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AUG 01 2006

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara
By A. DeHerrera DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

11
12 THE CITY OF SAN JOSE, a municipal
13 corporation,

14 Plaintiff,

15 v.

16 FILIPINO-AMERICAN SENIOR
17 OPPORTUNITIES DEVELOPMENT
18 COUNCIL, a California corporation,
19 dba FILIPINO-AMERICAN SENIOR
20 OPPORTUNITIES DEVELOPMENT
21 COUNCIL, INC., and
22 dba FILIPINO AMERICAN COMMUNITY
23 DEVELOPMENT COUNCIL, INC.;
24 BEN MENOR aka BENNY B. MENOR, an
25 individual; and
26 DOES 1-100, inclusive,

27 Defendants.

Case Number: 1-06-CV066845

**FIRST AMENDED COMPLAINT FOR
BREACH OF WRITTEN CONTRACT,
NEGLIGENCE, FRAUD,
CONVERSION, IMPOSITION OF
CONSTRUCTIVE TRUST,
ACCOUNTING, AND VIOLATION OF
THE FALSE CLAIMS ACT**

28 COMES NOW, the City of San Jose, and alleges as follows:

GENERAL ALLEGATIONS

1. At all times relevant hereto, the City of San Jose ("City") was and is a municipal corporation duly organized and existing under the laws of the State of California.

1 2. At all times relevant hereto, defendant Filipino-American Senior Opportunities
2 Development Council ("Fil-Am SODC") was and is a corporation duly organized and existing
3 under the laws of the State of California and at all times relevant hereto was doing business
4 in the City of San Jose. At all times relevant hereto, Fil-Am SODC also did business under
5 the fictitious business names Filipino-American Senior Opportunities Development Council,
6 Inc. and Filipino American Community Development Council, Inc., among others.

7 3. Plaintiff alleges on information and belief that Defendant Ben Menor aka Benny
8 B. Menor ("Menor") is a resident of San Jose, County of Santa Clara, State of California.
9 Menor was the President, CEO, and Executive Director of Fil-Am SODC. Menor controlled
10 the corporation Fil-Am SODC and dominated the corporate business. Menor approved the
11 financial expenditures for Defendant Fil-Am SODC. Menor moved, transferred, and
12 commingled City Grant Funds among Defendant Fil-Am SODC's bank accounts.

13 4. Plaintiff does not know the true names or capacities of defendants Does 1
14 through 100, inclusive, and therefore sue these persons or entities by their fictitious names.
15 Plaintiff will amend this complaint to allege their true names or capacities when they have
16 been ascertained. Plaintiff is informed and believes and on that basis alleges that each
17 fictitious defendant is in some manner responsible for the acts or omissions alleged herein,
18 and for the damages claimed in this Complaint.

19 5. Plaintiff is informed and believes and on that basis alleges that each named
20 defendant, including Does 1 through 100, inclusive, was the agent, servant, employee,
21 partner, or joint venturer of each other defendant and that each defendant was acting within
22 the course and scope of such agency, employment, partnership, or joint venture, and with
23 the consent or ratification of each other in doing the things alleged herein.

24 **FIRST CAUSE OF ACTION**
25 **(Breach of Written Contract – HNVF Grant Agreement 2002-2003)**
 (Against All Defendants)

26 6. Plaintiff re-alleges and incorporates herein by reference each and every
27 allegation of paragraphs 1 through 5, inclusive, as if fully set forth herein.

28 - 2 -

1 7. On or about, October 22, 2002, the City and Fil-Am SODC entered into a
2 written grant agreement whereby the City awarded Fil-Am SODC approximately \$307,919
3 from the City's Healthy Neighborhoods Venture Fund ("HNVF") grant program for the 2002-
4 2003 fiscal year (July 1, 2002 through June 30, 2003). A true and correct copy of the HNVF
5 grant agreement for 2002-2003 ("HNVF Grant Agreement 2002-2003") is attached hereto as
6 Exhibit A and incorporated herein by this reference.

7 8. At all times relevant herein, the City provided monies through its HNVF grant
8 program in part to help fund projects/programs in the areas of Senior Services and Health, to
9 improve the quality of life for seniors.

10 9. At all times relevant herein, Fil-Am SODC agreed to implement and maintain
11 the Northside Intergenerational Project ("Project") in accordance with all rules and
12 regulations with respect to the HNVF Program, contained in, without limitation, in the HNVF
13 Grant Agreement 2002-2003 and the City of San Jose Department of Parks, Recreation &
14 Neighborhood Services Policy and Procedures Manual for recipients of HNVF Service
15 Grants ("HNVF Policy and Procedures Manual"). A true and correct copy of the HNVF Policy
16 and Procedures Manual is attached hereto as Exhibit B and incorporated herein by this
17 reference.

18 10. At all times relevant herein, Fil-Am SODC agreed to provide as part of the
19 Project, without limitation, case management services, outreach services to homebound
20 seniors, after-school tutoring classes for parents and youth, community stop tobacco use
21 program, and veterans services.

22 11. The City of San Jose paid monies to Fil-Am SODC on a reimbursement basis
23 for services actually performed by Fil-Am SODC and for eligible costs actually incurred by
24 and paid by Fil-Am SODC pursuant to the HNVF Grant Agreement 2002-2003 for the cost
25 categories contained therein.

26 12. As a grant recipient, Fil-Am SODC must use City Grant Funds as stated in,
27 without limitation, the HNVF Grant Agreement 2002-2003 and the HNVF Policy and

1 Procedures Manual, and only for, without limitation, authorized and eligible activities,
2 programs, expenses, and costs.

3 13. Within the last four years and beyond, discovery of which was unknown to
4 Plaintiff despite diligent investigation of the circumstances of the damages, and were such
5 that the City could not have reasonably discovered additional facts supporting this cause of
6 action sooner than it did. The wrongful acts of Defendants, and each of them, were
7 committed, without limitation, in secret, by fraud, and hidden by false, incomplete, and
8 insufficient disclosure of financial records and the harm flowing there from was not
9 reasonably discoverable by the City. Defendants, and each of them, materially breached the
10 HNVF Grant Agreement 2002-2003, by, including, but not limited to:

11 a) Improper use of City Grant Funds of approximately \$99,264 plus interest for
12 activities and expenses that were not allowed or authorized by the HNVF Grant Agreement
13 2002-2003;

14 b) Making material misrepresentations with respect to information and data
15 furnished to the City;

16 c) Inappropriately and falsely submitting and receiving Grant Fund
17 reimbursements that were not allowed under the HNVF Grant Agreement 2002-2003;

18 d) Charging and overcharging the City without justification for ineligible amounts;

19 e) Providing ineligible services to ineligible recipients under the HNVF Grant
20 Agreement 2002-2003;

21 f) Failing to establish and maintain an adequate system of separate bank
22 accounts and earmark monies separately;

23 g) Failing to maintain adequate records, including, but not limited to, corporate
24 records, corporate meetings and minutes, books, financial records, supporting
25 documentation, financial transactions, including, but not limited to time cards and other
26 official documentation, evidencing in proper detail the nature and propriety of all charges and
27 the tracing of the monies to the expenses;

- 1 h) Taking actions without prior City approval or any approval as required;
- 2 i) Failing to report Program Income to the City as required and failing to use this
- 3 income to offset the operating expenses of the activities funded by the HNVF Grant
- 4 Agreement 2002-2003 as required therein;
- 5 j) Failing to disclose accurate and sufficient financial information in the audited
- 6 financial statements;
- 7 k) Failing to institute and maintain controls to prevent the Grant Funds to only
- 8 support projects specified in, and appropriate under the grants;
- 9 l) Failing to accurately and sufficiently disclose all funding sources as required;
- 10 m) Improperly counting the same activity and participants for both the City's
- 11 Programs and other non-related grants or programs, including without limitation, the SBC
- 12 Technology Grant;
- 13 n) Failing to abide by all applicable federal, state and local laws, for, without
- 14 limitation, failing to report employee income as required and using improper sources for
- 15 employee bonuses;
- 16 o) Directing and requiring Fil-Am SODC's employees to spend time on ineligible
- 17 programs and activities at the City's expense;
- 18 p) Failing to deduct ineligible time spent by Fil-Am SODC employees from their
- 19 hours charged to the City's Grant Funds; and
- 20 q) Entering into improper loan agreements and credit lines.

21 14. Defendant Menor signed the HNVF Grant Agreement 2002-2003.

22 15. Menor disregarded the corporate entity Fil-Am SODC and used his control and

23 dominion of the corporation for his own private, personal, and financial gain, by, without

24 limitation, improperly taking and spending City Grant Funds for his own purposes, which

25 were not allowed under the HNVF Grant Agreement 2002-2003.

26 16. Menor improperly used City Grant Funds, without limitation, to help pay for an

27 assisted living program for his own parents, which was not in accordance with the HNVF

1 Grant Agreement 2002-2003. These improper expenditures included labor and payroll costs
2 of Fil-Am SODC employees who were required to spend time providing ineligible services to
3 Menor's parents. Menor personally benefited from all of these improper expenditures and
4 did not seek or obtain City approval for use of City Grant Funds in this manner. Moreover, at
5 Menor's direction, these expenditures were submitted for reimbursement and the City paid
6 for them. At all times mentioned herein, there was a unity of interest and control between
7 defendant Menor and Defendant Fil-Am SODC, such that any individuality and separateness
8 between them ceased, and Defendant Fil-Am SODC is the alter ego of Defendant Menor.

9 17. It would be inherently unfair to the City not to pierce the corporate veil under
10 these circumstances. Adherence to the fiction of the separate existence of Defendant Menor
11 and Defendant Fil-Am SODC would permit an abuse of the corporate privileged and would
12 sanction fraud and promote injustice in that Menor fraudulently took, spent, and converted
13 the City's Grant Funds for his own improper use and gain all to the City's detriment.

14 18. The HNVF Grant Agreement 2002-2003 contained an implied covenant of
15 good faith and fair dealing. Defendants, and each of them, materially breached this
16 covenant by acting in bad faith through actions and omissions as alleged herein.

17 19. As a direct and proximate result of the breaches by Defendants and their acts
18 and omissions in connection with the acts alleged herein, Plaintiff has suffered damages in
19 an amount of approximately \$99,264, plus interest, according to proof.

20 WHEREFORE, Plaintiff prays for relief as set forth herein after.

21 **SECOND CAUSE OF ACTION**
22 **(Breach of Written Contract – HNVF Grant Agreement 2003-2004)**
23 **(Against All Defendants)**

24 20. Plaintiff re-alleges and incorporates by reference each and every allegation of
25 paragraphs 1 through 5, 8, 10, and 17 inclusive, as if fully set forth herein.

26 21. On or about, September 30, 2003, the City and Fil-Am SODC entered into a
27 written grant agreement whereby the City awarded Fil-Am SODC approximately \$307,919
28 from the City's Healthy Neighborhoods Venture Fund ("HNVF") grant program for the 2003-

1 2004 fiscal year (July 1, 2003 through June 30, 2004). A true and correct copy of the HNVF
2 grant agreement for 2003-2004 ("HNVF Grant Agreement 2003-2004") is attached hereto as
3 Exhibit C and incorporated herein by this reference.

4 22. At all times relevant herein, Fil-Am SODC agreed to implement and maintain
5 the Project in accordance with all rules and regulations with respect to the HNVF Program,
6 contained in, without limitation, in the HNVF Grant Agreement 2003-2004 (Ex. C.) and the
7 HNVF Policy and Procedures Manual, incorporated herein by this reference. (Ex. B.)

8 23. The City of San Jose paid monies to Fil-Am SODC on a reimbursement basis
9 for services actually performed by Fil-Am SODC and for eligible costs actually incurred by
10 and paid by Fil-Am SODC pursuant to the HNVF Grant Agreement 2003-2004 for the cost
11 categories contained therein.

12 24. As a grant recipient, Fil-Am SODC must use City Grant Funds as stated in,
13 without limitation, the HNVF Grant Agreement 2003-2004 and the HNVF Policy and
14 Procedures Manual, and only for, without limitation, authorized and eligible activities,
15 programs, expenses, and costs.

16 25. Within the last four years, Defendants, and each of them, materially breached
17 the HNVF Grant Agreement 2003-2004, by, including, but not limited to:

18 a) Improper use of City Grant Funds of approximately \$105,484 plus interest for
19 activities and expenses that were not allowed or authorized by the HNVF Grant Agreement
20 2003-2004;

21 b) Making material misrepresentations with respect to information and data
22 furnished to the City;

23 c) Inappropriately and falsely submitting and receiving Grant Fund
24 reimbursements that were not allowed under the HNVF Grant Agreement 2003-2004;

25 d) Charging and overcharging the City without justification for ineligible amounts;

26 e) Providing ineligible services to ineligible recipients under the HNVF Grant
27 Agreement 2003-2004;

1 f) Failing to establish and maintain an adequate system of separate bank
2 accounts and earmark monies separately;

3 g) Failing to maintain adequate records, including, but not limited to, corporate
4 records, corporate meetings and minutes, books, financial records, supporting
5 documentation, financial transactions, including, but not limited to time cards and other
6 official documentation, evidencing in proper detail the nature and propriety of all charges and
7 the tracing of the monies to the expenses;

8 h) Taking actions without prior City approval or any approval as required;

9 i) Failing to report Program Income to the City as required and failing to use this
10 income to offset the operating expenses of the activities funded by the HNVF Grant
11 Agreement 2003-2004 as required therein;

12 j) Failing to disclose accurate and sufficient financial information in the audited
13 financial statements;

14 k) Failing to institute and maintain controls to prevent the Grant Funds to only
15 support projects specified in, and appropriate under the grants;

16 l) Failing to accurately and sufficiently disclose all funding sources as required;

17 m) Improperly counting the same activity and participants for both the City's
18 Programs and other non-related grants or programs, including without limitation, the State of
19 California Grant;

20 n) Failing to abide by all applicable federal, state and local laws, for, without
21 limitation, failing to report employee income as required;

22 o) Directing and requiring Fil-Am SODC's employees to spend time on ineligible
23 programs and activities at the City's expense;

24 p) Failing to deduct ineligible time spent by Fil-Am SODC employees from their
25 hours charged to the City's Grant Funds; and

26 q) Entering into improper loan agreements and credit lines.

27 26. Defendant Menor signed the HNVF Grant Agreement 2003-2004.

1 27. Menor disregarded the corporate entity Fil-Am SODC and used his control and
2 dominion of the corporation for his own private, personal, and financial gain, by, without
3 limitation, improperly taking and spending City Grant Funds for his own purposes, which
4 were not allowed under the HNVF Grant Agreement 2003-2004.

5 28. Menor improperly used City Grant Funds, without limitation, to help pay for an
6 assisted living program for his own parents, which was not in accordance with the HNVF
7 Grant Agreement 2003-2004. These improper expenditures included labor and payroll costs
8 of Fil-Am SODC employees who were required to spend time providing ineligible services to
9 Menor's parents. Menor personally benefited from all of these improper expenditures and
10 did not seek or obtain City approval for use of City Grant Funds in this manner. Moreover, at
11 Menor's direction, these expenditures were submitted for reimbursement and the City paid
12 for them. At all times mentioned herein, there was a unity of interest and control between
13 defendant Menor and Defendant Fil-Am SODC, such that any individuality and separateness
14 between them ceased, and Defendant Fil-Am SODC is the alter ego of Defendant Menor.

15 29. In or about July 2004 and December 2004, Menor improperly used City Grant
16 Funds, for without limitation, to give himself and other employees excessive bonuses without
17 written employee evaluations to support these bonus, without an objective amount or
18 calculation, without board approval in some cases, and during a time when Fil-Am SODC
19 was in a precarious financial position

20 30. The HNVF Grant Agreement 2003-2004 contained an implied covenant of
21 good faith and fair dealing. Defendants, and each of them, materially breached this
22 covenant by acting in bad faith through actions and omissions as alleged herein.

23 31. As a direct and proximate result of the breaches by Defendants and their acts
24 and omissions in connection with the acts alleged herein, Plaintiff has suffered damages in
25 an amount of approximately \$105,484, plus interest, according to proof.

26 WHEREFORE, Plaintiff prays for relief as set forth herein after.

THIRD CAUSE OF ACTION
(Breach of Written Contract – CDBG Grant Agreement 2001-2003)
(Against All Defendants)

32. Plaintiff re-alleges and incorporates by reference each and every allegation of paragraphs 1 through 5, and 17 inclusive, as if fully set forth herein.

33. On or about July 30, 2001, the City and Fil-Am SODC entered into a written grant agreement whereby the City awarded Fil-Am SODC approximately \$111,804 for 2001-2002 and \$111,804 for 2002-2003 from the General Fund and the CDBG grant program for the 2001-2002 and 2001-2003 fiscal years (approximately July 1, 2001 through June 30, 2003). A true and correct copy of the CDBG grant agreement for 2001-2002 and 2001-2003 ("CDBG Grant Agreement 2001-2003") is attached hereto as Exhibit D and incorporated herein by this reference.

34. At all times relevant herein, the City provided monies through its CDBG grant program in part to help fund human services agencies, which provide services and promote the health, safety, and general welfare of the City of San Jose and its people.

35. At all times relevant herein, Fil-Am SODC agreed to implement and maintain the Northside Community Center ("Project II") in accordance with the provisions of the grant agreement by and between the City and the United States Department of Housing and Urban Development ("HUD") and all rules and regulations with respect to the CDBG Plan and Program, contained in, without limitation, the CDBG Grant Agreement 2001-2003 and the City of San Jose Department of Parks, Recreation & Neighborhood Services Administrative Services Division CDBG Policy and Procedures Manual for sub-recipients of Contractual Community Services ("CCS") and Operating Community Development Improvement ("CDI") ("CDBG Policy and Procedures Manual"). A true and correct copy of the CDBG Policy and Procedures Manual is attached hereto as Exhibit E and incorporated herein by this reference.

36. At all times relevant herein, Fil-Am SODC agreed to provide as part of the Project, without limitation, basic services for recreational, social, medical, information and

1 referral, escort care services and supplemental services for case-management to low- and
2 moderate-income elderly.

3 37. The City of San Jose paid monies to Fil-Am SODC on a reimbursement basis
4 for services actually performed by Fil-Am SODC and for eligible costs actually incurred by
5 and paid by Fil-Am SODC pursuant to the CDBG Grant Agreement 2001-2003 for the cost
6 categories contained therein.

7 38. As a grant recipient, Fil-Am SODC must use City Grant Funds as stated in,
8 without limitation, the CDBG Grant Agreement 2001-2003 and the CDBG Policy and
9 Procedures Manual, and only for, without limitation, authorized and eligible activities,
10 programs, expenses, and costs.

11 39. Within the last four years and beyond, discovery of which was unknown to
12 Plaintiff despite diligent investigation of the circumstances of the damages, and were such
13 that the City could not have reasonably discovered additional facts supporting this cause of
14 action sooner than it did. The wrongful acts of Defendants, and each of them, were
15 committed, without limitation, in secret, by fraud, and hidden by false, incomplete, and
16 insufficient disclosure of financial records and the harm flowing there from was not
17 reasonably discoverable by the City. Defendants, and each of them, materially breached the
18 CDBG Grant Agreement 2001-2003, by, including, but not limited to:

19 a) Improper use of City Grant Funds of approximately \$8,143 for activities and
20 expenses that were not allowed or authorized by the CDBG Grant Agreement 2001-2003;

21 b) Making material misrepresentations with respect to information and data
22 furnished to the City;

23 c) Inappropriately and falsely submitting and receiving Grant Fund
24 reimbursements that were not allowed under the CDBG Grant Agreement 2001-2003;

25 d) Charging and overcharging the City without justification for ineligible amounts;

26 e) Providing ineligible services to ineligible recipients under the CDBG Grant
27 Agreement 2001-2003;

1 f) Failing to establish and maintain an adequate system of separate bank
2 accounts and earmark monies separately;

3 g) Failing to maintain adequate records, including, but not limited to, corporate
4 records, corporate meetings and minutes, books, financial records, supporting
5 documentation, financial transactions, including, but not limited to time cards and other
6 official documentation, evidencing in proper detail the nature and propriety of all charges and
7 the tracing of the monies to the expenses;

8 h) Taking actions without prior City approval or any approval as required;

9 i) Failing to report Program Income to the City as required and failing to use this
10 income to offset the operating expenses of the activities funded by the CDBG Grant
11 Agreement 2001-2003 as required therein;

12 j) Failing to disclose accurate and sufficient financial information in the audited
13 financial statements;

14 k) Failing to institute and maintain controls to prevent the Grant Funds to only
15 support projects specified in, and appropriate under the grants;

16 l) Failing to accurately and sufficiently disclose all funding sources as required;

17 m) Improperly counting the same activity and participants for both the City's
18 Programs and other non-related grants or programs;

19 n) Failing to abide by all applicable federal, state and local laws, for, without
20 limitation, failing to report employee income as required;

21 o) Directing and requiring Fil-Am SODC's employees to spend time on ineligible
22 programs and activities at the City's expense;

23 p) Failing to deduct ineligible time spent by Fil-Am SODC employees from their
24 hours charged to the City's Grant Funds; and

25 q) Entering into improper loan agreements and credit lines.

26 40. Defendant Menor signed the CDBG Grant Agreement 2001-2003.

1 41. Menor disregarded the corporate entity Fil-Am SODC and used his control and
2 dominion of the corporation for his own private, personal, and financial gain, by, without
3 limitation, improperly taking and spending City Grant Funds for his own purposes, which
4 were not allowed under the CDBG Grant Agreement 2001-2003.

5 42. Menor improperly used City Grant Funds, without limitation, to help pay for an
6 assisted living program for his own parents, which was not in accordance with the CDBG
7 Grant Agreement 2001-2003. These improper expenditures included labor and payroll costs
8 of Fil-Am SODC employees who were required to spend time providing ineligible services to
9 Menor's parents. Menor personally benefited from all of these improper expenditures and
10 did not seek or obtain City approval for use of City Grant Funds in this manner. Moreover, at
11 Menor's direction, these expenditures were submitted for reimbursement and the City paid
12 for them. At all times mentioned herein, there was a unity of interest and control between
13 defendant Menor and Defendant Fil-Am SODC, such that any individuality and separateness
14 between them ceased, and Defendant Fil-Am SODC is the alter ego of Defendant Menor.

15 43. The CDBG Grant Agreement 2001-2003 contained an implied covenant of
16 good faith and fair dealing. Defendants, and each of them, materially breached this
17 covenant by acting in bad faith through actions and omissions as alleged herein.

18 44. As a direct and proximate result of the breaches by Defendants and their acts
19 and omissions in connection with the acts alleged herein, Plaintiff has suffered damages in
20 an amount of approximately \$8,143, according to proof.

21 WHEREFORE, Plaintiff prays for relief as set forth herein after.

22 **FOURTH CAUSE OF ACTION**
23 **(Breach of Written Contract – CDBG Grant Agreement 2003-2005)**
24 **(Against All Defendants)**

25 45. Plaintiff re-alleges and incorporates by reference each and every allegation of
26 paragraphs 1 through 5, 17, 34, and 36 inclusive, as if fully set forth herein.

27 46. On or about, July 21, 2003, the City and Fil-Am SODC entered into a written
28 grant agreement whereby the City awarded Fil-Am SODC approximately \$107,531 for 2003-

1 2004 and \$107,531 for 2004-2005 from the General Fund and the CDBG grant program for
2 the 2003-2004 and 2004-2005 fiscal years (approximately July 1, 2003 through June 30,
3 2005). A true and correct copy of the CDBG grant agreement for 2003-2004 and 2004-2005
4 ("CDBG Grant Agreement 2003-2005") is attached hereto as Exhibit F and incorporated
5 herein by this reference.

6 47. At all times relevant herein, Fil-Am SODC agreed to implement and maintain
7 the Project II in accordance with the provisions of the grant agreement by and between the
8 City and HUD and all rules and regulations with respect to the CDBG Plan and Program,
9 contained in, without limitation, the CDBG Grant Agreement 2003-2005 and the CDBG
10 Policy and Procedures Manual. (Ex. E incorporated herein by this reference.)

11 48. The City of San Jose paid monies to Fil-Am SODC on a reimbursement basis
12 for services actually performed by Fil-Am SODC and for eligible costs actually incurred by
13 and paid by Fil-Am SODC pursuant to the CDBG Grant Agreement 2003-2005 for the cost
14 categories contained therein.

15 49. As a grant recipient, Fil-Am SODC must use City Grant Funds as stated in,
16 without limitation, the CDBG Grant Agreement 2003-2005 and the CDBG Policy and
17 Procedures Manual, and only for, without limitation, authorized and eligible activities,
18 programs, expenses, and costs.

19 50. Within the last four years, Defendants, and each of them, materially breached
20 the CDBG Grant Agreement 2003-2005, by, including, but not limited to:

21 a) Improper use of City Grant Funds of approximately \$6,523 for activities and
22 expenses that were not allowed or authorized by the CDBG Grant Agreement 2003-2005;

23 b) Making material misrepresentations with respect to information and data
24 furnished to the City;

25 c) Inappropriately and falsely submitting and receiving Grant Fund
26 reimbursements that were not allowed under the CDBG Grant Agreement 2003-2005;

27 d) Charging and overcharging the City without justification for ineligible amounts;

1 e) Providing ineligible services to ineligible recipients under the CDBG Grant
2 Agreement 2003-2005;

3 f) Failing to establish and maintain an adequate system of separate bank
4 accounts and earmark monies separately;

5 g) Failing to maintain adequate records, including, but not limited to, corporate
6 records, corporate meetings and minutes, books, financial records, supporting
7 documentation, financial transactions, including, but not limited to time cards and other
8 official documentation, evidencing in proper detail the nature and propriety of all charges and
9 the tracing of the monies to the expenses;

10 h) Taking actions without prior City approval or any approval as required;

11 i) Failing to report Program Income to the City as required and failing to use this
12 income to offset the operating expenses of the activities funded by the CDBG Grant
13 Agreement 2003-2005 as required therein;

14 j) Failing to disclose accurate and sufficient financial information in the audited
15 financial statements;

16 k) Failing to institute and maintain controls to prevent the Grant Funds to only
17 support projects specified in, and appropriate under the grants;

18 l) Failing to accurately and sufficiently disclose all funding sources as required;

19 m) Improperly counting the same activity and participants for both the City's
20 Programs and other non-related grants or programs, including without limitation, the Santa
21 Clara County Nutrition Program;

22 n) Failing to abide by all applicable federal, state and local laws, for, without
23 limitation, failing to report employee income as required;

24 o) Directing and requiring Fil-Am SODC's employees to spend time on ineligible
25 programs and activities at the City's expense;

26 p) Failing to deduct ineligible time spent by Fil-Am SODC employees from their
27 hours charged to the City's Grant Funds; and

1 q) Entering into improper loan agreements and credit lines.

2 51. Defendant Menor signed the CDBG Grant Agreement 2003-2005.

3 52. Menor disregarded the corporate entity Fil-Am SODC and used his control and
4 dominion of the corporation for his own private, personal, and financial gain, by, without
5 limitation, improperly taking and spending City Grant Funds for his own purposes, which
6 were not allowed under the CDBG Grant Agreement 2003-2004.

7 53. Menor improperly used City Grant Funds, without limitation, to help pay for an
8 assisted living program for his own parents, which was not in accordance with the CDBG
9 Grant Agreement 2003-2004. These improper expenditures included labor and payroll costs
10 of Fil-Am SODC employees who were required to spend time providing ineligible services to
11 Menor's parents. Menor personally benefited from all of these improper expenditures and
12 did not seek or obtain City approval for use of City Grant Funds in this manner. Moreover, at
13 Menor's direction, these expenditures were submitted for reimbursement and the City paid
14 for them. At all times mentioned herein, there was a unity of interest and control between
15 defendant Menor and Defendant Fil-Am SODC, such that any individuality and separateness
16 between them ceased, and Defendant Fil-Am SODC is the alter ego of Defendant Menor.

17 54. The CDBG Grant Agreement 2003-2005 contained an implied covenant of
18 good faith and fair dealing. Defendants, and each of them, materially breached this
19 covenant by acting in bad faith through actions and omissions as alleged herein.

20 55. As a direct and proximate result of the breaches by Defendants and their acts
21 and omissions in connection with the acts alleged herein, Plaintiff has suffered damages in
22 an amount of approximately \$6,523, according to proof.

23 WHEREFORE, Plaintiff prays for relief as set forth herein after.

24 **FIFTH CAUSE OF ACTION**
25 **(Negligence)**
(Against All Defendants)

26 56. Plaintiff re-alleges and incorporates by reference each and every allegation of
27 paragraphs 1 through 55 inclusive, as if fully set forth herein.

57. Defendants, and each of them, owed the City a duty of care to act reasonably under the circumstances alleged herein.

58. Within the last three years and beyond, discovery of which was unknown to Plaintiff despite diligent investigation of the circumstances of the damages, and were such that the City could not have reasonably discovered additional facts supporting this cause of action sooner than it did. Defendants, and each of them, breached this duty of care by, without limitation, negligently, carelessly, and wrongfully:

a) Instituting, maintaining, organizing, handling, supervising, and implementing ineligible programs and activities;

b) Seeking reimbursement for ineligible expenses and activities;

c) Authorizing and approving ineligible financial transactions;

d) Keeping inadequate corporate books, records, financial records, and financial controls;

e) Failing to consistently use and maintain separate bank accounts and instead moved, transferred, and commingled City Grant Funds among the accounts;

f) Failing to earmark monies from specific sources; and

g) Incurring unnecessary and unreasonable debt, expenses, and other financial obligations, including, without limitation, loan agreements.

59. As a legal result of Defendants' negligence, and each of them, Plaintiffs have been caused to incur damages in an amount of approximately \$219,414, plus interest, according to proof, which is in excess of the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays for relief as set forth herein after.

**SIXTH CAUSE OF ACTION
(Fraud)
(Against All Defendants)**

60. Plaintiff re-alleges and incorporates by reference each and every allegation of paragraphs 1 through 55 inclusive, as if fully set forth herein.

61. Within the three years and beyond, discovery of which was unknown to Plaintiff despite diligent investigation of the circumstances of the damages, and were such that the City could not have reasonably discovered additional facts supporting this cause of action sooner than it did. The wrongful acts of Defendants, and each of them, were committed, without limitation, in secret, by fraud, and hidden by false, incomplete, and insufficient disclosure of financial records and the harm flowing there from was not reasonably discoverable by the City.

62. At all times alleged herein, Defendants and each of them made representations to the City that the amounts they sought reimbursement for under the Grant Agreements alleged herein, attached hereto as Exhibits A through F, were without limitation, accurate, valid, and eligible expenses under the Grant Agreements attached hereto as Exhibits A through F.

63. These representations by Defendants, and each of them, were in fact false. The true facts were that the expenses of approximately \$219,414 were not accurate, valid, or eligible as described more fully above.

64. When Defendants made these representations, they knew them to be false and made these representations with the intention to deceive and defraud the City and to induce the City to act in reliance on these misrepresentations in the manner hereafter alleged, and with the expectation that the City would so act.

65. At the time these representations were made by Defendants and each of them, and at the time of the actions herein alleged, the City did not know the true facts or the falsity of the representations. In reliance on these representations, the City was induced to and did reimburse these improper expenses. Had the City known the actual facts, it would have not taken such action. The City's reliance on the Defendants' representations was justified and reasonable because the requests for reimbursements appeared to be legitimate after review and consideration.

66. As a legal result of the fraudulent conduct of the Defendants, and each of them, as alleged herein, the City has been damaged in an amount according to proof, of approximately \$219,414, plus interest.

67. The aforementioned conduct of the Defendants, and each of them, was an intentional misrepresentation, deceit, or concealment of a material fact known to the Defendants with the intention on the part of the defendants of thereby depriving the City of property, money, and legal rights or otherwise causing injury, and was despicable conduct that subjected the City to a cruel and unjust hardship in conscious disregard of the City's rights, so as to justify an award of exemplary and punitive damages. Moreover, the officers, directors, and managing agent of Fil-Am SODC had advance knowledge of, conscious disregard for, and authorized and ratified the wrongful conduct alleged herein.

WHEREFORE, Plaintiff prays for relief as set forth herein after.

**SEVENTH CAUSE OF ACTION
(Conversion)
(Against All Defendants)**

68. Plaintiff re-alleges and incorporates by reference each and every allegation of paragraphs 1 through 67 inclusive, as if fully set forth herein.

69. At all times mentioned herein, Plaintiff was, and still is, the owner of the monies wrongfully taken by Defendants and each of them in an amount according to proof, of at least \$219,414, plus interest.

70. Within the last three years, Defendants, and each of them, took the City's monies described above from Plaintiff's possession and converted the same to their own use.

71. Moreover, additional monies were converted by defendants, and each of them, in an amount unknown to Plaintiff, but in excess of the jurisdiction of this court more than three years ago. Despite diligent investigation of the circumstances of the damages, the City could not have reasonably discovered the facts supporting this cause of action sooner than it did. The wrongful acts of Defendants, and each of them, were committed, without limitation,

1 in secret, by fraud, and hidden by false, incomplete, and insufficient disclosure of financial
2 records and the harm flowing there from was not reasonably discoverable by the City.

3 72. As a legal result of Defendants' and each of them, conversion, Plaintiff has
4 suffered damages in an amount of approximately \$219,414, plus interest, according to proof.

5 73. Between the time of Defendants', and each of them, conversion and the filing
6 of this action, Plaintiff incurred additional damages from time and money spent properly in
7 pursuit of the converted property.

8 74. Defendants' acts were willful, wanton, malicious, fraudulent, and oppressive,
9 were undertaken with the intent to defraud and justify the awarding of punitive damages.
10 Moreover, the officers, directors, and managing agent of Fil-Am SODC had advance
11 knowledge of, conscious disregard for, and authorized and ratified the wrongful conduct
12 alleged herein.

13 **EIGHTH CAUSE OF ACTION**
14 **(Imposition of Constructive Trust)**
(Against All Defendants)

15 75. Plaintiff re-alleges and incorporates by reference each and every allegation of
16 paragraphs 1 through 74 inclusive, as if fully set forth herein.

17 76. Defendants, and each of them, have wrongfully retained Plaintiff's property in
18 an amount according to proof, of at least \$219,414, plus interest.

19 77. The City had and has an immediate right to possession of these monies.

20 78. As a result of Defendants', and each of them, actions and omissions as alleged
21 in this Complaint, Defendant's obtained Plaintiff's property, without limitation, wrongfully and
22 by breach of written agreements.

23 79. Defendants, and each of them, hold the City's money as involuntary trustees
24 for Plaintiff's benefit.

25 WHEREFORE, Plaintiff prays for relief as set forth herein after.
26
27
28

1 **NINTH CAUSE OF ACTION**
2 **(Accounting)**
3 **(Against All Defendants)**

4 80. Plaintiff re-alleges and incorporates by reference each and every allegation of
5 paragraphs 1 through 79 inclusive, as if fully set forth herein.

6 81. As alleged more fully above, Defendants and each of them undertook the
7 charge and management of, without limitation, their programs and activities to seek accurate
8 reimbursement for eligible expenses that complied with the written Grant Agreements
9 attached as Exhibits A through F. In the course of the aforementioned charge, and
10 management, Defendants, and each of them, have undertaken numerous financial
11 transactions, and have received monies, which are due to Plaintiff pursuant to the Grant
12 Agreements alleged herein.

13 82. The total amount of money due from Defendants, and each of them, to Plaintiff
14 is unknown to Plaintiff and cannot be ascertained without an accounting of Defendants', and
15 each of them, receipts, disbursements, tax returns, bank accounts, corporate and individual
16 financial records, and such other documentation as may be necessary of the operations and
17 financial transactions from on or about 1993 to the present. Plaintiff is informed and
18 believes that the amount of its damages is in excess of \$219,414, plus interest according to
19 proof.

20 WHEREFORE, Plaintiff prays for relief as set forth herein after.

21 **TENTH CAUSE OF ACTION**
22 **(Violation of the False Claims Act – Government Code §§ 12650-12656)**
23 **(Against All Defendants)**

24 83. Plaintiff re-alleges and incorporates by reference each and every allegation of
25 paragraphs 1 through 82 inclusive, as if fully set forth herein.

26 84. This claim is brought by the prosecuting authority, the City Attorney's Office, on
27 behalf of and in the name the City of San Jose and involves collection of political subdivision
28 funds of the City.

85. Within the last three years, the City discovered the facts alleged herein, that within the last 10 years, Defendants and each of them presented to the City, false monthly written claims seeking alleged reimbursement for CDBG and General Fund funds during, without limitation, the years of 2002 through 2004. Defendants falsified claims and based them on falsified records. The City paid Defendants for false claims.

86. Within the last three years, the City discovered the facts alleged herein, that within the last 10 years, Defendants and each of them presented to the City, false quarterly annual written claims seeking alleged reimbursement for HNMF funds during, without limitation, the years of 2002 through 2004. Defendants falsified claims and based them on falsified records. The City paid Defendants for false claims.

87. Defendants and each of them made the aforementioned claims with actual knowledge that the claims were without merit and that the funds Defendants requested exceeded the amount to which the Defendants were entitled to from the City, if any.

88. Defendants and each of them, violated, without limitation, the False Claims Act, California Government Code sections 12650 through 12656 by, including, but not limited to:

a) Knowingly presenting and causing to be presented to the City, false claims for payment and approval;

b) Knowingly making, using, and causing to be used, false records and statements to get a false claim paid and approved by the City; and

c) Conspiring to defraud the City by, without limitation, getting the false claims paid by the City.

89. As a result of the conduct of the defendants, the City has been damaged in the sum of approximately \$219,414, according to proof.

WHEREFORE, Plaintiff prays for relief as set forth herein after.

PRAYER

WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
as follows:

1. For monetary damages according to proof in an amount according to proof for at least \$219,414, plus interest.
2. For other monetary damages according to proof.
3. For up to and including treble damages pursuant to Government Code section 12651.
4. For civil penalties of up to \$10,000 for each false claim pursuant to Government Code section 12651.
5. For legally recoverable interest.
6. For an order declaring that Defendants and each of them, hold the City's money in trust.
7. For punitive and exemplary damages.
8. For damages for time and money properly expended in pursuit of the converted property.
9. For costs of suit, including costs pursuant to Government Code section 12651.
10. For attorney's fees.
11. For such other and further relief as the Court may deem just and proper.

Dated: 8/1/06

RICHARD DOYLE, City Attorney

By: 

DAISY M. NISHIGAYA
Deputy City Attorney

Attorneys for The City of San Jose