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**SAN MATEO COUNTY**

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SAN MATEO COUNTY COMMUNITY

COLLEGE DISTRICT

*Exempt from filing fees pursuant to*

*Government Code § 6103*

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

**SAN MATEO COUNTY COMMUNITY  
COLLEGE DISTRICT,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**CASE NO. 17CIV01534**

**FIRST AMENDED CIVIL  
COMPLAINT FOR:**

- 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**

**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.

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

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

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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;

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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,  
(b) processes for obtaining the maximum reimbursement by the U.S.  
25 government of expenses associated with repacking, and (c) preparing all  
filings and applications as may be required by the FCC timely to complete  
26 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  
PricewaterhouseCoopers Advisory Services LLC ("PwC") to serve as  
7 LPN's subcontractor and agent and that PwC may provide to the District  
on behalf of LPN certain of the services set forth in Section 2.2 during the  
8 Quiet Period to the extent that PwC can do so in compliance with the  
FCC's Rules and LPN cannot. To facilitate this arrangement, the District  
9 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  
individuals who shall serve as the District's authorized bidders during the  
12 Auction and who (a) are authorized to place bids on behalf of the District  
during the Auction, (b) will be trained by LPN to be familiar with the  
13 FCC's Rules applicable to the Auction, as well as with Auction processes  
and procedures, and (c) will consult in every round during the Auction with  
14 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 <sup>6</sup> Section 2.4 of the May 16, 2013 Bid Management Agreement provided: "The District expressly  
26 acknowledges that in performing its duties hereunder, LPN may engage independent consultants,  
27 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

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

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

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

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

64. Had LPN performed its duties, the District's bid in Round 23 of the auction would have been submitted, the District would not have been dropped out of the auction, and the District would have continued to Round 24—and any and all subsequent rounds—of the auction according to the parties' auction strategy.

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

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

## SECOND CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing Against LPN)**

66. The District incorporates by reference paragraphs 1 through 65 as if each were fully alleged herein.

67. Implied in the agreements with LPN, including the Bid Management Agreement, is a covenant of good faith and fair dealing which prohibits LPN from taking actions to prevent the District from enjoying the benefits of the contract.

68. As the “exclusive bidding consultant and agent for the District,” LPN was responsible “to develop and implement” any and all strategies to ensure the District’s successful participation in the auction. As the exclusive agent responsible for implementing the parties’ auction strategy for KCSM-TV, LPN had the obligation to assure the timely submission of bids in the auction. LPN’s obligations included development and implementation of strategies and procedures to ensure timely submission of bids in the auction, training and supervising the bidders to “assure their satisfactory performance of the duties” in the auction, keeping the District informed concerning the bidding process “including, but not limited to, the results of each bidding round and expected bids in the next bidding round” and taking “all such other actions as may be reasonably required by the District as its bidding consultant and agent to achieve its successful participation in the Auction.”

69. Pursuant to Section 2.8 of the Bid Management Agreement, LPN and the District further agreed that if the FCC adopted rules for the auction that affected their respective

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



guise that such changes were required by the FCC Quiet Period Rule.

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

72. As a direct and proximate result of LPN's breaches of the implied covenant of good faith and fair dealing the District has sustained, and will continue to sustain, damages in an amount in excess of the minimum jurisdictional amount of this Court to be determined according to proof at trial.

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

### THIRD CAUSE OF ACTION

**(Breach of Fiduciary Duty Against LPN and PwC)**

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

74. As detailed in the Bidding Agreement, the District authorized LPN to act as its “exclusive bidding consultant and agent for the District to develop and implement” any and all strategies to ensure the District’s successful participation in the auction. The District further allowed LPN to “engage independent consultants, agents and subcontractors at its own expense.” However, the agreement required LPN to direct and supervise any work by such agents and, at all times, “LPN shall remain primarily responsible for satisfaction of its obligations hereunder notwithstanding such engagement.”

75. At some point prior to December 2015, LPN engaged PwC to serve as its agent and subcontractor to perform certain of LPN's contractual obligations due to the District. In light of LPN's representations about the need for this arrangement with PwC to comply with the FCC's Quiet Period Rule as well as other assurances that LPN would continue to assure the District's successful participation in the auction, the District executed a letter of authorization acknowledging that LPN had designated PwC "to be responsible for performing LPN's obligations under Section 2.2 of the Agreement and various of its subsections, including monitoring and assisting the District with its participation of Station KCSM-TV (RF Channel 43), San Mateo, California (FCC Facility

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

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

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

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

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

#### **SIXTH CAUSE OF ACTION**

##### **(Contractual Indemnification Against LPN)**

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

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

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

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.

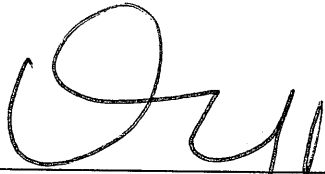
8 **PRAYER FOR RELIEF**

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.

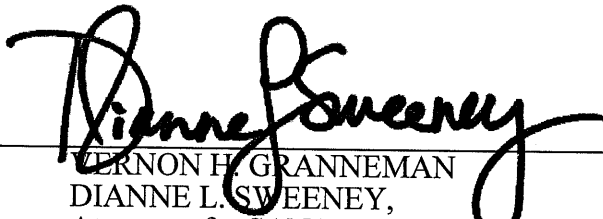
**COUNTY OF SAN MATEO,  
OFFICE OF COUNTY COUNSEL**

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4 

5 By: KATHRYN E. MEOLA  
6 CRAIG N. BAUMGARTNER,  
7 Attorneys for SAN MATEO COUNTY  
8 COMMUNITY COLLEGE DISTRICT

9 Dated: April 12, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

10  
11 

12 By: VERNON H. GRANNEMAN  
13 DIANNE L. SWEENEY,  
14 Attorneys for SAN MATEO COUNTY  
15 COMMUNITY COLLEGE DISTRICT  
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1 **DEMAND FOR JURY TRIAL**

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

3  
4 Dated: April 12, 2017.

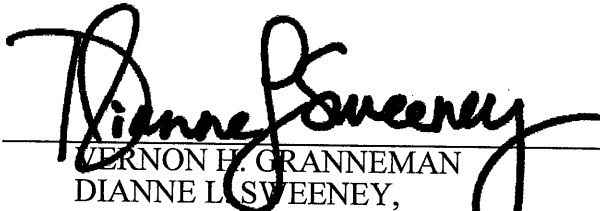
**COUNTY OF SAN MATEO,  
OFFICE OF COUNTY COUNSEL**

5  
6  
7 

8 By: \_\_\_\_\_  
9 KATHRYN E. MEOLA  
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11 Attorneys for SAN MATEO COUNTY  
12 COMMUNITY COLLEGE DISTRICT

13 Dated: April 12, 2017.

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

14  
15 

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20 COMMUNITY COLLEGE DISTRICT