

Plaintiff alleges:

1. Plaintiff, TURNER GROUP CONSTRUCTION is now, and at all times mentioned in this complaint was, a company organized and existing under the laws of the State of California, with its principal place of business in Alameda County, California. TURNER GROUP CONSTRUCTION is a General Contractor;
2. Defendant PHIL TAGAMI, Master Developer of the Oakland Army Base project, with his principal place of business located in the City of Oakland, County of Alameda and the State of California;
3. Defendant “Staff” of City of Oakland’s Redevelopment Agency, a public entity organized and existing under the Oakland City Charter, the principal place of business of which is located in the City of Oakland, Count of Alameda, and the State of California;
4. Defendant PAT CASHMAN, individually, and in his representative capacity as an employee of Community Economic Development, a public entity organized and existing under the provisions of the Oakland City Charter, the principal place of business of which is located in the City of Oakland, County of Alameda, State of California;
5. Defendant COURTNEY A. RUBY, individually, and in her representative capacity, as Auditor of the City of Oakland, a public entity organized and existing under the provisions of the Oakland City Charter, and the principal place of business of which is located in the City of Oakland, County of Alameda, State of California.
6. Defendant DEANNA J. SANTANA, individually, and in her representative capacity as Administrator of the City of Oakland, a public entity organized and existing under the provisions of the Oakland City

Charter, the principal place of business of which is located in the City of Oakland, County of Alameda, State of California.

7. Defendant BILL GATES, individually, and in his representative capacity as an employee of Top Grade Construction an unincorporated association organized and existing under the laws of the State of California, the principal place of business of which is located in the City of Livermore, County of Alameda, State of California.

8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does I-XX, inclusive, and therefore sued these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were proximately caused by their conduct.

9. Defendants TAGAMI, Redevelopment Agency Staff/ City of Oakland, PAT CASHMAN/CEO, COURTNEY A. RUBY/Auditor, DEANNA J. SANTANA/Administrator, and BILL GATES/ Top Grade Construction at all times herein mentioned were the agents and employees of their private and/or public entity employer as well as each other, and in doing the things hereinafter alleged were acting within the course and scope of such agency and the permission and consent of their codefendants.

STATEMENT OF FACTS

10. The narrative with which the Auditor commences the Performance Audit she authored and/or subsequently published begins in May, of 2011. (The Auditor's Performance Audit's Report, dated March 21,

2013, is attached as Plaintiff's Exhibit No. 1, and is incorporated reference herein, as if fully set forth)

The initial RFP for the subject Oakland Army Base Building 6 Remediation work was issued in August, of 2009.

11. Two months later, RDA staff indicated that it was going to recommend that the City Council select the "favored" proposal competitively bided and/or submitted by PARC Services, Inc., the team of which included both DOWNRITE Corporation and Turner Group Construction (as a subcontractor).

12. Immediately thereafter, Master Developer PHIL TAGAMI, contacted the Redevelopment Agency Staff, in order to not only question the competence of the PARC Services, Inc. "team", but also to make it perfectly clear that he believed that the competitively bided contract proposal for Remediation Work on Building- 6 of the Old Oakland Army Base should be awarded to, and/or handled by Top Grade Construction, a company with which he was in the process of putting together an Exclusive Negotiating Agreement concerning work necessary for the redevelopment of the former Oakland Army Base.

13. At that point in time (September, 2009), the Old Oakland Army Base Remediation work project became dormant, and it remained that way for about a year and a half. In retrospect, however we now know that the co-conspirators Redevelopment Agency "Staff", Master Developer/ PHIL TAGAMI and Top Grade Construction/ BILL GATES, had agreed that the Redevelopment Agency Staff would not go before the City Council in order to recommend that it award the Remediation Work contract to the favored PARC Services, Inc. bid proposal. Furthermore, they devised an altered and/or expanded REMEDIATION and/or demolition work contract (which appeared to include the work that had already been

bided competitively in 2009, by Plaintiff' as part of the PARC Services Inc., DOWNRITE Corporation "Team")

14. On or about May 24, 2011, TURNER Group Construction learned from Redevelopment Agency Staff that it had decided to recommend that the Oakland City Council "waive" the competitive bidding process and, instead, award two contracts (one for 2 million dollars, and another for 2.6 million dollars to 4.6 million dollars) for Demolition and/or Remediation Work at building 6 on the Old Oakland Army Base "sole Source" to BILL GATE Top Grade Construction (Contractor of Master Developer of the Oakland Army Base project, PHIL TAGAMI).

15. Following the advance release of the Auditor's report, City administrator SANTANA's letter of March 7, 2013 states that "...given that the Administration lacks investigatory and auditing expertise, we focused on management practices that we can strengthen to address these concerns. Although we recognized the need for an independent audit, the request to fund this effort was denied by the City Council. We appreciate the Auditor for conducting this, providing a thorough examination and investigation of the facts using the tools, expertise and authority available within the purview of the Auditor's Office. The audits findings validate the Administration's concerns."

16. The City Administrators letters concludes, "...we appreciate your work to ensure that Oakland's governing system is operating according to the legal framework of the charter that will ensure fairness, transparency and effectiveness in meeting the needs of the people we serve." (Administrator SANTANA's letter of March 7, 2013 is attached as Plaintiff's Exhibit 2, and is incorporated by reference herein, as if fully set forth)

17. In her letter dated March 21, 2013, Oakland City Auditor COURTNEY A. RUBY indicated that Section 218 of the City of Oakland Charter: Non

Interference in Administrative Affairs....is designed to afford every citizen, employee, and business the opportunity to live, work, and transact business with confidence that NO inappropriate influence is being exerted in City Government. However, if Section 218 is not enforced- it is rendered ineffective....” (Auditor RUBY’s letter of March 21, 2013 is attached as Plaintiff’s Exhibit 3, and is incorporated herein by reference, as if fully set forth)

18. “In February, 2012, the Administration clearly demonstrated its commitment to enforce Section 218, when it reviewed a Councilmember’s involvement in the Rainbow Teen Center.”

19. Auditor RUBY also stated that “Given the significance of the allegations that City polices ordinances and state laws were violated by a council member involved with the Rainbow Teen Center, my office commenced an audit in April of 2012 to determine whether or not violations of Section 218 occurred. Focused on the entirety of the City Council, the audit examined reported violations occurring in 2009 through 2012, including but not limited to, the Rainbow Teen Center.

20. After interviewing more than 40 employees, reviewing 27 hotline reports, and examining thousands of Councilmembers’ and Council Aides’ emails and select phone records, this audit was able to substantiate 14 instances of Councilmembers or their Aides violating the City Charter, Section 218, and Non-Interference in Administrative Affairs.” [p. 2 of letter of (March 21, 2013)]

21. Auditor RUBY also stated the audit was aimed at confirming reported instances of interference that had occurred; and still further, she indicated that, “this audit does not make any legal determinations; such matters will be properly referred to the appropriate law enforcement authorities...Conviction can only be determined in a court of law. What, if any, consequences related to these violations have yet

to be determined by the appropriate parties.” (P.2 of letter of March 21, 2013)

22. Auditor RUBY report stated that “unless there is clear direction and intervention from the Administration, this type of culture undermines the professional expertise of the staff.” (P.22 of Audit Report)

23. According to a legal opinion issued by the City Attorney on March 24, 2006 to one council member, and released to the full City Council on June 28, 2006, the City Council is responsible for policing its’ members; and she further stated that “the City Council has not enforced their Code of Conduct, defined procedures for such enforcement (including censure), or censured their colleagues in the past when the Code has been violated.” (P.22 of Audit Report)

24. In finding 1.2 of Auditor RUBY’s report, she indicated that “according to Redevelopment, this contracting process was highly irregular and “messy”. It is the audits conclusion that the Council members inappropriate involvement and interference in the contracting process appears to have significantly contributed to this highly irregular process. Under the standard contracting process for construction contracts exceeding \$50,000.00, the Administration should have conducted a competitive bid process. However, Redevelopment staff incorrectly began working with Top Grade Construction (Top Grade) for a sole source contract.

25. This occurred because, according to Redevelopment, “in an effort to speed up the remediation work on the Amy Base, Redevelopment attempted to contract with Top Grade Construction, who was a contractor of the master developer of the project”.

26. Regardless of the staffs’ misinterpretation about whether they could sole source a contract for the demolition work, as shown in

Exhibit 1, there was interference in the contracting process when, in June, of 2011, the District 6 Councilmember told staff that their recommendation to work with Top Grade needed to be reworked and that the Councilmember was negotiating a portion of the contract with TURNER. There was also interference when in July through September of 2011, the District 6 and 7 Councilmembers' directed staff to work with TURNER to establish a bid proposal.

27. Conversely, however, the Auditor's report also states that "the councilmembers from District 6 and District 7 were also consistently involved in Redevelopment's contract process for the Oakland Army Base Building 6 demolition and remediation (see yellow boxes in Exhibit 1). While this involvement does not cross the lines as inference, it does help illustrate how staffs were impacted by the Councilmembers' actions. Further, both the Councilmembers' involvement and interference in the contracting process appear to inappropriately favor TURNER.

28. A review of Exhibit 1, which purports to cover the "Events of Oakland Army Base Building 6 Demolition and Remediation Project", reveals that the City Administrator never authorized RDA to engage in this bid process with TURNER (from July through September. 2011)(p.16 of Auditor's Report)(Auditor RUBY's Exhibit 1 is attached as Plaintiff's Exhibit 1(a), and is incorporated herein by reference, as if fully set forth)

29. On September 19, 2011, RDA sent a letter to TURNER requesting TURNER to submit its bid proposal by October 3, 2011. This action was never authorized by the Administrator.

30. On September 26, 2011, TURNER submits its bid proposal to RDA

31. On September 27, 2011, the Administrator emails RDA and questions why staff sent the September 19, 2011 letter to TURNER and why RDA continues to work with TURNER.

32. On February 14, 2012, the RDA rated bids and names DOWNRITE Corporation as the lowest responsible bidder.

33. On June 19, 2012, the Oakland City Council voted to adopt the contract with DOWNRITE.

34. Almost six (6) months after the Sole Sourcing controversy suddenly erupted, Administrators SANTANA was still very upset with Plaintiff TURNER GROUP CONSTRUCTION. When the above referenced contracts were subsequently put out for competitive bidding and RDA Staff sent TURNER GROUP CONSTRUCTIONS an RFP letter dated September 19, 2011, the Administrator immediately questioned RDA Staff why that letter had been sent to TURNER, soliciting its bid (when she had not authorized RDA to allow TURNER GROUP CONSTRUCTION to participate in the bidding process; and still further, after Plaintiff submitted its bid proposal on September 26, 2011, the Administrator emailed RDA on September 27, 2011, to ask why it had requested a bid proposal from Plaintiff; and she also wanted to know why RDA was still dealing with TURNER GROUP CONTRACTION.

35. Meanwhile, the Auditor, for her part, altogether failed and/or refused to communicate with Plaintiff TURNER GROUP CONSTRUCTION during the course of the Performance Audit she previously conducted: and moreover, she neither allowed Plaintiff TURNER GROUP CONSTRUCTION to attend the preview of the Auditors report, NOR was TURNER GROUP CONSTRUCTION permitted to respond in writing and/or verbally, to the contents of the Auditor's Report, prior to its publication. And finally, the last act done in furtherance of the conspiracy between the Administrators and the Auditor was the letter of April 12, 2013, in which the Auditor rejected the demand made for

retraction of the defamatory material contained in her report that was made on behalf of Plaintiff TURNER GROUP CONSTRUCTION by Attorney JESSI MAINARDI's letter dated April 9, 2013. (Attorney MAINARDI's letter of April 9, 2013 is attached as Plaintiff's Exhibit 4, and is incorporated by reference herein, as if fully set forth; Auditor RUBY letter dated April 12, 2013, written in reply thereto is attached as Plaintiff's Exhibit 5, and is incorporated by reference herein, as if fully set forth)

FIRST CAUSE OF ACTION

(Conspiracy To Intentionally Interfere With Contractual Relations And Prospective Economic Advantage)

[Defendants PHIL TAGAMI, "Staff" of Redevelopment Agency, BILL GATES and TOP GRADE CONSTRUCTION]

36. Plaintiff TURNER GROUP CONSTRUCTION re-alleges the factual allegations contained in paragraphs 1 through 35 of this complaint, which are incorporated by reference herein, as if fully set forth.

37. Plaintiff TURNER GROUP CONSTRUCTION herein overs that, in and around August, 2009, it and PARC Services, Inc., and/or DOWNRITE CONSTRUCTION entered into a contractual agreement pursuant to which Plaintiff was to be a subcontractor on the PARC Services, Inc. "team" on the contract for Remediation work in connection with which the original RFP had just been issued; and still further, in connection with which a competitive bid proposal had been submitted to the Redevelopment Agency of the City of Oakland. Plaintiff herein overs that the contractual and/or economic relationships, detailed previously hereinabove, probably would have resulted in an economic benefit to Plaintiff;

38. Plaintiff herein alleges that defendants PHIL TAGAMI, Redevelopment Agency Staff and BILL GATES and TOP GRADE

CONSTRUCTION knew of the prospective future economic benefits that Plaintiff intended to derive from these relationships;

39. Defendants intended to disrupt these relationships.

40. Shortly thereafter defendants, and each of them, agreed to engage in wrongful conduct, in that they agreed RDA Staff would not appear before the City Council in order to recommend that It award the contract for remediation work to the PARC Services, Inc. "team", which had submitted the bid proposal "favored" by RDA Staff.

PHIL TAGAMI, Master Developer of the Oakland Army Base Project contacted Redevelopment Agency Staff, and questioned the competence of the PARC Services, Inc., "team"; and TAGAMI then identified TOP GRADE CONSTRUCTION (with which he was in the process of putting together an Exclusive Negotiating Agreement for construction work on the Oakland Army base) as the company which should be awarded the contract for the subject Remediation work. The defendants agreement was wrongful because it not only violated the provisions of §2.04.050 et seq. of the Oakland City Charter (requiring the use of a competitive bidding process for construction contracts from the City of fifty thousand (\$50,000.00) dollars or more) but also Intentionally Interfered with both the contractual relations formed by and/or between Plaintiff TURNER GROUP CONSTRUCTION, PARC Services, Inc. and/or DOWNRITE Corporation, as well as the prospective economic advantage from which Plaintiff TURNER GROUP CONSTRUCTION reasonably expected to derive a future economic benefit from both and/or each of Its former partners (PARC Services, Inc. and/or the DOWNRITE Corporation) and additionally the Redevelopment Agency.

41. Plaintiff herein alleges that its relationships with PARC Services, Inc., DOWNRITE Corporation, and/or the Redevelopment Agency were disrupted when, instead of having had its "favored" bid proposal

recommended to the City Council for an award of the Oakland Army Base Remediation Work contract by Redevelopment Agency Staff, the project went unexpectedly dormant.

42. Plaintiff was harmed;

43. That the defendants' wrongful conduct was a substantial factor in causing Plaintiffs harm.

EXEMPLARY DAMAGES

The defendants' and each of them, acted willfully and with the intent to injure Plaintiff in doing the things herein alleged; resultantly, defendants must be deemed to have acted with "malice", conscious disregard of Plaintiff's rights and, therefore, punitive damages should be assessed against the defendants in an amount sufficient to NOT only punish the defendants, but also to deter others from engaging in similar conduct.

RESPONDEAT SUPERIOR

Plaintiff, TURNER GROUP CONSTRUCTION herein asserts that the actions and/or failures to act of the defendant, and each of them, occurred during the course, and/or within the scope of their employment. As a result of the injuries "proximately caused" by the conduct of the employees, identified specifically herein above, the Defendant City of Oakland must be held vicariously liable for the damages incurred by Plaintiff.

WHEREFORE, Plaintiff requests Judgment in an amount to be established by proof at trial.

SECOND CAUSE OF ACTION

(Conspiracy to Negligently Interfere with Contractual Relations and/or Prospective Economic Advantage)

[Defendants PHIL TAGAMI, Staff of Redevelopment Agency/City of Oakland, BILL GATES and TOP GRADE CONSTRUCTION]

44. Plaintiff re-alleges the factual allegations contained in paragraphs 1 through 43 of this Complaint, which are incorporated by reference herein, as if fully set forth.

45. Plaintiff TURNER GROUP CONSTRUCTION claims that defendants PHIL TAGAMI, Redevelopment Agency Staff, and BILL GATES/TOP GRADE CONSTRUCTION conspired to Negligently Interfere with the contractual relations then existed between Plaintiff and PARC Services, Inc., DOWNRITE Corporation.

46. Defendant's PHIL TAGAMI, Redevelopment Agency Staff and BILL GATES/ TOP GRADE CONSTRUCTION to negligently interfere with the prospective economic advantage from which It reasonably expected to benefit from PARC Services, Inc., DOWNRITE Corporation, and the Redevelopment Agency, that probably would have resulted in an economic benefit to Plaintiff TURNER GROUP CONSTRUCTION. Agency Staff/City of Oakland, and BILL GATES/ TOP GRADE CONSTRUCTION knew and/or reasonably should have known of these relationships;

47. That defendants, and each of them, knew or reasonably should have known that those relationships would be disrupted if they failed to act with reasonable care;

48. The defendants, and each of them, failed to act with reasonable care;

49. The defendants engaged in wrongful and/or unreasonable conduct, in the violations of the Competitive Bidding requirements of the applicable provisions of Sections 2.04.010 et seq., of the Oakland City Charter and, additionally, by Conspiring to Negligently Interfere with

Contractual Relations then existing between It and PARC Services, Inc. and DOWNRITE Corporation, as well as the prospective economic advantage from which TURNER GROUP CONSTRUCTION reasonably expected to benefit from PARC Services, Inc., DOWNRITE Corporation and the Redevelopment Agency, that probably would have resulted in an economic benefit to TURNER GROUP CONSTRUCTION;

50. That these relationships were disrupted;

51. That Plaintiff TURNER GROUP CONSTRUCTION was harmed; and

52. That Defendant PHIL TAGAMI, Redevelopment Agency Staff and BILL GATES/ TOP GRADE CONSTRUCTION's wrongful conduct was a substantial factor in causing Plaintiff TURNER GROUP CONSTRUCTIONS harm. Although Plaintiff once believed that the last act in furtherance of this conspiracy occurred in and around September, of 2011, when PHIL TAGAMI and/or BILL GATES met with and threatened McGUIRE and HESTER with which Plaintiff had just contracted and had submitted a joint bid proposal: Shortly after the meeting referenced hereinabove, McGUIRE and HESTER backed out of the deal. A continuing Conspiracy of silence exists in order to keep a lid on and/or cover up the truth about the seminal roles played by PHIL TAGAMI and BILL GATES of TOP GRADE CONSTRUCTION at the inception of the Sole Sourcing debacle.

EXEMPLARY DAMAGES

In doing the things herein alleged, defendants acted willfully and with the intent to cause injury to the Plaintiff. Defendants were therefore guilty of malice; in conscious disregard of plaintiff's rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish defendants, and to deter others from engaging in comparable conduct.

RESPONDEAT SUPERIOR

Plaintiff TURNER GROUP CONSTRUCTION herein overers that inasmuch as the actions and/or failures to act of the defendants, and each of them, occurred during the course, and/or within the scope of their employment, their employers (the defendant City of Oakland, and/or TOP GRADE CONSTRUCTION) must be held vicariously liable for the damages incurred by Plaintiff as a result of the injuries “proximately caused” by the conduct of the employees identified specifically hereinabove.

WHEREFORE, Plaintiff requests Judgment in an amount to be established by proof at trial.

THIRD CAUSE OF ACTION

(Conspiracy to Defame Plaintiff TURNER GROUP CONSTRUCTION by Publication of LIBEL PER SE; and/or Negligent Defamation of Character/Special Damages “Proximately Caused Thereby”) [Defendants DEANNA J. SANTANA, Administrator, and COURTNEY A. RBY, Auditor, City of Oakland]

Plaintiff re-alleges the factual allegations contained in paragraphs 1 through 52 of this complaint, which are incorporated by reference herein, as if fully set forth.

53. Administrator SANTANA and/or Auditor RUBY agreed that some type of action would be necessary in order for the message to be communicated that the Administration is actively engaged in an effort to protect its employees from being unduly influenced by the actions or conduct of City Council persons.

54. The City Administrator and the City Auditor also agreed that a Major impediment to restoring and/or boosting the confidence of Administrative staff was the fact that, traditionally, City Council members had failed to discipline its own members who had violated a

wide variety of Rules, Regulations, and/or provision of the Oakland City Charter.

55. The Administrator and the Auditor believed that unless violations of the Oakland City Charter were enforced, there would no longer be a necessity for compliance with the law.

56. Auditor, RUBY's report determined that "unless there is clear direction and intervention from the Administration,...this type of culture undermines the professional expertise of the staff. (Page 22 of Audit report)

57. Plaintiff TURNER GROUP CONSTRUCTION asserts that in May, of 2011, It and the Council members from District 6 and 7 objected to the Redevelopment Agency's Notice of Intention to appear before the Rules Committee of the City Council in order to recommend that it Sole source a couple of contracts with a value of 4.6 to 6.6 million dollars to TOP GRADE CONSTRUCTION (contractor of the Master Developer of the Oakland Army Base Project, PHIL TAGAMI), in violation of the Competitive Bidding Requirement codified under Sections 2.04.010 et seq., of the Oakland City Charters.

58. Plaintiff herein overs that the above mentioned disclosure proved to be a source of tremendous embarrassment, both personally and professionally, to the Administrator of which she was very much mindful (and still seething) in September, of 2011, when the Redevelopment Agency Staff sent a letter to TURNER GROUP CONSTRUCTION to submit a bid proposal for the expanded Remediation Work contract in Building 6 on the Oakland Army Base.

59. It was duly noted by the Auditor that the Administrator had not authorized the Redevelopment Agency to request a bid proposal from TURNER; and still further, after TURNER submitted its' bid proposal on September 26, 2011, the Administrator emailed the Redevelopment

Agency on September 27, 2011, in order to question why TURNER had been sent a Request for Proposal letter and, still further, questioned why the Agency still continued to deal with TURNER.

60. Auditor RUBY, for her part, failed and/or refused to communicate with Plaintiff TURNER Group during the course of the Performance Audit she initiated in April of 2012, and the results of which had been published in March of 2013.

61. Plaintiff herein asserts that the reaction of the average reader of the report would probably be similar in character to that expressed by CHIP POOLE in the column he wrote for the San Francisco Chronicle after having read the defamatory matter concerning Plaintiff TURNER GROUP CONSTRUCTION that is contained in the subject report authored and/or published by Auditor RUBY.

62. Plaintiff TURNER GROUP CONSTRUCTION herein alleges that the last act in furtherance of the conspiracy occurred on April 28, 2013, when Auditor RUBY wrote a letter in which she declined to provide Plaintiff with a retraction of any of the defamatory material that was contained in the body of her report, which had been demanded in a letter, dated April 9, 2013, written by attorney JESSE MAINARDI on behalf of Plaintiff TURNER GROUP CONSTRUCTION.

63. Plaintiff TURNER GROUP CONSTRUCTION herein overs that the foregoing factual allegations, and/or allegations of material fact are sufficient to credibly demonstrate the fact that, at all relevant times herein mentioned, both Administrator SANTANA and/or Auditor RUBY harbored “ill will”, and/or acted with “malice” toward Plaintiff TURNER GROUP CONSTRUCTION (and the Council members from District 6 and 7).

64. Plaintiff would like to dispel any illusions held by the defendants, and each of them, concerning whether or not the Litigation Privileges codified, under CC Section 47, subsections 1 and 2 (and/or a and b). Plaintiff's position is that neither the Administrator nor the Auditor will be immunized from liability by the respective subsections of the Litigation Privilege, in that they (1) they do not hold a high enough political rank to qualify; and even more importantly, (2) there was no proceeding in conjunction with which the defamatory material contained in the Auditor's Report was published.

65. Accordingly, despite the fact that they were aware of the fact that, pursuant to the provisions of the Oakland City Charter, Oakland City Council members were possessed of the authority and/or charged with a duty to police itself, "the Administration" (Administrators SANTANA and Auditor RUBY) agreed that it would be necessary to engage in an unprecedented course of action in order to provide their own unique brand of enforcement for the subject violation of Section 218 of the Oakland City Charter.

66. Consequently, on or about March 13, 2013, defendants SANTANA and/or RUBY caused a performance audit which had been authored by defendant RUBY to be published. In the body of this document the Auditor detailed a series of events which she determined were sufficient to establish that the District 6 and 7 Oakland City Council members had violated Section 218 of the Oakland City Charter (a crime/misdemeanor) in that they had allegedly interfered with the contracting processes of the Oakland Redevelopment Agency; and furthermore, Madame Auditor indicated that the actions of the Council members appeared to inappropriately favor Plaintiff TURNER GROUP CONSTRUCTION.

67. Plaintiff TURNER GROUP CONSTRUCTION asserts that these types of statements are libelous, on their face, because they imply that the

Plaintiff was somehow complicit in the criminal conduct in which two members of the Oakland City Councils allegedly engaged as, at a minimum, an accessory before the fact; and resultantly, Plaintiff was unreasonably exposed to contempt, ridicule and public obloquy. In effect, the Publication of the Performance Audit unreasonably and/or wrongfully subjected Plaintiffs' (as well as the District 6 and 7 Councilpersons) to Public Censure.

68. As a proximate result of the above described publication Plaintiff TURNER GROUP CONSTRUCTION's business, which had previously enjoyed a good reputation that Plaintiff had worked hard to establish and/or preserve, has been diminished or lost, all to its general damage; and/or alternatively, It has been specially damaged by the loss of some of its' customers, and the fact that It has not gained customers at its' usual rate since this incident.

EXEMPLARY DAMAGES

In doing the things herein alleged defendants acted willingly and with the intent to cause injury to the plaintiff. Defendants were therefore guilty of malice, in conscious disregard of plaintiff's rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish the defendants, and each of them, and to deter others from engaging in comparable conduct.

RESPONDEAT SUPERIOR

Plaintiff TURNER GROUP CONSTRUCTION herein overers that, inasmuch as the action, and/or failures to act of the defendants, and each of them, occurred during the course and or within the scope of their employment their employer (the defendant City of Oakland) must be held vicariously liable for the damages incurred by Plaintiff as a result of the injuries "proximately caused" by the conduct of the employees described with specificity herein above.

WHEREFORE, Plaintiff requests Judgment in an amount to be established by proof at trial.

FOURTH CAUSE OF ACTION

Intentional Misrepresentation

[Defendants PHIL TAGAMI, BILL GATES/TOP GRADE CONSTRUCTION,
RDA STAFF]

69. Plaintiff re alleges the factual allegations contained in paragraphs 1 through 68 of this Complaint, which are incorporated herein by reference as of fully set forth.

70. Plaintiff re alleges the factual allegations contained in paragraphs 1 through 68 of this Complaint, which are incorporated herein by reference, as if fully set forth.

71. As a consequence of the “Sole Source’ controversy detailed previously hereinabove, Administrator SANTANA , and/or Auditor RUBY put their heads together and come up with a plan of operation that they believed would enable them to more effectively govern and/or better manage the day to day administrative affairs of the City; and, in order to accomplish this arduous undertaking they turned to an individual, BILL GATES, of TOP GRADE CONSTRUCTION, for assistance.

72. Auditor RUBY heavily relied upon information she had obtained from GATES and/or TOP GRADE, which had also fared badly in the “Sole Source” debacle they believed to have been caused by Plaintiff TURNER GROUP CONSTRUCTION; and they were only too happy to provide the Auditor with inaccurate, false and/or misleading information about TURNER GROUP CONSTRUCTION (TGC), which was believed to have been largely responsible for raising the hew and cry that resulted in TOP GRADE CONSTRUCTION’s loss of 4.6 million to 6.6 million dollars in

contracts for demolition and/or remediation work in Building 6 on the (former) Oakland Army Base.

73. During the course of the subject performance audit that was conducted by Auditor RUBY she failed and/or refused to interview Plaintiff TURNER GROUP CONSTRUCTION, but instead relied on second hand information provided about Plaintiff from third parties, such as BILL GATES and/or TOP GRADE CONSTRUCTION and/or REDEVELOPMENT AGENCY and/or CITY STAFF and, resultantly, the Auditors report contains a number of allegedly factual statements that are inaccurate, false, and or misleading.

74. Plaintiff herein avers that chief among the statements to which Plaintiff takes exception are, as follows: (a) the Audit Report states that “[a]ccording to TOP GRADE, on May 12, 2012, the District 7 Council Members recommends that TOP GRADE meet with TURNER to develop a working relationship between the two companies.”

75. Plaintiff TURNER GROUP CONSTRUCTION herein asserts that it is highly doubtful that the statement alleged by TOP GRADE is accurate and/or truthfully since the information concerning TOP GRADE’s role in the Remediation and/or Demolition Work in Building 6 on the Oakland Army Base did not become public knowledge until May 24 , 2011, when the Redevelopment Agency released It’s Notice of Intention to Request that the Rules Committee support Its’ request that the Competitive Bidding Requirement of 2.04.050 be waived, and a total of 4.6 to 6.6 million dollars for Demolition and/or Remediation Work on the Oakland Army Base be “Sole Source” to TOP GRADE CONSTRUCTION; and still further, it was Plaintiff that brought this new development to the attention of the District 7 Council Members, who had no prior knowledge thereof;

76. (b) The Audit Report states that in June, 2011, “The District 6 Council Members appears to be coaching TURNER regarding the terms

of its agreement with TOP GRADE.” Plaintiff TURNER GROUP CONSTRUCTION categorically denies that it was ever “coached” by Council member BROOKS with respect to its potential partnership with TOP GRADE; and still further, TURNER GROUP CONSTRUCTION (TGC) asserts that council member BROOKS never in any way consulted with and/or discussed that subject with TURNER GROUP CONSTRUCTION.

77. (c) The Audit Report also stated that in June, 2011, “According to testimonies, TURNER wanted to flip the contract structure and become the general contractor, rather than to be TOP GRADE’s subcontractor.” Plaintiff TURNER GROUP CONSTRUCTION did not demand that it be the general contractor, and/or that TOP GRADE become a subcontractor on the Oakland Army Base Demolition and/or Remediation contracts. Instead, TURNER negotiated with TOP GRADE, in good faith, at all relevant times herein mentioned, for a scope of work that would allow TURNER to exercise some degree of discretion and control over the hiring and cost of its own subcontractors, among other things.

78. (d) The Audit Report states that in June, 2011, “The District 6 Council member then told staff that she is negotiating a portion of the contract with TURNER. “Again, Plaintiff TURNER GROUP CONSTRUCTION herein avers that the veracity of the aforementioned statement is highly suspect since it was never informed that council member BROOKS was negotiating any portion of a contract with TURNER.

79. Plaintiff TURNER GROUP CONSTRUCTION herein avers that the statements referenced hereinabove in subsections (a) through (d) constituted Intentional Misrepresentations of material fact, which were made in furtherance of the Conspiracy into which defendants TAGAMI, RDA staff, GATES and/or TOP GRADE entered in late August, and/or early September, 2009.

80. Plaintiff TURNER GROUP CONSTRUCTION has been unreasonably exposed to harm by the conduct of the defendants, and each of them, that is referenced hereinabove. The “bald” assertions made by the defendants are not supported by credible evidence: and resultantly, they do not accurately depict and/or portray the material factual circumstances surrounding the Oakland Army Base contracts with which we are herein concerned; and, still further, the foregoing misrepresentation of material fact have operated to cause undue damage to Plaintiff TURNER GROUP CONSTRUCTION’s reputation, thereby negatively impacting its prospects for future contracts unless this court grants Judgment as herein below requested in Plaintiffs’ prayer for relief.

WHEREFORE, Plaintiff requests Judgment in an amount to be established by proof at trial.

PRAYER FOR RELIEF

Plaintiff TURNER GROUP CONSTRUCTION prays for judgment against the defendants, and each of them, as follows:

(AS TO DEFENDANTS PHIL TAGAMI, STAFF OF CITY OF OAKLAND’S REDEVELOPMENT AGENCY, BILL GATES/TOP GRADE CONSTRUCTION)
[ON THE FIRST, SECOND AND FORTH CAUSE OF ACTION]

1. General Damages in an amount according to proof at trial;
2. Special Damages in an amount according to proof at trial;
3. Exemplary Damages in an amount according to proof at trial;

(AS TO DEFENDANTS COURTNEY A. RUBY and DEANNA J. SANTANA)

4. General Damages in an amount according to proof at trial;
5. Special Damages in an amount according to proof at trial;
6. Exemplary Damages in an amount according to proof at trial;

(AS TO ALL DEFENDANTS)

7. For cost of suit'

8. For such other and further relief as the court deems proper.

Dated:

TURNER GROUP CONSTRUCTIONS
Plaintiff, IN PRO PER