

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 11-2129

DIVISION "D-16"

CONCRETE BUSTERS OF LOUISIANA, INC.  
AND WASTE REMEDIATION OF PLAQUEMINES, LLC

VERSUS

FREDERICK R. HEEBE, ALBERT J. WARD, JR.,  
RIVER BIRCH INCORPORATED AND HWY 90, LLC

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

AMENDING PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come petitioners, Concrete Busters of Louisiana, Inc., a Louisiana corporation domiciled in the Parish of Jefferson, and Waste Remediation of Plaquemines, LLC, a Louisiana limited liability company domiciled in the Parish of Jefferson, for the purpose of amending their original Petition for Damages, and allege as follows:

I.

Petitioners re-allege and re-affirm all allegations and prayers of their original Petition for Damages and Jury Demand.

II.

Petitioners hereby amend their original Petition for Damages by adding the following:

**The Co-Conspirators**

94.

Co-conspirator Shadow Lake Management, Inc. ("Shadow Lake") is a corporate entity with its principal place of business in Gretna, Louisiana. Shadow Lake is owned and controlled by Defendants Fred Heebe ("Heebe") and James Ward ("Ward"). Shadow Lake is a holding company that serves as the parent company of a number of corporate entities, including River Birch, Inc. ("River Birch") and several others. Upon information and belief, Shadow Lake served as an instrumentality through which many of the Defendants' unlawful actions were implemented.

95.

Co-conspirator Henry Mouton (“Mouton”) is a resident of Louisiana. Mouton served as Commissioner of the Louisiana Department of Wildlife and Fisheries from January 2003 until his resignation in November 2008. Mouton was indicted in the United States District Court for the Eastern District of Louisiana for unlawful actions in connection with the Defendants in 2011, and pled guilty, as described herein.

96.

Co-conspirator Aaron F. Broussard (“Broussard”) is a resident of Louisiana. Broussard served as President of the Jefferson Parish Council from 2004 until his resignation in January 2010. Broussard has been indicted for theft and bribery in the United States District Court for the Eastern District of Louisiana, and pled guilty, as described herein.

97.

Co-conspirator Timothy Whitmer (“Whitmer”) is a resident of Louisiana. Whitmer served as the Chief Administrative Officer for Jefferson Parish from 1998 until his resignation in January 2010. Whitmer was also an owner of Lagniappe Industries, LLC (“Lagniappe”), an entity through which Defendants provided undisclosed financial benefits to Whitmer, Broussard and/or other members of the Jefferson Parish administration. Whitmer has been indicted in the United States District Court for the Eastern District of Louisiana, and pled guilty, as described herein.

98.

Co-conspirator Thomas Wilkinson (“Wilkinson”) is a resident of Louisiana. Wilkinson served as the Parish Attorney for Jefferson Parish from 1996 until his resignation in March 2010. Wilkinson has been indicted in the United States District Court for the Eastern District of Louisiana, and pled guilty, as described herein.

99.

Co-conspirator Dominick Fazio (“Fazio”) is a resident of Louisiana. Fazio served as CEO of River Birch Incorporated at times pertinent. Fazio has been indicted in the United States District Court for the Eastern District of Louisiana.

100.

Upon information and belief, additional co-conspirators included numerous shell corporations and limited liability companies owned and/or controlled by the Defendants and/or their co-conspirators, including:

- a) Aaron Broussard, Parish President Campaign Committee, Inc.;
- b) Anne's Properties, LLC;
- c) B&A Insurance Agency, Inc.;
- d) B & C Contractors, LLC;
- e) Big Bang Properties, LLC;
- f) B.L.U., LLC;
- g) B.L.U. II LLC;
- h) B.L.U. Communications Services, LLC;
- i) Caribe Resort Properties, LLC;
- j) Cerro Coyote, SA;
- k) Coulon Consultants, LLC;
- l) CT Investments, LLC;
- m) CWC Gaming, LLC;
- n) Dangle & Associates, LLC;
- o) Debris Management, LLC;
- p) Deft, LLC;
- q) DHP LLC;
- r) Door Lock, LLC;
- s) Katz & Katz, LLC;
- t) Kempt Wilderness Lodge Services;
- u) Lagniappe Industries, LLC;
- v) N.C. General Contractors, Inc.;
- w) Nova Scotia Enterprises, LLC;

- x) Pasture Land, LLC;
- y) Ring Associates, LLC;
- x) Trout Point Lodge, Ltd.;
- aa) Waterfront Properties, Inc.;
- ab) Westside Construction Services, Inc.;
- ac) Willow Incorporated; and
- ad) Zydeco Holdings, LLC.

101.

The Defendants and various co-conspirators, including those listed above, have, in various combinations, conspired together, acted in concert and/or as alter egos, agents, tools or instrumentalities of each other, and, such that, in various combinations, some have constituted single business enterprises as they have shared:

- (a) identity or substantial identity of ownership;
- (b) common directors or officers;
- (c) unified administrative control;
- (d) similar or supplementary business functions;
- (e) salaries and other expenses or losses,
- (f) common employees;
- (g) common offices;
- (h) centralized accounting; and/or
- (i) finances; or
- (j) one or some have financed another or others; or
- (k) some have been inadequately capitalized; or
- (l) one or some have caused incorporation of one or others; or
- (m) one or some have paid another or others; or
- (n) one or some have received no business other than from another or others; or
- (o) one or some have used property of another or others as its own; or

- (p) they have not complied with corporate formalities; or
- (q) services have been rendered by the employees of one or some on behalf of another or others;
- (r) there have been undocumented transfers of funds between some;
- (s) there have been unclear allocation of profits and losses between some; and/or
- (t) they have bundled campaign contributions together, and/or acted as a “straw man” for another, to subvert campaign finance laws.

**Chef Menteur and Old Gentilly Landfills Attacked**

102.

Defendants and their co-conspirators, known and unknown, targeted a Construction & Demolition (“C&D”) landfill in New Orleans East owned and operated by Waste Management, popularly known as the “Chef Menteur” landfill. In August 2006, after only six (6) months of operations, the Chef Menteur landfill was permanently closed, diverting profitable waste streams from the Chef Menteur to the River Birch and HWY-90 landfills, and depriving New Orleans of a safe and cost-effective C&D disposal option for the immense volume of storm-related debris in the wake of Hurricane Katrina. Defendants and their co-conspirators, known and unknown, also targeted a C&D landfill owned and operated by AMID/Metro Partnership, LLC (“AMID/Metro”).

103.

In early 2001, the City of New Orleans publicly issued a Request for Proposal (“RFP”) for the operating of a Type III C&D Landfill atop the existing City of New Orleans Gentilly Landfill. Numerous companies with varying proposals competed in the RFP process. The contract to assist the City of New Orleans with obtaining a permit from the Louisiana Department of Environmental Quality (“LDEQ”) and to subsequently operate the Gentilly Landfill was awarded to AMID/Metro in March of 2002.

104.

AMID/Metro is a local company whose member companies have over 50 years of experience in obtaining regulatory approval to operate permitted landfills and waste disposal companies in

Louisiana.

105.

In June of 2002, LDEQ received a permit application from AMID/Metro on behalf of the City of New Orleans to construct and operate the Gentilly Landfill for the disposal of C&D debris and woodwaste. AMID/Metro spent over two (2) years performing costly engineering, environmental design, construction, and site preparation work in accordance with the proposed permit. After determining that the permit application was technically complete and complied with the rigorous requirements of the Solid Waste Regulations, a public notice was published noting the technical completeness of the application and inviting the public to comment on the application. LDEQ's permitting process was extensive and included public notices in both the *Times Picayune* and *The Morning Advocate* newspapers. LDEQ did not receive any public comments or requests for hearing on the application at any time pre-Katrina. On December 28, 2004, LDEQ's Assistant Secretary of the Office of Environmental Services issued Standard Permit P-0375 to the City of New Orleans for the operation of the Gentilly Landfill.

106.

During the Spring and Summer of 2005, the Gentilly Landfill underwent additional preparatory construction in order to ready the site for acceptance of C&D debris. The facility was scheduled to open in September of 2005. On August 26, 2005, Governor Blanco issued Proclamation No. 48 KBB 2005, declaring a state of emergency, as Hurricane Katrina threatened Louisiana. On August 29, 2005, under Proclamation No. 54 KBB 2005, Governor Blanco extended the state of emergency due to the extreme damage caused by Hurricane Katrina. Also on August 29, 2005, the Federal Emergency Management Agency ("FEMA") issued a Disaster Declaration, FEMA-1603-DR, which was a broad-based declaration providing federal relief for the catastrophic damage.

107.

One of the first needs in New Orleans, after the floodwaters receded, was to remove and dispose of massive amounts of debris blocking streets and inhibiting emergency vehicle response.

The U.S. Army Corps of Engineers (“USACE”) and the LDEQ established an emergency waste disposal plan. In addition, the Gentilly Landfill was selected by federal and state officials to play a lead role in helping the overall emergency clean-up operation get underway with federal, state and local assistance. On September 29, 2005, after much discussion and deliberation between federal, state and local authorities, Dr. Chuck Brown, the Assistant Secretary for the Office of Environmental Services of LDEQ issued an Order Authorizing Commencement of Operation for Standard Permit P-0375. At this time, LDEQ also expanded the permissible waste stream volumes that all regulated landfills in the New Orleans market could accept as a result of the various federal, state and local emergency orders.

108.

C&D landfills are typically authorized to handle construction and debris materials, but not industrial or municipal solid waste. Ordinarily, a C&D landfill in Louisiana would not be authorized to handle the full range of waste materials from a clean-up operation on the scale of Hurricane Katrina because of the presence of unauthorized waste. To accommodate the needed flexibility to clean up the City, the LDEQ and/or City issued Emergency Orders that expanded Louisiana’s definition of C&D debris to permit disposal of certain related materials (e.g., plaster, carpet, furniture). In addition, by express approval of the LDEQ, and consistent with the Emergency Orders in place following Hurricane Katrina, the Chef Menteur landfill and several others were granted approval to operate as “enhanced” C&D disposal sites, which authorized those sites for the disposal of waste from certain residential structures pursuant to government demolition that were presumed to contain asbestos-containing materials.

109.

In addition to the environmental and regulatory oversight of the LDEQ, the Environmental Protection Agency (“EPA”) also oversaw and approved of the operations at the Gentilly Landfill. The EPA conducted a three-day onsite investigation of the Gentilly Landfill in early November of 2005, following an unprecedented media and political attack leveled at the City of New Orleans and AMID/Metro. EPA and LDEQ continued to support the operations of the Gentilly Landfill,

notwithstanding what has recently been revealed as a well-coordinated attack against these agencies too.

110.

In February 2006, in the wake of Hurricane Katrina, then Mayor C. Ray Nagin (“Mayor Nagin”), utilizing his emergency powers, executed an Emergency Disaster Cleanup Site Request authorizing Waste Management to operate a C&D landfill at its “pre-approved” site in New Orleans East, off the Chef Menteur Highway. In exercising his emergency authority, Mayor Nagin’s Order superseded the normal processes of the Comprehensive Zoning Ordinance applicable to permitting a C&D landfill and granted the necessary approval. Waste Management expended considerable sums to prepare the site and to obtain the requisite approvals to operate the Chef Menteur landfill.

111.

In 2006, LDEQ publicly recognized that the Chef Menteur landfill “is technically sound, meets requirements and is in close proximity to some of the most devastated areas of Orleans Parish.” After completing its analysis of Chef Menteur, the LDEQ concluded that “[t]his site is needed to clean up New Orleans in a timely, environmentally sound manner.” Chef Menteur commenced operations in April 2006. Steps were taken by Waste Management, the LDEQ, and the EPA to minimize unauthorized waste streams. Air and water sample testing by the LDEQ in May and June 2006 found no health risks from its operation.

112.

Almost immediately following its opening, the Chef Menteur landfill (as well as the Old Gentilly landfill that was re-opened and authorized to handle post-Katrina C&D, and the proposed Two Rivers landfill in Catahoula Parish that also would have received post-Katrina debris) became the target of a wide-ranging public opposition campaign that was financed, organized and supported by the Defendants, their co-conspirators, known and unknown, and certain political and public figures acting at their behest.

113.

The Defendants set in motion a widespread and well-organized local, state and federal



campaign against the competitors of the Defendants, including Waste Management's Chef Menteur landfill, AMID/Metro Old Gentilly landfill, and the proposed Two Rivers Recycling Landfill in Catahoula Parish that also would have received post-Katrina debris if permitted. The vast majority of the opposition campaign was financed, organized, orchestrated, directed, and supported by the Defendants and at least one former state official and public figure at their behest.

114.

Upon information and belief, Defendants and their co-conspirators, known and unknown, sponsored sham lawsuits challenging the issuance, authorization, and permitting of the landfill, proposed blocking legislation, sought additional and unprecedented environmental compliance testing of the waste and the imposition of unnecessary leachate barriers, and manufactured the appearance of other forms of public outcry and widespread opposition.

115.

Mouton, then a Louisiana Department of Wildlife and Fisheries Commissioner, fomented public opposition while receiving illegal bribes from the Defendants to use his position and influence to further the commercial interests of the Defendants.

116.

On May 6, 2011, Mouton executed a *Factual Basis*, which, on June 1, 2011, was filed in the United States District Court for the Eastern District of Louisiana in the matter entitled *United States of America v. Henry M. Mouton*, case no. 11-048. Upon information and belief, the allegations of the *Factual Basis* are adopted herein as if copied *in extenso*. See *Factual Basis*, Document 18, attached hereto as Exhibit "A."

117.

Acting secretly on behalf of the Defendants, Mouton personally contacted, including through use of the mail and/or wires, numerous public officials, including persons at the EPA, the FBI, the U.S. Attorney's Office, seventeen (17) U.S. Senators, and others to spread misleading information and to seek their assistance in stopping other C&D landfills, including the Chef Menteur landfill, the re-opened Old Gentilly landfill, and the proposed Two Rivers landfill, from competing with River

Birch for post-Katrina waste disposal services under the guise of various environmental concerns. Each such communication was part of a scheme to defraud the recipients of such communications by stating or implying that Mouton was acting in his official capacity as a protector of Louisiana's natural resources while concealing that he was acting on behalf of Defendants.

118.

As one example noted in the 44-page federal indictment of Mouton, "On or about November 10, 2005, Henry M. Mouton, acting on behalf of co-conspirator 'A'," believed to be a person or company associated with the Defendants, "wrote to an official with the Environmental Protection Agency in Dallas" while concealing the financial motivations of himself and others "and represented himself as a Commissioner of the State of Louisiana Department of Wildlife and Fisheries Commission." In that correspondence, Mouton "attempted to affect the EPA officials actions in an effort to keep closed the Old Gentilly Landfill located in New Orleans."

119.

Yet another example noted in the 44-page federal indictment of Mr. Mouton, "On or about January 3, 2006, defendant Henry M. Mouton, acting on behalf of co-conspirator 'A'," believed to be a person or company associated with the Defendants, "wrote to a Colonel with the U.S. Army Corp of Engineers while concealing the financial motives of himself and others and represented himself as a Commissioner of the State of Louisiana Department of Wildlife and Fisheries Commission and attempted to gain the assistance of the official in an effort to keep closed the Old Gentilly Landfill located in New Orleans." Mouton took this action on the same date he received an illegal payoff of \$17,000.00 from a co-conspirator of the Defendants "to influence and reward him for his official action."

120.

One of the primary criticisms repeatedly leveled against the Gentilly Landfill concerned its environmental safety, based in large part on its construction and location. This criticism continued, notwithstanding the environmental and geographical approval by the United States Army Corps of Engineers ("USACE"), LDEQ and EPA. In that regard, the public opposition fomented by Henry

Mouton, then a Louisiana Department of Wildlife and Fisheries Commissioner, was particularly influential.

121.

In 2006, the Chef Menteur landfill was the subject of various environmental and permitting challenges filed in federal court. This series of court actions included a claim by the Louisiana Environmental Action Network and other interested citizens and putative public interest groups (hereinafter collectively "LEAN") challenging the LDEQ's issuance of permits to open and operate the landfill. Upon information and belief, the Defendants and their co-conspirators, known and unknown, supported and helped to finance the cost of the frivolous LEAN litigation. Counsel in the related judicial challenges brought by "concerned citizens" of New Orleans East seeking to challenge "the basis under which Waste Management sought to operate its landfill in an area of the City of New Orleans that is not zoned for such use," Kyle Schonekas ("Schonekas") and Joelle Evans ("Evans"), upon information and belief, were both secretly on retainer by the Defendants as undisclosed "lobbyists."

122.

Upon information and belief, the Defendants and their secret lobbyists, Schonekas and Evans, also enlisted the services of Walter Willard ("Willard") to assist with their litigation against the Chef Menteur landfill and challenging Mayor Nagin's emergency authorization. Upon information and belief, Willard was retained, at least in part, to curry favor and political influence. In particular, Willard is the brother of Cynthia Willard-Lewis ("Willard-Lewis"), then the New Orleans Councilperson for District E where the Chef Menteur landfill was located. At one point, Willard-Lewis was one of the strongest proponents and supporters of the Chef Menteur landfill because she deemed it critical to expediting the clean-up and recovery of her district in New Orleans East. This district is located most remotely from the River Birch and HWY-90 landfills. Upon information and belief, upon the retention of her brother to allegedly "assist" in the litigation against the landfill, Willard-Lewis suddenly reversed course and became a vocal opponent to the continued operation of the Chef Menteur landfill. Willard-Lewis attributed her changed position to the public

outcry over health and safety concerns arising from the location of the landfill.

123.

During the Summer of 2006, after the herein described improper influence of the Mayor's Office and New Orleans City Council, Mayor Nagin unexpectedly reversed his position and withdrew his emergency authorization for the Chef Menteur landfill.

124.

But for the opposition that the Defendants and their co-conspirators, including Mouton, artificially created, and/or other improper influence, it is highly unlikely that Mayor Nagin would have withdrawn his emergency authorization for the Chef Menteur landfill.

125.

When Mayor Nagin withdrew his emergency authorization, the Chef Menteur landfill became subject to, and out of compliance with, the zoning ordinances. As a result, the LDEQ took the position that, although a superior and less costly option, Chef Menteur would be unavailable for waste disposal. Similarly, FEMA announced that it would not fund the costs of disposal at unapproved sites, such as Chef Menteur, although superior to its other options.

126.

By August 2006, Waste Management closed the Chef Menteur landfill.

127.

Upon information and belief, the conspiracy to close all landfills in the Greater New Orleans Area extended beyond the Chef Menteur landfill, and also to the Old Gentilly Landfill, the Jefferson Parish landfill, the proposed Two Rivers landfill in Catahoula Parish, the Pecan Grove and Central landfills in Southern Mississippi, and the Woodside landfill in Walker, Louisiana.

128.

Upon information and belief, the River Birch Defendants and their co-conspirators used or caused to be used mail and/or wires as a part of their illegal and fraudulent scheme to improperly prevent and influence the political process to secretly advance their private financial interests at the expense of AMID/Metro, other competitors, and the consumers and citizens of the New Orleans

Market.

**Jefferson Parish Monopoly**

129.

Since 1996, Jefferson Parish and Waste Management had been parties to a Landfill Contract pursuant to which Waste Management operates the Jefferson Parish landfill. By its own terms, the Landfill Contract was designed to terminate when the Jefferson Parish landfill has reached its full permitted capacity (defined as “final elevation” under the subject permit). However, the Defendants secured from Jefferson Parish in the *Time Contract For Disposal Services Between the Parish of Jefferson and River Birch, Inc. and its Wholly Owned Subsidiary Hwy 90, LLC* (“River Birch contract”)—a commitment to shut down the Waste Management-operated Jefferson Parish landfill for a period of 25 years, costing the citizens of Jefferson Parish millions more to dispose of their waste, and rendering one of Jefferson Parish’s most valuable assets, its landfill, worthless. Further, the River Birch contract eliminated the Jefferson Parish landfill and Waste Management as a source of waste disposal competition.

130.

The River Birch contract with Jefferson Parish was designed and intended to leave the commercial waste generators that previously had benefitted from the competition between the Jefferson Parish landfill and Waste Management vulnerable to the Defendants’ resulting monopoly over landfill disposal rates.

131.

Defendants secured this windfall by, among other things, providing undisclosed financial benefits to members of the Jefferson Parish administration and certain of the administration’s principal staff members involved in the manipulation, solicitation, evaluation, negotiation, and approval of that waste disposal contract. Parish co-conspirators included Broussard, Whitmer, and Wilkinson. They drafted the River Birch contract to include a provision requiring that Jefferson Parish’s current valid contract for waste disposal services with Waste Management be prematurely terminated as a condition to the River Birch contract becoming effective.

132.

Jefferson Parish Ordinance No. 21587 establishes a uniform set of procedures for the purchase of materials, supplies, equipment, services and public works, and mandates the use of an RFP process. Pursuant to Ordinance No. 21587, and specifically Section 2-895 therein, a mandatory process is provided for the development, specification, weighing and use of specific criteria to evaluate proposals. Ordinance No. 21587 requires that the RFP include the specific criteria that will be used to evaluate the proposals, including price and other factors such as experience, staff capability, and cost breakdown. The Ordinance further requires that the criteria be carefully developed and a weighing scheme formulated around the most important features of each procurement action. The evaluation criteria must be included in the RFP along with the stated relative order of importance. The Ordinance further requires that a scoring system be devised and impartially applied to each proposal. Ordinance No. 21587 further requires that all proposals must be evaluated by an Evaluation Committee in accordance with the published criteria and that no change in the scope of the evaluation criteria is allowed. The evaluation shall be conducted with the sole objective to achieve the contract agreement most advantageous to the Parish of Jefferson based upon the published criteria. This ordinance was blatantly violated in the awarding of the River Birch contract.

133.

Under the then existing Jefferson Parish-Waste Management contract, commercial generators of municipal solid waste in the region had the option of disposing that waste at either the Jefferson Parish landfill or at the nearby River Birch landfill. That existing competition between the landfills, however, would be eliminated if the Jefferson Parish landfill were closed, as required by the River Birch contract, and the commercial waste generators would be subject to the unregulated disposal rates at River Birch. River Birch thereby illegally obtained an exclusive franchise for landfill disposal services in violation of Louisiana law and, specifically, La. R.S. 33:4169.1(A)(2).

134.

The repeated assertions that there would be “substantial cost savings” in the range of approximately \$25 million by shifting waste disposal to River Birch have been exposed as a complete sham and fraud. Jefferson Parish considered an extrapolation created by Rick Bueller, which was expanded upon by Wilkinson, when it made its determination that a savings would result if the contract with Waste Management were terminated in favor of River Birch. This false analysis was made specifically in an effort to deceive the Parish Council, the citizens of Jefferson Parish, and to justify termination of the Waste Management contract prior to its natural term in order to provide a new exclusive contract to River Birch.

135.

Commercial waste generators not subject to the Jefferson Parish disposal contract would have been expected to lose millions more through higher tipping charges.

136.

Upon information and belief, the health insurance contract between Shadow Lake and River Birch, and Lagniappe, owned by Tim Whitmer, and brokered by Dawn Whitmer, was a *quid pro quo* payment for the Jefferson Parish waste disposal contract. But for the corrupt influence and unlawful and undisclosed payments and financial benefits provided by Defendants, the Jefferson Parish Council would not have hijacked the RFP process, denied Petitioners a contract, entered the 25-year contract with River Birch, or sought to terminate their operating contract with Waste Management.

137.

Current Jefferson Parish Council members have publicly stated that they believe that they were misled regarding the River Birch contract and the undisclosed financial relationships at issue, and thus, expressed the view that the contract be declared void and unenforceable.

**The Continuing Conspiracy**

138.

The execution of the River Birch contract did not effectuate the contract and complete the conspiracy. Rather, the existing contract with Waste Management had to be canceled so the River

Birch contract could become effective. The Defendants and their co-conspirators, known and unknown, plotted continuously to employ the “annual appropriation dependency clause” of the Landfill Contract with Waste Management to prematurely terminate the contract with Waste Management in order to assure that the River Birch contract could be implemented.

139.

River Birch itself explained the need for the termination of the Waste Management contract in its *Memorandum in Support of Rule 12(B)(1) Motion To Dismiss Second Amended and Supplemental Counterclaim* filed in *Consolidated Garbage District No.1 of the Parish of Jefferson and the Parish of Jefferson through the Jefferson Parish Council v. Waste Management of Louisiana, L.L.C.*, case no: 09-06270, on the docket of the United States District Court for the Eastern District of Louisiana:

River Birch, Inc. bid for and won a contract with Jefferson Parish for the disposal of residential and Parish-generated solid waste, RACM, sewerage, sludge, special waste, construction and demolition debris, and yard and woody waste. That contract, ratified by Parish Council resolution # 112564, was contingent on the termination of the Parish’s waste disposal contract with Waste Management of Louisiana, L.L.C. Specifically, section 36 of River Birch’s contract with the Parish stated that it was suspended until

- A) A “final judgment” has been rendered declaring that the Time Contract between the Parish and Waste Management may be terminated under the Annual Appropriation Dependency Clause or in light of contractual breaches by Waste Management, and that in the event of such termination the Parish has no obligation to Waste Management except for payment of disposal fees which have been earned prior to the termination date, and that Waste Management is responsible for installation of final cover, at Waste Management’s expense, over Phase IIIA and IIIB cells in which Waste Management has placed solid waste; or
- B) The Parish and Waste Management voluntarily terminate the existing Kelvin Landfill Time Contract on terms and conditions acceptable to both parties.

First Am. & Suppl. Compl. ¶ 49.

The Parish and Parish Council, on behalf of Consolidated Garbage District No. 1, filed the present suit in 24th Judicial Court, Parish of Jefferson, seeking a declaration that the Waste Management contract could be terminated under the Annual Appropriation Dependency Clause. *See* Pet. Decl. J., Liq. Dam. Contract, & Recovery Overcharges, *Prayer for Relief*.



140.

River Birch, despite the filing of peremptory exceptions attempting to dismiss this litigation, further argued in the *Memorandum* that the demand by Waste Management for a declaratory judgment voiding the contract should be dismissed because:

To the extent that there were any irregularities with the bidding process (which is denied), the party with the most incentive to make a challenge would be the disappointed bidder, not Waste Management. The disappointed bidder for Request for Proposal No. 176 in fact has brought a suit in state court to invalidate the River Birch contract for substantially the same reasons given by Waste Management. *See Concrete Busters of Louisiana, LLC v. Heebe*, No. 11-2129, Civil District Court, Parish of Orleans, State of Louisiana. The public's interest in the integrity of the bidding process for Request for Proposal No. 176 is sufficiently safeguarded by this suit, brought by an actual bidder for the River Birch contract. This Court need not recognize Waste Management's standing, as a non-bidder, in order to protect the same.

141.

River Birch further argued in its *Reply Memorandum in support of its Rule 12(b)(1) Motion to Dismiss Waste Management's Second Amended and Supplemental Counterclaim* that "The River Birch contract is entirely contingent on the Parish obtaining a final judgment declaring the Waste Management contract invalid or Waste Management's voluntary termination of its contract."

142.

These actions were consistent with an October 11, 2004 memorandum prepared by former Parish Attorney Tom Wilkinson and addressed to the Jefferson Parish Council. The subject of the memorandum was "non-appropriations clause in Landfill Contract." Upon information and belief, the concept addressed in the memorandum of employing the non-appropriations clause in the Waste Management contract, was referenced in a James Gill opinion piece in the *Times-Picayune* newspaper, dated December 19, 2004. In the column Gill commented that some Council members were evidently "planning to give Waste Management the early heave-ho" and "Parish Attorney Wilkinson had suggested how they might go about doing it," and further noted that Wilkinson conceded the Parish might be found liable in court unless it could prove that Waste Management had been stiffed "in good faith." Thus, the acts described herein are consistent with a long-standing conspiracy.

143.

To effectuate cancellation of the Landfill Contract with Waste Management through the Annual Appropriation Dependency Clause, the co-conspirators, known and unknown, altered subsequent budgets, and, on August 21, 2009, Jefferson Parish filed a *Petition for Declaratory Judgment*, through co-conspirator Wilkinson, against Waste Management in the 24<sup>th</sup> Judicial District Court for the Parish of Jefferson, in the matter entitled *Consolidated Garbage District No.1 of the Parish of Jefferson and the Parish of Jefferson through the Jefferson Parish Council v. Waste Management of Louisiana, L.L.C.* and numbered 677003, citing the Annual Appropriation Dependency Clause in the Waste Management Landfill Contract, seeking, *inter alia*, a declaratory judgment “that in the event the Parish Council decides not to appropriate funds for the fiscal year 2010 for continuation of the [Waste Management] Landfill Contract, the Landfill Contract shall be deemed terminated without penalty or expense to the Parish except for tipping fees which have been earned by Waste Management prior to the termination date.” The suit further sought to obtain a “‘final judgment’ ... declaring that the Time Contract between the Parish and Waste Management may be terminated under the Annual Appropriation Dependency Clause.” The filing of this lawsuit was consistent with the long-standing conspiracy to utilize the non-appropriations clause to terminate the Waste Management contract, close the Parish landfill, and redirect Jefferson Parish waste to River Birch. Co-conspirator Wilkinson so acted because he had received *quid pro quo* benefits from Broussard described herein, who had received *quid pro quo* benefits from Defendants and/or their co-conspirators, known and unknown, as described herein.

144.

On September 14, 2009, the suit was removed to the United States District Court for the Eastern District of Louisiana and assigned Case No. 09-06270. The Parish filed an Amended Complaint stating that it sought the Court’s approval to use the Annual Appropriation Dependency Clause due to alleged substantial savings to the Parish which could be achieved by effectuating an already-executed contract with Defendants.

145.

Jefferson Parish later admitted in its *Answer to Waste Management's First Amended and Supplemental Counterclaim* in the federal litigation that "in October of 2009 Whitmer directed the Finance Director to reduce the landfill budget to one month of charges and add the difference to the professional services budget." Further, Gwenn Bolotte, Finance Director of Jefferson Parish, has testified that, in preparation of the 2010 budget, she received instructions from Whitmer to reduce the landfill budget to only one month of charges.

146.

Wilkinson continued to pursue the litigation through his suspension in February of 2010. On May 21, 2010, Wilkinson finally withdrew from the Waste Management litigation when a *Joint Motion to Substitute Counsel* was filed in the federal litigation.

147.

Waste Management filed a Counterclaim, then filed its *First and Second Amended and Supplemental Counterclaims* against the Parish, in the federal litigation, alleging that the 2009 waste disposal contract between the Parish and River Birch that would have diverted all waste from the Parish Landfill was entered illegally, and prayed that the actual contract between Jefferson Parish and River Birch be invalidated. Documents 74, 128 and 170. Waste Management claimed that the Parish sought to terminate its contract with Waste Management and divert its waste disposal business to River Birch. The *Second Amended and Supplemental Counterclaim* subsequently was dismissed by order of the Court for lack of standing. See Documents 234 and 259.

148.

Judge Ivan Lemelle found, in an *Order and Reasons* granting *River Birch's Rule 12(B)(1) Motion to Dismiss Second Amended and Supplemental Counterclaim* that:

Section 36 of the River Birch/Jefferson Parish contract states, in pertinent part:

If a final judgment is not rendered by December 31, 2009, declaring that upon an event of non-appropriation under the Annual Appropriation Dependency Clause, or in light of contractual breaches by Waste Management, that the Kelvin Landfill Time Contract may be terminated by the Parish with no liability for any claims, costs or expenses of Waste Management, including but not limited to lost future profits or

construction costs, and that Waste Management is obligated at its expense to install final cover in accordance with the Time Contract provisions and the LDEQ permit over cells in Phase IIIA and IIB in which Waste Management has placed waste, then the implementation and commencement date of this Time Contract will be postponed until the earlier of the following events:

a) A “final judgment” has been rendered declaring that the Time Contract between the Parish and Waste Management may be terminated under the Annual Appropriation Dependency Clause or in light of contractual breaches by Waste Management, and that in the event of such termination the Parish has no obligation to Waste Management except for payment of disposal fees which have been earned prior to the termination date, and that Waste Management is responsible for installation of final cover, at Waste Management’s expense, over Phase IIIA and IIB cells in which Waste Management has placed solid waste; or

b) The Parish and Waste Management voluntarily terminate the existing Kelvin Landfill Time Contract on terms and conditions acceptable to both parties. (Rec. Doc. No. 191-1 at 31).

Thus, unless the Court issues a judgment terminating the current Waste Management/Jefferson Parish contract or until Waste Management and Jefferson Parish mutually decide to terminate their contract, River Birch’s contract will not activate. (Rec. Doc. No. 76 at 3-4.). The River Birch contract is wholly contingent upon some affirmative action being taken with regard to the Waste Management/Jefferson Parish contract. (Id.).

149.

On January 18, 2011, Waste Management and Jefferson Parish filed in the federal litigation a *Consent Joint Motion to Continue Hearing on Cross-Motions for Partial Summary Judgment*. In the motion the parties stated that:

Recent developments may render moot some or all of the issues raised in the cross-motions for summary judgment. Counsel for the Parish and Consolidated Garbage District No. 1 needs time to meet with Parish representatives and thereafter advise the Court of the Parish’s position with respect to these developments.

As described above, until the filing of this Motion, Jefferson Parish had aggressively pursued the scheme, conceived of years before, to divert all Jefferson Parish waste to Defendants.

150.

On January 20, February 1, February 3, February 11, February 13, and February 14, 2011, Defendants placed advertisements and/or opinions of its expert economist Dr. Loren Scott in the *Times Picayune*, falsely claiming that Jefferson Parish would achieve cost savings through disposal of Parish waste at the River Birch landfill as compared to the Jefferson Parish landfill. Further, in

January 2011, Defendants issued mailers with the same falsehoods to citizens of Jefferson Parish.

**Away With The Whistleblower**

151.

In August 2009, Anne Marie Vandenberghe, the Assistant Parish Attorney in charge of responding to public records requests, received a Public Records Request from legal counsel for Waste Management, the then operator of the Jefferson Parish landfill, seeking the production of any contracts which may exist between River Birch and the Parish. As part of her duties, she obtained a copy of an un-executed contract between River Birch and the Parish from Eula Lopez, the Clerk and Custodian of Records for the Parish Council. Shortly afterward, she received yet another contract between River Birch and the Parish—this one signed only by the Parish Council Chairman. Upon bringing this apparent discrepancy to the attention of then-Parish Attorney Wilkinson, she was ordered by Wilkinson, her ultimate supervisor, not to make any further inquiries. Wilkinson directed her that he would personally handle this issue. Wilkinson then provided her with a fully-executed copy of a contract between River Birch and the Parish. She then brought these blatant discrepancies in the River Birch contracts to the attention of Parish Attorney Wilkinson, who failed to take any appropriate action thereto. The Parish, against her advice, issued a letter of non-production of the documents requested pursuant to the public records request.

152.

In preparation for a return for a federal subpoena request, Eula Lopez, certified a return dated December 16, 2009, of a partially-executed River Birch contract signed only by Jim Ward of River Birch, knowing that there were other multiple, signed copies of the same contract in the possession of the Parish. Lopez informed Anne Marie Vandenberghe, via an email, that her brother-in-law, Wilkinson, had instructed her not to send it to the Council Chairman for signature. All different versions of said document were made part of Vandenberghe's return to the Federal Grand Jury subpoena in December of 2009.

153.

Petitioners hereby adopt and allege the allegations of paragraphs 4, 5, 16, 17, 20, 21, 25, 26 and 28 of the *Complaint* in the matter entitled *Anne Marie Vanderweghe v. The Parish of Jefferson* and numbered 2:11-cv-2128 on the docket of the United States District Court for the Eastern District of Louisiana as if copied herein *in extenso*. See *Complaint*, Document 1, attached hereto as Exhibit “B.”

154.

These above-described unlawful acts were committed by Defendants and/or their co-conspirators, known and unknown, in furtherance of the conspiracy to effectuate the River Birch contract.

**Payola Radio**

155.

The Defendants made a substantial, undisclosed, interest-free, and unrecorded “loan” of \$250,000.00 through its CEO and co-conspirator Dominick Fazzio and co-conspirator Westside Construction Services, Inc. to radio host Garland Robinette (“Robinette”) after Robinette, armed with false and misleading information in direct contravention of the LDEQ’s informed opinion, routinely railed against the purportedly harmful environmental consequences of opening and operating the Chef Menteur and Old Gentilly landfills. So effective was Robinette in corrupting the public dialogue that even the LDEQ felt it was unable to communicate its position on the benefits of the Chef Menteur and Old Gentilly landfills as safe and valuable alternatives to disposal at the River Birch and HWY-90 landfills.

156.

Further, Robinette, after receiving the \$250,000.00 payment, contrary to his railings against the Chef Menteur and Old Gentilly landfills, never criticized the River Birch landfill or the River Birch contract. His silence continued at least through the filing of the original petition.

157.

The undisputed payments by Defendants and their co-conspirators, known and unknown, to

Robinette for attacks on competitor landfills and silence regarding their landfill and River Birch contract violate 47 USC 317 and 47 CFR 73:1212.

**Pattern Of Abusing Public Office**

158.

On December 2, 2011, a federal grand jury issued an *Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture* alleging, *inter alia*, that Broussard, Karen Parker and Wilkinson entered into a conspiracy to defraud and obtain money and/or property from Jefferson Parish. The *Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture* was filed in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States v. Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 “HH. Upon information and belief, the allegations of the *Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture* are adopted herein as if copied *in extenso*. See *Indictment*, Document 1, attached hereto as Exhibit “C.”

159.

On January 12, 2012, Karen Parker Broussard plead guilty to Conspiracy to Commit Misprison of a Felony in violation of Title 18 U.S.C. 4. Karen Parker Broussard further executed a *Factual Basis*. In the *Factual Basis*, Karen Parker Broussard swore that

from approximately 2004 through 2010, Broussard received monies, totaling hundreds of thousands of dollars, that were characterized as, among other things, “retainers,” “consulting fees” or “finder’s fees” with various contractors and vendors, all of whom were doing business with Jefferson Parish during the period of time Broussard was the President of Jefferson Parish. Moreover, Broussard was a majority owner in a holding company which owned an investment property in Canada. Broussard received income from this Canadian property. This property was partially funded by individuals and/or entities who were contractors and/or vendors doing business with Jefferson Parish during the period of time Broussard was the Jefferson Parish President.

Petitioners hereby adopt and allege the allegations contained in the *Factual Basis*, filed in the United

States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-00239, as if copied herein *in extenso*. See *Factual Basis*, attached hereto as Exhibit “D.”

160.

On February 3, 2012, a federal grand jury issued a *Superceding Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture*, Document 53, alleging, *inter alia*, that Broussard and Wilkinson “did knowingly and willfully combine, conspire, and agree together and with each other to: 1. Embezzle, steal, and obtain by fraud, property valued at \$5,000 or more and owned by, or under the care, custody and control of, the Parish of Jefferson; in violation of Title 18, United States Code, Section 666(a)(1)(A) 2. Use and cause to be used bank wire transfers to be transmitted by means of wire communication in interstate commerce the signals and sounds in furtherance of the scheme and artifice to defraud ... ; in violation of Title 18, United States Code, United States Code Section 1343.” The *Superceding Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture* was filed in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States v. Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 “HH. Upon information and belief, the allegations of the *Superceding Indictment for Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Wire Fraud and Notice of Forfeiture* are adopted herein as if copied *in extenso*. See *Superceding Indictment*, Document 53, attached hereto as Exhibit “E.”

161.

On January 20, 2012, the United States Attorney for the Eastern District of Louisiana filed a *Bill of Information for Misprison of a Felony* against Timothy A. Whitmer for, *inter alia*, allegedly “having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit: wire fraud, theft concerning programs receiving federal funds, and other federal criminal violations, [and concealing same by participating in: 1) the hiring of certain parish employees, 2) the awarding of salary increases to certain parish employees, and 3) the contract selection processes that



were all contrary to the best interests of the citizens of Jefferson Parish, and did not as soon as possible make known the same to [authorities]; all in violation of Title 18, United States Code, Section 4.” The *Bill of Information for Misprison of a Felony* was filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-046. Upon information and belief, the allegations of the *Bill of Information for Misprison of a Felony* are adopted herein as if copied *in extenso*. See *Bill of Information for Misprison of a Felony*, Document 1, attached hereto as Exhibit “F.” Upon information and belief, “the contract selection processes that were all contrary to the best interests of the citizens of Jefferson Parish” included the contract selection process for RFP 176 and the eventual River Birch contract.

162.

On March 22, 2012, Whitmer executed a *Factual Basis*. Petitioners hereby adopt and allege the allegations contained in the *Factual Basis*, filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-046, as if copied herein *in extenso*. See *Factual Basis*, Document 17, attached hereto as Exhibit “G.” In the *Factual Basis* Whitmer swore, *inter alia*, that (1) after Hurricane Katrina, he left the position of CAO because of job-related stress and because he became frustrated by the “culture of corruption” that occurred under the Broussard administration; (2) he returned as CAO when Broussard promised him a significant raise in salary; (3) he, at the instruction of Broussard, hired Karen Parker as a “Paralegal Supervisor,” a position for which she was not qualified, trained or certified, nor which duties she performed, and then provided her raises in salary and improper overtime/comp. pay, to the romantic and financial benefit of Broussard; (4) Wilkinson knew of, and aided and abetted the hiring and raises; (5) Wilkinson rescinded Karen Parker’s resignation to the benefit of Karen Parker; (6) Broussard received a “consulting fee” and “retainer” from a company to steer business to the company and feigned a “recusal” and drafted a tailored RFP when the company sought Parish business; (7) Broussard repeatedly used campaign funds for personal expenses; (8) Broussard provided Wilkinson with pay raises for concealing, aiding and abetting the preceding and helping Broussard with a private family matter; (9) Whitmer was aware that Broussard would improperly interject himself into contract

negotiations and would secretly advocate on behalf of certain businesses. In the *Factual Basis* Whitmer swore that:

Whitmer, along with two other business partners, operated an insurance business that sold insurance policies to various businesses and municipalities. In 2009, Whitmer approached Broussard and asked Broussard if he would be willing to assist Whitmer in securing additional insurance business. Whitmer and his partners agreed to pay Broussard \$1,000 per month for Broussard's assistance. The payments continued for five months and were discontinued when media reports began to investigate Whitmer's insurance dealings. Neither Whitmer nor Broussard sought Jefferson Parish Council approval for their self-dealings.

Upon information and belief, the "insurance business" referenced in the *Factual Basis* is co-conspirator Lagniappe Industries, LLC, and Broussard, as a *quid pro quo* for the payments of \$1,000.00 per month, assisted Lagniappe in "securing additional insurance business" from and through Defendants and their co-conspirators.

163.

Petitioners hereby adopt and allege the allegations contained in the *Factual Background* section of the *Response in Opposition to Defendant Broussard's Motion for Discovery*, Document 78, filed on or about April 20, 2012, in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States v. Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 "HH," as if copied herein *in extenso*. See *Response in Opposition to Defendant Broussard's Motion for Discovery*, Document 78, attached hereto as Exhibit "H."

164.

On July 27, 2012, a federal grand jury issued a *Second Superceding Indictment for Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, Conspiracy to Commit Wire Fraud, Bribery, Wire Fraud, Theft and Notice of Forfeiture*, Document 117, alleging, *inter alia*, that Broussard and Wilkinson committed bribery, specifically by Bill Mack ("Mack"), the owner of First Communications Company ("FCC"), and theft in violation of Title 18, United States Code 666(a)(1)(A) and (B) and 2. The *Second Superceding Indictment* was filed in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States*

v. *Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 “HH. Upon information and belief, the allegations of the *Second Superseding Indictment* are adopted herein as if copied *in extenso*. See *Second Superseding Indictment*, Document 117, attached hereto as Exhibit “I.”

165.

Mack would corruptly pay Broussard approximately \$1,500.00 per month in exchange for Broussard’s efforts to steer Mack and FCC telecommunications work. Wilkinson knew of, never reported, and acted in furtherance of, the Broussard-Mack bribery.

166.

On July 27, 2012, the United States Attorney for the Eastern District of Louisiana filed a *Bill of Information for Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds* against Mack for, *inter alia*, allegedly bribing Broussard for official acts, including steering a telecommunications contract to a company owned by Mack. The *Bill of Information for Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds* was filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-00239. Upon information and belief, the allegations of the *Bill of Information for Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds* are adopted herein as if copied *in extenso*. See *Bill of Information*, Document 1, attached hereto as Exhibit “J.”

167.

On August 16, 2012, Mack plead guilty as charged to the one-count *Bill of Information* charging him with conspiracy to commit bribery concerning programs receiving federal funds, in violation of Title 18, United States Code, Section 371. Mack further executed a *Factual Basis*. Petitioners hereby adopt and allege the allegations contained in the *Factual Basis*, filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-00239, as if copied herein *in extenso*. See *Factual Basis*, Document 16, attached hereto as Exhibit “K.” In the *Factual Basis*, Mack swore that, beginning in or around 1982 through in or around July 2012, he was an owner and/or President of FCC, a company that provided telecommunications services

and equipment for commercial customers, including governments and municipalities. From at least in or around 2004 through in or about 2007, his company, FCC, bid on and received contracts let by Jefferson Parish for telecommunications services and equipment.

168.

Beginning in or around 2002, Mack met Broussard, then a sitting Jefferson Parish council member. Around this time, in 2002, Mack began paying Broussard approximately \$1,500.00 per month in exchange for Broussard's official acts, as a Parish councilman and later Parish President, to, among other things, steer telecommunications work to FCC. From at least in or around 2004 through in or about November 2007, Mack and then Jefferson Parish President, Broussard, reached an arrangement where Mack would corruptly give Broussard monthly installments of money in exchange for, among other things, Broussard's efforts, as Parish President, to steer Parish telecommunications work to FCC. During this time period, FCC provided Broussard with approximately \$66,000.00, paid in monthly installments of approximately \$1,500.00, intending to influence Broussard in connection with his official duties as Jefferson Parish President. From in or around 2004 through in or around 2008, in exchange for the money he was receiving and had been receiving from Mack, Broussard undertook official actions as Jefferson Parish President to steer Parish work to FCC and FCC did, in fact, receive multiple contracts for telecommunications services in Jefferson Parish, collectively worth approximately \$40,000.00. Broussard also undertook other official actions as Jefferson Parish President, ultimately unsuccessful, to steer more lucrative Parish telecommunications work, including a 2008 Request for Proposal released by Jefferson Parish, to FCC. Additionally, Broussard and Mack, on several occasions in between 2004 and 2007, sought to conceal their improper relationship and the illegal payoffs by masking the purpose of the payoffs to make them appear legitimate.

169.

Petitioners hereby adopt and allege the allegations contained in the *Factual Background* section of the *Government's Response in Opposition to Defendant Thomas G. Wilkinson's Motion to Dismiss Counts One and Seven Through Twenty-Seven*, Document 142, filed on or about August

23, 2012, in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States v. Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 "HH," as if copied herein *in extenso*. See *Government's Response in Opposition to Defendant Thomas G. Wilkinson's Motion to Dismiss Counts One and Seven Through Twenty-Seven*, attached hereto as Exhibit "L."

170.

Petitioners hereby adopt and allege the allegations contained in the *Government's Notice of Intent to Introduce Intrinsic Evidence Or, Alternatively, Notice of "Other Act" Evidence Pursuant to Rule 404(b) of the Federal Rules of Evidence*, Document 146, filed in the United States District Court for the Eastern District of Louisiana in the matter entitled and numbered *United States v. Aaron Broussard and Thomas G. Wilkinson*, Criminal Docket No. 11-299 "HH," as if copied herein *in extenso*. See *Government's Notice of Intent to Introduce Intrinsic Evidence Or, Alternatively, Notice of "Other Act" Evidence Pursuant to Rule 404(b) of the Federal Rules of Evidence*, attached hereto as Exhibit "M."

171.

Broussard and his wife, Parker, falsely listed her occupation and job title on numerous government documents, including State of Louisiana Ethics Disclosures, as well as Federal Income Tax Returns through at least 2010.

172.

On September 24, 2012, Wilkinson plead guilty to Conspiracy to Commit Misprison of a Felony in violation of Title 18 U.S.C. 371 . Wilkinson further executed a *Factual Basis*. Petitioners hereby adopt and allege the allegations contained in the *Factual Basis*, filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-00239, as if copied herein *in extenso*. See *Factual Basis*, Document 191, attached hereto as Exhibit "N."

173.

On September 25, 2012, Broussard pled guilty to Conspiracy to Commit Bribery, Federal Program Fraud and Wire Fraud in violation of Title 18 U.S.C. 371 and Theft Concerning a Program

Receiving Federal Funds in violation of Title 18 U.S.C. 666(a)(1)(A). Broussard further executed a *Factual Basis*. Petitioners hereby adopt and allege the allegations contained in the *Factual Basis*, filed in the United States District Court for the Eastern District of Louisiana in the matter numbered 2:12-cr-00239, as if copied herein *in extenso*. See *Factual Basis*, Document 197, attached hereto as Exhibit "O."

174.

Thus, Broussard, with the assistance of Wilkinson and Whitmer, engaged in widespread pattern of abusing his political office for private gain by: (1) Broussard accepting bribes and payoffs from, among others, Mack of FCC, a Jefferson Parish vendor, in exchange for his influence and official acts to steer Parish and other business to FCC, with Wilkinson and Whitmer failing to report, aiding and/or abetting same; (2) devising a scheme to employ, among others, his girlfriend and later-wife, Karen Parker, with a job paid for by the taxpaying citizens of Jefferson Parish that she was not qualified and, in fact, did not perform, with Wilkinson and Whitmer failing to report, aiding and/or abetting same; (3) rewarding Wilkinson for, among other things, undertaking personal favors for Broussard including Wilkinson's efforts to use his influence at a local private school to assist a Broussard family member with the competitive admissions process, and failing to report, aiding and/or abetting the above, as well as failing to report, aiding and abetting the hijacking of the RFP and filing litigation to effectuate the River Birch contract; and (4) accepting payments from Lagniappe Industries, LLC for benefitting Whitmer by assisting Lagniappe in receiving business from Defendants and/or their co-conspirators, including Shadow Lake, in exchange for official acts to benefit Defendants in obtaining the River Birch contract.

175.

Further, beginning in or around 2002, a company named Nova Scotia Enterprises, LLC ("NSE"), was formed. NSE was a holding company for several pieces of vacation rental property located in the Canadian province of Nova Scotia. At various times from 2002 through 2010, there were up to twelve partners in NSE—many of which were Jefferson Parish contractors or prospective contractors. Broussard was also a partner in NSE. However, unlike almost every other partner in

NSE, Broussard was given a large, 42% interest in NSE for a small capital contribution to the company. By contrast, nearly \$50,000.00 was contributed by several other NSE partners for the upkeep and maintenance of properties. Significantly, many of the NSE investors who supplied the vast majority of the funds obtained a much smaller ownership interest than Broussard in NSE. Most importantly and not coincidentally, during Broussard's tenure, many of the NSE partners, through their various corporations, received contracts with, and work in, Jefferson Parish, worth millions of dollars, at the same time they were funding NSE and Broussard's corporate interest in it. Finally, Broussard sought, at the conclusion of his tenure as Parish President, to sell his ownership share in NSE—which was purchased for very little—for nearly \$200,000.00, an extraordinary return on the minimal investment supplied by Broussard. Upon information and belief, co-conspirators of the Defendants were NSE partners.

176.

From 2003, when he was first elected, through 2007, when he was re-elected, Broussard ran a political campaign that took in thousands of dollars annually from contributors. By law, such contributions are made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office. *See* La. R.S. 18:1483(6)(a). Broussard was prohibited by law from expending contributions for any personal use unrelated to a political campaign or the holding of public office or party position, *See* La. R.S. 18:1505.2(1)(1). Broussard was also required to report, on his annual campaign finance report, all legitimate campaign expenditures, which are defined as payments made for the purpose of supporting election to public office and included monies spent for general operating expenses. *See* La. R.S. 18:1483(9)(a). During this period of time (2003-2007), though being prohibited from doing so, Broussard spent tens of thousands of dollars in campaign contributions for personal expenses, all unrelated to political campaigns or the holding of public office. Wilkinson participated in some of Broussard's events paid for by campaign funds. Upon information and belief, Wilkinson knew of, never reported, and aided and abetted the misappropriation of campaign funds by Broussard. Upon information and belief, the Defendants and/or their co-conspirators, known and unknown, have made campaign

donations to Aaron Broussard, Parish President Campaign Committee, Inc.

177.

Broussard, during his tenure as Parish President, received other things of value from Jefferson Parish contractors, including dinners, gifts, and other things of value totaling thousands of dollars.

178.

The Louisiana Board of Ethics has charged Broussard with a violation of La. R.S. 42:1111A for receiving an improper thing of value from a Jefferson Parish employee.

179.

The acts alleged above constitute a conspiracy, a common plan and pattern of conduct, and a pattern of racketeering. The abuse of their offices by the acceptance of bribes, through various mechanisms, all enriched Broussard, Whitmer and Wilkinson.

180.

Broussard benefitted, including by his family collecting hundreds of thousands of dollars in unearned salary due to Parker's employment, and tens of thousands of dollars in bribes from his bribe payor(s).

181.

Wilkinson benefitted from the conspiracy he had with Broussard as he enjoyed, among other things, Broussard's retention as Parish Attorney upon his taking office, and an approximately 84% increase in salary during Broussard's tenure.

182.

Upon information and belief, Whitmer benefitted, knew of, failed to report, and aided and abetted some or all of the above-described acts of malfeasance.

183.

Whitmer benefitted from the conspiracy he had with Broussard as he enjoyed, among other things, Broussard's retention as CAO upon his taking office, and monies made through the sale of insurance by Lagniappe Industries, LLC, of which Whitmer and his wife were owners.



**Fraudulent Misrepresentations and Concealment**

184.

Defendants and their co-conspirators, known and unknown, acted in a manner designed to actively conceal their participation in the anti-competitive and unlawful scheme described above.

185.

Defendants' unlawful payments, for example, were by their very nature not disclosed to the public. In many cases, Defendants acted through proxies, such as co-conspirator government officials illicitly paid for their services, including Mouton, Whitmer, and Broussard, that were not known to be connected to the Defendants. In fact, these public officials, although working on behalf of Defendants, held themselves out as performing their public duties.

186.

Most, if not all, of the unlawful payments made to influence public officials to favor the Defendants, and disadvantage Petitioners' environmentally-friendly waste disposal alternatives and competing landfills, were made by co-conspirators, including Shadow Lake, but not directly by the Defendants. Similarly, the phone banks, lawsuits, media broadcast payola, and other efforts to foster public opposition to competitor landfills and suppress opposition to the River Birch landfill and River Birch contract were not conducted under the name of the Defendants.

187.

The concealment of the Defendants' role in the conduct described above was part and parcel of the effectiveness of the conspiracy. For example, even when questioned directly about Defendants' role in orchestrating the opposition campaign to the operation of the Chef Menteur, Old Gentilly, and Two Rivers landfills, Mouton lied to federal investigators about any connection between his conduct and Defendants Ward, Heebe, or River Birch. Mouton claimed he had received over \$450,000.00 in payments from the Defendants for "air conditioning" repair work. In fact, Mouton faced a federal criminal charge for lying to federal investigators regarding his connection to the Defendants and their role in his efforts to prevent the operations of the Chef Menteur, Old Gentilly, and Two Rivers landfills. Those lies were made in furtherance of the conspiracy launched

by Defendants, and intentionally and knowingly obstructed ongoing federal criminal investigations, constituting obstruction of justice in furtherance of the conspiracy.

188.

On February 12, 2010, Henry Mouton, to conceal his relationship with the co-conspirators, lied to FBI special agents when he said a wealthy friend from Mobile, Alabama provided a helicopter and a pilot for Mouton to fly over the Old Gentilly landfill and obtain aerial video and photographs, when in truth and fact, a co-conspirator actually paid for the helicopter rental. Mouton further lied to FBI agents claiming not to have a business relationship with any landfill and said that he had not received any compensation from any landfill when in truth he did know a director of a landfill company and he had received compensation from companies closely related to a landfill company owned by Defendants and/or their co-conspirators.

189.

Co-conspirators, associates and/or agents of Defendants prosecuted SLAPP lawsuits against the *Times-Picayune*, Fox 8 News, Anne Marie Vandenweghe, and bloggers, in foreign countries that lack the same constitutional protection of free speech as guaranteed by the laws of the State Louisiana and the United States of America, in an effort to silence investigation and to conceal the acts of the Defendants and their co-conspirators, committing libel tourism to thwart the protections of, and in contravention of, the First Amendment to United States Constitution, Article I, Section 7 of the Louisiana Constitution, the federal SPEECH Act 28 U.S.C. 4101-4105, the Louisiana Rachel's Law Louisiana Code of Civil Procedure Article 2542, and the Louisiana American Laws for American Courts Act La. R.S. 9:6000. Said lawsuits include the suits: entitled *Trout Point Lodge, Ltd, A Nova Scotia Company, Vaughn Perret and Charles Leary v. Doug K. Handshoe* and numbered 12-cv-90LG-JMR on the docket of the United States District Court for the Southern District of Mississippi; and, *Trout Point Lodge, Ltd, A Nova Scotia Company, Vaughn Perret and Charles Leary v. Louisiana Media Company, LLC*, and numbered Yar. No. 328248 on the docket of the Supreme Court of Nova Scotia.

190.

Defendants also orchestrated their unlawful payments to co-conspirator Jefferson Parish officials in a manner designed to evade public knowledge. No requirement to terminate the Waste Management contract, accept all of the Parish waste, or to close the Jefferson Parish landfill was included in the RFP. Moreover, upon information and belief, the pay-offs to co-conspirator Jefferson Parish officials, including Broussard, Whitmer and Wilkinson, for the exclusive landfill contract were accomplished via a *quid pro quo* award of the Shadow Lake insurance business to Lagniappe Industries, LLC connected with Whitmer and Broussard. Some members of the Jefferson Parish council that awarded the River Birch contract have expressly stated that they were unaware of the financial connections and corrupting influence between Defendants and co-conspirators Broussard and Whitmer, and deceived about the alleged benefits of that contract at the time it was awarded. Further, Defendants' co-conspirators Broussard and Whitmer failed to disclose or recuse themselves from conflicts of interest, as required by La. R.S. 42:1112.

191.

For years after the awarding of the River Birch contract, Petitioners did not know, and could not be expected to know in the exercise of reasonable diligence, of the Defendants' unlawful and anti-competitive conspiracies and acts taken in opposition to Petitioners' business interests.

192.

On May 18, 2012, the Louisiana Board of Ethics filed a Petition in the matter entitled *Louisiana Board of Ethics Acting in its Capacity as the Supervisory Committee on Campaign Finance Disclosure versus River Birch, Inc., Westside Construction Services, Inc., Dominick J. Fazio, Big Bang Properties, LLC, Anne's Properties, LLC, Dangle & Associates, LLC, B&C Contractors, LLC, Waterfront Properties, LLC, Ring Associates, LLC and N.C. General Contractors, Inc.* and numbered 715-029 on the docket of the 24<sup>th</sup> Judicial District Court for Parish of Jefferson. In the Petition the Board of Ethics alleges, *inter alia*, that "River Birch knowingly and willfully gave, furnished or contributed money to or in support of candidates and political committees, through or in the name of another, directly, or indirectly, in violation of La. R.S.

18:1505.2A.” Upon information and belief, the allegations of the *Petition* are adopted herein as if copied *in extenso*. See *Petition*, attached hereto as Exhibit “P.”

193.

Upon information and belief, Defendants made “straw man” contributions to politicians and/or elected officials who had the ability, or potentially had the ability, to influence the waste disposal industry, through official acts and otherwise, including, *inter alia*, Broussard, Byron Lee, Cynthia Willard-Lewis, Jennifer Sneed and Ray Nagin.

194.

Upon information and belief, Defendants made “straw man” contributions not only to avoid campaign contribution limits, but also to conceal their donations and relationships.

**Playing Monopoly With Real Money**

195.

The landfill disposal of C&D waste is a relevant product market, as is the market or sub-market for the disposal of post-Hurricane Katrina debris in enhanced C&D disposal sites. C&D disposal is subject to regulation under Louisiana state law, and only those landfills permitted to accept C&D waste (Type I, II, and III) may do so. Because waste streams from the Katrina debris removal contained C&D waste that was commingled with other waste streams (e.g., carpet, furniture), Emergency Orders were issued to expand Louisiana’s definition of C&D debris to accommodate the full range of Katrina storm debris. Given the declaration of emergency following Katrina, the LDEQ and/or the City of New Orleans also used their Emergency Orders to approve certain “enhanced” C&D landfills for the purpose of expediting the disposal of debris from certain residential structures demolished on governmental orders.

196.

Defendant HWY-90, LLC possesses substantial market power in the C&D landfill disposal market for the Greater New Orleans Area. Defendants own and operate one of the few permitted C&D landfills serving the Greater New Orleans Area and one of only three C&D landfills specifically authorized to accept the full range of Hurricane Katrina debris as an “enhanced” C&D

disposal site. That landfill contains the greatest permitted size and has the greatest remaining capacity. During the period in question for post-Katrina debris clean-up, the principal competition for the HWY-90 landfill came from the Chef Menteur and Old Gentilly landfills in East New Orleans and the Two Rivers landfill in Catahoula Parish.

197.

As described in the original petition and this amending petition, through the unlawful conspiracy and actions of the Defendants and their co-conspirators, including Mouton, the Defendants sought to place unreasonable restraints and conditions on the operation of at least the Chef Menteur, Old Gentilly, and Two Rivers landfills, with the goal of closing or preventing the operation of the landfills. By late 2006, the River Birch Defendants had succeeded in closing the Chef Menteur landfill and blocked the operation of both the Old Gentilly and Two Rivers landfills.

198.

The Defendants' conduct has restricted choice and negatively impacted the consumers of C&D landfill disposal services in the Greater New Orleans Area, including those services purchased for storm debris disposal post-Katrina by FEMA.

199.

The Defendants have attempted to monopolize the municipal ("MSW") landfill disposal market for the Greater New Orleans Area.

200.

Defendant River Birch possesses substantial market power in the MSW landfill disposal market for the Greater New Orleans Area. According to the LDEQ, Defendants own and operate one of the few permitted MSW landfills serving the Greater New Orleans Area and the only privately-owned landfill in that region. The River Birch landfill disposes of more MSW and commercial waste than any landfill serving New Orleans by an order of magnitude. The River Birch landfill also contains the greatest remaining capacity of any Type I or II landfill in the entire state.

201.

During the period in question, the River Birch landfill competed with the Jefferson Parish

landfill for MSW disposal from areas within Jefferson Parish, and for commercial generators in Jefferson Parish and surrounding areas.

202.

The landfill disposal of MSW is a relevant product market. MSW disposal is subject to regulation under Louisiana state law, and only those landfills permitted to accept MSW (Type I and II landfills) may do so.

203.

C&D landfills are not reasonably interchangeable with other landfills, such as Type I and II landfills that are capable of accepting industrial waste or MSW. MSW may only be disposed of in a Type I or II landfill. C&D landfills lack liners and other protections necessary to prevent leachates, as would be required to dispose of MSW.

204.

Although C&D may be disposed of in a Type I or II landfill, typically, it would not be economical to do so. Given the additional regulations, permits, and construction and operational requirements associated with Type I and II landfills, the disposal fees (or “tipping fees”) associated with such waste disposal is significantly greater than that to dispose of C&D. A ten percent (10%) increase in the price of disposal at a C&D landfill would not cause customers to dispose of C&D waste at an MSW landfill of equal distance.

205.

The United States Department of Justice has recognized landfills for the disposal of C&D and for the disposal of MSW as separate relevant products. The LDEQ also tracks MSW landfills and C&D landfills separately and subjects them to different regulations. Highlighting the differences between C&D landfills and MSW landfills, Defendants operate both a C&D Type III landfill (the “HWY-90” landfill) and an MSW Type II landfill (“River Birch”) on adjacent parcels of land in Avondale, Louisiana. Woody waste may be disposed of at both C&D landfills and MSW landfills.

206.

The Greater New Orleans Area is a relevant geographic market for the disposal of C&D,

MSW, and woody waste. The New Orleans market consists of Orleans, Jefferson, Plaquemines and St. Tammany Parishes and the immediately surrounding areas.

207.

As described in the original petition and this amending petition, including through the corrupt and unlawful actions of the Defendants and their co-conspirators, known and unknown, River Birch entered an illegally-obtained contract with Jefferson Parish that would require Jefferson Parish to close its own landfill then operated by Waste Management and eliminate competition from that landfill.

208.

The Defendants' conduct has restricted choice and negatively impacted the consumers of MSW landfill disposal services in the Greater New Orleans Area.

209.

The transportation of C&D, MSW, and woody waste is bulky and expensive. Moreover, landfills in Louisiana and surrounding states are extensively regulated, including with respect to the transportation or disposal of vegetation and woody waste from the Greater New Orleans Area ostensibly to prevent the spread of Formosa termite infestation, which would have included all of the Katrina-related woody waste generated in the Greater New Orleans Area, and all of the woody waste addressed in the original version of RFP 176. Additionally, transfer stations, which would help reduce the transportation costs to more distant landfills are prohibited. As a result, landfills that are located at more distant locations were and are not realistic alternatives, and do not provide a meaningful constraint on the pricing of New Orleans area landfills. Moreover, many landfills in other parts of Louisiana are publicly-owned and do not accept waste from outside their Parish. The United States Department of Justice has recognized that markets for landfill disposal are typically limited to those in or surrounding a metropolitan statistical area.

210.

Entry into the markets for C&D landfill disposal (Type III landfills) and for MSW landfill disposal (Type I or II) in the Greater New Orleans Area is difficult and time consuming. The landfill

siting and permitting process is political in nature and heavily regulated, and thus, it is frequently the subject of organized opposition and litigation. It would take many years to find suitable land, obtain the necessary permits, and construct a new landfill. This process takes substantially longer than two years.

211.

The market for alternative, environmentally-friendly disposal of woody waste, including Type III Wood Waste Separation and Processing, in the Greater New Orleans Area is a relevant product market. By hijacking RFP 176, the Defendants and their co-conspirators, known and unknown, prevented Petitioners from meaningfully developing an alternative, environmentally-friendly disposal method for woody waste. Further, by closing, and conspiring to close, landfills other than landfills owned by Defendants, Defendants prevented Petitioners from providing alternative, environmentally-friendly disposal of woody waste at those landfills. Entry into the markets for alternative, environmentally-friendly disposal of woody waste is difficult and time consuming, requiring capital investment, permitting and competition with owners of landfills who stand to profit more from just burying waste. Defendants conspired to, and effectively did, destroy the entire market for alternative, environmentally-friendly disposal of woody waste in the Greater New Orleans Area, restricting choice and negatively impacting the consumers of landfill disposal services in the Greater New Orleans Area

212.

The Defendants have conspired to monopolize the C&D landfill disposal market and the MSW landfill disposal market for the Greater New Orleans Area.

213.

Defendants River Birch and HWY-90, LLC possess substantial market power in the C&D and MSW landfill disposal markets for the Greater New Orleans Area.

214.

During the period from 2006 to present, the Defendants have conspired with others, including public officials, known and unknown, to take unlawful and anticompetitive actions designed and



intended to disrupt, disadvantage, and eliminate competing landfills serving or capable of serving the Greater New Orleans Area, as well as prevent the alternative, environmentally-friendly disposal of woody waste at those landfills. Landfills targeted for anti-competitive acts include at least the Chef Menteur, Old Gentilly, Jefferson Parish, and Two Rivers landfills. The Defendants may also have targeted other competing landfills including, but not limited to, Woodside landfill, to prevent them from serving as disposal facilities for the Greater New Orleans Area.

215.

The Defendants' conduct has restricted choice and negatively impacted the consumers of C&D and MSW landfill disposal services in the Greater New Orleans Area.

216.

By the conspiracies and acts alleged in the original petition and amending petition, the Defendants conspired to, and damaged and injured competition in the markets of C&D, MSW, woody waste and environmentally-friendly woody waste disposal in the Greater New Orleans Area, all in violation of La. R.S. 51:122.

217.

The conspiracies and acts alleged in the original petition and amending petition damaged and injured competition in the markets of C&D, MSW, woody waste and environmentally-friendly woody waste disposal in the Greater New Orleans Area, such that in 2009, 2010 and 2011, the River Birch landfill took in about 1.2 million tons of trash each year, receiving approximately \$36 million in tipping fees per year—almost twice as much as its nearest rival

218.

As a result of Defendants' unlawful conduct as set forth in the original petition and this amending petition, Petitioners have suffered financial injury including lost profits, lost business opportunity, and costs expending pursuing hijacked RFP 176.

**Federal RICO**

219.

The above-described acts by Defendants and their co-conspirators, known and unknown,

constitute the basis for Petitioners to state a claim under the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”). 18 U.S.C. Section 1961, *et seq.*

220.

Defendants, Frederick R. Heebe, Albert J. Ward, Jr., River Birch Incorporated, and HWY-90 LLC are “persons” within the meaning of 18 U.S.C. Section 1961(3).

221.

In the alternative, Defendants, Frederick R. Heebe and Albert J. Ward, Jr. are “persons” within the meaning of 18 U.S.C. Section 1961(3) for purposes of 18 U.S.C. Section 1962(c).

222.

The enterprise for purposes of 18 U.S.C. Sections 1961(3) and 1962(b), (c) and (d) is an association-in-fact of some or all of the co-conspirators listed in Paragraphs 94 to 100 above. Defendants utilized co-conspirator legal entities, including those under the umbrella of Shadow Lake, to implement their unlawful scheme and to make the unlawful bribes to co-conspirator public officials. Upon information and belief, Defendants utilized multiple, separate legal entities operating under the Shadow Lake umbrella, including the companies known as “W. Inc.,” “W.C.S. Inc.,” “D.A.” and “A.P. LLC,” and/or other entities listed above as co-conspirators in Paragraphs 95 to 100. Upon information and belief, the company known as “W. Inc.” is Willow, Inc; the company known as “W.C.S. Inc.” is Westside Construction Services, Inc.; the company known as “D.A.” is Dangle & Associates, LLC; and, the company known as “A.P. LLC” is Anne’s Properties, LLC.

223.

In the alternative, the enterprise for purposes of 18 U.S.C. Sections 1961(3) and 1962(b), (c) and (d) is an association-in-fact of River Birch Incorporated and HWY-90, LLC and some or all of the co-conspirators listed in Paragraphs 94 to 100 above.

224.

In the alternative, the enterprise for purposes of 18 U.S.C. Sections 1961(3) and 1962(b), (c) and (d) is an association-in-fact of Broussard, Whitmer, Wilkinson and Jefferson Parish Government. In the alternative, the enterprise for purposes of 18 U.S.C. Sections 1961(3) and

1962(b), (c) and (d) is Jefferson Parish Government. The Defendants, directly and through co-conspirators, including entities related to Shadow Lake, caused Broussard, Whitmer and Wilkinson, and at their direction, Jefferson Parish Government, to unlawfully hijack an RFP, manipulate the RFP process, misrepresent facts to the Jefferson Parish Council and public, file and pursue baseless litigation, and obstruct the proper response to a federal subpoena.

225.

The Defendants worked together to share costs, information, resources, strategies and the fruits of their predicate acts. The association-in-fact enterprise of Defendants and co-conspirators is an informal, ongoing relationship which functions as a continuing unit, pursuing a course of conduct (i.e., the predicate crimes listed herein), and with a common or shared purpose (i.e., restraining trade in the landfill business in the Greater New Orleans Area) and continuity of structure and personnel. The Defendants understood, and took acts in furtherance of, as described in the original petition and this amending petition, the common and shared purpose.

226.

Defendants, which engage in interstate commerce, have conducted for years, and continue to conduct, the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. Section 1962(c) and have conspired to violate Sections 1962(a) and (c) in violation of Section 1962(d).

227.

Defendants engaged in and continue to engage in the described pattern of racketeering activities affecting interstate commerce, in violation of 18 U.S.C. Section 1962(b). Defendants, Petitioners, affected competitors of Defendants, and the Parish of Jefferson, all engage in, and/or affect, interstate commerce. The racketeering activities affected interstate commerce through the impact on landfill disposal competition among those landfills serving the Greater New Orleans Area. Further, the Petitioners, affected competitors of Defendants, and the Parish of Jefferson, all employed equipment, such as trucks, tractors, burners and other equipment, acquired and transported in interstate commerce, some of which, because of the actions of Defendants, were redeployed to

other locations outside of Louisiana. Additionally, the Defendants used and/or directed co-conspirators to use the interstate mail and/or wires as part of the pattern of racketeering activity. Also, the Defendants and their co-conspirators have diverted local and national resources of the FBI, the U.S. Department of Justice, the EPA, and the U.S. Army Corps of Engineers.

228.

All Defendants have violated § 1962(d), inasmuch as they knowingly, intentionally, and unlawfully, aiding and abetting each other, conspired to: (a) acquire or maintain, directly or indirectly, any interest in or control of any of the enterprise(s) heretofore described through the pattern of racketeering activity described in the original, and this amending, petition; and (b) conduct and participate, directly or indirectly, in the conduct of the affairs of the enterprise(s), through the pattern of racketeering activity described in the original, and this amending, petition.

229.

Defendants and their co-conspirators, known and unknown, committed the predicate offenses of conspiracy to solicit and give bribes to a public official; wire fraud; mail fraud; money laundering; engaging in monetary transactions in property derived from specified unlawful activity; obstruction of justice; bribery of a public official; and corrupt influencing, under federal and/or state laws, all as described in the original, and this amending, petition, all amounting to continuous unlawful activity. Title 18 United States Code Sections 201, 1341, 1343, 1503, 1510, 1956 and 1957; La. R.S. 14:14:118 and 120.

230.

The multiple misrepresentations described in the original, and this amending, petition, constitute "false or fraudulent pretenses, representations or promises" within the meaning of the mail fraud (18 U.S.C. §1341) and wire fraud (18 U.S.C. §1343) provisions.

231.

Bribery of public officials, under both state and federal laws, is a specifically enumerated predicate crime under civil RICO. As outlined above, Defendants and their co-conspirators, have paid or arranged bribes of public officials, by giving things of value, over a period of many years,

starting at least as early as 2005, with the intent to influence their conduct in relation to their positions, employment, and duties in violation of La. R.S. § 14:118.. 18 U.S.C. Section 1962(C); La. R.S. § 14:118. Public official co-conspirators, known and unknown, including, upon information and belief, Mouton, Whitmer, Broussard, and at least one former member of the Jefferson Parish Council, have also repeatedly accepted bribes. In many cases, the Defendants and each of the co-conspirators, known and unknown, understood and took acts in furtherance of the Defendants' goals. 18 U.S.C. Section 1962(D). In many cases, those acts were detrimental to Petitioners. But for the corrupt influence and unlawful and undisclosed payments and financial benefits provided by the Defendants to these co-conspirators, the Jefferson Parish Council would not have entered into, and acted to effectuate, the River Birch contracts.

232.

Defendants and/or their co-conspirators engaged in mail and wire fraud with respect to the fraudulent communications of Mouton and the rigging of the bidding and contracting process for the disposal of waste within Jefferson Parish.

233.

The Defendants' and/or their co-conspirators' innumerable conspiracies, racketeering activities and/or predicate acts are related and also amount to a continuous unlawful activity.

234.

Mouton alone was indicted for accepting more than 100 separate illegal and undisclosed payments from Defendants and/or their co-conspirators worth more than \$450,000.00 over a period of several years. Upon information and belief, other public officials who have received improper and undisclosed *quid pro quo* payments include at least Jefferson Parish officials Broussard, Whitmer, and Wilkinson. In each case, the illicit payments were made for the purpose of allowing the Defendants to obtain a monopoly on the disposal of Jefferson Parish waste and dominate the Greater New Orleans Area landfill disposal markets by limiting competition, both from other landfills and from alternative and environmentally-friendly methods of woody waste disposal.

235.

These predicate acts are related in the sense that they have the same purpose (to obtain a monopoly on the disposal of Jefferson Parish waste and dominate the Greater New Orleans Area landfill disposal markets by limiting competition, both from other landfills and from alternative and environmentally-friendly methods of woody waste disposal); result (illegal hijacking of public contracts and closure of competitor landfills); victims (Petitioners and other competitors of Defendants); method of commission (the predicate crimes, including bribery); and are otherwise interrelated by distinguishing characteristics and are not isolated events, since they were carried out for the same purpose.

236.

The association-in-fact of some or all of the co-conspirators, including Shadow Lake and its associated entities, and/or the association-in-fact of River Birch Incorporated and HWY-90, LLC and some or all of the co-conspirators, and/or the association-in-fact of Broussard, Whitmer, Wilkinson and Jefferson Parish Government, and/or Jefferson Parish Government, constitute enterprise(s) as the co-conspirator businesses existed beyond their racketeering, fronting as legitimate waste disposal businesses, and as Jefferson Parish Government, with Broussard, Whitmer, Wilkinson as high officials, existed as a legitimate political subdivision of the State of Louisiana, existing beyond the corrupt activities of Broussard, Whitmer, Wilkinson. The co-conspirator businesses entities maintained an ongoing structure of persons associated over time, joined in purpose, and organized in a manner amenable to hierarchical and consensual decision making. Jefferson Parish Government also maintained an ongoing structure of persons associated over time, joined in purpose, and organized in a manner amenable to hierarchical and consensual decision making.

237.

The numerous unlawful conspiracies and acts described in the original, and this amending, petition constitute a pattern of racketeering activity designed to enrich Defendants by seizing the Jefferson Parish waste disposal business, and restraining competition in the waste disposal business,

as well as enrich Defendants' public actor co-conspirators, known and unknown, through corruption and malfeasance. Although it may be difficult to identify every coupling in the orgy of monopolizing greed and public corruption thrown by Defendants and their co-conspirators, there clearly existed a pattern of racketeering activity.

238.

The predicate acts are closely intertwined as far as actors, goals, nature, functioning and structure of the operations described in the original, and this amending, petition.

239.

The continuity and relatedness of these racketeering activities constitute a pattern of racketeering activities within the meaning of 18 U.S.C. § 1961(5).

240.

Defendants' corrupt and unlawful conduct was targeted, in part, at Petitioners, as well as other common victims, including competitor landfills and the taxpayers of Orleans and Jefferson Parishes. The bribes were intended, and succeeded, in wresting a Jefferson Parish contract from Petitioners and awarding the contract to Defendants, as well as closing other landfills at which Petitioners could have employed their alternative, environmentally-friendly method of woody waste disposal.

241.

As a result of Defendants' unlawful conduct as set forth in the original, and this amending, petition, Petitioners have suffered financial injury, including lost profits, lost business opportunities, and expenditures in connection with pursuit of the stolen contract.

242.

Petitioners continued to suffer financial injury through the attempts of Defendants to terminate the Waste Management-Jefferson Parish Contract. Petitioners had no possible opportunity to reduce waste in Jefferson Parish while Jefferson Parish, at the behest of the Defendants and their co-conspirators, sought implementation of the River Birch contract. Petitioners continue to suffer financial injury while other landfills, including Chef Menteur and Old Gentilly, remain closed, and

other potential landfill owners and operators are discouraged from entering such a corrupted market.

**Louisiana RICO**

243.

The acts by Defendants and their co-conspirators, known and unknown, described in the original petition, and this amending petition, constitute the basis for Petitioners to state a claim under the Louisiana Racketeer Influenced and Corrupt Organizations Act ("RICO"). La. R.S. 15:1351, *et seq.*

244.

Defendants and their co-conspirators, known and unknown, conspired to, and/or committed, the predicate offense of theft. La. R.S. 15:1352(A)(10) and La. R.S. 14:67.

245.

Defendants and their co-conspirators, known and unknown, engaged in multiple incidents of racketeering activity, to wit, theft, that had the same or similar intents, results, principals, victims, or methods of commission within five (5) years of each other. Defendants and their co-conspirators, known and unknown, engaged in multiple acts of theft, including: (1) the misappropriation and taking, and/or attempted misappropriation and taking, of contractual opportunities and rights of Petitioners and Waste Management; (2) the diversion of profitable waste streams to River Birch and HWY-90 landfills; (3) the misappropriation and taking, and/or attempted misappropriation and taking, of public funds; and/or (4) the misappropriation and taking, and/or attempted misappropriation and taking, of campaign funds.

246.

Petitioners were injured by reason of a violation of La. R.S. 15:1353 committed by Defendants and/or their co-conspirators, known and unknown, suffering actual damages.

247.

Defendants' and their co-conspirators, known and unknown, racketeering activities were conducted through a pattern of acts and transactions which occurred and/or had their effect within the State of Louisiana.



**Tortious Conduct**

248.

Upon information and belief, Defendants and their co-conspirators, known and unknown, have engaged in actions which are unethical, oppressive, unscrupulous, and substantially injurious to Concrete Busters of Louisiana, Inc. and Waste Remediation of Plaquemines, LLC, in that they:

- a) violated Jefferson Parish Ordinance 21587;
- b) violated the Louisiana Code of Governmental Ethics, including La. R.S. 42:1112;
- c) violated La. R.S. 33:4169.1(A)(2);
- d) violated La. R.S. 18:1483(6)(a);
- e) violated La. R.S. 18:1483(9)(a);
- f) violated La. R.S. 18:1505.2(1)(1);
- g) violated La. R.S. 18:1505.2A;
- h) forged and maintained false public records;
- i) injured public records;
- j) obstructed justice;
- k) committed misprison of felonies;
- l) violated 47 U.S.C. 317;
- m) violated 47 CFR 73:1212;
- n) violated 18 USC 666(a)(1)(A);
- o) violated 18 USC 666;
- p) committed libel tourism to thwart the protections of, and in contravention of, the First Amendment to United States Constitution, Article I, Section 7 of the Louisiana Constitution, the federal SPEECH Act 28 U.S.C. 4101-4105, the Louisiana Rachel's Law Louisiana Code of Civil Procedure Article 2542, and the Louisiana American Laws for American Courts Act La. R.S. 9:6000; and
- q) undertook such other acts or omissions which shall be shown, including without limitation and on information and belief which may be in violation of La. R.S. 14:73, 14:118(A)(1) and 14:120.

249.

The Defendants had a duty of fair dealing to Petitioners, a duty not to negligently,

intentionally, and/or fraudulently misrepresent, conceal, and/or fail to or purposely not disclose information to Petitioners or other third-parties in transactions or other matters in which the Defendants had a pecuniary interest, a duty to not conspire with and/or aid and abet others to act in tortious, intentional, and/or unlawful ways to injure or damage Petitioners, a duty not to tortiously, intentionally, or criminally interfere with Petitioners' business and/or contractual relations, a duty not to abuse its rights to compete in the marketplace by tortious, intentional, and/or unlawful conduct predominately motivated to harm Petitioners and other business competitors and against all moral rules, good faith, and elementary fairness expected in a civilized and law-abiding society, a duty not to conduct a single-business enterprise and/or a racketeering enterprise to perpetuate tortious, intentional, and/or unlawful wrongs against Petitioners, a duty not to commit unfair and deceptive trade practices against Petitioners, a duty not to convert and interfere with Petitioner's rights to bid on RFP 176, a duty not to unjustly enrich themselves at the expense and impoverishment of Petitioners due to the tortious, intentional, and/or unlawful scheme conducted covertly and surreptitiously by the Defendants, and a duty not to commit crimes such as bribery, lying to federal and state public officials, mail fraud, and/or wire fraud to injure and damage Petitioners and other business competitors.

250.

The tortious, surreptitious, unethical, and unlawful conduct, including but not limited to bribery, lying to state and federal officials, and/or mail/wire fraud, of the Defendants breached their duty to exercise any level of care, much less reasonable care, under the circumstances.

251.

Based on the tortious, unethical, surreptitious, and/or unlawful conduct of the Defendants outlined herein, they are liable to Petitioners based on their legal duty in the course of their business dealings and other matters in which they had a pecuniary interest to supply correct and not false or misleading information, a duty which they breached by affirmative misrepresentation, concealment and non/disclosure, as well as by omission, causing Petitioners to sustain losses and/or damages.

252.

Based on the tortious, deceitful, fraudulent, surreptitious, and/or unlawful conduct of the Defendants outlined herein, they are liable to Petitioners for intentional and/or fraudulent misrepresentation, concealment, and/or non-disclosure to Petitioners and other direct and/or third parties in transactions or other matters where the Defendants had a pecuniary interest and where there was a reason to expect that the misrepresentations and/or erroneous and fraudulent information would be relied upon, directly or indirectly, and influence the transactions at issue, including but not limited to conspiring to act in concert and/or aiding and abetting with the intent to commit and actively and willfully participating in the intentional, fraudulent, and/or unlawful conspiracy and venture, which was perpetuated with the intent to deceive and caused losses and/or damages to Petitioners.

253.

The tortious, deceitful, unethical, surreptitious, and/or unlawful conduct of the Defendants outlined above was taken with the predominant motive to cause harm to Petitioners and other business competitors in the market and against all moral rules, good faith, and elementary fairness, causing Petitioners losses and/or damages.

254.

Based on the tortious, unethical, surreptitious, and/or unlawful conduct of the Defendants outlined herein, they are liable to Petitioners for conversion due to the unlawful interference with the ownership or possession of the woody waste to be disposed by Petitioners, depriving Petitioners of their rights to a contract with Jefferson Parish.

255.

Based on the tortious, deceitful, fraudulent, surreptitious, and/or unlawful conduct of the Defendants outlined herein, they are liable to Petitioners for detrimental reliance under La. C.C. art. 1967 for their misrepresentations, concealments, and non-disclosures by conduct or purposeful omissions, which were justifiably relied upon by third-parties and those persons and/or entities charged with implementing the business of Jefferson Parish, all of which detrimentally affected

Petitioners.

**Continuing Tort and Course of Conduct**

256.

All of the above alleged acts and omissions continued and constituted a continuing tort and continuing course of conduct at least through the filing of the original petition.

257.

The injuries suffered by Petitioners caused by the acts and conspiracies alleged in the original petition and this amending petition continued at least through the filing of the original petition.

**Damages**

258.

Petitioners re-allege and re-aver the allegations of Paragraph 91 of the original Petition for Damages. Petitioners further allege and aver that as a consequence of the above-described actions of Heebe, Ward, River Birch and HWY-90, LLC, and/or their co-conspirators, in violation of state and federal laws, Petitioners Concrete Busters of Louisiana, Inc. and Waste Remediation of Plaquemines, LLC are entitled to the following remedies:

- a) Recovery of actual damages, including expenses of bid application, lost profits, damage to business reputation, and loss of business opportunity, plus attorneys' fees and penalties, against Heebe, Ward, River Birch and HWY-90, LLC, *in solido*, for the unfair trade practices perpetrated by Heebe, Ward, River Birch and HWY-90, LLC, pursuant to La. R.S. 51:1409;
- b) Recovery of actual damages, including expenses of bid application, lost profits, damage to business reputation, and loss of business opportunity, plus attorneys' fees and threefold damages, against Heebe, Ward, River Birch and HWY-90, LLC, its corporate officers, directors, and/or agents, *in solido*, for the uncompetitive practices perpetrated by Heebe, Ward, River Birch and HWY-90, LLC, pursuant to La. R.S. 51:137;
- c) Recovery of actual damages, including expenses of bid application, lost profits,

damage to business reputation, and loss of business opportunity, against Heebe, Ward, River Birch and HWY-90, LLC, *in solido*, pursuant to Louisiana Civil Code Articles 1953, 1767, 2298, 2315, 2316 and 2324;

- d) Recovery of damages, including expenses of bid application, lost profits, damage to business reputation, and loss of business opportunity, plus attorneys' fees and threefold damages, against Heebe, Ward, River Birch and HWY-90, LLC, its corporate officers, directors, and/or agents, *in solido*, for claims asserted under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. Section 1961, et seq.;
- e) Recovery of actual damages, including expenses of bid application, lost profits, damage to business reputation, and loss of business opportunity, plus attorneys' fees in the trial and appellate courts, costs of investigation and litigation reasonably incurred, and threefold damages, against Heebe, Ward, River Birch and HWY-90, LLC, its corporate officers, directors, and/or agents, *in solido*, for claims under the Louisiana Racketeer Influenced and Corrupt Organizations Act ("RICO") La. R.S. 15:1351, et seq.;
- f) Recovery of criminal and/or civil restitution; and
- g) Any other damages proven at trial or hearing of this matter.

259.

In accordance with Louisiana Civil Code Article 2324, Heebe, Ward, River Birch and HWY-90, LLC are solidarily liable with all the actors in the above unethical and illegal acts because, upon information and belief, Heebe, Ward, River Birch and HWY-90, LLC, knowing of said actions, and knowing that the actions were unethical and/or illegal, intentionally and/or willfully colluded with said actors for the benefit of Heebe, Ward, River Birch and HWY-90, LLC.

260.

Further, in accordance with the single business enterprise doctrine all of the Defendants are solidarily liable to Petitioners for the acts of all of the co-conspirator corporations and legal entities with which they formed a single business enterprise.

261.

Further, the corporate officers, directors and/or agents of River Birch and HWY-90, LLC, including Heebe and Ward, are individually and personally liable, *in solido*, pursuant to La. R.S. 51:126 and La. R.S. 12:95.

**WHEREFORE**, Concrete Busters of Louisiana, Inc. and Waste Remediation of Plaquemines, LLC pray that after due proceedings are had, there be a judgment herein in their favor and against Defendants Fred Heebe, Jim Ward, River Birch Incorporated and HWY-90, LLC, *in solido*, in an amount that is reasonable in the premises, including treble damages, together with attorneys' fees and costs of these proceedings, legal interest thereon from the date of judicial demand until paid, as well as any and all legal and equitable relief this Court deems appropriate.

Respectfully Submitted,



**RANDALL A. SMITH, T.A. (No. 2117)**  
**STEPHEN M. GELÉ (#22385)**

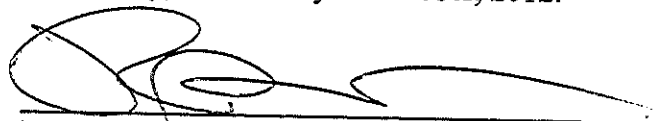
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to all counsel of record, via U.S. mail and/or hand delivery, this 4th day of October, 2012.



**RANDALL A. SMITH**