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Municipal Water District

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Central Basin Municipal Water District, a  
California Municipal Water District,

Plaintiff,

v.

Pacifica Services, Inc., a California Corporation,  
and Does 1 - 20, respectively,

Defendants.

CASE NO.:

COMPLAINT FOR:

1. BREACH OF CONTRACT
2. FRAUD - CIVIL CODE  
SECTIONS 1572 AND 1583
3. DECEIT - INTENTIONAL  
MISREPRESENTATION
4. DECEIT - NEGLIGENT  
MISREPRESENTATION

Plaintiff, Central Basin Municipal Water District, hereby files this Complaint against  
defendant Pacifica Services, Inc. and DOES 1 - 20 respectively.

#### INTRODUCTION

This action is about a private company that over-billed a government entity. After four  
amendments to a contract to increase the maximum amount payable to that company, the  
company was aware that approval by the government entity's Board of Directors was a necessity

1 to increase the maximum amount of the contract. Nonetheless, the company submitted invoices  
2 to the government entity far in excess of the maximum amount, some of which were paid. This  
3 action seeks to have this money returned.

4 II

5 JURISDICTION

6 Venue is proper in this judicial district, pursuant to California Code of Civil Procedure  
7 Sections 395(a) and/or 395.5. The defendant contracted to perform an obligation in the County  
8 of Los Angeles and defendant is a California Corporation, with its principal place of business in  
9 the County of Los Angeles. Moreover, the obligation was performed within this judicial district.

10 III

11 THE PARTIES

12 1. Plaintiff Central Basin Municipal Water District (hereinafter "Central Basin") is a  
13 California Municipal Water District, organized and existing under the Municipal Water District  
14 Law of 1911 (Water Code Sections 71000 - 73001). Central Basin, a water wholesaler and  
15 provider of recycled water, serves a population of more than 2 million living within 24 cities in  
16 southeast Los Angeles County, as well as unincorporated County areas. Central Basin's 227  
17 square-mile service area is governed by five publicly elected Directors. Its headquarters is  
18 located at 6252 Telegraph Road, Commerce, California.

19 2. Defendant Pacifica Services, Inc., (hereinafter "Pacifica") is a California Corporation  
20 that represents itself as providing consulting, engineering and program and project management  
21 services. Its President and CEO is Ernest M. Camacho, its Vice President is Michael Sisson, and  
22 its headquarters is located at 106 S. Mentor Ave., #200, Pasadena, California.

23  
24 III.

25 THE CONTRACT

26 Original Contract

27 3. On or about October 1, 2007, Central Basin and Pacifica entered into a contract  
28 entitled "PROFESSIONAL SERVICES AGREEMENT No. C2087 between CENTRAL BASIN

1 MUNICIPAL WATER DISTRICT and PACIFICA SERVICES, INC. for INDEPENDENT  
2 CONTRACTOR SERVICES FOR TECHNICAL OPERATIONS" ("hereinafter "the Contract" -  
3 Exhibit "A", attached hereto, includes the original contract and its 8 amendments, including  
4 attachments thereto, and is made part of this Complaint by reference as if fully set forth herein).

5 4. The original term was from October 1, 2007 to September 30, 2008 (Section 2) and  
6 the maximum amount payable was \$600,000 (Section 9).

7 5. Invoices for work performed by Pacifica under the Contract were mandated to be  
8 submitted on a monthly basis (Section 11).

9 6. If an action to enforce the Contract is brought, the prevailing party is entitled to  
10 attorneys fees, costs of collection, as well as any other costs and expenses incurred in connection  
11 with the enforcement action (Section 19).

12 7. Under the Scope of Services (Section 3), Pacifica represented that it had the  
13 qualifications and ability to perform the services in a professional manner and that it would, in a  
14 professional manner, furnish technical, administrative, professional and other labor.

15 Amendment No. 1

16 8. On or about October 7, 2008, the first amendment to the Contract was executed, with  
17 an effective date of September 22, 2008. Under this amendment the term was extended to  
18 January 31, 2009. There was no increase in the maximum billable amount.

19 Amendment No. 2

20 9. On or about February 4, 2009, the second amendment to the Contract was executed,  
21 with an effective date of January 26, 2009. Under this amendment the term was extended to July  
22 30, 2009, and the maximum billable amount was increased to \$960,000.

23 Amendment No. 3

24 10. On or about August 5, 2009, the third amendment to the Contract was executed, with  
25 an effective date of July 17, 2009. Under this amendment the term was extended to December  
26 31, 2009. There was no increase in the maximum billable amount.

27 Amendment No. 4

28 11. On or about October 26, 2009, the fourth amendment to the Contract was executed,

1 with an effective date also of October 26, 2009. This amendment added a Section 23 to the  
2 Contract, entitled "Certification" that concerns two Central Basin funding agreements, one with  
3 the Bureau of Reclamation and one with the Los Angeles County Flood Control District, that  
4 Pacifica was agreeing manage. Under this amendment the term was extended to June 30, 2011,  
5 and the maximum billable amount was increased to \$2,811,000.

6 Amendment No. 5

7 12. On or about April 12, 2010, the fifth amendment to the Contract was executed, with  
8 an effective date of April 9, 2010. This amendment adjusted the rates and types of Pacifica  
9 personnel working under the Contract. The term and maximum billable amount remained the  
10 same.

11 Amendment No. 6

12 13. On or about July 11, 2011, the sixth amendment to the Contract was executed, with  
13 an effective date of June 22, 2011. Under this amendment the term was extended to June 30,  
14 2012, and the maximum billable amount was increased to \$3,089,000.

15 Amendment No. 7

16 14. On or about February 24, 2012, the seventh amendment to the Contract was  
17 executed, with an effective date of January 23, 2012. Under this amendment the term remained  
18 unchanged but the maximum billable amount was increased to \$3,629,000.

19 Amendment No. 8

20 15. On or about July 2, 2012, the eighth and final amendment to the Contract was  
21 executed, with an effective date of June 25, 2012. This amendment extended the term to August  
22 31, 2012 "... or until such time that the Request for Qualification (RFQ) process including  
23 consultant selection is completed." This amendment did not increase the maximum billable  
24 amount; it remained \$3,629,000.

25 16. All of the amendments included a section entitled "Other" that contained this  
26 identical language: "Except as provided herein, the "Original Agreement" is affirmed.  
27  
28

IV

THE FACTS

17. Under Central Basin's regulations, the General Manager can only execute contracts below \$25,000. All other contracts require approval of Central Basin's Board of Directors.

18. Amendment No. 8 results from a Board meeting held on June 25, 2012. At that meeting, Agenda Item No. 13 was a request by staff for Board authorization to increase the Contract's term approximately two years - to June 30, 2014, and to increase the maximum billable amount to \$5,846,600. The recommended motion was as follows: "That the Board authorizes the General Manager to execute an amendment to contract No. C2078 with Pacifica Services, Inc. with a new term of July 1, 2012 through June 30, 2014 and increase the contract amount by \$2,217,600, plus a 10% contingency for a not-to-exceed total contract amount of \$5,846,600." This motion was not approved.

19. Instead, a substitute motion was passed extending the term of the contract only 60 days, contingent upon a Request for Qualifications being sent out "ASAP" for a vendor to replace Pacifica. The substitute motion did not increase the maximum amount billable under the contract - it remained at \$3,629,000. At this time period, June/July, 2012, there remained approximately \$334,000 unused funds under the Contract.

20. Pacifica knew, or should have known, an increase in the Contract maximum billable amount required official action by the Board of Directors, especially since the previous 4 increases were approved by the Board before a contract amendment was executed. Pacifica also knew, or should have known, that the maximum billable amount under the Contract was \$3,629,000 and that at this time, June/July of 2012, approximately \$334,000 contractual authority remained - easily enough for Pacifica to work the additional 60 days contemplated in the substitute motion.

21. In spite of this knowledge, Pacifica continued to send invoices to Central Basin, many of which were paid due to mistake, inadvertence, or otherwise, as follows:

| Invoice No. | <u>Date Paid (Invoice Period)</u> | <u>Amount:</u> |
|-------------|-----------------------------------|----------------|
| 63-74       | July 16, 2012 (5/2012)            | \$89,706.23    |

|    |       |                             |             |
|----|-------|-----------------------------|-------------|
| 1  | 63-72 | July 16, 2012 (3/2012)      | \$51,188.85 |
| 2  | 63-75 | July 30, 2012 (6/2012)      | \$91,849.01 |
| 3  | 63-77 | October 12, 2012 (8/2012)   | \$70,067.96 |
| 4  | 63-78 | November 9, 2012 (9/2012)   | \$64,396.30 |
| 5  | 63-79 | November 15, 2012 (10/2012) | \$85,832.61 |
| 6  | 63-70 | November 16, 2012 (1/2012)  | \$36,210.66 |
| 7  | 63-80 | December 12, 2012 (11/2012) | \$67,625.10 |
| 8  | 63-81 | January 10, 2013 (12/2012)  | \$67,058.28 |
| 9  | 63-82 | February 28, 2013 (1/2013)  | \$84,253.49 |
| 10 | 63-76 | March 21, 2013 (7/2012)     | \$79,529.12 |
| 11 | 63-83 | April 19, 2013 (2/2013)     | \$85,044.59 |
| 12 | 63-84 | Not paid (3/2013)           | \$75,129.94 |
| 13 | 63-85 | Not paid (4/2013)           | \$95,686.46 |
| 14 | 63-86 | Not paid (5/2013)           | \$93,245.81 |
| 15 | 63-87 | Not paid (6/2013)           | \$64,521.00 |

16 22. By the 4<sup>th</sup> invoice above, Invoice No. 63-78, Pacifica had exceeded its contractual  
17 authority. In total, Pacifica invoiced Central Basin \$867,385.93 over the maximum billable  
18 amount, and of this \$538,803 was paid by Central Basin by mistake, inadvertence or otherwise.

19 23. Despite the contractual mandate to submit invoices on a monthly basis, as seen  
20 above, invoices were submitted by Pacifica on a near-random basis.

21 24. On or about July 16, 2013, by and through its attorney, Pacific demanded immediate  
22 payment of the unpaid invoices for March, April and May - totaling \$268,504.17.

23 25. On or about July 19, 2013, by and through its attorney, Central Basin informed  
24 Pacifica that immediate remittance was not possible and that there was an issue of the invoices  
25 being far in excess of the maximum amount contractually allowed.



1 FIRST CAUSE OF ACTION

2 (Breach of Contract)

3 26. Central Basin realleges and incorporates by reference each and every allegation set  
4 forth in Paragraphs 1 - 26 above.

5 27. From approximately September, 2012 through June, 2013, Pacifica breached the  
6 Contract by sending invoices to Central Basin for money to which it was not contractually  
7 entitled because it was in excess of the maximum amount both authorized by Central Basin's  
8 Board of Directors and reflected in the Contract.

9 28. Central Basin performed all the terms, conditions, covenants, obligations, and  
10 promised required under the Contract except for those conditions, covenants, obligations and  
11 promises that have been excused, prevented or waived by the acts and/or conduct of Pacifica.

12 29. From July, 2012, through June 2013, Pacifica also beached the Contract by not  
13 submitting invoices on a monthly basis, as required by the Contract.

14 30. As a result of the beaches of the Contract by Pacifica, Central Basin has suffered  
15 damages.

16 31. Section 19 of the Contract provides, in pertinent part, that in the event of an action or  
17 proceeding thereunder, the prevailing party is entitled to recover reasonable attorneys' fees and  
18 costs in connection therewith. Central Basin has been required to engage counsel in this matter.  
19 Therefore, Central Basin is entitled to recover reasonable attorneys fees and costs incurred  
20 herein.

21 SECOND CAUSE OF ACTION

22 (Fraud - Civil Code, Sections 1572 & 1573)

23 32. Central Basin realleges and incorporates by reference each and every allegation set  
24 forth in Paragraphs 1 - 31 above.

25 33. As set forth by the factual allegations above, Pacifica knew, or should have known,  
26 that it was sending invoices to Central Basin that were extra-contractual. Pacific did not disclose  
27 the fact that its cumulative invoices exceeded the authorized amount although it knew of said  
28 fact. Pacifica knew, or should have known, that its prior relationship with Central Basin created

1 a relationship of trust such that Central Basin would accept its false representations without  
2 significant analysis and inquiry. Submission of these invoices therefore constituted Actual Fraud  
3 as defined by Civil Code, Section 1572 and/or Constructive Fraud as defined by Civil Code,  
4 Section 1573.

5 34. Pacifica submitted the extra-contractual invoices with the intention that Central Basin  
6 would rely on the false representations and/or failures to disclose. Central Basin did so rely.

7 35. Central Basin was justified in its reliance on the validity of the invoices and on the  
8 truth of the representations and/or failures to disclose given its long-term working relationship  
9 and position of trust and confidence previously exhibited by Pacifica over the duration of the  
10 relationship.

11 36. Central Basin relied on the truth of the false representations and/or failures to  
12 disclose to its detriment when it wrongfully paid Pacifica on invalid and unauthorized invoices as  
13 set forth by facts alleged throughout this Complaint. Central Basin suffered damages as alleged  
14 herein.

15 37. Pacifica acted with the intent to injure the interests of Central Basin and acted with  
16 malice and oppression as set forth by facts alleged throughout this Complaint.

17 THIRD CAUSE OF ACTION

18 (Deceit-Intentional Misrepresentation)

19 38. Central Basin realleges and incorporates by reference each and every allegation set  
20 forth in Paragraphs 1 - 37 above.

21 39. In the alternative, the conduct by Pacifica as alleged above constituted actionable  
22 Deceit, Intentional Misrepresentation. As set forth in Paragraphs 1 through 32 and throughout  
23 this Complaint, Pacifica's conduct in connection with the payment of unauthorized and  
24 illegitimate invoices constituted a knowing misrepresentation/concealment of facts with the  
25 intent to deceive.

26 40. Central Basin has also alleged facts to establish its justifiable reliance, detriment, and  
27 damages as necessary to establish a prima facie case for Intentional Misrepresentation.  
28 Paragraphs 1 - 32, above, establishes Central Basin's right to punitive damages.



1 FOURTH CAUSE OF ACTION

2 (Deceit–Negligent Misrepresentation)

3 41. Central Basin realleges and incorporates by reference each and every allegation set  
4 forth in Paragraphs 1 - 40 above.

5 42. In the alternative, Central Basin alleges that Pacifica made false  
6 representations/failures to disclose set forth throughout this Complaint without any reasonable  
7 basis to believe in the validity and legitimacy of the extra-contractual invoices and with sufficient  
8 information available with ordinary and reasonable effort and inquiry to determine the truth  
9 thereof. Central Basin has alleged sufficient facts as incorporated, above, to set forth its  
10 justifiable reliance, detriment, and damages as necessary to establish a prima facie case for  
11 Negligent Misrepresentation.

12 PRAAYER FOR RELIEF

13 1. For Judgment in favor of Central Basin and against Pacifica for damages in the  
14 amount of at least \$538,803, representing the amount of money paid by Central Basin to Pacifica  
15 by mistake, inadvertence or otherwise, and other damages according to proof at time of trial;

16 2. For punitive damages;

17 3. An award of attorneys fees and costs consistent with the Contract;

18 4. Recission of the Contract and all Related Amendments;

19 5. Interest at the legal rate from the date of submission of the first extra-contractual  
20 invoice;

21 6. For all costs and expenses; and

22 7. For such other and further relief as the Court may deem just and proper.

23  
24 Dated: July 25, 2013.

COHEN & BURGE, LLP

25  
26 By: 

27 Grant Burton  
28 Attorneys for Plaintiff Central Basin  
Municipal Water District