

2011 JUN 29 PM 12:42

RECEIVED
SAN DIEGO COUNTY CLERK

1 Kent L. Sharp, Esq.: State Bar #179468
2 Brian M. Holm, Esq.: State Bar #255691
3 LA JOLLA LAW GROUP
4 4330 La Jolla Village Drive, Suite 220
5 San Diego, CA 92122
6 (858) 202-1321
7 (858) 202-1308 Facsimile

8 Attorneys for Plaintiffs,
9 CHILDREN OF THE RAINBOW HEAD START, LLC
10 and CHILDREN OF THE RAINBOW, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO -- HALL OF JUSTICE

VIA FAX

13 CHILDREN OF THE RAINBOW HEAD
14 START, LLC, a California limited liability
15 company; CHILDREN OF THE RAINBOW,
16 INC., a California corporation; and GALE
17 WALKER, an individual,

18 Plaintiffs,

19 v.

20 NEIGHBORHOOD HOUSE
21 ASSOCIATION, a California non-profit,
22 public benefit corporation; RUDOLPH A.
23 JOHNSON, III a.k.a. RUDY JOHNSON, an
24 individual; NORMA JOHNSON, an
25 individual; and DOES 1 through 100,
26 inclusive,

27 Defendants.

CASE NO. 37-2011-00093701-CU-BC-CTL

COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
- (3) PROMISSORY ESTOPPEL
- (4) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- (5) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- (6) RESTITUTION
- (7) UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)
- (8) UNFAIR COMPETITION UNDER (CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)
- (9) BREACH OF FIDUCIARY DUTY
- (10) EXPRESS INDEMNITY
- (11) DECLARATORY RELIEF

Unlimited Civil Action

28 COMES NOW PLAINTIFFS CHILDREN OF THE RAINBOW HEAD START, LLC;
29 CHILDREN OF THE RAINBOW, INC. and GALE WALKER (collectively "COTR" or
30 "Plaintiffs") and hereby allege as follows:

31 ////

LA JOLLA
LAW
GROUP

4330 La Jolla Village Dr.
Suite 220
San Diego, CA 92122
(858) 202-1321
FAX (858) 202-1308

Complaint

1 **PARTIES**

2 1. PLAINTIFF CHILDREN OF THE RAINBOW HEAD START, LLC (“COTR
3 LLC”) is, and at all times herein mentioned was, a limited liability company organized and
4 existing under the laws of the State of California, with its principal place of business in San
5 Diego County, California.

6 2. PLAINTIFF CHILDREN OF THE RAINBOW, INC. (“COTR Inc.”) is, and at all
7 times herein mentioned was, a corporation organized and existing under the laws of the State
8 of California, with its principal place of business in San Diego County, California.

9 3. PLAINTIFF GALE WALKER is, and at all times herein mentioned was, an
10 individual residing in California. Ms. Walker is the CEO and president of COTR.

11 4. Plaintiffs are informed and believe and on that basis allege that DEFENDANT
12 NEIGHBORHOOD HOUSE ASSOCIATION (“NHA”) is, and at all times herein mentioned
13 was, a non-profit public benefit corporation organized and existing under the laws of the State
14 of California, with its principal place of business in San Diego County, California.

15 5. Plaintiffs are informed and believe and on that basis allege that DEFENDANT
16 RUDOLPH A. JOHNSON, III a.k.a. RUDY JOHNSON is an individual residing in California
17 and doing business in the County of San Diego. Plaintiffs are further informed and believe and
18 on that basis allege that Rudolph A. Johnson, III is the President and Chief Executive Officer
19 of NHA.

20 6. Plaintiffs are informed and believe and on that basis allege that DEFENDANT
21 NORMA JOHNSON is an individual residing in California and doing business in the County
22 of San Diego. Plaintiffs are further informed and believe and on that basis allege that Norma
23 Johnson is the Vice President of Children, Youth and Family Services for NHA.

24 **ALTER EGO AND JOINT VENTURE ALLEGATIONS**

25 7. Plaintiffs are informed and believe, and on that basis allege, that at all times
26 herein mentioned, each of the Defendants was each the agent, alter-ego, servant, co-
27 conspirator, partner, representative or employee of the other and in doing things hereinafter
28 alleged was working within the course and scope of its agency, alter-ego, partnership,

LA JOLLA
LAW
GROUP

1 conspiracy, partnership, employment or representation with the knowledge, notification,
2 authorization and consent of each of the other Defendants.

3 8. Plaintiffs are informed and believe, and on that basis allege, that Defendants are
4 each liable for the acts and omissions of the other as alleged in this Complaint, each of them
5 being in effect the "alter ego" of the other.

6 9. Plaintiffs are informed and believe, and on that basis allege, that recognition of
7 the privilege of separate existence would promote injustice because Defendants each
8 dominated and controlled the other as follows: each commingled funds and assets with the
9 other; each diverted funds and assets for other than corporate uses; each treated the assets of
10 the other as its own; each failed to maintain adequate business records, minutes, or corporate
11 records in a conspiracy to defraud their customers, including Plaintiffs; each failed to
12 adequately capitalize or provide available assets or resources to the other in a conspiracy to
13 defraud customers, including Plaintiffs; each used the other as a mere shell, instrumentality, or
14 conduit for a single venture in a conspiracy to defraud customers, including Plaintiffs; each
15 used the other to procure, manage, and administer labor and services from the other in a
16 conspiracy to defraud customers, including Plaintiffs; each diverted assets from one another to
17 the detriment of creditors, including Plaintiffs; and each contracted with and defrauded
18 Plaintiffs with the intent to avoid performance by use of the corporate or entity of the other as
19 a shield against personal and separate liability.

20 10. Plaintiffs are further informed and believe, and on that basis allege, that
21 Defendants, in carrying out the conduct herein, were acting together in a joint venture, and that
22 each part of the joint venture contributes to the management expertise and capital, and shares
23 of profits and losses.

24 11. Plaintiffs are informed and believe, and on that basis allege, that assets received
25 by Defendants, and each of them, are shared with each other; Defendants, and each of them,
26 are backed by the financial strength of the other; and Defendants, and each of them, provide a
27 host of services to the other, including accounting, marketing, and personnel.

28 ////

LA JOLLA
LAW
GROUP

1 12. Plaintiffs are informed and believe, and on that basis allege, that Defendants
2 owned, operated, managed, maintained, and controlled the activities of the other. Therefore, in
3 reality, the activities, acts, and omissions of Defendants are, and were, the activities, acts and
4 omissions of the other.

5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 Overview of Relationship Between COTR and NHA.

7 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained
8 in Paragraphs 1 through 12, inclusive, as though fully set forth herein

9 14. The Head Start Act (42 United States Code Section 9801 *et seq.*) was enacted for
10 the purpose of “promoting school readiness by enhancing the social and cognitive development
11 of low-income children through the provision, to low-income children and their families, of
12 health, educational, nutritional, social and other services that are determined, based on family
13 needs assessments, to be necessary.” 42 U.S.C. § 9831 (“The Head Start Act”). The Head Start
14 Act further authorizes the Secretary of the United States Department of Health and Human
15 Services to designate as a Head Start agency any local public or private non-profit or for-profit
16 agency. 42 U.S.C. § 9836(a). The Head Start Act further authorizes the Secretary to provide
17 financial assistance or grants to Head Start agencies for the operation of Head Start programs.
18 42 U.S.C. §§ 9833 – 9835.

19 15. NHA is contracted through the Department of Health and Human Services to
20 provide Head Start services including comprehensive education, health, mental health, social
21 services, and child care services to children in communities located throughout San Diego
22 County.

23 16. NHA’s operation of its Head Start centers throughout San Diego County was
24 riddled with violations, including fiscal mismanagement, lack of oversight, and failure to
25 supervise the children. Plaintiffs are informed and believe and thereon allege that
26 approximately 15 children in NHA’s centers had gone temporarily missing during a five year
27 span, which resulted in NHA being placed on probation. In May 2008, a child was allowed to
28 leave one of NHA’s centers with a complete stranger. On June 3, 2008, the Department of

LA JOLLA
LAW
GROUP

1 Health and Human Services filed paperwork seeking to revoke NHA's licenses.

2 17. In response to the widespread allegations of mismanagement, NHA attempted to
3 sub-contract a majority of its Head Start facilities out to a third party.

4 18. Both Plaintiffs COTR LLC and COTR Inc. are for-profit childcare and
5 development organizations registered with the State of California and City of San Diego to
6 provide professional development in the area of early literacy, family literacy, and cultural
7 competency to children and their families.

8 19. As part of NHA's sub-contracting process, NHA entered into contracts with
9 COTR to operate nine (9) facilities and to provide related services. Since taking over in
10 September 2008, COTR has taken these previously mismanaged and failing facilities and
11 turned them around into successful well-managed ventures. Unfortunately, immediately after
12 losing nine of its Head Start facilities to COTR, NHA began to impose improper and illegal
13 demands upon COTR that violate the agreements existing between COTR and NHA as well as
14 numerous Federal Regulations and Statutes.

15 20. From September 2008 until the present, NHA has engaged in a pattern of
16 extortive business practices by repeatedly threatening not to renew its annual contract with
17 COTR, unless COTR agrees to all demands (legal or not) made by NHA. The existing contract
18 between NHA and COTR expires on June 30, 2011.

19 21. Despite COTR complying with NHA's most recent extortive demands, NHA
20 demanded that COTR turn over all leases and licenses, and terminate all employees for no
21 cause.

22 22. NHA is not licensed and is unable to take over operations of the nine Head Start
23 facilities currently being operated by COTR.

24 *COTR and NHA Entered Into a Services Agreement and Memorandums of Understanding for*
25 *COTR to Provide Head Start Program Services.*

26 23. Since 2008, Plaintiff COTR, LLC and Defendant NHA entered into written
27 agreements drafted by NHA to provide services in connection with comprehensive early
28 childhood care and education services programs for children and their families. NHA and

LA JOLLA
LAW
GROUP

1 COTR renewed the contract in July 2009 and again on July 1, 2010 when they executed the
2 Head Start Services Agreement (Contract No. 10-002553-HS), which is hereinafter referred to
3 as the "Services Agreement." At the time COTR was to execute the Services Agreement,
4 general counsel for NHA, Dwight D. Smith, Esq., informed COTR that he would advise them
5 on the legalities of the Services Agreement and Memorandum of Understanding, and that
6 COTR is not permitted to change any of the provisions.

7 24. In addition, Plaintiff COTR and NHA entered into a Memorandum of
8 Understanding dated July 1, 2010, which is hereafter referred to as the MOU.

9 Specific Contract Provisions Breached by NHA:

10 25. Addressing the terms and conditions of payment from NHA for services
11 performed by COTR, Section 5.2 of the Services Agreement provides that NHA is required to
12 pay "allowable costs." As discussed below, NHA failed and refused to pay all allowable costs
13 under the Services Agreement.

14 26. Furthermore, Section 5.4 of the Services Agreement provides: "Notwithstanding
15 any other provision of this Agreement, NHA shall not withhold more than 15% of any
16 payment. NHA may pursue disputed amounts only after 85% of such amounts have been paid
17 to COTR." Nevertheless, NHA repeatedly denied payments due under the Services
18 Agreement, and also refused to pay 85% of such disputed monies for up to years at a time.

19 27. Moreover, in Section 10.18 of the Services Agreement, NHA and COTR agreed
20 to a number of additional assurances, including the parties' compliance with applicable federal
21 and state laws. The Services Agreement reads in relevant part:

22 "Additional Assurances. Attached hereto as EXHIBIT "D" and
23 incorporated herein by reference are additional Assurances governing this
24 Agreement between NHA and COTR for Head Start Services rendered to
25 NHA. *The Parties to this Agreement shall abide by all of the terms and
conditions set forth in the Assurances.*" (Emph. added).

26 28. The express language of the Services Agreement at Section 10.18 mandates that
27 all additional assurances apply to "the Parties" – which, by definition, includes NHA. Thus,
28 each time NHA's misconduct and fraudulent scheme violates a federal or state law also

LA JOLLA
LAW
GROUP

1 constitutes a breach of Section 10.18 of the Services Agreement.

2 29. Additionally, the MOU has similar provisions regarding "Assurances" at Section
3 4.0. Specifically, one such assurance provides, "The parties shall establish safeguards to
4 prohibit employees from using their positions for a purpose that is or gives the appearance of
5 being motivated by the desire for private gain for themselves or others, particularly those with
6 whom they have family, business or other ties."

7 30. Specifically, another assurance provides, "The parties shall comply with the
8 Copeland "Anti-Kickback" Act (18 USC 874) as supplemented by 29 CFR Part 3."

9 31. Lastly, both the Services Agreement and MOU have prevailing party attorneys'
10 fees clauses at Sections 10.17 and 6.6, respectively.

11 *NHA Unlawfully Demanded that COTR Purchase All Food Services Solely From NHA.*

12 32. In or about June 2009 and again in June 2010, NHA and Defendant Rudolph A.
13 Johnson, III unilaterally demanded that COTR forego the legally required "bidding process"
14 for food services and buy all of COTR's food services directly from NHA. To this end, Mr.
15 Johnson demanded that Plaintiff Gale Walker, Program Director and sole owner of COTR,
16 enter into the Services Agreement that included such food service agreement obligations.

17 33. In September 2009, Rudolph A. Johnson, III threatened that either COTR agree to
18 contract with NHA's food services or NHA would not renew the Services Agreement or MOU

19 34. Upon learning of COTR's efforts to comply with the law and get alternative bids
20 for food services, Rudolph A. Johnson, III became irate, and demanded that Gale Walker
21 immediately assure him by e-mail that COTR would exclusively use NHA for food services
22 and not any other company.

23 35. On September 10, 2009, as a result of Mr. Johnson's repeated threats, and fearing
24 that Mr. Johnson would terminate the contractual relationship and/or withhold funding from
25 COTR thereby causing its Head Start facilities to shut down, Ms. Walker sent an e-mail to Mr.
26 Johnson assuring him that COTR would be using NHA for food services.

27 36. Defendants demanded COTR to use NHA's food services despite the legal
28 requirement to obtain at least three competitive bids. NHA demanded that COTR forego the

LA JOLLA
LAW
GROUP

4330 La Jolla Village Dr.
Suite 220
San Diego, CA 92122
(858) 202-1321
FAX (858) 202-1308

1 bidding process altogether by forcing COTR to contractually agree to use NHA's food services
2 even before COTR applied to the California Department of Education for the Child and Adult
3 Care Food Program, which requires the bids.

4 37. COTR is informed and believes and thereon alleges that, in imposing NHA's food
5 service agreement upon COTR, NHA charged COTR above market rates for food services.
6 Each year, NHA charged COTR food costs that were significantly above the competition, and
7 above market value.

8 38. This dollar amount also counts against COTR's budget, wasting valuable
9 resources that could have better been used to help the children.

10 39. COTR is informed and believes and thereon alleges that NHA then overcharged
11 COTR for food services above the established contract amount. In such "overcharges," NHA
12 would take additional monies from COTR as monies available to be labeled as NHA's
13 "discretionary income." By labeling income as "discretionary income," NHA was then
14 permitted to distribute federal grant money from this fund with fewer restrictions, including
15 enabling distribution to its officers and directors.

16 40. By effectively forcing COTR to use NHA's food services, NHA was in effect
17 "competing" for profits with COTR and creating a conflict of interest in violation of state and
18 federal laws.

19 NHA Improperly Forced Gale Walker to Pay NHA Directly a Sum in the Amount of
20 \$240,000.00.

21 41. Over the course of the three year relationship between COTR and NHA, COTR
22 paid Gale Walker a management fee. Throughout the 2010 – 2011 time period, COTR
23 knowingly and willingly paid Ms. Walker a total \$240,000.00 in monthly installments.

24 42. The Service Agreement expressly provides for the payment of COTR LLC's
25 "allowable costs." Similarly, the MOU entered into between NHA and COTR Inc. also
26 provides for payment of "allowable costs."

27 ////

28 ////

LA JOLLA
LAW
GROUP

1 43. The Head Start Act allows for profit distributions or increments above cost to
2 owners of entities that are independent contractors in the Head Start program. Such monies are
3 characterized as “allowable costs,” payment for which was owed and due to COTR.

4 44. In or about April 2011, NHA demanded Gale Walker of COTR to individually
5 pay from her own personal funds the \$240,000.00 administrative fee she received back directly
6 to NHA in the form of a cashier’s check, as NHA alleged the administrative fee was suddenly
7 no longer an allowable cost.

8 45. Rudolph A. Johnson, III and other Defendants told Gale Walker that if she did not
9 personally pay the \$240,000.00 to NHA, NHA would not renew the Services Agreement or
10 MOU with COTR when they expired on June 30, 2011, despite the contracts’ provision that
11 they be renewed so long as Plaintiffs fully performed the agreements.

12 46. COTR is informed and believes and thereon alleges that NHA knew the monies
13 distributed by COTR to Gale Walker in the amount of \$240,000.00 were legal payments, i.e.,
14 administrative costs, and fully intended that the monies to be paid from her in the amount of
15 \$240,000.00 would be characterized as “discretionary income,” thereby enabling NHA to
16 distribute federal grant money with fewer restrictions, including payment to its officers and
17 directors.

18 47. Despite believing that the management fee was an allowable costs, in April 2011,
19 Gale Walker individually executed and delivered a cashier’s check in the amount of
20 \$240,000.00 payable to NHA under the belief that if she did so, NHA would renew COTR’s
21 contract for another year and she would be able to continue to improve the nine Head Start
22 facilities that she had rescued from NHA three years earlier.

23 48. Plaintiffs are informed and believe and therefore allege that the threat,
24 requirement and demand by Defendants that Ms. Walker pay \$240,000.00 directly to NHA
25 (rather than have Ms. Walker pay the money back to COTR’s operating account) is part of a
26 larger scam by Defendants, against not only COTR – but also similarly situated “partners” or
27 “vendors” of NHA – whereby NHA uses illegal and improper threats and “scare tactics” to
28 force such persons and entities to direct monies back to NHA in a manner that creates improper

LA JOLLA
LAW
GROUP

4330 La Jolla Village Dr.
Suite 220
San Diego, CA 92122
(858) 202-1321
FAX (858) 202-1308

1 “discretionary income.”

2 NHA Improperly Administered the Payroll Services of COTR.

3 49. From approximately September 2008 – December 2009, NHA demanded and
4 required COTR to use NHA for payroll services. NHA disallowed COTR from getting
5 competitive bids for payroll and threatened to discontinue the Services Agreement if COTR
6 used a third-party payroll company.

7 50. Additionally, NHA improperly required COTR to pay all its employees “accrued
8 vacation” to NHA to withhold and keep for the employees unless and until they used their
9 accrued vacation time. As an independent contractor, COTR is responsible for accounting and
10 budgeting for accrued vacation, not NHA.

11 51. In or around December 2009, COTR changed payroll companies. However, NHA
12 has wrongfully withheld and converted approximately \$111,000.00 in “accrued vacation” for
13 over a year and a half.

14 52. COTR is informed and believes and thereon alleges that, in a recurring pattern, it
15 appears that this accrued vacation money too was used by NHA as “discretionary income” and
16 wrongfully diverted away from COTR and to the benefit of NHA’s officers and directors.

17 COTR Leased Office Space from Rudolph A. Johnson, III’s Mother at “Above-Market-Rent.”

18 53. Defendant Rudolph A. Johnson, III’s mother is the owner of an office space
19 rented by COTR through Bronze Triangle CDC for administrative uses in connection with the
20 Head Start program.

21 54. Over the three years, the rent has increased to an amount that is above the market
22 rent.

23 55. This above market office lease violates both state and federal laws.

24 56. Rudolph A. Johnson, III and his mother are improperly benefiting from state and
25 federal funds through COTR used to pay the office lease at an above market rate.

26 NHA Improperly Forced COTR to Pay Additional Costs for IT Services.

27 57. Despite being required to provide COTR with certain Information Technology
28 (IT) services in the Services Agreement and also in accordance with their application to the

LA JOLLA
LAW
GROUP

1 United States Government, NHA has demanded and required COTR to enter into additional IT
2 services contracts, charging COTR approximately \$3,000.00 per month.

3 58. NHA demanded that COTR sign up for the additional IT services and threatened
4 to terminate and/or not renew the Services Agreement if COTR did not agree.

5 59. COTR is informed and believes and thereon alleges that as part of NHA's
6 program budget, NHA is allotted a certain amount to spend on IT services and is required by
7 the Services Agreement to provide those services to COTR. The additional charge of
8 \$3,000.00 per month by NHA is double dipping and NHA is double charging this amount
9 unfairly, for a profit and in direct competition with COTR.

10 60. Despite the Services Agreement and COTR's payment of \$3,000.00 per month for
11 IT services, COTR has received little to no IT support or services at any time between June
12 2008 and the present. The whole IT services scam is meant to direct monies back to NHA as
13 "discretionary income."

14 NHA Unlawfully Forced COTR to Enter into a Transportation Contract with NHA.

15 61. In 2009, NHA demanded that COTR enter into a transportation contract with
16 NHA (the "Transportation Contract") to provide transport of children to the Head Start
17 Program operated by COTR at the Logan Heights' facility. In so doing, NHA refused to allow
18 COTR to satisfy the Head Start Program's "open and competitive procurement practices" by
19 contacting other transportation vendors or allowing COTR to obtain quotes for these services
20 from other vendors.

21 62. NHA's improper demand again demonstrates NHA's complete and total disregard
22 for the Head Start procurement rules in cases where that disregard results in a direct financial
23 benefit to NHA.

24 63. Through the Transportation Contract, NHA would take additional monies from
25 COTR as monies available to be labeled as NHA's "discretionary income." By labeling
26 income as "discretionary income," NHA was then permitted to distribute federal grant money
27 from this fund with fewer restrictions, including enabling distribution to its officers and
28 directors.

LA JOLLA
LAW
GROUP

1 64. COTR is informed and believes and thereon alleges that NHA's conduct resulted
2 in COTR paying more than it should have paid for these transportation services.

3 *NHA Operated an Inner City Facility Without a License and then Fraudulently Transferred*
4 *that Facility to COTR.*

5 65. COTR would not have needed the Transportation Contract at all (or any of the
6 transportation services provided under that contract) but for NHA's improper and illegal
7 conduct related to the Inner City Head Start facility located at 2918 Imperial Avenue, San
8 Diego, California (the "Inner City Facility").

9 66. COTR is informed and believes and thereon alleges that, for over 20 years prior to
10 2008, NHA operated a Head Start Program at the Inner City Facility and that lease for the
11 Inner City Facility was between NHA and the Luckey Family. Said lease was transferred to
12 COTR in 2009 in connection with COTR's taking-over NHA's failed Head Start Programs.

13 67. In 2009, COTR had the Inner City Facility inspected for the purpose of obtaining
14 a permanent CCL license. Although NHA represented to COTR that the Inner City Facility
15 had all necessary permits to operate as a child care facility, COTR learned for the first time
16 during this inspection that the Inner City Facility never had the required Group E occupancy
17 permit. In short, NHA illegally operated the Inner City Facility for more than 20 years.

18 68. In connection with the transfer of Head Start Program facilities to COTR in 2009,
19 NHA dumped this illegal facility on COTR without ever disclosing that the facility lacked
20 proper permits to operate as a child-care facility.

21 69. Once COTR learned that the Inner City Facility was not properly licensed, it
22 immediately took the only legal and responsible action it could take – it shut down the facility.
23 In order to serve the children and families who had been receiving Head Start Program services
24 at the Inner City Facility, COTR was then forced to transport these children and families to the
25 Logan Heights' facility.

26 70. COTR is informed and believes and thereon alleges that, after dumping the illegal
27 facility on COTR to NHA's own benefit (since it would no longer have to pay lease on the
28 Inner City Facility or be stuck with the liability of operating an illegal facility), NHA

1 benefitted even further by forcing COTR to enter into the aforementioned Transportation
2 Contract.

3 71. As a result of NHA's fraudulent transfer of the Inner City Facility lease to COTR,
4 COTR suffered substantial harm.

5 72. Compounding COTR's damages in this regard, the lease for the Inner City
6 Facility was an unreasonable lease that called for rent well in excess of fair market value. The
7 beneficiary of this lease was the Luckey family (the landlord) who are very good friends of
8 Michael Kemp, one of NHA's COO's. NHA's conduct in this regard created a conflict of
9 interest and is a violation of Federal Regulations prohibiting nepotistic contracts.

10 NHA's Failure to Renew COTR's Contract is Done in Bad Faith.

11 73. The Services Agreement expressly provides that, if COTR performs its
12 obligations thereunder, that it is the intent of the parties to extend the Service Agreement.

13 74. In or about May 2011, NHA notified COTR that it will stop doing business with
14 COTR and would not renew the Service Agreement or the MOU.

15 75. COTR has provided to NHA all required books, records, and information
16 pursuant to the Services Agreement and also pursuant to both state and federal laws.

17 76. Furthermore, upon completion of the NHA audit, COTR's records were
18 "reconciled" and approved by NHA's audit team.

19 77. NHA never provided COTR with any notice that COTR breached or failed to
20 fully perform its obligations under the Service Agreement or MOU.

21 78. NHA has instead done everything in its power to violate the letter and spirit of the
22 Services Agreement that require the parties to extend the term of the same as well as the MOU.

23 79. Plaintiffs are informed and believe and thereon allege that NHA wants to take
24 back control over the nine Head Start Programs that COTR revitalized and/or replace COTR
25 with a subcontractor that will roll over and succumb to NHA's extortive and illegal demands
26 so as to allow NHA to continue to inflate the amount of funds that it can recoup from the
27 subcontractor as "discretionary funds" and continue to line its own pockets with federal grant
28 money.

LA JOLLA
LAW
GROUP

1 NHA Orchestrated a Scheme Against COTR to Unfairly and Unlawfully Force COTR Out of
2 Business to the Direct Benefit of NHA.

3 80. Plaintiffs are informed and believe and thereon allege that the Defendants have
4 undertaken a pattern and practice of defrauding COTR as part of a much larger “money
5 laundering” scheme involving other vendors, in order to gain an improper “discretionary
6 income” windfall during their three (3) year relationship, and now at the end, to take over
7 COTR’s businesses and/or find a new subcontractor for COTR’s nine revitalized facilities that
8 is willing to succumb to NHA’s onerous and illegal coercion and demands.

9 81. Despite being continuously held hostage, coerced, and defrauded by NHA
10 throughout the last three (3) years, COTR has turned around the failed NHA facilities—
11 facilities that were so poorly managed by NHA that the Department of Health and Human
12 Services was going to cease funding NHA unless NHA subcontracted them to another
13 organization that could properly manage the facilities and bring them within compliance.
14 COTR has obtained all the licenses back in order, organized and trained the teachers,
15 streamlined the programs and, most importantly, has cured NHA’s longstanding pattern of
16 allowing children to go missing while under its control. And now, NHA most adamantly and
17 improperly demands the businesses back.

18 82. In a letter dated May 9, 2011, the NHA demands that COTR turn over to NHA all
19 of COTR’s business assets, including: “. . . transfer/surrender of licenses, assignment of
20 leases, maintaining the centers in their current operational condition, as well as, retaining all
21 materials and supplies to operate the centers...”

22 83. Plaintiffs are informed and believe and thereon allege that Defendants and each of
23 them have undertaken a devious plan to improperly compete with COTR since the start of their
24 business relationship in 2008.

25 84. In 2008, members of the California Community Care Licensing (“CCL”) division
26 had warned Gale Walker to NOT take over the healthcare licenses from NHA because they
27 believed that NHA had bad intentions and only intended to “use” Gale Walker for her
28 knowledge and resources and eventually illegally “take back” the licenses and businesses after

LA JOLLA
LAW
GROUP

1 she and COTR got them back in order.

2 85. COTR is informed and believes and thereon allege now, some three years later,
3 NHA intends to take back COTR's hard earned successful businesses in an attempt to profit
4 improperly – by demanding that COTR turn over all its assets, licenses, and business value,
5 despite COTR's full performance under the Services Agreement and NHA's representations
6 that it would renew the Services Agreement and MOU.

7 86. As a direct result of NHA's bad faith refusal to renew the Services Agreement and
8 MOU, the nine Head Start facilities that COTR revitalized will be shut down and COTR will
9 be out of business.

10 Plaintiffs Were Forced to Defend Two Lawsuits as a Direct Result of NHA's Management of
11 the Head Start Facilities that Plaintiffs Took Over.

12 87. The Services Agreement provides an indemnity clause that requires NHA to
13 indemnify COTR for any lawsuit filed against COTR. Specifically,

14 “NHA shall indemnify, hold harmless and defend COTR and its
15 officers, directors, agents and employees from and against any and all
16 liabilities, obligations, damages, costs, losses and expenses (including
17 reasonable attorney's fees), in litigation commenced by or against
18 COTR and all claims, demands, actions or judgments of every nature
19 whatsoever in favor of any person on account of personal injury or
20 death, or damages to or loss of property or profits resulting solely from
21 any act, omission, negligence, fault or violation of law or ordinance,
associated with NHA's obligations arising out of or related to this
Agreements. Such indemnification by NHA shall apply unless such
damage or injury results from the negligence, gross negligence or
willful misconduct of COTR its officers, directors, agents or
employees.”

22 88. In June 2009, Vicky Carreno, a former employee of COTR, filed an employment
23 discrimination complaint against COTR that alleged wrongful conduct of an employee that
24 Plaintiffs are informed and believes and thereon alleges was hired by NHA and passed along to
25 COTR when it took over operations of the nine Head Start facilities in 2008.

26 89. In October 2009, Eva Duarte, a former employee of COTR, filed an employment
27 discrimination complaint against COTR that alleged wrongful conduct of an employee that
28 Plaintiffs are informed and believes and thereon alleges was hired by NHA and passed along to

LA JOLLA
LAW
GROUP

1 COTR when it took over operations of the nine Head Start facilities in 2008.

2 90. COTR was forced to defend against these two claims, expending over
3 \$100,000.00 in attorneys' fees and costs to do so. In addition, COTR was required to make a
4 settlement payment to Eva Duarte, a former employee of COTR, who filed an employment
5 discrimination complaint against COTR that predominantly alleged wrongful conduct of an
6 employee hired by NHA and which was passed along to COTR.

7 91. Plaintiffs have demanded reimbursement from NHA for these said attorneys' fees
8 and costs and the settlement payment made to Eva Duarte, but NHA has denied these requests.

9 **FIRST CAUSE OF ACTION**
10 **Breach of Contract**
11 **(Against NHA and DOES 1 through 10)**

12 92. Plaintiffs re-allege and incorporate herein by reference the allegations contained
13 in Paragraphs 1 through 91, inclusive, as though fully set forth herein.

14 93. Plaintiffs are informed and believe and thereon allege that NHA entered into
15 written contractual relations with COTR, including the written contracts defined as the
16 Services Agreement and MOU discussed above.

17 94. Plaintiffs have performed all their obligations to be performed under the terms of
18 said contracts.

19 95. To the extent that Defendants allege that Plaintiffs have failed to perform any
20 provisions, terms, or conditions of such contracts, Plaintiffs are informed and believe and
21 therefore allege that NHA and Defendants have undertaken conduct that has directly and
22 proximately caused any such non-performance by Plaintiffs. Therefore, any such non-
23 performance was caused by Defendants, and is therefore excused.

24 96. NHA and Defendants have materially breached said contracts, including but not
25 limited to the following conduct:

- 26 a. By failing to pay all "allowable costs" as provided in the Service Agreement.
27 b. By withholding more than 15% of disputed payments in violation of the Services
28 Agreement.

LA JOLLA
LAW
GROUP

- 1 c. By improperly demanding Gale Walker to individually pay \$240,000.00 directly
2 to NHA—monies that NHA had already willingly paid to Ms. Walker pursuant to
3 the Services Agreement;
- 4 d. By failing to provide IT services as required and forcing COTR to pay for
5 additional IT services that were never provided;
- 6 e. By failing to renew COTR's Services Agreement and MOU beyond June 30,
7 2011.
- 8 97. By refusing to allow COTR to obtain competitive bids for food services,
9 transportation, payroll, and IT services, NHA was in violation of federal and state laws.
- 10 98. Plaintiffs are informed and believe and therefore allege that such conduct
11 amounting to a material breach of contract by Defendants has directly and proximately caused
12 Plaintiffs damages in an amount to be established at the time of trial.

13
14 **SECOND CAUSE OF ACTION**
15 **Breach of the Covenant of Good Faith and Fair Dealing**
16 **(Against NHA and DOES 1 through 10)**

- 17 99. Plaintiffs re-allege and incorporate herein by reference the allegations contained
18 in Paragraphs 1 through 98, inclusive, as though fully set forth herein.
- 19 100. Plaintiffs are informed and believe and on that basis allege that NHA entered into
20 written contractual relations with COTR, including the written contracts defined as the
21 Services Agreement and MOU as set forth above.
- 22 101. Plaintiffs are informed and believe and on that basis allege that each of such
23 contracts contains an implied covenant of good faith and fair dealing by each party not to do
24 anything which will deprive the other parties of the benefits of the said contracts.
- 25 102. Plaintiffs are informed and believe and on that basis allege that NHA was
26 required to act in accordance with such covenant of good faith and fair dealing, and that such
27 duty imposes on each party to the contract the duty to refrain from doing anything which
28 would render performance of the contract impossible by any act of his own, and also the duty

LA JOLLA
LAW
GROUP

1 to do everything that the contract presupposes that each party will do to accomplish this
2 purpose.

3 103. The purpose of the Services Agreement was to provide COTR with the necessary
4 funds to revitalize and operate the nine non-compliant, poorly managed Head Start facilities
5 that NHA had been unable to competently manage.

6 104. Plaintiffs have performed all their obligations under the terms of the Services
7 Agreement, and have gone above and beyond the call of the Services Agreement and
8 revitalized the struggling Head Start centers under COTR's management.

9 105. To the extent that Defendants allege that Plaintiffs have failed to perform any
10 provisions, terms, or conditions of such contracts, Plaintiffs are informed and believe and
11 therefore allege that NHA and Defendants have undertaken conduct that has directly and
12 proximately caused any such non-performance by Plaintiffs. Therefore, any such non-
13 performance was caused by Defendants, and is therefore excused.

14 106. NHA and Defendants breached the implied covenant of good faith and fair
15 dealing by failing and refusing to renew the Services Contract and MOU beyond June 30,
16 2011.

17 107. Plaintiffs are informed and believe and on that basis allege that such conduct
18 amounting to a material breach of contract, a failure to deal fairly, and a failure to act in good
19 faith by Defendants has the purpose of the contracts and directly and proximately caused
20 Plaintiffs' damages in an amount to be established at trial.

21 **THIRD CAUSE OF ACTION**
22 **Promissory Estoppel**
(Against NHA and Rudolph A. Johnson, III)

23 108. Plaintiffs re-allege and incorporate herein by reference the allegations contained
24 in Paragraphs 1 through 107, inclusive, as though fully set forth herein.

25 109. In the spring of 2011, Rudolph A. Johnson, III unambiguously promised Gale
26 Walker if she paid to NHA the \$240,000.00 management fee that she received pursuant to the
27 July 2010 Services Agreement, NHA would extend COTR's current contract for another year.

28 ///

LA JOLLA
LAW
GROUP

- 1 a. By improperly demanding Gale Walker to personally pay \$240,000.00 to NHA
- 2 directly in order to renew the Services Agreement;
- 3 b. Creating a systematic pattern and practice of devising a scheme to improperly
- 4 require COTR to pay NHA monies to be characterized as “discretionary income”
- 5 in violation of state and federal laws; and
- 6 c. Concealing facts related to Defendants’ intent to NOT renew the Services
- 7 Agreement or MOU for 2011-2012; and
- 8 d. Intentionally violating OMB Circular A-102.

9 117. Plaintiffs are informed and believe and based thereon allege that Defendants had
10 knowledge that their conduct was wrongful, and violated numerous state and federal laws.

11 118. The relationship between Plaintiffs and NHA was disrupted.

12 119. As a proximate result of such wrongful acts, Plaintiffs have suffered injury and
13 damage to its business and goodwill in an amount to conform to proof at trial, but in no event
14 less than the jurisdictional minimum of this honorable Court.

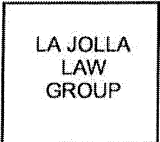
15 120. Defendants Rudolph A. Johnson, III and Norma Johnson’s actions were a
16 substantial factor in causing Plaintiffs’ harm.

17 121. Plaintiffs are informed and believe and based thereon allege that the acts of
18 Defendants and DOES 1 through 100, in interfering with Plaintiffs’ business relationship as
19 described herein were willful and malicious and designed to obstruct and otherwise interfere
20 with the successful operation of Plaintiffs’ business. Plaintiffs therefore are entitled to recover
21 exemplary and punitive damages in a sum sufficient to punish Defendants and DOES 1
22 through 100.

23 **FIFTH CAUSE OF ACTION**
24 **Negligent Interference with Prospective Economic Advantage**
(Against Rudolph A. Johnson, III and Norma Johnson)

25 122. Plaintiffs re-allege and incorporate herein by reference the allegations contained
26 in Paragraphs 1 through 121, inclusive, as though fully set forth herein.

27 123. Plaintiffs are informed and believe and based thereon allege that they maintained
28 an existing or prospective economic or business advantage with NHA in that NHA was



1 required to consider in good faith the renewal of Plaintiffs' contract to manage a number of
2 successful Head Start Program facilities within San Diego County, a relationship that probably
3 would have resulted in an economic benefit to Plaintiffs. Moreover, Plaintiffs' contractual
4 relationship required NHA to perform certain acts that created a future economic benefit to
5 Plaintiffs.

6 124. Defendants Rudolph A. Johnson, III and Norma Johnson knew or should have
7 known of the relationship between COTR and NHA.

8 125. Defendants Rudolph A. Johnson, III and Norma Johnson failed to act with
9 reasonable care:

- 10 a. By improperly demanding Gale Walker to personally pay \$240,000.00 to NHA
- 11 directly in order to renew the Services Agreement;
- 12 b. Creating a systematic pattern and practice of devising a scheme to improperly
- 13 require COTR to pay NHA monies to be characterized as "discretionary income"
- 14 in violation of state and federal laws; and
- 15 c. Concealing facts related to Defendants' intent to NOT renew the Services
- 16 Agreement or MOU for 2011-2012; and
- 17 d. Intentionally violating OMB Circular A-102.

18 126. Defendants Rudolph A. Johnson, III and Norma Johnson's conduct was wrongful,
19 breached the terms of the Services Agreement and MOU, and violated numerous state and
20 federal laws.

21 127. The relationship between Plaintiffs and NHA was disrupted.

22 128. As a proximate result of such wrongful acts, Plaintiffs have suffered injury and
23 damage to its business and goodwill in an amount to conform to proof at trial, but in no event
24 less than the jurisdictional minimum of this Court.

25 129. Defendants Rudolph A. Johnson, III and Norma Johnson's actions were a
26 substantial factor in causing Plaintiffs' harm.

27 ///

28 ///

LA JOLLA
LAW
GROUP

1 134. Plaintiffs request damages against Defendants in the amount Plaintiffs were
2 damaged, in an amount according to proof at the time of trial.

3 **SEVENTH CAUSE OF ACTION**
4 **Unfair Business Practices under Cal. Bus. & Prof. Code §§ 17200, et seq.**
5 **(Against NHA, Rudolph A. Johnson, III and Norma Johnson)**

6 135. Plaintiffs re-allege and incorporate herein by reference the allegations contained
7 in Paragraphs 1 through 134, inclusive, as though fully set forth herein.

8 136. Plaintiffs are informed and believe and therefore allege that Defendants have
9 engaged in a series of unlawful and improper acts, including the following:

- 10 a. Threatening and demanding that COTR purchase all food services solely from
11 NHA;
- 12 b. Improperly demanding Gale Walker to individually pay \$240,000.00 to NHA
13 directly;
- 14 c. Improperly administering payroll services and wrongfully withholding funds in
15 excess of \$111,000.00;
- 16 d. Demanding that COTR pay rent to Rudolph A. Johnson, III's mother in excess to
17 and above market rents;
- 18 e. Charging for, but not providing to COTR, IT services despite a contractual
19 obligation to do so;
- 20 f. Improperly requiring COTR to forego the bidding process and contracting with
21 NHA for transportation services;
- 22 g. Fraudulently transferring the Inner City Facility to COTR;
- 23 h. Creating a systematic pattern and practice of devising a scheme to improperly
24 require COTR to pay NHA monies to be characterized as "discretionary income"
25 in violation of state and federal laws;
- 26 i. Concealing facts related to Defendants' intent to NOT renew the Services
27 Agreement or MOU for 2011-2012 after COTR had fully performed under the
28 Services Agreement and MOU and revitalized the Head Start facilities;

LA JOLLA
LAW
GROUP

4330 La Jolla Village Dr.
Suite 220
San Diego, CA 92122
(858) 202-1321
FAX (858) 202-1308

1 137. Plaintiffs are informed and believe and therefore allege that Defendants' conduct
2 is unlawful, unfair, and fraudulent.

3 138. Plaintiffs are informed and believe and therefore allege that Defendants' conduct
4 has specifically violated numerous state and federal laws.

5 139. Despite Defendants' duties and obligations to Plaintiffs under the Services
6 Agreement, the MOU, and the restrictions imposed by federal and state laws on Defendants'
7 use and distribution of federal Head Start funds, Defendants have embarked on a scheme of
8 unfair and unlawful business practices against Plaintiffs in an effort to misappropriate and
9 fraudulently acquire federal Head Start funds for the personal benefit of NHA's officers and
10 directors.

11 140. Plaintiffs are informed and believe and on that basis allege that Defendants
12 engaged in fraudulent conduct amounting to unfair business practices against Plaintiffs as
13 described herein, which constitutes unlawful, unfair, and/or fraudulent business practices in
14 violation of Section 17200 et seq. of the California Business and Professions Code and
15 California common law.

16 141. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have
17 suffered and will continue to suffer substantial pecuniary losses and irreparable injury to its
18 business reputation and goodwill. As such, Plaintiffs' remedy at law is not adequate to
19 compensate for injuries inflicted by Defendants. Accordingly, Plaintiffs are entitled to
20 temporary, preliminary, and permanent injunctive relief.

21 142. By reason of such wrongful acts, Plaintiffs are and were, and will be in the future,
22 deprived of the profits and benefits of said business relationships, agreements, and transactions
23 with various existing employees, clients, prospective clients, and/or suppliers, and Defendants
24 have wrongfully obtained such profits and benefits in an amount to conform to proof at trial,
25 but in no event less than the jurisdictional minimum of this Court.

26 ///

27 ///

28 ///

LA JOLLA
LAW
GROUP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CAUSE OF ACTION
Unfair Competition under Cal. Bus. & Prof. Code §§ 17200, et seq.
(Against NHA, Rudolph A. Johnson, III and Norma Johnson)

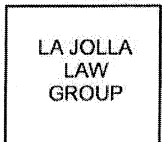
143. Plaintiffs re-allege and incorporate herein by reference the allegations contained in Paragraphs 1 through 142, inclusive, as though fully set forth herein.

144. Plaintiffs are informed and believe and based thereon allege that Defendants have engaged in a series of unlawful and improper acts, including in relation to the following:

- a. Threatening and demanding that COTR purchase all food services solely from NHA;
- b. Improperly demanding Gale Walker to individually pay \$240,000.00 to NHA directly;
- c. Improperly administering payroll services and wrongfully withholding funds in excess of \$111,000.00;
- d. Demanding that COTR pay rent to Rudolph A. Johnson, III's mother in excess to and above market rents;
- e. Charging for, but not providing to COTR, IT services despite a contractual obligation to do so;
- f. Improperly requiring COTR to forego the bidding process and contracting with NHA for transportation services;
- g. Fraudulently transferring the Inner City Facility to COTR;
- h. Creating a systematic pattern and practice of devising a scheme to improperly require COTR to pay NHA monies to be characterized as "discretionary income" in violation of state and federal laws;
- i. Concealing facts related to Defendants' intent to NOT renew the Services Agreement or MOU for 2011-2012 after COTR had fully performed under the Services Agreement and MOU and revitalized the Head Start facilities.

145. Plaintiffs are informed and believe and based thereon allege that Defendants' conduct is unlawful, unfair, and fraudulent.

////



1 146. Plaintiffs are informed and believe and therefore allege that Defendants' conduct
2 has specifically violated numerous state and federal laws.

3 147. Despite Defendants' duties and obligations to Plaintiffs under the Services
4 Agreement and MOU, and the restrictions imposed by federal and state laws on Defendants'
5 use and distribution of federal Head Start funds, Defendants have embarked on a scheme to
6 launch a business that competes with Plaintiffs and makes unauthorized use of federal Head
7 Start funds.

8 148. Plaintiffs are informed and believe and on that basis allege that Defendants
9 engaged in fraudulent conduct to compete against Plaintiffs as described herein, which
10 constitutes unlawful, unfair, and/or fraudulent business practices in violation of Section 17200
11 et seq. of the California Business and Professions Code and California common law.

12 149. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have
13 suffered and will continue to suffer substantial pecuniary losses and irreparable injury to its
14 business reputation and goodwill. As such, Plaintiffs' remedy at law is not adequate to
15 compensate for injuries inflicted by Defendants. Accordingly, Plaintiffs are entitled to
16 temporary, preliminary, and permanent injunctive relief.

17 150. By reason of such wrongful acts, Plaintiffs are and were, and will be in the future,
18 deprived of the profits and benefits of said business relationships, agreements, and transactions
19 with various existing employees, clients, prospective clients, and/or suppliers, and Defendants
20 have wrongfully obtained such profits and benefits in an amount to conform to proof at trial,
21 but in no event less than the jurisdictional minimum of this Court.

22 **NINTH CAUSE OF ACTION**
23 **Breach of Fiduciary Duty**
(Against NHA, Rudolph A. Johnson, III and Norma Johnson)

24 151. Plaintiffs re-allege and incorporate herein by reference the allegations contained
25 in Paragraphs 1 through 150, inclusive, as though fully set forth herein.

26 152. NHA provided payroll services to Plaintiffs. 45 Code of Federal Regulation
27 74.37 places the recipient of Department of Health and Human Services' funds in a
28 trustor/trustee status. NHA itself characterizes the relationship between Plaintiffs and itself as

LA JOLLA
LAW
GROUP

1 a "partnership." As a result, Defendants owed Plaintiffs a fiduciary duty by way of a fiduciary
2 and confidential relationship established between the parties.

3 153. Plaintiffs are informed and believe and therefore allege that Defendants breached
4 such fiduciary duty to Plaintiffs the following actions:

- 5 a. In relation to all conduct threatening and demanding that COTR purchase all food
6 services solely from NHA;
- 7 b. In relation to all conduct stemming from NHA's improper demand for Gale
8 Walker to pay \$240,000.00 to NHA directly;
- 9 c. In relation to NHA's improper administration of payroll services and wrongful
10 withholding of funds in excess of \$111,000.00;
- 11 d. In relation to the office rent required to be paid from COTR to Rudolph A.
12 Johnson, III's mother in excess to and above market rents;
- 13 e. In relation to improper transportation services;
- 14 f. In relation to the fraudulent transfer of the Inner City Facility to COTR; and
15 g. In relation to a failure to cooperate in connection with document review and
16 auditing process.

17 154. Plaintiffs are informed and believe and based thereon allege that Defendants'
18 breach of the fiduciary duty led to a distinct advantage to Defendants in that they, those family
19 members and friends close to them, gained the benefit of the transactions described above, that
20 they gained interest on such monies, and had access to them to do what they wished within
21 their "discretionary fund."

22 155. As a result of the foregoing actions, Plaintiffs have been harmed in an amount that
23 will be proven at time of judgment or trial, an amount that exceeds \$10,000,000.00.

24 **TENTH CAUSE OF ACTION**
25 **Express Indemnity**
26 **(Against NHA)**

27 156. Plaintiffs re-allege and incorporate herein by reference the allegations contained
28 in Paragraphs 1 through 155, inclusive, as though fully set forth herein.

////

LA JOLLA
LAW
GROUP

1 157. The Services Agreement provides an indemnity clause that requires NHA to
2 indemnify COTR for any lawsuit filed against COTR. Specifically:

3 "NHA shall indemnify, hold harmless and defend COTR and its
4 officers, directors, agents and employees from and against any and all
5 liabilities, obligations, damages, costs, losses and expenses (including
6 reasonable attorney's fees), in litigation commenced by or against
7 COTR and all claims, demands, actions or judgments of every nature
8 whatsoever in favor of any person on account of personal injury or
9 death, or damages to or loss of property or profits resulting solely from
10 any act, omission, negligence, fault or violation of law or ordinance,
associated with NHA's obligations arising out of or related to this
Agreements. Such indemnification by NHA shall apply unless such
damage or injury results from the negligence, gross negligence or
willful misconduct of COTR its officers, directors, agents or
employees."

11 158. In June 2009, Vicky Carreno, a former employee of COTR, filed an employment
12 discrimination complaint against COTR that predominantly alleged wrongful conduct of an
13 employee hired by NHA and passed along to COTR.

14 159. In October 2009, Eva Duarte, a former employee of COTR, filed an employment
15 discrimination complaint against COTR that predominantly alleged wrongful conduct of an
16 employee hired by NHA and passed along to COTR.

17 160. COTR was forced to defend against these two claims, expending over
18 \$100,000.00 in attorneys' fees and costs to do so. In addition, COTR was required to make a
19 settlement payment to Eva Duarte, a former employee of COTR, who filed an employment
20 discrimination complaint against COTR that predominantly alleged wrongful conduct of an
21 employee hired by NHA and which was passed along to COTR.

22 161. COTR has demanded reimbursement from NHA for these said attorneys' fees and
23 costs and the settlement payment made to Eva Duarte, but NHA has denied these requests.

24 **ELEVENTH CAUSE OF ACTION**

25 **Declaratory Relief**

26 **(Against NHA)**

27 162. Plaintiffs re-allege and incorporate herein by reference the allegations contained
28 in Paragraphs 1 through 161, inclusive, as though fully set forth herein.

////

LA JOLLA
LAW
GROUP

1 Third Cause of Action for Promissory Estoppel:

- 2 1. For general and/or special damages;
- 3 2. Disgorgement/restitution of the \$240,000.00 Gale Walker was coerced into
- 4 paying to NHA;
- 5 3. Specific performance requiring NHA to renew the Services Agreement and MOU
- 6 with COTR for another year as NHA promised;
- 7 4. For prejudgment interest; and
- 8 5. For such other relief as the Court deems just and proper.

9 Fourth Cause of Action for Intentional Interference with Prospective Economic Advantage:

- 10 1. For general and/or special damages;
- 11 2. Disgorgement/restitution of any ill-gotten gains;
- 12 3. For prejudgment interest;
- 13 4. For punitive and exemplary damages; and
- 14 5. For such other relief as the Court deems just and proper.

15 Fifth Cause of Action for Negligent Interference with Prospective Economic Advantage:

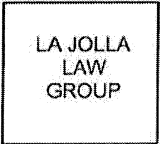
- 16 1. For general and/or special damages;
- 17 2. Disgorgement/restitution of any ill-gotten gains, including, but not limited to, the
- 18 \$240,000.00 Gale Walker was coerced into paying to NHA;
- 19 3. For prejudgment interest; and
- 20 4. For such other relief as the Court deems just and proper.

21 Sixth Cause of Action Restitution of Proceeds Procured Through Duress, Coercion

22 and Violation of Federal and State Statutes:

- 23 1. For general and/or special damages;
- 24 2. Disgorgement/restitution of any ill-gotten gains, including, but not limited to, the
- 25 \$240,000.00 Gale Walker was coerced into paying to NHA;
- 26 3. For prejudgment interest; and
- 27 4. For such other relief as the Court deems just and proper.

28 ///



1 Seventh Cause of Action for Unfair Business Practices:

- 2 1. For general and/or special damages;
- 3 2. For attorneys' fees and costs;
- 4 3. For injunctive relief requiring NHA to cease its operations with regard to the
- 5 Head Start Program;
- 6 4. For punitive and exemplary damages;
- 7 5. For prejudgment interest; and
- 8 6. For such other relief as the Court deems just and proper.

9 Eighth Cause of Action for Unfair Competition:

- 10 1. For general and/or special damages;
- 11 2. For attorneys' fees and costs;
- 12 3. For injunctive relief requiring NHA to cease its operations with regard to the
- 13 Head Start Program;
- 14 4. For punitive and exemplary damages;
- 15 5. For prejudgment interest; and
- 16 6. For such other relief as the Court deems just and proper.

17 Ninth Cause of Action for Breach of Fiduciary Duty:

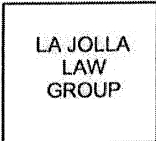
- 18 1. For general and/or special damages;
- 19 2. Disgorgement/restitution of any ill-gotten gains;
- 20 3. For prejudgment interest; and
- 21 4. For such other relief as the Court deems just and proper.

22 Tenth Cause of Action for Express Indemnity:

- 23 1. For general and/or special damages incurred by COTR in having to defend the
- 24 two lawsuits lodged against COTR in 2009;
- 25 2. For prejudgment interest; and
- 26 3. For such other relief as the Court deems just and proper.

27 ///

28 ///



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Eleventh Cause of Action for Declaratory Relief:

- 1. For a judgment declaring any provisions of the Services Agreement and MOU that violate federal or state law as unenforceable by NHA;
- 2. For restitution/disgorgement of the monies COTR paid to NHA that are in excess of the fair market value for the services NHA provided to COTR—including, but not limited to, food services, transportation services, IT services, and payroll services;
- 3. For prejudgment interest; and
- 4. For such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED:

DATED: June 29, 2011

LA JOLLA LAW GROUP

By: 
 KENT L. SHARP, ESQ.
 Attorney for Plaintiffs,
 CHILDREN OF THE RAINBOW
 HEAD START, LLC and
 CHILDREN OF THE RAINBOW,
 INC.

