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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

J.A. MOMANEY SERVICES, INC.,  
a California Corporation,  
and DOES 1 through 100, inclusive,

Defendants.

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**

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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.

12. A video detection system provides a visual image of the intersection to monitor the number of vehicles present, or passing through, the intersection. This information is used to understand the flow of traffic and to determine synchronization and timing of the traffic signals. Video detection is a relatively young product and there are at least four major video detection systems currently in use by public entities in California. Video detection systems, similar to controllers, contain certain proprietary features that render competing systems incompatible if the end-user desires to obtain the full benefit of such features on a system-wide basis.

13. A traffic signal display is the presentation of lights at an intersection. A traffic signal display includes: vehicle and pedestrian signals, framework (the mast arms upon which the display is mounted), pedestrian push buttons, and through bolts. Traffic signal displays are commodity products, not proprietary, and are usually not specified by brand or manufacturer in a traffic signal project.

14. The cabinet houses the controller and other hardware related to the traffic signal and is present at every intersection. Generally, there is nothing proprietary about cabinets (unless a particular cabinet is designated by the specifications), and cabinets are available from several companies. In some instances, the cabinets may require special wiring, depending on the configuration of other components.

15. An emergency vehicle preemption device is a product which permits its user to “preempt” the normal operation of the traffic signal at an intersection by changing the light to green in order to permit emergency vehicles such as fire engines, ambulances, or buses to safely and quickly navigate the streets in order to arrive at their destination.

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

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

- 19 (A) Tie-in sales impair competition for public entity contracts by preventing  
20 electrical contractors from competing for such contracts based on the price  
21 of the non-proprietary equipment. As a result of the tie-in sales,  
22 contractors are overcharged for the tied products. The contractors,  
23 believing they receive the same lump sum quoted prices from JAM  
24 Services, have no incentive to challenge the practice because they pass-  
25 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  
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8                               By: \_\_\_\_\_  
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