

FILED BY FAX**ALAMEDA COUNTY****March 14, 2014****CLERK OF
THE SUPERIOR COURT
By Angelica Mendola, Deputy****CASE NUMBER:
RG13704222**

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From the Roots Up, Inc. and
Derron Thibodeaux

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

FROM THE ROOTS UP, INC., a California
non-profit corporation; DERRON
THIBODEAUX, an individual,

Plaintiff and Petitioner,

v.

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

Defendants and Respondents.

CASE NO. RG 13704222

SECOND AMENDED
VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE &
DECLARATORY RELIEF

INTRODUCTION

1. This is an action brought by From the Roots Up, Inc., a non-profit organization whose members are concerned residents of the City of Oakland, and Derron Thibodeaux, an Oakland taxpayer. From the Roots Up challenges actions taken by the City of Oakland

1 [City] in the City's dealings with Oakland Maritime Support Services, LLC [OMSS].
2 Oakland has enacted Ordinance No. 13-201, which authorizes the City Administrator to
3 enter into a lease agreement with OMSS without further review or consideration by the
4 City Council.

5 2. Although OMSS was granted an Exclusive Negotiating Agreement [ENA] with
6 the City of Oakland for an ancillary maritime support [AMS] facility in 2007, that ENA
7 expired more than two years ago. The ordinance before the court pertains to a different
8 parcel of land than that covered by the expired ENA. The failure of the City to solicit
9 new proposals and re-open the development of the site in question violate applicable law
10 governing contracts between municipalities and developers.

11 3. Plaintiffs and petitioners [petitioners] are informed and believe that for many
12 years, the City has failed to collect parking taxes owed by OMSS based on parking
13 revenue it received as part of its operation of truck parking facilities on land leased to it
14 by the City of Oakland.

15 4. Petitioners seek a writ of mandate and interim injunctive relief to prevent the
16 City from entering into a lease with OMSS unless and until it has (a) complied with the
17 legal requirements governing municipal contracting to ensure that OMSS is the best
18 qualified bidder to complete an ancillary marine services facility adjacent to the Port of
19 Oakland (the successful bidder must have a project that conforms to present site and use
20 requirements, as well as the financial resources to complete a project of this scale), and
21 (b) protected the financial interests of the City by actually collecting overdue parking
22 taxes and other sums of money owed to the City by OMSS.

23 PARTIES

24 5. Petitioner From the Roots Up, Inc., is a California non-profit and tax-exempt
25 corporation organized under Internal Revenue Code § 527. The purpose of the
26 organization is to represent the interests of its members and to serve as a watchdog over
27 the activities of the Oakland mayor and city council, to ensure that the interests of the
28 residents of Oakland are protected.

1 6. Petitioner Derron Thibodeaux is a resident of the City of Oakland who has paid
2 taxes in the City of Oakland within the past twelve months. Petitioner Thibodeaux owns
3 two parcels of real estate in the city, and has been assessed Oakland City parcel taxes on
4 each of the parcels, and had paid said taxes to the City of Oakland, within the last past
5 twelve months. He therefore has standing to bring this action as a taxpayer, pursuant to
6 Cal. Civ. Proc. Code § 526a, to prevent the "illegal expenditure of, waste of, or injury to,
7 the estate, funds, or other property" of the City of Oakland.

8 7. Defendant City of Oakland is a California charter city.

9 8. Defendant Jean Quan is the Mayor of the City of Oakland, and, as chief
10 administrative officer of the city, she is responsible for the implementation of Ordinance
11 No. 13-0145.

12 9. Defendants Dan Kalb, Patricia Kernighan, Lynette Gibson McElhaney, Libby
13 Schaaf, Noel Gallo, Desley Brooks, Larry Reid, and Rebecca Kaplan are members of the
14 City Council of the City of Oakland, and are responsible for the enactment of Ordinance
15 No. 13-0145.

16 10. The true names and capacities of DOES 1- 10 are, at this time, unknown to
17 Petitioners, who therefore sue said Defendants by such fictitious names, and who will ask
18 leave of the Court to amend this Petition to reflect the true names and capacities when the
19 same have been ascertained. Petitioners are informed and believe and thereon allege, that
20 each of said Respondents are responsible in some manner for the events and injuries
21 herein described, and proximately caused damages to Petitioners as herein alleged.

22 11. Petitioners are informed and believe and thereon allege, that, at all times
23 herein alleged, each and every Respondent was the agent, employee, servant, partner,
24 franchisee and joint venturer of each of his or their co-Respondents, and, in doing the
25 actions hereinafter alleged, was acting within the scope of his or their authority as such
26 agent, employee, servant, partnership, franchisee, and joint venturer, and with the
27 permission and consent of each co-Respondent.

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1 California Limited Liability Company, for development of an AMS facility to provide
2 truck parking and truck-related services on approximately 17 acres in the Central and
3 North Gateway Areas of the former OAB. The ostensible purpose of the LDDA is to
4 develop the AMS facility to comply with the requirements of the BCDC.

5 19. The project as described by the LDDA is substantially different from the
6 project envisioned by the original proposal in 2007. The 2007 proposal included
7 approximately \$33.3 million in new construction, while the proposed LDDA would
8 require only \$22 in construction. The land upon which the project will be developed is not
9 in the East Gateway development area, but in the Central and North Gateway areas.
10 While there will be jobs associated with the project, there will not be 259 new jobs.
11 Moreover, many of the jobs associated with the project are connected to a proposed food
12 court, which will not pay employees anything close to the average \$47,000 income that
13 was promised in the original proposal.

14 ***B. History of OMSS Financial Dealings With the City.***

15 20. Petitioners are informed and believe that prior to June 2007 OMSS was
16 operating a truck parking facility on the former OAB pursuant to the City's short term
17 lease program. That short term lease continued until August 2013, at which time the City
18 entered into a lease with OMSS for approximately 5 acres to be used by OMSS as an
19 alternative to its existing truck parking location, which was required for the development
20 of the former OAB project to proceed.

21 21. Oakland Municipal Code Chapter 4.16 imposes a parking tax equal to 18.5%
22 (consisting of a base tax rate of 10% and a surcharge of 8.5%) of the space rental fee on
23 every person occupying a rented parking space in the City. Section 4.16.020 identifies the
24 vehicles subject to the tax, and specifically includes trucks. Section 4.16.050 requires
25 that the tax be paid directly to the parking lot operator, and it is illegal for the operator to
26 absorb or refund the tax. Every parking lot operator must register with the City, §
27 4.16.100, and must also file annual returns reporting the tax collected.

28 22. OMSS has never registered as a parking lot operator despite the fact that it has

1 continuously operated truck parking facilities at the former OAB and has collected
2 parking fees from truck drivers who park on its facilities.

3 23. In 2009, an effort was made before the City council to exempt large trucks
4 from the parking tax requirement, but that effort failed and OMSS was specifically
5 directed to commence collecting and forwarding parking taxes. Records have been
6 requested from the City of Oakland concerning OMSS parking tax registration and
7 payment, and the City has responded that it has no record of OMSS having registered as a
8 parking lot operator. Petitioners are informed and believes that OMSS has neither
9 registered nor collected the mandatory taxes.

10 24. Under the terms of Ordinance 13-0145, Ordinance Exhibit B, Item 36,
11 "Developer shall be current in parking taxes as a condition to Closing and to remain in
12 compliance under the ground lease." Under Section 9 of the ordinance, the City
13 Administrator is given the authority to "determine satisfaction of conditions precedent
14 under the LDDA to the conveyance of the leasehold." Because OMSS has never
15 registered as a parking operator nor ever filed a parking tax return, it would be an abuse
16 of discretion to determine that OMSS has become current in parking tax payments
17 without a full audit of OMSS's parking operation as provided by Oakland Municipal
18 Code § 4.16.130.

19 25. OMSS was directed to vacate its temporary parking facility by notice service
20 in mid-2013. Despite the notice, OMSS retained possession of its premises on the former
21 OAB where it operated its parking facility. Consequently, the City of Oakland was forced
22 to filed an unlawful detainer action against OMSS, and judgment was entered in favor of
23 the City. On September 13, 2013, OMSS was evicted from the premises on the OAB pursuant
24 to a writ of possession based upon eviction proceedings initiated by the City.

25 26. Inexplicably, a month later on October 14, 2013 the and OMSS entered into a
26 Lease Termination Agreement, despite the fact that OMSS's leasehold interested had been
27 terminated by a judgment. In the agreement, the City waived approximately \$270,000 in rent and
28 utility charges owed by OMSS for the period from June-September 2013. In addition, the City

1 returned a \$70,000.00 security deposit to OMSS. The settlement agreement was prepared and
2 signed by City staff, and was never presented to the City Council.

3 27. On October 11, 2013, in a letter from Deanna J. Santana, the Oakland City
4 Administrator, to Fred Blackwell, as Assistant City Administrator, the actions of the City
5 Administration with regard to delinquent parking taxes of OMSS are discussed. The
6 letter acknowledges that OMSS failed to collect the mandatory parking tax from its
7 customers, leading to a tax liability totaling \$1,258,715. The letter directs that other
8 municipal funds be used to pay the delinquent parking taxes on behalf of OMSS. A copy
9 of the letter is attached to this complaint.

10 28. Petitioners are informed and believe and thereon allege that this waiver of
11 parking tax liability was done without the knowledge and/or consent of the Oakland City
12 Council.

13 29. The contents of the letter and the purported waiver of \$1.25 million in parking
14 tax arrearages was not made known to the Council at the time the LDDA arrangement
15 was approved by the Council, nor was the memorandum made known to the general
16 public.

17 LEGAL REQUIREMENTS

18 30. As a Charter City, Oakland has adopted ordinances regulating the competitive
19 bidding process for projects like the AMS services project at the former OAB. *See*
20 Oakland Municipal Code §§ 2.04.010 et seq. Although competitive bidding is not
21 required for projects falling below certain threshold dollar limits, the project at issue here
22 is not exempted.

23 31. The City of Oakland has abused its authority under its Code by authorizing
24 City administration to negotiate a Lease Disposition and Development Agreement
25 [LDSS] for a number of reasons, any one of which would require that the competitive
26 bidding process be reopened. (1) The ENA between OMSS and the City of Oakland
27 expired more than two years ago; (2) More than six years have passed between the
28 original Request for Proposal and the authorization to enter into an LDSS; (3) the location

1 of the project has changed, the capital requirements have been reduced by one-third, and
2 the extent to which jobs will be created by the project has been sharply reduced from the
3 original proposal; and (4) the financial responsibility of OMSS has been called into
4 question by the failure over a period of more than six years to pay parking taxes to the
5 City of Oakland and the failure to pay rent for space occupied by OMSS.

6 32. "Because of the potential for abuse arising from deviations from strict
7 adherence to [competitive bidding] standards ... the letting of public contracts universally
8 receives close judicial scrutiny" *Konica Business Machines U.S.A., Inc. v. Regents*
9 *of University of California* (1988) 206 Cal. App.3d 449, 456, 253 Cal. Rptr. 591.

10 33. When the competitive bidding requirements are not met, relief may be had by
11 way of writ of mandate. *Eel River Disposal and Resource Recovery, Inc. v. County of*
12 *Humboldt* (2013) 221 Cal. App. 4th 209, 164 Cal. Rptr.3d 316.

13 34. Oakland Municipal Code §§ 2.41.050 et. seq., govern the disposition by lease
14 or otherwise of municipal property. Under those provisions, the City is required to
15 engage in a competitive bidding process. The challenged ordinance approved the LDDA
16 without complying with the requirements of §§ 2.41.050 et. seq. Under the
17 circumstances, any effort by the City to negotiate a lease pursuant to the existing
18 ordinance would itself be a waste of municipal funds, since any lease would be a nullity
19 due to the failure to comply with competitive bidding requirements.

20 35. Under the provisions of the Oakland Parking Tax Ordinance, enacted as a
21 public initiative through a ballot measure, Oakland Municipal Code §§ 4.16.101 et seq.,
22 the collection and allocation of the parking tax is governed by a number of mandatory
23 provisions. Any parking facility operator governed by the ordinance and required to
24 collect parking taxes (§ 4.16.050); must register with the City (§ 4.16.100), and must
25 collect the taxes due or be subject to a twenty-five percent surcharge (§ 4.16.070). Those
26 (such as OMSS) who fail to comply with these requirements are subject to a rigorous
27 review and audit process, and to additional penalties and interest. The actions of OMSS
28 in failing to pay parking taxes for many years make OMSS guilty of a misdemeanor (§

1 4.16.090).

2 36. The October 11, 2013, letter from the City of Oakland purporting to absolve
3 OMSS of its delinquent parking tax liability is not authorized under the Parking Tax
4 Initiative Measure and the provisions of the code embodying that enactment. The City
5 Administrator has no legal authority to waive the parking tax. Moreover, by purporting to
6 waive the parking tax, the City Administrator is also absolving OMSS of any criminal
7 responsibility for its actions, even though the parking tax measure specifically states that
8 the violations committed by OMSS are punishable as misdemeanors. The City
9 Administrator has acted in excess of her authority in so doing.

10 EQUITY AND IRREPARABLE INJURY

11 37. There is between the parties an actual controversy as set forth in this complaint. The
12 Petitioners and members of the public are suffering irreparable injury and are threatened with
13 irreparable harm in the future by reason of the acts alleged herein, inasmuch as the City of
14 Oakland imminently will take actions that contravene the public bidding process and threaten the
15 financial welfare of the City by the illegal expenditure of, waste of, or injury to, the estate, funds,
16 or other property of the City of Oakland.

17 38. Petitioners have no plain, adequate, or complete remedy to speedily redress the
18 wrongs complained of herein other than this action. Any other remedy to which Petitioners could
19 be remitted would be attended by such uncertainties and delays that it would cause further
20 irreparable injury, damage, and inconvenience to them. Damages are not adequate to protect
21 Petitioners from the continuing effects of the actions of the City and from the City's failure to
22 act.

23 FIRST CAUSE OF ACTION--WRIT OF MANDATE

24 39. Petitioners reallege paragraphs 1 through 31 above as if fully set forth herein.

25 40. In taking the actions described above, the City of Oakland has failed to perform its
26 duties under its charter, municipal code and other applicable law. The City has acted in excess of
27 its authority and contrary to law in designating Oakland Marine Support Services as the sole
28 party eligible to enter into a contract for the development of Ancillary Marine Support services

1 at the former Oakland Army Base, without first reopening the proposed development to
2 competitive bidding.

3 SECOND CAUSE OF ACTION-WRIT OF MANDATE

4 41. Petitioners reallege paragraphs 1 through 31 above as if fully set forth herein.

5 42. To the extent OMSS shall be deemed to have satisfied its obligation to pay parking
6 taxes to the City of Oakland, that determination amounts to an abuse of discretion and action in
7 excess of authority by officials of the City of Oakland, because OMSS has never registered as
8 required by the Oakland Municipal Code and has never paid any parking taxes.

9 PRAYER

10 Wherefore, petitioners pray:

11 1. That the Court issue its peremptory writ of mandate commanding the City of Oakland
12 as follows:

13 (a) The City of Oakland shall not enter into any Lease Disposition and Development
14 agreement with Oakland Maritime Support Services unless and until it solicits and reviews
15 competitive bids for the Ancillary Marine Support services project at the former Oakland Army
16 Base. (b) The City of Oakland shall not certify that Oakland Marine Support Services has paid
17 applicable parking taxes unless and until Oakland Marine Support Services has registered as a
18 parking provider and unless, until an audit has been completed to determine the amount of
19 parking taxes owing to date, and until payment of back taxes has been made.

20 2. That the Court issue its alternative writ of mandate, commanding the City of Oakland
21 to show cause why a peremptory writ of mandate should not issue commanding that the City take
22 the actions set forth in Paragraph 1 of this prayer;

23 3. That the Court declare that the actions of the City of Oakland as described herein are
24 contrary to law;

25 4. That the Court issue a temporary restraining order and preliminary injunction against
26 the implementation of Ordinance No. 13-0145 pending resolution of the issues raised by this
27 petition;

28 5. That the Court award attorneys fees, expenses of counsel, and costs of suit pursuant to

1 Cal. Civ. Proc. Code § 1021.5; and

2 6. For such other relief as the Court may deem just and proper.

3 Dated: March 14, 2014

Respectfully submitted,

4 LAW OFFICES OF ROBERT C. MOEST
Robert C. Moest

5 -and-

6 LAW OFFICES OF OSCAR B. VALENCIA
7 Oscar B. Valencia


8
9 By: 

Robert C. Moest

10 Attorneys for Petitioners
11 From The Roots Up, Inc. and
Derron Thibodeaux

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I am the president of From The Roots Up, Inc., a California non-profit corporation, and also am an individual petitioner in this action. I have read the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE & DECLARATORY RELIEF and know its contents to be true, except where stated on information and belief, and as to those allegations, I am informed and believe them to be true.


Perron Thibodeaux

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2530 Wilshire Boulevard, Second Floor, Santa Monica, California 90403.

On March 14, 2014, I served the foregoing document described SECOND AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE & DECLARATORY RELIEF as on the interested parties in this action by placing a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Jamilah A. Jefferson, Esq.
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I am readily familiar with my office'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 at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed March 14, 2014, in Los Angeles County, California.


Robert C. Moest