

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

WASTE CONNECTIONS US, INC. and
PROGRESSIVE WASTE SOLUTIONS
OF LA, INC.,

Plaintiffs,

vs.

RUBICON GLOBAL, LLC
and JONATHAN M. DEWITT

Defendants.

Civil Action No.
2017CV291331

**PLAINTIFFS' ORIGINAL COMPLAINT, EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING ORDER, AND INTERLOCUTORY INJUNCTION**

Waste Connections US, Inc. ("Waste Connections") and Progressive Waste Solutions of LA, Inc. ("PWS") (collectively, "Plaintiffs"), by and through their counsel, respectfully submit this Original Complaint, Emergency Application for Temporary Restraining Order, and Interlocutory Injunction (the "Complaint") against Defendants Rubicon Global, LLC ("Rubicon") and Jonathan M. Dewitt ("Dewitt") (collectively, "Defendants").

INTRODUCTION

1.

This case involves the misappropriation of Plaintiffs' trade secrets and confidential information on a massive scale by Dewitt, a highly trusted former District Sales Manager of PWS. In the days and weeks leading up to his resignation from PWS, Dewitt downloaded onto two USB devices at least 1,160 confidential documents of Plaintiffs (approximately 4,800 pages), including pricing information, bid proformas, customer lists (with customer identities, pricing information, and the date when the customer's service agreement with PWS expires), and thousands of pages

from Waste Connections' highly specialized cultural and leadership training and development programs.

Dewitt abruptly resigned from PWS to accept the position of National Sales Manager for Rubicon, a competitor of Plaintiffs' in the waste services industry. Rubicon describes itself and its leaders as "disruptors" in the industry (*see RUBICON, About Rubicon, Mission and Values, <https://www.rubiconglobal.com/mission-values/> (last accessed on June 6, 2017.)*), and has systematically targeted Waste Connections' business for disruption. Rubicon is interfering with Waste Connections' contracts and customer relationships, and seeks to convert Waste Connections' customers to Rubicon services through unlawful means. Rubicon's hiring of Dewitt as its National Sales Manager, along with Dewitt's misappropriation of thousands of pages of confidential documents from Plaintiffs, is the latest chapter in Rubicon's unlawful competition against Plaintiffs. Rubicon, now armed with Plaintiffs' confidential pricing information, bid proformas, and key financial information, is poised to target Plaintiffs' customers and undercut Plaintiffs' pricing to steal business away from Plaintiffs. Further, now armed with approximately 4,800 pages of confidential cultural, training and development program materials of Waste Connections, Rubicon can now replicate for itself the highly specialized and successful training and development programs for which Waste Connections is an industry leader. Waste Connections developed these programs over many years and through a substantial investment of resources. Unless Defendants are immediately restrained and enjoined from using and/or disclosing Plaintiffs' trade secrets, Plaintiffs will be imminently and irreparably harmed.

PARTIES AND SERVICE

2.

Plaintiff Waste Connections is a corporation organized under the laws of Delaware, with its principal place of business in the State of Texas.

3.

Plaintiff PWS is a corporation organized under the laws of Delaware and has its principal place of business in the State of Louisiana. PWS is an affiliate of Waste Connections.

4.

Defendant Rubicon is a limited liability company organized under the laws of Delaware, with its principal place of business in the State of Georgia. Rubicon can be served at its headquarters located at 950 East Paces Ferry Road NE, Suite 1900, Atlanta, Georgia 30326-1384.

5.

Defendant Jonathan M. Dewitt is a resident of the State of Louisiana. Dewitt can be served at his residence located at 615 N. Salcedo St., New Orleans, Louisiana 70119. Upon information and belief, Dewitt intends to relocate from Louisiana to Georgia, and establish residency in the State of Georgia.

JURISDICTION AND VENUE

6.

Defendants are subject to personal jurisdiction of this Court and venue in this Court is proper in this action.

7.

Personal jurisdiction over Rubicon is proper in this Court because Rubicon's principal place of business is in Atlanta, Georgia.

8.

Personal jurisdiction over Dewitt is proper in this Court because Dewitt transacts business in the State of Georgia. Further, upon information and belief, Dewitt intends to relocate his domicile to the State of Georgia in connection with his employment with Rubicon.

9.

Venue in this Court is proper pursuant to Georgia Constitution Art. VI, Section II and O.C.G.A. §§ 9-10-31, 14-2-510(b), and 14-11-1108.

FACTUAL BACKGROUND

10.

Waste Connections is a leader in the waste services industry as a waste collection and disposal company, providing waste collection, transportation, disposal, and recycling of non-hazardous solid waste to residential, commercial, and industrial customers in the United States. PWS is an affiliate of Waste Connections, performing waste collection and disposal services in the State of Louisiana. The waste services industry is highly competitive. Waste Connections has become a market leader in the United States as a result of the time, money, and effort it has expended to develop confidential and proprietary strategies, programs, and methods of operation.

11.

Among Plaintiffs' most significant assets are their goodwill with customers and long-term customer relationships; customer databases and information, including pricing strategies and customer pricing; financial data, including costs and profit margins; sales strategies and sales training methodologies; marketing plans; industry expertise; highly specialized training provided to employees on company culture and leadership; technical data, technology and other confidential information and trade secrets. These assets are critical to Plaintiffs' success in the industry.

Plaintiffs expend significant time and financial resources developing their strategies, programs, and trade secrets, all of which provide Plaintiffs with a commercial advantage over their competitors in the waste services industry. Plaintiffs take reasonable steps to protect their trade secrets and confidential information, including but not limited to, requiring employees with access to such information, like Dewitt, to execute agreements prohibiting their use and disclosure of trade secrets and confidential information other than for the benefit of Plaintiffs; implementing IT security policies; and password protecting databases containing Plaintiffs' trade secrets.

12.

Unlike Waste Connections, Rubicon is a relatively new player in the waste services industry, originally forming in 2008 as a waste services broker for large national companies. In approximately Summer 2016, Rubicon changed its business model. Instead of brokering for large national companies, Rubicon now seeks to “disrupt” Waste Connections and other localized providers in the industry by aggressively targeting Waste Connections' existing customers and enticing them to terminate their waste contracts early and instead, to broker their waste removal services through Rubicon. Rubicon does not have the infrastructure, strategies, methods of operation, and training programs like those of Waste Connections as an industry leader in the waste services market. In its self-proclaimed “disruptor” role in the industry, Rubicon is targeting Waste Connections and is currently seeking to misappropriate from Waste Connections its customers, key employees, trade secrets, and infrastructure. Rubicon hired Dewitt to serve as its National Sales Manager to gain access to Waste Connections' trade secrets in order to enable Rubicon to undercut Plaintiffs' pricing in order to steal customers and business, and in order to replicate Waste Connections' sales strategies, training programs, and infrastructure. Rubicon's employment of Dewitt is the latest in Rubicon's assault on Waste Connections.

13.

Dewitt was hired by PWS on December 19, 2011. Contemporaneously with the commencement of his employment with PWS,¹ Dewitt signed an employment agreement (the “Agreement,”), a true and correct copy of which is attached hereto as Exhibit A. In the Agreement, PWS agreed that it would:

provide [Dewitt] with specialized knowledge regarding [Plaintiffs’] business and its customer relationships, and will provide [Dewitt] with initial and ongoing confidential information and trade secrets of [Plaintiffs] (hereinafter referred to as “Confidential Information”). For the purpose of this Agreement, Confidential Information includes, but it is not limited to, names and addresses of customers, customer contacts, expiration dates of customer service agreements, customer pricing and discounts, pricing and discount strategies, customer service requirements, contents of proposals to customers for the provision of services, internal costs of providing services, equipment and equipment maintenance costs, costing and estimation procedures and formulae, information regarding [Plaintiffs’] sales, profit and loss, profit margin, overhead bookkeeping and accounting information, recruiting methodology, sales methodology, sales procedures, operating procedures, marketing plans and procedures, financial information, engineering information, other technical or business information, of [Plaintiffs].

See Agreement, Ex. A, at ¶ 2.1. By signing this Agreement, Dewitt expressly understood that Plaintiffs’ Confidential Information give Plaintiffs “a competitive advantage over others who do not have the information . . . including but not limited to the goodwill generated through [their] customer relationships.” *Id.* Dewitt also acknowledged that Plaintiffs “would be harmed” by disclosure to “the public or to a third party” who is not authorized to have this Confidential Information. *Id.*

14.

In return for receiving access to this Confidential Information, Dewitt agreed to be bound by certain nondisclosure and other reasonable post-employment obligations:

¹ Dewitt was hired by IESI LA Corporation (“IESI”) on December 19, 2011. IESI merged with Progressive Waste Solutions of LA, Inc. (“PWS”) on January 12, 2012.

Employee agrees to hold all Confidential Information in trust for the Company and will not: (1) use the information for any purpose other than the benefit of the Company; or (2) disclose to any person or entity any Confidential Information Employee will also take reasonable steps to safeguard such Confidential Information and to prevent its disclosure to unauthorized persons Upon termination of employment . . . Employee shall immediately deliver to the Company any and all Confidential Information in Employee's possession or control

See Agreement, Ex. A, at ¶¶ 2.2, 2.3 (emphasis added).

15.

Dewitt also signed PWS's Code of Conduct policy on January 4, 2012, reminding him about his nondisclosure and additional post-employment obligations. A true and correct copy of Exhibit B is attached hereto. Specifically, the Code of Conduct stated:

Upon any disclosure of confidential information the responsible Personnel may be held liable for any loss or damage suffered by the Company and will be subject to disciplinary action (up to and including termination of employment). When Personnel leave the service of the Company, ***all business related documents and information of the Company must be returned to the Company and is not to be used or disclosed to third parties in any way by the departing Personnel.***

Ex. B, Code of Conduct, at ¶ 4.1 (emphasis added). Plaintiffs' expectation that Dewitt would maintain the confidentiality of their Confidential Information was made clear to Dewitt.

16.

On January 25, 2016, Dewitt was promoted to District Sales Manager over a major PWS market.² Dewitt, upon obtaining the promotion, recognized that Plaintiffs were "entrust[ing] this major market to [him]" and promised that he would "work every day to make [Plaintiffs] proud." See January 25, 2016 Email from J. Dewitt, attached as Exhibit C. As a District Sales Manager over this major market, Dewitt was placed in a position of considerable trust. Based on his position of leadership with PWS, and the contractual obligations Dewitt undertook in the

² Dewitt managed sales for the greater New Orleans area, including the parishes of Orleans, Acadia, Lafayette, St. Landry, St. Martin, and Vermillion.

Agreement, Dewitt was provided with greater access to trade secrets of PWS. In June 2016, PWS merged with Waste Connections.³ After the merger, Dewitt was provided access to the training programs, strategies, and other trade secrets of Waste Connections. Dewitt was provided materials that were crucial to Plaintiffs' operations and sales success, including Plaintiffs' pricing information (e.g., pricing sheets, pricing calculator, bid documents, key financial information of the Plaintiffs, and pricing strategies), customer data (including customer lists, customer service requirements, contents of proposals to customers, and contract expiration dates), and voluminous highly specialized training materials. Although employed in Louisiana, as a highly trusted District Sales Manager, Dewitt was given access to Plaintiffs' confidential information and trade secrets on a nationwide basis in the U.S.

17.

Rubicon is now stepping up its assault on Waste Connections by hiring key employees of Plaintiffs and by misappropriating the trade secrets of Plaintiffs. Armed with the trade secrets Dewitt misappropriated from Plaintiffs, Rubicon is now poised to undercut Plaintiffs' pricing with existing and prospective customers, unless restrained and enjoined by the Court. Furthermore, as a relative newcomer to the industry, Rubicon sorely lacks the infrastructure and training and development programs for which Plaintiffs are known as industry leaders. Dewitt misappropriated pricing information, customer data, and thousands of pages of Waste Connections' highly specialized and highly successful training, development, and cultural program materials, which are trade secrets of Waste Connections. It is no mere coincidence that Dewitt downloaded Waste Connections pricing information, customer data, and thousands of pages from Waste Connections'

³ On June 1, 2016, pursuant to the terms of an Agreement and Plan of Merger, a subsidiary of PWS's ultimate parent company merged with Waste Connections. From that date until Dewitt's resignation from PWS on March 24, 2017, Dewitt gained access to the trade secrets of Waste Connections (in addition to the access he previously had to the trade secrets of PWS).

training and development programs shortly before his move from PWS to Rubicon. Rubicon, in possession of Plaintiffs' confidential cultural, training and development program materials, can now replicate these programs for itself, unless it is restrained and enjoined by this Court.

18.

Dewitt abruptly resigned from PWS on March 24, 2017, to accept employment with Rubicon as its National Sales Director. Before Dewitt's resignation from PWS, he was aggressively accessing and downloading thousands of pages of Plaintiffs' trade secrets and confidential information. Indeed, forensic evidence demonstrates that in the days prior to his resignation, Dewitt was accessing Plaintiffs' Salesforce data for Austin and Houston, Texas (which were not in Dewitt's sales territory); downloading pricing information and pricing proformas for operations outside of Louisiana; and downloading substantial portions of Plaintiffs' cultural, training and development programs (many of which he never even participated in or attended). *See* Affidavit of Expert Alvin Fielding, attached as Exhibit D; Affidavit of David Hall, Senior Vice President – Sales and Marketing, attached as Exhibit E; Affidavit of Hank Coles, Director of Training and Development, attached as Exhibit F. This information is *exactly* the type of information a company, such as Rubicon, would need to replicate Plaintiffs' infrastructure, strategies, and programs, particularly if its goal was to recruit and train a strong sales force to “disrupt” Waste Connections in the waste services industry. All of this Confidential Information would be of tremendous benefit to Dewitt as the National Sales Manager for Rubicon.

19.

On the very day of Dewitt's resignation from PWS, Plaintiffs, through counsel, sent Dewitt a letter reminding him of his ongoing contractual obligations to Plaintiffs, including the prohibition against the use and disclosure of Plaintiffs' confidential information and trade secrets,

and demanding that he return to PWS any and all information or data of Plaintiffs in his possession. Furthermore, and as an additional step to protect their trade secrets and confidential information, Plaintiffs, through counsel, sent a letter to Rubicon advising Rubicon of Dewitt's ongoing contractual and legal obligations to PWS. True and accurate copies of the correspondence from Plaintiffs' counsel to Rubicon and Dewitt are attached as Exhibit G.⁴

20.

Upon Dewitt's abrupt resignation from PWS to accept a similar position at Rubicon, Plaintiffs had a forensic analysis performed of Dewitt's company-issued laptop and other electronic data devices (cell phone and tablet). Plaintiffs discovered that in the weeks prior to Dewitt's resignation on March 24, 2017, Dewitt, as recently as March 21, 2017 (*just three days before his sudden resignation*), accessed and downloaded onto at least two external devices⁵ more than 4,000 pages containing Plaintiffs' confidential information and trade secrets. *See* Fielding Aff., Ex. D. Despite Plaintiffs' previous written request to Dewitt that he return all confidential information and trade secrets of Plaintiffs in his possession, Dewitt has not returned any of Waste Connections and PWS's confidential information and trade secrets. The external device that Dewitt used on March 21 to download Plaintiffs' confidential information and trade secrets alone contains over 1,000 proprietary, confidential and trade secret documents, including pricing information and pricing strategies, customer lists and other customer data (including service agreements and contract expiration dates), and highly specialized training materials integral to Plaintiffs' operations. These materials provide Plaintiffs with a commercial advantage over its

⁴ Suspiciously, after Plaintiffs sent this correspondence to Rubicon, Rubicon appears to have changed the title of Dewitt's position from "National Sales Director" to "Director of Outside Sales."

⁵ Dewitt downloaded confidential information of Plaintiffs on at least two external data devices, one that was connected to Dewitt's computer on March 21, 2017, and one connected to his computer on January 17, 2017. *See* Fielding Aff., Ex. D.

competitors and would-be “disruptors” in the industry, particularly Rubicon. *See id.*; *see also* Hall Aff., Ex. E; Coles Aff., Ex. F.

21.

In addition to the substantial amount of trade secrets and confidential information Dewitt downloaded onto two external data devices, Dewitt also accessed—in the days leading up to his resignation from PWS—confidential sales information from Plaintiffs’ Salesforce.com database. *See* Fielding Aff., Ex. D. Salesforce.com is a cloud-based platform that Plaintiffs utilize to track future or potential customer information, potential revenue generated by future customer contracts, and other customer lead information for sales purposes. *See id.* Through the forensic analysis, Plaintiffs learned that Dewitt’s activity on Salesforce significantly increased leading up to his sudden departure from PWS. Before his resignation, the number of reports Dewitt ran on Salesforce increased by almost double from January to February of 2017, and almost quadrupled in the first three weeks of March 2017. *Id.* In January 2017, Dewitt ran 41 reports. *Id.* In February 2017, Dewitt ran 99 reports. And in March 2017, Dewitt ran 159 reports. *Id.* After receiving his offer of employment as National Sales Manager for Rubicon, Dewitt improperly accessed prospective customer information and sales reports of Plaintiffs in Austin and Houston, Texas, neither of which was in his assigned territory. *Id.* Disturbingly, on March 20, 2017, Dewitt ran these Salesforce reports for both the Austin and Houston area. *Id.* He ran these reports again on March 24, 2017 for the Houston area, which is also the *same day* that Dewitt submitted his resignation. *Id.* Tellingly, Rubicon is building an active presence in both of these Texas markets.

22.

Dewitt's suspicious behavior continued up to his resignation on March 24, 2017. At that time, Dewitt returned his company-issued laptop, cell phone, and tablet. The forensic analysis of Dewitt's laptop revealed that Dewitt deleted several folders from his laptop prior to his resignation. *Id.* Last accessed by Dewitt on March 23, 2017 and March 24, 2017, many of these deleted folders also contained Plaintiffs' business-related information. *See id.* at Ex. 4, Plainly, Dewitt accessed these folders within two days of submitting his resignation. Then, he intentionally deleted these folders before turning in his laptop to PWS. *See id.* This is suspicious, because the forensic analysis of Dewitt's search-engine history showed that he Google-searched the terms "cmd log commands windows 7" and "view hidden security logs without admin." *See id.* *These commands are used to perform activities, including accessing and deleting files, on a Microsoft Windows device without leaving any traces of activity on the machine. Id.* These searches indicate that Dewitt had a higher-than-average understanding of how to delete information from his computer, including web history, other USB device activity, and/or files and folders. *Id.*

23.

Dewitt returned his company-issued cell phone to PWS, but it was locked by password protection. *See id.* Dewitt intentionally did not leave the password with PWS. The password protection prevents the cell phone from being analyzed. *Id.* Further, Dewitt may have intentionally reset the cell phone to its factory settings (thereby wiping all memory). The forensic analysis of Dewitt's web activity showed that he Google-searched "how to reset a Samsung note 5" on March 22, 2017. *See id.* Dewitt also returned his tablet, but he intentionally wiped his tablet device clean of any information. The forensic investigator determined that the tablet device Dewitt turned in to PWS had been reformatted. *Id.* This intentional reformation deleted any of

Dewitt's previous activity. Clearly, Dewitt took steps to "wipe" or hide his misappropriation of Plaintiffs' trade secrets and confidential information.

24.

Rubicon is unlawfully competing against Plaintiffs. Rubicon knowingly hired Dewitt as its National Sales Manager in order to misappropriate and use for its own benefit the trade secrets and confidential information of Plaintiffs. In so doing, Rubicon induced Dewitt to breach his Agreement with PWS. This unlawful misappropriation of Plaintiffs' trade secrets and confidential information provides Rubicon with an unfair competitive advantage in the waste market. Thus, unless Defendants' misappropriation of Plaintiffs' trade secrets is immediately restrained and enjoined, Plaintiffs will suffer irreparable injury.

COUNT ONE
BREACH OF CONTRACT
(DEWITT)

25.

Plaintiffs incorporate by reference, as fully set forth herein, the allegations contained in paragraphs 1 through 24.

26.

The Agreement constitutes a valid and enforceable written contract. On December 19, 2011, in exchange for access to Plaintiffs' trade secrets and confidential information, Dewitt contractually agreed not to "use . . . or disclose to any person or entity any Confidential Information [and to] take reasonable steps to safeguard such Confidential Information and to prevent its disclosure to unauthorized persons." Agreement, Ex. A, at ¶¶ 2.1, 2.2. Dewitt also contractually agreed to "immediately deliver to the Company any and all Confidential Information in [his] possession or control," including "copies of any documents or materials related to the

Company's business," as well as "any property of the Company" upon termination of employment. *Id.* at ¶ 2.3.

27.

Plaintiffs fully performed their obligations under the Agreement by providing Dewitt with access to Confidential Information, including pricing information, customer data, sales procedures and strategies, and training materials, to allow Dewitt to perform his job duties. *Id.* at ¶ 2.1.

28.

Through the actions described above, Dewitt has breached the Agreement, and unless restrained, will continue to do so. Indeed, Dewitt misappropriated, at minimum, 1,160 documents containing Plaintiffs' Confidential Information (using two USB devices), including pricing information, customer data, and highly specialized training materials. Despite Plaintiffs' requests, Dewitt has refused to return any of Plaintiffs' Confidential Information.

29.

All conditions precedent to Plaintiffs' rights to relief sought herein have been performed, have occurred, and/or have been excused.

30.

As a result of Dewitt's breach of the Agreement, Plaintiffs have suffered and will continue to suffer immediate and irreparable injury and harm. The confidential information and trade secrets Dewitt misappropriated provide Plaintiffs a commercial advantage in the waste services industry. The unauthorized use and disclosure of this confidential information and trade secrets will damage Plaintiffs' commercial advantage through loss of their trade secrets, goodwill, injury to their reputation, loss of current and future customers, lost profits, loss of future profits, loss of market share, as well as interference with their ability to maintain their top employees. *See Hall*

Aff., Ex. E; Coles Aff., Ex. F. Even Dewitt *expressly* acknowledged Plaintiffs' competitive advantage "over others who do not have the information" and that Plaintiffs would be harmed if this Confidential Information was improperly disclosed to the "public or a third party." See Agreement, Ex. A, at ¶ 2.1.

31.

As a consequence of Dewitt's breach, Plaintiffs have been required to retain services of undersigned counsel. Pursuant to GEORGIA CODE ANNOTATED § 13-6-11, and Paragraph 5.1 of the Agreement, Plaintiffs are entitled to their reasonable attorneys' fees incurred in the prosecution of this matter and through all appeals.

COUNT TWO
VIOLATION OF THE GEORGIA TRADE SECRETS ACT, O.C.G.A. § 10-1-760 ET SEQ.
(BOTH DEFENDANTS)

32.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 31 above.

33.

Defendants should be restrained and enjoined for violating the Georgia Trade Secrets Act by their actual or threatened misappropriation of Plaintiffs' trade secrets. O.C.G.A. § 10-1-760 *et seq.* "Actual or threatened misappropriation [of trade secrets] may be enjoined" to "eliminat[e] [a] commercial advantage." § 10-1-762. Trade secrets are defined by the Georgia Trade Secrets Act as:

[I]nformation, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which:

(A) Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Id. at § 10-1-760(4). Dewitt improperly accessed and took Plaintiffs' trade secrets, including pricing information (*e.g.*, a pricing sheet, confidential compactor and bid proformas, and a 10-85 calculator), customer data (including customer identification data and contract expiration dates), as well as highly specialized training materials. *See* Hall Aff., Ex. E; Coles Aff., Ex. F. These are trade secrets that provide Plaintiffs with "economic value" because this information is not "generally known to" and is not "readily ascertainable by proper means by[] other persons who can obtain economic value from its disclosure or use," such as Rubicon. *Id.* One important document Dewitt misappropriated was a detailed list of PWS's customers in New Orleans. *See* Hall Aff., Ex. E. This customer list is a complete "blue print" of PWS's business in the Greater New Orleans area. *Id.* This list provides information on the customers' names and addresses, customer revenue, volume of services provided, rates charged, and most importantly, the customer contract expiration dates. *Id.* Plaintiffs derive economic value from this information not being generally known to others or ascertainable through proper means to others. *Id.* It is well known in the industry that a customer is most susceptible to changing its current waste service provider and entertaining a proposal from a competitor around the time that the current waste service contract is due to expire. *Id.* With this information, especially the customer contact expiration date, Rubicon and Dewitt can gain a commercial advantage by targeting those customers most likely to be susceptible to entertaining a new sales pitch with "near laser precision." *Id.* Armed with Plaintiffs' customer identities, pricing information, and contract expiration dates, Dewitt and

Rubicon can readily undercut Plaintiffs' prices with customers—particularly those whose contracts are set to expire—and further disrupt Plaintiffs' customer relationships in that territory. *Id.*

Dewitt also misappropriated Plaintiffs' Kansas pricing sheet—a pricing sheet for a location outside his assigned territory that he was never authorized to have. *Id.* This document contains the pricing for front load services Waste Connections provides its customers. *Id.* This pricing sheet also includes pricing for multiple pick-ups and/or multiple receptacles from the same location. *Id.* This document is confidential because it reveals the pricing and pricing strategy of Waste Connections. *Id.* A competitor, such as Rubicon, does not generally know this information, nor is it otherwise ascertainable. *Id.* While this price sheet is specific to Kansas, Rubicon and Dewitt can use this information to determine Waste Connections' pricing strategy for other markets involving multiple receptacles and/or pick-ups from a single customer location and undercut Plaintiffs' pricing. *Id.*

Further, Dewitt misappropriated several of Waste Connections' proformas containing confidential pricing information integral to Waste Connections' pricing strategies. *Id.* One of Waste Connections' proformas that Dewitt downloaded onto the March 21 USB device is for the purchase and/or rental of compactors, which is an integral part of the overall pricing for a customer. *Id.* Using the information contained in the proforma, Rubicon and Dewitt can undercut Waste Connections' pricing throughout the country. *Id.* Dewitt also misappropriated two proformas containing a large commercial bid and a municipal bid by Waste Connections in Oklahoma. *Id.* These proformas contain, among other key financial information, Waste Connections' cost of operations, SG&A (cost of sales, goods and administrative expenses), capital expenditures, and IRR (internal rate of return). *Id.* These trade secrets provide information

integral to the bidding strategy and pricing strategies of Waste Connections. *Id.* With this information, in particular Waste Connections' IRR, Rubicon and Dewitt can undercut Waste Connections' pricing throughout the country. *Id.* Dewitt was not authorized to retain any of this information. *Id.*

Another crucial document Dewitt misappropriated was Waste Connections "10-85 calculator." *Id.* Waste Connections provides this calculator to sales representatives to calculate how to improve profitability on a customer account when the customer seeks to change (*e.g.*, increase or decrease) services. *Id.* When this calculator is used in connection with the Kansas pricing sheet, it discloses Waste Connections' pricing strategy. *Id.* With this information, Dewitt and Rubicon can essentially determine Waste Connections' pricing strategy for changes to customers' services (on a nationwide basis) and undercut its pricing. *Id.* Dewitt, as PWS's District Sales Manager for the greater New Orleans area, had no legitimate business reason to access, let alone retain, Waste Connections' Kansas pricing sheet, Oklahoma compactor proforma, the Oklahoma bidding proformas, or the 10-85 calculator. *Id.*

Dewitt also misappropriated thousands of pages of Plaintiffs' cultural and leadership training materials. Coles Aff., Ex. F. These training materials are the foundation for Plaintiffs' comprehensive training programs, which are used to promote a culture of Servant Leadership. *Id.* Servant Leadership is a concept Waste Connections and PWS use to promote employee retention, employee safety, and help management motivate employees to continuously perform at a top level. *Id.* Much of this training program is self-created material by Waste Connections. *Id.* Other parts of the program are materials created by third parties. *Id.* However, Waste Connections has invested tremendous time, effort, and money to synthesize and compile this information into unique programs for the benefit of Plaintiffs' employees. *Id.* Plaintiffs derive substantial

economic value from this training program through the beneficial effects this program has on their employees—both in employee retention and in the ways employees interact with one another and with customers.⁶ *Id.* The material Dewitt took is a blueprint for Waste Connections’ guide to success through leadership. *Id.* In Rubicon’s hands, Plaintiffs will lose their commercial advantage in improved employee retention and lose the cost or operational efficiencies they have obtained through hundreds, if not thousands of “man hours” in developing these programs. *Id.* All of these factors contribute to Waste Connections’ continued success as a leader in the waste services industry. *Id.*

34.

Plaintiffs also make more than “reasonable” efforts to protect the privacy of their trade secrets. *See* Hall Aff., Ex. E; Coles Aff., Ex. F. Plaintiffs require employees with access to trade secrets to enter into nondisclosure agreements prohibiting the unauthorized use or disclosure of Plaintiffs’ trade secrets. *Id.* Plaintiffs also have IT security policies that are designed to protect these trade secrets from unauthorized users. *Id.* Plaintiffs also password-protect databases containing these trade secrets. *Id.* Plaintiffs even password protect certain documents themselves. *Id.* Thus, these materials constitute protected trade secrets under the Georgia Trade Secrets Act.

35.

Defendants misappropriated Plaintiffs’ Confidential Information. Misappropriation occurs through the actual or threatened “acqui[sition],” “use,” and/or “disclosure” of another’s trade secrets “without express or implied consent” through “improper means.” O.C.G.A. § 10-1-760(1)-(2). Rubicon is a relatively new player in the waste industry, entering the market in 2008 and only

⁶ Indeed, Waste Connections’ culture and leadership training materials are so effective that after Waste Connections merged with a subsidiary of PWS’s ultimate parent company in June 2016, and Waste Connections’ procedures and training programs were implemented, worker injury rates were drastically reduced. *See* Coles Aff., Ex. G.

recently moving into a more competitive space with Waste Connections and other waste service providers in the industry. Rubicon does not have the infrastructure, strategies, and methods for which Waste Connections is a known industry leader. Rubicon intentionally hired Dewitt as its National Sales Manager for the purpose of acquiring Plaintiffs' trade secrets for its own benefit, and to replicate for itself Waste Connections' infrastructure, strategies, and training. Before resigning from PWS, and most recently within three days of submitting his resignation, Dewitt accessed and downloaded at least 4,800 pages of documents containing Plaintiffs' trade secrets onto two USB devices. *See* Fielding Aff., Ex. D; Hall Aff., Ex. E; Coles Aff., Ex. F. Dewitt misappropriated Plaintiffs' trade secrets in breach of the Agreement with PWS by taking these devices with him when he resigned from PWS. *Id.* Because Rubicon hired Dewitt to acquire Plaintiffs' trade secrets for its benefit, there is an imminent threat that Defendants have and/or will continue to use Plaintiffs' trade secrets to gain an unfair commercial advantage over Plaintiffs. Defendants' misappropriation of Plaintiffs' Confidential Information has been and continues to be undertaken without the express or implied consent of Plaintiffs.

36.

Plaintiffs have suffered and will continue to suffer irreparable injury if Dewitt or Rubicon are permitted to retain, use and/or disclose Plaintiffs' Confidential Information in violation of the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 *et seq.* There is no adequate remedy at law to compensate Plaintiffs for the loss of their trade secrets and customer goodwill. Defendants' unauthorized misappropriation will damage Plaintiffs' commercial advantage in the marketplace, resulting in a loss of goodwill, reputation, current and future customers, lost profits, loss of future profits, loss of market share, and interference with the ability to maintain top-talent employees.

Thus, an emergency temporary restraining order and interlocutory injunction are necessary to prevent additional irreparable harm to Plaintiffs.

COUNT THREE
TORTIOUS INTERFERENCE WITH AN EXISTING CONTRACT
(RUBICON)

37.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 36 above.

38.

Rubicon is aware of the existence of the Agreement between PWS and Dewitt. Plaintiffs, through counsel, notified Rubicon about Dewitt's ongoing obligations to PWS and provided Rubicon with a copy of the Agreement. Ex. G. Plaintiffs' counsel notified Rubicon that Dewitt is bound by the nondisclosure provision and post-employment obligations in the Agreement. *Id.*

39.

Despite being aware of this Agreement, Rubicon hired Dewitt to gain access to Plaintiffs' Confidential Information for Rubicon's own benefit. As a relatively new player and aspiring "disruptor" in the waste services entry, Rubicon wants Plaintiffs' confidential information and trade secrets to steal customers from Plaintiffs and to create a similar infrastructure to Plaintiffs' in order to seek business from Plaintiffs' customers. In the last three days before Dewitt submitted his resignation to PWS, Dewitt accessed and downloaded over 1,000 documents containing Plaintiffs' Confidential Information, including Plaintiffs' pricing strategies, customer data, and training materials. Fielding Aff., Ex. D; Hall Aff., Ex. E; Coles Aff., Ex. F. This information is extremely beneficial to Rubicon and will aid Rubicon in replicating Plaintiffs' current infrastructure, sales strategies, procedures, and training. Hall Aff., Ex. E; Coles Aff., Ex. F. This

information also provides Rubicon with the information to undercut Plaintiffs' pricing and interfere with Plaintiffs' current and future customer relationships. Hall Aff., Ex. E. And, even though Rubicon was notified by Plaintiffs on March 24, 2017 about Dewitt's Agreement, Rubicon has made no attempt to ensure that Dewitt returned Plaintiffs' trade secrets in his possession. *See* Ex. E. Instead, Rubicon changed Dewitt's job title after receiving this notification, from "National Sales Director" to "Director of Outside Sales," in a transparent attempt to minimize the significance of Dewitt's position at Rubicon.

40.

As a direct and proximate result of Rubicon's tortious interference, Plaintiffs have suffered and, unless Rubicon is restrained, will continue to suffer irreparable harm and damages due to Rubicon's tortious interference with Plaintiffs' Agreement with Dewitt, including injury to goodwill, reputation, lost profits, loss of market share, and loss of future profits.

COUNT FOUR
REQUEST FOR TEMPORARY RESTRAINING ORDER AND INTERLOCUTORY
INJUNCTION
(BOTH DEFENDANTS)

41.

Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 40 above.

42.

Plaintiffs have demonstrated a likelihood of success on the merits for their claims asserted herein.

43.

As a direct and proximate result of Dewitt and Rubicon's conduct as described above, Plaintiffs have suffered and will continue to be subjected to irreparable harm to their business and goodwill.

44.

Unless Dewitt and Rubicon's conduct is immediately restrained, losses will continue to mount and will in all probability continue to irreparably harm Plaintiffs' business.

45.

Plaintiffs' have no adequate remedy at law to protect against further unwarranted and unauthorized use and/or disclosure of Plaintiffs' Confidential Information.

46.

Dewitt further acknowledged in Paragraph 5.1 of his Agreement that any breach of his Agreement entitled Plaintiffs to, among other relief, an injunction to enforce this Agreement and prevent any conduct in violation of the Agreement. *See* Agreement, Ex. A, at ¶ 5.1.

47.

The harm to Plaintiffs greatly outweighs any harm that Defendants would suffer by the issuance of a temporary restraining order and, on hearing, and an interlocutory injunction.

48.

Public policy favors granting a temporary restraining order, and on hearing, interlocutory injunction to restrain the actual or threatened use and/or disclosure of trade secrets and confidential information.

49.

In order to preserve the status quo during the pendency of this action, Plaintiffs request an emergency temporary restraining order, and on hearing, an interlocutory injunction, against Rubicon and Dewitt as follows:

- A. Dewitt is restrained and enjoined, directly or indirectly, from continuing his employment with Rubicon.
- B. Dewitt is restrained and enjoined, directly or indirectly, from using or disclosing any Confidential Information or trade secrets of Plaintiffs, including but not limited to sales strategies and training materials, customer lists and identities, customer contracts, customer pricing and discounts, customer quotes, customer service requirements, expiration dates of customer service agreements, contents of proposals to customers, customer prospects, Plaintiffs' internal costs, profit margins, pricing and discount strategies, and other highly confidential customer and financial information.
- C. Dewitt is required to return any copies of Plaintiffs' trade secrets or confidential information, including the general USB device connected to Dewitt's laptop on March 21, 2017 and the SanDisk Cruzer connected to Dewitt's laptop on January 17, 2017. Dewitt must immediately return all "hard copy" materials in his possession, custody, or control that were acquired from Waste Connections or PWS, or any of Plaintiffs' current or former customers, current or former employees, or any other agents or representatives of Plaintiffs, including all copies or summaries of such materials. Dewitt is further ordered to immediately return to Plaintiffs all work that he created during his employment with PWS, regardless of form.
- D. Dewitt is required to submit to a forensic examination any computer, laptop, tablet, cellular phone, or other like device owned or used by Dewitt for personal or business use. Dewitt is further ordered to provide to counsel for Plaintiffs within 48 hours the password for his PWS-issued cell phone, and the identities and the password(s) for any personal email account(s) and cloud servers he uses in order to allow for their forensic examination.
- E. Rubicon, its affiliates, agents, employees, or any other entity or individual acting on its behalf or in concert with it, are enjoined and restrained from using or disclosing Plaintiffs' Confidential Information, including but not limited to, sales strategies and training materials, customer lists and identities, customer pricing and discounts, customer quotes, customer service requirements, expiration dates of customer service agreements, contents of proposals to customers, customer prospects, Plaintiffs' internal costs, profit margins, pricing and discount strategies, and other highly confidential customer and financial information.
- F. Rubicon is required to submit to a forensic examination its computer systems and network, including any computer, laptop, tablet, cellular phone, or other like device

assigned to Dewitt or made accessible to Dewitt by Rubicon in order to retrieve, recover, and delete any Confidential Information or trade secrets of Plaintiffs.

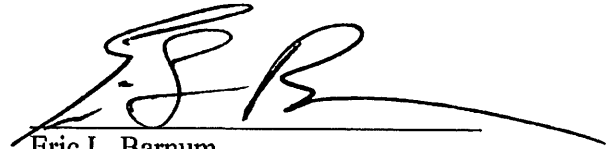
WHEREFORE, Plaintiffs demand and pray as follows:

That an emergency temporary restraining order be immediately issued, and after hearing, an interlocutory injunction be issued immediately enjoining Defendants from using or disclosing Plaintiffs' trade secrets and confidential information; that the Court award Plaintiffs all litigation expenses incurred in bringing this action, including reasonable attorneys' fees; and that the Court award Plaintiffs such other and further relief as the Court deems just and proper under the circumstances.

Dated June 13, 2017

Respectfully submitted,

BAKER & HOSTETLER LLP



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