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F I L E D
Clerk of the Superior Court
NOV 09 2006

6 Attorneys for JOHN C. MATTMAN

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

10 CITY OF SAN MARCOS, a Chartered)
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Plaintiff,

vs.

MATTMAN SPECIALTY VEHICLES, INC. a Nevada Corporation; J. MATTMAN SECURITY, INC., dba THE MATTMAN COMPANY, a California Corporation; JOHN C. MATTMAN, DOES 1 to 50, Inclusive,

Defendants.

CASE NO: GIN 055305

NOTICE OF DEMURRER AND DEMURRER TO THE COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES

DATE: February 9, 2007
TIME: 1:30 p.m.
DEPT.: 28

JUDGE: Hon. Michael B. Orfield

Complaint Filed: 09/06/2006

20 TO: Plaintiff CITY OF SAN MARCOS, (hereinafter "Plaintiff") and TO ITS ATTORNEY
21 OF RECORD:

22 PLEASE TAKE NOTICE that on, February 9, 2007 at 1:30 p.m.or as soon as
23 thereafter as the matter can be heard in **Department 28** of this Court, located at 325 South
24 Melrose Dr. Vista, CA, Defendants JOHN C. MATTMAN, will and hereby does demur to
25 the Complaint For Breach of Contract, Conversion and Fraud ("Complaint").

26 Defendant demurs to each of the following causes of action in the Complaint on the
27 following grounds:

- 28 1. The pleading as a whole does not state facts sufficient to constitute a cause of

1 action against Defendant.

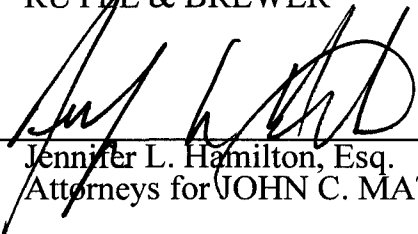
2 2. Plaintiff failed to state in its first cause of action for Breach of Contract facts
3 sufficient to constitute a cause of action against Defendant.

4 3. Plaintiff failed to state in its second cause of action for Conversion facts
5 sufficient to constitute a cause of action against Defendant.

6 4. Plaintiff failed to state in its third cause of action for Fraud facts sufficient to
7 constitute a cause of action against Defendant and it is uncertain.

8 Dated: November 8, 2006

RUYLE & BREWER

9
10 By 
11 Jennifer L. Hamilton, Esq.
12 Attorneys for JOHN C. MATTMAN

13 Z:\D211 Mattman\pleadings\NoticeDemurrer&P&A.wpd

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS**

3 Defendant John C. Mattman was the owner/President of Defendant, J. Mattman
4 Security dba Mattman Specialty Vehicles for seven years after purchasing the company from
5 his father. While his father owned and operated the company, John worked as a developer
6 and sales agent for 16 years. The primary focus of the company was to build security
7 vehicles that were used by Sheriffs, Firefighters, Navy Special Forces Units and many others.

8 After the events of 9/11, Mattman Security began to grow at a rate that outpaced the cash
9 flow of the company. The nature of their business dictates that large sums of cash are needed
10 up-front to order the chasis or base for the security vehicle. As most of Mattman Security's
11 contracts were with the government, payment was usually slow. This created a situation
12 where the company was contract rich, but cash poor, on any given day.

13 Sometime in 2005, John Mattman was approached by Ron Williams, who was an
14 investment specialist with Huntington Capital. Mr. Williams drafted a proposal to take
15 Mattman Security public and satisfy the company's cash problems. The board of directors
16 reviewed the proposals and agreed this was the best direction for the company.

17 On January 31, 2006, J. Mattman Security became a wholly-owned subsidiary of
18 Mattman Specialty Vehicles, Inc (MSV) and the current officers and directors all resigned..
19 (Exhibit A Hamilton Declaration: Board Minutes, Jan 31, 2006). Also on that date, MSV
20 went public offering shares at the initial price of \$1.50. At the first Board meeting, a new
21 board of directors was elected for MSV. (Hamilton Declaration, Exhibit B: Board Minutes
22 January 31, 2006.) John C. Mattman resigned as President/CEO and Barrie Cropper was
23 elected in his place. John C. Mattman was elected Chairman of the Board and it was
24 determined his role would be in client development. (Exhibit B). From that day forward,
25 John gave up any of his controlling interests in the company and literally turned over his
26 father's company to Barrie Cropper and Ron Williams. While John was still active in the day
27 to day marketing of their products and the process of building and designing specialty
28 vehicles he had little or no input as to the direction his former company was taking. John

1 was laid off by the board of directors, along with the rest of the 66 employees in July 2006
2 a mere six months after turning the company over to Mr. Cropper. In the process, John has
3 lost everything he worked to build over the last 16 years. The company his father started has
4 been decimated and he is forced to file personal bankruptcy. The City of San Marcos has
5 erroneously listed Defendant, John C. Mattman, as the President and CEO of Defendants
6 MSV and J. Mattman Security. As John did not serve in that capacity at the time of the
7 contract between MSV and the City of San Marcos, Plaintiff has not alleged any valid cause
8 of action against John.

9 **LEGAL ARGUMENT**

10 **I.**
11 **A DEMURRER IS APPROPRIATE**
12 **WHEN THE COMPLAINT FAILS TO ALLEGE**
13 **SUFFICIENT FACTS TO STATE A CLAIM**

14 *Code of Civil Procedure* §430.10 provides in pertinent part:

15 The party against whom a complaint or cross-complaint has
16 been filed may object, by demurrer or answer as provided in
17 Section 430.30, to the pleading on any one or more of the
18 following grounds: ...

19 (e) The pleading does not state facts sufficient to constitute a
20 cause of action.

21 (f) The pleading is uncertain. As used in this subdivision,
22 “uncertain” includes ambiguous and unintelligible.

23 (g) In an action founded upon a contract, it cannot be
24 ascertained from the pleading whether the contract is written, is
25 oral, or is implied by conduct.

26 *(See also, Code of Civil Procedure* §430.30(a).)

27 **A. Plaintiff Failed to State in its First Cause of Action for Breach of Contract Facts**
28 **Sufficient to Constitute a Cause of Action Against Defendant.**

The essential elements to be pleaded in an action for breach of contract are (a) the

1 existence of the contract; (b) plaintiff's performance of the contract, or excuse for non-
2 performance; (c) defendant's breach of the contract; and (d) the resulting damage to the
3 plaintiff. (*Lortz v. Connell* (1969) 273 Cal.App.2d 286, 290.) Plaintiff's complaint alleges
4 breach of an agreement between MSV and the City of San Marcos for the construction of a
5 mobile emergency operations center. (Plaintiff's Complaint ¶ 14; Exhibit A). Todd Newman
6 signed on behalf of Plaintiff and Ted Carlson signed the agreement on behalf of Defendant
7 MSV on March 23, 2006. (Plaintiff's Complaint: Exhibit A). Plaintiffs are attempting to
8 hold Mr. Mattman responsible, as an officer of the corporation, for restitution on a breach
9 of contract action on a contract entered into by the corporation, to which he was not a party.

10 California law is well-settled and does not support a claim against an officer or
11 director for breach of contract in these circumstances. Board members may not be held liable
12 absent allegations that they entered into the contract with plaintiff on their own behalf or
13 purported to bind themselves personally. (*Frances T v. Village Green Owners Association*
14 *et al.* (1986) 42 Cal.3d 490, 512, (citing) *United States Liab. Ins. Co. V. Haidinger-Hayes,*
15 *Inc.* (1970) 1 Cal.3d 586, 595.)

16 Here, there are no factual allegations alleging Mr. Mattman contracted with Plaintiff
17 on his own behalf, nor can they amend to add such allegations. Accordingly, Defendant's
18 Demurrer to Plaintiff's Breach of Contract cause of action should be sustained without leave
19 to amend.

20 **Plaintiff Failed to State in its Second Cause of Action for Conversion Facts**
21 **Sufficient to Constitute a Cause of Action Against Defendant.**

22 The elements for a valid cause of action for conversion are as follows: (1) the
23 plaintiff's ownership of right to possession of the property; (2) the defendant's conversion
24 by a wrongful act or disposition of property rights; (3) damages resulting from the
25 conversion. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1065). It is necessary to
26 show an assumption of control over the property, or that the alleged converter has applied
27 the property to his or her own use. *Id.* However, in California, an officer or director may not
28 be held *personally* liable for conversion or misapplication of money or property. (*Shafer v.*

1 *Fisher* (1927) 85 Cal.App. 43, 44.

2 Plaintiffs have made no factual allegations that Defendant John Mattman personally
3 converted Plaintiff's money for his own use or into his possession. Plaintiffs have not
4 alleged that Defendant was even a party to the transaction in anyway other than his role as
5 an employee and a member of the board of directors. Moreover, Plaintiffs inaccurately listed
6 Mr. Mattman as the President/CEO of MSV despite his resignation in January 2006 (even
7 if he was still the CEO/President he could no be held liable unless facts showed he personally
8 converted the funds for his personal use).

9 Plaintiff cannot amend this claim to add facts against Mr. Mattman, as there is no
10 legally cognizable claim for conversion against an officer or director of a corporation.
11 Accordingly, Defendant's Demurrer to Plaintiff's cause of action for Conversion should be
12 sustained without leave to amend.

13 **C. Plaintiff Failed to State in its Third Cause of Action for Fraud Facts Sufficient**
14 **to Constitute a Cause of Action Against Defendant.**

15 The elements for a valid cause of action for fraud are as follows: (1) representation;
16 (2) falsity; (3) knowledge of falsity; (4) intent to deceive; (5) reliance and resulting damage
17 (causation). 5 Witkin, California Procedure (4th ed..) Pleading section 668, p. 123. Plaintiff's
18 cause of action for fraud against Defendant John Mattman is defective in both facts and law.

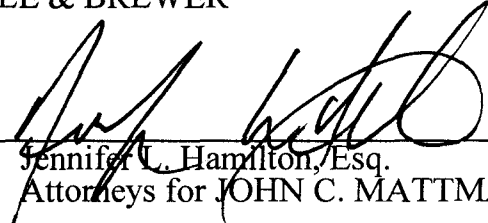
19 California law states, "Directors or officers of a corporation do not incur personal
20 liability for torts of corporation merely by reason of their official position, unless they
21 participate in wrong or authorize or direct that it be done." (*Michaelis v. Benavides* (1998)
22 61 Cal.App.4th 681, 686. It is well-settled that corporate directors cannot be held vicariously
23 liable for the corporation's torts in which they do not participate. Their liability, if any, stems
24 from their *own tortious conduct*, not from their status as officers and directors. (*United*
25 *States Liab.* 1 Cal.3d at 595.) "While the corporation itself may be held liable for such acts,
26 the individual officer or director will be immune unless he authorizes, directs, or in some
27 meaningful sense actively participates in the wrongful conduct." (*Teledyne Industries, Inc.*
28 *v. Eon Corporation* (1975) 401 F.Supp. 729, 736-737 (applying California Law).

1 Plaintiff does not make any allegations that Mr. Mattman had any personal
2 involvement in the alleged fraud. Moreover, Mr. Mattman is not alleged to have had any
3 contact whatsoever with Plaintiff. Accordingly, Plaintiff's claim fails to allege any legally
4 cognizable cause of action against Mr. Mattman for fraud.

5 As Plaintiff cannot allege facts that would constitute a valid cause of action against
6 Mr. Mattman for fraud, Defendant requests his demurrer be sustained without leave to
7 amend.

8
9 Dated: November 8, 2006

Respectfully submitted,
RUYLE & BREWER

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12 By  _____
13 Jennifer C. Hamilton, Esq.
14 Attorneys for JOHN C. MATTMAN

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DECLARATION OF JENNIFER L. HAMILTON

I, JENNIFER L. HAMILTON, declare that:

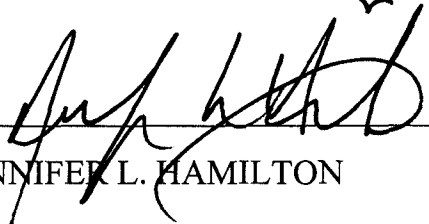
1. I am an attorney duly licensed to practice law in the State of California and I am the attorney of record for Defendant JOHN C. MATTMAN..

2. I have personal knowledge of the matters stated herein, and if called as a witness would give the same testimony.

3. Attached herein as Exhibit A is a true and correct copy of the Mattman Specialty Vehicles Minutes of the Board of Directors Meeting, dated Monday, January 30, 2006.

4. Attached herein as Exhibit B is a true and correct copy of the Mattman Specialty Vehicles Minutes of the Board of Directors Meeting, dated Monday, January 30, 2006.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this 8 day of November 2006 at San Diego, California.



JENNIFER L. HAMILTON