



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
SUNDAY, JULY 17, 2011

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Herrera to sue CBS Outdoor advertising over \$100K in paint damage to MUNI vehicles

Damage caused by defiant advertising giant has gone unaddressed for months, despite clear contract provision requiring reimbursement

SAN FRANCISCO (July 17, 2011)—City Attorney Dennis Herrera will file suit tomorrow morning against CBS Outdoor, Inc. for more than \$100,000 in exterior paint damage to MUNI buses that the company caused when applying and removing its advertising displays. The lawsuit comes after months of good faith efforts by City officials to resolve the claim went virtually unheeded by the defiant New York-based company, in clear violation of the City's longstanding contract for advertising on MUNI vehicles. Herrera's complaint for damages alleges that CBS Outdoor breached a 2004 contract inherited from its predecessor interest, Viacom Outdoor Group, which requires the contractor to "reimburse City for any damage done to City's property in connection with the use of such equipment and materials" that it employs for its advertising displays. In addition to damages, Herrera is seeking attorneys' fees and costs to pursue the civil action.

"San Francisco taxpayers have a right to expect public contractors to live up their obligations, and CBS Outdoor has clearly failed to do that," Herrera said. "My office's lawsuit comes after months of hard work to document the damages the company caused to our MUNI buses, and to try and resolve our claim cooperatively. Unfortunately, our efforts to secure the reimbursements to which we're entitled have been ignored. So I'm forced to seek a court order for the payment in addition to attorneys' fees and costs."

Late last year, the City presented extensive documentation, at CBS Outdoor's request, to verify the City's claim of damages totaling \$106,519.02. The claim binder was comprised of spreadsheets, detailed repair estimates, and photographs of damage to more than one-hundred MUNI buses spanning five different Municipal Railway divisions. The case will be: *City and County of San Francisco v. CBS Outdoor, Inc.*, San Francisco Superior Court, to be filed July 18, 2011. A representative sampling of photos is available on the City Attorney's website at: <http://www.sfcityattorney.org/>.

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CITY AND COUNTY OF SAN FRANCISCO



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July 8, 2011

VIA E-MAIL (glafayette@lkclaw.com) AND U.S. MAIL

Gary T. Lafayette, Esq.
Lafayette & Kumagai LLP
100 Spear St., #600
San Francisco, CA 94105

Re: Claim Against CBS Outdoor For Damage To Buses

Dear Mr. Lafayette:

I have called and written to you several times over the last few months, and spoken to you two or three times. As you know, the San Francisco Municipal Transportation Agency claims that your client, CBS Outdoor, Inc., damages paint on the SFMTA's buses when applying or removing advertising decals. We have a clear contractual right to reimbursement for damage done to the vehicles.

You have reassured me at least twice that you would promptly consult with your client and would then get back to me to discuss resolving our claim. Despite repeated inquiries, you have consistently failed to communicate. It appears you leave us no choice but to file a suit for breach of contract.

I enclose a draft of the complaint we intend to file. If you wish to resolve this matter short of litigation, please contact me immediately. If we have not resolved the matter, or at least made satisfactory progress toward resolving it, by Wednesday, July 13, we shall forthwith file our complaint.

I look forward to speaking to you.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "Donald P. Margolis".

DONALD P. MARGOLIS
Deputy City Attorney

Enclosure

cc: Robin Reitzes, Esq.

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CITY AND COUNTY OF SAN FRANCISCO,
9 ACTING BY AND THROUGH THE SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION

14 CITY AND COUNTY OF SAN
FRANCISCO,

15 Plaintiff,

16 vs.

17 CBS OUTDOOR, INC., and Does One
18 through Twenty,

19 Defendants.

Case No.

**COMPLAINT FOR DAMAGES FOR
BREACH OF CONTRACT**

20
21 **INTRODUCTION**

22 1. The City and County of San Francisco ("the City"), acting by and through the San
23 Francisco Municipal Transportation Agency ("SFMTA"), entered into a contract with Viacom
24 Outdoor Group, Inc. ("Viacom") to furnish advertisements on the inside and outside of
25 approximately one thousand, one hundred and eight (1,108) public transit vehicles – buses, cable
26 cars, light rail vehicles (LRVs), and historic streetcars. Under the contract, Viacom agreed to pay
27 the City a percentage of revenue generated from its sales of vehicle advertising space. With the
28 intent of implementing an effective, mutually beneficial advertising program, Viacom agreed to:

1 follow existing ad design and material guidelines; obtain City approval before using any
2 experimental materials; and reimburse the City for any damage to City property resulting from
3 Viacom's use of advertising materials.

4 2. Defendant CBS Outdoor, Inc. ("CBS") acquired Viacom's stock and assumed its
5 liabilities, and is therefore liable for damages for breach of contract with the City to the same extent
6 as would be Viacom.

7 3. CBS breached its contract with the City by causing extensive exterior paint damage to
8 the City's bus fleet and failing to reimburse the City for over one hundred thousand dollars
9 ("\$100,000") in necessary repairs.

10 **VENUE**

11 4. Venue is proper in this Court, because the contract that is the subject of the action was
12 executed in the City and County of San Francisco. The alleged breach of contract and resulting
13 damages impact over one hundred City buses, which the City owns and operates.

14 **PARTIES**

15 5. The City is a municipal corporation duly organized and existing under the laws of the
16 State of California. At all relevant times, the City acted by and through the SFMTA in operating
17 City buses.

18 6. The City is informed and believes and on that basis alleges that CBS is a Delaware
19 corporation that does business in the State of California. CBS provides outdoor advertising services
20 to clients seeking to broadcast their marketing messages in major metropolitan areas. CBS operates
21 approximately 550,000 outdoor media displays throughout the United States, including California,
22 and several regions abroad.

23 7. The City is informed and believes and on that basis alleges that CBS is the successor in
24 interest to Viacom, and has acquired any and all liabilities that Viacom had under the subject
25 contract. To the extent that Viacom continues to exist as an active entity, its liability remains, and
26 that of CBS is co-extensive.

27 8. The true names or capacities, whether individual, corporate, associate, or otherwise, of
28 DOE 1 through DOE 20 are unknown to the City, which therefore sues such defendants by such

1 fictitious names, and which will amend this complaint to show their true names and capacities when
2 ascertained. The City is informed and believes and thereon alleges that each of the defendants
3 designated as a DOE is responsible in some manner for the wrongs herein referred to and thereby
4 proximately contributed to the breach of contract as alleged here.

5 9. The City is informed and believes and thereon alleges that at all times herein mentioned
6 each of the defendants, including DOES 1 through 20, was the alter ego of the others, and was the
7 agent and employee of each of the remaining defendants, and in doing the things hereinafter
8 alleged, was acting within the course and scope of such agency and employment.

9 10. Each of the above-named defendants is liable for the breaches and other wrongs of
10 CBS. For simplicity, all of the above-named defendants shall be collectively referred to herein as
11 "CBS."

12 BACKGROUND

13 The 2004 Contract

14 11. The MTA operates a fleet of vehicles (buses, cable cars, light rail vehicles, and historic
15 streetcars).

16 12. On or about July 1, 2004, Viacom and the City entered into an agreement (hereinafter
17 referred to as "the 2004 Contract") by which the City agreed to provide Viacom with rights to MTA
18 vehicle advertising space. In exchange, Viacom agreed to pay the City a guaranteed percentage of
19 its resulting advertising revenue. A true and correct copy of the 2004 Contract is attached as
20 Exhibit A and incorporated as though fully set forth here. By its terms, the 2004 Contract was to,
21 and did, expire on June 30, 2009.

22 13. Under the 2004 Contract, the City granted exclusive but limited rights to Viacom to
23 place advertisements at SFMTA passenger platforms, and on the inside and outside of SFMTA
24 vehicles (including full decal "wraps" of some bus exteriors).

25 14. The parties agreed to the following relevant provisions of the 2004 Contract:

- 26 a. **Installation and Maintenance:** Viacom agreed to install, replace, and maintain all
27 "frames, display equipment and decal adhesive material" and to "reimburse City for any
28

1 damage done to City's property in connection with the use of such equipment and materials."
2 (2004 Contract, Section 7.2.)

3 b. **Maintenance In Clean Condition:** Viacom agreed to "continuously maintain in a
4 clean, safe, and first-class condition during the entire term of this Agreement all advertising
5 displays, panels, frames, mountings, racks, and any other advertising displays installed
6 under this agreement." (2004 Contract, Article 9.B.)

7 c. **Design Considerations:** The parties expressed a shared intent to run a mutually
8 beneficial, "effective and aesthetically pleasing" (2004 Contract, Section 6.9.1) advertising
9 program. Viacom thus agreed to restrict ad materials to those presently known, or
10 subsequently developed, that would prevent damage to the surface of MTA vehicles,
11 "including the Vehicles' paint scheme or decal applications." (*Id.*)

12 e. **Required Prior Authorization for New Materials:** Although Viacom had
13 permission to experiment with new advertising materials, such permission was tempered
14 with the expectation that Viacom would obtain City authorization prior to trying any new
15 materials. (2004 Contract, Section 6.9.2.)

16 15. The City has demanded payments from CBS to recover the cost of necessary repairs to
17 the damaged paint of afflicted MTA vehicles. CBS has at all times failed and refused to pay those
18 amounts.

19 CAUSE OF ACTION

20 Breach of Contract 21 (Against All Defendants)

22 16. The City realleges and incorporates by reference paragraphs 1 through 15 of this
23 Complaint as though fully set forth here.

24 17. CBS, as successor in interest to Viacom, breached the 2004 Contract by:

- 25 a. damaging the paint of more than 100 buses or other transit vehicles during
26 application or removal of its advertising decals; and
27 b. despite repeated demands, failing and refusing to pay the City the cost of
28 documented paint damage caused by installation or removal of the decals.

1 18. The City has been harmed by defendant CBS Outdoor's breach of the contract.

2 19. The City is entitled to damages for CBS Outdoor's breach of the contract, in an
3 amount in excess of the jurisdictional minimum of this court, estimated at one hundred six
4 thousand, five hundred nineteen dollars and two cents ("\$106,519.02").

5 **PRAYER FOR RELIEF**

6 Wherefore, the City prays for judgment against defendants as follows:

7 1. For damages in excess of the jurisdictional minimum of this Court, in the amount of
8 at least one hundred six thousand, five hundred nineteen dollars and two cents (\$106,519.02).

9 2. For an award of reasonable attorney's fees under Section 12.11 of the 2004 Contract
10 and any other applicable contractual or statutory provision; and

11 3. For such other relief as this Court may deem just and proper.

12 Dated: July __, 2011

13 DENNIS J. HERRERA
14 City Attorney
15 JOANNE HOEPER
16 Chief Trial Deputy
17 DONALD P. MARGOLIS
18 Deputy City Attorney

19 By: _____
20 DONALD P. MARGOLIS

21 Attorneys for Plaintiff
22 CITY AND COUNTY OF SAN FRANCISCO,
23 ACTING BY AND THROUGH THE SAN
24 FRANCISCO MUNICIPAL TRANSPORTATION
25 AGENCY
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