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MJ  
SUPERIOR COURT  
SAN DIEGO COUNTY, CA

5 Attorneys for Plaintiff City of San Marcos

6 **Exempt from Filing Fees**  
(Government Code § 6103)

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 **NORTH COUNTY DIVISION**

**GIN055305**

11 CITY OF SAN MARCOS, a Chartered City,

CASE NO.

12 Plaintiff,

**COMPLAINT FOR BREACH OF  
CONTRACT, CONVERSION AND  
FRAUD**

13 v.

14 MATTMAN SPECIALTY VEHICLES, INC.,  
a Nevada corporation; J. MATTMAN  
SECURITY, INC., dba THE MATTMAN  
15 COMPANY, a California corporation; JOHN  
C. MATTMAN, and DOES 1 through 50  
16 inclusive,

17 Defendants.

18  
19 Plaintiff alleges as follows:

20 **PARTIES**

21 1. Plaintiff CITY OF SAN MARCOS ("City"), a public entity, is a Chartered City  
22 within the State of California.

23 2. City is informed and believes and thereon alleges that Defendant MATTMAN  
24 SPECIALTY VEHICLES, INC. ("Mattman") is and, at all relevant times, was a Nevada corporation  
25 not authorized to conduct business in California, but having a manufacturing facility and principal  
26 place of business in the City of San Marcos, County of San Diego, State of California.

27 3. City is informed and believes and thereon alleges that Defendant J. MATTMAN  
28 SECURITY, INC. dba THE MATTMAN COMPANY ("Security") is and, at all relevant times, was

1 a California corporation with its principal place of business in the City of San Marcos, County of  
2 San Diego, State of California.

3 5. City is informed and believes and thereon alleges that Defendant JOHN C.  
4 MATTMAN is and, at all relevant times, was an individual residing in the County of San Diego,  
5 State of California and President and CEO of both Mattman and of Security.

6 6. City is unaware of the true names and capacities, whether individual, corporate,  
7 partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 50 inclusive, and  
8 has therefore sued them by the foregoing fictitious names. City is informed and believes and  
9 thereon alleges that each of the Defendants designated as DOE is legally responsible and liable in  
10 some manner for the events, happenings and City's damages alleged herein. City will amend this  
11 complaint to identify the true name and capacity of each such DOE defendant when they have been  
12 ascertained.

13 12. City is further informed and believes and on that basis alleges that at all relevant  
14 times, each defendant was the agent, representative, partner, officer, director, member and/or  
15 employee of the, and in connection with the acts mentioned herein, was acting within the scope of  
16 such agency, representation, partnership, office, directorship, membership and/or employment, and  
17 each defendant ratified each and every act and thing done by each and every other defendant  
18 mentioned in this Complaint.

19 **GENERAL ALLEGATIONS**

20 13. City is informed and believes and thereon that at all relevant times, Defendants were  
21 in the business of manufacturing mobile units for field command and emergency operations, with  
22 manufacturing facilities located in San Marcos, California.

23 14. On or about 28 March 2006 the City entered into an agreement ("Agreement") with  
24 Defendants for the purchase of one base trailer, which would thereafter be modified and equipped  
25 by Defendant Mattman to serve as the City's Mobile Emergency Operations Center/Field Command  
26 Post (Trailer"). A true and correct copy of the Agreement is attached hereto as **Exhibit "A"** and  
27 incorporated herein by reference as though set forth in full.

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1 15. On or about 05 April 2006, in accordance with the Agreement, the City issued  
2 purchase order number 512007 and issued check number 35910 dated 28 March 2006 in the amount  
3 of \$70,335.00 from the City of San Marcos general fund to Defendants.

4 16. On 05 April 2006 Defendants specified the amount of \$70,335.00 as a deposit,  
5 which City is informed and believes and thereon alleges to be the cost of the trailer base or chassis  
6 assembly to be modified to produce the City's Mobile Emergency Operations Center/Field  
7 Command Post. City provided Said amount to Defendants.

8 **FIRST CAUSE OF ACTION**  
9 **(Breach of Contract)**  
10 **(Against All Defendants)**

11 17. City realleges paragraphs 1 through 16 above and incorporates them herein by  
12 reference as though set forth in full.

13 18. On or about 28 August 2006, Todd Newman, Deputy Fire Chief of the City of San  
14 Marcos, entered into the Agreement on behalf of City wherein the Defendants and each of them  
15 promised and agreed to construct one Mobile Emergency Operations Center/Command Trailer  
16 ("Trailer") to City for the sum of \$215,630.38. Under the terms of the Agreement, City was to pay  
17 a deposit of \$70,355.00, with the balance due upon final inspection, acceptance and delivery of the  
18 Trailer. The \$70,355.00 deposit was intended to defray the cost of the Trailer's base or chassis  
19 assembly that Defendants were to obtain from a third-party vendor. When the chassis assembly was  
20 delivered to Defendants, Defendants were to deliver title for the chassis assembly to the City.

21 19. On or about 05 April 2006, City delivered to Defendant Security a check in the  
22 amount of \$70,355.00, pursuant to instructions on Mattman's invoice for the deposit. A true and  
23 correct copy of Mattman's invoice is attached hereto as Exhibit "B" and incorporated herein by  
24 reference as though set forth in full.

25 20. City has performed all obligations, covenants, and promises required of it to be  
26 performed under the terms and conditions of the Agreement.

27 21. Not having received title to the chassis assembly or any information regarding the  
28 status of its Trailer, on or about 28 August 2006, City demanded from Defendants information

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1 regarding the status of the Trailer and a refund for the amount of \$70,355.00 tendered to Defendants  
2 for the cost of the Trailer's base or chassis assembly.

3 22. Defendants breached the Agreement by failing and refusing to deliver title for the  
4 chassis assembly to the City, by failing to construct and deliver to the City a fully furnished Trailer  
5 as detailed in The Mattman Company Technical Proposal for the San Marcos Fire Department  
6 Mobile Emergency Operations Center Revised 11/16/05 BB.

7 23. As the direct and proximate result of Defendants' breach as alleged above, City has  
8 suffered damages in the amount of \$70,355.00, plus interest thereon.

9 **SECOND CAUSE OF ACTION**  
10 **(Conversion)**  
11 **Against All Defendants**

12 24. City realleges paragraphs 1 through 23 above and incorporates them herein by  
13 reference as though set forth in full.

14 25. On or about 05 April 2006, City delivered to Defendants the sum of \$70,355.00 to  
15 defray the costs of the Trailer's chassis assembly. In exchange, Defendants were to deliver to the  
16 City title for the Trailer's chassis assembly.

17 26. Defendants have failed and refused to deliver to the City title for the Trailer's chassis  
18 assembly. City is informed and believes and thereon alleges the Defendants have not placed an  
19 order for the chassis assembly, but rather have converted the City's funds to their own use. In the  
20 absence of Defendants' delivery to the City of title to the Trailer's chassis assembly, at the time of  
21 Defendants' conversion, the City had a right to a full refund of the \$70,355.00 it tendered to  
22 Defendants to defray the costs of the chassis assembly

23 27. On or about 28 August 2006, City demanded the immediate return of the \$70,355.00,  
24 but Defendants have failed and refused, and continue to fail and refuse to return the City's funds. A  
25 true and correct copy of City's written demand is attached hereto as Exhibit "C" and incorporated  
26 by reference as though set forth in full.

27 28. As a direct and proximate result of Defendants' conversion, City has suffered  
28 damage in the amount of \$70,355.00, plus interest thereon.

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1           39.     The representations made by Carlson on behalf of Defendants to City that the  
2 \$70,355.00 deposit would be forwarded to the manufacturer of the trailer chassis assembly were  
3 made with the intent to induce City to tender the \$70,355.00 deposit to defendants and, in reliance  
4 on those representations, City did so. Had the City known that Defendants would not forward the  
5 City's deposit to the manufacturer of the trailer chassis assembly, the City would not have tendered  
6 it to the Defendants but would have sent it directly to the manufacturer of the trailer chassis  
7 assembly.

8           40.     At the time these representations were made by Defendants and at the time City took  
9 the actions herein alleged, City was ignorant of the falsity of Defendants' representations, but  
10 believed them to be true. City's reliance on Defendants' representations was justified because  
11 Defendants advertise themselves as experts in the manufacture of specialty vehicles such as the  
12 Trailer that the City wished to obtain, "boast[ing] a 96% return rate among those customers  
13 requiring additional vehicles."

14           41.     As a proximate result of the fraudulent conduct of Defendants as alleged herein,  
15 City's ability to appropriately respond in an emergency has been compromised.

16           42.     As a further proximate result of Defendants fraudulent conduct, City has suffered  
17 damages in a total amount unknown at this time, but according to proof at the time of trial.

18           43.     The aforementioned acts of Defendants were done with the intention depriving the  
19 City of legal rights or otherwise causing injury, and were despicable conduct that subjected City to  
20 cruel and unjust hardship in conscious disregard of the City's rights, so as to justify an award of  
21 exemplary damages.

22           WHEREFORE, City prays judgment against Defendants and each of them as follows:

- 23           1.     For refund of its deposit in the amount of \$70,355.00, plus interest thereon;
- 24           2.     For compensatory damages according to proof at the time of trial;
- 25           3.     For time and money properly expended in pursuit of the \$70,355.00 as authorized by  
26 Civil Code section 3336;
- 27           4.     For exemplary damages in an amount sufficient to punish Defendants and deter  
28 similar conduct in the future;

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- 5. For cost of suit incurred herein; and
- 6. For any other and for the relief as the Court may deem proper.

DATED: September 6, 2006

LOUNSBERY FERGUSON ALTONA & PEAK LLP

By:   
JUDITH HARTWIG  
Attorneys for Plaintiff  
City of San Marcos