

FILED BY FAX**ALAMEDA COUNTY**

June 13, 2014

**CLERK OF
THE SUPERIOR COURT**
By Lynn Wiley, Deputy**CASE NUMBER:
RG13704222**

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 8 CITY OF OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA**COUNTY OF ALAMEDA**

11 FROM THE ROOTS UP, INC., a
 12 California non-profit corporation;

13 Plaintiff and Petitioner,

14 v.

15 CITY OF OAKLAND, a California charter city;
 16 JEAN QUAN, Mayor, City of Oakland; DAN
 17 KALB, PATRICIA KERNIGHAN, LYNETTE
 18 GIBSON MCELHANEY, LIBBY SCHAAF,
 NOEL GALLO, DESLEY BROOKS, LARRY
 REID, REBECCA KAPLAN, all members of the
 Oakland City Council; DOES 1 to 10, inclusive,

19 Defendants and Respondents.
 20

Case No. RG13704222

ASSIGNED FOR ALL PURPOSES TO
 DEPARTMENT 31, HON. EVELIO GRILLO

**DEFENDANT CITY OF OAKLAND'S
ANSWER TO SECOND AMENDED
COMPLAINT**

22 Defendant City of Oakland ("City") answers Plaintiffs' Second Amended Complaint, as
 23 follows:

24 1. As to Paragraph 1, the City admits the allegation that "Oakland has enacted Ordinance
 25 No. 13-201." The City denies the remaining allegations.

26 2. As to Paragraph 2, the City admits the allegation that "OMSS was granted an Exclusive

1 | Negotiating Agreement with the City of Oakland.” The City denies the remaining allegations.

2 | 3. As to Paragraph 3, the City denies the allegations.

3 | 4. As to Paragraph 4, the City denies the allegations.

4 | 5. As to Paragraph 5, the City has no information or belief that the allegations are true,
5 | and on that ground, denies the allegations.

6 | 6. As to Paragraph 6, the City has no information or belief that the allegations are true,
7 | and on that ground, denies the allegations.

8 | 7. As to Paragraph 7, the City admits the allegation.

9 | 8. As to Paragraph 8, the City admits the allegation that “Jean Quan is the Mayor of the
10 | City of Oakland.” The City denies the remaining allegations.

11 | 9. As to Paragraph 9, the City admits that the allegation that “Dan Kalb, Patricia
12 | Kernighan, Lynette Gibson McElhaney, Libby Schaaf, Noel Gallo, Desley Brooks, Larry Reid, and
13 | Rebecca Kaplan are members of the City Council of the City of Oakland.” The City denies the
14 | remaining allegations.

15 | 10. As to Paragraph 10, the City has no information or belief that the allegations are true,
16 | and on that ground, denies the allegations.

17 | 11. As to Paragraph 11, the City has no information or belief that the allegations are true,
18 | and on that ground, denies the allegations.

19 | 12. As to Paragraph 12, the City admits the allegations.

20 | 13. As to Paragraph 13, the City denies the allegations.

21 | 14. As to Paragraph 14, the City admits the allegation that “After receiving proposals, the
22 | Oakland Redevelopment Agency determined that the proposal from OMSS was the most responsive of
23 | the seven proposals received.” The City admits the allegation that “The City adopted a resolution (No.
24 | 2007-0076) authorizing the agency administrator to enter into a 180-day exclusive negotiating
25 | agreement [ENA] with OMSS.” The City admits the allegation that “Staff was authorized to extend
26 | the ENA for 90 days.” The City denies the remaining allegations.

- 1 15. As to Paragraph 15, the City denies the allegations.
- 2 16. As to Paragraph 16, the City admits the allegations.
- 3 17. As to Paragraph 17, the City denies the allegations.
- 4 18. As to Paragraph 18, the City denies the allegations.
- 5 19. As to Paragraph 19, the City denies the allegations.
- 6 20. As to Paragraph 20, the City admits the allegation that "OMSS was operating a truck
7 parking facility on the former OAB." The City admits the allegation that "the City entered into a lease
8 with OMSS for approximately 5 acres to be used by OMSS." The City denies the remaining
9 allegations.
- 10 21. As to Paragraph 21, the City admits that "Oakland Municipal Code Chapter 4.16
11 imposes a parking tax equal to 18.5% (consisting of a base tax rate of 10% and a surcharge of 8.5%) of
12 the space rental fee on every person occupying a rented parking space in the City. Section 4.16.020
13 identifies the vehicles subject to tax, and specifically includes trucks. Section 4.16.050 requires that
14 the tax be paid directly to the parking lot operator." The City admits the allegation that "Every parking
15 lot operator must register with the City." The City denies the remaining allegations.
- 16 22. As to Paragraph 22, the City denies the allegations.
- 17 23. As to Paragraph 23, the City denies the allegations.
- 18 24. As to Paragraph 24, the City denies the allegations.
- 19 25. As to Paragraph 25, the City denies the allegations.
- 20 26. As to Paragraph 26, the City denies the allegations.
- 21 27. As to Paragraph 27, the City denies the allegations.
- 22 28. As to Paragraph 28, the City denies the allegations.
- 23 29. As to Paragraph 29, the City denies the allegations.
- 24 30. As to Paragraph 30, the City denies the allegations.
- 25 31. As to Paragraph 31, the City denies the allegations.
- 26 32. As to Paragraph 32, the City denies the allegations.

1 33. As to Paragraph 33, the City denies the allegations.

2 34. As to Paragraph 34, the City admits the allegation that "Oakland Municipal Code §
3 2.41.050, et seq. governs the disposition by lease or otherwise of municipal property." The City denies
4 the remaining allegations.

5 35. As to Paragraph 35, the City denies the allegations.

6 36. As to Paragraph 36, the City denies the allegations.

7 37. As to Paragraph 37, the City denies the allegations.

8 38. As to Paragraph 38, the City denies the allegations.

9 39. The City incorporates by reference its responses to Paragraphs 1 through 38.

10 40. As to Paragraph 40, the City denies the allegations.

11 41. The City incorporates by reference its responses to Paragraphs 1 through 40.

12 42. As to Paragraph 42, the City denies the allegations.

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AFFIRMATIVE DEFENSES

16 As separate and distinct affirmative defenses to the Second Amended Complaint, and each
17 cause of action asserted in it, the City states as follows:

18 **First Affirmative Defense:** Plaintiffs are not real parties in interest and lack standing to sue the
19 City.

20 **Second Affirmative Defense:** The Second Amended Complaint, and each purported cause of
21 cause of action asserted in it, fails to state facts sufficient to constitute a claim upon which relief can be
22 granted.

23 **Third Affirmative Defense:** The Second Amended Complaint, and each purported cause of
24 cause of action asserted in it, is premature.

25 **Fourth Affirmative Defense:** The Second Amended Complaint, and each purported cause of
26 cause of action asserted in it, seeks an advisory opinion.

1 **Fifth Affirmative Defense:** The City complied with Oakland Municipal Code § 2.41.050, *et*
2 *seq.*

3 **Sixth Affirmative Defense:** Plaintiffs' action is barred because the alleged wrongful acts and
4 omissions are based on the exercise of a discretionary duty or discretionary function on the part of the
5 public defendants. Accordingly, the City is immunized from liability as a matter of law.

6 **Seventh Affirmative Defense:** The causes of action in the Second Amended Complaint are
7 barred by the applicable statutes of limitation, including Government Code section 945.6.

8 **Eighth Affirmative Defense:** The causes of action in the Second Amended Complaint are
9 barred because Plaintiffs failed to present a timely claim in accordance with the Government Claims
10 Act.

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13 Dated: June 13, 2014

14 BARBARA J PARKER, City Attorney
15 RANDOLPH W. HALL, Chief Assistant City Attorney
16 OTIS McGEE, JR., Special Counsel
17 JAMES F. HODGKINS, Supervising Trial Attorney
18 JAMILAH A. JEFFERSON, Deputy City Attorney
19 DAVID A PEREDA, Deputy City Attorney

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By: 
Attorneys for Defendant
CITY OF OAKLAND

PROOF OF SERVICE

From the Roots Up, Inc., v. City of Oakland
Alameda County Superior Court Case No. RG13704222

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below I served the within documents:

DEFENDANT CITY OF OAKLAND'S ANSWER TO SECOND AMENDED COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/ Express Mail.

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I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 13, 2014 at Oakland, California.



Carma Carden