

CAUSE NO. 2017-52435

RUBICON GLOBAL, LLC	§	IN THE DISTRICT COURT OF
	§	
	§	
Counter-Claimant	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
WASTE CONNECTIONS OF	§	
TEXAS, LLC	§	
	§	
Counter-Defendant	§	125th JUDICIAL DISTRICT

**COUNTER-CLAIMANT’S ORIGINAL COUNTERCLAIM;
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION;
MOTION FOR EXPEDITED DISCOVERY; AND REQUEST FOR DISCLOSURES**

To the Honorable District Court:

Counterclaimant Rubicon Global, LLC (“Rubicon”) files this Counterclaim; Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction; Motion for Expedited Discovery; and Request for Disclosures against Counter-Defendant Waste Connections of Texas, LLC, (“Waste Connections”) and alleges as follows:

Rubicon, on behalf of its customer Sterling Plaza Merchant Association (“SPMA”) seeks a TRO requiring Waste Connections to cease its trespass on SPMA’s shopping center premises.

This Court should enter a temporary restraining order because:

- Waste Connections is trespassing and has refused to cease the trespass;
- Waste Connections’ trespass constitutes irreparable harm as a matter of law;
- Removal of Waste Connections’ dumpsters from SPMA’s premises is necessary to return the parties to the last peaceable status preceding Waste Connections’ trespass.

BACKGROUND

Rubicon is a new entrant into the trash services industry that is lowering customers' costs through consulting and management services that include negotiating for more competitive pricing from trash haulers like Waste Connections. Rather than compete in the marketplace, Waste Connections has chosen to engage in a campaign of harassment and litigation in the hopes of hurting or diminishing Rubicon's ability to negotiate lower trash hauling prices for its customers. As part of this strategy, Waste Connections refuses to timely remove its waste containers from the property of its former customers in order to interfere with Rubicon's ability to service the customers and to harass those customers into re-entering a service contract with Waste Connections.

Rubicon seeks injunctive relief in response to Waste Connections' most egregious efforts to date to harass Rubicon's customers in Houston, Texas. After Waste Connections ignored requests to remove its containers from SPMA's property, Rubicon arranged for the containers to be removed from SPMA's property and returned to Waste Connections. Then, nearly two weeks later, Waste Connections intentionally and without authorization returned the dumpsters to SPMA's property and placed them directly in front of the new waste hauler's dumpsters, thereby preventing the new hauler from being able to service its own dumpsters and SPMA. The Waste Connections dumpsters remain on SPMA's property despite repeated requests for their removal. Waste Connections should not be permitted to interfere with the property rights of local businesses in its efforts to prevent Rubicon from contracting with customers and negotiating lower rates for trash hauling.

FACTS

1. Rubicon is a technology company that connects waste hauling companies (who have trucks and dumpsters) with waste creators (businesses, large and small) who need services. Ex. 1, Affidavit of Marc Spiegel, at ¶ 3. Rubicon is changing the way that waste hauling and recycling services have traditionally been managed and provided in a way that is good for competition and customers.

2. The waste industry has traditionally been dominated by the “big three” waste haulers, Waste Connections, Republic Services, and Waste Management. Over the last several years, customers across the nation who are unhappy with the “big three” have hired Rubicon to manage their waste disposal needs. These customers include businesses large and small that need flexible solutions for their waste management. Ex. 1, Spiegel Aff., at ¶¶ 6, 10. Rubicon’s management services include right-sizing the customers’ waste services, negotiating better prices from haulers, and increasing customers’ flexibility on contract term-length. *Id.* In addition, like many wireless phone providers, Rubicon agrees – when necessary – to handle the termination of its customers’ old contracts and pays the resulting liquidated damages.

3. Waste Connections does not like the reality of Rubicon’s impact on pricing for trash hauling in the industry and, as a result, has taken steps to attempt to impede Rubicon’s business. For example, Waste Connections refuses to accept and sign for notices of termination that Rubicon sends by certified mail on behalf of customers who are canceling their services. Ex. 1, Spiegel Aff., at ¶ 11. Waste Connections refuses to accept payment of the liquidated damages or termination fees that Rubicon sends to Waste Connections on behalf of the customers. *Id.* Waste Connections refuses to remove its dumpsters from the premises of customers who have cancelled their services with Waste Connections, despite customer requests

to remove them. *Id.* Indeed, Waste Connections has even returned its unwanted dumpsters to customer locations after steps are taken to have the trespassing dumpsters removed on behalf of Rubicon's customers. *Id.*, at ¶ 12.

4. One new Rubicon customer in Houston, SPMA, currently has Waste Connections dumpsters on its property that Waste Connections refuses to remove (and indeed, that Waste Connections returned to SPMA's premises after they were removed, and has refused to remove despite receiving a written demand from the SPMA). Ex. 1, Spiegel Aff., at ¶¶ 13-16; *see also* Exs. 1-B. On behalf of SPMA, which has assigned to Rubicon its claim for trespass, Rubicon seeks a temporary restraining order to remove the unwanted dumpsters and prohibit Waste Connections from further trespass and from bringing the containers back against SPMA's wishes.

5. SPMA is a group of businesses that operate within a retail shopping center on Bellaire Boulevard in southwest Houston. In October 2014, SPMA hired Waste Connections to perform waste hauling at a fixed price for a five-year automatically renewing term.

6. In June 2017, SPMA was unhappy with Waste Connections' waste hauling services and decided to hire a new company to manage all of its waste hauling needs. Ex. 1, Spiegel Aff., at ¶ 13. SPMA contracted with Rubicon to manage all services regarding waste and recycling on behalf of SPMA at 9888 Bellaire Blvd, Houston, TX 77036. *Id.* As part of managing all such services, SPMA authorized Rubicon to "adjust services as needed, to cancel and award services, [and] to right-size, or remove/tow vendor equipment on the customer's premises at the owner's expense." *Id.*

7. On July 28, 2017, acting pursuant to authorization by SPMA, Rubicon sent Waste Connections a notice of termination of services for SPMA, effective August 6, 2017. Ex. 1,

Spiegel Aff., at ¶ 14. Rubicon advised Waste Connections that it needed to remove all Waste Connections equipment (dumpsters) from SPMA's premises by August 6, 2017; if not removed by that date, the equipment would be returned to Waste Connections at its expense. Ex. 1-A. Rubicon further asked Waste Connections to provide documentation concerning any liquidated damages that might be owed by SPMA as a result of the termination, so that Rubicon could remit payment. *Id.*

8. On August 9, 2017, Waste Connections called SPMA on the phone. SPMA informed Waste Connections that its contract was terminated and that SPMA had signed a contract with Rubicon.

9. Waste Connections did not remove its dumpsters from SPMA's property, as requested. Ex. 1, Spiegel Aff., at ¶ 15. As a result, on August 11, 2017, Rubicon (acting on behalf of SPMA) arranged for the removal of the Waste Connections' dumpsters from SPMA's premises and had them towed to Waste Connections' facility in Humble, Texas. *Id.*

10. Despite instructions that SPMA had terminated its contract with Waste Connections and did not want Waste Connections' dumpsters on its property, Waste Connections returned the dumpsters to 9888 Bellaire Blvd on or about August 23, 2017. Ex. 1, Spiegel Aff., at ¶ 16.

11. The old Waste Connections containers were placed in front of the new dumpsters owned by the hauling company hired by Rubicon to perform trash hauling for SPMA. Ex. 1, Spiegel Aff., at ¶ 16. Waste Connections intentionally placed its dumpsters in front of the new dumpsters arranged for by Rubicon so that the new hauler would not have access to its dumpsters and SPMA would be prevented from using a new waste hauling service. As a result, SPMA is unable to have waste removed from its premises unless it uses the Waste Connections dumpsters

-- that it has told Waste Connections it does not want on its property – which can only be serviced by Waste Connections, a company that the SPMA no longer wants hauling its waste. Ex. 1, Spiegel Aff., at ¶ 17; *see also* Ex. 2, Affidavit of Keith Kucifer, at ¶ 4, and Ex. 2-1 (photographs).

12. On September 5, 2017, SPMA sent a letter to Waste Connections stating:

Found on our property as of August 23, 2017, there are four Waste Connections containers next to Rubicon containers under our current contract, and have another four Waste Connections containers on the side of our back alley at the South end. Herein, we request that Waste Connections or successor if applicable immediately remove all of your containers. Currently ALL Waste Connections containers on our property are illegal. Should you fail to remove your containers within 24 hours after receiving this letter, SPMA will look to take legal action.

Ex. 1-B; *see also* Ex. 1, Spiegel Aff., at ¶ 16.

13. An attorney for Waste Connections responded to SPMA's letter on September 7, 2017. He did not indicate whether Waste Connections would cease its trespass and remove the dumpsters as requested by SPMA.

14. Rubicon, on behalf of SPMA, again repeated the request to have Waste Connections remove the offending dumpsters on September 14. Rubicon also offered, on behalf of SPMA, to allow Waste Connections to provide hauling and waste disposal services at the rate negotiated by Rubicon with the new hauler.

15. In response, Waste Connections wrongly insisted that it would not remove its dumpsters, and in fact would continue to bill SPMA under its canceled contract, until SPMA paid liquidated damages and until SPMA gave Waste Connections a copy of its contract with Rubicon. There is no basis to Waste Connections' position. Rubicon's contract with SPMA is a waste management consulting services contract, not a trash hauling contract. Nothing in Waste Connections' contract, which allows Waste Connections the right to match "competitive offers

made by third parties in writing for similar services,” entitles Waste Connections to receive a copy of Rubicon’s contract with SPMA. Providing “similar services” would require Waste Connections to work with Rubicon as the manager of SPMA’s waste management needs, a prospect that Waste Connections refuses to accept. SPMA complied with the right to match competitive pricing for similar services when Rubicon afforded Waste Connections the opportunity to provide waste hauling services at the same price as the new hauler, an offer that Waste Connections refused. Furthermore, payment of liquidated damages is not a precondition to termination of a contract or removal of trespassing containers. Waste Connections has no property interest or right in the SPMA’s property and no right to trespass pending the payment of liquidated damages.

16. Most importantly, issues of termination and alleged breach have nothing to do with, nor do they excuse, Waste Connections’ continuing trespass. SPMA has asked Waste Connections to remove the dumpsters several times and Waste Connections has refused to do so.

17. Currently, the Waste Connections dumpsters referenced in SPMA’s September 5 letter—requesting immediate removal—are still located on SPMA’s premises at 9888 Bellaire Blvd, without authorization. Ex. 2, Kucifer Aff., at ¶ 3; *see also* Ex. 2-1 (photographs).

18. The dumpsters that Waste Connections placed on SPMA’s premises are blocking the new waste containers that SPMA wishes to use, and are depriving SPMA of its use and enjoyment of the property at 9888 Bellaire Blvd., Houston, TX 77036. Ex. 1, Spiegel Aff., at ¶ 17; Ex. 2, Kucifer Aff., at ¶ 4. Redundant dumpsters are an eyesore and can cause customer complaints. Ex. 1, Spiegel Aff., at ¶ 17. Furthermore, there is standing water in at least one of the new dumpsters that Rubicon hired. Ex. 2, Kucifer Aff., at ¶ 6; *see also* Ex. 2-3. Because the new dumpsters are blocked by the dumpsters that Waste Connections placed there, they cannot

be emptied and the standing water cannot be removed by the new hauler. Ex. 1, Spiegel Aff., at ¶ 17. Standing water attracts mosquitos and mosquito-borne viruses. *Id.*

19. Moreover, the dumpsters that Waste Connections placed in front of the new Rubicon-arranged waste containers damage Rubicon's goodwill and reputation with its customers and contracted haulers because they interfere with Rubicon's ability to provide contracted services. Ex. 1, Spiegel Aff., at ¶ 17.

CAUSES OF ACTION

I. Trespass

20. All prior paragraphs are incorporated herein by reference.

21. SPMA has the lawful right to possession and/or use of the premises at 9888 Bellaire Blvd.

22. Waste Connections trespassed on SPMA's premises by physically, intentionally, voluntarily, and without authorization placing and leaving dumpsters on SPMA's premises. Any authorization that Waste Connections had to leave its dumpsters on the premises expired when SPMA cancelled its contract with Waste Connections or, at the latest, when SPMA sent its letter on September 5 requesting their immediate removal.

23. Waste Connections' trespass caused injury to SPMA's right of possession and right to use and enjoyment of the premises. SPMA transferred to Rubicon its right to sue for trespass. A copy of the assignment is attached as Exhibit 3. Rubicon seeks recovery of all available damages suffered as a result of Waste Connections' trespass.

REMEDIES

Temporary Restraining Order and Temporary Injunction

24. All prior paragraphs are incorporated herein by reference.

25. Pursuant to the common law and Texas Civil Practice and Remedies Code Section 65.011, Rubicon is entitled to injunctive relief. Absent injunctive relief, Waste Connections will continue its trespass on SPMA's premises by leaving its waste dumpsters there without authorization. Waste Connections should not be permitted to trespass while this case is litigated.

26. Additionally, absent injunctive relief, Waste Connections may conceal, fail to preserve, or otherwise make unavailable information, documents, and tangible items related to Waste Connections' trespass and tortious interference.

27. The harm that will result if the temporary restraining order does not issue is irreparable because Waste Connections will continue to deprive SPMA of the right of possession and the right of use and enjoyment of its premises. In addition, SPMA will be irreparably harmed if Waste Connections fails to preserve the complete evidence of its misdeeds.

28. There is no adequate remedy at law because damages cannot be calculated for Waste Connections' damage to SPMA's loss of the right of possession and use and enjoyment of its premises.

29. Accordingly, Rubicon requests a temporary restraining order to restore and preserve the status quo pending further order from this Court that:

- (1) requires Waste Connections to remove its dumpsters and equipment from the property located at 9888 Bellaire Blvd, Houston, Texas 77036;
- (2) prohibits Waste Connections from returning its dumpsters and equipment to the property located at 9888 Bellaire Blvd., Houston, Texas 77036 without prior written authorization by SPMA;
- (3) prohibits Waste Connections from destroying, altering, concealing or modifying any information, materials, documents, communications, or records (whether in electronic or hard copy form) in any way related to Waste Connections' relationship with SPMA and Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036;
- (4) requires Waste Connections to identify and segregate all documents or materials, whether in electronic or hard copy form, concerning its relationship with SPMA and

Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036, and to make such documents or materials available for inspection in unredacted form within seventy-two hours of the Court's order;

(5) requires Waste Connections to present a corporate representative for deposition at a mutually convenient time and place prior to October 6, 2017; and

(6) obligates Rubicon to conduct its review of Waste Connections' internal documents only through its outside and in-house counsel pending further Orders of this Court.

30. In addition, Rubicon requests this Court, following a hearing, to convert the temporary restraining order into a temporary injunction to remain in effect until final judgment is entered in this case.

31. Rubicon is willing to post a bond to secure the temporary restraining order. Rubicon suggests that reasonable bond would not exceed \$500.

32. Rubicon requests expedited discovery prior to a temporary injunction hearing, so that it may present further evidence therein and test the excuses, defenses, and assertions that may be offered by Waste Connections in an attempt to explain or excuse its conduct.

Permanent Injunction

33. All prior paragraphs are incorporated herein by reference.

34. For all the reasons stated above, Rubicon seeks further permanent injunctive relief prohibiting Waste Connections' continued wrongful and harmful conduct.

Damages

35. All prior paragraphs are incorporated herein by reference.

36. Rubicon seeks damages in an amount to be determined at trial.

Exemplary Damages

37. All prior paragraphs are incorporated herein by reference.

38. Pursuant to common law and Texas Civil Practice and Remedies Code Section 41.003, Rubicon is entitled to recover exemplary damages, because Waste Connections' misconduct was committed with malice or fraud.

DISCOVERY CONTROL PLAN

39. Rubicon intends to conduct discovery under Level 3 of Tex. R. Civ. P. 190.4.

40. Rubicon, on behalf of SPMA, seeks damages of less than \$100,000.

PRAYER FOR RELIEF

Rubicon requests this Court to award it a judgment for the following relief:

- A temporary restraining order that:
 - (1) requires Waste Connections to remove its dumpsters and equipment from the property located at 9888 Bellaire Blvd, Houston, Texas 77036;
 - (2) prohibits Waste Connections from returning its dumpsters and equipment to the property located at 9888 Bellaire Blvd., Houston, Texas 77036 without prior written authorization by SPMA
 - (3) prohibits Waste Connections from destroying, altering, concealing or modifying any information, materials, documents, communications, or records (whether in electronic or hard copy form) in any way related to Waste Connections' relationship with SPMA and Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036;
 - (4) requires Waste Connections to identify and segregate all documents or materials, whether in electronic or hard copy form, concerning its relationship with SPMA and Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036, and to make such documents or materials available for inspection in unredacted form within seventy-two hours of the Court's order;
 - (5) requires Waste Connections to present a corporate representative for deposition at a mutually convenient time and place prior to October 6, 2017; and
 - (6) obligates Rubicon to conduct its review of Waste Connections' internal documents only through its outside and in-house counsel pending further Orders of this Court.
- A temporary injunction based upon the temporary restraining order, to continue pending until final trial of this matter;

- A permanent injunction based upon the temporary restraining order and temporary injunction;
- Damages in an amount to be determined at trial;
- Exemplary damages;
- Court costs and interest; and
- All other relief, whether at law or in equity, to which Rubicon is justly entitled.

REQUEST FOR DISCLOSURES

Pursuant to Texas Rule of Civil Procedure 194, Rubicon requests disclosure of the information or material described in Rule 194.2 within 30 days of service of this request.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

/s/ Christina A. Bryan

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**ATTORNEYS FOR COUNTER-CLAIMANT
RUBICON GLOBAL, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the attorneys of record in the above referenced matter, on the 27th day of September, 2017.

/s/ Jarod R. Stewart

Jarod R. Stewart

EXHIBIT 1

CAUSE NO. 2017-52435

RUBICON GLOBAL, LLC	§	IN THE DISTRICT COURT OF
	§	
	§	
Counter-Claimant	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
WASTE CONNECTIONS OF	§	
TEXAS, LLC	§	
	§	
Counter-Defendant	§	125th JUDICIAL DISTRICT

AFFIDAVIT OF MARC SPIEGEL

BEFORE ME, the undersigned official, on this day appeared Marc Spiegel, who is personally known to me, and first being duly sworn to law upon his oath deposed and said:

1. My name is Marc Spiegel. I am fully competent to make this Affidavit, and all statements herein are within my personal knowledge and are true and correct.

2. I am one of the co-founders of Rubicon Global, LLC ("Rubicon").

3. Rubicon is a technology company that operates in the waste and recycling space. Founded in 2008, Rubicon offers a platform that connects waste hauling companies (who have trucks and dumpsters) with waste creators (typically businesses, large and small) who need services.

4. The waste and recycling industry is dominated by three very large companies—Waste Management, Republic Services, and Waste Connections (collectively "the Big Three"). There are many other companies that provide containers and hauling for both waste and recycling, but these are the dominant three.

5. Many customers that I have spoken with, especially small businesses, are not aware that they have a choice when it comes to waste disposal. These customers assume that they are required to use the waste hauling company that the business next door uses, i.e. one of the Big Three. Customers who hire one of the Big Three typically pay anywhere from 20% to 50% more for their waste and recycling services than if they were being performed by a smaller hauling company. Typically, customers also cannot make a change in hauling companies without being on the hook for liquidated damages or a termination fee that often amounts to thousands of dollars.

6. Rubicon is helping thousands of businesses across the United States change the way that their waste and recycling is managed and hauled, giving them greater flexibility and better prices. We consult with our customers about the size of containers needed, the frequency

of the pick-ups, and other ways to “right-size” their services. This consultation results in the customer obtaining a lower price for their waste management needs than what they are paying to one of the Big Three. It also allows for changes to the waste management if the customers’ needs change as the business expands or contracts.

7. Rubicon’s agreements with haulers allow Rubicon to make a change in hauling companies if the customer is not satisfied with the services it is receiving. The Big Three do not offer such flexibility.

8. Rubicon also helps smaller waste haulers through technology like in-cab monitoring that tracks vehicle progress, vehicle stops, and several other metrics to reduce miles driven, save money, and improve their overall hauling operations. Rubicon has created purchasing consortiums so that haulers, large and small, can reduce their expenses on buying tires, fuel, dumpsters, and insurance.

9. Until 2016, Rubicon actually hired Waste Connections to provide hauling services to some of Rubicon’s customers in several different states. As Rubicon continued to grow and become more of a threat to Waste Connections, the relationship between Waste Connections and Rubicon deteriorated until it was finally terminated by Waste Connections. Since then, Waste Connections has refused to do business with Rubicon, harassed its customers, and sued Rubicon in several different states in an attempt to stop Rubicon from gaining more market share.

10. When a potential customer is interested in hiring Rubicon to manage its waste needs, Rubicon sends the customer a service agreement and a letter of authorization. Once those documents are signed, Rubicon notifies the hauler so that it can arrange the container(s) and truck(s) to get the service started. It is important to Rubicon not to leave the customer without waste service, which can happen if the customer notifies one of the Big Three that its contract is terminated and the Big Three company immediately removes its containers (such as at 4:59 pm on a Friday) knowing that they won’t be replaced for a few days. As such, Rubicon (on behalf of the customer) typically notifies the Big Three company of termination when the new hauler is ready to go.

11. For many customers across the nation, when they want to cancel Waste Connections’ hauling service and change to Rubicon’s waste management services, Waste Connections has made it extraordinarily difficult for both the customers and for Rubicon. Waste Connections refuses to accept and sign for notices of termination that are sent by certified mail. Waste Connections refuses to accept payment of liquidated damages or termination fees, even returning checks sent by Rubicon (demanding instead that the customer send the check). After a customer has provided notice of termination and requested that Waste Connections remove its containers within 7-10 days, Waste Connections does not comply.

12. When Waste Connections does not comply with the customer’s request to remove the dumpsters after the customer has terminated its contract with Waste Connections, Rubicon has assisted the customer by arranging for tow trucks to remove the Waste Connections dumpsters left on the customer’s property. In response, in some cases in Houston, Waste Connections has returned its dumpsters back to the customer’s property. Waste Connections’

apparent goal is to make the transition process so difficult, lengthy, and expensive that the customer will decide not to go forward with Rubicon and instead stay with Waste Connections.

13. Sterling Plaza Merchants Association ("SPMA") is a Rubicon customer in Houston, Texas that decided to terminate its contract with Waste Connections. Rubicon sent SPMA a service agreement and authorization letter, both of which SPMA signed in late June 2017. After consulting with SPMA about its needs, Rubicon hired a local Houston hauler, OP Enterprise Waste Services, to provide waste containers and hauling for SPMA. SPMA authorized Rubicon to adjust services as needed, to cancel and award services, and to right-size, or remove/tow vendor equipment on the customer's premises at the owner's expense.

14. On July 28, 2017, acting pursuant to authorization by SPMA, Rubicon sent Waste Connections a notice of termination for SPMA at 9888 Bellaire Blvd., Houston, TX 77036. The notice requests Waste Connections to remove its containers from the premises by August 6, 2017, and says that if they are not removed by that date the containers will be towed at Waste Connections' expense. A true and correct copy of this notice is attached as Exhibit A.

15. Despite SPMA's request, Waste Connections did not remove its dumpsters. On August 11, 2017, Rubicon arranged for a towing company that towed the dumpsters back to Waste Connections' location in Humble, Texas.

16. On or about August 23, 2017, I learned that Waste Connections had returned its dumpsters to SPMA's premises. At that point, I became more involved in the SPMA account. I learned that Waste Connections had placed its dumpsters in front of the new containers that OP Enterprise Waste Services had left on the premises (for SPMA's new waste services), thereby preventing OP Enterprise Waste Services from servicing its dumpsters. I spoke with Erling Wang of SPMA, who had me copied on the September 5, 2017 letter sent by the SPMA to Waste Connections requesting that the dumpsters be removed within 24 hours. A true and correct copy of that letter is attached as Exhibit B. Waste Connections did not remove its dumpsters as requested by SPMA.

17. Based on my experience in the waste management industry, and based on other companies' containers that I have personally observed, when dumpsters are left on a customer's property without authorization, they deprive the occupant of the use and enjoyment of the premises. Extra dumpsters, especially those placed in front of the dumpsters already in place, are an eyesore and can result in customer complaints. If there is trash in the dumpsters that are blocked, it cannot be removed and thus can cause significant odor problems as well as attracting unwanted insects, rodents, and other creatures. Blocked containers that cannot be removed can get standing water in them, which can cause problems with mosquitos and mosquito-borne viruses. Moreover, when a company like Waste Connections whose contract has been terminated leaves or places its containers on the customer's premises without authorization, that damages Rubicon's goodwill and reputation with its customers and contracted haulers because all of Rubicon's services cannot be provided.

Further Affiant sayeth not.

M. Spiegel

Marc Spiegel

District of Columbia: SS

THE STATE OF _____

COUNTY OF _____

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§
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BEFORE ME, the undersigned authority, on this day personally appeared Marc Spiegel, by me being duly sworn stated that the facts stated in the foregoing affidavit are true and correct to the best of his knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME by the said Marc Spiegel on the 26th day of September, 2017 to certify which witness my hand and seal of office.



Tracey L. Jackson
Notary Public, State of *District of Columbia*

EXHIBIT A



Rubicon Global, LLC.
950 East Paces Ferry R, Suite 1900
Atlanta, GA 30326
(678) 906-2601

Date: **July 28, 2017**

Re: Termination of Services for **Sterling Plaza Merchants Association**

Dear **Waste Connections**,

Please accept this letter as notice to cancel our service effective **08/06/2017** at the following locations:

Account Number	Account Name	Address
5120-7643897	Sterling Plaza Merchants Association	9888 Bellaire Blvd, Houston, TX - 77036

If any liquidated damages are owed based upon the termination of the contract with **Sterling Plaza Merchants Association**, please provide documentation so that we may remit payment.

In accordance with this cancellation, please remove your company's equipment on **08/06/2017**. If your equipment is not removed on **08/06/2017**, the equipment will be towed at your expense.

We appreciate your cooperation in this transition. Please email me electronic versions of the following at SMBNotifications@rubiconglobal.com:

- Confirmation of cancellation
- Current service agreement
- Final invoice, with the liquidated damages amount, if any

Thank you for your services. If there are any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Frazier", with a horizontal line extending to the right.

Scott Frazier | [RUBICON GLOBAL](#) | Account Executive
SMBNotifications@rubiconglobal.com | www.RubiconGlobal.com

Sterling Plaza Merchants Association
9888 Bellaire Blvd Houston Texas 77036

Date: 06/21/2017

Re: Rubicon Global, LLC is Authorized Waste and Recycling Manager for

Dear Vendor:

Effective immediately, Rubicon Global, LLC (hereinafter "Rubicon") is authorized to manage all services regarding waste and recycling at the location listed below on behalf of Sterling Plaza Merchants Association (hereinafter "Customer").

Account Number	5120-7643897
Account Name	Sterling Plaza Merchants Association
Address	9888 Bellaire Blvd Houston Texas 77036

Rubicon's management authority includes the right to adjust services as needed, to cancel and award services, to right-size, or remove/tow vendor equipment on the customer's premises at the owner's expense. After the date hereof, Rubicon is responsible for the payment of all invoices to the vendor and all billing should be sent directly to Rubicon, provided, however, Customer remains responsible for the payment of any past due amounts accrued as of the date hereof.

The vendor or service provider shall disclose the following items to Rubicon, as requested, and/or any other information that Rubicon reasonably deems pertinent related to the above-mentioned services:

- past invoices
- weight tickets
- service agreements
- pickup history
- service related issue documentation
- prospective bids
- volumes
- current disposition of materials

To ensure a smooth transition, upon receipt of this letter please send the following information for all services performed for the location referenced above to Rubicon at **SMBNotifications@Rubiconglobal.com**:

- Current charges (unpaid invoices or account statements) and invoices or statements for services completed but not yet billed, and any applicable future billing
- Any existing waste or recycling service agreements or contracts
- All invoices for services you have performed for the location referenced above for the past three (3) months

Contract Renewal

This letter serves as official notification that we will not renew any existing service agreements or contracts between us and your organization. Therefore, these agreements will terminate upon the expiration of the current term thereof.

We appreciate your cooperation in this transition. Please direct any questions or concerns to Rubicon at **SMBNotifications@Rubiconglobal.com**.

Sincerely,

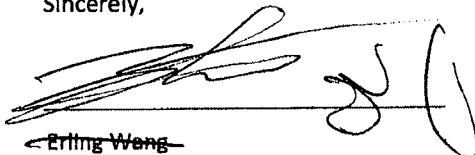

~~Erling Wang~~
Steven Xue, Jimin Wang
Sterling Plaza Merchants Association

EXHIBIT B

Attn: Customer Care

Waste Connections of TX, LLC, OR Waste Connections of Texas, LLC

2010 Wilson Rd, Humble, TX 77396

OR 3 WATERWAY SQUARE PL, STE 110 ,THE WOODLANDS, TX 77380-3488

OR POBOX 1598, HUMBLE, TX 77347

Tel 281 446 0239

9/5/2017

Dear Waste Connections in charge of customer # 5120-7643897,

This letter is regarding the Sterling Plaza Merchants Association ("SPMA") located at 9888 Bellaire Boulevard, Houston, TX 77036, previously contracted with Waste Connections of Texas, LLC and billed by Waste Connections of TX, LLC ("Waste Connections").

We decided to find a new company to manage our waste hauling needs because we were unhappy with Waste Connections. We signed a contract with Rubicon Global ("Rubicon"), who was authorized to notify you and terminate our contract with Waste Connections effective August 7, 2017, which was sent to Lynn Brucker via e-mail on July 28, 2017.

As a part of the service switch, Rubicon demanded that Waste Connections remove its four containers from the SPMA's property on August 6 or 7, 2017, when Waste Connections did not cooperate. On August 11, 2017, Rubicon removed Waste Connections containers on our behalf and returned them to your address at 2010 Wilson Road, Humble, TX 77396.

Found on our property as of August 23, 2017, there are four Waste Connections containers next to Rubicon containers under our current contract, and have another four Waste Connections containers on the side of our back alley at the South end. Herein, we request that Waste Connections or successor if applicable immediately remove all of your containers. Currently ALL Waste Connections containers on our property are illegal. Should you fail to remove your containers within 24 hours after receiving this letter, SPMA will look to take legal action.

Any questions you have should be directed to Marc Spiegel with Rubicon at (678) 906-2694.

Regards,

Sterling Plaza Merchants Association

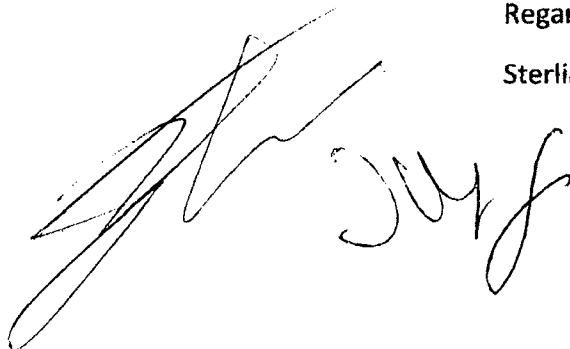
A handwritten signature in black ink, appearing to read 'Marc Spiegel', is written over the typed name of the Sterling Plaza Merchants Association.

EXHIBIT 2

CAUSE NO. 2017-52435

RUBICON GLOBAL, LLC	§	IN THE DISTRICT COURT OF
	§	
	§	
Counter-Claimant	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
WASTE CONNECTIONS OF	§	
TEXAS, LLC	§	
	§	
Counter-Defendant	§	125th JUDICIAL DISTRICT

AFFIDAVIT OF KEITH KUCIFER

BEFORE ME, the undersigned authority, on this day personally appeared KEITH KUCIFER, who is personally known to me and being first duly sworn by me, testified upon oath as follows:

1. "My name is Keith Kucifer. I am over the age of 18, of sound mind, and competent and legally capable of making this affidavit. The facts stated herein are true and correct and of my own personal knowledge.

2. I am licensed private investigator in the State of Texas. I am currently employed by Gradoni & Associates. I previously worked for the Texas Department of Public Safety for 27 years, including as an investigator for approximately 13 years. During my career, I have conducted numerous investigations and surveillance projects.

3. On September 26, 2017, I traveled to the shopping center located at 9888 Bellaire Blvd., Houston, Texas 77036 on two occasions, arriving there first in the morning (at approximately 10:00 a.m.) and then again in the afternoon (at approximately 2:30 p.m.). The shopping center can be accessed from Bellaire Boulevard, as well as from a rear entrance located off of Clarewood Drive. Approximately 50 to 75 yards due West from the rear entrance on Clarewood Drive, I observed eight trash dumpsters. Four of the dumpsters were blue and were marked "Waste Connections of Texas." Behind the four Waste Connections dumpsters, I observed four olive green dumpsters marked OP Enterprise.

4. The four Waste Connections dumpsters were in front of the four OP Enterprise dumpsters, blocking access to them. The Waste Connections dumpsters were arranged in such a way that a waste hauling truck would be unable to access and empty the OP Enterprise dumpsters. Exhibit 1 to this affidavit contains four photographs depicting the arrangement of the dumpsters.

5. I observed trash in three of the four Waste Connections dumpsters. I also noticed a strong, distinct, unpleasant odor reminiscent of rotten food emanating from the Waste Connections dumpsters. Numerous flies hovered over the dumpsters. Exhibit 2 to this affidavit contains a photograph depicting the trash I observed in one of the Waste Connections dumpsters.

6. I observed standing water in one of the OP Enterprise dumpsters, as depicted in the photograph attached as Exhibit 3 to this affidavit.

7. All of the photographs attached as Exhibits 1 through 3 to this affidavit were taken by me on September 26, 2017 while on location at 9888 Bellaire Blvd. and accurately depict what I observed.


FURTHER AFFIANT SAYETH NOT."



KEITH KUCIFER

GIVEN UNDER MY HAND AND SEAL OF OFFICE and SWORN AND SUBSCRIBED BEFORE ME on this the 26th day of September, 2017.





Notary Public in and for the
State of Texas

Printed name and commission expiration
date (or seal stating the same information)

EXHIBIT 1









EXHIBIT 2

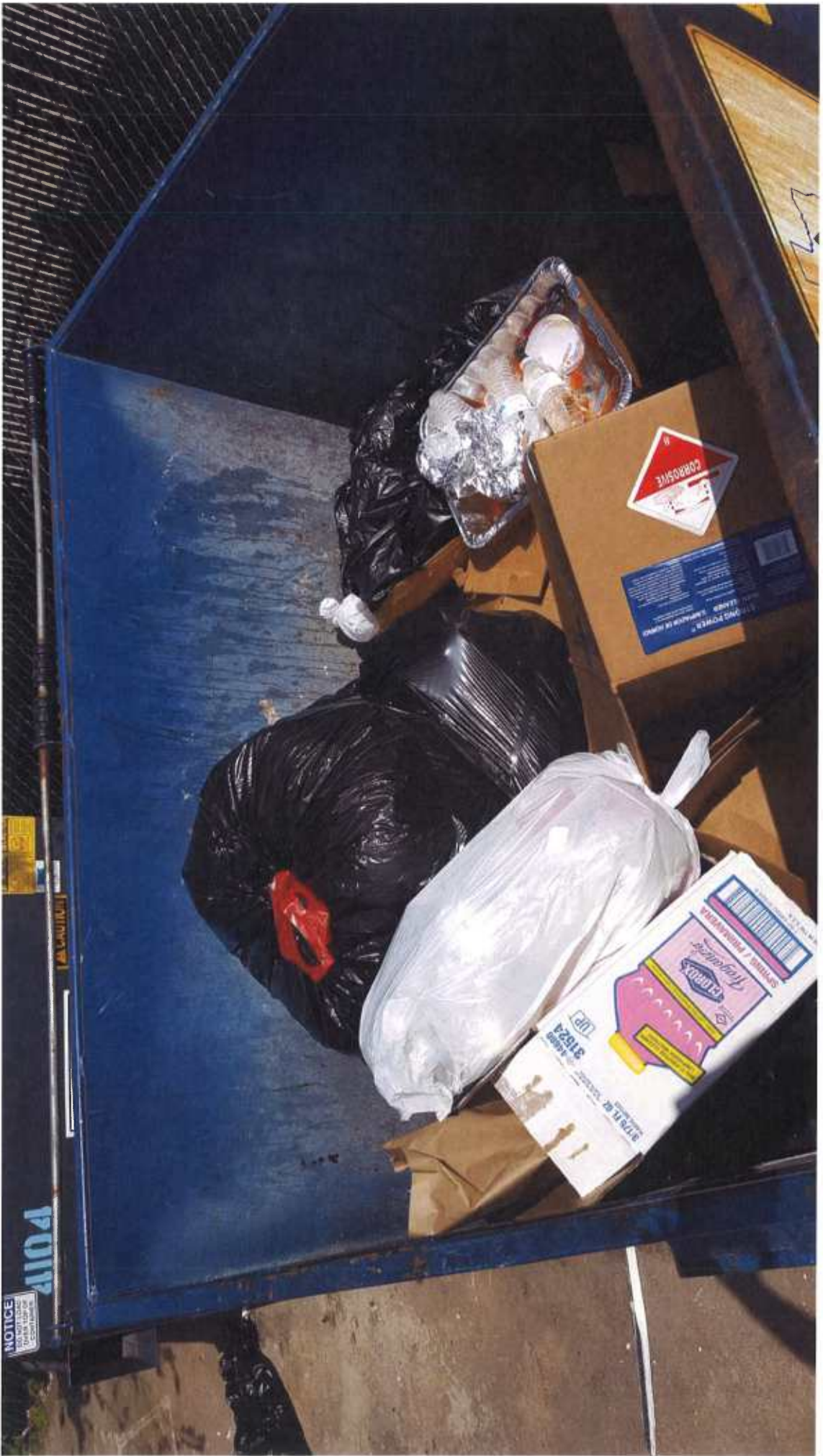


EXHIBIT 3




EXHIBIT 3

ASSIGNMENT OF CLAIMS

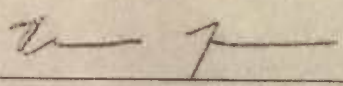
Whereas Sterling Plaza Merchants Association, Inc. ("SPMA") authorized Rubicon Global, LLC to manage all services regarding waste and recycling at SPMA's location of 9888 Bellaire Blvd, Houston, TX 77036, and whereas pursuant to that authorization Rubicon Global, LLC terminated the Service Agreement between SPMA and Waste Connections of Texas, LLC dated October 20, 2014, and whereas Waste Connections of Texas, LLC has instituted litigation against Rubicon Global, LLC in Harris County, Texas, SPMA for due consideration of one dollar (\$1) hereby unconditionally assigns to Rubicon Global, LLC all claims and causes of action arising from or relating to the Service Agreement between SPMA and Waste Connections of Texas, LLC dated October 20, 2014. In addition, SPMA unconditionally assigns to Rubicon Global, LLC all claims and causes of action for trespass arising from the placement of waste containers owned by or belonging to Waste Connections of Texas, LLC on the premises of SPMA and/or 9888 Bellaire, Houston, Texas 77036. To the extent Rubicon Global, LLC recovers for damages resulting from the Waste Connections of Texas, LLC's trespass on SPMA's premises, Rubicon Global, LLC will remit those particular damages to SPMA

This assignment specifically excludes the assignment of the October 20, 2014 Service Agreement itself.

Agreed to this 22nd of September, 2017.



Sterling Plaza Merchants Association, Inc.



William D. Meyer
Associate Counsel
Rubicon Global, LLC

CAUSE NO. 2017-52435

RUBICON GLOBAL, LLC

Counter-Claimant

v.

**WASTE CONNECTIONS OF
TEXAS, LLC**

Counter-Defendant

§
§
§
§
§
§
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§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

**ORDER GRANTING COUNTER-CLAIMANT'S
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

After considering Counter-Claimant Rubicon Global, LLC's application for temporary restraining order on behalf of Sterling Plaza Merchants Association ("SPMA"), the pleadings, the evidence in the record, and the arguments of counsel, the Court GRANTS the application. The Court FINDS that Rubicon has shown through the evidence that SPMA has a probable injury, a probable right to recovery, and has demonstrated irreparable harm through no adequate remedy at law. The Court FINDS that if the Court does not issue the requested temporary restraining order, SPMA will be irreparably injured because it will continue to be deprived of the use and enjoyment of its premises due to a continuing, unauthorized trespass by Counter-Defendant Waste Connections of Texas, LLC ("Waste Connections").

Therefore, the Court ORDERS as follows:

1. Counter-Defendant Waste Connections is ordered to remove all Waste Connections dumpsters and equipment from the premises located at 9888 Bellaire Boulevard, Houston, Texas 77036, within twenty-four (24) hours of entry of this Order;
2. Waste Connections and all other persons or entities in active concert or participation with Waste Connections who receive actual notice of this Order by personal service or

otherwise are enjoined and restrained from returning Waste Connections dumpsters and equipment to the premises located at 9888 Bellaire Boulevard, Houston, Texas 77036 without prior written authorization by SPMA;

3. Waste Connections and all other persons or entities in active concert or participation with Waste Connections who receive actual notice of this Order by personal service or otherwise are enjoined and restrained from destroying, altering, concealing or modifying any information, materials, documents, communications, or records (whether in electronic or hard copy form) in any way related to (a) Waste Connections' relationship with SPMA and (b) Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036;
4. Waste Connections is ordered to identify and segregate all documents or materials, whether in electronic or hard copy form, concerning its relationship with SPMA and Waste Connections' actions concerning 9888 Bellaire Blvd., Houston, Texas 77036, and to make such documents or materials available to counsel for Counter-Claimant Rubicon Global, LLC for inspection in unredacted form within seventy-two (72) hours of this Order;
5. Waste Connections is ordered to present a corporate representative for deposition at a mutually convenient time and place prior to October 6, 2017;
6. Counter-Claimant Rubicon Global, LLC is permitted to review any Waste Connections internal documents only through its outside and in-house counsel pending further orders of this Court;

7. The clerk shall issue notice to Waste Connections that the hearing on Counter-Claimant's request for temporary injunction is set for October __, 2017 at _____. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits; and
8. Bond for this temporary restraining order is set at \$_____.

This order expires on October __, 2017 at _____

SIGNED this ____ day of September, 2017

ANCILLARY JUDGE PRESIDING