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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15

16 PEOPLE OF THE STATE OF CALIFORNIA,
17 Plaintiff,
18 v.
19 J.A. MOMANEY SERVICES, INC.,
20 a California Corporation,
and DOES 1 through 100, inclusive,
21 Defendants.
22

Case No.
**COMPLAINT FOR A
PRELIMINARY AND
PERMANENT INJUNCTION,
CIVIL PENALTIES, ATTORNEYS'
FEES, AND OTHER EQUITABLE
RELIEF BASED ON VIOLATIONS
OF THE CARTWRIGHT ACT AND
UNFAIR COMPETITION ACT**

1 **INTRODUCTORY STATEMENT**

2 By this Cartwright Act and Unfair Competition Act action, California Attorney General
3 Bill Lockyer challenges certain anti-competitive conduct pervasive in Northern California and
4 Northern Nevada, specifically, tie-in sales of traffic signal equipment and other violations of the
5 antitrust laws. Such sales have gone on for years, affected thousands of intersections throughout
6 the region, and hundreds of cities and counties which ultimately pay the cost of such illegal
7 conduct. He seeks to restore competition, and impose civil penalties on the persons responsible
8 for engaging in such conduct.

9 **PARTIES, JURISDICTION, AND VENUE**

10 The People of the State of California, ex rel Bill Lockyer, Attorney General of the State of
11 California (“the People”), allege the following:

12 1. Bill Lockyer is the Attorney General of the State of California (“the Attorney
13 General”) and is authorized to enforce the Cartwright Act and Unfair Competition Act on behalf
14 of the People of the State of California, pursuant to Business & Professions Code sections 16754,
15 17204 and 17206. The Attorney General has an office in the County of San Francisco and brings
16 this action on behalf of the People.

17 2. Defendant J.A. Momoney Services, Inc. (“JAM Services”), which does business as
18 JAM Services, is, and at all relevant times mentioned herein was, a corporation organized
19 pursuant to the laws of the State of California with its principal offices in the City of Livermore,
20 County of Alameda.

21 3. The true names and capacities of defendants named herein as DOES 1 through 100
22 are unknown to plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff
23 will amend this complaint to show the true names when the same have been ascertained.

24 4. Plaintiff is informed and believes, and thereupon alleges, that at all times material
25 hereto, defendants, and each of them, were and are now acting as a principal, agent and/or joint

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1 venturer of all other defendants, or conspired with said defendants to commit the unlawful acts
2 herein alleged.

3 5. At all times relevant to this complaint, defendants engaged in the business of
4 buying, selling and distributing automobile and pedestrian traffic control equipment for use by
5 public entities throughout Northern California and Northern Nevada, including within the County
6 of San Francisco. JAM Services has several express and defacto agreements with various
7 manufacturers and distributors which make JAM Services the only purchase source available to
8 electrical contractors in Northern California for certain traffic signal products. Based on the
9 economic power these agreements provide, defendants have engaged in a pattern and practice of
10 acts of unfair competition, including, but not limited to, offering to engage in and engaging in,
11 unlawful tie-in sales to contractors, and have unreasonably restrained trade and competition in the
12 traffic signal industry, including competition for the installation of traffic signals for thousands of
13 public intersections throughout Northern California and Northern Nevada.

14 6. JAM Services does business in the County of San Francisco and venue is
15 therefore proper under Business and Professions Code section 16754. Additionally, the
16 violations of law described were committed wholly or in part throughout Northern California,
17 including the County of San Francisco, with injuries occurring throughout Northern California
18 and in the County of San Francisco.

19 7. Unless enjoined and restrained by an order of this Court, defendants, and each
20 of them, will continue to engage in the unlawful acts and conduct set out herein resulting in
21 irreparable harm to competition and to the public.

22 **RELEVANT GEOGRAPHIC AND PRODUCT MARKETS**

23 8. The relevant geographic market is all parts of California north of, and including,
24 Kern County, California and Northern Nevada, or that portion of Nevada north of Clark County.

25 9. The relevant product market is traffic signal equipment, including, but not limited
26 to, traffic signal controllers (“controllers”), traffic signal cabinets (“cabinets”), traffic signal

1 displays, video detection systems, and emergency vehicle preemption devices. Electrical
2 contractors install, and often maintain, such equipment on behalf of public and private entities for
3 use in traffic signals on public streets. There is a separate and independent demand for each of
4 these products.

5 10. A controller is present at every intersection with a traffic signal. A controller is a
6 computerized device which controls the timing of the traffic signals, permitting synchronization of
7 traffic signals from intersection to intersection in order to facilitate traffic flow. Four major types
8 of controllers used in California are:

9 (A) Traconex and Multisonics controllers which comply with National
10 Electrical Manufacturers' Association ("NEMA") guidelines,
11 manufactured by U.S. Traffic, Inc., ("U.S. Traffic").

12 (B) Econolite NEMA controllers, manufactured by Econolite Control
13 Products, Inc., ("Econolite").

14 (C) The 170 Controller, ("170") used and developed by CalTrans and other
15 public entities in response to the proprietary guidelines promulgated by
16 NEMA. Because the technology is open, the 170 controller is
17 manufactured by several companies and is widely available.

18 (D) 2070 controllers which, like the 170 controllers, utilize open
19 technology, but are presently only manufactured by Safetran, Econolite,
20 Eagle, and Naztec. 2070 controllers which are presently approved for use
21 by CalTrans are manufactured only by Safetran, Eagle, and Naztec.

22 11. The Traconex, Multisonics, and Econolite controllers, also known as NEMA
23 controllers, use proprietary communication protocols which are incompatible with each other, or
24 with the 170 and 2070 controllers. Thus, to obtain the full benefits of traffic signal
25 synchronization along its streets, a public entity must decide on a particular type and/or brand of
26 controller, and thereafter continue to install that controller at each of its intersections.

1 **NATURE OF THE VIOLATIONS**

2 16. Public entities are continually building and developing roads and intersections in an
3 effort to improve traffic congestion and automobile and pedestrian travel. Typically, public
4 entities develop plans and specifications for such projects, detailing the particular traffic signal
5 components and equipment they require for the project. The public entity then publishes these
6 plans and specifications, and requests electrical contractors to submit bids for the project,
7 generally choosing the lowest responsible bidder as the project contractor. In order to prepare a
8 bid, electrical contractors obtain prices from distributors and manufacturers for the various
9 materials and equipment specified by the public entity, and prepare a bid based on the cost of
10 materials and labor.

11 17. JAM Services occupies a dominant position in the market for the sale, resale,
12 and distribution of many traffic signal-related products to electrical contractors in Northern
13 California and Northern Nevada. Due to express or defacto agreements with manufacturers and
14 other distributors, JAM Services is the only source of many proprietary traffic signal-related
15 products for contractors in Northern California and Northern Nevada. The following products
16 (“the proprietary products”) constitute a non-exhaustive list of items which contractors in
17 Northern California must purchase from defendant and not from any another source:

- 18 (A) NEMA controllers (manufactured by U.S. Traffic and Econolite);
- 19 (B) Video detection systems (manufactured by Iteris, Econolite, and Peek);
- 20 and
- 21 (C) Emergency vehicle preemption devices (manufactured by 3M and
22 Econolite).

23 18. As a result of defendant’s exploitation of its status as exclusive distributors or
24 resellers of certain products, whose proprietary features create technological incompatibility
25 between otherwise similar products as well as prohibitive switching costs, public entities, who are
26 end-users, are the victims of a "lock-in" effect, wherein they are faced with the choice of

1 continuing to purchase such products from defendant or lose the full benefits of synchronization
2 of their intersections. The necessary consequence of such a lock is that competition
3 in such projects is foreclosed, resulting in increased costs to the public entity end-users and,
4 ultimately, the taxpayers.

5 **FIRST CAUSE OF ACTION**

6 Violation of Cartwright Act, Bus & Prof. Code § 16720

7 (Unlawful Tie-In Sales, Per Se Violation)

8 19. Plaintiff repeats and realleges Paragraphs 1 through 19 hereof.

9 20. Defendant has engaged in, or facilitated, illegal tie-in sales. Defendant has a
10 practice of engaging in tie-in sales, with certain exceptions, whenever any traffic signal project
11 requires products that are only available to contractors through JAM Services. Products
12 exclusively available from JAM Services include, but are not limited to, certain NEMA
13 controllers, video detection systems, and emergency vehicle preemption devices (“tying
14 products”). In such cases, as a condition of selling the tying products, defendant requires
15 electrical contractors to purchase non-proprietary products, including, but not limited to, traffic
16 signal display equipment, cabinets, and 170 controllers (“the tied products”).

17 21. There is sufficient demand by public entities, and others, for the purchase of the
18 tied products separate from the tying products so that the tying and tied products are separate and
19 distinct products.

20 22. Defendant has sufficient economic power permitting it to engage in tie-in sales.
21 JAM Services’ economic power is based on one, more, or all of the following:

- 22 (A) Public entities specify traffic signal products which utilize proprietary
23 technology, and which are only available from JAM Services;
24 (B) Contractors reasonably fear losing an indispensable supply source if the tie-
25 in practice is challenged;

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- (C) Public entities are locked-in to a particular brand of proprietary product once they elect a particular brand, as the switching costs are prohibitively high;
- (D) JAM Services represents to the contractors that it quotes and sells the tied and tying products to other contractors at the same price;
- (E) The contractors are able to pass on increased costs to the cities and other municipalities with a mark-up;
- (F) Defendant’s practice is to provide quotes to contractors only hours before electrical contractors’ bids to the public entities are due, foreclosing any meaningful opportunity for contractors to demand a break-out of prices in order to purchase tied items at competitive prices, or to otherwise challenge lump sum quotes provided by JAM Services; and
- (G) Defendant fails to disclose to its supply sources the totality of the products it sells exclusively, specifically, products which compete with those of the various suppliers.

23. Defendant’s tie-in sales restrain competition in the market for non-controller, non-proprietary, and more commonly available equipment, and result in an overcharge to the end-users. Defendant’s tie-in sales harm competition in any or all of the following respects:

- (A) Tie-in sales impair competition for public entity contracts by preventing electrical contractors from competing for such contracts based on the price of the non-proprietary equipment. As a result of the tie-in sales, contractors are overcharged for the tied products. The contractors, believing they receive the same lump sum quoted prices from JAM Services, have no incentive to challenge the practice because they pass-through the overcharge to the public entities with an additional mark-up;

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1 (B) Tie-in sales are a barrier to entry into the traffic signal installation business
2 to electrical contractors who desire to compete for public entity contracts
3 based on the price of the tied products; and

4 (C) Tie-in sales foreclose other distributors from competing with JAM
5 Services, particularly other distributors who also sell the tied products in
6 traffic signal projects that include any of the proprietary products.

7 24. As a direct and proximate result of defendant's tie-in sales, a not insubstantial
8 amount of commerce has been, and continues to be, affected in the tied product markets.
9 Defendant's tie-in sales have impacted thousands of purchases of traffic signal equipment,
10 involved projects specified by many dozens of public entities, affected many hundreds of bids on
11 traffic signal projects, and impacted the businesses of dozens of contractors and distributors.

12 25. There is no legitimate business justification for the tie-in sales engaged in by
13 defendant, and the anticompetitive effects of said conduct far outweigh any purported efficiencies
14 generated thereby.

15 26. Defendant's tie-in sales result in or threaten irreparable harm in at least one of
16 the following ways: the tie-in sales violate Business and Professions Code sections 16720 and
17 17200, limit the number of distributors and contractors who may compete for traffic signal
18 projects based on the price of non-proprietary products because of their inability to obtain
19 proprietary products, and cause cities and other public entities to be overcharged for traffic
20 signals.

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1 **SECOND CAUSE OF ACTION**

2 Violation of Cartwright Act, Bus. & Prof. Code § 16727

3 (Unlawful Tie-in sales, Per Se Violation)

4 27. Plaintiff repeats and realleges Paragraphs 1 through 26 hereof.

5 28. Defendant’s conduct with respect to the sale of traffic control equipment for use
6 within the State of California constitutes illegal per se tie-in sales in violation of Business &
7 Professions Code section 16727.

8 **THIRD CAUSE OF ACTION**

9 (Unfair Competition)

10 29. Plaintiff repeats and realleges Paragraphs 1 through 28 hereof.

11 30. The practices described are violations of the antitrust laws or constitute incipient
12 violations of antitrust laws, constitute acts of unfair competition, and are prohibited by Business
13 and Professions Code section 17200. Each tie-in sale, and solicitation of such sale, constitutes an
14 act of unfair competition.

15 **PRAYER**

16 **WHEREFORE**, plaintiff prays for judgment against defendant as follows:

17 1. For a preliminary and permanent injunction barring the illegal conduct alleged
18 above and restoring effective competition in the relevant markets;

19 2. That pursuant to Business and Professions Code section 17206, defendant be
20 ordered to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) for each act of
21 unfair competition, for a total of not less than One Million Five Hundred Thousand Dollars
22 (\$1,500,000.00);

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1 3. That plaintiff recover its costs of suit herein, including costs of investigation and
2 reasonable attorney fees attributed the causes of action alleged above; and
3 4. For such other and further relief as the Court may deem just and proper.
4 Dated: November 25, 2003.

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6 BILL LOCKYER
7 Attorney General of the State of California

8 By: _____
9 Margaret E. Spencer
10 Deputy Attorney General

11 Attorneys for the Plaintiff
12 People of the State of California

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