 & 341; 30-31 at ¶17; 20 at ¶18; 8-9 at ¶16.

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ARGUMENT

Mandate is appropriate to compel the City to provide the Library with suitable facilities as required under the City Charter and State law. Section 1085(a) of the California Code of Civil Procedure provides for review of governmental acts through mandate or mandamus. Mandamus will lie to compel a public official to perform an official act required by law. Code Civ. Proc. §1085(a). Two basic requirements are essential to the issuance of the writ: (1) a clear and present duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. *Cal. Hosp. Ass'n v. Maxwell-Jolly*, 188 Cal. App. 4th 559, 568 (2010), *cert. denied*, 132 S. Ct. 94 (2011). Both of these elements are present here, and Respondents have abused their discretion in failing to provide the Library with suitable housing as required by the Charter and State law. The court must issue the writ in all cases where, as here, "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Code Civ. Proc. §1086.

A. The City Has A Clear And Present Duty To Provide Suitable And Sufficient Facilities For The Library.

Respondents have a clear and present duty under the Charter and State Law to provide and furnish adequate and suitable quarters for the Library in a readily accessible location. The Charter and State law require the City to provide "suitable," "complete," "sufficient" and "readily accessible" quarters for the Library, and the City Administrator, as the Director of Administrative Services, is charged under the Charter and City's Administrative Code with allocating office space to City agencies and departments. *See* Charter of the City and County of San Francisco ("Charter") art. VIII, §8.103, art. IV, §4.129 (1996); San Francisco Admin. Code §4.1.

The specific duties of the City and County of San Francisco were first articulated in Section 8 of 1869-70 Cal. Stat. 235 (the "1870 Act"), which reads:

The City and County of San Francisco is hereby authorized and *required* to provide, fit up and furnish, and provide with fuel, lights, stationery and all necessary conveniences and care, rooms *convenient and accessible* to the Courts, *sufficient for the use and accommodation* of said law library and those who have occasion for its use. And the Board of Supervisors of the City and County of San Francisco are hereby authorized, empowered and required to appropriate, allow and order paid out of the General Fund such sums as may be necessary for the purposes aforesaid. (1869-70 Cal. Stat. at 235, 238 (emphasis added))

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2 The California legislature later repealed the 1870 Act, but that repeal was prospective only;
3 therefore, the 1870 Act is still effective and remains good law as to the Library. *See* Cal. Bus. &
4 Prof. Code §6363 (West Supp. 2001). Subsequent City Charters, including the present Charter, have
5 recognized the continuing effect of the 1870 Act and incorporated its requirements. The basic duty
6 articulated by the 1870 Act was explicitly incorporated into Section 8.103 of the present Charter,
7 which states in relevant part:

8 The City and County *shall provide suitable and sufficient quarters* for the Law
9 Library, *fix up and furnish the same* and provide for the supply of necessary light,
10 heat, stationery and other conveniences. The library shall be so located as to be
11 *readily accessible* to the judges and officers of the courts. (Charter, art. VII, §8.103
(emphasis added))

12 The City Administrator, as the Director of Administrative Services, also has a clear and
13 present duty to ensure that the Library has suitable and permanent housing. Under the Charter, the
14 Director of Administrative Services “shall manage all public buildings, facilities and real estate of
15 the City and County [of San Francisco].” Charter, art. IV, §4.129. The San Francisco
16 Administrative Code further states that the Director “shall have charge of all public buildings . . . of
17 the City and County . . . including the allocation of office space therein . . .” San Francisco Admin.
18 Code §4.1. As the officer primarily responsible for the allocation of public office space, the
19 Director of Administrative Services has a duty to the Library to provide accommodations suitable
20 under the Charter and statutory provisions.

21 **B. The Library Has A Clear, Present And Beneficial Right To The Performance Of**
22 **The City’s Obligations Under The Charter And State Law.**

23 A party must be “beneficially interested” to seek a writ of mandate, and the beneficial
24 interest must “direct and substantial.” *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52
25 Cal. 4th 155, 165 (2011). A beneficial interest generally means that the petitioner “has some special
26 interest to be served or some particular right to be preserved or protected over and above the interest
27 held in common with the public at large.” *Id.*

28 Here, the Library possesses the direct, substantial sort of beneficial interest required to seek a
writ of mandate under Code of Civil Procedure Section 1086. The 1870 Act and the Charter create a

1 right to suitable housing that is enforceable by the Library. *See* 1869-70 Cal. Stat. at 238; Charter,
2 art. VII, §8.103. The Library lacks sufficient funds to arrange for its own occupancy needs and is
3 wholly dependent on the City, which is charged under its Charter with providing for these needs.
4 Appx. 37 at ¶12. The City's failure to provide suitable and adequate housing for the Library has had
5 and will continue to have a present and ongoing severe effect on the Library's ability to carry out its
6 mission. *Id.* 40-41 at ¶21; *see also id.* 28-31 at ¶¶12, 17; 20-21 at ¶¶18, 19; 6-9 at ¶¶11, 16. Indeed,
7 with the imminent closing of the Veterans Building, the Library's very existence is in jeopardy. *Id.*
8 40-41 at ¶21. Accordingly, the Library has a clear, present and beneficial right to City's
9 performance of its obligations and the "beneficial interest" requirement is met. *See Save the Plastic*
10 *Bag*, 52 Cal. 4th at 165 ("One who is in fact adversely affected by governmental action should have
11 standing to challenge that action if it is judicially reviewable") (citation omitted).

12 **C. In Failing To Provide Suitable And Sufficient Quarters For The Library, The**
13 **City And The City Administrator Have Abused Their Discretion In Violation Of**
14 **The Charter And State Law.**

15 Although mandate will not lie to control a public agency's discretion, "[it] will lie to correct
16 abuses of discretion, and will lie to force a particular action by the inferior tribunal or officer, when
17 the law clearly establishes the petitioner's right to such action." *Manjares v. Newton*, 64 Cal. 2d
18 365, 370 (1966) (citation omitted); *Cal. Hosp. Ass'n*, 188 Cal. App. 4th at 570 ("It is well settled
19 that mandamus will lie to correct an abuse of discretion by a public official or agency"). Where, as
20 here, a nonjudicial entity, official or employee, is required by law to exercise discretion, mandate
21 may issue to compel the exercise of that discretion and "to exercise it under a proper interpretation
22 of the applicable law." *Id.* (emphasis added).

23 Courts will not uphold an agency action if it was "arbitrary, capricious, lacking in
24 evidentiary support, or was made without due regard for the petitioner's rights." *Ridgecrest Charter*
25 *Sch. v. Sierra Sands Unified Sch. Dist.*, 130 Cal. App. 4th 986, 1003 (2005). "[C]ourts must ensure
26 that an agency has adequately considered all relevant factors, and has demonstrated a rational
27 connection between those factors, the choice made, and the purposes of the enabling statute." *Id.*

28 In *Board of Law Library Trustees v. Board of Supervisors*, 99 Cal. 571 (1893), the California
Supreme Court specifically addressed the issue of "suitable" quarters for law libraries under

1 California Business & Professions Code Section 6361, which is analogous to the relevant provisions
2 in the 1870 Act and the City Charter. In *Board of Law Library Trustees*, the county board of
3 supervisors placed the county law library in a room used mainly for other purposes. *Id.* at 571-72.
4 Access to books was obstructed and “rendered greatly inconvenient” by furniture and other articles,
5 and “books [could] not be consulted or used with reasonable convenience, or in any proper or
6 satisfactory manner.” *Id.* at 572. The California Supreme Court issued a writ of mandate stating
7 “the room used as a library room is not sufficient, and not such as is contemplated by the statute.
8 The board should provide a suitable room.” *Id.* at 573; *see also Ridgecrest*, 130 Cal. App. 4th at
9 1006-07 (holding that school district abused its discretion by failing to provide charter school with
10 reasonably equivalent and contiguous facilities as required by state law; school district’s
11 interpretation of what was required under the law was erroneous).

12 Here, as in *Board of Law Library Trustees*, the City is effectively obstructing access to the
13 Library by failing to provide sufficient facilities. In order to meet their duties under the Charter and
14 State law, Respondents must promptly provide the Library with *complete, adequate, accessible* and
15 *suitable* space. 1869-70 Cal. Stat. at 238; Charter, art. VII, §8.103. The 20,000 net rentable square
16 feet proposed by the City would render the Library substandard under any objective standard. *See*
17 Appx. 30-31 at ¶17; 20 at ¶18; 8-9 at ¶16; *see also id.* 300 at ¶3 & 304-08 (American Association of
18 Law Libraries (“AALL”), *County Public Law Library Standards*). Indeed, in a 2010 report, the City
19 Controller recommended that the City “work to identify a new permanent location for the Law
20 Library in the Civic Center area that has at least 35,000 gross square feet.” *Id.* 41 at ¶22 & 126.
21 The purpose of the report was “to review the options available for relocation of the Law Library to a
22 facility capable of meeting the needs of a modern law library.” *Id.* at 101 (emphasis added).¹⁰ More
23 recent space studies by independent consultants determined that the Library requires between 43,663
24 and 57,213 gross square feet. *Id.* 41-42 at ¶23 & 167-94, 195-98.

25 The Library’s “temporary” quarters in the Veterans Building cannot be used as a baseline

26 ¹⁰The City’s report was methodologically flawed and underestimated the Library’s space
27 needs, *see* Appx. 41 at ¶22 & 127-157 (The San Francisco Law Library, *Requirements for a*
28 *Permanent Law Library*), but the City nonetheless found that the Library required 35,000 gross
square feet.

1 standard because they are, and always have been, insufficient and inadequate in multiple ways. *See*
2 Appx. 42-44 at ¶24; *see also id.* 30-31 at ¶17; 20 at ¶18; 8-9 at ¶16. The City Controller admitted as
3 much in his 2010 report: “The Law Library’s current facilities do not meet the physical plant and
4 facilities standards established by the American Association of Law Libraries” and “the Law
5 Library’s current facilities do not meet the needs of modern library.” *Id.* 41 at ¶22 & 99-126.
6 Moreover, the Veterans Building is scheduled to close in May 2013, and the Library’s current space
7 will not be available when the building re-opens. *Id.* 44 at ¶26; 269-271 at ¶¶6(b), 10.

8 The 30,000-35,000 gross square feet currently available at 1200 Van Ness would suffice to
9 house the essential programs and services. *See* Appx. 40-41 at ¶21; 324-25 at ¶5 & 341; 30-31 at
10 ¶17; 20 at ¶18; 8-9 at ¶16. This minimal amount of space sought by the Library is consistent with
11 comparable county law libraries. The Library serves 19,555 attorneys and, after extensive discards,
12 will have approximately 138,980 volumes in its collection. *Id.* 242 at ¶3; RJN ¶4 & Ex. 4. The
13 Alameda County Law Library serves 8,680 attorneys, has 85,000 volumes, and its main branch
14 occupies approximately 30,000 gross square feet. *Id.* 233 at ¶¶2-3; RJN ¶4 & Ex. 4. The Orange
15 County Law Library occupies a approximately 47,454 gross square feet to house a collection of
16 approximately 162,784 volumes, and serves 18,445 attorneys. *Id.* 24-25 at ¶5; RJN ¶4 & Ex. 4. The
17 San Diego County Public Law Library is housed in approximately 35,000 square feet with a
18 collection of approximately 120,265 volumes and serves 17,923 attorneys. *Id.* at ¶4; RJN ¶4 & Ex.
19 4.

20 Digital media is an important resource that saves space, but it does not eliminate the need for
21 print legal materials. Appx. 28 at ¶11; 16-17 at ¶11; 6 at ¶10. There are large gaps in online sources
22 of essential legal information that must be provided in print materials, and many archival materials
23 are not available electronically and will not be retrospectively digitized. *Id.* 28 at ¶11; 6 at ¶10; *see*
24 *also id.* 16-17 at ¶11. Electronic resources require additional support from library professionals
25 because it often is necessary to instruct, train and guide patrons in the use of these tools. *Id.* 28 at
26 ¶11; 16-17 at ¶11; 6 at ¶10. In addition, online resources can be inaccurate or out-of-date, and print
27 collections are necessary to ensure equal access for all, not just those who are able to use electronic
28 resources and can afford the cost of printing research results, but also those who cannot. *Id.*

1 Here, as in *Ridgecrest*, the City's determination that the Library needs only 20,000 net
2 rentable square feet is arbitrary and lacks evidentiary support; indeed the City has provided no
3 explanation or objective basis of any kind. Providing insufficient space is as unlawful as failing to
4 provide any space at all. See *Board of Law Library Trustees*, 99 Cal. at 573; *Ridgecrest*, 130 Cal.
5 App. 4th at 1006-07. The Charter and State law do not permit Respondents to provide the Library
6 with such inadequate and unsuitable quarters. 1869-70 Cal. Stat. at 238; Charter, art. VII, §8.103.
7 By refusing to fund more than 20,000 net rentable square feet, Respondents have abused their
8 discretion and failed to meet their mandatory duty to provide suitable and sufficient space for the
9 Library. See *Ridgecrest*, 130 Cal. App. 4th at 1001 (school district's exercise of discretion in
10 providing facilities to charter school "must comport with the evident purpose" of the applicable
11 statute).

12 The provision of legal information is fundamental to a democratic society and essential for
13 its people to protect their rights and handle their legal affairs. Appx. 30 at ¶16; 19-20 at ¶17; 7 at
14 ¶15. The Library's programs and services provide the people of San Francisco with free access to
15 legal information and specialized reference assistance in the use of those materials. *Id.* 44 at ¶25.
16 As a public county law library, the Library is already an extremely valuable asset to the community,
17 but with more space, it could do even more. *Id.* For example, the Library could expand its vital role
18 in helping low income individuals resolve high stakes legal issues, providing resources and support
19 for small business, easing the burden on courts handling more and more cases with self-represented
20 litigants, and providing free educational programming. *Id.* Such expansion could include
21 partnerships with the bar, the courts and/or legal aid organizations to best serve the San Francisco
22 community. *Id.* But without adequate space for the requisite collections, facilities and services, the
23 Library will be unable to provide essential services and as a result its role will be marginalized, to
24 the detriment of the public, the courts and the legal community. *Id.*

25 **D. The Library Has No Adequate Remedy At Law.**

26 The Library has no plain, speedy and adequate remedy in the ordinary course of law. Unless
27 this Court grants the relief requested, Respondents will continue to abuse their discretion and refuse
28 to perform their legal duties. No money damages or other legal remedy could adequately

1 compensate the Library or its patrons for the hardship caused by Respondents' abuses of discretion.
2 Absent intervention by the Court, the Library, its patrons and the community will continue to suffer
3 irreparable harm in that they will not have access to adequate library resources. See Appx. 42-44 at
4 ¶¶24, 26; RJN ¶2 & Ex. 2 (Resolution No. 09-04) (Library's current location at the Veterans
5 Building is "creating a significant crisis and hardship for the community and for the people it
6 serves").¹¹

7 CONCLUSION

8 For the foregoing reasons, the Library requests that this Court:

9 1. Find that (a) the 20,000 net rentable square feet proffered by the City at 1200 Van
10 Ness is inadequate under the Charter and State law and contrary to the needs of the San Francisco
11 community; and (b) less than 30,000-35,000 gross square feet would prevent the Library from
12 fulfilling its mission and constitutes an abuse of discretion under the Charter and State law.

13 2. Issue a peremptory writ of mandate commanding Respondents the City and the City
14 Administrator to immediately provide, fix up and furnish (including providing for tenant
15 improvements, furniture, fixtures and equipment, and moving costs) complete, adequate, readily
16 accessible and suitable space and facilities for the Library that consist of between 30,000 and 35,000
17 gross square feet, as required by the Charter and State law.

18
19 DATED: March 13, 2013.

Respectfully,

20 ARNOLD & PORTER LLP

21 By: 
22

DENIS T. RICE

23 Attorneys for Petitioner and Plaintiff SAN
24 FRANCISCO LAW LIBRARY

25
26
27 ¹¹See, e.g., Appx. 212-13 at ¶4 (resources are invaluable to practice); 252 at ¶10 (severe
28 hardship if print collection inaccessible or Library were to close); 274 at ¶3 (essential to
participation as a citizen); 287 at ¶2 (archival collection invaluable and not easily available); 297-98
at ¶9 (Library is avenue for justice).