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7 Attorneys for Plaintiff
MITCHELL ENGINEERING

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 MITCHELL ENGINEERING, a California
13 corporation,

14 Plaintiff,

15 v.

16 CITY AND COUNTY OF SAN FRANCISCO, a
political subdivision of the State of California;
17 ANTHONY IRONS, in his individual capacity and,
alternatively, in his official capacity as Assistant
18 General Manager of the San Francisco Public
Utilities Commission; MICHAEL QUAN, in his
19 individual capacity and, alternatively, in his official
capacity as Director of the Construction
20 Management Bureau of the San Francisco Public
Utilities Commission; ALAN WONG, in his
21 individual capacity and, alternatively, in his official
capacity as a Safety Manager of the San Francisco
22 Public Utilities Commission; and DOES 1-10,
inclusive,

23 Defendants.
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CV Case No. 08

4022

COMPLAINT FOR DAMAGES FOR:

- 1) VIOLATION OF FEDERAL CIVIL RIGHTS ACT [42 U.S.C. §1983];
- 2) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS;
- 3) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- 4) NEGLIGENCE INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; AND
- 5) CONSPIRACY

DEMAND FOR JURY TRIAL

FILED
08 AUG 22 PM 2:05
RICHARD MORRIS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

EMC

1 Plaintiff MITCHELL ENGINEERING (“MITCHELL”), by its attorneys, Duane Morris LLP,
2 and for its complaint against defendants CITY AND COUNTY OF SAN FRANCISCO (“CITY”), a
3 municipal corporation and political subdivision of the State of California; ANTHONY IRONS
4 (“IRONS”), in his individual capacity and, alternatively, in his official capacity as Assistant General
5 Manager of the San Francisco Public Utilities Commission (“SFPUC”); MICHAEL QUAN
6 (“QUAN”), in his individual capacity and, alternatively, in his official capacity as the Director of the
7 Construction Management Bureau of the SFPUC; and ALAN WONG (“WONG”), in his individual
8 capacity and, alternatively, in his official capacity as a Safety Manager of the SFPUC, alleges as
9 follows:
10

11 **THE PARTIES**

12 1. Plaintiff MITCHELL is now, and was at all times relevant hereto, a corporation duly
13 organized and existing under the laws of the State of California, having its principal place of business
14 in San Francisco, California and duly licensed as a contractor by the State of California’s Contractors
15 State License Board, under License No. 754676, to perform all acts herein alleged.
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17 2. Defendant CITY is a municipal corporation and a political subdivision of the State of
18 California.
19

20 3. SFPUC is a department of the CITY that provides drinking water, wastewater
21 collection, and municipal power services to the citizens of San Francisco and other customers.
22

23 4. SFPUC is organized into several bureaus or departments, which are responsible for
24 engineering, design, and construction management in connection with the construction of water
25 treatment and delivery systems for the CITY and other regional water districts.
26

27 5. Defendant IRONS is and at all times relevant to this action was employed by the CITY
28 as the Assistant General Manager of the SFPUC.

1 6. Defendant QUAN is and at all times relevant to this action was employed by the CITY
2 as the Director of the Construction Management Bureau of the SFPUC.

3 7. Defendant WONG is and at all times relevant to this action was employed by the CITY
4 as a Safety Manager of the SFPUC.

5 8. MITCHELL is ignorant of the true names and capacities of DOES 1 through 10,
6 inclusive, as it is anticipated that additional CITY employees were involved in the actions described
7 herein, and that such additional CITY employees may be discovered during this action; and therefore,
8 MITCHELL sues such defendants by these fictitious names. When each defendant's true name and
9 capacity is ascertained, MITCHELL will amend this Complaint by naming each defendant sued
10 fictitiously herein by its true name and capacity.

11 9. MITCHELL is informed and believes, and on that basis alleges, that each of these
12 fictitiously-named defendants acted willfully or in conscious disregard of MITCHELL's rights and/or
13 was negligent, careless, liable, or otherwise legally responsible in some manner for the events and
14 occurrences alleged herein and that MITCHELL's damages were proximately caused by these
15 defendant's acts.

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18 **JURISDICTION AND VENUE**

19 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a civil
20 action arising under the Constitution, laws, or treaties of the United States, specifically, 42 U.S.C.
21 §1983 and 1988. Additionally, this Court has supplemental jurisdiction over each of the state law
22 claims alleged herein pursuant to 28 U.S.C. §1367(a).

23 11. This Court has personal jurisdiction over all of the Defendants because the Defendants,
24 and each of them, reside or are located in the Northern District, including the City and County of San
25 Francisco.
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1 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because all of the
2 Defendants reside or are located in the Northern District, including the City and County of San
3 Francisco. Venue is also proper, pursuant to 28 U.S.C. § 1391(a), because the wrongful acts, and a
4 substantial part of the claims alleged herein, arose in the Northern District.
5

6 INTRADISTRICT ASSIGNMENT

7 13. Pursuant to Northern District Local Rules 3-5(b) and 3-2(c), this action is properly
8 assigned to the San Francisco Division of the Northern District because a substantial part of the
9 events or omissions which give rise to the claims herein occurred within the City and County of San
10 Francisco.
11

12 INTRODUCTION

13 14. This action arises following the discovery of facts demonstrating an intentional,
14 concerted effort by the CITY and several senior CITY administrators, to prevent MITCHELL from
15 bidding, performing and being compensated for its work on a series of CITY projects. These acts and
16 omissions were carried out pursuant to a policy implemented and approved by the CITY and its senior
17 administrators designed to significantly interfere with MITCHELL's existing contractual relationships
18 and prospective business opportunities with other entities, with the expressly stated objective of
19 ultimately driving MITCHELL out of the City of San Francisco and out of business.
20

21 15. Specifically, MITCHELL has learned through the deposition testimony of several
22 SFPUC employees in pending actions between MITCHELL and the CITY, that the CITY, through
23 Defendants IRONS, QUAN, and WONG, implemented a policy intended to interfere with
24 MITCHELL's work on other unrelated public and private projects, and the existing and prospective
25 contractual and business relationships with MITCHELL's banks, contractors, subcontractors,
26 suppliers, vendors, sureties, and other governmental entities.
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1 16. On June 24, 2008, Tom Farnham, an SFPUC construction inspector employed by the
2 CITY, testified under oath as follows:

3 Q. Have you ever heard anyone say that there's someone in the City that's out to get
4 Mitchell Engineering?

5 A. Yes. ...

6 A. I have heard Alan Wong say it, and I heard Carl Lee say it.

7 Q. What did Alan Wong say regarding somebody in the City being out to get Mitchell?

8 A. He said Mike Quan wanted Mitchell Engineering out of the City....it was shortly after
9 [the] Dewey [project], and I would say probably before either the very beginning or
10 right before the startup of [the] Lincoln [project] and the pump station on Sloat...

11 Q. Did you hear Carl Lee say that he wanted Mitchell Engineering either hurt or out of
12 the City or any words to that effect?

13 A. I guess I would say yes on that....

14 Q. What did Mr. Carl Lee say about someone in the City wanting to either cause harm to
15 Mitchell Engineering or to get them out of the City?

16 A. Okay. He said they were going to hold up payments because Mitchell Engineering
17 was spread too thin, so their bank wouldn't be able to cover it.

18 Q. And as best you can recollect, could you tell me what his words were?

19 A. Well, he said: The way we're going to get Mitchell out of the City, or bust them, was
20 to hold up their progress payments, because they were spread too thin.

21 Q. Was there some mention of "bank" in his comment?

22 A. Yes.

23 Q. What did he say with respect to the bank or Mitchell's bank?

24 A. Just: we're going to hold up their progress payments, because they've got so many
25 jobs going on right now. They are spread too thin. Their bank won't be able to cover
26 it.

27 Q. ... Did you hear anyone say that they wanted to blame Mitchell Engineering on the - -
28 for the subsidence on [the] Dewey [project]- -

 A. Yes.

 Q. And who did you hear say that?

1 A. That was Mike Quan and Alan Wong....They told me to keep my mouth shut, don't
2 talk to [then SFPUC General Manager] Susan Leal. They wanted to blame it on
3 Mitchell.

4 Q. Did Mr. Alan Wong ever say why either he or Mike Quan or anyone else would want
5 Mitchell Engineering out of the City?...

6 A. Reason they wanted him out, because they had gotten too big, and they needed to be
7 taught a lesson, that Mr. Silva was getting a little too brash, I guess. That wasn't the
8 word, but pushy or whatever....Mike Quan didn't tell me that, no. Alan Wong did.

9 17. On June 25, 2008, the following day, a second CITY employee, SFPUC construction
10 inspector Dan Helminiak, testified under oath as follows:

11 Q. At any time did you hear anybody say they wanted to hurt Mitchell Engineering or
12 words to that effect?

13 A. The only time that just because you're probably going to ask me in a different way
14 but yeah, during my interview in 2005 Kevin Barteaux says that - - I asked him what
15 - - what contractors you guys use here in the city? And he said Mitchell
16 Engineering...I said I've never heard of them. He says we're trying to run them out
17 he says.

18 * * * * *

19 Q. And what was it that Wyman Lee was doing you thought was unfair and/or unethical?

20 A. I recall there was some temporary striping out on...Sloat Boulevard where Mitchell
21 had blacked it out after using it, and he showed me the specs. The specs - he wanted
22 to know my interpretation of the specs and basically Mitchell was required to
23 maintain temporary striping at all times. So once the work was completed, they
24 blacked this temporary striping out and he felt that they didn't do a good enough job.
25 And at the time I'm thinking well, you know, you guys got a pump station you got to
26 get started up there. Why don't you guys - if I was you I would be concentrating on,
27 you know, getting your start-up activities going. Let's get this thing on-line.
28 Everybody seemed to be dwelling on this temporary striping. And I just - I just felt
at the time that it wasn't the right avenue to take and they dwelled on this for two
weeks. And I just felt - I said I think you're being unfair...

Q. What was Mr. Wyman Lee's response to your statement that I think you're being
unfair?

A. I'm doing what I'm doing so that the people coming up don't have to deal with this.

18. On July 1, 2008, further corroborating testimony was provided by SFPUC Resident
Engineer Kevin Barteaux, who testified under oath as follows:

Q. Have you ever heard anyone say that they wanted Mitchell Engineering not to
contract with the City?

A. Not in those exact words but I've heard concern because of prior problems with

1 projects that they prefer Mitchell not do business with the PUC. ... There was a
2 meeting we had with Tony Irons, Alan Johanson, Michael Quan at Market Street.

3 * * * * *

4 A. So yes there was concern that they preferred there was no more work with Mitchell in
5 the future.

6 Q. Who expressed that concern?

7 A. Again I'm not sure. It was at that meeting it would have been one of those three, but
8 I believe it was Tony Irons.

9 19. The above testimony of CITY employees Tom Farnham, Dan Helminiak, and Kevin
10 Barteaux, and related facts alleged below, form the basis for MITCHELL's claims alleged herein.

11 **GENERAL ALLEGATIONS**

12 20. MITCHELL is part-owned, managed and operated by Curt Mitchell, a fourth
13 generation contractor whose local, family-run construction business maintained a long and successful
14 relationship with the CITY. Together with co-founder Michael Silva, Curt Mitchell has continued to
15 work for the CITY, including the construction by MITCHELL of significant improvements to the
16 CITY's aging fresh water delivery system. MITCHELL also performed extensive work on projects
17 involving the CITY's wastewater treatment and disposal systems. Prior to founding MITCHELL,
18 Curt Mitchell and Michael Silva managed major projects along the CITY's Embarcadero Waterfront
19 District performed by another contractor, including the South and Mid-Embarcadero projects.

20 21. Following its formation in 1999, MITCHELL grew from a small contractor with a few
21 million dollars of annual gross revenues into a successful regional contractor, employing over 65
22 salaried employees and several hundred union employees, with annual gross revenues in recent years
23 approaching \$90 million. As set forth below, a significant portion of MITCHELL's work involved
24 construction projects for the CITY. MITCHELL also undertook and successfully completed major
25 projects for other public agencies outside San Francisco, as well as work for private owners and
26 developers throughout Northern California.
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28

1 22. MITCHELL has received numerous honors for its public works projects for the CITY
2 and for other projects outside the CITY, including appearing on the cover of California Constructor
3 magazine on nine occasions, and dedication of a plaque honoring MITCHELL and others at the site of
4 a CITY improvement project.

5
6 23. MITCHELL has successfully completed major projects for multiple CITY
7 departments, including the CITY's Department of Public Works ("DPW"), which designs and
8 manages the construction of various public facilities and coordination of CITY street excavations.

9 24. MITCHELL also worked with the CITY and its Municipal Transportation Agency,
10 which oversees San Francisco's Municipal Railway ("MUNI"), on the Third Street Light Rail Transit
11 Project. This project, which began in 2003, was divided into several segments located along the
12 southern portion of Third Street in San Francisco, and consisted primarily of the construction of a
13 total of approximately 5.2 miles of double track and underground utilities for electrical, sewer, water
14 and high-pressure water systems.

15
16 25. MITCHELL, separately and with a partner (who together formed joint venture MEOC
17 ("MEOC")), successfully installed approximately 4 of the 5.2 total miles of track and associated
18 utilities, numerous railway platforms, thousands of linear meters of concrete piles, tens of thousands
19 of metric tons of asphalt paving, and removed over 19,000 metric tons of hazardous waste as part of
20 its work on the Third Street Light Rail Transit Projects.

21
22 26. MITCHELL also worked with the SFPUC successfully completing improvements to
23 the CITY's water delivery system, including improvements to the Yosemite Valley's Hetch Hetchy
24 and O'Shaughnessy Camp facilities, the Irvington Portal in Fremont, Sunset and Sutro Reservoirs, the
25 Crystal Springs pipeline, and numerous pump stations and water pipes throughout the City and
26 County of San Francisco.

1 27. Based in part on MITCHELL's extensive and long-standing relationships with the
2 CITY and its various departments, including the SFPUC, DPW, and MUNI, MITCHELL and the
3 CITY completed these large-scale and expensive projects without major delays or disputes, and
4 without the filing of claims or litigation, despite the complex nature of each of these projects.
5

6 **THE FOURTH STREET BRIDGE PROJECT**

7 28. In or about August 2002, the CITY invited bids on a contract for the Seismic Retrofit
8 & Rehabilitation of Fourth Street Bridge Over Mission Channel Waterway, Federal Aid Project No.
9 STPLZ-5934(080) Contract No. 1990N (the "Fourth Street Bridge Project"), all in accordance with
10 the CITY's plans and specifications and other contract documents prepared by the CITY.

11 29. The CITY hired construction consultant Patrick Collins prior to bid to review the
12 CITY's plans and specifications for the Fourth Street Bridge Project. The CITY requested Mr.
13 Collins determine if the work of improvement could be constructed from the CITY's plans and
14 specifications, and determine what types of problems a contractor was likely to encounter during
15 construction.
16

17 30. The CITY's consultant determined that the project could not be constructed pursuant to
18 the CITY's plans, and that the contractor would encounter myriad significant problems because of
19 deficiencies in the plans and specifications. Among the problems anticipated by Mr. Collins were
20 design conflicts involving the large counterweight on the Fourth Street Bridge and the wharf. He also
21 advised the CITY that there was not enough room in China Basin to install the coffer dam necessary
22 for construction below the waterline. He further advised the CITY that there were serious conflicts
23 between the location of existing piling and the piles to be constructed during the project.
24

25 31. None of these findings were disclosed to any of the Fourth Street Bridge Project
26 bidders, including MITCHELL.
27
28

1 32. MITCHELL submitted a bid on behalf of MEOC on October 9, 2002. MEOC was
2 determined to be the lowest responsive, responsible bidder, and on that basis, awarded the contract for
3 the Fourth Street Bridge Project.

4 33. Significant problems were encountered even before the CITY and MEOC executed a
5 written contract for the project and continued through the conclusion of MEOC's work on the project
6 in 2005. Among other considerable problems, MEOC experienced construction difficulties arising
7 from:
8

9 a. The CITY's inaccurate depiction of piling locations, which were found to be
10 in conflict with an existing Auxiliary Water Supply System ("AWSS") line;

11 b. The CITY's design alignment of the AWSS, which conflicted with the
12 location of a required cofferdam;

13 c. Inaccurate information provided by the CITY erroneously indicating that the
14 mud line at the bridge site was 17 feet lower than the actual mud line, despite earlier contrary
15 findings by divers hired by the City;

16 d. Inaccurate information provided by the CITY regarding the contours and
17 composition of the bedrock underlying the bridge and its supports, which was inconsistent with the
18 deeper and steeper contours of the actual bedrock;

19 e. Inaccurate geotechnical data provided by the CITY, the correction of which
20 led to increased blow counts for pile driving and a re-evaluation of the type of piles to be installed on
21 the project;

22 f. Excessive numbers of wooden piles and other buried obstructions were
23 encountered during construction of the cofferdam, which were not indicated on project documents;
24 and
25

26 g. Delays associated with cofferdam design approval by the CITY.
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1 34. As a result of these numerous and significant problems, many of which were
2 anticipated by the CITY's consultant but never disclosed to MEOC, MITCHELL or other bidders,
3 MEOC was eventually forced to file a Government Code claim against the CITY to recoup damages
4 sustained on the Fourth Street Bridge Project.

5
6 35. The parties submitted their dispute to a neutral Dispute Review Board ("DBR") in
7 2006, as required under the terms of the Dispute Review Board Agreement for the Fourth Street
8 Bridge Project. The DRB was comprised of three internationally-renown and highly-regarded
9 engineers with approximately 100 years of engineering and construction experience between them.

10 36. Following the presentation of fourteen separate issues by the parties during a series of
11 hearings in 2006, the DRB issued written findings in May 2007, which concluded that the CITY's
12 consultant correctly determined in advance that the CITY's plans and specifications were severely
13 flawed, and that the CITY had seriously mishandled the design and construction of the project.

14
15 37. Among other things, the DRB found:

16 a. The CITY failed to exercise due diligence when preparing certain sections of
17 the Fourth Street Bridge Project documents for bid;

18 b. Various pre-bid documents provided to bidders, including MITCHELL and
19 MEOC, were insufficient and deficient;

20 c. Certain project plans and specifications were defective, incorrect and/or
21 contained missing information;

22 d. The CITY's administration of scheduling matters was contrary to the intent of
23 the parties' contract and prevented MEOC from performing its work in accordance with the
24 provisions of the contract; and
25

26 e. The CITY's interpretation of the contract scheduling provisions violated the
27 contract's covenant of good faith and fair dealing.
28

1 38. As a result of these and other findings, the DRB recommended that MEOC and
2 MITCHELL be compensated on the basis of a modified total cost method. Using a modified total
3 cost method of calculating the amounts due MEOC estimated its modified total costs of performance
4 were \$23.4 million. However, the CITY failed and refused to pay MEOC its modified total costs of
5 performance.
6

7 39. During the course of the Fourth Street Bridge Project and subsequent DRB
8 proceedings, MITCHELL was contacted by reporters from various television stations, newspapers
9 and magazines regarding the status of the project and progress toward resolving the dispute with the
10 CITY regarding the design and administration of the project. MITCHELL responded truthfully that
11 the CITY's plans and specifications were misleading and defective in material respects, and that the
12 CITY refused to resolve the parties' outstanding dispute, notwithstanding the findings and
13 recommendations of a neutral DRB panel. As a result, local media carried stories portraying the
14 CITY's administration of the Fourth Street Bridge project in a negative manner.
15

16 40. Further, Mitchell contacted members of the CITY's Board of Supervisors to inform the
17 elected representatives of the CITY's governing body that responsible CITY administrators were
18 mishandling the Fourth Street Bridge Project and the resulting dispute resolution process.
19 MITCHELL is informed and believes, and on that basis alleges, that during the course of the dispute
20 with the CITY regarding the Fourth Street Bridge Project, MITCHELL's relationship with the CITY
21 and various departments and employees of the CITY began to deteriorate significantly, due largely to
22 the nature, extent, and severity of the problems associated with the Fourth Street Bridge Project, the
23 CITY's mishandling of these problems and the dispute resolution process, and the negative attention
24 which CITY administrators received in the media and from members of the Board of Supervisors as a
25 result.
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MITCHELL'S PROJECTS WITH THE SFPUC

1
2 41. Between 2000 and approximately 2004, MITCHELL bid on and was awarded
3 contracts for a series of fresh water system projects by SFPUC. These projects included
4 improvements to the Sunset Reservoir (the "Sunset Project"), the installation of new and replacement
5 pipeline and pump station equipment at the Central, Clarendon and Summit Pump Stations (the
6 "Central Pump Project," "Clarendon Project," and "Summit Project," respectively) and new pipelines
7 along Lincoln Avenue and Dewey Boulevard (the "Lincoln Project" and "Dewey Project,"
8 respectively) (hereinafter collectively referred to as the "PUC Projects").
9

10 42. MITCHELL's work on the PUC Projects, which continued until this year, was, in
11 general terms, successful and unremarkable until MEOC encountered significant difficulties with the
12 CITY on the Fourth Street Bridge Project, as described above. Following the negative news
13 coverage, MITCHELL's contacts with the Board of Supervisors, the DRB hearings, and associated
14 findings adverse to the CITY, MITCHELL's relationship with the CITY deteriorated immediately and
15 precipitously, and the CITY begin to administer MITCHELL's contracts with the PUC in an improper
16 and vindictive manner.
17

18 43. Beginning in 2004, MITCHELL experienced a pattern of consistently harmful
19 treatment by the CITY and its employees, including SFPUC administrators, designed to interfere with
20 its prosecution of its work on the PUC Projects and other projects associated with the CITY.
21

22 44. For example, the Central Pump Project, which began in 2004, involved numerous
23 CITY-caused delays and associated requests by MITCHELL for time extensions and cost adjustments
24 through contract change orders. Following the Fourth Street Bridge Project dispute, the CITY began
25 issuing unilateral change orders, which modified the scope of work on the Central Pump Project by
26 adding work, but refused to award MITCHELL additional time in which to complete the added work
27 required by the CITY, all contrary to the express provisions of the contract for the Central Pump
28

1 Project. Thereafter, the CITY began unilaterally assessing liquidated damages against MITCHELL of
2 \$6,000 per day and eventually terminated MITCHELL on January 2, 2007.

3 45. In addition, during the course of the Lincoln Project between mid-2004 and January
4 2007, the CITY issued a total of 23 change orders, which amounted to more than \$1.1 million in
5 additional or changed work. The CITY, however, awarded only 21 days of additional time for
6 MITCHELL to perform this added or changed work. The CITY also caused several other delays on
7 the Lincoln Project, including delays resulting from the CITY's failure to issue excavation permits,
8 incomplete CITY designs, and the CITY's refusal to approve properly-performed backfill compaction
9 work. As with the Central Pump Project, the CITY begin unilaterally assessing liquidated damages of
10 \$3,000 per day due to project completion delays, which delays were in fact caused by the CITY.
11

12 46. Similar issues were faced by MITCHELL on the Summit Project, between 2004 and
13 2007. This project was delayed by the CITY even before MITCHELL started work, due to lack of
14 access to the jobsite. Due to various other problems experienced during the project, additional delays
15 were encountered by MITCHELL and the CITY indicated that all time extension issues would be
16 reconciled upon completion. Notwithstanding this assurance, the CITY altered its position upon
17 completion and no time extensions were granted for the Summit Project. As a result, over \$785,000
18 in liquidated damages were unilaterally and improperly assessed against MITCHELL on the Summit
19 Project.
20

21 47. During the course of the PUC projects, representatives of MITCHELL appeared before
22 the San Francisco Public Utilities Commission on multiple occasion and contacted members of the
23 Board of Supervisors to protest the improper and vindictive handling of MITCHELL's contracts with
24 the PUC. MITCHELL was also contacted by reporters for newspapers and trade magazines regarding
25 the CITY's administration of the these and other parts of the SFPUC's ongoing \$4 billion seismic
26 retrofit and upgrade of the CITY's aging Hetch Hetchy and related fresh water system. MITCHELL
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1 responded truthfully that the CITY was mishandling MITCHELL's contracts with the SFPUC. As a
2 consequence, there were press reports critical of the PUC's handling of MITCHELL's contracts with
3 the PUC. MITCHELL is informed and believes, and on that basis alleges, that senior PUC
4 administrators were angered by MITCHELL's contacts with the press, Board of Supervisors and
5 Public Utilities Commission, and as a result determined to retaliate and punish MITCHELL.
6

7 48. Similarly, MITCHELL was the lowest bidder on another SFPUC project, but was not
8 awarded the contract and subsequently filed a bid protest. Following a hearing on the bid protest,
9 apparently based on testimony by MITCHELL that was critical of the CITY and its administrators, a
10 CITY Deputy Attorney told MITCHELL's Michael Silva, "I'm going to get you," apparently in
11 retaliation for MITCHELL's protesting of the award and providing testimony critical of the CITY at
12 the protest hearing.
13

14 49. Problems were also experienced by MITCHELL on the Clarendon, Dewey, and Sunset
15 Projects, similar to the PUC projects described above, in that the CITY and its employees
16 implemented a sustained policy, whereby:

17 a. MITCHELL's work was arbitrarily rejected despite its compliance with
18 project plans and specifications;

19 b. MITCHELL was denied routine requests for extensions of time due to
20 unanticipated, unforeseeable and excusable project delays;

21 c. MITCHELL was not paid for work that complied with project plans and
22 specifications;

23 d. MITCHELL was routinely paid late for work that complied with project plans
24 and specifications;

25 e. Fault for project delays and other problems was attributed to MITCHELL,
26 despite acknowledgements by the CITY's own inspectors that MITCHELL was without fault;
27
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1 f. The CITY intentionally interfered with MITCHELL's ability to be
2 compensated for work on projects for other municipalities;

3 g. The CITY threatened to re-open and in fact did re-open other projects, which
4 had already been finalized and closed-out by MITCHELL and the CITY, following a hearing before
5 the Public Utilities Commission in October 2006 at which MITCHELL presented its position
6 regarding issues encountered during work on the SFPUC Projects and other;
7

8 h. The CITY threatened to terminate MITCHELL in connection with other
9 projects, which had already been finalized and closed by MITCHELL and the CITY, again following
10 the October 2006 hearing described above;

11 i. The CITY improperly and consistently began denying MITCHELL's requests
12 for change orders, although similar requests previously had been routinely approved; and
13

14 j. The CITY reversed its previously-stated position regarding the CITY's
15 responsibility for significant delays and improperly assessed liquidated damages against
16 MITCHELL.

17 50. During this time, the CITY and its administrators, including Defendants IRONS,
18 QUAN, and WONG, were aware that MITCHELL had valuable and long-term contractual and other
19 business relationships with its joint venture partners, subcontractors, suppliers, vendors, banks,
20 sureties, and other governmental entities.

21
22 51. The CITY was also aware that MITCHELL was engaged by the CITY and various
23 CITY agencies and departments on other projects, including each of the PUC Projects, and that
24 MITCHELL had financial obligations arising out of each of these projects, which made MITCHELL
25 particularly susceptible to significant economic losses in the event of improperly rejected work,
26 improper refusals to pay for completed work, or payment delays by the CITY on the PUC Projects.
27
28

1 52. The CITY's policies, procedures, and practices, as alleged above, were implemented
2 with the specific and expressed intention of causing harm to MITCHELL's existing and future
3 contractual and economic relationships. MITCHELL is informed and believes, and thereon alleges,
4 that the CITY has improperly administered similar contracts with other construction companies,
5 which have spoken out against, resisted or complained of CITY contracting practices, all in an effort
6 to punish contractors who object to improper or illegal CITY practices.
7

8 53. MITCHELL is informed and believes, and on that basis alleges, that senior CITY
9 personnel, employed by various CITY agencies, including the SFPUC and DPW, or both, have
10 enacted a concerted policy, to intentionally cause harm to MITCHELL's existing and prospective
11 economic interests, for the express purpose of preventing MITCHELL from performing further work
12 for the CITY, and other parties, and ultimately driving MITCHELL out of business.
13

14 54. As a result of the implementation of the policies, procedures, and practices, as alleged
15 above, the CITY has in fact caused significant and long-term economic damages to MITCHELL as
16 further described herein.

17 55. Separate and apart from the damages directly associated with the Four Street Bridge
18 Project and the SFPUC Projects, MITCHELL has suffered damages due to the CITY's acts based on,
19 among other things:

20 a. Damage to MITCHELL's contractual relationship with its surety, which
21 provided bonds necessary to bid and perform work for public and private entities. As a result of
22 Defendants' acts and omissions, as alleged above, MITCHELL's surety has increased the bonding
23 rates charged to MITCHELL and has severely limited or eliminated MITCHELL's access to
24 bonding capacity, which, in turn, has limited or prevented MITCHELL from bidding on new work.
25

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27 ///

28 ///

1 59. Defendants' acts and omissions, as alleged above, also constitute a violation of
2 MITCHELL's right to pursue its occupation and business without undue, unfair and inappropriate
3 government interference.

4 60. Defendants' acts and omissions, as alleged above, constituted a deprivation of
5 MITCHELL's property without due process under the Fifth and Fourteenth Amendments of the
6 United States Constitution, in that:

7 a. MITCHELL was denied equal protection under the law as a member of a class
8 of contractors who objected to the CITY's contract management practices and were, therefore, subject
9 to retaliatory, damaging and unequal treatment by the CITY;

10 b. MITCHELL was denied due process under the law based on the CITY's
11 failure to provide notice of or the opportunity for a hearing prior to the CITY's implementation of the
12 policies described herein, which constructively debarred MITCHELL, thereby preventing it from
13 performing any future work for the CITY. The CITY failed to follow the required procedure under
14 the CITY's Administrative Code to formally debar, so as to prevent any future work in the CITY by
15 MITCHELL, instead electing to retaliate against MITCHELL, as described herein.

16 c. MITCHELL was further denied due process under the law due to the CITY's
17 implementation of the policies described herein, which were unreasonable, capricious, without any
18 rational basis or relation to a legitimate governmental objective.

19 61. Defendants' acts and omissions, as alleged above, also constituted a violation of
20 MITCHELL's right, pursuant to the First Amendment of the United States Constitution, to petition
21 the Government for redress of its grievances, and to exercise its right of free speech, without being
22 subjected to retaliation by the CITY.

23 62. Each of the interests described in Paragraphs 58 through 61 above is a cognizable and
24 protected interest under 42 U.S.C. §1983.
25
26
27
28

1 63. MITCHELL is informed and believes, and on that basis alleges, that Defendants' acts
2 and omissions, as alleged above, were each taken under color of state law, including the CITY's
3 policy of consistently damaging treatment, designed to interfere with MITCHELL's prosecution of its
4 work on the PUC Projects and other projects associated with the CITY.
5

6 64. In particular, Defendants IRONS, QUAN, and WONG abused the position of authority
7 given to them by the CITY, while acting in their individual and official capacities and while
8 exercising their responsibilities in that capacity.

9 65. Defendants' acts and omissions were the actual and proximate cause of the deprivation
10 of MITCHELL's interests described in Paragraphs 58 through 61 above.

11 66. As a result of Defendants' above-mentioned acts and omissions, MITCHELL has
12 suffered damages in excess of \$20 million.
13

14 WHEREFORE, MITCHELL prays for judgment in its favor and against Defendants,
15 according to proof as provided below.

16 **SECOND CAUSE OF ACTION**

17 (Intentional Interference with Contractual Relationships)

18 (Against All Defendants)

19 67. MITCHELL realleges and incorporates by reference, as though fully set forth herein,
20 Paragraphs 1 through 66, inclusive, of this Complaint.
21

22 68. MITCHELL had numerous valid and existing contracts in connection with the SFPUC
23 Projects, including various contractual relationships with its subcontractors, suppliers, vendors, banks,
24 sureties, and other governmental entities.

25 69. Among other things, MITCHELL has an existing contractual relationship with its
26 surety, which provided bonds necessary to bid and perform work for public and private entities. As a
27 result of Defendants' acts and omissions, as alleged above, MITCHELL's surety has increased the
28

1 bonding rates charged to MITCHELL and has severely limited or eliminated MITCHELL's access to
2 bonding capacity, which, in turn, has limited or eliminated MITCHELL's ability to bid on new work.

3 70. MITCHELL also has an existing contractual relationships with its financial
4 institutions, including its insurers and bank, which provided MITCHELL with a revolving line of
5 credit. This relationship allows MITCHELL to compensate its employees, suppliers, subcontractors,
6 and vendors pending payment from project owners. Based on Defendants' acts and omissions, as
7 alleged above, MITCHELL's banks have limited or eliminated its ability to access this line of credit,
8 which has limited or eliminated MITCHELL's ability to compensate its employees, suppliers,
9 subcontractors, and vendors.

10
11 71. In addition, MITCHELL also has an existing contractual relationship with its
12 subcontractors, suppliers, and vendors. Based on Defendants' acts and omissions, as alleged above,
13 MITCHELL's relationships with these entities has been harmed or destroyed, including damage to
14 MITCHELL's reputation with these parties, elimination of favorable contract terms, and rejection of
15 work by certain parties with whom MITCHELL has previously enjoyed a long-term economic
16 relationship.

17
18 72. During the performance of its work on the SFPUC Projects between 2000 and 2006,
19 Defendants were aware and had actual knowledge of these contractual relationships.

20
21 73. Defendants' acts and omissions, as alleged above, were all committed with the specific
22 intent to induce a breach of the contracts described herein. Specifically, MITCHELL is informed and
23 believes, and on that basis alleges, that Defendants intended to reject properly performed work, delay
24 or fail to pay for properly performed work, and/or otherwise inhibit MITCHELL's performance of its
25 work on the SFPUC Projects in order to render the parties' performance of these contracts impossible
26 or more difficult.

1 74. In fact, Defendants' acts and omissions caused these contracts to be breached or render
2 performance of the obligations thereunder more difficult, as described above.

3 75. As a result of Defendants' above-mentioned acts and omissions, MITCHELL has
4 suffered damages in excess of \$20 million.

5 76. MITCHELL has presented its claim, based on the above facts, to Defendants through
6 service of the claims on the CITY's Clerk of the Board, Ms. Angela Calvillo, as required under
7 California Government Code Section 910, *et seq.* (A copy of MITCHELL's claim is attached hereto
8 as Exhibit A.) Although Defendants' failure to take action on MITCHELL's claims within 45 days
9 will be deemed a rejection of these claims under Government Code Section 912.4, MITCHELL
10 contends that awaiting a rejection of these claims is futile and, as such, files the present action prior to
11 expiration of the 45-day period under the Government Code.
12

13 WHEREFORE, MITCHELL prays for judgment in its favor and against Defendants,
14 according to proof as provided below.
15

16 **THIRD CAUSE OF ACTION**

17 (Intentional Interference with Prospective Economic Advantage)

18 (Against All Defendants)

19 77. MITCHELL realleges and incorporates by reference, as though fully set forth herein,
20 Paragraphs 1 through 76, inclusive, of this Complaint.
21

22 78. MITCHELL had numerous economic relationships with various contractors,
23 subcontractors, and governmental entities containing the probability of future economic benefit.

24 79. During the performance of its work on the SFPUC Projects between 2000 and 2006,
25 Defendants were aware and had actual knowledge of these prospective economic relationships.

26 80. Defendants' acts and omissions, as alleged above, were all committed with the specific
27 intent to induce a disruption of these economic relationships.
28

1 81. In fact, Defendants' acts and omissions actually caused these relationships to be
2 disrupted.

3 82. As a result of Defendants' above-mentioned acts and omissions, MITCHELL has
4 suffered damages in excess of \$20 million.

5 83. MITCHELL has presented its claim, based on the above facts, to Defendants through
6 service of the claims on the CITY's Clerk of the Board, Ms. Angela Calvillo, as required under
7 California Government Code Section 910, *et seq.* (A copy of MITCHELL's claim is attached hereto
8 as Exhibit A.) Although Defendants' failure to take action on MITCHELL's claims within 45 days
9 will be deemed a rejection of these claims under Government Code Section 912.4, MITCHELL
10 contends that awaiting a rejection of these claims is futile and, as such, files the present action prior to
11 expiration of the 45-day period under the Government Code.
12

13 WHEREFORE, MITCHELL prays for judgment in its favor and against Defendants,
14 according to proof as provided below.
15

16 **FOURTH CAUSE OF ACTION**

17 (Negligent Interference with Prospective Economic Advantage)

18 (Against All Defendants)

19 84. MITCHELL realleges and incorporates by reference, as though fully set forth herein,
20 Paragraphs 1 through 83, inclusive, of this Complaint.
21

22 85. MITCHELL had numerous economic relationships with various contractors,
23 subcontractors, and governmental entities containing the probability of future economic benefit.

24 86. During the performance of its work on the SFPUC Projects between 2000 and 2006,
25 Defendants were aware or should have known of these prospective economic relationships.

26 87. Defendants' acts and omissions, as alleged above, were all committed with a negligent
27 disregard of these prospective economic relationships.
28

1 88. In fact, Defendants' negligent acts and omissions actually caused these relationships to
2 be disrupted.

3 89. As a result of Defendants' above-mentioned acts and omissions, MITCHELL has
4 suffered damages in excess of \$20 million.

5 90. MITCHELL has presented its claim, based on the above facts, to Defendants through
6 service of the claims on the CITY's Clerk of the Board, Ms. Angela Calvillo, as required under
7 California Government Code Section 910, *et seq.* (A copy of MITCHELL's claim is attached hereto
8 as Exhibit A.) Although Defendants' failure to take action on MITCHELL's claims within 45 days
9 will be deemed a rejection of these claims under Government Code Section 912.4, MITCHELL
10 contends that awaiting a rejection of these claims is futile and, as such, files the present action prior to
11 expiration of the 45-day period under the Government Code.
12

13 WHEREFORE, MITCHELL prays for judgment in its favor and against Defendants,
14 according to proof as provided below.
15

16 **FIFTH CAUSE OF ACTION**

17 (Conspiracy)

18 (Against All Defendants)

19 91. MITCHELL realleges and incorporates by reference, as though fully set forth herein,
20 Paragraphs 1 through 90, inclusive, of this Complaint.
21

22 92. MITCHELL is informed and believes, and thereon alleges that Defendants, including
23 Defendants IRONS, QUAN, and WONG agreed to a common plan or design calling for joint action
24 with each of these Defendants playing a part.

25 93. In particular, and as provided in the deposition testimony quoted herein, Defendants
26 IRONS, QUAN, and WONG, among others named fictitiously named herein, agreed to cooperate in
27 the implementation of the CITY-approved policy designed to unlawfully prevent MITCHELL's
28

1 performance under its contracts with SFPUC and the interference with MITCHELL's existing
2 contracts and prospective economic relationships.

3 94. Defendants IRONS, QUAN, and WONG, among others named fictitiously named
4 herein, actually cooperated in the implementation of this policy.

5 95. As a result of Defendants' above-mentioned acts and omissions, MITCHELL has
6 suffered damages in excess of \$20 million.

7 96. MITCHELL has presented its claim, based on the above facts, to Defendants through
8 service of the claims on the CITY's Clerk of the Board, Ms. Angela Calvillo, as required under
9 California Government Code Section 910, *et seq.* (A copy of MITCHELL's claim is attached hereto
10 as Exhibit A.) Although Defendants' failure to take action on MITCHELL's claims within 45 days
11 will be deemed a rejection of these claims under Government Code Section 912.4, MITCHELL
12 contends that awaiting a rejection of these claims is futile and, as such, files the present action prior to
13 expiration of the 45-day period under the Government Code.

14 WHEREFORE, MITCHELL prays for judgment in its favor and against Defendants,
15 according to proof as provided below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, MITCHELL respectfully prays for Judgment against Defendants, and each
18 of them, as follows:

- 19 1. For general compensatory and consequential damages in an amount according to
20 proof and as provided herein, which are anticipated to exceed \$20 million;
21 2. For interest on said sums as provided herein;
22 3. For punitive damages against Defendants as to the First, Second, Third, and Fifth
23 Causes of Action;
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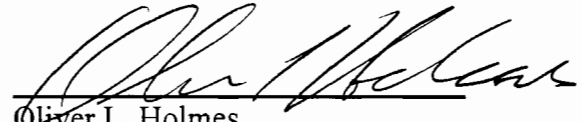
1 4. For attorney's fees and costs in this action, as provided under 42 U.S.C. §1988, and as
2 otherwise provided by the law; and

3 5. For such other and further relief as the Court may deem just, proper and equitable.
4

5 Dated: August 22, 2008

DUANE MORRIS LLP

6
7 By:



8 Oliver L. Holmes
9 Richard L. Seabolt
10 Damon M. Fisk
11 Attorneys for Plaintiff
12 MITCHELL ENGINEERING



CLAIM
To the City and County of San Francisco
Clerk of the Board

- (a) The name and post office address of the claimant: Mitchell Engineering, 250 Executive Park Blvd., Suite 4000, San Francisco, California 94134.
- (b) The post office address to which the person presenting this claim desires notices to be sent: Robert L. Leslie, McInerney & Dillon, 1999 Harrison Street, Suite 1700, Oakland, California 94612.
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted: within the last six months, Claimant discovered that in and about the City and County of San Francisco ("City") and elsewhere, from 2005 continuing through to the present, Michael Quan, Alan Wong, Wyman Lee, Carl Lee, Alan Johanson, Tony Irons Dennis Tsai and others currently unknown, interfered with and conspired together to interfere with Claimant's existing and prospective contractual and economic relationships, including but not limited to Claimant's relationship with its bonding company, banks, subcontractors, suppliers, other governmental entities, contractors, vendors, and others by, among other acts, making false statements, asserting false claims, suppression of facts, preventing others from paying amounts due to Claimant and causing them to delay payments to Claimant, changing how the City and County of San Francisco administers contracts, changing interpretation of contract provisions by threatening to, trying to and by enforcing and conspiring to enforce illegal laws, ordinances, codes and contract terms. In addition these acts or actions were engaged in for the purpose of preventing Claimant from performing contracts with the City and other entities, the City and certain City employees "wanted [Claimant] out of the City," and destroying Claimant's business. In addition, this was in violation of state and federal law, and Claimant's rights under the Constitution of the United States. This was only made known to claimant within the last six months.
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim: compensatory damages, loss of credit with third parties; inability to obtain bonds and bid on jobs; lost revenue and income from jobs, including but not limited to an inability to bid on jobs, unabsorbed overhead and underutilized equipment; increased bonding rates; costs related to subcontractor claims; loss of reputation in community, lost future revenue and income, interest and attorneys fees.
- (e) The name or names of the public employee or employees causing the injury, damage, or loss, if known: Michael Quan, Alan Wong, Wyman Lee, Carl Lee, Alan Johanson and Tony Irons.

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(f) The claim would not be a limited civil case.

August 15, 2008

McInerney & Dillion, P.C.

By: 

~~Robert L. Leslie~~

Attorneys for claimant Mitchell Engineering