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LEGAL PROCESS #12

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Attorneys for Plaintiff State of California,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STATE OF CALIFORNIA,

Plaintiff,

v.

NATIONWIDE WIRE & BRUSH MFG., INC.,

Defendant.

CASE NO. 05AS03942

COMPLAINT FOR
VIOLATIONS OF
CARTWRIGHT ACT (Bus. &
Prof. Code § 16720, et seq.),
FALSE CLAIMS ACT (Gov.
Code § 12650, et seq.), UNFAIR
COMPETITION LAW (Bus. &
Prof. Code § 17200, et seq.)

COMES NOW, Bill Lockyer, Attorney General for the State of California, and alleges
the following:

INTRODUCTION

1. Bill Lockyer, Attorney General, State of California, brings this civil antitrust, unfair
competition, and false claims action in his official capacity on behalf of the State of California
against Defendant NATIONWIDE WIRE & BRUSH, MFG., INC. (hereinafter
"NATIONWIDE"), under section 16720 et seq. of the Business & Professions Code section
12650, et seq., of the Government Code, and section 17200, et seq., of the Business &
Professions Code for allocating customers and territories with its competitors in the California

1 market for street sweeping parts, equipment, and services for soliciting and submitting shadow
2 bids on government contracts for street sweeping equipment and services, and for knowingly
3 presenting "false claims", i.e., bids that were the product of the aforementioned collusive bid-
4 rigging and territorial/customer allocation arrangements mentioned above. These collusive
5 activities with two other California competitors, ACME ROTARY BROOM SERVICE, and
6 BILL KORETOFF, dba ACME ROTARY BROOM SERVICE (hereinafter "ACME and
7 KORETOFF"), and with SAN DIEGO ROTARY BROOM COMPANY, INC, now doing
8 business as AMERICAN ROTARY BROOM COMPANY, INC., (hereinafter "SAN DIEGO
9 ROTARY BROOM"), deprived public entities of choice in the market for street sweeping parts,
10 equipment, and services, thereby vitiating the competitive process.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction to hear the claims alleged in this Complaint and is a Court
13 of competent jurisdiction to grant the relief requested..

14 3. This Court has jurisdiction over Defendant NATIONWIDE because Defendant is
15 headquartered, and does substantial business, in the State of California.

16 4. Venue is proper in this Court because the causes of action arise in the County of
17 Sacramento where some of the violations of law occurred.

18 **PARTIES**

19 5. Plaintiff STATE OF CALIFORNIA, is represented by Bill Lockyer, Attorney General,
20 State of California. As the Attorney General for the State of California, Bill Lockyer is the chief
21 law enforcement officer for the State (Cal.Const. Art. 5, § 13), is authorized to enforce the above
22 referenced statutes, and is also empowered to bring this suit on behalf of the State and its general
23 economy.

24 6. Defendant NATIONWIDE, now operating as United Rotary Brush Company of
25 California, Inc., is headquartered in, and does business from, Galt, California. During the
26 relevant period set out below in this Complaint, Defendant NATIONWIDE sold street sweeping
27 parts, equipment, and reconditioning/remanufacturing services relating to main brooms,
28 including cable-wrap and tube brooms, and gutter brooms, to public entities in California,

1 including cities and counties.

2 **Co-conspirators**

3 7. ACME ROTARY BROOM SERVICE and BILL KORETOFF dba ACME ROTARY
4 SERVICE, and AMERICAN ROTARY BROOM COMPANY, INC., incorporated in California
5 and formerly doing business as SAN DIEGO ROTARY BROOM COMPANY are not named as
6 defendants in this action.

7 **FACTUAL ALLEGATIONS**

8 8. Public entities such as cities, counties, and state agencies require street sweeping parts,
9 equipment, and reconditioning/remanufacturing services relating to main brooms, including
10 cable-wrap and/or tube brooms, and gutter brooms, to public entities in California, for their street
11 sweeping machines. Depending upon such circumstances as the size and duration of the
12 envisioned contract for parts, equipment, or services, these entities can and do require bids or
13 quotes from potential providers of such parts, equipment, and services. However, public entities
14 may also contract out, with no bidding or quotations required, for such parts, equipment, and/or
15 services with a provider.

16 9. These procedures are not mutually exclusive. However, if a current provider does not
17 face any competition from other companies that provide such parts, equipment, and/or services,
18 then it is less likely that a public entity will use a bidding or quotation procedure.

19 10. When a public entity requires bids or quotes for street sweeping parts, equipment,
20 and/or services, it will often require or will seek out more than one bid or quote. Moreover, as a
21 condition for making bids, a public entity can require certifications such as the following: “[the]
22 bid is genuine and not sham or collusive, or made in the interest or on behalf of any entity not
23 herein named; that the Bidder has not directly or indirectly induced or solicited any other Bidder
24 to submit a sham bid, or any other person to refrain from bidding, and that the Bidder has not in
25 any manner sought by collusion to secure to himself any advantage over other Bidders.” Or, a
26 public entity can put a potential bidder on notice as a condition of submitting a bid, and as part of
27 any resulting contract, such as the following: “[a]ny acts or omissions of bidder in violation of
28 federal, state, or municipal law, . . ., regarding anti-competitive practices, unfair trade

1 practices, collusion, . . . , creating an unfair influence on the public bidding and award process
2 pertaining to this contract or proposal may void this contract.”

3 11. Beginning sometime in the 1980s and continuing through the date of the filing of
4 this complaint, Defendant NATIONWIDE entered into a scheme with ACME and KORETOFF
5 and SAN DIEGO ROTARY BROOM to allocate territories and customers throughout
6 California. Defendant NATIONWIDE was allocated, with a couple of exceptions, the contracts
7 for all public entities located in those counties in Northern California that were north of a line
8 stretching from the northern boundary of Santa Cruz County, through the northern boundaries of
9 San Benito and Merced Counties, to the northern boundary of Mariposa County, and including
10 such counties as Sacramento, San Francisco, Alameda, Contra Costa, Santa Clara, and San
11 Joaquin among many others. During the time period in which the State of California Department
12 of Transportation would bid out one street sweeping parts, equipment, and services contract to
13 cover the entire State, that contract was allocated to Defendant as a part of this scheme.

14 12. Pursuant to this agreement, from the 1980s to the date of the filing of this complaint,
15 neither ACME and KORETOFF nor SAN DIEGO ROTARY BROOM competed for the
16 contracts of public entities located in Defendant NATIONWIDE’s Northern California
17 “territory” with one or two exceptions. In exchange, Defendant NATIONWIDE did not compete
18 for the contracts of public entities located outside of this “territory,” i.e., in the Central California
19 “territory” allocated to ACME and KORETOFF and in the Southern California “territory”
20 allocated to SAN DIEGO ROTARY BROOM. Even if, for example, a public entity in
21 Defendant NATIONWIDE’s “territory” were to contact SAN DIEGO ROTARY BROOM to
22 solicit a bid, SAN DIEGO ROTARY BROOM would inform that public entity that it would not
23 bid on that contract.

24 13. An additional incentive for this allocation of territories and customers was a “quid
25 pro quo” arrangement put into place by Defendant NATIONWIDE in which it agreed to supply
26 its competitors, ACME and KORETOFF, and SAN DIEGO ROTARY BROOM, with its
27 manufactured street sweeping parts and equipment. In exchange, neither ACME and
28 KORETOFF, nor SAN DIEGO ROTARY BROOM, competed in Defendant NATIONWIDE’s

1 territory for the contracts of public entities even if either ACME and KORETOFF, or SAN
2 DIEGO ROTARY BROOM, were to use non-NATIONWIDE parts and equipment to do so.

3 14. Beginning in the 1980s and continuing through the date of the filing of this
4 complaint, ACME and KORETOFF entered into a further scheme with Defendant
5 NATIONWIDE to engage in bid-rigging activities in each other's "territory" that went beyond a
6 refusal to submit bids or quotes or otherwise refrain from competing for contracts in each other's
7 "territory." ACME and KORETOFF would solicit "shadow bids" from Defendant
8 NATIONWIDE beginning in the 1980s in response to which Defendant NATIONWIDE would
9 submit highly-inflated bids for the contracts of customers located in ACME and KORETOFF's
10 territory. In turn, over approximately the same time period, Defendant NATIONWIDE would
11 solicit and Defendants ACME and KORETOFF would submit similar "shadow bids" for the
12 contracts of customers located in NATIONWIDE's territory. In this manner, both Defendant
13 NATIONWIDE and ACME and KORETOFF could ensure that public entities would not reject
14 their bids because there were too few bidders while ensuring, at the same time, that each won the
15 bids located in their respective "territories."

16 15. As a result of these arrangements and practices, public entities in California,
17 including state agencies, cities, and counties, were denied choice, leading to anti-competitive
18 effects that included higher prices than those in out-of-state markets.

19 **VIOLATIONS ALLEGED**

20 **FIRST CAUSE OF ACTION**

21 **(Against Defendant NATIONWIDE - *Per se* Violation of the**
22 **Cartwright Act, Section 16720, Business & Professions Code)**

23 16. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs
24 1 to 15 inclusive, as though the same were set forth in their entirety herein.

25 17. The Defendant's illegal combination with its co-conspirators ACME and
26 KORETOFF and SAN DIEGO ROTARY BROOM with the purpose of unreasonably restraining
27 trade consisted of an agreement, understanding, and concert of action, the substantial terms of
28 which were to allocate territories and customers throughout California in the market for street
sweeping parts, equipment, and reconditioning/remanufacturing services.

1 18. The Defendant's illegal combination with co-conspirator ACME and KORETOFF
2 with the purpose of unreasonably restraining trade consisted of a further agreement,
3 understanding, and concert of action, the substantial terms of which were to solicit from each
4 other, and submit for the benefit of the other, "shadow bids" - that is bids at highly-inflated
5 prices. In this manner, both Defendant NATIONWIDE and ACME and KORETOFF could
6 ensure that public entities would not reject their bids by generating the appearance of having
7 multiple bidders while ensuring, at the same time, that each would have the winning low-cost bid
8 in their respective "territories."

9 19. The Defendant's conduct with its co-conspirators constitutes both a market/customer
10 allocation scheme and a bid-rigging scheme, both of which are *per se* illegal under Cartwright
11 Act, Business & Professions Code section 16720.

12 20. Defendant's continuing wrongful conduct, as alleged above, unless or until
13 restrained by order of this Court, will further cause great and irreparable harm to the market for
14 street sweeping, parts, equipment, and services in the State of California.

15 **SECOND CAUSE OF ACTION**

16 **(Against Defendant NATIONWIDE Violation 17 of the False Claims Act, Government Code Section 12650)**

18 21. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs
19 1 through 20 inclusive, as though the same were set forth in their entirety herein.

20 22. This is a claim for penalties under the False Claims Act involving only state funds.

21 23. Requests for payments pursuant to approved bids, quotes, and/or purchase orders by
22 state agencies constitute false claims within the meaning of the False Claims Act where such
23 requests were submitted pursuant to a representation that state and federal antitrust laws had not
24 been violated and/or that the bid and/or purchase order is genuine and not sham or collusive.

25 24. Defendant NATIONWIDE conspired with co-conspirators ACME and KORETOFF,
26 and SAN DIEGO ROTARY BROOM, to defraud state agencies, cities, and/or counties, and/or
27 made false statements to state agencies, cities, and/or counties, in order to obtain and/or allocate
28 contracts for street sweeping parts, equipment, and services without having to compete for said
contracts. Said contracts, involving bids, quotes, and/or purchase order, often contained

1 requirements that the selected provider not violate state and federal antitrust laws in order to
2 secure the contract and/or that the that the bid and/or quote is genuine and not sham or collusive.
3 However, Defendant NATIONWIDE conspired to defraud said public entities by directly
4 violating these representations and/or by assisting its co-conspirators to directly violate these
5 representations. Defendant NATIONWIDE also knowingly made false statements by engaging
6 in the aforementioned bid-rigging and territorial/customer allocation activities in violation of
7 these representations.

8 **THIRD CAUSE OF ACTION**

9 **(Against Defendant NATIONWIDE Violation of the Unfair 10 Competition law, Business & Professions Code, Section 17200)**

11 25. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs
12 1 through 24 inclusive, as though the same were set forth in their entirety herein.

13 26. The conduct by Defendant NATIONWIDE described herein, including its
14 participation in market/customer allocation and bid-rigging schemes and their submission of
15 false claims pursuant to both schemes, is unlawful as a violation of federal and state antitrust
16 laws, as well as the state false claims act, or are unfair business practices as incipient violations
17 of federal and state antitrust laws, and as such is prohibited by Business & Professions Code
18 section 17200.

19 27. Defendant's continuing wrongful conduct, as alleged above, unless or until
20 restrained by order of this Court, will further cause great and irreparable harm to the market for
21 street sweeping, parts, equipment, and services in the State of California.

22 **PRAYER**

23 **WHEREFORE**, Plaintiff prays for judgment against Defendant NATIONWIDE as
24 follows:

25 1. That the Court adjudge and decree that the market/customer allocation schemes and
26 bid-rigging schemes of Defendant NATIONWIDE constitute an illegal restraint of trade in
27 violation of section 16720 et. seq. Business & Professions Code, of the Cartwright Act and are
28 therefore null and void;

1 2. That the Court adjudge and decree that the conduct of Defendant NATIONWIDE to
2 have been in violation of section 12650 et. seq., Government Code, of the False Claims Act;

3 3. That the Court adjudge and decree that the conduct of Defendant NATIONWIDE to
4 have been in violation of section 17200, et seq., Business & Professions Code, of the Unfair
5 Competition Law;

6 4. That the Court enter an injunction pursuant to section 16720 et. seq., Business &
7 Professions Code, of the Cartwright Act, restraining and enjoining Defendant, its officers,
8 directors, agents, employees, and successors and all other persons acting or claiming to act on
9 their behalf, be enjoined and restrained from, in any manner, directly or indirectly, entering into,
10 continuing, maintaining, or renewing any market or customer allocation agreement or scheme, or
11 any the bid-rigging agreement or scheme, with any competitor in the market for street sweeping
12 supplies, parts and services;

13 5. That the Court enter an injunction pursuant to section 17203, Business & Professions
14 Code, of the Unfair Competition Law, restraining and enjoining Defendant, by through or on
15 behalf of it, from engaging in or performing directly or indirectly, any or all of the following:

16 a. Making or supporting the making of any false claims as set out in paragraphs
17 21 through 24; and

18 b. Engaging in any acts of unfair competition as set out in paragraphs 25-27 or
19 any other acts of unfair competition;

20 6. That Defendant be ordered to pay \$2,500 to the Plaintiff per violation as civil
21 penalties pursuant to section 17206, Business & Professions Code, of the Unfair Competition
22 Law;

23 7. That Defendant be ordered to pay \$10,000 to the Plaintiff per false claim as civil
24 penalties pursuant to section 12650, et. seq., Government Code, of the False Claims Act;

25 8. That judgment be entered against Defendant for the costs of this action and
26 reasonable attorney's fees and;

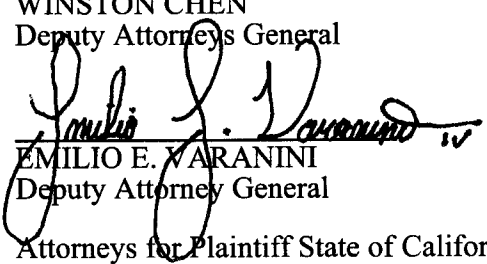
27 9. That the Court grant other legal and equitable relief as it may deem just and proper,
28 including such other relief as the Court may deem just and proper to redress, and prevent

1 recurrence of, the alleged violation and to dissipate the anticompetitive effects of the
2 Defendant's violations.

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4 Dated: August 5, 2005

Respectfully submitted,

5 BILL LOCKYER,
6 Attorney General of the State of California
7 THOMAS GREENE
8 Chief Assistant Attorney General
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10 Senior Assistant Attorney General
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