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

**17CIV01550**

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

19 Plaintiffs,

20 v.

21 SAN MATEO COUNTY COMMUNITY  
COLLEGE DISTRICT,  
22

23 Defendant.  
24  
25  
26  
27  
28

Case No.

**COMPLAINT FOR  
BREACH OF CONTRACT**

**DEMAND FOR JURY TRIAL**

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

**APR 10 2017**

Clerk of the Superior Court  
By JORDAN MAXWELL  
DEPUTY CLERK

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

5 **NATURE OF THE ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **THE PARTIES**

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

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

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

9 **JURISDICTION AND VENUE**

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

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

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

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

21 **FACTUAL BACKGROUND**

22 **The District Operates KCSM**

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

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

described in the license.

29. The KCSM website states that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 *LPN's Subsidy Payments*

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

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

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

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

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

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

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

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

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

11 (vi) No Material Adverse Effect has occurred.

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

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

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

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

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

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

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

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

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

15 *LPN’s Contractual Reimbursement Right*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amount of \$114,494,613.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **FIRST CAUSE OF ACTION**

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

18 **(Funding Agreement § 6.9)**

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

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

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

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

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

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

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

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

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

## 15 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

### 15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

#### 18 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147. As described above in the five Causes of Action of this Complaint, the District breached its obligations under the Funding Agreement and the Bid Management Agreement, thereby breaching § 10.b of the Put/Call Option Agreement.

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

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

### SEVENTH CAUSE OF ACTION

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

**(Funding Agreement § 6.9)**

150. LPN hereby incorporates the preceding paragraphs 1 through 149 of this Complaint by reference as if set forth here again in full.

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

152. LPN has fully performed its duties under the Funding Agreement.

153. Funding Agreement § 6.9 required the District to “perform all of its obligations under the terms of” the Bid Management Agreement and the Put/Call Option Agreement.

154. As described above in the six Causes of Action of this Complaint, the District breached its obligations under the Bid Management Agreement and the Put/Call Option Agreement, thereby breaching § 6.9 of the Funding Agreement.

155. As a direct and proximate result of the District's breach, the Auction Option became worthless. LPN therefore suffered damages in the amount of 36.5% of the Auction proceeds to which it would have been entitled by the Auction Option, and which would have resulted from the relinquishment of KCSM's spectrum if the District had performed its

obligations under the Funding Agreement.

## **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

#### 20 **PRESENTATION OF CLAIMS**

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

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

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

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

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

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

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

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff LPN demands a jury trial in this action.

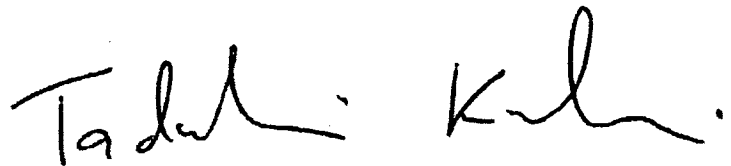
9 **PRAYER FOR RELIEF**

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

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

18  
19 DATED: April 10, 2017

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

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