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6 Attorneys for Plaintiffs
7 *Mary Marlow, Elizabeth Van Denburgh,*
8 *and Nancy Coleman*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF MARIN

12 MARY MARLOW, ELIZABETH VAN
13 DENBURGH, and NANCY COLEMAN,

14 Plaintiffs,

15 v.

16 RODNEY GOULD; and DOES 1 through 100,
17 inclusive,

18 Defendant.

CASE NO.

**COMPLAINT FOR RESTITUTION,
CIVIL PENALTIES, AND
INJUNCTIVE RELIEF**

1 COME NOW Plaintiffs Mary Marlow, Elizabeth Van Denburgh, and Nancy Coleman,
2 and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs Mary Marlow, Elizabeth Van Denburgh, and Nancy Coleman
5 (“Plaintiffs”) bring this action against Defendant Rodney Gould (“Defendant” or “Defendant
6 Gould”), the former City Manager of the City of Santa Monica, to enforce provisions of the
7 Santa Monica City Charter.

8 2. Like many cities in California, Santa Monica has conflict-of-interest restrictions
9 that set forth reasonable limitations on the City’s public officials, such as preventing them
10 from awarding lucrative business contracts to companies and then turning around and going to
11 work for those same companies. These restrictions—which were enacted by the voters nearly
12 15 years ago—are necessary not only to ensure that City public officials make decisions based
13 strictly on the merits for the benefit of the public, irrespective of separate personal or financial
14 interests, but also to avoid the appearance of a conflict of interest in order to promote the
15 public’s confidence in the City’s public officials and their decisions.

16 3. In blatant disregard for these longstanding conflict-of-interest laws, Defendant
17 Gould did exactly what they prohibit—he awarded multiple contracts to a consulting firm and,
18 within months of leaving office, accepted employment at that same firm as a Vice President.

19 4. Plaintiffs, and all residents of Santa Monica, need this Court’s assistance to
20 enforce these laws and to require Defendant Gould to comply with them.

21 **PARTIES**

22 5. PLAINTIFF MARY MARLOW is a resident and taxpayer of the City of Santa
23 Monica. Plaintiff Marlow is Chair of the Santa Monica Transparency Project, an all-volunteer
24 group of Santa Monica residents founded in 2010 whose goal is to increase transparency in
25 city government and the accountability of city officials to residents.

26 6. PLAINTIFF ELIZABETH VAN DENBURGH is a resident and taxpayer of the
27 City of Santa Monica and is a member of the Santa Monica Transparency Project.

28 7. PLAINTIFF NANCY COLEMAN is a resident and taxpayer of the City of

1 Santa Monica and is a member of the Santa Monica Transparency Project.

2 8. DEFENDANT RODNEY GOULD is the former City Manager of the City of
3 Santa Monica. In accordance with the provisions of the Santa Monica City Charter, Defendant
4 Gould was appointed by the City Council to be the City Manager in December 2009, and he
5 served in that position until his resignation on January 31, 2015. Defendant Gould currently
6 resides in the County of Marin.

7 9. Plaintiffs are unaware of the true names and capacities of Defendants DOES 1
8 through 100, inclusive, and they are therefore sued by fictitious names pursuant to Code of
9 Civil Procedure section 474. Plaintiffs allege on information and belief that each such
10 fictitiously named Defendant is responsible or liable in some manner for the events and
11 happenings referred to herein, and Plaintiffs will seek leave to amend this Complaint to allege
12 their true names and capacities after the same have been ascertained.

13 JURISDICTION AND VENUE

14 10. This Court has jurisdiction over this matter pursuant to section 2206 of the Santa
15 Monica City Charter.

16 11. Venue is proper in the County of Marin pursuant to Code of Civil Procedure
17 section 395 as Defendant Gould currently resides in the County of Marin.

18 STATEMENT OF FACTS

19 **Santa Monica City Charter and Role of City Manager**

20 12. The City of Santa Monica is a Charter City that is located in the County of Los
21 Angeles.

22 13. The City is governed by the Santa Monica City Charter, which represents the
23 supreme law of the City of Santa Monica. The Charter was originally approved by voters in
24 the early 1900s and has been amended from time to time.

25 14. For nearly 70 years, the Santa Monica Charter has provided for a “Council-
26 Manager” form of government, under which the City Council performs the legislative
27 functions of the City and the City Manager serves as the chief executive officer and head of
28 the administrative branch of the City. (Santa Monica City Charter (“Charter”), §§ 500, 704.)

1 15. As the Charter provides, the “City Council shall appoint the City Manager”
2 (Charter, § 700), who serves no pre-established term of office, but “who may be removed by
3 motion of the City Council adopted by at least five affirmative votes.” (Charter, § 700.)

4 16. Among other duties, the City Manager is responsible for appointing and
5 removing department heads, preparing and administering the City’s annual budget, and
6 advising the City Council on the financial condition and future needs of the City. (Charter,
7 § 704.)

8 17. In addition, the City Manager is authorized to solicit requests-for-proposals
9 for—and to award in his or her discretion—professional services contracts of up to \$80,000,
10 without City Council approval “whenever the City Manager determines in his or her sole
11 discretion that the best interests of the City would be fully served by proceeding in such a
12 manner.” (Santa Monica Municipal Code (“SMMC”), §§ 2.24.073, subd. (e); 2.24.074.)

13 **Santa Monica’s Oaks Initiative**

14 18. In November 2000, the voters of Santa Monica overwhelmingly passed a voter-
15 sponsored initiative measure titled the Taxpayer Protection Amendment of 2000, which is
16 commonly known as the Oaks Initiative. The ballot question posed to voters was: “Shall the
17 City Charter be amended to prohibit any City public official who approves giving a public
18 contract or other benefit to any person from receiving ‘personal or campaign advantages’ from
19 that person for up to six years?” Nearly 60% of the voters voted yes.

20 19. The Oaks Initiative amended the City’s Charter to set forth certain conflict-of-
21 interest restrictions on the City’s public officials. The Initiative was premised on a conviction
22 that public benefits frequently are awarded on the basis of personal or campaign advantages,
23 and not on the basis of merit or the public good. Its Findings and Declarations express
24 concerns that decisions on the use of public assets made by “local public officials entrusted
25 with their management and control” are often tainted by conflicts of interest, declaring that
26 such decisions should instead be made based on “the merits for the benefit of the public,” and
27 not on “separate personal or financial interests of involved public officials”:

28 “The people of the City of Santa Monica (“City”) find that the use or

1 disposition of public assets are often tainted by conflicts of interest among local
2 public officials entrusted with their management and control. Such assets,
3 including publicly owned real property, land use decisions conferring substantial
4 private benefits, conferral of a franchise without competition, public purchases,
5 taxation, and financing, should be arranged strictly on the merits for the benefit
6 of the public, and irrespective of the separate personal or financial interests of
7 involved public officials.” (Charter, § 2201, subd. (a).)

8 20. The Findings and Declarations to the Initiative specifically call out public
9 decisions to award “service contracts” that may be made “with the expectation of, and
10 subsequent receipt of, private benefits,” such as “future employment offers.” (Charter, § 2201,
11 subd. (b).)

12 21. To this end, the operative provision of the Oaks Initiative—appearing in section
13 2203 of the Charter—prohibits a “City public official who has exercised discretion to approve
14 and who has approved” a “public benefit” to an individual or entity from receiving a “personal
15 advantage” from that same individual or entity within either two years from leaving office or
16 six years from when the official approved the public benefit, whichever is earlier:

17 “No City public official who has exercised discretion to approve and who has
18 approved or voted to approve a public benefit as defined in Section 2202(a) may
19 receive a personal or campaign advantage as defined in Section 2202(c) from a
20 person as defined in Section 2202(b) for a period beginning on the date the
21 official approves or votes to approve the public benefit, and ending no later than:

- 22 (1) two years after the expiration of the term of office that the official is
23 serving at the time the official approves or votes to approve the public
24 benefit;
- 25 (2) two years after the official’s departure from his or her office whether
26 or not there is a pre-established term of office; or
- 27 (3) six years from the date the official approves or votes to approve the
28 public benefit; whichever is first.” (Charter, § 2203, subd. (a).)

29 22. “Public benefit” is defined to include “a contract, benefit, or arrangement
30 between the City and any individual, corporation, firm, partnership, association, or other
31 person or entity to . . . provide personal services of a value in excess of \$25,000 over any
32 12 month period. . . .” (Charter, § 2202, subd. (a)(1).)

33 23. “Personal advantage” is defined to include “any employment for compensation.”

1 (Charter, § 2202, subd. (c)(2).)

2 24. “Public official” is defined to include “any elected or appointed public official
3 acting in an official capacity.” (Charter, § 2202, subd. (d).)

4 25. In August 2006, the City of Santa Monica issued a memorandum providing
5 guidance on the “Implementation of the Oaks Initiative.” The memorandum first states that the
6 “City Attorney prepared the following information about the Initiative” and then declares that
7 all “[c]ity public officials’ must comply with the Initiative.” The memorandum continues by
8 noting that the Initiative defines “public official” to include any elected or appointed public
9 official acting in an official capacity, which the City’s memorandum concludes covers: “City
10 Council members,” “Planning Commission members,” and “*City Manager* and Department
11 heads and designees who confer ‘public benefits’ (e.g., *contracts*, purchase orders, and
12 discretionary permits, variances or text amendments).” (August 2006 City Memorandum Re:
13 Information to Candidates for City Boards and Commissions, Implementation of the Oaks
14 Initiative (“August 2006 City Memo”), at p. 1 (emphasis added) (a true and correct copy of
15 which is attached as Exhibit A to this Complaint).)

16 26. In addition to providing a direct link to this August 2006 memorandum, the
17 City’s website states that the memorandum was prepared by the “City Attorney and City
18 Clerk’s Office” and further explains that the “requirements [of the Oaks Initiative] affect *all*
19 City-elected and appointed officials, including Council-appointed board and commission
20 members.” (E.g., <http://www.smgov.net/departments/Clerk/boards/applications/airport.aspx>
21 (emphasis added) (last visited 8/7/2015).)

22 27. The City’s August 2006 memorandum provides two examples of actions
23 prohibited by the Oaks Initiative:

24 “Example 1: A Councilmember/Commissioner who voted to approve a land use
25 project valued in excess of \$25,000 cannot thereafter receive from the ‘recipient’
26 *employment*”

27 “Example 2: An *employee of the City . . .* who approves a contract valued over
28 \$25,000 cannot thereafter receive a gift valued at \$50 or more for the designated
period.” (August 2006 City Memo, at pp. 1-2 (emphasis added).)

1 28. The memorandum concludes by warning public officials that a “civil action may
2 be brought against [them] and a civil monetary penalty may be imposed.” (August 2006 City
3 Memo, at p. 2.)

4 29. The Oaks Initiative does indeed provide that “any resident of the City” may
5 bring a civil action against a public official who receives a personal advantage in violation of
6 the Initiative. “A finding of liability shall subject the public official to the following civil
7 remedies:”

8 “(1) restitution of the personal or campaign advantage received, which shall
9 accrue to the general fund of the City;

10 (2) a civil penalty of up to five times the value of the personal or campaign
11 advantage received;

12 (3) injunctive relief necessary to prevent present and future violations of this
13 Article;

14 (4) disqualification from future public office or position within the jurisdiction,
15 if violations are willful, egregious, or repeated.” (Charter, § 2206, subd. (b).)

16 30. The Initiative further provides that if “the petitioner prevails, the respondent
17 public official shall pay reasonable attorney’s fees and costs to the prevailing petitioner.”
18 (Charter, § 2206, subd. (c).)

18 **Defendant Gould’s Appointment to City Manager**

19 31. In mid-2009, the then-City Manager of Santa Monica announced his decision to
20 retire at the end of the year, setting in motion a nationwide search by the City Council for a
21 new City Manager.

22 32. As alleged above, the Santa Monica City Charter provides that the City Manager
23 is an appointed position selected by the City Council. (Charter, § 700.) The Charter further
24 provides that the “City Manager shall be chosen on the basis of his or her executive and
25 administrative qualifications” and “shall be paid a salary commensurate with the City
26 Manager’s responsibilities as chief administrative officer of the City.” (*Id.*, § 703.)
27 Accordingly, the City Manager position in Santa Monica is a full-time employment position
28 that is highly compensated.

1 33. Throughout the second half of 2009, the City Council was actively engaged in
2 its search for the next City Manager of Santa Monica, holding no fewer than six closed-
3 session meetings, some lasting several hours, to discuss and consider the “public employee
4 appointment” of the City Manager.

5 34. At the end of this process, the City Council voted 6-0, on December 8, 2009, “to
6 appoint Rodney Gould as the new City Manager.” The City Council further voted to approve
7 the terms of Defendant Gould’s employment contract at that same meeting.

8 35. Defendant Gould’s employment contract dated December 8, 2009, provided for
9 an annual base salary of \$285,000, along with medical and other benefits, contributions to his
10 pension, discretionary annual performance bonuses up to 10% of the base salary, relocation
11 and housing allowances, and an optional mortgage of up to \$1.3 million to be provided by the
12 City. By 2013, Defendant Gould’s total pay and benefits had exceeded \$480,000—the highest
13 compensation paid to any public official in the City. (See www.transparentcalifornia.com (last
14 visited 8/7/2015).)

15 36. At the time that Defendant Gould agreed to the employment contract dated
16 December 8, 2009, the Oaks Initiative had been in force for nearly a decade, including the
17 provision that declared that the “people, who compensate public officials, expect and declare
18 that as *a condition of such public office*, no gifts, *promised employment*, or campaign
19 contributions shall be received from any substantial beneficiary of such a public decision for a
20 reasonable period, as provided herein.” (Charter, § 2201, subd. (c) (emphasis added).)

21 **Defendant Gould’s Approval of City Contracts with Management Partners**

22 37. As the City Manager, Defendant Gould served as the highest-ranking appointed
23 public official in the City, who, more than any individual official in Santa Monica, is entrusted
24 with the management and control of public assets and has discretionary authority to award
25 personal services contracts.

26 38. Under his authority to award personal services contracts of up to \$80,000
27 (SMMC, §§ 2.24.073, subd. (e); 2.24.074), Defendant Gould, in his official capacity as the
28 City Manager, exercised his discretion to approve numerous City contracts to Management

1 Partners, a private management consulting firm with California offices in San Jose and Orange
2 County.

3 39. For instance, as recently as October 9, 2014, Defendant Gould exercised his
4 discretion to approve Contract No. 2940, a personal services agreement with Management
5 Partners to provide performance measurement development. This contract is valued at
6 \$44,900.

7 40. The term of the contract ran from October 9, 2014, until December 31, 2015. On
8 information and belief, this contract was still in place at the time Defendant Gould began his
9 employment with Management Partners, and has not been terminated and continues to be in
10 effect as of the date of the filing of this Complaint.

11 41. The October 9, 2014, contract never appeared on the City Council's agenda, and
12 there is no mention of it in the minutes of any City Council meeting.

13 42. The October 9, 2014, contract with Management Partners was approved by
14 Defendant Gould in his official capacity as the City Manager without also being approved by
15 the City Council.

16 43. A true and correct copy of the October 9, 2014, contract is attached as Exhibit B
17 to this Complaint.

18 44. Defendant Gould further exercised his discretion to approve a February 25,
19 2013, contract with Management Partners to provide oversight of a forestry contract with
20 West Coast Arborists. This contract was valued at \$50,000.

21 45. The term of the contract began on February 25, 2013, and was expected to run
22 until mid-April 2013.

23 46. The February 25, 2013, contract never appeared on the City Council's agenda,
24 and there is no mention of it in the minutes of any City Council meeting.

25 47. The February 25, 2013, contract with Management Partners was approved by
26 Defendant Gould in his official capacity as the City Manager without also being approved by
27 the City Council.

28 48. A true and correct copy of the February 25, 2013, contract is attached as

1 Exhibit C to this Complaint.

2 49. Defendant Gould also exercised his discretion to approve Contract No. 2374,
3 another personal services agreement with Management Partners dated November 23, 2011, to
4 prepare an organizational and financial analysis of Woodlawn Cemetery. This contract was
5 valued at \$39,500.

6 50. The term of the contract ran from November 23, 2011, until June 30, 2012.

7 51. The November 23, 2011, contract never appeared on the City Council's agenda,
8 and there is no mention of it in the minutes of any City Council meeting.

9 52. The November 23, 2011, contract with Management Partners was approved by
10 Defendant Gould in his official capacity as the City Manager without also being approved by
11 the City Council.

12 53. A true and correct copy of the November 23, 2011, contract is attached as
13 Exhibit D to this Complaint.

14 54. When the term of the November 23, 2011, contract ended, Defendant Gould
15 again exercised his discretion to approve an April 3, 2012, contract that extended the term of
16 the original agreement until March 31, 2015. This contract was valued at \$30,000.

17 55. The April 3, 2012, contract never appeared on the City Council's agenda, and
18 there is no mention of it in the minutes of any City Council meeting.

19 56. The April 3, 2012, contract with Management Partners was approved by
20 Defendant Gould in his official capacity as the City Manager without also being approved by
21 the City Council.

22 57. A true and correct copy of the April 3, 2012, contract is attached as Exhibit E to
23 this Complaint.

24 58. Each one of these four contracts with Management Partners, individually,
25 constitutes a "public benefit" as defined by the Oaks Initiative (Charter, § 2202, subd. (a)) that
26 was approved by Defendant Gould, thereby triggering the time-based restrictions on his
27 receiving a personal advantage from Management Partners as set forth in the Initiative (*id.*,
28 § 2203, subd. (a)). Specifically, because Defendant Gould exercised his discretion to approve

1 a public benefit to Management Partners, he was therefore prohibited from receiving a
2 personal advantage, such as accepting employment for compensation, from Management
3 Partners for the shorter of two years after Defendant Gould's departure from his office or six
4 years from the date Defendant Gould approved the contract with Management Partners.

5 59. In addition, on information and belief, in 2014, Defendant Gould, with direction
6 from City Council, exercised his discretion to negotiate and approve at least two other
7 contracts with Management Partners, each of which also constitutes a "public benefit" as
8 defined by the Oaks Initiative. (Charter, § 2202, subd. (a).)

9 **Defendant Gould's Resignation and Illegal Employment at Management Partners**

10 60. On August 1, 2014, Defendant Gould announced his resignation as the City
11 Manager to be effective January 31, 2015.

12 61. On information and belief, shortly after the announcement of his resignation,
13 Defendant Gould began discussions with Gerald Newfarmer, the President and Chief
14 Executive Officer of Management Partners, about Defendant Gould's potential employment at
15 the company after he had left the City. On information and belief, during the same time these
16 employment discussions were occurring, the City was negotiating with Management Partners
17 on the terms of the October 9, 2014, personal services contract discussed above. That personal
18 services contract was subsequently approved and executed by Defendant Gould on behalf of
19 the City of Santa Monica and by Mr. Newfarmer on behalf of Management Partners.

20 62. On information and belief, Defendant Gould accepted employment at
21 Management Partners on or about May 26, 2015—less than four months after his departure
22 from his position as the City Manager of Santa Monica and also within six years of his
23 approving each of the contracts discussed above.

24 63. On June 10, 2015, the Santa Monica Transparency Project informed the Santa
25 Monica City Attorney and the City Council of Defendant Gould's violations of the Oaks
26 Initiative. Shortly thereafter, Defendant Gould was quoted in a newspaper article as
27 confirming that he was aware of these allegations and had been contacted by the Santa Monica
28 City Attorney about them. The City Attorney notified the Santa Monica Transparency Project

1 that she and her office had a conflict of interest in this matter because Defendant Gould had
2 been a co-worker and past client.

3 64. Despite having been informed of these violations, Defendant Gould has
4 continued to remain employed by Management Partners as its Vice President for Management.

5 65. The City of Santa Monica has taken no action, either. Thus, Plaintiffs have filed
6 this action as residents of Santa Monica to enforce the law.

7 **FIRST CAUSE OF ACTION**
8 **Violation of Santa Monica City Charter**
9 **(Charter, §§ 2203, subd. (a); 2206, subd. (b))**

10 66. Plaintiffs incorporate by reference all the allegations contained in the previous
11 paragraphs as though fully set forth herein.

12 67. Defendant Gould served as an appointed public official in Santa Monica from
13 December 2009 until January 2015. As alleged above, from 2012 to 2014, Defendant Gould,
14 in his official capacity as the City Manager, exercised his discretion to approve numerous
15 services contracts valued in excess of \$25,000 to Management Partners, each of which
16 constituted a “public benefit” as that term is defined by the Santa Monica City Charter.

17 68. Shortly after his resignation from public office, Defendant Gould accepted
18 employment at Management Partners, which employment constitutes a “personal advantage”
19 as that term is defined by the Charter.

20 69. Defendant Gould’s acceptance of such a personal advantage is a direct violation
21 of Santa Monica City Charter section 2203, subdivision (a), which prohibits any City public
22 official who has exercised discretion to approve a public benefit to an individual or entity from
23 receiving a personal advantage from that individual or entity for the shorter of: (i) two years
24 after that the public official left office; or (ii) six years from the date the official approves the
25 public benefit.

26 70. A civil action may be brought by any resident of the City of Santa Monica to
27 enforce section 2203, subdivision (a), of the Santa Monica City Charter. (Charter, § 2206,
28 subds. (b)-(c).)

SECOND CAUSE OF ACTION
Injunctive Relief
(Charter, § 2206, subd. (b)(3); Code Civ. Proc., § 526)

1
2
3
4 71. Plaintiffs incorporate by reference all the allegations contained in the previous
5 paragraphs as though fully set forth herein.

6 72. The Santa Monica City Charter provides that injunctive relief may be granted to
7 prevent present and future violations of section 2203, subdivision (a), of the Charter. (Charter,
8 § 2206, subd. (b)(3).)

9 73. Defendant Gould is presently employed at Management Partners in violation of
10 section 2203, subdivision (a), of the Charter, and unless enjoined by this Court will continue
11 to violate that section of the Charter. An injunction enjoining Defendant Gould from present
12 and future violations is therefore necessary. (Charter, § 2206, subd. (b)(3); Code Civ. Proc.,
13 § 526.)

PRAYER FOR RELIEF

14 WHEREFORE, the Plaintiffs pray for judgment as follows:

15
16 1. On the first cause of action, that this Court order Defendant Gould to pay
17 restitution of the personal advantage he has received from Management Partners, which shall
18 accrue to the general fund of the City of Santa Monica. (Charter, § 2206, subds. (b)(1), (c).)

19 2. On the first cause of action, that this Court impose civil penalties against
20 Defendant Gould of up to five times the value of the personal advantage he has received from
21 Management Partners, 10% of which shall be awarded to Plaintiffs and 90% of which shall be
22 awarded to Santa Monica City's general fund. (Charter, § 2206, subds. (b)(2), (c).)

23 3. On the second cause of action, that this Court issue an injunction enjoining
24 Defendant Gould from continuing to violate section 2203 of the Santa Monica City Charter.

25 4. On each and every cause of action, that this Court award Plaintiffs their
26 reasonable attorney's fees and costs pursuant to Santa Monica City Charter section 2206,
27 subdivision (c).

28 5. On each and every cause of action, that this Court award Plaintiffs their

1 reasonable attorney's fees and costs pursuant to the private attorney general statute set forth in
2 California Code of Civil Procedure section 1021.5.

3 6. That this Court grant Plaintiffs such other, different, or further relief as the Court
4 may deem just and proper.

5
6 DATED: August 7, 2015

Respectfully submitted,

7 STRUMWASSER & WOOCHEER LLP
8 Attorneys for Plaintiffs

9
10 By: 
11 Bryce A. Gee