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6 and Convenient Parking, Inc.

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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 FEKRE BEKELE, a.k.a. FRED BEKELE, an
12 individual and CONVENIENT PARKING,
L.L.C., a California Limited Liability
13 Company and IMCO, L.L.C., a Joint Venture
14 organized as a California Limited Liability
Company, individually and on behalf of the
City and County of San Francisco

15 Plaintiffs,

16 v.

17 NATHANIEL P. FORD, SR., a.k.a., NAT
18 FORD, individually and as Executive
Director/Chief Executive Officer of the SAN
19 FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY; CITY AND
20 COUNTY OF SAN FRANCISCO; SAN
FRANCISCO MUNICIPAL
21 TRANSPORTATION AGENCY; DENNIS
HERRERA and DOES 1-50, inclusive,

22 Defendants.
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Case No. 11-CV-01640 WHA

SECOND AMENDED COMPLAINT

1. Violation of 42 U.S.C. §1983 (Deprivation of Civil Rights);
2. Violation of 42 U.S.C. §§1983 & 1985 (Conspiracy To Violate Civil Rights);
3. Violation of 42 U.S.C. §§1983, 1985 & 1986 (Failure To Prevent Violation Of Civil Rights);
4. Violation of Civil Code §52.1(b) (Interference With Rights);
5. Violation of §17200, et. seq. (Unlawful Business Practices).
6. Negligent Interference With Contractual Rights
7. Intentional Interference With Contractual Rights
8. Negligent Interference With Prospective Economic Advantage
9. Intentional Interference With Prospective Economic Advantage
10. California Political Reform Act
11. San Francisco Government Ethics Ordinance

INJUNCTIVE RELIEF SOUGHT

PUNITIVE DAMAGES SOUGHT

JURY TRIAL DEMANDED

1 Plaintiffs hereby allege as follows:

2 **INTRODUCTION**

3 1. This is an influence-peddling case. Plaintiffs, having provided the winning bid for a
4 San Francisco parking lot management contract, soon found the award attacked by well-connected
5 parking companies that previously held the management contracts for the parking lots at issue. These
6 well-connected companies sought the intervention of Nathaniel Ford, the head of San Francisco's
7 Municipal Transit Authority. Shortly thereafter, at a meeting in the offices of Ford's attorney – who
8 simultaneously represented one of the non-winning companies, plaintiffs were presented with a
9 choice: either work out a deal to split the parking contracts along lines the non-winning companies
10 found acceptable, or face the delay, or complete denial of the award of the contracts.

11 2. When plaintiffs refused to accede to these demands, the well-connected companies
12 made good on their threat. Ford – without disclosing his professional connection – purported to act on
13 demands to reverse the award issued on behalf of these companies by their attorney, *that is, Ford's*
14 *attorney*. Based on a series of erroneous and misleading statements and elisions by Ford, the SFMTA
15 overturned the award.

16 3. Plaintiffs turned to the City Attorney of San Francisco, who purported to conduct an
17 investigation of these events. The City Attorney then issued a “report” on his investigation – a report
18 that was riddled with demonstrably and unreasonably false statements (including false statements that
19 defamed plaintiffs) and inexplicably absolved Ford and other officials of misconduct. Unbeknownst
20 to plaintiff, the City Attorney had accepted money from the well-connected companies that, under
21 California and San Francisco laws, precluded him from participating in the investigation.

22 4. These actions violated rights guaranteed plaintiffs under the United States and
23 California Constitutions, and contravened rules of conduct for government officials California and San
24 Francisco established precisely to avoid the conflicts of interests presented here.

25 **JURISDICTION**

26 5. This is a civil suit brought under the Federal Civil Rights Act, 42 U.S.C. §§ 1983, 1985
27 and 1986 for violations of the Fifth and Fourteenth Amendments of the United States Constitution.

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1 15. Defendant CITY AND COUNTY OF SAN FRANCISCO (“City”), is a municipality
2 duly organized and existing under the laws of the State of California. The City is located in the
3 County of San Francisco and State of California. At all times relevant to this complaint, the City
4 operated by and through its agent, Defendant SAN FRANCISCO MUNICIPAL TRANSPORTATION
5 AGENCY (“SFMTA”).

6 16. Defendant SFMTA, is a public entity located in the City and County of San Francisco
7 and State of California, and at all relevant times herein, was the agent for, and under the direction and
8 control of, the City.

9 17. Defendant NATHANIEL FORD, a.k.a., NAT FORD (“Nat Ford”), was at all times
10 relevant to this complaint, Director of the SFMTA. As Director of the SFMTA, Nate Ford was the
11 chief policy making authority of the SFMTA, and as such, had the power to determine how the
12 SFMTA ran the bidding process for parking lot contracts and, ultimately, who was awarded such
13 contracts.

14 18. Defendant DENNIS HERERRA is the City Attorney for the City and County of San
15 Francisco. As City Attorney, the City Attorney advises and directs the SFMTA, and is a policy-
16 maker for the City and County of San Francisco.

17 19. DOES 1 through 50 are employees and/or officers of the SFMTA, other agencies,
18 instrumentalities, public entities or municipal corporations that were the agents for, and under the
19 direction and control of the City and/or SFMTA.

20 20. Plaintiff is ignorant of the true names and capacities of Defendants DOES 1 through
21 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend his
22 complaint to state the names and capacities of DOES 1 through 50 when they have been
23 ascertained.

24 21. In engaging in the conduct described herein, Defendants Nat Ford and SFMTA acted
25 under color of law and in the course and scope of their employment with the City. In engaging in the
26 conduct described herein, Defendants exceeded the authority vested in them under the laws of the
27 United States, the United States Constitution, the laws of the State of California and the California
28 Constitution.

STATEMENT OF FACTS

SFMTA Hires Consultant To Make Bidding On Parking Contracts Fair To Smaller Companies

22. In the summer of 2007, the SFMTA hired consultant Barbara Chance to address multiple issues concerning the City’s management and award of public contracts for City-owned parking facilities.

23. The SFMTA was concerned that, among other things, the City was not maximizing the revenues the City could derive from parking facilities, and that locally owned businesses were being denied entry into the competitive world of public parking contracts. Also, concerns that parking garage contracts were being awarded amid charges of influence peddling were notorious.

24. On June 19, 2007, Ms. Chance presented her recommendations, which included a plan for revising the process for contract bidding to enable a more open and competitive process.

25. In response to this, in early 2008, the MTA put together a new process for the awarding of parking garage contracts, in accord with the Chance consultant report and with input from both the Human Rights Commission and Small Business Commission, both of whom had received complaints about the existing process.

26. Among the primary recommendations that were adopted was encouraging smaller locally owned business to partner up with established companies so that they could gain a foothold in the industry. Also, Ms. Chance made recommendations already being used in other jurisdictions to encourage bid competition and which would keep the city from over paying for parking management services.

Mr. Bekele’s Convenient Parking, Inc. Struggles To Compete With The Bigger Players

27. Mr. Bekele had emigrated from Ethiopia, via Germany and had studied business at UC Davis. He learned the parking garage business while supporting himself through school, and after graduating he continued to work in this field during the recession of the early 1990s when other work was scarce.

28. Eventually, Mr. Bekele helped bring his extended family to the US and has been proud to call San Francisco his home for the past 20 years. At the time of the bid on the 2008 parking garage contract, Mr. Bekele was operating three different garages, as Convenient, a Local Business Enterprise

1 (“LBE”), but his business growth had stalled because the bigger companies always managed to win
2 the best contracts.

3 Thanks To SFMTA’S New Policies Mr. Bekele Gets His Chance To Compete

4 29. After securing a 250K loan for working capital requirements, Mr. Bekele, partnered
5 up with Imperial Parking Corporation (“Impark”). Impark has operated garages in San Francisco for
6 some time and are one of the bigger companies that have routinely won contracts in the area.

7 30. Due to the new policy change, Mr. Bekele hoped the SFMTA would favor a joint
8 venture that would allow a locally owned business an entry into the management of these lucrative
9 parking garage contracts. Impark has wide experience handling such jobs and does work throughout
10 the U.S. and Canada including managing the parking for some well known sports venues such as the
11 San Francisco Giants nearly 5,000 capacity parking garage at AT&T Park. They have the kind of
12 experience Mr. Bekele knew he could learn from and which would quell any claim he couldn’t operate
13 larger parking venues.

14 31. Together, Mr. Bekele’s Convenient and Impark formed a joint venture called IMCO,
15 representing the forging together of the larger Impark and Mr. Bekele’s smaller Convenient, precisely
16 what the Chance consultant report had envisioned.

17 Mr. Bekele Gets His Chance To Win And The SFMTA Gets Its
18 Chance To Validate Its New Process

19 32. On April 10, 2009, the SFMTA issued a Request For Proposal for the operation and
20 management of parking facilities in the City, denominated RFP# SFMTA 2008/09-30 (“RFP”).

21 33. A pre-bid Conference convened on April 24, 2009, that included twenty-eight
22 individuals representing twenty-three vendors, including five from LBEs.

23 34. In June 19, 2009, IMCO submitted its final proposal and bid deposit, along with several
24 other companies.

25 35. On or about September 21, 2009, IMCO was notified that it had won the portion of the
26 contract designated “Group A”, and that work towards finalizing an agreement would begin shortly
27 thereafter.
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1 36. Seven days later, on September 28, 2009, the formal period for parties to object to the
2 RFP results expired. Neither of the parking companies that won smaller portions of the contract,
3 Pacific and Five Star, had any basis to complain, nor did they complain during the final protest period.

4 37. Management of all garages in “Group A” under the new contract awarded to IMCO
5 was to begin by February 1, 2010.

6 38. By winning the portion of the “Group A” contract, IMCO had outbid a number of
7 companies with interests in the award of the contract, including Pacific Park Management (“Pacific”)
8 and Five Star Parking (“Five Star”). While Pacific had won a portion of the contract designated
9 “Group C” and Five Star had won a portion of the contract designated “Group B”, both Group B and
10 Group C paid less in management fees than did Group A.

11 After Winning Fair And Square, Mr. Bekele Gets Shaken Down By Powerful Interests

12 39. On September 23, 2009 – only two days after the announcement of bid winners –
13 attorney Steven Kay’s office, who represented Pacific, sent an email to Ashish Patel requesting all
14 information regarding the RFP to be forwarded to his office. Such action constituted improper
15 lobbying by his office because all bid participants were only allowed to contact the SFMTA regarding
16 the RFP process through Winnie Xie.

17 40. After Steven Kay’s September 23, 2009 email was sent, and on that same day, Nat Ford
18 sent an email to SFMTA officials Bond Yee (“Mr. Yee”) and Amit Kothari (“Mr. Kothari”) saying,
19 “we need to talk about this”, referring to the RFP results.

20 41. Additionally, a September 25, 2009 SFMTA staff email mentions Nat Ford’s “concern”
21 regarding the RFP results.

22 42. Following the improper contact made by Steven Kay, Nat Ford’s concern about the
23 RFP results and the SFMTA staff learning of such concern, the SFMTA held meetings regarding
24 undisclosed matters concerning parking garage facilities on September 28 and October 13, 2009.

25 43. On or about October 26, 2009, Steven Kay, sent a letter to SFMTA Director Nat Ford
26 requesting that the RFP results be rejected.

27 44. Three days later, September 29, 2009, Pacific donated Five Hundred Dollars (\$500.00)
28 to a fund for Dennis Herrera, City Attorney for the City and County of San Francisco.

1 45. On November 2, 2009, Mr. Kothari sent an email mentioning “item 10.7” was to be
2 voted on the following day. That item, if passed, that would give Nat Ford the power to unilaterally
3 reject the RFP and do a new one.

4 46. On November 3, 2009, that proposal was passed, giving Nat Ford power to reject the
5 RFP himself.

6 47. On information and belief, the City Attorney (HERRERA), when asked to review Mr.
7 Kay’s letter and advise the SFMTA regarding the letter’s contents, the City Attorney did not recuse
8 himself, or disclose Pacific’s donation.

9 48. Instead, on information and belief, the City Attorney reviewed Mr. Kay’s letter and
10 advised Mr. Ford and the SFMTA without disclosing his involvement.

11 49. On November 24, 2009, the SFMTA Board was informed that the RFP results were
12 being rejected by Nat Ford to eliminate performance based compensation as well as to regroup all
13 parking garage contracts – contrary to the Chance report’s recommendations.

14 Mr. Ford did not disclose, to Mr. Bekele, Convenient, IMCO or the SFMTA Board,
15 that Mr. Kay was also Mr. Ford’s lawyer.

16 50. On November 30, 2009, the bidders in the RFP were informed that the RFP results
17 were rejected by the SFMTA, but were not told what the SFMTA Board was told – that the reason was
18 to eliminate performance based compensation or to regroup the parking garage contracts.

19 51. On December 1, 2009, IMCO protested the rejection of their bid.

20 52. On the heels of IMCO’s protest over the rejection of their bid, during December of
21 2009, Pacific requested a meeting with Impark and Convenient representatives.

22 53. Also during December of 2009, the SFMTA Board requested their staff to provide
23 justification for rejection of the RFP at the next Board meeting.

24 54. On December 31, 2009, Mr. Bekele and Ward Thomas (“Mr. Thomas”), Mr. Bekele’s
25 partner in IMCO, among others, attended a meeting at 100 Embarcadero Street, San Francisco, at the
26 law offices of Steven Kay. Present also at the meeting were representatives from Pacific and Mr.
27 Scott Hutchinson of Five Star.
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1 55. During the meeting, Mr. Hutchinson informed Mr. Bekele and Mr. Thomas that if they
2 did not reach an agreement to give up some of the parking garages IMCO had won in the bidding
3 process, that “they” had “so much ‘juice’ in the City” that they could stall the contract award process,
4 or get IMCO’s contract rejected altogether.

5 56. Also during that meeting, Steven Kay stated that Nat Ford had given him approval to
6 mediate the meeting. **Mr. Kay did not reveal that Nat Ford was also Mr. Kay’s client.**

7 57. Pacific was an established client of Steven Kay prior to the RFP in question.

8 58. Additionally, on December 15, 2009 – only a couple weeks after the rejection of
9 IMCO’s bid – Nat Ford hired Steven Kay to represent him in negotiating his employment contract
10 with the City. At worst, this was a conflict of interest, because Steven Kay was in position to refuse to
11 help Nat Ford which may lead to him losing his job if he didn’t act favorably toward Pacific. At best,
12 it created the appearance of a conflict of interest, which Nat Ford admitted himself when he finally
13 recused himself from the matter on July 15, 2010 – nearly eight months after he unilaterally reneged
14 on the bid IMCO had won fair and square.

15 59. On January 4, 2010, Pacific set a meeting that Mr. Thomas, Mr. Bekele and others
16 attended at One South Van Ness, Nat Ford’s office in San Francisco. During that meeting Nat Ford
17 confirmed his knowledge of the meeting that had taken place at Steven Kay’s offices on December 31,
18 2009.

19 60. On January 5, 2010, Mr. Bekele, Mr. Thomas, Mr. Hutchinson and others attended a
20 meeting with SFMTA staff. SFMTA staff Mr. Yee, Virginia Harmon (“Ms. Harmon”) and Mr. Kotari
21 were at that meeting where Mr. Bekele was told it was “in the best interest of the City” to recommend
22 to the SFMTA Board that the contract be awarded as is.

23 61. IMCO did not agree to the back door deal that was proposed, believing it would have
24 contravened multiple laws.

25 After Being Improperly Lobbied, SFMTA Changes Its Mind And Rescinds The Winning Bid

26 62. In retaliation for IMCO’s refusal to acquiesce to this deal, Steven Kay and his clients
27 improperly lobbied SFMTA officials and Board members to reverse the award, in order to allow the
28 project to be awarded to a company connected to powerful interests in the City.

1 63. Despite the pressure exerted by Steven Kay’s lobbying, SFMTA staff continued to
2 recommend that IMCO receive a contract based on their winning bid.

3 64. However, Mr. Bekele received direct threats in person, warning that the contract
4 between the City and IMCO would be delayed if he did not agree to a back room deal to privately
5 rearrange the award.

6 65. Ultimately, the SFMTA folded under the pressure of the lobbying of powerful special
7 interests when Nat Ford unilaterally rescinded the RFP in which IMCO won its bid for Group A, and
8 began to establish another RFP for those parking garage contracts.

9 66. The newly issued RFP increased the threshold limits of liquid capital requirements to
10 bid on the contracts from \$500,000.00 to \$1,000,000.00 (or the undefined two months working
11 capital), which inured to the advantage of the more well capitalized bidders such as Pacific and Five
12 Star. Whereas under the previous RFP, IMCO could meet the \$500,000.00 liquid asset requirement,
13 allowing them to bid on the Group A contract, and Mr. Bekele was capable of bidding on the Group C
14 contract as a prime, with Convenient’s \$250,000.00 in working capital, this new RFP made it more
15 difficult for IMCO to bid, and impossible for Mr. Bekele to bid on any part of the contract as a prime.

16 67. The new RFP also doubled the amount of parking management fees awarded, greatly
17 increasing the costs to the City.

18 68. Ironically, the new RFP had received fewer bids than the former RFP, directly
19 contradicting the SFMTA’s reasoning it had put forward in its November 30, 2009 letter to the
20 winning bidders.

21 69. Mr. Bekele, Convenient and IMCO then sought the assistance of the City Attorney,
22 which purported to undertake an investigation. The City Attorney did not disclose the conflict of
23 interest created by Pacific’s payments to Mr. Herrera’s fund, a conflict that, under state and local
24 rules, should have precluded Herrera’s participation in the investigation.

25 70. On March 2, 2011, the City Attorney issued a report on its investigation. To describe
26 the report as a “whitewash” is an insult to whitewashes. The report absolved Mr. Ford and all other
27 City officials or employees of any wrongdoing. This includes the City Attorney’s disregard of Mr.
28 Ford’s failure to disclose his professional relationship with Mr. Kay (and through Mr. Kay to Pacific),

1 which plainly contravened the express provisions of San Francisco’s Ethical Code, which mandates
2 the disclosure by officials of any professional relationships bearing on matters for which the official
3 may act. The report was riddled with multiple material errors and falsehoods, each of which could
4 easily have been corrected and refuted with minimal diligence by the City Attorney.

5 71. Worse still, the City Attorney’s report accused Mr. Bekele of acts of wrongdoing, and
6 impropriety. These accusations were false, and caused damage to Mr. Bekele, Convenient and
7 IMCO’s reputation and livelihood. Before issuing these false accusations, the City Attorney made no
8 attempt to verify their accuracy with Mr. Bekele, even though Mr. Bekele had fully cooperated with
9 the City Attorneys soi-dissant “investigation”.

10 72. When public funds are soon to be spent as a result of government action participated in
11 by a public officer who had a conflict of interest, a taxpayer has standing to sue for appropriate relief,
12 including injunctive relief.

13 **CAUSES OF ACTION**

14 First Cause Of Action – 42 U.S.C. §1983 – Deprivation Of Rights

15 73. Plaintiffs incorporate the allegations stated in paragraphs 1 through 60 of the complaint
16 as though fully set forth herein.

17 74. The City, SFMTA, Nat Ford and Mr. Herrera, through the conduct above described,
18 each deprived Plaintiffs of their right to due process of law, equal protection of the laws and to
19 contract.

20 75. As an actual and proximate result of the conduct above-described, Plaintiffs have
21 suffered damages in an amount to be proven at trial.

22 Second Cause Of Action - 42 U.S.C. §§1983 & 1985 - Conspiracy To Violate Civil Rights

23 76. Plaintiffs incorporate the allegations stated in paragraphs 1 through 62 of the complaint
24 as though fully set forth herein.

25 77. The City, SFMTA and Nat Ford, through the conduct above described, each conspired
26 with the other to agree to deprive Plaintiffs of their right to due process of law, equal protection of the
27 laws and to contract.

1 78. The City, SFMTA and Nat Ford, through the conduct above described each intended to
2 agree as described in paragraph 64 and each intended that the object of the agreement be achieved.

3 79. The object of the agreement to deprive Plaintiffs of their rights succeeded and was the
4 actual and proximate cause of damage to them in an amount to be proven at trial.

5 Third Cause Of Action - 42 U.S.C. §§1983, 1985 & 1986 - Failure To Prevent Civil Rights
6 Violation

7 80. Plaintiffs incorporate the allegations stated in paragraphs 1 through 66 of the complaint
8 as though fully set forth herein.

9 81. The City, SFMTA, Nat Ford and Herrera, through the conduct above described, each
10 failed to prevent the deprivation of Plaintiffs' right to due process of law, equal protection of the laws
11 and to contract.

12 82. As an actual and proximate result of the conduct above-described, Plaintiffs have
13 suffered damages in an amount to be proven at trial.

14 Fourth Cause Of Action - Violation Of Civil Code §52.1(b) - Interference With Rights

15 83. Plaintiffs incorporate the allegations stated in paragraphs 1 through 70 of the complaint
16 as though fully set forth herein.

17 84. By threats, intimidation and coercion, the City, SFMTA, Nat Ford and Herrera, through
18 the conduct above described, each interfered with Plaintiffs' right to due process, equal protection of
19 the laws and to contract.

20 85. As an actual and proximate result of the conduct above-described, Plaintiffs have
21 suffered damages in an amount to be proven at trial.

22 Fifth Cause Of Action - Violation Of §17200, Et. Seq. - Unlawful Business Practices

23 86. Plaintiffs incorporate the allegations stated in paragraphs 1 through 85 of the complaint
24 as though fully set forth herein.

25 87. The actions of the City, SFMTA and Nat Ford complained of above constitute
26 unlawful, unfair and fraudulent business practices within the meaning of Business and Professions
27 Code §17200, Et. Seq.

1 88. As a result of the actions of the City, SFMTA and Nat Ford complained of above,
2 Plaintiffs have been damaged in an amount to be proven at trial.

3 Sixth Cause Of Action - Negligent Interference With Contractual Rights

4 89. Plaintiffs incorporate the allegations stated in paragraphs 1 through 88 of the complaint
5 as though fully set forth herein.

6 90. The actions of the City, SFMTA and Nat Ford complained of above lead to Plaintiffs’
7 losing a contract they had already won and any benefits due thereunder.

8 91. The City, SFMTA and Nat Ford had a duty to not interfere with Plaintiffs’ contractual
9 rights.

10 92. By their actions complained of above, the City, SFMTA and Nat Ford breached that
11 duty.

12 93. That breach was the actual and proximate cause of damages to Plaintiffs in an amount
13 to be proven at trial.

14 Seventh Cause Of Action - Intentional Interference With Contractual Rights

15 94. Plaintiffs incorporate the allegations stated in paragraphs 1 through 93 of the complaint
16 as though fully set forth herein.

17 95. The actions of the City, SFMTA and Nat Ford complained of above lead to Plaintiffs’
18 losing a contract they had already won and any benefits due thereunder.

19 96. By their actions complained of above, the City, SFMTA and Nat Ford intentionally
20 interfered with Plaintiffs’ contractual rights.

21 97. That intentional interference was the actual and proximate cause of damage to Plaintiffs
22 in an amount to be proven at trial.

23 Eighth Cause Of Action – Negligent Interference With Prospective Economic Advantage

24 98. Plaintiffs incorporate the allegations stated in paragraphs 1 through 97 of the complaint
25 as though fully set forth herein.

26 99. The actions of the City, SFMTA and Nat Ford complained of above lead to Plaintiffs’
27 losing a contract they had already won and any benefits due thereunder.

1 100. The City, SFMTA and Nat Ford had a duty to not interfere with Plaintiffs' prospective
2 economic advantage.

3 101. By their actions complained of above, the City, SFMTA and Nat Ford breached that
4 duty.

5 102. That negligent interference was the actual and proximate cause of damages to Plaintiffs
6 in an amount to be proven at trial.

7 Ninth Cause Of Action – Intentional Interference With Prospective Economic Advantage

8 103. Plaintiffs incorporate the allegations stated in paragraphs 1 through 102 of the
9 complaint as though fully set forth herein.

10 104. The actions of the City, SFMTA and Nat Ford complained of above lead to Plaintiffs'
11 losing a contract they had already won and any benefits due thereunder.

12 105. By their actions complained of above, the City, SFMTA and Nat Ford intentionally
13 interfered with Plaintiffs' prospective economic advantage.

14 106. That intentional interference was the actual and proximate cause of damages to
15 Plaintiffs in an amount to be proven at trial.

16 Tenth Cause of Action – Violation of the Political Reform Act

17 107. The Political Reform Act of 1974 (Cal. Gov. Code §§ 81000 et seq.) (the "Reform
18 Act") prohibits the public officials from acting in matters where their private interests might conflict
19 with their public duties. The purpose of the act is that that public officers be prevented from acting in
20 conflict of interest situations unless such action is absolutely necessary.

21 108. Section 81000 of the Reform Act, provides, in pertinent part: "No public official at
22 any level of . . . local government shall make, participate in making or in any way attempt to use his
23 official position to influence a governmental decision in which he knows or has reason to know he has
24 a financial interest."

25 109. Section 87103 of the Reform Act provides, in pertinent part, that: "[a]n official has a
26 financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that
27 the decision will have a material financial effect, distinguishable from its effect on the public
28 generally, on: "(c) Any source of income . . . aggregating two hundred fifty dollars (\$ 250) or more in

1 value received by . . . the public official within twelve months prior to the time when the decision is
2 made; . . ."

3 110. For the purposes of disqualification under Section 87100 and 87103, “ a public official
4 has an economic interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts
5 aggregating \$ 420 or more in value provided to, received by, or promised to the public official within
6 12 months prior to the time when the decision is made.”

7 111. An officer of a city or his agent is not entitled to represent secretly a party claiming
8 adversely to the city and to accept a fee for such service. A public officer may not make an
9 unauthorized profit out of the particular public business which has been entrusted to his care. An agent
10 stands in a fiduciary relationship to his principal, and if he makes a secret profit from the subject
11 matter of his agency, the principal may recover such profit.

12 112. Local government officials and employees are in violation of the rule and statutes
13 forbidding conflict of interests when they vote, or in any other way approve or disapprove of requests
14 for local action, if they have a disqualifying interest in the matter.

15 113. Both Nathaniel Ford and Dennis Herrera are public officials subject to the Political
16 Reform Act under California Government Code Section 82048, which defines public officials to
17 include every officer or employee of a local governmental agency.

18 114. Both Ford and Herrera, by the conduct alleged above, violated the Reform Act and
19 were the actual and proximate cause of damages to Plaintiffs in an amount to be proven at trial.

20 Eleventh Cause of Action, Violation of San Francisco Government Ethics Ordinance

21 115. Section 87300 of the California Government Code requires each agency to adopt and
22 promulgate a Conflict of Interest Code pursuant to the provisions of this Reform Act. Both San
23 Francisco and the SFMTA are “agencies” within the meaning of Section 87300. Pursuant to Section
24 87300, San Francisco enacted the San Francisco Government Ethics Ordinance. (the “Ethics
25 Ordinance”).

26 116. Section 3.214 of the The Ethics Ordinance requires, City officers and employees “to
27 disclose
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1 on the public record any personal, professional or business relationship with any individual who is the
2 subject of or has an ownership or financial interest in the subject of a governmental decision being
3 made by the officer or employee where as a result of the relationship, the ability of the officer or
4 employee to act for the benefit of the public could reasonably be questioned.” A court may void any
5 governmental decision made by a City officer or employee who fails to disclose a relationship as
6 required by Section 3.214 of the Ethics Ordinance.

7 117. Both Ford and Herrera, by the conduct alleged above, violated the Ethics Ordinance
8 and were the actual and proximate cause of damages to Plaintiffs in an amount to be proven at trial.

9 **STATUTORY PENALTIES**

10 Due to the foregoing actions of Defendants, and in addition to the relief requested below,
11 Plaintiffs are entitled to the following:

- 12 1. Pursuant to Civil Code §52, a civil penalty of three times their actual damages proven
13 at trial;
- 14 2. Pursuant to Civil Code §52, a civil penalty of \$25,000.00, as well as, punitive damages
15 and attorney fees for the same;
- 16 3. Pursuant to Civil Code §§52.1(b) and 52.1(h), in addition to the damages available
17 pursuant to Civil Code §52, reasonable attorney fees for Defendants’ violation of Civil Code §52.1(a);
- 18 4. Pursuant to San Francisco Ethics Ordinance §3.242 penalties in the amount of \$5,000
19 for each violation;
- 20 5. All other penalties provided under law.

21 **RELIEF REQUESTED**

22 Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

- 23 1. Compensatory damages according to proof against all Defendants;
- 24 2. Special damages according to proof against all Defendants;
- 25 3. Punitive damages against individual Defendants in an amount to be proven at trial as
26 permitted by law;
- 27 4. Attorneys’ fees;
- 28 5. Expert witness fees;

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6. Costs incurred in this matter;

7. An order declaring the acts by Defendants alleged above violative of the Reform Act and the Ethics Ordinance;

8. Injunctive relief to reinstate Plaintiffs’ winning bid and to restrain Defendants from awarding the afore-mentioned parking contracts to anyone else;

9. An order voiding Ford and the SFMTA’s decision not to approve Plaintiff’s award of the parking contract;

10. An order precluding Herrera from participating in any investigation of the above-alleged conduct;

11. An order appointing a conflict-free attorney or other authorized person to conduct a proper investigation of the above-alleged conduct on behalf of the City;

12. Prejudgment interest at the maximum legal rate; and

13. Any other relief as the Court finds just and proper.

Dated: June 14, 2011

GONZALEZ & LEIGH, LLP

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