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Superior Court Of California,
Sacramento
12/18/2018
irone2
By _____, Deputy
Case Number:
34-2018-00246856

7 Attorneys for Plaintiff
8 Yes! For a Better San Diego

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

BY FAX

Yes! For a Better San Diego, a San Diego
Committee,

Plaintiff,

vs.

Election Systems, Inc., dba Arno
Petition Consultants, Inc., a California
Corporation; Michael D. Arno, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

Complaint for

- 1) Negligence;
- 2) Negligent Misrepresentation;
- 3) Breach of Contract; and
- 4) Fraud

Jury Trial Demanded

1 COMES NOW PLAINTIFF, Yes! For a Better San Diego, which for its complaint
2 against defendants, alleges as follows:

3 **Parties**

4 1. Plaintiff Yes! For a Better San Diego (“Plaintiff”) is a political committee
5 formed in San Diego, California.

6 2. Defendant Election Systems Inc., doing business as Arno Petition
7 Consultants, Inc. (“APC”), is a California corporation with its principal place of business in
8 Penryn, California. APC is a petition management firm.

9 3. Defendant Michael D. Arno is an individual residing in Sacramento,
10 California. Mr. Arno is the owner and CEO of APC.

11 **Jurisdiction and Venue**

12 4. This Court has jurisdiction over all causes of action asserted herein under the
13 California Constitution, Article VI, § 10, because this case is a cause not given by statute to
14 other trial courts, and the amount sought exceeds the jurisdictional minimum of this Court.

15 5. This Court has personal jurisdiction over APC and Mr. Arno because they
16 both maintain sufficient minimum contacts with the State of California to render
17 jurisdiction by this Court permissible under the traditional notions of fair play and
18 substantial justice.

19 6. Venue is proper because the defendants reside in this county.

20 **Facts**

21 7. Plaintiff was formed in San Diego, California to promote a citizen’s initiative
22 (“the Initiative”) aimed at increasing the transient occupancy tax at San Diego hotels to
23 finance the expansion of the San Diego Convention Center, to provide housing and
24 services to the homeless, and to repair roads.

25 8. In January 2018, Plaintiff engaged APC through its owner, defendant Arno
26 (collectively “Defendants”) to collect the requisite number of signatures necessary to
27 qualify the Initiative for the November 2018 ballot.

28 9. Plaintiff paid APC a deposit of \$75,000.00 to retain APC’s

1 services. The parties agreed that APC would collect approximately 112,000 total signatures
2 at a rate of \$4.54 per signature. APC was contractually obligated to attain a minimum
3 validity rate for signatures of 72%. The validity rate provision was important, as
4 qualification for the November 2018 ballot depended upon a random sampling of
5 signatures demonstrating at least 78,811 valid signatures for the Initiative.

6 10. As required by state and local law, Plaintiff had 180 calendar days
7 from the time of its publication of the initiative language in a local media outlet to turn in
8 the requisite number of signatures. Plaintiff clearly informed Defendants of its desire to
9 turn in signatures on an expedited timeline to ensure qualification for the November 2018
10 ballot. Mr. Arno represented that APC could achieve this goal, which is reflected in the
11 Recitals in the parties' contract.

12 10. APC was to provide Plaintiff and its representatives a running tally of
13 collected signatures and the corresponding validity rate for those signatures during the
14 course of performance of APC's signature-gathering efforts. Both Plaintiff and APC set an
15 informal target date in May to submit the signatures, in order to qualify for the November
16 2018 ballot, given the process to validate signatures and place the initiative on the ballot

17 11. During the first several months of signature gathering, APC provided a
18 signature report stating the number of signatures collected and the validity rate of the
19 collected signatures. APC also provided a series of invoices to Plaintiff and received timely
20 payment from Plaintiff. The rate of signature gathering was slow. Accordingly, in May,
21 2018 the parties twice agreed to increase the price per signature to APC to accelerate the
22 rate of signature collection in order to achieve the deadline for the November 2018 ballot.
23 The May 23, 2018 invoice from APC shows that 46,474 signatures were collected at \$4.54
24 per signature, 7,794 signatures were collected at \$6.54 signature, and 11,501 signatures were
25 collected at \$9.04 per signature.

26 12. The results from APC were lower than expected throughout the spring,
27 requiring Plaintiff to engage a second paid firm (with APC's consent) to supplement APC's
28 efforts by canvassing door to door. That firm was able to achieve its contractual obligation

1 of ten thousand signatures. Furthermore, volunteer efforts from Plaintiff provided
2 approximately 2,500 signatures for Plaintiff through June 1, 2018.

3 13. Plaintiff continued to receive reports from Defendants through early and
4 mid-June showing Plaintiff would soon be able to turn in the requisite number of
5 signatures to qualify for the November 2018 ballot. Defendant Arno provided repeated
6 assurances that the project was nearly completed, requiring just one or two more turn-ins.

7 14. The total reported by APC on June 7, 2018 was 89,590; for June 11 - 93,232;
8 and June 14 - 95,262. On June 18, APC provided a final written report showing 93,390
9 signatures, a materially lower number than last represented on June 14.

10 15. On or around June 21, 2018, Defendants informed Plaintiff's representatives
11 that the final collection date from signature gatherers would be June 24, 2018. This would
12 allow APC and Plaintiff to turn in the targeted 113,000 signatures to the Registrar of
13 Voters on June 25, 2018. By this point in time the parties had agreed that, due to a
14 declining signature validity rate, an additional 1,000 signatures needed to be collected for a
15 total of 113,000.

16 16. On Sunday, June 24, 2018, representatives of Plaintiff went to APC's
17 campaign offices to review the final turn-in of signatures and help prepare them for
18 delivery to the Registrar of Voters the following day. Based on APC's representations as to
19 the number of valid signatures gathered, a media advisory was issued, announcing
20 Plaintiff's intent to turn in signatures on June 25 at a highly publicized news conference
21 with elected officials and community leaders

22 17. When Plaintiff's representatives arrived at APC's office, they were informed
23 by defendant Arno that the final turn-in was actually less than previously represented, and
24 APC might need "a couple more days" to finish the project. Because of the numerous
25 delays and inconsistent numbers reported by Mr. Arno, Plaintiff's representatives decided
26 to do their own count of all the signatures collected by APC. By 2 a.m. the following
27 morning, the representatives discovered that the total number of signatures in APC's
28 possession only amounted to approximately 87,312 – nowhere close to the 113,000

1 signatures previously represented to have been gathered by APC. The 87,312 signatures
2 included those collected by APC, the 10,000 signatures from the second vendor, and
3 approximately 2,500 signatures from volunteers. Based on the actual count of signatures,
4 APC had only collected around 75,000 signatures through its own efforts.

5 18. During the representatives' counting of the signatures collected, Mr. Arno
6 admitted to Chris Wahl, lead representative for Plaintiff, that he had consistently overstated
7 the reported number of signatures.

8 19. The amounts for signatures and travel expenses paid by Plaintiff to Mr.
9 Arno through June 19th, 2018 totaled \$834,435.58. APC's invoices up until June 13
10 included costs per signature due for approximately 93,222 signatures collected, well over
11 the actual number of signatures collected by APC as of the June 24th signature count by
12 Plaintiff. Invoices after June 13th did not include a signature count for those charges. By
13 way of reference, the initial quote for services given by APC to Plaintiff was \$508,480.00 to
14 collect 112,000 gross signatures.

15 20. Early in the project, defendant Arno made repeated promises about
16 finishing the job on time and on budget, before informing Mr. Wahl that he needed
17 additional payments to continue with the signature efforts because he had no money.
18 Defendant Arno claimed that he was owed a large sum of money from other projects
19 around the country and expected payment soon, which would allow him to pay his
20 subcontractors who were pulling out of San Diego due to lack of payment from APC.
21 Because of defendants' representations, Plaintiff was faced with the Hobson's choice of
22 either losing hundreds of thousands of dollars without an initiative, or continuing to fund
23 APC to try to salvage the project. Efforts by Plaintiff to mitigate its losses by replacing
24 APC were unsuccessful, because no company would agree to step in for APC.

25 21. Beginning on June 25, 2018 and running through the final turn-in of
26 signatures to the Registrar of Voters on July 9, Plaintiff redoubled efforts to finish the
27 delayed project as quickly as possible. APC invoiced Plaintiff approximately \$170,000 in
28 addition for signatures and lodging during the final two weeks of the signature drive. The

1 total number of signatures turned in to the Registrar of Voters on July 9th was 114,609.
2 Mr. Arno informed Plaintiff at that time that his calculated validity rate was 71.9% (APC
3 was contractually obligated to meet a 72% validity rate). At the turn-in of signatures at the
4 Registrar of Voters, Mr. Arno acknowledged in a direct conversation with multiple
5 members of Plaintiff that he had overbilled the project, and he pledged to pay back every
6 dollar that he overbilled Plaintiff.

7 22. On August 8, 2018, San Diego City Clerk Elizabeth Maland released the
8 results of the random sampling count. The estimated total number of valid signatures was
9 72,713, which was far short of the 78,811 required to qualify on the random sample. The
10 validity rate of the sample was roughly 67.1% (2,311 valid out of 3,442), which was far
11 below the 71.9% number that APC had guaranteed to Plaintiff. As a result of failing the
12 random sample, the initiative missed the deadline to qualify for the 2018 ballot, and the
13 signature verification process moved to the next step of having to verify every signature to
14 determine whether there were at least 71,646 valid signatures to qualify for a future ballot.

15 23. On September 20, 2018, the City Clerk released the results of the full count
16 of signatures. The minimum number of required signatures (71,646) was reached, but
17 verification of this number had required counting 110,874 of the total turn-in (the Clerk's
18 office stops counting once the 71,646 number is reached, which left 3,915 unverified).
19 These results translate to a validity rate of only 64.6%.

20 24. Under the APC contract, if APC fails to meet its guaranteed 72% validity
21 rate, Plaintiff has the option of reimbursement at the rate of the average amount paid to
22 APC over the course of the agreement per deficient signature. Based on 98,497 gross
23 signatures collected by APC at an average payment of \$8.60 per gross signature, the
24 contractual formula entitles Plaintiff to a \$97,025.20 reimbursement.

25 25. Beyond this contractually mandated reimbursement, APC is responsible for
26 damages incurred by Plaintiff as a result of APC's negligence in the performance of its
27 work, in the misrepresentations in defendants' reporting of APC's results, and in the
28 billings for its services. APC billed Plaintiff for approximately 120,472 gross signatures, but

1 the actual number collected by APC was only 98,497 signatures. This difference of 21,975
2 signatures (signatures which Plaintiff paid for) equates to overpayment of approximately
3 \$188,985.00 to APC for gross signatures. Together with the \$97,025.20 reimbursement
4 owed under the signature validity guarantee, Plaintiff is owed a total of \$286,010.20 from
5 APC.

6 **First Cause of Action**

7 **(Negligence against all Defendants)**

8 26. Plaintiff incorporates by reference each and every allegation set forth above
9 as though fully set forth herein.

10 27. Defendants owed a duty of reasonable care to Plaintiff.

11 28. Defendants breached their duty of reasonable care by failing to exercise
12 reasonable diligence and care in the collection of signatures, overreporting the number of
13 signatures collected; overreporting the validity rate of the signatures collected; overbilling
14 for its services; and inaccurately representing that APC would finish the job on time.

15 29. Defendants' breaches of their duty of care proximately caused
16 damages to Plaintiff in the form of overpayment and missing the deadline to qualify the
17 Initiative for the November 2018 ballot.

18 **Second Cause of Action**

19 **(Negligent Misrepresentation against all Defendants)**

20 30. Plaintiff incorporates by reference each and every allegation set forth above
21 as though fully set forth herein.

22 31. Defendants provided false (inflated) representations of the number
23 of signatures gathered, the validity rate of the gathered signatures, and the amount of
24 money Plaintiff owed. Defendants also falsely represented that APC would finish the job
25 on time.

26 32. Defendants lacked reasonable grounds for believing these representations to
27 be true.

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45. Defendant's false representations were material.

46. Plaintiff reasonably relied upon Defendants' false representations and, as a direct and proximate result, suffered damages.

47. Defendants' conduct was fraudulent and willful, and warrants imposition of punitive damages against them, in an amount sufficient to punish and make an example of them.

Prayer for Relief

Plaintiff prays for relief as follows:

- A. For compensatory damages, in an amount to be proven at trial;
- B. For punitive damages pursuant to California Civil Code § 3294;
- C. For reasonable attorneys' fees and costs; and
- D. For such other and additional relief as deemed just and proper.

Jury Demand

Plaintiff demands a trial by jury.

Dated: December 18, 2018

FITZGERALD KNAIER LLP

By: 

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Joseph L. McGeady, Esq.
Attorneys for Plaintiff
Yes! For a Better San Diego