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SAN DIEGO, CA

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN DIEGO

14 **STATE OF CALIFORNIA,**  
15  
16 Plaintiff,  
17  
18 v.  
19 **AMERICAN ROTARY BROOM COMPANY, INC.,**  
20 **formerly known as SAN DIEGO ROTARY BROOM**  
**CO., INC.,**  
21 Defendants.

**GIC 853579**  
CASE NO.

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

**NO FEE PURSUANT  
TO GOVERNMENT CODE  
SECTION 6103.**

Assign to Master Calendar

22 COMES NOW, Bill Lockyer, Attorney General for the State of California, and alleges the  
23 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 Defendant AMERICAN ROTARY BROOM COMPANY, INC. (formerly known as  
28 SAN DIEGO ROTARY BROOM COMPANY, INC.) (hereinafter referred to as "SAN DIEGO

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

#### 14 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 Defendant SAN DIEGO ROTARY BROOM because  
19 Defendant is headquartered, and does substantial business, in the State of California.

20 4. Venue is proper in this Court because the causes of action arise in the County of San  
21 Diego where some of the violations of law occurred.

#### 22 23 PARTIES

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

1       6. Defendant SAN DIEGO ROTARY BROOM is headquartered in, and does business  
2 from, Escondido, California. During the relevant period set out below in this Complaint,  
3 Defendant SAN DIEGO ROTARY BROOM sold street sweeping parts, equipment, and  
4 reconditioning/remanufacturing services relating to main brooms, including cable-wrap and tube  
5 brooms, and gutter brooms, to public entities in California, including cities and counties.

6  
7                                 **Co-conspirators**

8       7. UNITED ROTARY BRUSH COMPANY OF CALIFORNIA, INC., incorporated in  
9 California and formerly doing business as NATIONWIDE WIRE AND BRUSH MFG.  
10 COMPANY, INC., and ACME ROTARY BRUSH SERVICES and BILL KORETOFF dba  
11 ACME ROTARY BRUSH SERVICES, headquartered in California, are not named as  
12 defendants in this action.

13  
14                                 **FACTUAL ALLEGATIONS**

15       8. Public entities such as cities, counties, and state agencies require street sweeping parts,  
16 equipment, and reconditioning/remanufacturing services relating to main brooms, including  
17 cable-wrap and/or tube brooms, and gutter brooms, to public entities in California, for their street  
18 sweeping machines. Depending upon such circumstances as the size and duration of the  
19 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, other public  
21 entities may also simply contract out, with no bidding or quotations required, for such parts,  
22 equipment, and/or 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 more than one bid or quote. Moreover, as a  
28 condition for making bids, a public entity can require certifications such as the following: "[the

1 bid is genuine and not sham or collusive, or made in the interest or on behalf of any entity not  
2 herein named; that the Bidder has not directly or indirectly induced or solicited any other Bidder  
3 to submit a sham bid, or any other person to refrain from bidding, and that the Bidder has not in  
4 any manner sought by collusion to secure to himself any advantage over other Bidders." Or, a  
5 public entity can put a potential bidder on notice as a condition of submitting a bid, and as part of  
6 any resulting contract, such as the following: "[a]ny acts or omissions of bidder in violation of  
7 federal, state, or municipal law, . . ., regarding anti-competitive practices, unfair trade practices,  
8 collusion, . . ., creating an unfair influence on the public bidding and award process pertaining  
9 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 this  
11 complaint, Defendant SAN DIEGO ROTARY BROOM entered into a scheme with  
12 NATIONWIDE and ACME and KORETOFF to allocate territories and customers throughout  
13 California. Defendant SAN DIEGO ROTARY BROOM was allocated, with a couple of  
14 exceptions, the contracts for all public entities located in the following counties in Southern  
15 California: Ventura, Los Angeles, Orange, San Bernardino, Riverside, San Diego, Imperial, and  
16 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 ACME and KORETOFF competed for the contracts of public  
19 entities located in this Southern California "territory." In exchange, Defendant SAN DIEGO  
20 ROTARY BROOM did not compete for the contracts of public entities located outside of this  
21 "territory," i.e., in the Northern California "territory" allocated to NATIONWIDE and in the  
22 Central California "territory" allocated to ACME and KORETOFF (except, in the latter case, in  
23 instances in which ACME and KORETOFF lost their contracts to a third party competitor who  
24 was not a party to this agreement). Even if, for example, a public entity in NATIONWIDE's  
25 "territory" were to contact Defendant SAN DIEGO ROTARY BROOM to solicit a bid,  
26 Defendant SAN DIEGO ROTARY BROOM would inform that public entity that it would not  
27 bid on that contract.

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

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

7 14. Plaintiff is informed and believes that beginning in 1980s, Defendant SAN DIEGO  
8 ROTARY BROOM may have engaged in bid-rigging activities in furtherance of the above-  
9 described territorial/customer allocation scheme through the solicitation and/or submission of  
10 shadow bids - that is bids at highly inflated prices. The submission of bids at highly inflated  
11 prices by it or by its competitors would generate the appearance of multiple bidders (which are  
12 required by some public entities) while ensuring that either it or its competitors would have the  
13 winning low-cost bid.

14 15. Even after co-conspirator NATIONWIDE was acquired by an out-of-state company,  
15 United Rotary, Defendant SAN DIEGO ROTARY BROOM sought to obtain its commitment to  
16 continue the aforementioned scheme and continued itself to abide by that scheme.

17 16. As a result of these arrangements and practices, competition in the market for street  
18 sweeping parts, services, and equipment was unreasonably restrained. Public entities in  
19 California, including state agencies, cities, and counties, suffered anti-competitive effects that  
20 included higher prices than out-of-state markets and reduced selection.

21  
22 **VIOLATIONS ALLEGED**

23 **FIRST CAUSE OF ACTION**

24 **(Against Defendant San Diego Rotary Broom -**  
25 ***Per se* Violation of the Cartwright Act,**  
**Section 16720, Business and Professions Code)**

26 17. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs 1  
27 to 16 inclusive, as though the same were set forth in their entirety herein.

28 18. The Defendant's illegal combination with its co-conspirators NATIONWIDE and

1 ACME and KORETOFF with the purpose of unreasonably restraining trade consisted of an  
2 agreement, understanding, and concert of action, the substantial terms of which were to allocate  
3 territories and customers throughout California in the market for street sweeping parts,  
4 equipment, and reconditioning/remanufacturing services.

5 19. Plaintiff is informed and believes that the Defendant may have engaged in bid-rigging  
6 activities in furtherance of the above-described scheme, the substantial terms of which were to  
7 solicit and submit "shadow bids" - that is bids at highly-inflated prices.

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

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

14  
15 **SECOND CAUSE OF ACTION**

16 **(Against Defendant San Diego Rotary Broom -**  
17 **Violation of the False Claims Act,**  
18 **Government Code Section 12650)**

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

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

22 24. Requests for payments pursuant to approved bids, quotes, and/or purchase orders by  
23 state agencies constitute false claims within the meaning of the False Claims Act where such  
24 requests were submitted pursuant to a representation that state and federal antitrust laws had not  
25 been violated and/or that the bid and/or purchase order is genuine and not sham or collusive.

26 25. Defendant SAN DIEGO ROTARY BROOM conspired with co-conspirators  
27 NATIONWIDE and ACME and KORETOFF to defraud state agencies, cities, and/or counties,  
28 and/or made false statements to state agencies, cities, and/or counties, in order to obtain and/or  
allocate contracts for street sweeping parts, equipment, and services without having to compete

1 for said contracts. Said contracts, involving bids, quotes, and/or purchase order, often contained  
2 requirements that the selected provider not violate state and federal antitrust laws in order to  
3 secure the contract and/or that the that the bid and/or quote is genuine and not sham or collusive.  
4 However, Defendant SAN DIEGO ROTARY BROOM conspired to defraud said public entities  
5 by directly violating these representations and/or assisting its co-conspirators to directly violate  
6 these representations. Defendant SAN DIEGO ROTARY BROOM also knowingly made false  
7 statements by engaging in the aforementioned bid-rigging and territorial/customer allocation  
8 activities in violation of these representations.

9  
10 **THIRD CAUSE OF ACTION**

11 **(Against Defendant San Diego Rotary Broom -**  
12 **Violation of the Unfair Competition Law,**  
13 **Business & Professions Code, Section 17200)**

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

16 27. The conduct by Defendant SAN DIEGO ROTARY BROOM described herein,  
17 including its participation in market/customer allocation and bid-rigging schemes and its  
18 submission of false claims pursuant to both schemes, is unlawful as a violation of federal and  
19 state antitrust laws, as well as the state false claims act, or are unfair business practices as  
20 incipient violations of federal and state antitrust laws, and as such is prohibited by Business &  
21 Professions Code section 17200.

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

25 **PRAYER**

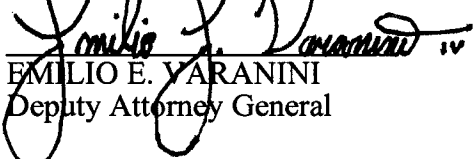
26 **WHEREFORE**, Plaintiff prays for judgment against Defendant SAN DIEGO ROTARY  
27 BROOM as follows:

28 1. That the Court adjudge and decree that the market/customer allocation schemes and bid-

1           9. That the Court grant other legal and equitable relief as it may deem just and proper,  
2 including such other relief as the Court may deem just and proper to redress, and prevent  
3 recurrence of, the alleged violation and to dissipate the anticompetitive effects of the Defendant's  
4 violations.

5  
6 Dated: August 5, 2005

Respectfully submitted,  
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