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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF FRESNO

14
15 **STATE OF CALIFORNIA,**

16 **Plaintiff.**

17 v.

18 **ACME ROTARY BROOM SERVICE and**
BILL KORETOFF, individually and doing business
as ACME ROTARY BROOM SERVICE,
19 **Defendants.**
20
21

CASE NO. **05 CE CL 06793**

COMPLAINT FOR
VIOLATIONS OF
CARTWRIGHT ACT (Bus. &
Prof. Code § 16720, et seq.);
FALSE CLAIMS ACT
(Gov. Code § 12650, et seq.)
AND UNFAIR
COMPETITION LAW (Bus. &
Prof. Code § 17200, et seq.)

22 COMES NOW, Bill Lockyer, Attorney General for the State of California, and alleges
23 the following:

24 **INTRODUCTION**

25 1. Bill Lockyer, Attorney General, State of California, brings this civil antitrust, unfair
26 competition, and false claims action in his official capacity on behalf of the State of California
27 against Defendants ACME ROTARY BROOM SERVICE (hereinafter "ACME") and BILL
28 KORETOFF., individually and doing business as ACME ROTARY BROOM SERVICE

1 (hereinafter "KORETOFF"), under section 16720 et seq. of the Business & Professions Code,
2 section 12650 et. seq. of the Government Code, and section 17200 et. seq. of the Business &
3 Professions Code for allocating customers and territories with their competitors in the California
4 market for street sweeping parts, equipment, and services for soliciting and submitting shadow
5 bids on government contracts for street sweeping equipment and services, and for knowingly
6 presenting "false claims", i.e., bids that were the product of the aforementioned collusive bid-
7 rigging and territorial/customer allocation arrangements mentioned above. These collusive
8 activities with two other California competitors, NATIONWIDE WIRE & BRUSH MFG.
9 COMPANY, INC. now owned and operated by UNITED ROTARY BROOM, INC. as UNITED
10 ROTARY BROOM OF CALIFORNIA, INC., (hereinafter "NATIONWIDE"), and with SAN
11 DIEGO ROTARY BROOM, INC, now doing business as AMERICAN ROTARY BROOM
12 COMPANY, INC. (hereinafter "SAN DIEGO ROTARY BROOM"), deprived the public entities
13 of choice in the market for street sweeping parts, equipment, and services, thereby vitiating the
14 competitive process.

15 JURISDICTION AND VENUE

16 2. This Court has jurisdiction to hear the claims alleged in this Complaint and is a Court
17 of competent jurisdiction to grant the relief requested..

18 3. This Court has jurisdiction over Defendants ACME AND KORETOFF because
19 Defendant KORETOFF resides in the County of Fresno, State of California, while Defendant
20 ACME is headquartered in the City of Fresno, State of California, and does substantial business
21 in the State of California.

22 4. Venue is proper in this Court because the causes of action arise in the County of
23 Fresno where some of the violations of law occurred.

24 PARTIES

25 5. Plaintiff STATE OF CALIFORNIA, is represented by Bill Lockyer, Attorney General,
26 State of California. As the Attorney General for the State of California, Bill Lockyer is the chief
27 law enforcement officer for the State (Cal. Const. Art. 5, sec. 13), is authorized to enforce the
28 above-referenced statutes, and he is also empowered to bring this suit on behalf of the State and

1 its general economy.

2 6. Defendant ACME is headquartered in, Defendant KORETOFF resides in, and
3 both do business from, the County of Fresno, California. During the relevant period set out
4 below in this Complaint, Defendants ACME and KORETOFF, sold street sweeping parts,
5 equipment, and reconditioning/remanufacturing services relating to main brooms, including
6 cable-wrap and tube brooms, and gutter brooms, to public entities in California, including cities
7 and counties.

8 **CO-CONSPIRATORS**

9 7. UNITED ROTARY BRUSH COMPANY OF CALIFORNIA, INC., incorporated
10 in California and formerly doing business as NATIONWIDE WIRE AND BRUSH MFG. INC.,
11 and AMERICAN ROTARY BROOM COMPANY, INC., incorporated in California and
12 formerly doing business as SAN DIEGO ROTARY BROOM COMPANY, INC., are not named
13 as defendants in this action.

14 **FACTUAL ALLEGATIONS**

15 8. Public entities such as cities, counties, and state agencies require street sweeping
16 parts, equipment, and reconditioning/remanufacturing services relating to main brooms,
17 including cable-wrap and/or tube brooms, and gutter brooms, to public entities in California, for
18 their street sweeping machines. Depending upon such circumstances as the size and duration of
19 the envisioned contract for parts, equipment, or services, these entities can and do require bids or
20 quotes from potential providers of such parts, equipment, and services. However, public entities
21 may also contract out, with no bidding or quotations required, for such parts, equipment, and/or
22 services with a provider.

23 9. These procedures are not mutually exclusive. However, if a current provider does not
24 face any competition from other companies that provide such parts, equipment, and/or services,
25 then it is less likely that a public entity will use a bidding or quotation procedure.

26 10. When a public entity requires bids or quotes for street sweeping parts, equipment,
27 and/or services, it will often require or will seek out or more than one bid or quote. Moreover, as
28 a condition for making bids, a public entity can require certifications such as the following:

1 “[the] bid is genuine and not sham or collusive, or made in the interest or on behalf of any entity
2 not herein named; that the Bidder has not directly or indirectly induced or solicited any other
3 Bidder to submit a sham bid, or any other person to refrain from bidding, and that the Bidder has
4 not in any manner sought by collusion to secure to himself any advantage over other Bidders.”
5 Or, a public entity can put a potential bidder on notice as a condition of submitting a bid, and as
6 part of any resulting contract, such as the following: “[a]ny acts or omissions of bidder in
7 violation of federal, state, or municipal law, regarding anti-competitive practices, unfair trade
8 practices, collusion, . . . , creating an unfair influence on the public bidding and award process
9 pertaining to this contract or proposal may void this contract.”

10 11. Beginning sometime in the 1980s and continuing through the date of the filing of
11 this complaint, Defendants ACME and KORETOFF entered into a scheme with NATIONWIDE
12 and SAN DIEGO ROTARY BROOM to allocate territories and customers throughout
13 California. Defendants ACME and KORETOFF were allocated, with a couple of exceptions, the
14 contracts for all public entities located in the following counties in Central California: Santa
15 Cruz, San Benito, Merced, Mariposa, Madera, Fresno, Kings, Tulare, Kern, San Luis Obispo,
16 Monterey, and part of Santa Barbara County.

17 12. Pursuant to this agreement, from the 1980s to the date of the filing of this complaint,
18 neither NATIONWIDE nor SAN DIEGO ROTARY BROOM competed for the contracts of
19 public entities located in this Central California “territory” except in those instances in which
20 Defendants ACME and KORETOFF had already lost those contracts to a third party competitor
21 who was not part of the conspiracy. In exchange, Defendants ACME and KORETOFF did not
22 compete for the contracts of public entities located outside of this “territory,” i.e., in the Northern
23 California “territory” allocated to NATIONWIDE and in the Southern California “territory”
24 allocated to SAN DIEGO ROTARY BROOM. Even if, for example, a public entity in SAN
25 DIEGO ROTARY BROOM’s “territory” were to contact Defendants ACME and KORETOFF to
26 solicit a bid, Defendants ACME and KORETOFF would inform that public entity that they
27 would not bid on that contract.

28 13. An additional incentive for this allocation of territories and customers was a “quid

1 pro quo” arrangement put into place by NATIONWIDE in which it agreed to supply its
2 competitors, Defendants ACME and KORETOFF, and SAN DIEGO ROTARY BROOM, with
3 its manufactured street sweeping parts and equipment. In exchange, neither Defendants ACME
4 and KORETOFF, nor SAN DIEGO ROTARY BROOM, would compete in NATIONWIDE’s
5 territory for the contracts of public entities even if either Defendants ACME and KORETOFF, or
6 SAN DIEGO ROTARY BROOM, were to use non-NATIONWIDE parts and equipment to do
7 so.

8 14. Beginning in the 1980s and continuing through the date of the filing of this
9 complaint, Defendants ACME and KORETOFF entered into a further scheme with
10 NATIONWIDE to engage in bid-rigging activities in each other’s “territory” that went beyond a
11 refusal to submit bids or quotes or otherwise refrain from competing for contracts in each other’s
12 “territory.” Defendants ACME and KORETOFF would solicit “shadow bids” from
13 NATIONWIDE beginning in the 1980s in response to which NATIONWIDE would submit
14 highly-inflated bids for the contracts of customers located in Defendants ACME and
15 KORETOFF’s territory. In turn, over approximately the same time period, NATIONWIDE
16 would solicit and receive similar “shadow bids” for the contracts of customers located in
17 NATIONWIDE’S territory. In this manner, both NATIONWIDE and Defendants ACME and
18 KORETOFF could ensure that public entities would not reject their bids because there were too
19 few bidders while ensuring, at the same time, that each won the bids located in their respective
20 “territories.”

21 15. As a result of these arrangements and practices, public entities in California,
22 including state agencies, cities, and counties, were denied choice, leading to anti-competitive
23 effects that included higher prices than out-of-state markets.

24 **VIOLATIONS ALLEGED**

25 **FIRST CAUSE OF ACTION**

26 **(Against Defendants ACME and KORETOFF *per se***
27 **Violation of the Cartwright Act, Section 16720,**
28 **Business & Professions Code)**

16. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs

1 to 15 inclusive, as though the same were set forth in their entirety herein.

17. The Defendants' illegal combination with its co-conspirators NATIONWIDE and SAN DIEGO ROTARY BROOM with the purpose of unreasonably restraining trade consisted of an agreement, understanding, and concert of action, the substantial terms of which were to allocate territories and customers throughout California in the market for street sweeping parts, equipment, and reconditioning/remanufacturing services.

18. The Defendants' illegal combination with co-conspirator NATIONWIDE with the purpose of unreasonably restraining trade consisted of a further agreement, understanding, and concert of action, the substantial terms of which were to solicit from each other, and submit for the benefit of the other, "shadow bids" - that is bids at highly-inflated prices. In this manner, both NATIONWIDE and Defendants ACME and KORETOFF could ensure that public entities would not reject their bids by generating the appearance of having multiple bidders while ensuring, at the same time, that each would have the winning low-cost bid in their respective "territories."

19. The Defendants' conduct with its co-conspirators constitutes both a market/customer allocation scheme and a bid-rigging scheme, both of which are *per se* illegal under California's Cartwright Act, Business & Professions Code section 16720.

20. Defendants' continuing wrongful conduct, as alleged above, unless or until restrained by order of this Court, will further cause great and irreparable harm to the market for street sweeping, parts, equipment, and services in the State of California.

SECOND CAUSE OF ACTION

(Against Defendants ACME and KORETOFF Violation of The False Claims Act, Government Code Section 12650)

21. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs 1 through 20 inclusive, as though the same were set forth in their entirety herein.

22. This is a claim for penalties under the False Claims Act involving only state funds.

23. Requests for payments pursuant to approved bids, quotes, and/or purchase orders by state agencies constitute claims within the meaning of the False Claims Act where such requests were submitted pursuant to a representation that state and federal antitrust laws had not been

1 violated and/or that the bid and/or purchase order is genuine and not sham or collusive.

2 24. Defendants ACME and KORETOFF conspired with co-conspirators NATIONWIDE
3 and SAN DIEGO ROTARY BROOM to defraud state agencies, cities, and/or counties, and/or
4 made false statements to state agencies, cities, and/or counties, in order to obtain and/or allocate
5 contracts for street sweeping parts, equipment, and services without having to compete for said
6 contracts. Said contracts, involving bids, quotes, and/or purchase order, often contained
7 requirements that the selected provider not violate state and federal antitrust laws in order to
8 secure the contract and/or that the that the bid and/or quote is genuine and not sham or collusive.
9 Defendants ACME and KORETOFF conspired to defraud said public entities by assisting its co-
10 conspirators to directly violate these representations. Plaintiffs also allege, based on information
11 and belief, that Defendant ACME and KORETOFF also knowingly made false statements by
12 engaging in the aforementioned bid-rigging and territorial/customer allocation activities in
13 violation of these representations.

14 **THIRD CAUSE OF ACTION**

15 **(Against Defendants ACME and KORETOFF Violation of**
16 **the Unfair Competition Law, Business & Professions Code,**
17 **Section 17200)**

18 25. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs
19 1 through 24 inclusive, as though the same were set forth in their entirety herein.

20 26. The conduct by Defendants ACME and KORETOFF described herein, including
21 their participation in market/customer allocation and bid-rigging schemes and their submission
22 of false claims pursuant to both schemes, is unlawful as a violation of federal and state antitrust
23 laws, as well as the state false claims act, or are unfair business practices as incipient violations
24 of federal and state antitrust laws, and as such is prohibited by Business & Professions Code
25 section 17200.

26 27. Defendants' continuing wrongful conduct, as alleged above, unless or until
27 restrained by Order of this Court, will further cause great and irreparable harm to the market for
28 street sweeping, parts, equipment, and services in the State of California.

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PRAYER

1
2 **WHEREFORE**, Plaintiff prays for judgment against Defendants ACME and
3 KORETOFF as follows:

4 1. That the Court adjudge and decree that the market/customer allocation schemes and
5 bid-rigging schemes of Defendants ACME and KORETOFF constitute an illegal restraint of
6 trade in violation of section 16720 et. seq. of the Cartwright Act and are therefore null and void;

7 2. That the Court adjudge and decree that the conduct of Defendants ACME and
8 KORETOFF to have been in violation of section 12650 et. seq., Government Code, of the False
9 Claims Act;

10 3. That the Court adjudge and decree that the conduct of Defendants ACME and
11 KORETOFF to have been in violation of section 17200 et. seq., Business & Professions Code, of
12 the Unfair Competition Law;

13 4. That the Court enter an injunction pursuant to section 16720 et. seq., Business &
14 Professions Code, of the Cartwright Act, restraining and enjoining Defendants, their officers,
15 directors, agents, employees, and successors and all other persons acting or claiming to act on
16 their behalf, be enjoined and restrained from, in any manner, directly or indirectly, entering into,
17 continuing, maintaining, engaging or renewing any market or customer allocation agreement or
18 scheme, or any bid-rigging agreement or scheme, with any competitor in the market for street
19 sweeping supplies, parts and services;

20 5. That the Court enter an injunction pursuant to section 17203, California Business &
21 Professions Code, of the Unfair Competition Law, restraining and enjoining Defendants, and
22 each of them, by through or on behalf of them, from engaging in or performing directly or
23 indirectly, any or all of the following:

- 24 a. Making or supporting the making of any false claims as set out in
25 paragraphs 21 through 24;
- 26 b. Engaging in any acts of unfair competition as set out in paragraphs
27 25-27 or any other acts of unfair competition;

28 6. That Defendants be ordered to pay \$2,500 to the Plaintiff per violation as civil

1 penalties pursuant to section 17206, Business & Professions Code, of the Unfair Competition
2 Law;

3 7. That Defendants be ordered to pay \$10,000 to the Plaintiff per false claim as civil
4 penalties pursuant to section 12650 et. seq., Government Code, of the False Claims Act .

5 8. That judgment be entered against Defendants for the costs of this action and
6 reasonable attorney's fees and;

7 9. That the Court grant other legal and equitable relief as it may deem just and proper,
8 including such other relief as the Court may deem just and proper to redress, and prevent
9 recurrence of, the alleged violation and to dissipate the anti-competitive effects of the
10 Defendants' violations.

11 Dated: August 5, 2005

Respectfully submitted

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13 Attorney General of the State of California
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15 Chief Assistant Attorney General
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