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18 **SAN MATEO COUNTY COMMUNITY**

19 **COLLEGE DISTRICT**

20 *Exempt from filing fees pursuant to*  
21 *Government Code § 6103*

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **COUNTY OF SAN MATEO**

24 **SAN MATEO COUNTY COMMUNITY**  
25 **COLLEGE DISTRICT,**

26 **Plaintiff,**

27 **vs.**

28 **LOCUSPOINT NETWORKS, LLC,**  
**PRICEWATERHOUSECOOPERS**  
**ADVISORY SERVICES LLC and DOES 1-**  
**200,**

**Defendants.**

**FILED**  
**SAN MATEO COUNTY**

**APR - 7 2017**

**Clerk of the Superior Court**

**DEPUTY CLERK**

**17CIV01534**

**CASE NO.**

**CIVIL COMPLAINT FOR [Redacted]**

1. **BREACH OF CONTRACT;**
2. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
3. **BREACH OF FIDUCIARY DUTY;**
4. **NEGLIGENCE;**
5. **DECLARATORY RELIEF;**
6. **CONTRACTUAL INDEMNITY; AND**
7. **BREACH OF CONTRACT—FAILURE TO PERFORM POST-AUCTION OBLIGATIONS.**

**JURY TRIAL DEMANDED**

17 - CIV - 01534  
CMP  
Complaint  
450181



1. The SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT (the “District”) is a community college district of the State of California, located in the County of San Mateo (the “County”), which operates three colleges — Cañada College, College of San Mateo, and Skyline College — that provide educational services. The District is one of the largest community college districts in the State of California and offers both academic and vocational programs, including more than 80 vocational degree and certificate programs, to approximately 40,000 community members each year. The District is governed by a Board of Trustees with five voting members (the “Board”).<sup>1</sup>

2. Upon information and belief, defendant LocusPoint Networks, LLC (“LPN”) is a Delaware limited liability company authorized to transact business in the State of California, with its principal place of business in Pleasanton, California.

3. Upon information and belief, defendant PricewaterhouseCoopers Advisory Services LLC (“PwC”) is a Delaware limited liability company authorized to transact business in the State of California, with its principal place of business in New York, New York.

4. The District does not know the true names or capacities of defendants named herein as Doe One through Doe Two Hundred and, therefore, sues these defendants by their fictitious names. The District will ask leave to amend their true names and capacities when the same have been fully ascertained.

5. The District is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is in some way legally responsible for the acts alleged in this Complaint.

**VENUE**

6. Venue in this Court is proper because, among other things, (i) the parties agreed to venue in this County, (ii) performance of the contracts at issue occurred, in part, in San Mateo County, California, and (iii) the breaches of the contracts at issue took place in San Mateo County, California.

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<sup>1</sup> The Board also includes a non-voting student member.

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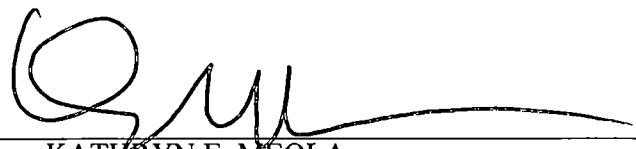
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Dated: April 7, 2017.

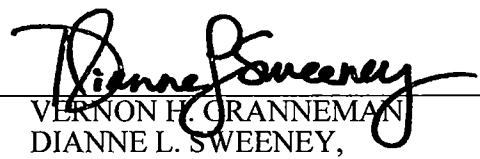
**COUNTY OF SAN MATEO,  
OFFICE OF COUNTY COUNSEL**



By: \_\_\_\_\_  
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Attorneys for SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT

Dated: April 7, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**



By: \_\_\_\_\_  
VERNON H. CRANNEMAN  
DIANNE L. SWEENEY,  
Attorneys for SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT




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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury in the above-captioned action of all issues triable by jury.


Dated: April 7, 2017.

**COUNTY OF SAN MATEO,  
OFFICE OF COUNTY COUNSEL**

By:   
KATHRYN E. MBOLA  
CRAIG N. BAUMGARTNER,  
Attorneys for SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT

Dated: April 7, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

By:   
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Attorneys for SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT

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8 Attorneys for Plaintiffs  
 9 LocusPoint Networks, LLC and  
 LocusPoint II KCSM, LLC

**ENDORSED FILED**  
**SAN MATEO COUNTY**  
 APR 10 2017  
 Clerk of the Superior Court  
 By JORDAN MAXWELL  
 DEPUTY CLERK

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 12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 13 **COUNTY OF SAN MATEO**  
 14 **UNLIMITED JURISDICTION**

15 **17CIV01550**

16 LOCUSPOINT NETWORKS, LLC,  
 a Delaware Limited Liability Company;  
 17 LOCUSPOINT II KCSM, LLC,  
 18 a Delaware Limited Liability Company,

19 Plaintiffs,

20 v.

21 SAN MATEO COUNTY COMMUNITY  
 COLLEGE DISTRICT,

22 Defendant.

Case No.

**COMPLAINT FOR  
 BREACH OF CONTRACT**

**DEMAND FOR JURY TRIAL**

1 LocusPoint Networks, LLC and LocusPoint II KCSM, LLC (“LPN”), by and through  
2 their undersigned counsel, for their complaint against the San Mateo County Community College  
3 District (“the District”), respectfully allege, upon knowledge as to their own actions and  
4 information and belief as to others’ actions, as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for damages to recover what LPN would have received but for the  
7 District’s breaches of its three May 2013 contracts with LPN.

8 2. Those contracts involved the District’s broadcast television station, KCSM-TV  
9 (“KCSM”), which the District had operated at a significant loss for years. By 2011, the District  
10 had decided to explore selling the station outright rather than continuing to fund KCSM’s losses,  
11 going as far as to issue a Request for Proposal (RFP) that solicited six acquisition proposals.

12 3. Then, in February 2012, a federal law was passed that required the Federal  
13 Communications Commission (“FCC”) to hold a special auction in which holders of FCC  
14 broadcast licenses, such as the District, would have the unique opportunity to sell the spectrum-  
15 usage rights—essentially, the right to use the public airwaves—associated with their licenses at  
16 prices brokered by the FCC in a multiple-round auction (the “Auction”). The relinquished  
17 spectrum would be repackaged by the FCC and auctioned to wireless-communications providers,  
18 making licenses covering large metropolitan areas—such as KCSM’s—especially attractive. But  
19 the critical details of the Auction, such as timing, design, station valuation, and spectrum supply  
20 and demand, were yet to be determined.

21 4. Sensing the opportunity, the District decided not to accept any of the six  
22 acquisition proposals, and chose instead to seek an arrangement under which it could obtain from  
23 a third-party the funding KCSM needed to continue to operate until the Auction, whenever it  
24 might occur. Outside funding was crucial because the District had “approximately \$1 million in  
25 losses every year at KCSM-TV,” and the District’s Board of Trustees (the “Board”) was “clear  
26 that the District cannot afford to continue this financial subsidization,” as reported in the May 15,  
27 2013 Board meeting minutes.

28 5. The District solicited four bids with a second RFP, but only two bids to fund

1 KCSM. On May 15, 2013, the Board selected LPN's bid, which provided up to \$3.6 million in  
2 funding to KCSM, on the recommendation of the District's staff that "the proposed agreement  
3 with LocusPoint Networks is the best and most valuable option for the District."

4 6. The value to the District of LPN's commitment went far beyond the dollar  
5 amount—LPN's funds would also buy the District the necessary time until the Auction since it  
6 was unwilling to continue to fund KCSM on its own.

7 7. The Auction opportunity enabled the District to negotiate favorable funding terms  
8 and transfer to LPN the risks associated with the Auction. LPN agreed to forgo any guaranteed  
9 repayment or investment return in exchange for an option to receive 36.5% of the District's  
10 proceeds from the Auction. Thus, the District assumed no risk to its ongoing operating budget.  
11 By contrast, at a time of great uncertainty regarding the Auction—the principal trade association  
12 for broadcasters had opposed it and the FCC had not yet adopted a framework or rules to govern  
13 it—LPN risked its entire investment in exchange for a share of the District's Auction proceeds. If  
14 the Auction were delayed or did not occur, or if the FCC's offer fell below an agreed minimum  
15 price, the District would get to keep LPN's funding while LPN could get nothing. Operating a  
16 noncommercial, nonprofit television station at a significant loss, the District could not have  
17 obtained such advantageous financing terms from any traditional source such as a bank—to the  
18 extent it could have obtained any financing at all.

19 8. Because LPN staked its investment on the Auction rather than on a guaranteed  
20 repayment or return from the District, LPN sought assurances from the District about the  
21 District's participation in the Auction. For example, (i) the Funding Agreement required the  
22 District to "take all actions necessary to cause the spectrum usage rights associated with the FCC  
23 License to be relinquished in the Auction"; (ii) the Bid Management Agreement obligated the  
24 District to "[t]ake all such other actions as may be reasonably required or as LPN . . . may request  
25 in order for the District to successfully participate in the Auction and relinquish the spectrum  
26 usage rights associated with the License at a price that is at or above the [\$3,000,000] Minimum  
27 Bid Amount"; and (iii) the Put/Call Option Agreement bound the District to its obligations under  
28

1 the other Agreements.<sup>1</sup> The District expressly agreed to reimburse LPN's funding payments upon  
2 a breach of these obligations (among other events).

3 9. The District and LPN began their preparations for the Auction in December 2015.  
4 Those preparations included establishing procedures that the District's three authorized bidders—  
5 the only individuals allowed under FCC rules to place bids on a licensee's behalf—would follow  
6 to ensure KCSM's successful participation in the Auction. Foremost among those procedures  
7 was confirming and documenting each of the District's bids as they were submitted in light of the  
8 FCC's repeated warnings that the failure to submit a bid would result in being dropped from the  
9 Auction.

10 10. The District filed an application with the FCC to participate in the Auction on  
11 January 6, 2016, and active bidding began on May 31, 2016. Following agreed procedures, the  
12 District successfully participated in all the Auction rounds between May 31 and November 14,  
13 2016, that required the District's participation.

14 11. But during the morning round on November 15, 2016, the District failed to take  
15 the most fundamental "action necessary" to successfully participate in the Auction—placing a  
16 bid. Despite knowing that the FCC would deem a bidder's failure to enter a bid as a decision to  
17 drop out of the Auction, the District's authorized bidder admitted that she did not "think to  
18 actively submit a bid." The FCC's offer was \$114,494,613 in that round, well above the  
19 contractual Minimum Bid Amount.

20 12. The District failed to follow the procedures and perform the checks that the  
21 District and LPN had established to prevent just such an outcome. Contrary to the agreed  
22 procedures, the District (i) did not generate a Bid Summary confirmation from the FCC Auction  
23 website (which only the District's authorized bidder could access); (ii) signed a Bid Submission  
24 Confirmation Sheet certifying falsely that the District had submitted a bid, despite not obtaining  
25 the Bid Summary confirmation; and (iii) failed to verify that the bid had been submitted at any  
26 time while the bidding for that round remained open.

27  
28 <sup>1</sup> The May 16, 2013 Funding Agreement, Bid Management Agreement, and Put/Call Option Agreement (and their amendments) are attached as Exhibits A, B, and C, respectively.

1           13.     If the District had participated in the Auction as contractually required, it would  
2 have submitted all the required bids and KCSM's spectrum-usage rights would have been fully  
3 relinquished, like those of other full-power television stations in the same television market for  
4 bids in excess of \$80 million, on information and belief.<sup>2</sup>

5           14.     Instead, as the direct and immediate result of the District's actions (and inaction),  
6 the FCC, in accordance with its well-publicized procedures, dropped KCSM from the Auction.

7           15.     In an instant, LPN's option for 36.5% of the District's Auction proceeds became  
8 worthless. LPN's investment—the subsidies to fund KCSM until the Auction and the time and  
9 effort to prepare the District for it—was wasted.

10          16.     Depriving LPN of the benefit of its bargain did not stop the District from  
11 continuing to take LPN's funds. The District did not tell LPN in 2016 that it had failed to submit  
12 a bid and been dropped from the Auction. Rather, despite its known failure to bid, the District  
13 falsely certified on December 16, 2016, that it had "performed in all material respects all  
14 agreements" with LPN so it could satisfy a condition precedent to LPN's funding obligation.

15          17.     In reliance on the District's false certification, LPN made its next quarterly  
16 payment of \$225,000 to the District on December 20, 2016.

17          18.     During its first post-auction conversation with LPN on February 8, 2017, the  
18 District kept silent about the false certification and the payment it induced. In breach of its  
19 contractual reimbursement obligations, the District has not returned any portion of LPN's  
20 \$3,375,000 funding payments.

21          19.     LPN seeks damages, in an amount to be proven at trial, adequate to compensate  
22 for (i) the value of its option to receive 36.5% of the Auction proceeds the District would have  
23 received had it performed its obligation to bid in the Auction; and (ii) the District's failure to  
24 reimburse LPN's \$3,375,000 funding payments (plus interest) as the Funding Agreement  
25 requires.

26  
27  
28 <sup>2</sup> The FCC is expected to issue a public notice announcing winning bidders and final bid prices in April 2017.

1 **THE PARTIES**

2 20. Plaintiff LocusPoint Networks, LLC is a Delaware limited liability company with  
3 its principal place of business in Pleasanton, California.

4 21. Plaintiff LocusPoint II KCSM, LLC is a Delaware limited liability company with  
5 its principal place of business in Pleasanton, California.

6 22. On information and belief, Defendant San Mateo County Community College  
7 District is a community college district operating three colleges—Cañada College, College of San  
8 Mateo and Skyline College—located in San Mateo County, California.

9 **JURISDICTION AND VENUE**

10 23. This action arises under the laws of the State of California and is within the subject  
11 matter jurisdiction of this Court.

12 24. The District is a California community college district subject to the personal  
13 jurisdiction of this Court. The District accepted this Court's jurisdiction in Funding Agreement §  
14 10.14.

15 25. Venue is proper under (i) California Code of Civil Procedure § 394(a) because this  
16 is an action against a California community college district located in San Mateo County,  
17 California; and (ii) Funding Agreement § 10.14, in which the District accepted the jurisdiction of,  
18 and venue in, this Court.

19 26. The amount in controversy exceeds \$25,000, and unlimited civil jurisdiction is  
20 proper under California Code of Civil Procedure § 88.

21 **FACTUAL BACKGROUND**

22 **The District Operates KCSM**

23 27. The District holds the FCC licenses and authorizations necessary to operate  
24 KCSM-TV (RF Channel 43), a full-power, noncommercial, education television station located in  
25 San Mateo, California (FCC Facility ID No. 58912).

26 28. An FCC Television Broadcast Station License authorizes a licensee "to use and  
27 operate the radio transmitting apparatus" described in the license. The FCC authorizes licensees  
28 to use radio transmitters at only the specific frequency, power, and location (among other things)

1 described in the license.

2 29. The KCSM website states that:

3 KCSM is located in the San Francisco Bay Area, the heart of the fifth largest  
4 television and radio market in the United States with the potential of reaching an  
5 audience of more than 6 million people. KCSM TV broadcasts 24 hours a day, and  
6 our 500 kilowatt broadcast signal has a coverage area that includes San Mateo, San  
7 Francisco, Santa Clara, Santa Cruz, Alameda, Contra Costa, Marin, Solano,  
8 Sonoma and Napa counties.

9 30. KCSM transmits in the UHF band, at 644–650 MHz.

10 31. According to an FCC white paper, “[t]he propagation characteristics of the TV  
11 bands, especially in UHF ranges between 470 MHz and 698 MHz, are well-suited for wireless  
12 broadband applications.”<sup>3</sup>

### 13 **The District Plans to Sell KCSM or Auction Its Spectrum Usage Rights**

14 32. As of June 2011, KCSM was running an annual deficit of \$800,000. At the  
15 June 8, 2011 meeting of the Board, the Board President stated that the District cannot continue to  
16 subsidize KCSM.

17 33. Because of the deficit, the District hired an attorney practicing FCC regulation and  
18 compliance law from a Washington D.C. firm to explore options for selling KCSM.

19 34. After debate, the Board agreed to proceed with an “RFP and sale process” for  
20 KCSM. On December 7, 2011, the District issued an RFP to “qualified entities” to acquire  
21 KCSM.

22 35. The District reported on February 14, 2012, that it had received bids from six  
23 entities.

24 36. Eight days later, on February 22, 2012, President Obama signed into law the  
25 Middle Class Tax Relief and Job Creation Act of 2012, which required the FCC to hold the  
26 Auction within ten years.

27 37. Recognizing the potential to receive greater proceeds from the Auction than from a  
28 sale, the Board decided on October 24, 2012, not to accept any of the six acquisition proposals.

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<sup>3</sup> FEDERAL COMMUNICATIONS COMMISSION, SPECTRUM ANALYSIS: OPTIONS FOR BROADCAST SPECTRUM (June 2010), available at <https://transition.fcc.gov/national-broadband-plan/spectrum-analysis-paper.pdf>, at 6.



1           38.     Rather, as the November 14, 2012 Board meeting minutes reflect, Vice President  
2 of the College of San Mateo<sup>4</sup> Jan Roecks—with a team including the District’s FCC counsel—  
3 proposed a new plan under which the District would contract with a third party to fund KCSM’s  
4 operating deficit until the District could sell KCSM’s spectrum-usage rights in the Auction.  
5 Going forward, the District would require its FCC counsel’s approval on all decisions regarding  
6 the Auction.

7           39.     The May 15, 2013 Board meeting minutes report that the District received four  
8 proposals, but only two bids to subsidize KCSM until the Auction. Ms. Roecks recommended the  
9 proposal from LPN as “the best and most valuable option for the District.” The Board accepted  
10 that recommendation.

11     **LPN Agrees to Fund KCSM for a Share of the Auction Proceeds**

12           40.     District Chancellor Ron Galatolo negotiated with LPN the general structure of the  
13 agreements regarding LPN’s funding of KCSM and the sale of KCSM’s spectrum rights in the  
14 Auction.

15           41.     The District and LPN signed a binding Letter of Intent on March 19, 2013. The  
16 letter documented (i) the District’s “interest in obtaining support in funding the operating  
17 expenses of [KCSM] as soon as possible,” and (ii) LPN’s agreement to provide that funding in  
18 the amount of \$3.6 million.

19           42.     The District incurred no obligation to repay or provide any return on LPN’s  
20 investment. Rather, LPN’s return (if any) would come as a portion of any proceeds the District  
21 received from the Auction (when or if it occurred). The District represented that it (i) “will agree  
22 to participate in the Auction and to place bids under which it would relinquish to the FCC  
23 [KCSM’s] spectrum usage rights”; and (ii) will agree to pay LPN 36.5% of the “proceeds derived  
24 from the District’s participation in the Auction.”

25           43.     Thus, the District secured the funding it wanted and needed at no out-of-pocket  
26 cost or risk to its ongoing operating budget, because LPN was willing to risk its investment  
27 capital and return in exchange for the prospect of receiving 36.5% of uncertain Auction proceeds

28     <sup>4</sup> The titles of District employees in this Complaint reflect their current known positions.

1 at a time when the Auction's timing, design, process, spectrum supply and demand, and bidding  
2 levels were all unknown.

3 44. In fact, there was substantial risk that the Auction might not occur at all. On  
4 January 25, 2013, nearly two months before the parties signed the Letter of Intent, the National  
5 Association of Broadcasters ("NAB") argued in a filing with the FCC that the FCC's pending  
6 Auction design could not move forward unless certain "critical elements [were] fully addressed  
7 and resolved," and pushed for a slower process.<sup>5</sup> The NAB followed through by petitioning on  
8 August 18, 2014, for judicial review of the FCC's order adopting rules to govern the Auction.  
9 The lawsuit caused the FCC to delay the Auction in the face of "undeniable impediments,"<sup>6</sup> and  
10 was not resolved until an appellate court sustained the FCC order on June 12, 2015.<sup>7</sup>

11 45. The District and LocusPoint Networks, LLC formalized the arrangement described  
12 in the Letter of Intent in three agreements executed on May 16, 2013: (i) a Funding Agreement  
13 (amended December 17, 2015); (ii) a Put/Call Option Agreement (amended December 17, 2015);  
14 and (iii) a Bid Management Agreement (amended December 8, 2015) (collectively "the  
15 Agreements").

16 46. Effective September 1, 2013, as the Agreements permitted, LocusPoint Networks,  
17 LLC assigned its rights and obligations under the Agreements to its wholly owned subsidiary,  
18 LocusPoint II KCSM, LLC.

19 *LPN's Subsidy Payments*

20 47. In the Funding Agreement, LPN agreed to subsidize the District's operation of  
21 KCSM up to \$3,600,000, with "each Subsidy Payment . . . in an amount equal to \$225,000,"  
22 payable quarterly.

23 48. As a condition precedent to LPN's obligation to make each quarterly payment, the  
24 District agreed to provide LPN "a duly executed Compliance Certificate attesting," among other  
25

26 <sup>5</sup> See National Association of Broadcasters, Comments on Auction Design (Jan. 25, 2013),  
27 <http://www.nab.org/documents/filings/IncentiveAuctionComments012513.pdf>.

28 <sup>6</sup> See Gary Epstein, *Incentive Auction Progress Report*, FCC Blog, October 24, 2014,  
<https://www.fcc.gov/news-events/blog/2014/10/24/incentive-auction-progress-report>.

<sup>7</sup> See *Nat'l Ass'n of Broadcasters v. F.C.C.*, 789 F.3d 165 (D.C. Cir. 2015).

1 things, that there had been no breaches or “Triggering Events”—i.e., the District’s breach of a  
2 representation or warranty or “default in the performance of or compliance with any term” in the  
3 Agreements:

4 (i) The representations and warranties contained in the Funding  
5 Agreement and in the other Funding Documents are true, correct and complete in  
6 all material respects to the same extent as though made on and as of the date  
hereof . . . ;

7 (ii) No event has occurred or would result from the making of such  
8 Subsidy Payment that would constitute a Triggering Event or a Potential  
Triggering Event;

9 (iii) [the District] has performed in all material respects all agreements  
10 and satisfied all conditions which the Funding Agreement and each other  
[Agreement] provides shall be performed or satisfied by it on or before the date  
hereof; . . .

11 (vi) No Material Adverse Effect has occurred.

12 49. Under the Funding Agreement, a Material Adverse Effect included “the  
13 impairment of the ability of [the District] to perform, or of LPN to enforce, . . . [the District’s]  
14 material obligations under any [Agreement].”

15 50. LPN made every Subsidy Payment required under the Funding Agreement after  
16 receiving a Compliance Certificate from the District.

17 51. To date, LPN has paid the District a total of \$3,375,000 in Subsidy Payments.  
18 *The Auction: the District’s Obligation to Bid and LPN’s Option for Its Share of Proceeds*

19 52. In consideration for LPN’s Subsidy Payments, the District made several promises  
20 about its participation in the upcoming Auction to protect LPN’s investment.

21 53. The District promised that KCSM would “participate in the Auction.” (Put/Call  
22 Option Agreement § 10.b.) The District was to designate “up to three individuals who shall serve  
23 as the District’s authorized bidders during the Auction” and who are “authorized to place bids on  
24 behalf of the District during the Auction.” (Bid Management Agreement § 2.6.3, as amended.)

25 54. The District committed in all three Agreements to take all the necessary actions to  
26 relinquish KCSM’s broadcast spectrum usage rights in the Auction: (i) the Funding Agreement  
27 required the District to “take all actions necessary to cause the spectrum usage rights associated  
28 with the FCC License to be relinquished in the Auction” (§ 6.9); (ii) the Bid Management

1 Agreement bound the District to “[t]ake all such other actions as may be reasonably required or as  
2 LPN, acting in its capacity of bidding consultant and agent, may request in order for the District  
3 to successfully participate in the Auction and relinquish the spectrum usage rights associated with  
4 the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount” (§ 2.6.5); and  
5 (iii) the Put/Call Option Agreement bound the District to perform its obligations under the other  
6 Agreements (§ 10.b.).

7 55. The District granted LPN an option “to receive the LPN Share [36.5%] of the  
8 proceeds derived from the relinquishment of the Station’s spectrum usage rights in connection  
9 with the Auction” (the “Auction Option”). (Put/Call Option Agreement §§ 1 & 2(a).)

10 56. In addition to the District’s affirmative obligations to participate in the Auction,  
11 the District promised not to do anything to jeopardize the Auction Option: the District committed  
12 to “take no action that could reasonably be expected to impede, interfere with, delay, postpone or  
13 materially adversely affect the transactions contemplated by this [Put/Call Option] Agreement or  
14 the likelihood of such transactions being consummated.” (Put/Call Option Agreement § 10.d.)

15 *LPN’s Contractual Reimbursement Right*

16 57. The Funding Agreement requires the District to reimburse LPN’s Subsidy  
17 Payments upon a “Triggering Event,” including any “default in the performance of or compliance  
18 with any term” in the Agreements.

19 58. Upon such an event that results in a Material Adverse Effect, LPN has “sole  
20 discretion” to “declare all or any portion of the Subsidy Payments . . . immediately due and  
21 payable,” and the District shall deliver the amount due in “same day funds, free of any restriction  
22 or condition, . . . to LPN not later than noon San Francisco time on the date due in the LPN  
23 Account.” (§§ 9.1 & 9.2.B.)

24 59. The District also agreed to return LPN’s payments with interest at 8% annually in  
25 the event of the District’s willful breach of any Agreement. (Funding Agreement § 9.1.)

26 **The FCC Adopts Rules for the Auction and Simplifies Auction Participation**

27 60. The Auction, as described by the FCC, would consist of “two separate but  
28 interdependent auctions—a reverse auction, which will determine the price at which broadcasters

1 will voluntarily relinquish their spectrum usage rights; and a forward auction, which will  
2 determine the price companies are willing to pay for flexible use wireless licenses.”<sup>8</sup> The FCC  
3 would stand in the middle, establishing the supply of spectrum usage rights in the reverse auction  
4 by making offers to broadcasters willing to relinquish them, as well as the demand for spectrum  
5 in the forward auction by soliciting bids for new wireless licenses from wireless providers.

6 61. As the FCC described, the reverse auction and the forward auction must “work  
7 together. Ultimately, the reverse auction requires information about how much bidders are  
8 willing to pay for spectrum licenses in the forward auction; and the forward auction requires  
9 information regarding what spectrum rights were tendered in the reverse auction.”<sup>9</sup>

10 62. The FCC’s role was to manage the market for the spectrum licenses “to allow  
11 market forces to determine the highest and best use of spectrum.”<sup>10</sup>

12 63. Throughout its development of bidding procedures for the Auction, the FCC  
13 sought to facilitate broadcaster participation by simplifying the bidding process for bidders. The  
14 FCC published an order establishing the Auction design framework, followed by a detailed public  
15 notice explaining all bidding and application procedures.<sup>11</sup> And it conducted numerous  
16 educational efforts (such as outreach meetings, webinars, and tutorials) and published a “FCC  
17 Incentive Auction Reverse Auction Bidding System User Guide” (“RABS User Guide”)<sup>12</sup>  
18 specifically for participating stations.

19 \_\_\_\_\_  
20 <sup>8</sup> Federal Communications Commission, *How It Works: The Incentive Auction Explained*,  
21 <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/how-it-works> (last visited  
22 March 28, 2017).

23 <sup>9</sup> *Id.* For an explanation of the operation of forward and reverse auctions, see Federal  
24 Communications Commission, *Incentive Auction Rules Option and Discussion*, at  
25 <http://wireless.fcc.gov/incentiveauctions/learn-program/rule-option/introduction.html> (last visited  
26 March 28, 2017).

27 <sup>10</sup> FEDERAL COMMUNICATIONS COMMISSION, FCC 15-78, PUBLIC NOTICE: PROCEDURES FOR  
28 COMPETITIVE BIDDING IN AUCTION 1000, INCLUDING INITIAL CLEARING TARGET DETERMINATION,  
29 QUALIFYING TO BID, AND BIDDING IN AUCTIONS 1001 (REVERSE) AND 1002 (FORWARD) (2015),  
30 available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-78A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-78A1_Rcd.pdf), at 3.

31 <sup>11</sup> See FEDERAL COMMUNICATIONS COMMISSION, FCC 14-50, IN THE MATTER OF EXPANDING THE  
32 ECONOMIC AND INNOVATION OPPORTUNITIES OF SPECTRUM THROUGH INCENTIVE AUCTIONS  
33 REPORT AND ORDER (2014), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-50A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-50A1.pdf); see also FCC 15-78.

34 <sup>12</sup> Available at <https://www.fcc.gov/file/3797/download>

1           64.     Before each round of the Auction, the FCC would inform each bidder whether its  
2 station would be in “bidding” status (i.e., whether it would be able to submit a bid in that round).  
3 For bidders such as the District that offered to fully relinquish their spectrum, the choice in  
4 bidding status was either to accept or reject the price offered by the FCC. The FCC stated that a  
5 bidder such as the District “that has or is interested in only a single bid option will have a simple  
6 choice: whether to accept the lower clock price offered for its station’s currently held option or to  
7 reject that offer and drop out of the bidding.”<sup>13</sup>

8           65.     If a broadcaster were to enter a bid accepting the FCC’s price, the FCC would  
9 determine whether to declare that bid a “provisionally winning” bid or to offer a lower price in a  
10 subsequent round.<sup>14</sup>

11          66.     Once all stations had either dropped out or been declared “provisionally winning,”  
12 wireless providers would bid for the offered spectrum in a forward auction stage. The Auction  
13 would end (and “provisionally winning” bidders would be named winning bidders) when  
14 forward-auction prices in the largest markets met FCC benchmarks and total forward-auction  
15 revenues covered (i) the winning reverse-auction bids, (ii) the cost to reimburse stations assigned  
16 new channels as a result of the Auction for their reasonably incurred relocation expenses, and (iii)  
17 the FCC’s administrative costs.

18          67.     If those criteria were not met at the end of a stage, the FCC would conduct another  
19 stage of the Auction at a lower spectrum-clearing target, resulting in a lower price offered to  
20 participating stations. The Auction was expected to have multiple stages, each containing dozens  
21 of bidding rounds lasting over several months.

22           **The District and LPN Prepare for the Auction to Ensure the District’s Successful**  
23           **Participation**

24          68.     The District filed an application<sup>15</sup> with the FCC to participate in the Auction on  
25

---

26 <sup>13</sup> FCC 15-78 at 60.

27 <sup>14</sup> The FCC could also determine that the broadcaster was not needed, and remove it from the  
Auction.

28 <sup>15</sup> As a broadcaster, the District applied to participate in the “reverse auction” portion of the  
Auction.

1 January 6, 2016, selecting “Go Off-Air” as its sole bidding option.<sup>16</sup>

2 69. The District designated its employees Ms. Roecks, Eugene Whitlock, and  
3 Executive Vice Chancellor Kathy Blackwood to act as its “authorized bidders.” Under the FCC’s  
4 procedures, only these three authorized bidders would receive and be authorized to use an  
5 electronic code key (a “SecurID token”) from the FCC, which was necessary to “place bids for  
6 the applicant during the auction.”<sup>17</sup>

7 70. Even before the application was filed, the District’s authorized bidders held  
8 meetings with LPN to begin preparing for the Auction, consistent with LPN’s agreement to  
9 “[t]rain and supervise the qualified personnel that the District appoints to act as its authorized  
10 bidders in the Auction to assure their satisfactory performance of the duties associated with  
11 authorized bidders in the Auction.”

12 71. These meetings were vital because the consequences of not submitting a bid were  
13 enormous—as the FCC repeatedly warned, a missing bid would be deemed a bid to drop out of  
14 the Auction, precluding any future bidding in any future stage or round. This warning was  
15 included in official documents adopted by the FCC, in the RABS User Guide, in materials  
16 provided in connection with the FCC Mock Auction documents, and in other education materials  
17 disseminated before the Auction.

18 72. To ensure that bidders could deal with contingencies and avoid an unintentional  
19 failure to submit a bid, the FCC also implemented backup mechanisms, such as (i) permitting  
20 applicants to identify “up to three authorized bidders who are authorized to place bids for the  
21 applicant in the auction”; and (ii) installing a telephonic backup bidding system if a bidder were  
22 to experience technical problems with its computer or with the FCC’s online Auction bidding  
23 system.

24  
25 <sup>16</sup> Bidders with a station in the UHF television band also could preserve the option to bid to move  
to the VHF band. In its agreements with LPN, the District forswore that option.

26 <sup>17</sup> FEDERAL COMMUNICATIONS COMMISSION, DA 15-1252, INSTRUCTIONS FOR FCC FORM 177  
27 APPLICATION TO PARTICIPATE IN THE REVERSE AUCTION (AUCTION 1001) (2015) *available at*  
28 [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-1252A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1252A1.pdf) at 7. The FCC also specified  
that “[t]he username and the RSA token should be used only by the authorized bidder to which it  
was assigned.” (RABS User Guide at 7.)

1           73.     The District's three authorized bidders met with an LPN representative in  
2 December 2015 to begin their Auction preparation. Joining them at this meeting were  
3 representatives from PricewaterhouseCoopers ("PwC"), which LPN had engaged at its expense to  
4 consult with the District because an FCC rule, scheduled to take effect in January 2016,  
5 established a "Quiet Period" prohibiting communications between the District and LPN during  
6 the Auction about the District's bids or bidding strategy.<sup>18</sup>

7           74.     In amending the Bid Management Agreement on December 8, 2015, the District  
8 agreed to "consult in every round during the Auction with PwC" but acknowledged that PwC was  
9 "not assuming any additional duties or obligations directly to the District."

10          75.     Chancellor Galatolo and two of the District's authorized bidders attended another  
11 meeting with an LPN representative in December 2015.

12          76.     At LPN's request, one of the District's authorized bidders signed a Confidential  
13 Bidding Plan for KCSM for Incentive Auction on January 11, 2016. The plan required that  
14 "Authorized Bidders will complete and sign a Bid Submission Confirmation sheet, located in a  
15 secured Auction Playbook, following the submission of the bid for each Licensee in each round  
16 of the Auction."

17          77.     PwC requested that the District's authorized bidder also generate a Bid Summary  
18 from the FCC's Auction website that confirmed the time and amount of the bid.

19          78.     The District submitted a commitment to accept the FCC's opening price offer for  
20 the relinquishment of the KCSM spectrum usage rights on March 29, 2016.

21          79.     The District participated with PwC in the FCC's May 2016 mock auction. The  
22 District's three authorized bidders practiced the bidding process and followed the procedures to  
23 which the District had agreed.

24  
25  
26 <sup>18</sup> The FCC issued this regulation, 47 C.F.R. § 1.2205, on August 15, 2014, and released guidance  
27 on October 6, 2015, regarding prohibited communications during the "Quiet Period" covering the  
28 time of the Auction. *See* FEDERAL COMMUNICATIONS COMMISSION PUBLIC NOTICE, DA 15-1129,  
GUIDANCE REGARDING THE PROHIBITION OF CERTAIN COMMUNICATIONS DURING THE INCENTIVE  
AUCTION, AUCTION 1000 (2015), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-1129A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1129A1.pdf)



1 **The District Fails to Enter a Bid and Is Dropped from the Auction**

2 80. Bidding in the Auction began on May 31, 2016. Following the strategy and  
3 procedures to which the District had agreed, one of the District's authorized bidders, Ms. Roecks,  
4 placed a bid on the District's behalf to accept the FCC's opening price offer of \$353,887,920.

5 81. Over the three stages of the auction, until November 14, 2016, an authorized  
6 District bidder logged into the FCC Reverse Auction Bidding System for 52 rounds in which a  
7 bid was potentially required.

8 82. While any of the District's three authorized bidders could have executed the  
9 bidding function on the District's behalf, Ms. Roecks performed this role in 46 of those 52  
10 rounds. And she successfully placed bids on the District's behalf in 17 rounds in which a bid  
11 submission was required.

12 83. After doing so, her general practice—consistent with the agreed procedures—was  
13 to sign the Bid Submission Confirmation Sheets and generate Bid Summaries from the FCC  
14 Auction website confirming the District's bids in rounds that required a bid.

15 84. As the Auction progressed, however, the District's bidders strayed from the agreed  
16 procedures. For example, on September 2, 2016 (Stage 2, Round 12) and November 10, 2016  
17 (Stage 3, Round 18), the District's authorized bidder failed to sign the Bid Submission  
18 Confirmation Sheets.

19 85. Stage 3, Round 23 of the Auction occurred on November 15, 2016. The bidding  
20 window for that round was open between 7:00 a.m. and 8:00 a.m PST.

21 86. Ms. Roecks, the only District authorized bidder who was present for the bidding,  
22 did not submit a bid on the District's behalf in Stage 3, Round 23.

23 87. Ms. Roecks stated that she did not "think to actively submit a bid" and did not  
24 click the "bid" button "which we had done for all active rounds since May."

25 88. Nor did Ms. Roecks follow her admitted "normal activity" in generating a Bid  
26 Summary confirmation from the FCC Auction website, as PwC had requested.

27 89. Ms. Roecks signed a Bid Submission Confirmation Sheet stating that she had  
28 "submitted the bid according to bid strategy" at "7:12 AM PST" for Stage 3, Round 23, in the

1 amount of \$114,494,613.

2 90. Thus, the District not only failed to submit a bid, but also (i) failed to follow its  
3 normal procedure of generating a confirmation directly from the FCC Auction website, (ii) falsely  
4 certified that it had submitted a bid despite not obtaining that confirmation, and (iii) failed to  
5 verify whether it had submitted a bid during the remaining approximately 48 minutes that Round  
6 23 bidding remained open.

7 91. When Ms. Roecks logged into the FCC Auction website for the next round  
8 approximately three hours later, she learned that the District had been dropped from the Auction  
9 due to its failure to submit a bid in the prior round.

10 92. The FCC informed the District—as it had repeatedly warned—that “the auction is  
11 automated, is not built to reinstate bidders for any reason, and there was no way to get back into  
12 the auction regardless of the reason.”

13 93. Ms. Roecks informed Chancellor Galatolo of the failure to bid. At his request, Ms.  
14 Roecks and PwC both documented the events of the day and closed down the bidding for KCSM  
15 as it was no longer allowed to participate in the Auction.

16 **The District Falsely Certifies Its Performance in Order to Continue Receiving**  
17 **Quarterly Subsidy Payments from LPN**

18 94. The District did not inform LPN that it had failed to submit a bid and had  
19 consequently been dropped from the Auction.

20 95. Despite its known failure to bid, the District certified on December 16, 2016, that  
21 “[n]o event has occurred . . . that would constitute a Triggering Event” and the District had  
22 “performed in all material respects all agreements” with LPN. The District’s failure to submit a  
23 bid was a “Triggering Event” under the Funding Agreement because it was a “default in the  
24 performance of or compliance with” the Agreements.

25 96. The District’s false certification enabled it to continue receiving quarterly Subsidy  
26 Payments from LPN, which LPN had no obligation to make unless (among other things) the  
27 District had performed its contractual obligations and no Triggering Events had occurred.

28 97. In reliance on the District’s false certification, LPN made its next quarterly

1 Subsidy Payment of \$225,000 to the District on December 20, 2016.

2 98. The District could have taken action to avoid inducing LPN to make a payment on  
3 the basis of a false certification, or to return the funds as soon as possible. For example, the  
4 District could have declined to sign the December 16, 2016 certificate it knew was false. Or it  
5 could have segregated LPN's December 20 payment.

6 99. And even if the District had legitimate concerns about communicating with LPN  
7 during the Quiet Period, it did not alert LPN about its false certification (and the Subsidy Payment  
8 it induced) even after the Quiet Period ended on February 6, 2017, when the District had the  
9 opportunity to correct the record during a February 8, 2017 call with LPN.

10 100. Instead, the District deposited LPN's money and stayed silent.

11 101. Under Funding Agreement § 9.1, LPN notified the District on February 21, 2017,  
12 that the \$3,375,000 in Subsidy Payments that LPN had paid to date were "immediately due and  
13 payable."

14 102. As of the date of this Complaint, the District has kept all \$3,375,000 of LPN's  
15 funds.

16 **FIRST CAUSE OF ACTION**

17 **Breach of Contract Under California Civil Code § 3300 *et seq.***

18 **(Funding Agreement § 6.9)**

19 103. LPN hereby incorporates the preceding paragraphs 1 through 102 of this  
20 Complaint by reference as if set forth here again in full.

21 104. The Funding Agreement (amended December 17, 2015) is a valid and enforceable  
22 written agreement between the District and LPN.

23 105. LPN has fully performed its duties under the Funding Agreement.

24 106. Funding Agreement § 6.9 required the District to "take all actions necessary to  
25 cause the spectrum usage rights associated with the FCC License to be relinquished in the  
26 Auction (as such term is defined in the Option Agreement), subject to the terms set forth in the  
27 Bid Management Agreement."

28 107. Entering a bid in the Auction, which only the District's authorized bidders were

1 authorized to do, was “necessary to cause the spectrum usage rights associated with the FCC  
2 License to be relinquished in the Auction.”

3 108. As detailed above, the District willfully failed to enter a bid in Stage 3, Round 23  
4 of the Auction on November 15, 2016, which resulted in the District being dropped from the  
5 Auction.

6 109. The Auction Option was consideration for LPN’s Funding Agreement obligations.  
7 (Funding Agreement at 1.) As a direct and proximate result of the District’s breach, the Auction  
8 Option became worthless. LPN therefore suffered damages in the amount of 36.5% of the  
9 Auction proceeds to which it would have been entitled by the Auction Option, and which would  
10 have resulted from the relinquishment of KCSM’s spectrum if the District had performed its  
11 obligations under the Funding Agreement.

12 110. LPN is entitled to recover from the District the damages sustained by LPN as a  
13 result of the District’s wrongful acts described in this Complaint. The amount of such damages  
14 will be proven at trial.

15 **SECOND CAUSE OF ACTION**

16 **Breach of Contract Under California Civil Code § 3300 *et seq.***

17 **(Bid Management Agreement § 2.6.5)**

18 111. LPN hereby incorporates the preceding paragraphs 1 through 110 of this  
19 Complaint by reference as if set forth here again in full.

20 112. The Bid Management Agreement (amended December 8, 2015) is a valid and  
21 enforceable written agreement between the District and LPN.

22 113. LPN has fully performed its duties under the Bid Management Agreement.

23 114. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other  
24 actions as may be reasonably required . . . in order for the District to successfully participate in  
25 the Auction and relinquish the spectrum usage rights associated with the License at a price that is  
26 at or above the [\$3,000,000] Minimum Bid Amount.”

27 115. Entering a bid in the Auction, which only the District’s authorized bidders were  
28 authorized to do, was “reasonably required . . . for the District to successfully participate in the

1 Auction and relinquish the spectrum usage rights associated with the License.”

2 116. As detailed above, the District failed to enter a bid in Stage 3, Round 23 of the  
3 Auction on November 15, 2016, when the FCC’s offer was above the Minimum Bid Amount.  
4 The District’s failure to bid resulted in the District being dropped from the Auction.

5 117. The Bid Management Agreement, the Put/Call Option Agreement, and the  
6 Funding Agreement together formed the entire agreement between LPN and the District. (Bid  
7 Management Agreement § 8.6.) As a direct and proximate result of the District’s breach, the  
8 Auction Option became worthless. LPN therefore suffered damages in the amount of 36.5% of  
9 the Auction proceeds to which it would have been entitled by the Auction Option, and which  
10 would have resulted from the relinquishment of KCSM’s spectrum if the District had performed  
11 its obligations under the Bid Management Agreement.

12 118. LPN is entitled to recover from the District the damages sustained by LPN as a  
13 result of the District’s wrongful acts described in this Complaint. The amount of such damages  
14 will be proven at trial.

15 **THIRD CAUSE OF ACTION**

16 **Breach of Contract Under California Civil Code § 3300 *et seq.***

17 **(Bid Management Agreement § 2.6.5)**

18 119. LPN hereby incorporates the preceding paragraphs 1 through 118 of this  
19 Complaint by reference as if set forth here again in full.

20 120. The Bid Management Agreement (amended December 8, 2015) is a valid and  
21 enforceable written agreement between the District and LPN.

22 121. LPN has fully performed its duties under the Bid Management Agreement.

23 122. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other  
24 actions . . . as LPN, acting in its capacity as bidding consultant and agent, *may request* in order  
25 for the District to successfully participate in the Auction and relinquish the spectrum usage rights  
26 associated with the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount.”

27 123. In the Confidential Bidding Plan for KCSM for Incentive Auction, to which the  
28 District agreed on January 11, 2016, LPN requested that the District’s authorized bidders

1 “complete and sign a Bid Submission Confirmation sheet, located in a secured Auction Playbook,  
2 following the submission of the bid for each Licensee in each round of the Auction.” By virtue of  
3 Bid Management Agreement § 2.6.5, the District was contractually bound to perform this  
4 obligation.

5 124. The District breached this obligation because, as detailed above, Ms. Roecks  
6 signed a false Bid Submission Confirmation Sheet stating that she had “submitted the bid  
7 according to bid strategy” at “7:12 AM PST” for Stage 3, Round 23, in the amount of  
8 \$114,494,613.

9 125. As a direct and proximate result of the District’s breach, the District was dropped  
10 from the Auction, and LPN’s Auction Option therefore became worthless. LPN therefore  
11 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been  
12 entitled by the Auction Option, and which would have resulted from the relinquishment of  
13 KCSM’s spectrum if the District had performed its obligations under the Bid Management  
14 Agreement.

15 126. LPN is entitled to recover from the District the damages sustained by LPN as a  
16 result of the District’s wrongful acts described in this Complaint. The amount of such damages  
17 will be proven at trial.

18 **FOURTH CAUSE OF ACTION**

19 **Breach of Contract Under California Civil Code § 3300 *et seq.***

20 **(Bid Management Agreement § 2.6.5, Amendment Attachment A: Letter of Authorization)**

21 127. LPN hereby incorporates the preceding paragraphs 1 through 126 of this  
22 Complaint by reference as if set forth here again in full.

23 128. The Bid Management Agreement (amended December 8, 2015) is a valid and  
24 enforceable written agreement between the District and LPN.

25 129. LPN has fully performed its duties under the Bid Management Agreement.

26 130. Attachment A to the Amendment to the Bid Management Agreement was a Letter  
27 of Authorization that required the District to “cooperate with PwC in accordance with Section 2.6  
28 of the Agreement as it performs its engagement by LPN to help ensure compliance with the

1 FCC's rules pertaining to the Auction under the Agreement.”

2 131. Bid Management Agreement § 2.6.5 required the District to “[t]ake all such other  
3 actions . . . as LPN, acting in its capacity as bidding consultant and agent, may request in order  
4 for the District to successfully participate in the Auction and relinquish the spectrum usage rights  
5 associated with the License at a price that is at or above the [\$3,000,000] Minimum Bid Amount.”

6 132. As detailed above, the District breached § 2.6.5 of the Bid Management  
7 Agreement (as amended) by, among other things, failing to generate a confirmation directly from  
8 the FCC Auction website in Stage 3, Round 23 of the Auction on November 15, 2016, as  
9 requested by PwC.

10 133. As a direct and proximate result of the District's breach, the District was dropped  
11 from the Auction, and LPN's Auction Option therefore became worthless. LPN therefore  
12 suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been  
13 entitled by the Auction Option, and which would have resulted from the relinquishment of  
14 KCSM's spectrum if the District had performed its obligations under the Put/Call Option  
15 Agreement.

16 134. LPN is entitled to recover from the District the damages sustained by LPN as a  
17 result of the District's wrongful acts described in this Complaint. The amount of such damages  
18 will be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **Breach of Contract Under California Civil Code § 3300 *et seq.***

21 **(Put/Call Option Agreement § 10.d.)**

22 135. LPN hereby incorporates the preceding paragraphs 1 through 134 of this  
23 Complaint by reference as if set forth here again in full.

24 136. The Put/Call Option Agreement (amended December 17, 2015) is a valid and  
25 enforceable written agreement between the District and LPN.

26 137. LPN has fully performed its duties under the Put/Call Option Agreement.

27 138. Put/Call Option Agreement § 10.d. obligated the District to “take no action that  
28 could reasonably be expected to impede, interfere with, delay, postpone or materially adversely

1 affect the transactions contemplated by this Agreement or the likelihood of such transactions  
2 being consummated.”

3 139. As detailed above, the District breached § 10.d. by, among other things, (i) failing  
4 to bid in Stage 3, Round 23 of the Auction on November 15, 2016, which resulted in the District  
5 being dropped from the Auction; (ii) failing to follow its normal procedure of generating a  
6 confirmation directly from the FCC Auction website; (iii) certifying that it had submitted a bid  
7 despite not obtaining that confirmation, and (iv) failing to verify whether it had submitted a bid  
8 during the remaining time that Round 23 bidding remained open.

9 140. The District’s conduct could have reasonably been “expected to impede, interfere  
10 with, delay, postpone or materially adversely affect the” Auction Option.

11 141. As a direct and proximate result of the District’s breach, the Auction Option  
12 became worthless. LPN therefore suffered damages in the amount of 36.5% of the Auction  
13 proceeds to which it would have been entitled by the Auction Option, and which would have  
14 resulted from the relinquishment of KCSM’s spectrum if the District had performed its  
15 obligations under the Put/Call Option Agreement.

16 142. LPN is entitled to recover from the District the damages sustained by LPN as a  
17 result of the District’s wrongful acts described in this Complaint. The amount of such damages  
18 will be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **Breach of Contract Under California Civil Code § 3300 *et seq.***

21 **(Put/Call Option Agreement § 10.b.)**

22 143. LPN hereby incorporates the preceding paragraphs 1 through 142 of this  
23 Complaint by reference as if set forth here again in full.

24 144. The Put/Call Option Agreement (amended December 17, 2015) is a valid and  
25 enforceable written agreement between the District and LPN.

26 145. LPN has fully performed its duties under the Put/Call Option Agreement.

27 146. Put/Call Option Agreement § 10.b. required the District to perform its obligations  
28 under the Funding Agreement and the Bid Management Agreement.





1 obligations under the Funding Agreement.

2 **EIGHTH CAUSE OF ACTION**

3 **Breach of Contract Under California Civil Code § 3300 *et seq.***

4 **(Reimbursement under Funding Agreement §§ 9.1–9.2)**

5 156. LPN hereby incorporates the preceding paragraphs 1 through 155 of this  
6 Complaint by reference as if set forth here again in full.

7 157. The Funding Agreement (amended December 17, 2015) is a valid and enforceable  
8 written agreement between the District and LPN.

9 158. LPN has fully performed its duties under the Funding Agreement.

10 159. The Funding Agreement obligates the District to reimburse LPN’s Subsidy  
11 Payments upon a “Triggering Event,” which includes any “default in the performance of or  
12 compliance with any term contained in (a) this [Funding] Agreement . . . or (b) the [Put/Call]  
13 Option Agreement or the Bid Management Agreement” that “result[s] in a Material Adverse  
14 Effect.” Under Funding Agreement § 1.1, Material Adverse Effects include “the impairment of  
15 the ability of [the District] to perform, or of LPN to enforce, the Reimbursement Obligations or  
16 any other material obligations under any” of the Agreements.

17 160. As described above in the seven Causes of Action, the District defaulted in the  
18 performance of the Funding Agreement, the Put/Call Option Agreement, and the Bid  
19 Management Agreement.

20 161. These defaults resulted in a Material Adverse Effect because they resulted in the  
21 District being dropped from the Auction, which impaired the District’s ability to perform its  
22 obligations under the Agreements, such as its obligations to “participate in the Auction” (Put/Call  
23 Option Agreement § 10.b) and to “take all actions necessary to cause the spectrum usage rights  
24 associated with the FCC License to be relinquished in the Auction” (Funding Agreement § 6.9).

25 162. Thus, the defaults described above in the seven Causes of Action constitute  
26 Triggering Events.

27 163. A Triggering Event also occurs when “[a]ny representation, warranty, certification  
28 or other statement made by [the District] shall be false in any material respect on the date as of

1 which made” and results in a Material Adverse Effect. (Funding Agreement § 9.1(C).)

2 164. As described above, the District’s December 16, 2016 certification was false when  
3 made. The District certified that “[n]o event has occurred . . . that would constitute a Triggering  
4 Event” and the District had “performed in all material respects all agreements” with LPN, despite  
5 knowing that it had failed to enter a bid on November 15, 2016, which constituted a breach of the  
6 Agreements resulting in a Material Adverse Effect, thus rendering the breaches Triggering  
7 Events.

8 165. The District’s false certification also breached the District’s warranty in Funding  
9 Agreement § 4.13 that “[n]o representation or warranty of [the District] contained in any . . .  
10 certificate or written statement furnished to LPN by or on behalf of [the District] . . . contains any  
11 untrue statement of a material fact.”

12 166. The false certification resulted in a Material Adverse Effect because it prevented  
13 LPN from enforcing the District’s reimbursement obligations under Funding Agreement §§ 9.1 &  
14 9.2.

15 167. In light of the Triggering Events described in paragraphs 160–166 that resulted in  
16 a Material Adverse Effect, LPN had “sole discretion” to “declare all or any portion of the Subsidy  
17 Payments made on or prior to [the Triggering Event] date . . . immediately due and payable,”  
18 requiring the District to deliver the amount due in “same day funds, free of any restriction or  
19 condition, . . . to LPN not later than noon San Francisco time on the date due in the LPN  
20 Account.” (§§ 9.1 & 9.2.B.)

21 168. Under Funding Agreement § 9.1, LPN notified the District on February 21, 2017,  
22 that the \$3,375,000 in Subsidy Payments that LPN had paid as of that date were “immediately  
23 due and payable.” Because the breaches described above in the seven Causes of Action and the  
24 Triggering Events described in paragraphs 160-166 were willful, the District must return the  
25 \$3,375,000 with interest at an 8% annual rate. (Funding Agreement § 9.1.)

26 169. The District has not paid LPN any portion of the \$3,375,000 or the 8% interest  
27 thereon.

28 170. The District has therefore breached and continues to breach its Funding Agreement

1 obligation to reimburse LPN's \$3,375,000 in Subsidy Payments plus interest.

2 171. As a direct result of the District's continuing breach, LPN has suffered damages in  
3 the amount of \$3,375,000 plus interest accruing at an 8% annual rate.

4 **NINTH CAUSE OF ACTION**

5 **Attorneys' Fees Under the Funding Agreement**

6 172. LPN hereby incorporates the preceding paragraphs 1 through 171 of this  
7 Complaint by reference as if set forth here again in full.

8 173. The Funding Agreement is a valid and enforceable written agreement between the  
9 District and LPN.

10 174. LPN has fully performed its duties under the Funding Agreement.

11 175. Section 10.2 of the Funding Agreement allows the prevailing party to recover its  
12 reasonable attorneys' fees and costs in any litigation arising out of the Funding Agreement:

13 If either party to this Agreement shall bring any action for relief against the other,  
14 declaratory or otherwise, arising out of this Agreement, the losing party shall pay  
15 to the prevailing party reasonable attorneys' fees and costs incurred in bringing  
16 such suit and/or enforcing any judgment granted therein. Any judgment or order  
17 entered in such action shall contain a specific provision providing for the recovery  
18 of attorneys' fees and costs incurred in enforcing such judgment.

19 176. This action arises out of the Funding Agreement. Thus, the prevailing party is  
20 entitled to recover its reasonable attorneys' fees and expenses incurred in bringing this action and  
21 enforcing any judgment.

22 **PRESENTATION OF CLAIMS**

23 177. The first breach of contract described in this Complaint occurred on  
24 November 15, 2016, three months and six days before LPN presented its claims to the District.

25 178. LPN presented its claims to the District in compliance with Cal. Gov. Code § 910.

26 179. Specifically, the claims were delivered by hand and sent by certified mail from  
27 San Francisco, California, to the District's Chancellor's Office and the District's Board of  
28 Trustees on February 21, 2017. On the same date, the claims were sent by e-mail to Chancellor  
Galatolo, Mr. Whitlock, and the members of the District Board of Trustees.

180. The claims included notice that LPN declared the Subsidy Payments made to date

1 immediately due and payable because a Triggering Event had occurred, which terminated LPN's  
2 obligation to make further payments under the Funding Agreement.

3 181. The District did not provide a notice of insufficiency under Cal. Gov. Code  
4 § 910.8 within 20 days after the claims were presented.

5 182. The District did not respond to LPN's claims by April 6, 2017. The District's  
6 Board is therefore deemed to have rejected LPN's claims under Cal. Gov. Code § 912.4(c).

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff LPN demands a jury trial in this action.

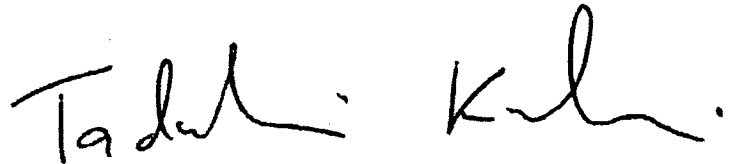
9 **PRAYER FOR RELIEF**

10 LPN prays for judgment against the District, as follows:

- 11 a. For compensatory damages in a sum to be determined at trial;
- 12 b. Directing the District to pay LPN's attorneys' fees and costs incurred in bringing  
13 this action, in an amount to be determined upon an offer of proof to the Court, and  
14 granting LPN leave of the Court to offer a report constituting such proof to the  
15 Court;
- 16 c. For prejudgment interest; and
- 17 d. For such other and further relief as the court may deem proper.

18 DATED: April 10, 2017

19 Tadahiro Kaburaki (S.B. #311823)  
20 B. Andrew Bednark (*pro hac vice* forthcoming)  
21 O'MELVENY & MYERS LLP

22 

23  
24 Tadahiro Kaburaki

25 Attorneys for LocusPoint Networks, LLC and LocusPoint II  
26 KCSM, LLC

1 **COUNTY OF SAN MATEO, OFFICE OF COUNTY COUNSEL**  
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**ENDORSED FILED**  
**SAN MATEO COUNTY**

APR 12 2017

Clerk of the Superior Court  
By JORDAN MAXWELL  
DEPUTY CLERK

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10 Attorneys for Plaintiff  
11 SAN MATEO COUNTY COMMUNITY  
COLLEGE DISTRICT

12 *Exempt from filing fees pursuant to*  
13 *Government Code § 6103*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN MATEO

16 **SAN MATEO COUNTY COMMUNITY**  
17 **COLLEGE DISTRICT,**

CASE NO. 17CIV01534

**FIRST AMENDED CIVIL  
COMPLAINT FOR:**

18  
19 **Plaintiff,**

1. BREACH OF CONTRACT;
2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
3. BREACH OF FIDUCIARY DUTY;
4. NEGLIGENCE;
5. DECLARATORY RELIEF;
6. CONTRACTUAL INDEMNITY; AND
7. BREACH OF CONTRACT—FAILURE TO PERFORM POST-AUCTION OBLIGATIONS.

20  
21 vs.

22 **LOCUSPOINT NETWORKS, LLC,**  
23 **PRICEWATERHOUSECOOPERS**  
24 **ADVISORY SERVICES LLC,**  
**LOCUSPOINT II KCSM, LLC and DOES 1-**  
25 **200,**

26 **Defendants.**

**JURY TRIAL DEMANDED**

**REDACTED PENDING HEARING ON  
CONFIDENTIALITY**

1           1.       The SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT (the  
2 “District”) is a community college district of the State of California, located in the County of San  
3 Mateo (the “County”), which operates three colleges — Cañada College, College of San Mateo,  
4 and Skyline College — that provide educational services. The District is one of the largest  
5 community college districts in the State of California and offers both academic and vocational  
6 programs, including more than 80 vocational degree and certificate programs, to approximately  
7 40,000 community members each year. The District is governed by a Board of Trustees with five  
8 voting members (the “Board”).<sup>1</sup>

9           2.       Upon information and belief, defendant LocusPoint Networks, LLC (“LocusPoint”)  
10 is a Delaware limited liability company authorized to transact business in the State of California,  
11 with its principal place of business in Pleasanton, California.

12           3.       Upon information and belief, defendant LocusPoint II KCSM, LLC (“LPN-  
13 KCSM”) is a Delaware limited liability with its principal place of business in Pleasanton,  
14 California. Upon information and belief, LPN-KCSM is a wholly owned subsidiary of LocusPoint  
15 and LocusPoint assigned certain rights and obligations related to the agreements set forth herein to  
16 LPN-KCSM. LocusPoint and LPN-KCSM will hereinafter be referred to collectively as “LPN.”

17           4.       Upon information and belief, defendant PricewaterhouseCoopers Advisory Services  
18 LLC (“PwC”) is a Delaware limited liability company authorized to transact business in the State  
19 of California, with its principal place of business in New York, New York.

20           5.       The District does not know the true names or capacities of defendants named herein  
21 as Doe One through Doe Two Hundred and, therefore, sues these defendants by their fictitious  
22 names. The District will ask leave to amend their true names and capacities when the same have  
23 been fully ascertained.

24           6.       The District is informed and believes, and on that basis alleges, that each of the  
25 fictitiously named defendants is in some way legally responsible for the acts alleged in this  
26 Complaint.

27 \_\_\_\_\_  
28 <sup>1</sup> The Board also includes a non-voting student member.

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## OVERVIEW

7. As described herein, LPN and PwC committed multiple negligent failures and/or breaches of contract when they failed to ensure that the District's bids were properly submitted in the Federal Communications Commission's ("FCC's") reverse auction.

8. The written agreement between the District and LPN was clear: LPN was responsible to take all "actions as may be reasonably required . . . to achieve [the District's] successful participation in the Auction." At all relevant times, LPN was responsible for the auction as the District's "exclusive bidding consultant and agent." This included LPN's promise to "timely submit all bids in the Auction." As to LPN's decision to hire PwC and assign certain obligations to PwC, LPN promised that LPN would "remain primarily responsible for satisfaction" of the obligations to the District.

9. On November 15, 2016, LPN's agent, PwC, failed to ensure that a bid was placed for the District in the auction. The PwC consultant directly monitoring the bidding process admitted the failures in a contemporaneous writing. Specifically, the PwC consultant admitted that (i) he simply "assumed" a bid had been placed and (ii) he failed to require a bid receipt from the FCC website (as he had done for all other auction rounds) which would have confirmed that a bid had not been received by the FCC.

10. As a result of negligent failures and breaches of contract by LPN and/or PwC, a bid was not received by the FCC, the District was dropped out of the auction and the District was unable to realize the benefits of a sale of KCSM-TV through the auction. The District now seeks damages and other remedies as set forth herein.

## VENUE

11. Venue in this Court is proper because, among other things, (i) the parties agreed to venue in this County, (ii) performance of the contracts at issue occurred, in part, in San Mateo County, California, and (iii) the breaches of the contracts at issue took place in San Mateo County, California.

## BACKGROUND

12. The District is the licensee and operator of station KCSM-TV, San Mateo,



1 California, Facility No. 58912, FCC Facility ID No. 58912 (“KCSM-TV” or the “Station”).  
2 KCSM-TV operates on a frequency (or “channel”) that is restricted by the FCC to non-commercial  
3 and educational (“NCE”) uses. KCSM-TV’s high power transmitter and its transmitting location at  
4 the Mount Sutro tower provide coverage to millions of people in one of the nation’s densest urban  
5 areas.

6 13. Starting in or around 2011, the District began exploring plans to determine the  
7 future of KCSM-TV. This included considering selling the Station and/or partnering with a third  
8 party to defer any sale and participate in the FCC’s incentive auction. However, the cash value of  
9 the Station in a sale to a third party is limited by the FCC’s NCE-only designation of the Station’s  
10 channel assignment, because a buyer would not be permitted to operate the Station for commercial  
11 purposes.

12 14. In 2012, Congress, in Section 6403 of the Middle Class Tax Relief and Job Creation  
13 Act of 2012, Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-30, authorized and required the FCC  
14 to conduct an “incentive auction” of electromagnetic spectrum in order to clear television stations  
15 from the spectrum their channels occupy. The auction would have two parts – a “reverse” auction  
16 to determine the price at which television stations would be willing to relinquish their spectrum  
17 usage rights, and a “forward” auction in which the spectrum relinquished would be auctioned to the  
18 highest bidder, to be used for mobile wireless service. Auction proceeds from the sale of new  
19 wireless licenses in the forward auction would be used to pay the winning bidders in the reverse  
20 auction.

21 15. The reverse auction – the first ever conducted by the FCC – presented a unique  
22 opportunity for the District to realize the market value for the spectrum used by the Station, rather  
23 than the lower value of a non-commercial and educational station.<sup>2</sup>

24 16. After soliciting proposals, in or around May 2013, the District entered into written  
25 contracts with LPN pursuant to which the District appointed LPN “to act as its exclusive consultant

26 \_\_\_\_\_  
27 <sup>2</sup> Although Congress authorized the FCC to conduct additional incentive auctions, it is not required  
28 to do so, and it is unknown whether another reverse auction of television licenses will be conducted  
within the foreseeable future.

1 and agent to develop and implement any and all strategies appropriate to [the District's]  
2 participation" in the auction. Through written and oral assurances that it possessed "substantial  
3 expertise in the development of strategies for participating in sophisticated auctions such as the  
4 Auction," LPN represented that it possessed unique and highly valuable expertise that the District  
5 did not have but needed in order to successfully sell its spectrum usage rights in the auction for the  
6 "maximum value possible."<sup>3</sup> To that end, the District and LPN entered into a series of contracts  
7 that were duly passed and adopted by the Board. These contracts included: (1) a Bid Management  
8 Agreement executed on May 16, 2013; (2) a Funding Agreement executed on May 16, 2013; (3) a  
9 Security Agreement executed on May 16, 2013; and (4) a Put/Call Option Agreement executed on  
10 May 16, 2013. LPN later proposed various amendments to the above agreements that LPN  
11 represented were necessary to comply with certain anti-collusion rules passed by the FCC after the  
12 2013 agreements were approved by the District. These amendments, which were signed by a  
13 representative for the District, but not duly passed and adopted by the Board, included the  
14 "Amendment to Funding Agreement" executed on December 17, 2015, "Amendment to Bid  
15 Management Agreement" executed on December 8, 2015, and "Amendment to Put/Call Option  
16 Agreement," executed on December 17, 2015. These agreements are sometimes collectively  
17 referred to herein as the "Funding Documents."

#### 18 THE FUNDING DOCUMENTS

19 17. The Funding Documents make clear that LPN controlled all material aspects of the  
20 District's participation in the auction, to the degree that LPN undertook to "[t]imely submit all bids  
21 in the Auction for the District as may be required for continued participation in the Auction until  
22 successful relinquishment of the spectrum usage rights associated with the License."

23 18. In reliance on LPN's express contractual commitments and assurances, including  
24

25 <sup>3</sup> As a material inducement to the District to enter into the foregoing agreements with LPN, LPN  
26 represented that it had "substantial expertise in the development of strategies for participating in  
27 sophisticated auctions such as the Auction, ha[d] access to personnel who are familiar with prior  
28 auctions conducted by the FCC, and ha[d] access to significant resources that can be employed  
[sic] brought to bear on the District's participation in the Auction." Bid Management Agreement,  
page 1, Recital No. 6.

1 LPN's agreement to fund ongoing Station operations during the pendency of the auction,<sup>4</sup> the  
2 District agreed to pay LPN 36.5% of any proceeds from KCSM-TV's participation in the auction  
3 plus a quarterly fee under the Bid Management Agreement.

4 19. The May 16, 2013 Bid Management Agreement sets forth the parties' respective  
5 obligations with regard to the FCC auction. Under Section 2.1, the District appointed "LPN to act  
6 as its exclusive consultant and agent to develop and implement any and all strategies appropriate to  
7 [the District's] participation" in the auction. Section 2.2 sets forth express obligations of LPN  
8 including, without limitation, the following:

9 2.2 As the exclusive bidding consultant and agent for the District  
10 under this Agreement, LPN will have the obligation to:

11 2.2.1 Keep the District informed of material developments in the  
12 FCC's rulemaking and other proceedings designed to adopt rules that will  
13 apply to the Auction. LPN may, in its sole discretion, participate in any  
14 such proceedings, either in its own name or as part of a group or  
association of participating parties, to advocate the adoption of provisions  
in the FCC's Rules that would allow the District to participate fully in the  
Auction with the opportunity to relinquish spectrum usage rights associated  
with the License at their desired value;

15 2.2.2 Timely prepare for review and submission by the District such  
16 filings and applications as may be required by the FCC's Rules for the  
District to participate fully in the Auction;

17 2.2.3 Advance to the District and pay to the FCC, any filing fees,  
18 deposits or other payment obligations that the FCC's Rules may require for  
the District to participate in the Auction;

19 2.2.4 Establish a general bidding strategy for maximizing the value in  
20 the Auction of the spectrum usage rights associated with the License;

21 2.2.5 Appoint qualified personnel to act as the District's authorized  
22 bidders in the Auction, and train and supervise such personnel to assure  
their satisfactory performance of the duties associated with authorized  
bidders in the Auction;

23 2.2.6 Provide training to the District to assure compliance with all  
24 requirements of the FCC's Rules applicable to "applicants" in the Auction,  
25 including, to the extent appropriate, training for the officers, directors and  
agents of the District who may be individually subject to compliance with  
the FCC's Rules during the Auction;

26  
27 <sup>4</sup> LPN agreed to provide funding to the District's ongoing operation of KCSM in the amount up to  
28 \$3.6 million in quarterly installments of \$225,000.

1 2.2.7 Timely submit all bids in the Auction for the District as may be  
2 required for continued participation in the Auction until successful  
3 relinquishment of the spectrum usage rights associated with the License;  
provided, however, that LPN shall not place any bid that would result in  
such relinquishment for less than the Minimum Bid Amount;

4 2.2.8 Throughout the Auction, keep the District informed concerning  
5 the bidding process, including, but not limited to, the results of each  
bidding round and expected bids in the next bidding round;

6 2.2.9 Comply with all regulatory requirements imposed on  
7 participants in the Auction, including, but not limited to, any restrictions on  
8 communications with other bidders during the Auction, as may be imposed  
under any so-called "anti-collusion rules" adopted as part of the FCC's  
Rules;

9 2.2.10 Prepare, on behalf of the District, responses to any requests for  
10 information which the FCC may make prior to, during, or following  
completion of the Auction;

11 2.2.11 Participate with the District in any meetings or telephone  
12 conferences with the FCC as the FCC may request prior to, during, or  
following completion of the Auction;

13 2.2.12 Communicate with the FCC, on behalf of the District, regarding  
14 logistical matters relevant to participation in the Auction and the mechanics  
of obtaining any proceeds resulting from the District's participation in the  
15 Auction;

16 2.2.13 If, at the conclusion of the Auction, the FCC accepts the bid for  
17 relinquishment of the spectrum usage rights associated with the License,  
prepare for the District all filings and applications as may be required to  
18 complete the process of relinquishment, including, but not limited to,  
advancing to the District, and paying to the FCC on their behalf, any filing  
or other fees associated with being a winning bidder in the Auction; and

19 2.2.14 Take all such other actions as may be reasonably required by the  
20 District as its bidding consultant and agent to achieve its successful  
participation in the Auction at a price that is at or above the Minimum Bid  
21 Amount.

22 2.2.15 Consult with the District regarding all regulatory processes  
associated with the "repacking" of KCSM to a new channel assignment if,  
23 at the conclusion of the Auction, the FCC has not accepted the District's  
bid for relinquishment of the spectrum usage rights associated with the  
License. Such consultations will include involvement with the District in  
24 (a) discussions with the FCC regarding the channel reassignment process,  
25 (b) processes for obtaining the maximum reimbursement by the U.S.  
government of expenses associated with repacking, and (c) preparing all  
26 filings and applications as may be required by the FCC timely to complete  
the repacking process.

27 The Bid Management Agreement also provided, among other things, that:  
28

1 2.4 The District expressly acknowledges that in performing its  
2 duties hereunder, LPN may engage independent consultants, agents and  
3 subcontractors at its own expense. LPN agrees that any such engagement  
4 shall be undertaken under LPN’s direction and supervision, and LPN shall  
5 remain primarily responsible for satisfaction of its obligations hereunder  
6 notwithstanding such engagement.

7 \* \* \* \* \*

8 2.7 During the Term hereof, without LPN’s express written consent,  
9 the District may not directly or indirectly solicit, engage or contract with  
10 any other person or entity for the purpose of consulting with, acting as an  
11 agent for, advising, or managing the activities of, the District with regard to  
12 participation in the Auction or in any proceeding before the FCC relating to  
13 the FCC Rules applicable to the Auction or any related matter arising out  
14 of the Auction, or with regard to the sale, assignment or transfer of the  
15 License, except that the District may consult with District counsel and its  
16 established communications counsel.

17 2.8 The Parties acknowledge that the FCC has not adopted final  
18 rules for the conduct of the Auction and that the adoption of those rules  
19 could affect their respective obligations as set forth herein or any other  
20 terms of this Agreement. If that should occur, the Parties agree to negotiate  
21 in good faith to modify this Agreement to the extent required for the intent  
22 of the Parties in this Agreement and in the Funding Documents – *i.e.*, that  
23 the District will participate fully in the Auction so as to relinquish its  
24 spectrum usage rights at a bid amount at or above the Minimum Bid  
25 Amount, and that LPN will be the District’s exclusive consultant (except as  
26 set forth above) and agent with respect to the District’s participation in the  
27 Auction as contemplated in this Agreement – to be preserved to the  
28 maximum extent reasonably possible under the FCC’s Rules for the  
Auction as adopted from time to time. The Parties expressly agree that, if  
they are unable to reach an agreement on any modifications to this  
Agreement necessary to comply with the FCC’s Rules, then this  
Agreement shall remain binding and control each Party participation in the  
Auction to the maximum extent then permitted under the FCC’s Rules.

20 **THE FCC’S QUIET PERIOD RULE TO PROHIBIT COLLUSION**

21 20. On June 2, 2014, the FCC adopted a rule (the “Quiet Period Rule”) prohibiting all  
22 covered television licensees from communicating directly or indirectly about any incentive auction  
23 bids or bidding strategies to any other covered television licensee during the auction.

24 21. By virtue of its ownership of KCSM-TV, the District was a “covered licensee”  
25 under the Quiet Period Rule. On information and belief, LPN was also a covered television  
26 licensee and subject to the Quiet Period Rule because LPN acquired ownership of several FCC-  
27 licensed television stations both before and after June 2, 2014 for the purpose of selling those  
28

1 stations in the FCC incentive auction. LPN therefore knew or should have known at least by the  
2 summer of 2014 (after the FCC adopted the Quiet Period Rule on June 2, 2014) that it could not  
3 provide the bidding services described in the Bid Management Agreement to the District during the  
4 auction while also actively bidding for its own stations in that auction. FCC rules did not prohibit  
5 non-licensee third parties, including PwC, from serving as authorized bidders for licensees  
6 participating in the auction.

7 22. On October 6, 2015, the staff of the FCC issued guidance (“FCC Guidance”)  
8 regarding the applicability of the Quiet Period Rule but did not modify the rule in any way. On  
9 October 15, 2015, the FCC announced that the Quiet Period would begin on December 18,  
10 2015. On November 12, 2015, the FCC postponed the start of the Quiet Period to January 12,  
11 2016. Ultimately, the covered quiet period began on January 12, 2016 and ended on February 5,  
12 2017 (the “Quiet Period”).

13 23. Yet in spite of having known for well over a year that it would be unable to perform  
14 its duties under the Bid Management Agreement, LPN waited until mid-November 2015 to inform  
15 the District that it needed to amend the Bid Management Agreement and bring in a third party to  
16 provide the services LPN had agreed to provide to the District during the auction.

17 24. On November 17, 2015, LPN informed the District that it had “contracted with PwC  
18 to manage the process” of bidding in the auction. Later, on or about November 27, 2015, Bill  
19 deKay of LPN told the District that LPN needed to amend certain agreements to comply with FCC  
20 rules. Specifically, LPN’s deKay wrote:

21 I have attached two documents that need to be executed as part of this process.

22 *The first is an amendment to our agreement that addresses the FCC requirements*  
23 *that have been placed on bidders after we signed our deal. This will allow us to*  
24 *use PwC to provide services in the auction that are needed to keep things on track*  
*and easy for you folks, and also compliant with FCC rules.*

25 The second document is simply a letter of authorization from you to PwC that  
26 allows them to do this work.

27 In our meeting on Monday at 2, we will cover the process for applying to participate  
28 in the auction as well as our game plan for managing things along the way.

As a heads up, we will need Larry Miller to prepare the application, with our  
support as needed. We are asking everyone we work with to prepare the FCC

1 application around the 10<sup>th</sup> of December, we will take a couple days to review, and  
2 then all applications are ready to file before the holidays.

3 *(The deadline is 1/12 but no one wants to work over Christmas or play chicken  
4 with the fcc deadlines. Risk is we are out.)*

5 *We stand ready to help make this painless and efficient for us both.*

6 I know that Larry and our FCC folks work well together, so we should be fine.

7 *We look forward to catching up and getting KCSM ready for the auction.*  
(emphasis added).

8 25. LPN further assured the District that it had retained PwC as a consultant to perform  
9 LPN's obligations under the Bid Management Agreement and claimed that the changes to the  
10 parties' Bid Management Agreement were required "to accommodate fcc prohibited  
11 communications rules." LPN also presented amendments to the Put/Call Option Agreement and  
12 the Funding Agreement. LPN assured the District that PwC would simply "sit[] in" for LPN and  
13 that the amendments did not make material changes to the agreements.

14 26. LPN also told the District that FCC rules required the District to place the bid  
15 directly because it was the owner of KCSM-TV. While the District understood that it would now  
16 have a clerical task (that at least according to LPN was required by the FCC), LPN further assured  
17 the District that LPN that there was no substantive change to the parties' agreement. LPN, either  
18 directly or through PwC, would assure, at all times, that the District successfully navigated the  
19 auction process.

20 27. Consistent with LPN's representations that this change was simply a temporary  
21 swap-out of PwC for LPN during the Quiet Period, there was no financial consequence to the  
22 proposed amendments. LPN continued to retain its right to receive 36.5% of the proceeds from the  
23 sale of the District's spectrum rights in the auction, and LPN assured the District orally and in  
24 writing that the amendments were "at no cost" to the District and were merely "synch ups" to  
25 adjust the contract language to conform to the FCC's Quiet Period Rule. With respect to the Bid  
26 Management Agreement, LPN's deKay wrote to a District representative:

27 "The changes to the bid management agreement are to accommodate fcc prohibited  
28 communication rules."

1           28.     Material statements by LPN about the amendments were not true. For example,  
2 LPN falsely stated to the District that this last-minute switch to PwC was prompted by the FCC's  
3 October 2015 guidance when, in fact, the underlying Quiet Period Rule had been in place since  
4 June 2014. Similarly, nothing in the FCC rules prohibited a non-owner from bidding on behalf of  
5 an owner.

6           **THE APPOINTMENT OF PWC TO ACT AS EXCLUSIVE BIDDING CONSULTANT**  
7                           **AND AGENT IN PLACE OF LPN DURING THE QUIET PERIOD**

8           29.     Consistent with LPN statements at the time, a District representative confirmed with  
9 LPN in writing that the proposed amendments did not represent a change in the May 16, 2013  
10 agreements but were merely an assignment of certain of LPN's obligations to a third party, PwC.  
11 The representative advised LPN that she was not seeking Board approval of the amendments and  
12 LPN acknowledged its concurrence in that decision. Accordingly, the Board never voted to  
13 approve any of the December 2015 amendments, including the Amendment to Bid Management  
14 Agreement dated December 8, 2015.

15           30.     The Amendment to Bid Management Agreement provided that LPN "engaged  
16 [PwC] to serve as LPN's subcontractor and agent" with respect to LPN's duties and obligations  
17 under that agreement because "LPN will be unable to communicate with the District [during the  
18 Quiet Period] regarding bids or bid strategy." Therefore, the Amendment to Bid Management  
19 Agreement modified the Bid Management Agreement to provide that LPN had

20                           "designated PwC to be responsible for performing LPN's obligations under Section  
21                           2.2 of the [Bid Management] Agreement and various of its subsections, including  
22                           monitoring and assisting the District with its participation of Station KCSM-TV (RF  
                              Channel 43), San Mateo, California (FCC Facility ID No. 58912) (the "Station") in  
                              the auction."

23 For all intents and purposes, PwC stepped into LPN's shoes with regard to LPN's contractual  
24 duties and obligations owed to the District. During the Quiet Period, PwC was appointed to act in  
25 LPN's place under the Bid Management Agreement as the District's "exclusive bidding consultant  
26 and agent."

27           31.     The December 8, 2015 Amendment to Bid Management Agreement provided in part  
28



1 as follows:

2 a. Section 2.2.2 of the Agreement shall be deleted and replaced with the  
3 following: "Before the Quiet Period, timely prepare for review and  
4 submission by the District of the application for KCSM to participate fully  
5 in the Auction;"

6 b. Section 2.2.3 of the Agreement shall be deleted and replaced with the  
7 following:

8 "[Reserved.]"

9 c. Section 2.2.4 of the Agreement shall be deleted and replaced with the  
10 following: "Prior to the Application Deadline, establish a general bidding  
11 strategy for maximizing the value in the Auction of the spectrum usage  
12 rights associated with the License;

13 d. Section 2.2.5 of the Agreement shall be deleted and replaced with the  
14 following: "Train and supervise the qualified personnel that the District  
15 appoints to act as its authorized bidders in the Auction to assure their  
16 satisfactory performance of the duties associated with authorized bidders in  
17 the Auction;"

18 e. Section 2.2.7<sup>[5]</sup> of the Agreement shall be deleted and replaced with the  
19 following:

20 "[Reserved.]"

21 f. Section 2.2.10 of the Agreement shall be deleted and replaced with the  
22 following: "Prepare, on behalf of the District, responses to any requests for  
23 information which the FCC may make prior to or following, but not during,  
24 the Quiet Period;"

25 g. Section 2.2.11 of the Agreement shall be deleted and replaced with the  
26 following: "Participate with the District in any meetings or telephone  
27 conferences with the FCC as the FCC may request prior to or following,  
28 but not during, the Quiet Period;"

h. Section 2.2.12 of the Agreement shall be deleted and replaced with the  
following: "Communicate with the FCC on behalf of the District, prior to  
or following, but not during, the Quiet Period, regarding logistical matters  
relevant to participation in the Auction and the mechanics of obtaining any  
proceeds resulting from the District's participation in the Auction;"

i. Section 2.2.13 of the Agreement shall be deleted and replaced with the  
following: "If, at the conclusion of the Auction, the FCC accepts the bid for  
relinquishment of the spectrum usage rights associated with the License,

<sup>5</sup> Section 2.2.7 of the May 16, 2013 Bid Management Agreement placed sole responsibility on LPN to "[t]imely submit all bids in the Auction for the District as may be required for continued participation in the Auction until successful relinquishment of the spectrum usage rights associated with the License; *provided, however*, that LPN shall not place any bid that would result in such relinquishment for less than the Minimum Bid Amount." (emphasis in original).

1 prepare for the District all filings and applications as may be required to be  
2 filed after the Quiet Period to complete the process of relinquishment;”

3 j. The last sentence of Section 2.3 of the Agreement shall be deleted and  
4 replaced with the following: “In implementing the strategy developed for  
the Auction, the District shall cause its authorized bidder to refrain from  
submitting a bid that would cause such an event to occur.”

5 k. Two new final sentences shall be added to the end of Section 2.4<sup>[6]</sup> as  
6 follows: “The Parties agree and acknowledge that LPN has engaged  
7 PricewaterhouseCoopers Advisory Services LLC (“PwC”) to serve as  
LPN’s subcontractor and agent and that PwC may provide to the District  
8 on behalf of LPN certain of the services set forth in Section 2.2 during the  
Quiet Period to the extent that PwC can do so in compliance with the  
9 FCC’s Rules and LPN cannot. To facilitate this arrangement, the District  
has executed a Letter of Authorization in the form attached to this  
Agreement as Attachment A.”

10 l. Section 2.6.3 of the Agreement shall be deleted and replaced with the  
11 following: “Designate prior to the start of the Quiet Period up to three  
12 individuals who shall serve as the District’s authorized bidders during the  
Auction and who (a) are authorized to place bids on behalf of the District  
13 during the Auction, (b) will be trained by LPN to be familiar with the  
FCC’s Rules applicable to the Auction, as well as with Auction processes  
14 and procedures, and (c) will consult in every round during the Auction with  
PwC in a prompt and timely manner;”

15 32. Again, LPN assured the District that these amendments were at “no cost” to the  
16 District and did not materially change the obligations under the May 16, 2013 agreements, except  
17 for the obligations assigned to PwC to perform for which LPN remained “primarily responsible”  
18 under Section 2.4 of the Bid Management Agreement.

### 19 AUCTION TRAINING PROVIDED BY PWC

20 33. Beginning in or about January 2016 and with the onset of the Quiet Period, PwC  
21 was in regular contact with the District about the auction process. PwC consistently assured the  
22 District that it had developed detailed and fail-safe procedures to successfully navigate the auction  
23 process. PwC’s plan included monitoring and ensuring that the District took all the necessary pre-  
24 auction steps with the FCC, training the District on the PwC-guided auction process and requiring

25 \_\_\_\_\_  
26 <sup>6</sup> Section 2.4 of the May 16, 2013 Bid Management Agreement provided: “The District expressly  
27 acknowledges that in performing its duties hereunder, LPN may engage independent consultants,  
agents and subcontractors at its own expense. LPN agrees that any such engagement shall be  
28 undertaken under LPN’s direction and supervision, and LPN shall remain primarily responsible for  
satisfaction of its obligations hereunder notwithstanding such engagement.”

1 in-person participation by PwC at each and every stage and round of the auction. Indeed, PwC's  
2 plan was documented in a "Playbook" which the District is informed and believes was created by  
3 LPN and PwC. That Playbook was provided to the District and detailed how PwC would be  
4 guiding the District successfully throughout the auction process.

5 34. In the months before bidding commenced in the auction, PwC sent regular emails to  
6 the District advising them on auction process. PwC's emails included, among other things, notices  
7 of certain upcoming tasks, directions to the District on how any task should be completed and,  
8 finally, a confirmatory step by PwC to ensure that the District had, in fact, completed the required  
9 task as instructed.

10 35. For example, in February 2016, PwC wrote the District to confirm that the District  
11 had received a letter from the FCC concerning the District's status as a station applicant for the  
12 auction. PwC asked for a copy of the FCC's letter and warned the District that the FCC may  
13 require the District to take certain action to update its application. PwC also advised the District  
14 about upcoming steps that the FCC would be taking. For instance, PwC advised that the FCC  
15 would be issuing a "First Confidential Status Letter" to each applicant and that the letter might  
16 trigger the need for minor amendments to the District's application in a relatively tight time  
17 frame. PwC also notified the District that the FCC would then be issuing a "Second Confidential  
18 Status Letter" that would advise the District how to confirm their commitment to participate in the  
19 auction and receive the SecurID tokens required to participate in the auction. While the District's  
20 bidders had no familiarity with these procedures, PwC advised that it would be following up with  
21 the District on these issues and, indeed, that is what happened. PwC's instructions even included  
22 the minutiae of each of the steps. For example, PwC explained that the FCC would be sending the  
23 SecurID tokens in a package that would be delivered to a specific person at the District and that  
24 while a signature would be required for delivery of those tokens, the signer for the package need  
25 not be the person identified as the recipient on the parcel. Of course, PwC later followed up again  
26 to make sure the SecurID tokens were received.

27 36. PwC made clear during the training that PwC would control and direct the District's  
28 participation in the auction and that PwC was required to be present at each bidding session to

1 monitor, observe and direct all actions of the District bidder once the bidder logged in to the  
2 auction. Indeed, the PwC bidding consultant actually viewed the District bidders' computer  
3 screens during the entirety of each and every bidding session and literally directed each bidder's  
4 every action.

5 37. PwC also developed and implemented protocols to confirm actual bidding activity  
6 during each round. For example, as part of PwC's Playbook, PwC and/or LPN developed and  
7 utilized a "Bid Submission Confirmation Sheet" that PwC was to complete and sign confirming  
8 PwC's observation of the bidding process and, for active bidding sessions, confirming that a bid  
9 was submitted. On each Bid Submission Confirmation Sheet, the PwC agent was to note the date,  
10 time and amount of the District's submitted bid. At the end of each round, and only after PwC had  
11 filled out the sheet, the District bidder was to countersign the sheet. According to PwC, the Bid  
12 Submission Confirmation Sheets were

13 *"[r]ound-by-round sign-in sheets to enable confirmation of execution of agreed-*  
14 *upon Auction plans and affirm actions taken by Authorized Bidder with*  
15 *affirmation from Consulting Team member. Specific guidance from start to*  
16 *finish for each round regarding logistics (Bid location and signature binder*  
17 *storage)." (emphasis added).*

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 38. Also during this pre-auction period, District representatives, at PwC's direction,  
26 participated in a "mock auction" made available by the FCC in May 2016. PwC explained that  
27 "[a]ttending all rounds [of the training] will help us to iron out any questions/issues that may arise  
28 during the clock rounds, and reduce the chance that any of us are unable to execute the bidding

1 process.” Both PwC consulting team members who were assigned to the District participated in  
2 the “mock auction” along with all three of the District’s bidding representatives. Although both  
3 members of PwC’s designated consulting team participated in certain pre-auction activity,  
4 including the mock auction, only one of them, John Impullitti, actually participated in the actual  
5 auction during the so-called clock rounds.

6 39. PwC’s training approach emphasized how PwC would directly monitor and guide  
7 the District bidders in each and every step of the auction process and confirm that all necessary  
8 steps had been taken in order to assure the District’s continued and successful participation in the  
9 auction. At all times, the District understood that its role was to comply with the directions of PwC  
10 because PwC, as the experts on the auction and the representative of LPN, was there to ensure the  
11 parties’ successful participation in the auction.

12 40. During both the pre-auction period and during the bidding rounds, PwC’s Impullitti  
13 repeatedly advised the District that he was required to personally witness any and all auction bids,  
14 was required to confirm that bids were submitted as required and that the District could not  
15 participate in the auction without Impullitti’s presence and involvement. Indeed, each auction  
16 session (or round) started with PwC’s Impullitti meeting one of the three District bidders in person  
17 at the bidder’s office and arranging the seating so that both Impullitti and the District bidder could  
18 simultaneously view the computer screen through which any bidding would occur.

19 41. The FCC’s auction system allowed a bidder, after submitting a bid, to print out a  
20 FCC-generated bid summary receipt (an “FCC Bid Receipt”) confirming that the FCC had  
21 successfully received the bid. Surprisingly, in spite of the fact that LPN’s and PwC’s most  
22 important and ultimate responsibility was *to assure that a bid was successfully placed in each*  
23 *round* as required and that a FCC Bid Receipt was the *only FCC confirmation of a successfully*  
24 *placed bid*, neither PwC’s Playbook nor its Bid Submission Confirmation Sheet prompted or  
25 advised the District bidder or the PwC consultant to obtain FCC Bid Receipts. Nor did the  
26 Playbook recognize or even mention the importance of obtaining a FCC Bid Receipt immediately  
27 after placing a bid. Nonetheless, PwC’s Impullitti was aware that FCC Bid Receipts were  
28 available, knew how to obtain them and after each bidding round *prior* to November 15, 2016,

1 directed District bidders to generate a FCC Bid Receipt confirming the FCC's receipt of a bid when  
2 a bid had been placed.

3 **PWC CLOSELY MONITORED AND CONTROLLED THE DISTRICT'S**  
4 **PARTICIPATION IN THE AUCTION**

5 42. The reverse auction required four stages to close. Stage 1 of the auction comprised  
6 52 rounds, began on May 31, 2016 and ended on June 29, 2016. Stage 2 comprised 53 rounds,  
7 began on September 13, 2016 and ended on October 13, 2016. Stage 3 comprised 52 rounds,  
8 began on November 1, 2016 and ended on December 1, 2016. The fourth and final stage of the  
9 auction comprised 53 rounds, began on December 13, 2016 and ended on January 13, 2017.

10 43. The FCC rules provided that failure of a reverse-auction participant to place a bid in  
11 any round in which a bid option was available would result in the participant being dropped from  
12 the auction and excluded from future bid opportunities. Accordingly, participating broadcast  
13 licensees (or their agents) were required to be present for all reverse-auction bidding rounds, or to  
14 place a "proxy bid," in order to avoid being dropped from the auction.

15 44. Under the direction of PwC's Impullitti, a District bidder properly submitted a  
16 responsive bid in the auction's opening round (Stage 1; Round 1), which occurred on May 31,  
17 2016. Impullitti directed and monitored the bidding, prepared and signed a Bid Submission  
18 Confirmation Sheet and guided the bidder to obtain a FCC Bid Receipt. Impullitti also directed  
19 and monitored one of the three District bidders in each subsequent round of the auction.

20 45. For each of the rounds in which the District participated, its bidder logged in for the  
21 respective round in the presence of and under the direction of PwC's Impullitti. In each round,  
22 Impullitti gave specific directions to the District's bidder at each step of the bidding process,  
23 including specific instructions to submit a bid during each bidding round. He then filled out and  
24 signed a Bid Submission Confirmation Sheet based on his observation of bidding status and any  
25 actual bidding activity. Impullitti was required by PwC's and/or LPN's procedures to immediately  
26 upload an electronic copy of the Bid Submission Confirmation Sheet to a secure "Box" cloud  
27 storage file, where all of the District's auction records were and are maintained. Although not  
28 mentioned in the Playbook, Impullitti's consistent practice in each round was to direct the bidder or

1 otherwise assure that a FCC Bid Receipt was obtained through the auction website confirming an  
2 actual bid by the District had been received by the FCC.

3 46. In the eleventh round of Stage 1, which occurred on June 8, 2016, KCSM-TV's  
4 status changed to "Frozen – Provisionally Winning." A station with a "frozen" status in a given  
5 round was not required (or even permitted) to place a bid in that round. KCSM-TV's status did not  
6 change for the remainder of Stage 1, and KCSM-TV therefore was not required to place additional  
7 bids in Stage 1. KCSM-TV entered Stage 2 with a status of "Frozen – Pending Catch-up" and  
8 maintained that status until Round 12, when it resumed bidding until again changing to "Frozen –  
9 Provisionally Winning" status in Round 18 of Stage 2. KCSM-TV's status through the first 17  
10 Rounds of Stage 3 remained "Frozen – Pending Catch-up." On November 10, 2016, in Stage 3;  
11 Round 18, KCSM-TV's status was no longer "Frozen Pending Catch-up." In Rounds 18 and 19  
12 (which both occurred on November 10, 2016), Impullitti monitored and directed the District bidder  
13 to log in and submit a bid. For both rounds, Impullitti completed and signed a Bid Submission  
14 Confirmation Sheet, had it countersigned by the bidder, and assured that a FCC Bid Receipt was  
15 generated.

16 47. No auction activity took place on November 11, 2016 when the FCC was closed for  
17 the Veterans Day holiday.

18 48. Auction activity resumed on November 14, 2016 and the District's bidder  
19 effectuated the District's responsive submissions in the three Rounds conducted that day (Stage 3;  
20 Rounds 20, 21 and 22). All three of that day's bidding rounds were monitored and directed by  
21 Impullitti, who prepared a Bid Submission Confirmation Sheet for each of those Rounds and  
22 directed that FCC Bid Receipts be obtained before the Round closed.

### 23 **STAGE 3; ROUND 23 ("ROUND 23")**

24 49. Round 23 of the auction occurred on November 15, 2016. The District bidder for  
25 that day signed in to the auction site early in the first round shortly after 7:00 a.m. PST in  
26 Impullitti's presence (who was seated immediately behind her) and at his direction. The bidder  
27 that morning had been out of town the previous day and did not participate in Rounds 20, 21 and  
28 22. The bidder logged in to the auction website as directed and then waited as Impullitti observed

1 the bidding status and completed the Bid Submission Confirmation Sheet which stated that a bid  
2 had been submitted based on what he observed on the screen. In Impullitti's words, they had  
3 "submitted a bid in accordance with the bidding strategy." Impullitti recorded that the bid amount  
4 was \$114,494,613. Nevertheless, he signed the Bid Submission Confirmation Sheet affirming that  
5 the bid had been placed at "7:12 a.m. PST" and that the information he had recorded "completely  
6 and accurately reflect[s] the actions taken during the auction." Impullitti did not follow his usual  
7 procedure and did not request that the District bidder generate and capture (*e.g.*, print or create a  
8 PDF) a FCC Bid Receipt confirming the FCC's receipt of a bid. Rather, he simply presented his  
9 handwritten Bid Submission Confirmation Sheet to the bidder for counter-signature. Impullitti  
10 observed the District bidder log out of the auction and he then left her office. At that time, there  
11 was still approximately 45 minutes left to place a bid in Round 23.

12 50. While Impullitti noted on the Bid Submission Confirmation Sheet that this was an  
13 active bidding session, he failed to direct the bidder to submit a bid. Had he done so, the bidder  
14 would have navigated to the submit button (which could be revealed by scrolling the screen to the  
15 right) and clicked on it – actions that were readily viewable by Impullitti who sat only a matter of  
16 inches from the computer screen. Compounding the problem, Impullitti also failed to direct the  
17 bidder to generate and print a FCC Bid Receipt (or otherwise assure that a FCC Bid Receipt was  
18 obtained), which he could have done at any time before Round 23 ended at 8:00 a.m. PST,  
19 approximately 45 minutes after he signed the Bid Submission Confirmation Sheet. Had Impullitti  
20 taken prompt and reasonable steps to obtain a FCC Bid Receipt as he had done in every previous  
21 bidding round, he would have realized that no bid had been submitted for Round 23. Similarly,  
22 had LPN and/or PwC properly developed the Bid Submission Confirmation Sheet checklist to  
23 include and require a printout of the FCC Bid Receipt, the only *official* confirmation that a bid had  
24 been submitted, Impullitti would have been forced to realize that no bid had been submitted for  
25 Round 23 and he would have directed the District bidder to place a bid and obtain a FCC Bid  
26 Receipt before Round 23 ended.

27 51. Impullitti's belief that a bid had been submitted in Round 23 was mistaken. At the  
28 scheduled opening of Round 24, which started at 10:00 a.m. PST that same day, the bidder, with



1 Impullitti present, as required, logged in to the auction site and saw the Station's status listed as  
2 "dropped out of bidding." Impullitti (who initially thought they were provisionally winning based  
3 on his observation of the auction screen) and the bidder quickly initiated a series of efforts to have  
4 KCSM-TV reinstated as an active bidder in the auction.

5 52. To that end, the bidder contacted, and attempted to contact, FCC auction personnel  
6 by telephone and e-mail. In the course of each contact, she was informed that KCSM-TV's  
7 termination as a bidder was not reversible. At some point in the course of her November 15, 2016  
8 efforts to reenter the District in the auction, the District bidder realized she could not recall having  
9 seen or having generated and downloaded a FCC Bid Receipt for Round 23. Impullitti also admits  
10 that, in connection with Round 23, he "assumed the bid was submitted" and "did not request the  
11 bid summary print out." Impullitti prepared a Bid Submission Confirmation Sheet for Round 24  
12 noting the new status.

13 53. Despite its best efforts, the District's efforts to have KCSM-TV reinstated as an  
14 active bidder in the auction ultimately proved fruitless.

#### 15 **REMAINDER OF THE QUIET PERIOD**

16 54. Although the FCC had dropped KCSM-TV from the auction for failing to submit a  
17 bid, KCSM-TV remained a "covered entity" under the FCC's rules, and both the District and  
18 Impullitti were prohibited from disclosing the events or the fact that KCSM-TV had exited the  
19 auction to any other covered entity, including LPN, until the end of the Quiet Period.

#### 20 **END OF THE QUIET PERIOD**

21 55. After the close of the Quiet Period, the District was approached by the licensee of a  
22 public television station, who apparently made a successful bid in the auction. That licensee  
23 inquired whether KCSM-TV survived the auction and, if so, whether the District would be  
24 interested in channel sharing or a sale.

25 56. In compliance with the parties' agreement, the District contacted LPN to inquire  
26 whether LPN wished to be involved in discussions with the potential buyer expressing interest in  
27 the Station. LPN refused and continues to refuse to work in good faith to sell the Station in the  
28 manner contemplated by the parties under Section 6 of the Put/Call Option Agreement, in which

1 LPN agreed to work together with the District “in good faith to develop a strategy to maximize the  
2 value of the Station” and to “use commercially reasonable efforts to identify a suitable Buyer and  
3 consummate a Sale.” Rather, LPN insisted, and continues to insist, that it does not have any  
4 further obligations under the parties’ agreements.

### 5 **LPN SHIRKS ITS RESPONSIBILITIES AND BLAMES THE DISTRICT**

6 57. LPN, through its counsel, sent a letter to the District dated February 21, 2017. In  
7 the February 21 letter, LPN alleged that the District was actually the party in breach of its  
8 obligations under the contracts. The letter includes baseless assertions against the District and  
9 shows a complete about-face by LPN on the parties’ rights and obligations. Rather than accurately  
10 acknowledging that, as per the parties’ written agreements, (i) LPN was the party who, at all times,  
11 was the “exclusive bidding consultant and agent for the District” and that LPN was responsible “to  
12 develop *and implement*” any and all strategies to assure the District’s successful participation in the  
13 auction and (ii) that, in exchange for these critical auction services, the District had agreed to pay  
14 LPN 36.5% of the sale proceeds (which under LPN’s valuation would be more than \$25 million  
15 due to LPN), LPN unabashedly blamed the District for LPN’s own failure. Ironically, LPN’s  
16 counsel nearly entirely ignores the conduct of its own agent, PwC. Yet, PwC was the agent chosen  
17 by LPN, PwC was the manager that LPN put onsite at the District, PwC was the party trained by  
18 LPN, and PwC was the party who was monitoring and supervising the auction at each and every  
19 stage to assure that a bid was successfully placed. When PwC failed to perform LPN’s contractual  
20 obligations, that failure was LPN’s failure. Moreover, the parties’ agreements expressly required  
21 LPN to direct and supervise any work by such agents and stated that, at all times, “LPN shall  
22 remain primarily responsible for satisfaction of its obligations hereunder notwithstanding such  
23 engagement.”

24 58. Consistent with its refusal to acknowledge the actual terms of the parties’  
25 agreements, LPN’s counsel also, for the first time, suggested that the December 2015 amendments  
26 (e.g., the documents that LPN’s own CEO and co-founder said were language “synch ups” and  
27 were “*needed to keep things on track and easy for you folks [the District], and also compliant*  
28 *with FCC rules*”), in fact placed not a clerical obligation on the District to participate in the auction

1 as the owner of the Station but purportedly shifted the overall contractual obligation for ensuring  
2 the District's successful participation in the auction onto the District itself (notwithstanding LPN's  
3 concurrent assertion that it was entitled to more than \$25 million for guaranteeing that very  
4 obligation). Neither the agreements nor any of the contemporaneous discussions support LPN's re-  
5 writing of the parties' obligations.

6 **FIRST CAUSE OF ACTION**

7 **(Breach of Contract Against LPN)**

8 59. The District incorporates by reference paragraphs 1 through 58 as if each were fully  
9 alleged herein.

10 60. The District and LPN entered into a series of contracts. Among the contracts  
11 between the District and LPN is a valid and binding Bid Management Agreement, executed on  
12 May 16, 2013.

13 61. Pursuant to the parties' Bid Management Agreement, LPN was the "exclusive  
14 bidding consultant and agent for the District to develop and implement" any and all strategies to  
15 ensure the District's successful participation in the auction. As the exclusive agent responsible for  
16 implementing the parties' auction strategy for KCSM-TV, LPN had the sole obligation to assure  
17 the timely submission of bids in the auction. LPN's obligations also included training and  
18 supervising the bidders to "assure their satisfactory performance of the duties" in the auction,  
19 keeping the District informed concerning the bidding process and taking "all such other actions as  
20 may be reasonably required by the District as its bidding consultant and agent to achieve its  
21 successful participation in the Auction."

22 62. The District has performed all terms, conditions, and obligations of the agreements  
23 with LPN to be performed on its part, excepting only those that have been waived or excused by  
24 LPN's actions or failures of performance.

25 63. LPN breached the parties' agreements, including the Bid Management Agreement,  
26 in numerous ways, including but not limited to: failing to assure the timely submission of a bid,  
27 failing to properly train and supervise PwC, and failing to take all actions reasonably required to  
28 ensure the District's successful participation in the auction.



1 obligations, LPN and the District would “negotiate in good faith to modify [the Bid Management  
2 Agreement] to the extent required for the intent of the Parties in [the Bid Management Agreement]  
3 and in the Funding Documents.”

4 70. LPN breached the implied covenant of good faith and fair dealing in various ways  
5 including, but not limited to:

- 6 (a) failing to candidly and in good faith inform the District about the FCC Quiet Period  
7 Rule in June 2014, including how that rule could impact the parties’ agreements;
- 8 (b) falsely stating that the last-minute switch to PwC was prompted by the FCC’s  
9 October 2015 guidance when, in fact, the FCC’s position on this issue had been in  
10 place since June 2014;
- 11 (c) falsely stating that the District, instead of LPN, PwC, or some other third party, was  
12 required to place the bid directly because the District was the owner of the Station;
- 13 (d) failing to negotiate the amendments in good faith including (i) failing to disclose  
14 what portions of the amendments were actually required by the FCC’s Quiet Period  
15 Rule as well as what portions were simply to accommodate LPN’s business  
16 structure and/or preferences and/or PwC’s requirements and/or preferences, (ii)  
17 waiting until shortly before the Quiet Period was set to begin to disclose the fact that  
18 LPN had hired PwC and was now seeking to amend the parties’ agreement and (iii)  
19 in November and December 2015 misrepresenting LPN’s purported views about the  
20 significance of the amendments (including assuring the District that these late-stage  
21 amendments did not materially change the agreements except for the assignment of  
22 certain LPN responsibilities to PwC during the Quiet Period and were “at no cost”  
23 to the District and were merely language “synch ups” and “to accommodate fcc  
24 prohibited communications rules” during the Quiet Period) and only disclosing its  
25 actual views after KCSM-TV was dropped from the auction; and
- 26 (e) through the amendments to the agreements (should this Court determine they are  
27 valid in whole or part), placing additional duties on the District and/or purporting to  
28 shift responsibility or liability to the District for certain LPN obligations under the



1 ID No. 58912) (the “Station”) in the auction.” The District further agreed to cooperate with PwC  
2 so that PwC could carry out LPN’s obligations.

3 76. In light of the above, LPN (directly as well as indirectly through PwC) and PwC  
4 (through its agreement with LPN and through its work for the District) agreed to act as the  
5 District’s bidding agent and/or subagent.

6 77. As the District’s agent and/or subagent, LPN and PwC owed the District a fiduciary  
7 duty to use reasonable care, skill, and diligence.

8 78. LPN breached its fiduciary duty to the District to use reasonable care, skill, and  
9 diligence in various ways including, but not limited to:

- 10 (a) failing to properly train and supervise PwC;
- 11 (b) failing to develop a sufficient procedure for the auction that would assure the  
12 timely submission of a bid during all available bidding rounds;
- 13 (c) failing to include, in its auction procedures and bidding protocols, a  
14 requirement to obtain and print the FCC Bid Receipt, which was the only  
15 *official* confirmation that the FCC had actually received and processed a bid;
- 16 (d) failing to properly monitor PwC and the performance of its duties owed to  
17 the District;
- 18 (e) failing to keep the District informed concerning the bidding process,  
19 including, but not limited to, the results of each bidding round and expected  
20 bids in the next bidding round; and
- 21 (f) failing to take all actions reasonably required to ensure the District’s  
22 successful participation in the auction.

23 79. PwC breached its fiduciary duty to the District to use reasonable care, skill, and  
24 diligence by in various ways including, but not limited to:

- 25 (a) failing to include, in its auction procedures and bidding protocols, a  
26 requirement to obtain and print the FCC Bid Receipt;
- 27 (b) failing to properly monitor and supervise the bidding process;
- 28 (c) failing to ensure that the FCC’s website was properly displaying on District

- 1                    bidders' computer monitors being utilized for the bidding process;
- 2                    (d) failing to properly monitor, observe and/or confirm whether a bid had been
- 3                    submitted on November 15, 2016;
- 4                    (e) failing to assure that the District's bid was submitted on November 15, 2016;
- 5                    (f) failing to direct the bidder to capture (*e.g.*, print out, create a PDF) the FCC
- 6                    Bid Receipt from the FCC's website which would have shown the true status
- 7                    of the bidding;
- 8                    (g) failing to utilize the approximately 45 minutes of remaining time during the
- 9                    Round 23 bidding session to assure that the District's bid was properly
- 10                    submitted; and
- 11                    (h) preparing and then certifying that a bid had been placed on November 15,
- 12                    2016 when, in fact, no bid had been submitted.

13                    80. As professional agents and/or subagents, LPN and PwC owed a heightened

14                    fiduciary duty to the District, requiring LPN and PwC to have the particular knowledge and to

15                    exercise the particular skill and diligence expected of them. LPN, for example, was touted as the

16                    expert in this area and it was the party who engaged and trained PwC and the District is informed

17                    and believes that LPN purportedly imparted its specialized knowledge to PwC as part of that

18                    training process.

19                    81. LPN and PwC breached their respective fiduciary duties to the District to exercise

20                    the particular knowledge, skill, and diligence expected of them by failing to use their respective

21                    specialized knowledge in a diligent manner and to exercise the required due care which each owed

22                    the District to avoid any failure to place a bid in the auction or to otherwise assure the ability of the

23                    District to continue its participation in the auction.

24                    82. Had LPN and PwC fulfilled their fiduciary duties to the District, the District's bid in

25                    Round 23 of the auction would have been submitted, the District would not have been dropped out

26                    of the auction, and the District would have continued to Round 24—and any and all subsequent

27                    rounds—of the auction.

28                    83. As a direct and proximate result of LPN's and PwC's breaches of their fiduciary



1 duties, the District has sustained, and will continue to sustain, damages in an amount in excess of  
2 the minimum jurisdictional amount of this Court to be determined according to proof at trial.

3 WHEREFORE, the District prays for relief as hereinafter set forth.

4 **FOURTH CAUSE OF ACTION**

5 **(Negligence Against PwC)**

6 84. The District incorporates by reference paragraphs 1 through 58 as if each were fully  
7 alleged herein.

8 85. By virtue of its special relationship with the District, PwC owed a duty of  
9 reasonable care to the District in conducting the bidding process.

10 86. PwC negligently breached that duty of care by:

- 11 (a) failing to include, in its auction procedures and bidding protocols, a  
12 requirement to obtain and print the FCC Bid Receipt;
- 13 (b) failing to properly monitor and supervise the bidding process;
- 14 (c) failing to ensure that the FCC's website was properly displaying on District  
15 bidders' computer monitors being utilized for the bidding process;
- 16 (d) failing to properly monitor, observe and/or confirm whether a bid had been  
17 submitted on November 15, 2016;
- 18 (e) failing to assure that the District's bid was submitted on November 15, 2016;
- 19 (f) failing to direct the bidder to capture (*e.g.*, print out, create a PDF) the FCC  
20 Bid Receipt from the FCC's website which would have shown the true status  
21 of the bidding;
- 22 (g) failing to utilize the approximately 45 minutes of remaining time during the  
23 Round 23 bidding session to assure that the District's bid was properly  
24 submitted; and
- 25 (h) preparing and then certifying that a bid had been placed on November 15,  
26 2015 when, in fact, no bid had been submitted.

27 87. Had PwC not acted negligently, the District's bid in Round 23 of the auction would  
28 have been submitted, the District would not have been dropped out of the auction, and the District

1 would have continued to Round 24—and any and all subsequent rounds—of the auction.

2 88. As a direct and proximate result of PwC’s negligence, the District has sustained, and  
3 will continue to sustain, damages in an amount in excess of the minimum jurisdictional amount of  
4 this Court to be determined according to proof at trial.

5 WHEREFORE, the District prays for relief as hereinafter set forth.

6 **FIFTH CAUSE OF ACTION**

7 **(Declaratory Relief Against LPN)**

8 89. The District incorporates by reference paragraphs 1 through 58 as if each were fully  
9 alleged herein.

10 90. An actual controversy has arisen and now exists between the District and LPN with  
11 respect to their respective rights and obligations under the Bid Management Agreement and the  
12 amendments to agreements referenced in paragraph 16 above, including, but not limited to, the  
13 following: the District contends, and LPN denies, that the amendments set forth in paragraph 16  
14 do not materially alter the rights and obligations of the parties under the May 16, 2013 agreements,  
15 except for the assignment of certain LPN obligations to PwC, and do not alter the obligation of  
16 LPN to “[t]imely submit all bids in the Auction for the District as may be required for continued  
17 participation in the Auction.” To the extent that LPN contends otherwise, the amendments are  
18 invalid and unenforceable against the District for two separate and independent reasons: (i) the  
19 amendments were never approved or ratified by the Board as required by section 81655 of the  
20 Education Code; and (ii) based on LPN’s recently disclosed interpretation of those amendments  
21 (*i.e.*, LPN contends the amendments materially shifted certain obligations of LPN to the District),  
22 such amendments fail for lack of consideration.

23 91. The District desires a judicial determination of its rights and duties, and a  
24 declaration that:

- 25 (a) the amendments do not materially alter the rights and obligations of the  
26 parties under the May 16, 2013 agreements, except for the assignment of  
27 certain LPN obligations to PwC, and do not alter the obligation of LPN  
28 under the Bid Management Agreement to “[t]imely submit all bids in the

1 Auction for the District as may be required for continued participation in the  
2 Auction”; and/or

3 (b) the amendments set forth in paragraph 16, including the Amendment to Bid  
4 Management Agreement, are not valid as a matter of law pursuant to the  
5 California Education Code; and/or

6 (c) to the extent that the Court determines that the amendments set forth in  
7 paragraph 16 are valid under the California Education Code and materially  
8 changed the parties’ May 16, 2013 agreements (which LPN now contends  
9 and the District disputes), the amendments are invalid due to lack of  
10 consideration.

11 92. WHEREFORE, the District prays for relief as hereinafter set forth.

12 **SIXTH CAUSE OF ACTION**

13 **(Contractual Indemnification Against LPN)**

14 93. The District incorporates by reference all of the above paragraphs as if each were  
15 fully alleged herein.

16 94. Pursuant to Section 7.2 of the Bid Management Agreement, “LPN shall indemnify  
17 and hold harmless the District, as well as its officers, directors, employees and agents, from all  
18 Losses arising out of (i) any breach of any representation, warranty, obligation or performance of  
19 LPN under this Agreement, (ii) any actions by LPN that are inconsistent with the FCC Rules or  
20 (iii) any gross negligence or willful misconduct by LPN relative to its obligations under this  
21 Agreement.” “Losses” is a defined term under the contract which means “all liabilities, claims,  
22 costs, damages, fines, forfeitures and expenses.”

23 95. This indemnification and hold-harmless language indicates that: (1) LPN expressly  
24 contemplated that its breach of its obligations under the Bid Management Agreement and/or any  
25 gross negligence or willful misconduct by LPN relative to its obligations under that agreement  
26 could result in Losses to the District; and (2) LPN agreed to hold the District harmless if such  
27 actions occurred.

28 96. The District performed all terms, conditions, and obligations of the Bid

1 Management Agreement to be performed on its part, excepting only those that have been waived or  
2 excused by LPN's actions or failures of performance.

3 97. As set forth herein, LPN breached its obligations under the Bid Management  
4 Agreement in numerous ways that, in turn, resulted in Losses by the District.

5 98. As set forth herein, LPN, by its own performance and by and through the  
6 performance of its own agent, PwC, was grossly negligent in performance of LPN's obligations  
7 under the Bid Management Agreement and that negligence, in turn, resulted in Losses by the  
8 District.

9 99. As a direct and proximate result of the LPN's breaches of the Bid Management  
10 Agreement, the District has sustained, and will continue to sustain, Losses in an amount to be more  
11 particularly proven at trial, but reasonably believed to exceed the minimum jurisdictional amount  
12 of this Court.

13 100. Pursuant to Section 7.2 of the Bid Management Agreement, LPN must indemnify  
14 the District for the Losses sustained to date as well as those continuing Losses by the District as a  
15 result of LPN's breaches of the Bid Management Agreement and the conduct of both LPN and its  
16 agent, PwC.

17 WHEREFORE, the District prays for relief as hereinafter set forth.

18 **SEVENTH CAUSE OF ACTION**

19 **(Breach of Contract—Failure to Perform Post-Auction Obligations Against LPN)**

20 101. The District incorporates by reference paragraphs 1 through 58 as if each were fully  
21 alleged herein.

22 102. Among other agreements, the District and LPN entered into the Funding Agreement  
23 and the Put/Call Option Agreement in or about May 2013.

24 103. By its express language, the purpose of the Put/Call Option Agreement was to set  
25 forth the conditions upon which the District would relinquish the Station's spectrum usage rights  
26 through participation in the auction or a sale to a buyer in the event that the District was not  
27 successful in relinquishing the Station's spectrum usage rights in the auction, in exchange for  
28 certain funding by LPN and a share of sale proceeds. The Put/Call Option Agreement therefore

1 expressly contemplated a possibility where the District's participation in the auction would not  
2 result in a sale.

3 104. Section 6 of the Put/Call Option Agreement ("Mechanics of a Sale") provided as  
4 follows: "In the event that [the District] participates in the Auction and an Auction Sale does not  
5 occur, the parties will work together in good faith to develop a strategy to maximize the value of  
6 the Station and each shall use commercially reasonable efforts to identify a suitable Buyer and  
7 consummate a Sale. Following receipt of a valid Sale Call Notice by [the District] or a valid Put  
8 Notice by LPN, subject to the terms and conditions of this Agreement, [the District] and LPN shall  
9 proceed in good faith to negotiate, prepare and execute a definitive agreement with the Buyer for  
10 the Sale (the "Sale Agreement")."

11 105. After the close of the Quiet Period, the District was approached by the licensee of a  
12 public television station who inquired whether the District would be interested in channel sharing  
13 or a sale to that station.

14 106. In compliance with the parties' agreement, the District contacted LPN to inquire  
15 whether LPN wished to be involved in discussions with the potential buyer expressing interest in  
16 KCSM-TV. LPN refused and continues to refuse to work in good faith to sell KCSM-TV in the  
17 manner contemplated by the parties.

18 107. Similarly, the Funding Agreement provided for the continuation of certain subsidy  
19 payments (in installments of \$225,000) by LPN to the District through a portion of 2017. LPN  
20 failed and continues to fail to provide the ongoing subsidy as contemplated by the parties'  
21 agreements.

22 108. The District has performed all terms, conditions, and obligations of the agreements  
23 to be performed on its part, excepting only those that have been waived or excused by LPN's  
24 actions or failures of performance.

25 109. LPN has breached and/or repudiated its duties under Section 6 of the Put/Call  
26 Option Agreement, and specifically its contractual obligation to work together with the District in  
27 good faith to develop a strategy to maximize the value of the Station, and to "use commercially  
28 reasonable efforts to identify a suitable Buyer and consummate a Sale." LPN has also breached the

1 Funding Agreement by failing to make the subsidy payments. LPN has further breached and/or  
2 repudiated the agreements by insisting that it does not have any further obligations under the  
3 parties' May 16, 2013 agreements.

4 110. As a direct and proximate result of LPN's breaches, the District has sustained, and  
5 will continue to sustain, damages in an amount in excess the minimum jurisdictional amount of this  
6 Court to be determined according to proof at trial.

7 WHEREFORE, the District prays for relief as hereinafter set forth.

8 **PRAYER FOR RELIEF**

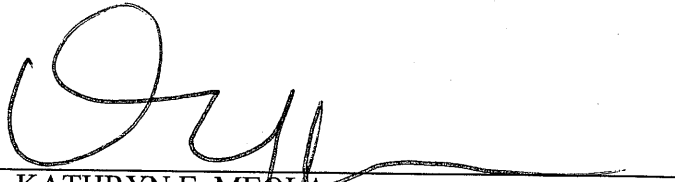
9 Wherefore, the District prays for judgment against LPN and PwC as follows:

- 10 1. Damages in an amount according to proof at trial;
- 11 2. Interest at the legal rate of ten percent (10%) per annum through the date of entry of  
12 judgment herein;
- 13 3. Reasonable attorneys' fees;
- 14 4. Costs of suit;
- 15 5. A judicial determination of the respective rights and duties of the District and LPN  
16 as set forth herein; and
- 17 6. Such other and further relief as the Court may deem proper.
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1 Dated: April 12, 2017.

**COUNTY OF SAN MATEO,  
OFFICE OF COUNTY COUNSEL**

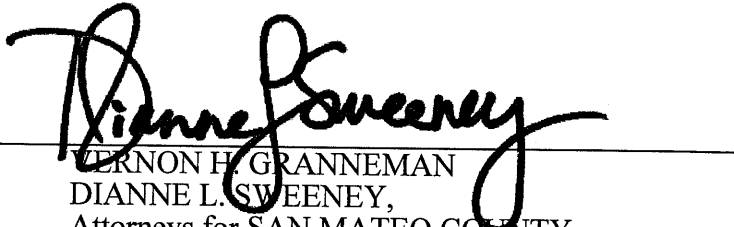
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By: KATHRYN E. MEOLA  
CRAIG N. BAUMGARTNER,  
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COMMUNITY COLLEGE DISTRICT

Dated: April 12, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**



By: VERNON H. GRANNEMAN  
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Attorneys for SAN MATEO COUNTY  
COMMUNITY COLLEGE DISTRICT

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury in the above-captioned action of all issues triable by jury.

Dated: April 12, 2017.

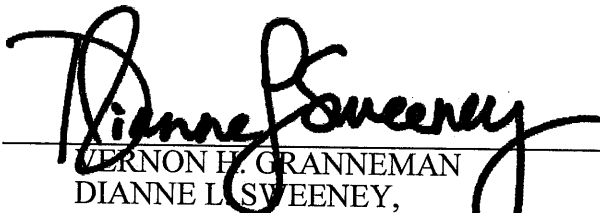
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OFFICE OF COUNTY COUNSEL**



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COMMUNITY COLLEGE DISTRICT

Dated: April 12, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**



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