

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**KM ENTERPRISES, INC, d/b/a EMTRAC  
SYSTEMS,** )  
 )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **GLOBAL TRAFFIC TECHNOLOGIES, INC.,** )  
 **a Delaware corporation; and GLOBAL** )  
 **TRAFFIC TECHNOLOGIES, LLC, a** )  
 **Delaware limited liability company,** )  
 )  
 **Defendants.** )

**Case No.: 12-257-MJR-SCW**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 3, Plaintiff, KM Enterprises, Inc. (öKMEö), by its undersigned attorney, files this Complaint against Defendants, Global Traffic Technologies, Inc. (öGTT Inc.ö), a Delaware corporation, and Global Traffic Technologies, LLC (öGTT, LLCö) a Delaware limited liability company (collectively, öGTTö), as follows:

**INTRODUCTION AND SUMMARY OF ACTION**

1. This is an antitrust action brought to prevent injuries and to recover for injuries to Plaintiff as a result of Defendants' monopolization and attempted monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. §2 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26. Plaintiff's injuries and threatened injuries are of the type that the antitrust laws are intended to prevent. This action seeks damages, injunctive relief, costs of suit and reasonable attorneys' fees pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26. The action also alleges related state law claims involving common questions of fact.

2. The action alleges antitrust causes of action related to Defendants' monopolization and attempted monopolization activity. The monopolization involved impropriety in competitive bidding on public contracts using practices similar to bid rigging. Bid rigging occurs when a competitor influences the results of competitive bidding in a way that causes a bid to be awarded to a particular contractor or causes a certain product to be utilized as a de facto sole source procurement. The monopolization activity included conduct amounting to or similar to illegal tying in which a competitor manipulates the market for its product by requiring that maintenance of its obsolete product is tied to upgrades and future purchases of a new product for which there is market competition.
3. KME and GTT are competitors in the Emergency Vehicle Preemption (EVP) and Transit Signal Priority (TSP) market. Generally, they distribute and install equipment that preempts traffic signals so that emergency and transit vehicles may pass on a green light while other traffic is directed to stop. EVP involves emergency vehicles, while TSP involves buses and light rail.
4. Here, GTT engaged in a market manipulative de facto sole source scheme in which it encouraged and aided public agencies to draft specifications for GTT's obsolete optical product, and then informed the agencies that the product was no longer available. It replaced the obsolete product with a dual product (optical and GPS), which placed two products separately within one housing. That served as a bridge between the obsolete optical product and the new GPS version. This edged KME out of that regional market as KME's GPS product is incompatible with GTT's GPS product and vice versa and, as set forth hereinafter, regulations apply that cause a local installation to have regional ramifications.

5. As part of its effort to drive KME out as a competitor, on September 30, 2010, GTT filed a patent infringement suit against KME, the allegations of which KME denies. GTT then erroneously threatened KME's potential customers with having to refund any money spent purchasing KME's product in addition to replacing the KME product with the GTT product.
6. In several instances, on information and belief, GTT influenced the results of a competitive bid in its favor by learning the low bid and beating that price, by gifts, lobbying and grant-writing assistance to agencies as an incentive and/or by a campaign of disinformation concerning the quality of KME's equipment and/or the features of GTT's equipment, among other means.

#### **JURISDICTION AND VENUE**

7. This action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26, for damages and to secure injunctive relief against Defendants for violations of §2 of the Sherman Act as alleged herein.
8. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331 and 1337 and by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26. Venue is proper in this District pursuant to §§12 and 16 of the Clayton Act, 15 U.S.C. §§22 and 26, and 28 U.S.C. §1391(b)-(d). GTT transacts business, is found, and/or has agents in this District; a substantial part of the events giving rise to Plaintiff's claims occurred, and a substantial portion of the affected interstate trade and commerce described herein has been carried out, in this District.
9. The Court has jurisdiction over the state law claims under 28 U.S.C. §1367, because those claims are so related to the federal claims that they form part of the same case or

controversy, and under 28 U.S.C. §1332 because the amount in controversy exceeds \$75,000, and Plaintiff and Defendants are headquartered in different states.

10. The Court has jurisdiction over each of the Defendants by virtue of their nationwide contacts and business activities, including their contacts and activities within this district.

### **PARTIES**

11. Plaintiff KM Enterprises, Inc., d/b/a Emtrac Systems is an Illinois corporation located in Mount Vernon, Illinois.
12. Defendant GTT, Inc. is a Delaware corporation, whose registered agent is CT Corporation Systems, Inc., 100 S. 5<sup>th</sup> Street #1075, Minneapolis, Minnesota 55402. The corporation's Chief Executive Officer is Douglas Roberts, 7800 Third Street North, Oakdale, Minnesota 55128.
13. Defendant GTT, LLC is a Delaware limited liability company, whose registered agent is CT Corporation, 100 S. 5<sup>th</sup> Street #1075, Minneapolis, Minnesota 55128. The corporation's manager is Rick Sachse, 7800 Third Street North, Oakdale, Minnesota 55128.
14. Defendants install and maintain EVPs in Belleville, Illinois and elsewhere in this District and, maintain a distributorship office here. A regional representative supports the southern Illinois distributor.

### **TRADE AND COMMERCE**

15. The activities of Defendants, as described in this Complaint, were within the flow of, and substantially affected, interstate commerce. During the time period covered by this Complaint, Defendants used the instrumentalities of interstate commerce to carry out their unlawful activities.

### **A. The Relevant Product Market**

16. The relevant product market is the United States market for traffic preemption equipment used to control traffic signal priority for emergency vehicles and transit vehicles (bus, trolley and light rail). The market includes the maintenance market for optical and radio frequency equipment as well as the manufacture, distribution and sales of GPS equipment.
17. The available evidence shows that GTT at the time of the 2010 patent suit had a dominant position in the relevant market by virtue of its purchase from 3M of the existing optical business. At that time, KME was gaining a substantial position in the GPS market. Shortly after the campaign of disinformation and other anticompetitive conduct began in about October, 2010, KME's position in the US GPS market declined to nearly zero percent.
18. By virtue of its power to exclude competition in the relevant market, GTT at all relevant time possessed monopoly power in the relevant market.

### **B. Antitrust Injury and Other Cognizable Harm**

19. GTT's anticompetitive conduct as hereinafter described was a material cause of substantial harm to competition in the relevant market. KME's product is superior to and more advanced than GTT's product and costs less. Nevertheless, GTT's conduct has caused the loss of numerous contracts, the loss of opportunity to bid and interference with the competitive bidding process on jobs bid. But for GTT's conduct, KME would have been a competitive force among traffic preemption contracts bid and solicitations that were canceled due to protest would have been completed after applying competitive procedures pursuant to regulations.
20. GTT's violations of §2 of the Sherman Antitrust Act, as herein described, are a material cause of injury to Plaintiff's business and property, in the nature of lost profits and

diminished capital value of Plaintiff's business. Specifically, GTT's conduct has materially caused Plaintiff to be awarded fewer contracts and to earn lower profits. But for GTT's anticompetitive conduct, Plaintiff would have enjoyed far greater sales. Indeed, prior to GTT's conduct in disseminating disinformation about KME and false information about GTT, Plaintiff's sales in the affected products were growing at a high rate due to KME's superior quality and low relative cost. But after the disinformation began, sales growth slowed to a halt.

## **FACTUAL ALLEGATIONS**

### **A. Overview and Background**

21. Kris Morgan, President of KME invented the Emtrac Systems traffic preemption equipment more than 24 years ago and has worked to market, develop and distribute the product since that time.
22. Research and development of the product, including software development, in addition to its manufacturing take place in McLeansboro, Illinois, by contract with KME in partnership with a separate corporation.
23. KME produces the Emtrac Systems product which functions to preempt traffic signals for emergency vehicles, but also performs data collection functions as Emtrac GPS technology complies with the National Intelligent Transportation System Architecture goal of automated vehicle location, computer-aided dispatch systems, remote vehicle and facility surveillance and traffic incident management systems. KME was formed in 2007. Together with its predecessor, it has offered the GPS capable version of its product since 2004. Before 2004, KME manufactured and distributed a non-GPS version of the equipment which worked using Radio Frequency signals.

24. An investment group purchased the marketing rights to GTT's product from The 3M Company (3M) in 2007 and formed GTT. GTT owns the Opticom System which is an optical signal priority system, which was widely installed by 3M. 3M developed and patented a GPS version of its equipment in 1995, but the system was not substantially marketed until 2007 when GTT obtained the rights.
25. Before the GPS version of the EVP and TSP products were marketed, 3M dominated the field with a saturation of approximately 97% of in-place EVP equipment with its Opticom system over KME's much smaller in-place percentage for its Radio Frequency version.
26. Until GTT sued KME in October, 2010 for violation of its patent, which involved GTT's application of the GPS technology, KME had a market share of about 60-70% of the GPS market. KME was consistently winning head to head tests of the GPS equipment.
27. KME's market share went to nearly zero immediately after the anticompetitive conduct began.
28. The GPS versions of KME and GTT equipment are not interoperable.

**B. Recent regulatory implementation is relevant to the issues of market share and damages.**

29. United States Department of Transportation policy related to Intelligent Transportation Systems (ITS) is relevant to the issues of market share and damages. The Regional Architecture was introduced by the 2001 enactment which required that compliance be in place by 2005; the Regional Architecture must be consistent with the National Architecture. 23 C.F.R. §940.9.
30. In 2001, when the ITS policies were implemented, GPS technology as part of traffic signal preemption had been designed by Emtrac Systems. It was not actively marketed until 2004.

31. Traffic preemption was accomplished before 2004 by Emtrac Systems using RF frequencies and before 2007 by 3M, predecessor in interest to GTT, using optical technology.
32. Regional architecture adopted by regions in compliance with the 2005 deadline was largely based upon interoperability with optical systems put in place by 3M.
33. GPS technology will allow for interoperability among jurisdictions as well as transportation modes.
34. KME GPS technology complies with the National ITS Architecture goal of automated vehicle location, computer-aided dispatch systems, remote vehicle and facility surveillance and traffic incident management systems. KME also provides interoperability with bus and rail systems.
35. If GPS capability is planned as part of proper maintenance of the regional architecture, then the most cost effective approach would be to upgrade the entire system with GPS. This is true in light of Regional Architecture policy regarding updated obsolete technology as well as conformity to the National Architecture as defined in the United States Department of Transportation Final Report-April 2011. *Intelligent Transportation Systems (ITS) Standards Program Strategic Plan for 2011-2014*, FHWSA-JPO-22-052, Final Report-April 2011. It would be cost effective and consistent with Regional Architecture as well as the National Architecture to allow competitive bidding for installation of the GPS technology to replace the obsolete optical equipment. Interoperability among agencies within a region does not determine the continued use of obsolete technology in a manner inconsistent with federal policy, as maintenance is required to prevent such a situation. ITS integration can only be achieved by purchasing open architecture, non-proprietary,

standard equipment.ö United States Department of Transportation, Federal Transit Administration, *Dear Colleague Letter*, Number C-96-18.

**C. Monopoly and attempted monopoly.**

36. GTT approached KME in 2008 to discuss obtaining production rights to KME's Emtrac System. GTT met with KME twice in Mt. Vernon, Illinois and once in San Antonio, Texas to request an agreement wherein GTT would sell the Emtrac GPS System under the Opticom label. The discussions were not productive and GTT was not granted any rights to private label or sell KME's Emtrac GPS System. After GTT was unable to secure rights to private label or sell KME's Emtrac GPS System, GTT continued to attempt to compete against the Emtrac GPS System. Before October, 2010, customers substantially chose the Emtrac GPS System.
37. On or about August, 2011, GTT assisted the city of Stockton, California, which has an existing Opticom System, with the development of specifications for a federally funded solicitation to install EVP's in several of its intersections. The specifications required:  
öOpticom, Model #721, EVP/TSP optical detector on existing mast arms.ö
38. No competitors could bid the job under the circumstances.
39. GTT has informed its customers that it no longer distributes the Opticom product, yet the solicitation proceeded. Instead of the solicited product, the City was provided a ödual system,ö which is two different sets of equipment marketed as a single unit. One product within the casing can read optical signals. The other product within the casing can read GPS signals. The City was inaccurately informed that this was provided at no additional charge.

40. Remarkably, KME's GPS product serves as a true dual system for optical and GPS signals. It has been commercially available since 2006, before GTT was formed. Nevertheless, KME was not qualified to bid as the solicitation specified an Opticom model number.
41. On subsequent pages of the specifications the following was required: "furnish and install GPS antenna equipment."
42. The geographic region was being prepared for tied future distribution of the Opticom GPS equipment.
43. In Moreno Valley, California a similar approach was taken with regard to provision of a dual emitter and a dual phase selector (collectively, "dual equipment"), which were falsely represented by GTT to have been provided at no additional charge after the advertised specification for the optical equipment by model number. Interestingly, the specified single units were no longer commercially available or no longer being manufactured.
44. GTT's logic was that the City could continue to use the obsolete optical equipment with the addition of this dual equipment until it was ready to switch to GPS equipment. At that time, the dual equipment could continue in use.
45. There are three problems with GTT's logic. First, it is based on the false premise that this phased upgrade to GPS is cost effective. In fact, completely updating the system to GPS has been shown to be more cost effective. Second, the GPS portion of the dual equipment is not compatible with the KME product, so future bids for GPS preemption equipment within any regional architecture could cause the GTT product to be locked in. Finally, because of regulations regarding Regional Architecture, once the GTT product is installed, interoperability is required for the entire region.

46. Thus, the dual equipment sold to the City aces KME out of the market applicable to an entire region as any future purchases of GPS equipment will be termed maintenance or upgrade items and will not be placed for bids.
47. Other anti-competitive activity included GTT providing disinformation to agencies involving an idea that the subject matter of the patent suit would be an issue if the agency chose KME such that the federal money applied to the project would have to be refunded and the KME equipment ripped out.
48. GTT influenced agencies to choose its product through the implication of a continued relationship with 3M by displaying the 3M logo on salesperson apparel and on letterhead.
49. On or about December, 2010, St. Paul, Minnesota issued a federally funded solicitation for bids for equipment to be placed on its rail lines. Influenced and assisted by GTT, specifications required an "Opticom M754 four (4) channel phase selector" and proceeded to describe the equipment manufactured by GTT.
50. Competitors were locked out of the bid because the specifications identified the model number and brand. This took place without federal agency approval required by the regulations and in the face of the fact that GTT was no longer producing the Opticom model number specified.
51. A side by side test had been planned for the purpose of comparing the GTT and KME products. GTT promised to provide a dual phase selector at no charge. St. Paul cancelled the test and purchased the GTT product on that basis.
52. Once again, KME was locked out of distribution to an entire region.
53. GTT employed strategies similar to the ones set forth in paragraphs 37 through 52 above with regard to projects throughout the country.

54. In May, 2011, Town of Brookhaven, Traffic Preemption Control System Pin No. 1757.43, Invitation to Bid #11039 was released to solicit bids for about 400 intersections in the Town of Brookhaven, New York.
55. Four prime contractors bid the job, including Hinck Electrical Contractor, Inc., who was awarded the contract.
56. The prime contract was in the amount of about \$1.8 million, while the subcontract for the purchase of traffic preemption equipment was in the amount of more than \$1.5 million. The approximate \$300,000 to the prime contractor was to cover installation of the equipment, in cooperation with the subcontractor.
57. The first set of specifications for the solicitation identified as Town of Brookhaven, Traffic Preemption Control System Pin No. 1757.43, Invitation to Bid #11039, were so tightly written around Global Traffic Technologies that the Federal Highway Administration required that the Town of Brookhaven rewrite the specifications before being granted permission to bid the project.
58. The Emtrac Systems GPS traffic preemption equipment met the specifications of the solicitation.
59. On June 1, 2011, KME submitted bids to four contractors for the job: Commander Electric, Eldor Traffic Signal Contracting, Johnson Electric and Hinck Electric (öHinckö).
60. GTTø May 27, 2011 quote to at least two other contractors bidding on the Brookhaven job was \$2,688,242.50. GTT also quoted a price to Hinck at that time.
61. KMEø bid was in the amount of \$1,526,250.00.
62. The project bid on June 2, 2011.

63. By June, 2011, KME had suffered the effects of the false allegations related to the pending litigation on proposed sales for more than 8 months. Employees who agreed to work were doing so without pay in hopes of a turnaround.
64. On June 2, 2011, DeAlessandro contacted all four contractors that turned in bids and asked whether KME's price was low and whether the contractor used KME's numbers.
65. All contractors, except Hinck, stated to DeAlessandro during those conversations that KME's price was the lowest.
66. Hinck stated to DeAlessandro that when Hinck received a formal contract it would be talking to him.
67. Morgan met with Paul Stram of Hinck Electric in New York on July 26, 2011. During the meeting, Stram and Morgan discussed the Brookhaven project.
68. Stram informed Morgan that GTT had requested the opportunity to update its bid as it had allegedly "bid too much equipment."
69. A bid of "too much equipment" would have been unlikely as the necessary number of units was stated in the specifications. Morgan requested the opportunity to update his bid if GTT were allowed to do so.
70. The revised quote given by GTT to Hinck was \$1,450,040.60, about \$70,000 below KME's bid and \$1.2 million below GTT's first bid.
71. On August 4, 2011, Morgan contacted Stram by telephone and Stram told him that Global Traffic Technologies ("GTT") would be awarded the contract.
72. During the Federal Highway Administration investigation, Hinck provided to the agency a purported email containing the quoted figure with a June 1, 2011 date, contrary to other evidence that indicates that the email was created after July 26, 2011.

73. Meanwhile, the dual equipment ploy continued to undermine KME's sales. KME began to request permission to bid on jobs with regard to which the Opticom system was named on the specifications.

74. On or about July, 2010, City of Overland Park ("Overland Park"), Metcalf Avenue/Shawnee Mission Parkway Bus Corridor, Transit Signal Priority (ST-1346), Tiger Grant KS-78-0001-4c ("Solicitation") was placed for bids.

75. In its steadfast intention to specify the name brand "Opticom" system, the City of Overland Park went to great lengths, influenced and assisted by GTT.

76. GTT had already announced that the Opticom system was no longer available. The purpose was to lock out competitors and offer the dual equipment, thereby claiming future GPS system installations for the region.

77. The Overland Park specifications for the Solicitation include:

721	Optical Detector	6 units
762	Phase selector	15 units
764	Phase selector	13 units
794T	Emitter	15 units

ST 1349

78. The Opticom Equipment listed in the subsequent FTA authorization did not differentiate between Phase selectors 762 and 764.

79. In fact, 762 phase selectors are optical only phase selectors and 764 phase selectors are dual unit selectors that accommodate both optical and GPS capability.

80. If the goal of the project was to provide current interoperability with existing regional systems, GPS technology would not have been necessary. If GPS capability were planned as part of proper maintenance of the regional architecture then the most cost effective approach would have been to upgrade the entire system with GPS technology rather than to

add to existing outdated technology with a plan for future utilization of GPS technology. This was true in light of Regional Architecture policy regarding updated obsolete technology as well as conformity to the National Architecture as defined in the United States Department of Transportation Final Report-April 2011. *Intelligent Transportation Systems (ITS) Standards Program Strategic Plan for 2011-2014*, FHWSA-JPO-22-052, Final Report-April 2011.

81. The stated reason for not changing the entire project to GPS was that the fire trucks used optical emitters.
82. If the concern were interoperability with local fire trucks, then the dual phase selectors would not have been necessary, as they envisioned future use of GPS technology. If the noncompetitive sole source solicitation would have been allowed for purchase of dual unit phase selectors and emitters, it would violate rules related to competition in bid regulations as it applied to future installation of GPS technology.
83. Even up to the deadline for bids at 2 pm July 19, 2011, Overland Park had failed to respond to KME's repeated requests for permission to bid. As a result, GTT was the sole bidder for the project.
84. KME's protest was ignored while Overland Park cancelled the solicitation and was granted sole source approval. The FTA, upon being informed of the issues, reversed the sole source determination and directed Overland Park to comply with regulations as to future projects.
85. Tactics similar to the ones documented herein were employed with regard to numerous agencies throughout the United States.

**CLAIMS FOR RELIEF**

**COUNT I  
Violation of 15 U.S.C. §2  
Monopolization**

86. Plaintiffs incorporate paragraphs 1 through 85 as if fully set forth as part of this Count I.
87. At all relevant times, GTT possessed monopoly power in the relevant market. GTT possessed the power to exclude competitors from the relevant market.
88. By its anticompetitive conduct, GTT willfully maintained its monopoly power in the relevant market using restrictive or exclusionary conduct, rather than by means of greater business acumen, and injured Plaintiff thereby. It was GTT's conscious object to further its dominance in the relevant market by and through its campaign of disinformation and interference with the competitive bidding process in public contracts throughout the United States.
89. GTT's conduct constitutes an anticompetitive scheme to acquire and maintain monopoly power in the relevant market.
90. GTT's willful maintenance of monopoly power has made it difficult or impossible for competitors, such as Plaintiff herein, to engage in fair competition.
91. The natural and probable consequence of the conduct, which was plainly foreseeable to GTT, was to exclude or destroy competition in the relevant market resulting in injury to Plaintiff's business and property including the loss of past, present and future profits, by loss of customers and potential customers, by the loss of goodwill and product image and by the prospective destruction of Plaintiff's business.

92. Plaintiff has suffered irreparable injury by reason of the acts, practices and conduct of GTT alleged above, and will continue to suffer such injury until and unless the Court enjoins such acts, practices and conduct.

## **COUNT II**

### **Violation of 15 U.S.C. §2 Attempted Monopoly**

93. Plaintiff incorporates paragraphs 1 through 85 as if fully set forth as part of this Count II.

94. GTT's conduct was unreasonably exclusionary.

95. By its campaign of disinformation and specific interference with the competitive bidding process of public contracts, GTT induced agencies to ignore bidding regulations in equipment choice or to prepare sole source specifications for GTT equipment with the specific intent on the part of GTT to achieve monopoly power in the relevant market. It was GTT's conscious object to exclude competition in the relevant market. These practices have no legitimate business justification.

96. The natural and probable consequence of the conduct, which was plainly foreseeable to GTT, was to exclude or destroy competition in the relevant market resulting in injury to Plaintiff's business and property including the loss of past, present and future profits, by loss of customers and potential customers, by the loss of goodwill and product image and by the prospective destruction of Plaintiff's business.

97. There is a dangerous probability that, unless restrained, GTT's course of conduct will succeed, in violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

98. Plaintiff has suffered irreparable injury by reason of the acts, practices and conduct of GTT alleged above, and will continue to suffer such injury until and unless the Court enjoins such acts, practices and conduct.

### **COUNT III**

#### **Unjust Enrichment**

99. Plaintiff incorporates paragraphs 1 through 85 as if fully set forth as part of this Count III.

100. GTT has unjustly retained a benefit to the Plaintiff's detriment to the extent of sales and revenues it garnered as a material result of the illegal conduct complained of herein.

101. GTT's retention of the benefit violates the fundamental principles of justice, equity and good conscience.

### **COUNT IV**

#### **Violation of State Antitrust Laws**

102. Plaintiff incorporates paragraphs 1 through 85 as if fully set forth as part of this Count IV.

103. Defendants wrongful acts violated the state antitrust statutes of the various states in which Defendants do business (including but not limited to the California Cartwright Act, California Business & Professional Code §16700, *et seq* and §17200, *et seq*; NY GEN BUS Ch. 20, Art. 22; Baldwin's Ohio Revised Code §1331 *et seq*; Minnesota Statutes Annotated §352D; Kansas Statutes Annotated Ch. 50).

### **COUNT V**

#### **Tortious Interference with Business Advantage**

104. Plaintiff incorporates paragraphs 1 through 85 as if fully set forth as part of this Count V.

105. Economic relationships by virtue of its eligibility to bid on projects existed between the Plaintiff and individual third party agencies which were seeking to purchase and install TSP and EVP equipment, severally. There was a probability of future economic benefit to the Plaintiff in light of the fact that, given KME's product superiority, lower cost and

also in light of the obsolescence of the in-place GTT optical equipment, there was a substantial likelihood that Plaintiff would have been awarded public contracts had the competitive bidding process not been hindered by disinformation and obstruction.

106. Defendants had knowledge of the relationship, as GTT and KME are the primary competitors in the market.

107. Defendants engaged in intentional wrongful acts, as set forth herein, designed to disrupt the relationship. Alternatively, Defendants acted with the sole purpose of harming the Plaintiff.

108. Actual disruption of the relationship occurred and Plaintiff was not allowed to bid projects where specifications required a GTT product by model number and/or where Plaintiff's bid was disregarded as a result of disinformation provided by GTT.

109. But for the wrongdoing of Defendants, Plaintiff was reasonably certain to have continued the relationship or realized the expectancy.

110. Economic harm to the plaintiff was proximately caused by the acts of the Defendants in that jobs for which Plaintiff should have been eligible to compete were awarded to GTT.

### **RELIEF REQUESTED**

111. Plaintiff demands the following relief:

- A. Judgment in its favor and against GTT;
- B. Compensatory damages, trebled as to the federal claims, in an amount to be determined at trial;
- C. An order or decree permanently enjoining the anticompetitive conduct set forth herein;
- D. Restitution and/or disgorgement of GTT's unjust enrichment;
- E. Punitive or exemplary damages, where applicable;

- F. Costs, including attorneys' fees;
- G. Pre- and post-judgment interest;
- H. Further relief as the Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

/s/ Jana Yocom

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