

CAUSE NO. _____

WASTE CONNECTIONS OF TEXAS,
LLC,

Plaintiff,

v.

RUBICON GLOBAL, LLC,

Defendant.

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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
AND REQUESTS FOR DECLARATORY JUDGMENT AND
TEMPORARY AND PERMANENT INJUNCTIONS**

COMES NOW Plaintiff Waste Connections of Texas, LLC and hereby files this Original Petition and Requests for Declaratory Judgment and Temporary and Permanent Injunctions against Defendant Rubicon Global, LLC, and respectfully shows the Court as follows:

DISCOVERY CONTROL PLAN

1. This case should be governed by Discovery Control Plan Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

PARTIES

2. Plaintiff Waste Connections of Texas, LLC ("Waste Connections") is a Delaware limited liability company with its principal place of business in Harris County, Texas.

3. Defendant Rubicon Global, LLC ("Rubicon") is a Delaware limited liability company doing business in Texas. Despite doing business in Texas, Rubicon has failed to register with the Texas Secretary of State or appoint a registered agent for service of process in Texas. As such, Rubicon may be served with process through service on its President or other executive officer at its headquarters located at 950 East Paces Ferry Road NE, Suite 1900,

Atlanta, Georgia 30326-1384, or through service on the Texas Secretary of State pursuant to Texas Civil Practice and Remedies Code Sections 17.026 and 17.044.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this Court. Waste Connections seeks a declaratory judgment and temporary and permanent injunctive relief and monetary relief in excess of the minimum jurisdictional limits of this Court.

5. This Court has general personal jurisdiction over Rubicon because it does business in Texas. This Court has specific personal jurisdiction over Rubicon because the acts made the basis of this lawsuit were specifically and intentionally undertaken by Rubicon, and continue to occur, in Texas.

6. Venue in Harris County, Texas, is proper under Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred and continue to occur in Harris County, Texas.

INTRODUCTION

7. The facts underlying this action reveal a repeated and widespread practice whereby Rubicon, in an effort to compete with Waste Connections, hires local car-towing companies to unlawfully remove and tow Waste Connections' waste storage containers, often with trash still in them, in an unsafe and dangerous manner. At the time of the wrongful towing, these containers are lawfully located on Waste Connections' customers' property pursuant to contracts between Waste Connections and its customers. Those contracts expressly prohibit the movement or alteration of the containers by anyone other than Waste Connections. The unlawful towing activity not only violates industry and applicable state and federal safety regulations, it also irreparably harms Waste Connections' reputation and goodwill, creates unsafe

and dangerous conditions for the public at large, and disrupts Waste Connections' business operations.

8. Waste Connections seeks a declaration from this Court that Rubicon's use of tow trucks to unlawfully move Waste Connections' containers violates Waste Connections' contracts with its customers, violates applicable state and federal regulations concerning the securement and transportation of cargo such as waste containers, and creates an unreasonable risk of danger to the public.

9. Moreover, Waste Connections seeks temporary and permanent injunctive relief from this Court because Rubicon's use of tow truck companies to unlawfully tow containers in an unsafe manner has caused and continues to cause irreparable harm to Waste Connections' goodwill and business reputation among customers, potential customers, investors, and potential investors, thereby damaging Waste Connections' ability to conduct its business. Waste Connections' number one operating principle is an unyielding focus on safe operations and risk prevention and mitigation. Rubicon's practice of hiring tow truck companies to tow away Waste Connections' containers in a manner that violates industry and applicable safety standards, thus risking public safety, undermines Waste Connections' safety-first image, reputation, and goodwill in ways that cannot be calculated and cannot be compensated.

10. Likewise, temporary and permanent injunctive relief is necessary to prevent irreparable harm to Waste Connections arising from Rubicon arranging to tow away Waste Connections' containers which disrupts Waste Connections' operations, interrupts workflow, and impedes its ability to peaceably conduct its business.

11. In addition, Rubicon's conduct of arranging the towing and delivery of waste containers filled with solid waste to a Waste Connections facility that is not an approved waste

disposal facility violates Texas Health and Safety Codes and constitutes a criminal offense. Texas law expressly provides for a civil suit for injunctive relief to enjoin such conduct. Texas Code, Health & Safety Code § 365.015.

12. Waste Connections believes and alleges upon information and belief that Rubicon will continue its unnecessary and dangerous practices unless enjoined by this Court.

13. Waste Connections has already obtained a state-wide injunction against Rubicon in Louisiana prohibiting it from towing Waste Connections' containers as more fully discussed below, and is seeking similar relief from this Court in this action.

WASTE CONNECTIONS

14. Waste Connections provides waste removal and hauling services to thousands of customers in this State pursuant to contract. Its customers include residential property owners; housing complexes; towns and municipalities pursuant to long-term municipal contracts; health care centers; schools and child care centers; churches; and businesses ranging from individual store owners to strip malls to large big-box stores, factories, and manufacturing centers.

15. Waste Connections enters into service agreements with its customers and agrees to provide waste removal services for a specified term and price. Waste Connections' standard service agreements provide, in relevant part, that (A) Waste Connections' containers remain the property of Waste Connections at all times; (B) the containers are deemed to be in the care, custody, and control of the customer while located at the customer site; (C) the customer accepts responsibility for all loss or damage to the container except for normal wear and tear resulting from Waste Connections' handling of the containers; (D) the customer agrees not to move or alter the containers, and shall use the containers only for their proper and intended purpose; (E) the service agreement cannot be assigned without the consent of Waste Connections; and (F) the

customer agrees to provide Waste Connections with the opportunity to provide additional services to the customer during the term of the service agreement, and/or the right to match any offer for future waste removal services upon the expiration or termination of the agreement.

WASTE CONNECTIONS BUILDS ITS BUSINESS ON SAFETY FIRST

16. Safety is Waste Connections' number one core operating value. Throughout its operations, Waste Connections strives to insure complete safety of its employees, its customers, and the public and communities it serves. An unparalleled culture of safety is paramount to Waste Connections' business model.

17. As an example of Waste Connections' safety-first focus, Waste Connections maintains an extensive safety program for its drivers and helpers. For new drivers, there is a 10 day new-hire training process which covers the entire spectrum of safety issues including proper cargo (including containers) securement, proper cargo weight distribution, safe loading/unloading and transportation of containers, and how those issues affect a vehicle's operation.

18. Safety training continues throughout the drivers' and helpers' careers at Waste Connections. Once new hires are assigned into the field, there is a driver trainer supervisor that oversees and evaluates drivers for 30, 60 and 90 days. Waste Connections also has annual defensive driver training programs involving classroom and behind-the-wheel training and safety education courses. Waste Connections' drivers also go through annual compliance training. Waste Connections has a corrective action policy which holds not only Waste Connections' safety-sensitive employees accountable, but also Waste Connections' leadership. Waste Connections maintains a strict drug and alcohol, risky driver, and hand-held device policy.

19. In addition to constant safety training and oversight, Waste Connections utilizes specialized equipment to reinforce its safety training and goals. For example most, if not all, of Waste Connections' trucks contain event recording technology (DriveCam or 3rd EyeCam) which is designed to identify and mitigate risky behavior and serve as a tool for safety training and accident prevention. This equipment reports data events to an independent third party reviewer who scores the data and sends it electronically to the driver's direct supervisor. If the driver is determined to exhibit risky behaviors, he/she is coached/retrained and monitored for improvement and correction. Waste Connections is constantly promoting and striving to improve when it comes to safety and risk mitigation.

20. Waste Connections also uses specialized trucks for movement of its waste containers. By using equipment specifically designed and manufactured for moving waste containers, Waste Connections is able to reduce risks associated with such movements. These precautions are necessary when dealing with large metal containers which can weigh multiple tons, and which are lifted off the ground and transported along public roads and highways in close proximity to the travelling public. This is the main reason Waste Connections' standard form service agreement with its customers expressly prohibits customers and anyone other than Waste Connections from moving its containers.

21. Waste Connections is an industry leader in safety and risk mitigation procedures as a result of its rigorous and pervasive attention to safe operations. As a result, Waste Connections has received numerous awards for its safety record. Whether it is total recordable injury rates, experience modification rates, or collision frequency rates, Waste Connections ranks among the very best in safety and accident prevention in the waste industry. For example, in 2014 Waste Connections had the lowest total OSHA Recordable Injury Rate among national

waste haulers, and has had less than half the industry OSHA Recordable Injury Rate average since that time, meaning that the industry on average experiences more than double the number of OSHA recordable injuries than that experienced by Waste Connections' employees.

22. Safety and risk mitigation is not only important to Waste Connections' management, it is also important to Waste Connections' employees. Waste Connections conducts a servant leadership survey each year, and the first question concerns safety. Safety consistently ranks among the highest in importance. Creating a culture of safety-first allows Waste Connections to attract and retain its dedicated employees, thus reducing unnecessary and disruptive employee-turnover.

23. Waste Connections provides extensive training to its sales team regarding the safety precautions it employs and the safety-related performance results it achieves. In turn, the sales team utilizes this information in its sales and marketing efforts when seeking to retain existing customers and recruit new customers. Waste Connections' safety reputation is its differentiator in the industry and this reputation is consistently used for courting and maintaining customers who value contracting with a waste hauler that is focused on safety. Waste Connections has been able to secure and maintain contracts and win bids from customers, including schools, housing complexes, and municipalities, because of its exceptional safety record and uncompromising safety-first culture. Waste Connections' reputation as a safety leader in the waste industry, and its remarkable growth and success in just its twentieth year of operation, is due in large measure to its singular focus and culture that values and promotes safety above all else.

24. Waste Connections' record of success relating to safety performance and reducing risk is also valued by shareholders and investors. The ultimate parent of Waste Connections is a

publicly traded company whose positive reputation and image as an industry leader in safety and accident prevention has been reported by securities analysts and market commentators, and has helped attract and maintain institutional investor interest in the Company. One industry analyst recently commented about Waste Connections' "Keys to Success" as follows: "Focus on safety – In what is the fifth most hazardous industry in the US, [Waste Connections, Inc.'s] emphasis on safety has resulted in incident rates improving every year for over a decade and the company having the lowest incident rate in the industry." TD Securities Inc. *Action Note* on Waste Connections, Inc., June 21, 2017.

RUBICON'S UNLAWFUL CONDUCT

25. In direct contrast to Waste Connections' emphasis on safety and accident prevention and risk mitigation, and in violation of Waste Connections' service agreements with its customers, Rubicon engages in a repeated practice in the State of Texas and elsewhere of hiring tow truck companies – that engage in the towing of automobiles - to unlawfully take possession of Waste Connections' waste containers and remove them from the property of Waste Connections' customers. Rubicon engages in such conduct without concern for the reputational impact on Waste Connections, and in complete disregard of applicable safety regulations and the unreasonable risk of harm such conduct creates to the public travelling in proximity to the container-carrying tow trucks, and anyone in the vicinity of the containers as they are being loaded and unloaded by untrained tow truck drivers.

26. Rubicon claims to be a technology start-up company that provides waste and recycling solutions for businesses. Rubicon has the dubious distinction of being known as the "Uber" of the waste industry. With heavy reliance on marketing and self-promotion, Rubicon

proclaims on its website that its mission is “to disrupt the waste and recycling industry”, and it has specifically targeted Waste Connections as one of the businesses it is intent on disrupting.

27. Rubicon’s website also claims it has developed a technology-enabled platform that connects customers with an independent network of waste haulers who can bid for their waste removal business. While this may be Rubicon’s aspiration, for now Rubicon seems to be nothing more than an old-fashioned waste services broker seeking to grow its business by taking customers from established companies. It owns no trucks or other waste removal or hauling equipment or assets.

28. With lofty promises of short-term cost savings and deceptive claims of diverting waste from landfills, fixed-term pricing, and risk-free cancellations, all of which are false and misleading, Rubicon cold-calls businesses and seeks to persuade them to breach their contracts with their existing waste haulers, and offers to pay the customers’ liquidated damages if they sign a contract with Rubicon to act as their purported “agent” to manage their waste removal needs. Because Rubicon conducts all of its business via telephone and internet from a central location in Atlanta, Georgia, it almost never meets in person with its customers – the “principals” for whom Rubicon claims to act as agent.

29. After the customer signs a contract with Rubicon,¹ Rubicon purports to “terminate” the customer’s existing waste hauling contract, and hires another waste hauling company to actually service the customer’s waste removal needs, while charging customers a fee for their middle-man brokering activities.

¹ Rubicon’s standard form contracts are typically for three years, allow for rate increases, impose early-termination charges, automatically renew for successive terms, and prohibit customers from assigning the contract without Rubicon’s prior consent. These terms are typical of traditional waste-hauling contracts, belying Rubicon’s claim that it has developed a new business model. As set forth herein, perhaps the only unique and most notorious aspect of Rubicon’s business is its renegade attitude and its unlawful towing of competitors’ waste containers.

30. One way Rubicon acts as a “disrupter” is to tow away waste containers belonging to Waste Connections, often without emptying them first. Rubicon is unique among companies in the waste industry because no other company engages in the practice of towing another company’s waste containers. Instead, the industry practice when a new waste service provider acquires a customer from an existing provider is to either place its container next to the former provider’s container to allow the former provider a reasonable amount of time to remove its container, or to sensibly negotiate a date when the former provider will remove its container and the new provider will deliver a replacement container so there is no gap in service to the customer. But instead of conducting business in this way, Rubicon engages in the unnecessary and deliberately disruptive and unreasonably dangerous tactic of hiring tow truck companies to tow away Waste Connections’ containers.

31. As part of its efforts to persuade customers to breach their contracts with Waste Connections and enter into a contract with Rubicon, Rubicon obtains an electronic signature from customers on a pre-printed authorization form (again, Rubicon never actually meets with its customers). The form is generically addressed “Dear Vendor” and proclaims that “Effective immediately Rubicon Global LLC is authorized to manage all services regarding waste and recycling” on behalf of the customer. Rubicon enters into such an arrangement with Waste Connections’ customers notwithstanding the non-assignment clause in Waste Connections’ service agreements and notwithstanding that neither Rubicon nor the customers have obtained Waste Connections’ consent to the purported assignment of the service agreement.

32. Rather than provide this authorization form to Waste Connections on the date it is purportedly (electronically) signed, Rubicon’s typical practice is to hold it for anywhere from three to four weeks or longer. The first time Waste Connections is aware that Rubicon is

purporting to act as agent for its customers, if any notice is provided at all, is when Waste Connections receives a notice usually by email with a subject line stating “Termination of Services.” The termination notice arrives in the same email with the authorization form that is dated three to four or more weeks earlier. Rubicon purports to terminate Waste Connections’ service agreements with its customers notwithstanding the fact that most, if not all, of the agreements give Waste Connections the opportunity to provide its customers with additional waste collection and disposal services during the term of the agreement.

33. Rubicon’s termination notice directs Waste Connections to remove its waste container(s) from the customer’s location usually within seven days or less, and on at least one occasion with as little as three days’ notice, failing which the notice warns that the container(s) will be “towed at your expense.” Despite having been purportedly authorized to manage the customers’ waste services for almost one-month or longer, Rubicon notifies Waste Connections and demands removal of its containers in an unreasonably short period of time.

34. In other instances Rubicon provides Waste Connections no notice of termination at all. Containers are simply dropped-off at one of Waste Connections’ truck/container yards. And in still other instances, the containers towed by Rubicon-hired tow truck companies have gone missing and their whereabouts remain unknown. In such circumstances, the actions of Rubicon in concert with the tow-truck companies may constitute criminal conduct under Texas Penal Code § 31.02 which makes it a criminal offense to unlawfully appropriate property with the intent to deprive the owner of the property.

35. Even where prior notice is provided, it does not allow Waste Connections sufficient time to contact its customers (who, along with Waste Connections is the only entity legally authorized to exercise rights under the contract) to confirm its customers’ intention to

breach the service agreement by cancelling before expiration of the agreement's term;² to calculate and explain to its customers that liquidated damages and account balances will be owed upon cancellation of the agreement; to await payment of same; to schedule the emptying of the container prior to removal; and finally to schedule the container's removal using Waste Connections' specialized trucks designed for the transportation of waste containers.

36. Beyond the foregoing, each time Rubicon arranges for, and conspires with, tow truck companies to deliver Waste Connections' waste containers containing solid waste to a Waste Connections truck/container yard in Harris County that is not an approved solid waste disposal facility, Rubicon commits a criminal offense and violates the Texas Health & Safety Code (Texas Code, Health & Safety Code § 365.012(c)). Pursuant to Texas Code, Health & Safety Code § 365.015(a), Waste Connections is entitled to an injunction to enjoin Rubicon's continued violation of this statute.

THE COURT SHOULD ISSUE A DECLARATORY JUDGMENT THAT RUBICON'S TOWING OF WASTE CONTAINERS VIOLATES WASTE CONNECTIONS' CONTRACTS, IS A VIOLATION OF LAW, AND CREATES AN UNNECESSARY AND UNREASONABLE RISK OF HARM

37. Rubicon hires tow truck companies to tow away Waste Connections' containers from its customers' locations notwithstanding the express prohibition against towing in Waste Connections' service agreements with its customers, and despite the fact that neither Rubicon nor the tow truck companies have the equipment, training, or licensing to properly and lawfully transport Waste Connections' waste containers. Rubicon's pattern of unauthorized, unilateral

² In many instances, the "electronic signature" on the notices Rubicon sends to Waste Connections, which Rubicon claims is the signature of an authorized representative of the customer, is not by the same authorized representative who signed the service agreement with Waste Connections. Moreover, in several instances where Waste Connections has contacted the person named in Rubicon's notices, the individual admits they did not have authority to bind the customer to a contract with Rubicon or to authorize the breach of Waste Connections' service agreement. In many instances, after Waste Connections contacts its customers, those customers have decided to maintain their service with Waste Connections rather than do business with Rubicon.

towing of Waste Connections' containers implicates not only Waste Connections' business interests but also public safety.

38. Before hiring tow truck companies, Rubicon does not inquire as to their safety record, nor does Rubicon make any attempt to ensure that the tow truck companies are capable of safely transporting waste containers according to applicable safety regulations. Rather, the only inquiry Rubicon makes before hiring tow truck companies is whether they are licensed to operate a tow truck business. The various ad-hoc companies hired by Rubicon do not employ uniform procedures, and Rubicon exerts no oversight or control over them.

39. The tow truck companies typically use flatbed/rollback trucks designed to tow automobiles, not containers. The trucks have tilt-up rollback flatbeds and the drivers typically connect the containers to a winch and literally drag the containers – steel on steel - onto the truck bed, and use gravity to slide them off when unloading them. In addition, the truck operators chain the containers using chains, “J” hooks, and straps, equipment that is not suitable, much less specialized, for securing and transporting containers, some of which are filled with waste, on public roads and highways. Appropriate securement devices and anchor points are not used, nor are the truck operators trained to safely secure and transport waste containers, and, of course, Waste Connections' quality controls play no role in the tow truck companies' movement of its containers. These conditions create an unreasonable risk of harm and extremely dangerous conditions for the public in proximity of these towed containers on the roads and highways of Texas, and anyone in the vicinity of the containers while they are being loaded and unloaded.

40. The manner in which Rubicon loads, tows, and unloads Waste Connections' containers, using untrained personnel; non-specialized vehicles; inadequate cargo-securement techniques; and towing containers filled with trash that could blow away as the containers are

transported on the back of flatbed trucks at highway speeds, not only falls short of the standards to which Waste Connections holds itself, it also runs afoul of industry practices and applicable regulations.

41. Specifically, the transporting of Waste Connections' containers, as orchestrated by Rubicon, fails to comply with the Federal Motor Carrier Safety Regulations, including those regulations governing proper load securement, as well as Texas State regulations which adhere to federal regulations. See 49 C.F.R. §§ 393.100 - 393.136. These regulations govern the transportation and securement of cargo, including waste containers, and include provisions to prevent rolling and swaying of cargo and load-shifting; provisions concerning tie downs and anchor points appropriate to the load weight; and load placement on the bed of trucks to ensure vehicle stability and proper load distribution. The regulations also govern procedures to secure the lids on containers to prevent the risk of waste blowing out of containers and into the pathways of the motoring public. The most critical of these procedures, of course, is to prevent the risk that the container breaks loose and falls off the truck with potentially catastrophic consequences to those in vicinity of the truck and container. At each turn, Rubicon-hired tow trucks fail to comply with applicable industry and safety regulations, thus not only violating the law, but also creating an unreasonable risk of harm to the public.

42. These hazards are real and every time Rubicon unlawfully tows a Waste Connections' container it is an accident waiting to happen, and another instance where Waste Connections' goodwill and reputation for safety is irreparably harmed. And all of this risk is unnecessary and arises simply because of Rubicon's desire to act as a "disruptor" instead of acting in accordance with standard industry norms of arranging for a replacement waste container to be placed next to a Waste Connections container or provide sufficient time to

schedule the removal of Waste Connections' container and the drop-off of the replacement container.

43. Each time Rubicon arranges for the removal of a Waste Connections container it is also knowingly and intentionally violating the service agreements between Waste Connections and its customers, for whom Rubicon purports to act as agent. Those service agreements expressly prohibit the customer, and anyone other than Waste Connections, from moving or altering the containers. What Waste Connections' customers cannot do as Rubicon's purported principals, Rubicon cannot do as their purported agent. Rubicon has no greater rights than do Waste Connections' customers.

44. As a result of Rubicon's actions as described herein, Rubicon is exposing Waste Connections' customers, as well as the tow truck companies Rubicon contracts with, to the risk of potential liability from any number of parties who are or might be harmed from the unlawful and highly dangerous practice of towing waste containers using unsuitable equipment and methods that violate applicable safety regulations.

45. Since October 2016, Rubicon has arranged for the illegal and unauthorized towing of Waste Connections' containers on at least 35 occasions from its customers' locations in the Houston area alone. These customers are listed in Schedule A attached to this Petition. In each instance, Rubicon has taken such action unilaterally and without authorization from Waste Connections.

46. Based on the foregoing, Rubicon seeks a declaration from this Court that Rubicon's practice of hiring tow truck companies to move Waste Connections' containers without authority and in violation of the express prohibition against container movement in Waste Connections' service agreements with its customers, violates applicable safety

regulations, is unnecessary, and creates an unreasonable risk of harm and danger to the public. And when containers containing trash are deposited at a facility that is not an approved solid waste disposal facility, Rubicon's conduct is a criminal offense in violation of Texas Health & safety Code § 365.012(c).

THIS COURT SHOULD ISSUE TEMPORARY AND INJUNCTIVE RELIEF BECAUSE RUBICON'S CONDUCT IRREPARABLY HARMS WASTE CONNECTIONS' REPUTATION, GOODWILL AND ITS BUSINESS OPERATIONS

47. Rubicon's practice of moving and transporting containers in an unsafe manner by untrained tow truck drivers using equipment that is not designed or manufactured for such purpose threatens the public well-being and irreparably harms Waste Connections' reputation and goodwill among its customers, prospective customers, investors, and potential investors, and disrupts Waste Connections' ability to conduct its business in an orderly and professional manner.

48. Waste Connections' reputation and goodwill, based on industry-leading achievements in safe operations and risk management, are irreparably damaged by Rubicon's unlawful and unsafe towing practices which is a catastrophe waiting to happen. Such damage is impossible to calculate or to compensate.

49. Rubicon's practices fail to adhere to industry standards and applicable regulations for the towing and securement of waste containers that can weigh many thousands of pounds.

50. In view of the singular focus Waste Connections places on safety and risk prevention, and its achievements as a safe and responsible company in the waste industry, every time a Rubicon-hired tow truck rumbles down a highway in Texas with a multi-ton waste container chained precariously on the back of the truck – often filled with garbage that could blow out of the container – Waste Connections' image and reputation as a safety-conscious

waste disposal company is undermined and irreparably harmed in ways that cannot be calculated or compensated. The dangers and risks created by Rubicon towing away Waste Connections' containers harms Waste Connections' ability to hire and retain employees, attract and retain customers, including schools and municipalities, and negatively impacts Waste Connections' brand in the eyes of customers and potential customers, and shareholders, investors, and potential investors, given the emphasis these constituents place on the Company's safety record and safety-related achievements.

51. In addition, Rubicon's unlawful self-help remedy of having third-party tow truck companies transport waste containers that neither Rubicon nor the third-party has authority to lawfully transport also disrupts Waste Connections' business operations creating additional irreparable harm. As is common in the industry, waste containers often are not individually marked and do not have tracking information. Prior to Rubicon's conduct, Waste Connections could rely on its system of delivering and removing its containers to know the precise location of any container at any given moment, thereby allowing it to know its exact inventory and availability to adapt and respond to customers' needs. But when Rubicon-hired tow trucks show up at Waste Connections' truck/container yards with containers, often with no notice whatsoever having been given to Waste Connections, it is a time consuming and labor intensive exercise for Waste Connections to determine where the containers came from.

52. Rubicon's practice of towing away its containers also disrupts Waste Connections' operations and interrupts its work flow. It can take a tow truck driver 10 minutes or more to unload a container and exit the yard. Because the yard is a high-traffic area with trucks entering and exiting, during the time it takes for the driver to unload containers, traffic

congestion occurs with trucks unable to enter and exit the yard thus impeding operations and disrupting Waste Connections' business.

53. In other instances, containers have been simply dropped off at Waste Connections' truck/container yards without the tow-truck checking in with anyone, meaning the Rubicon-hired tow truck companies are unlawfully trespassing on Waste Connections' property. And because the containers are not marked, Waste Connections has no way of tracking containers that are simply left at the yards by tow truck drivers. This causes tremendous disruption to Waste Connections' business operations and work flow which depends on Waste Connections being able to control the movement and location of its assets, including its containers.

54. Moreover, Rubicon's practice of delivering waste containers to a Waste Connections truck/container facility with trash in the containers creates further disruptions not only because Waste Connections needs to empty the containers, but also because Waste Connections has no way to verify the type and source of refuse or where it came from, which means Waste Connections must expend time and resources to verify that the container is not filled with hazardous, contaminated, or other inappropriate waste.

55. In several instances, containers towed away from customers' property by Rubicon-hired tow trucks have gone missing and their whereabouts are unknown. In July and August 2017 alone, containers towed away by Rubicon-hired tow trucks from the following Houston-area customers remain missing: Clearchoice Automotive (2 locations); and Burts Food Market. Even if the containers were dropped-off at Waste Connections' facilities, because the tow truck drivers do not have delivery receipts signed by a Waste Connections employee, or any other evidence to substantiate actual delivery and receipt by Waste Connections, Waste

Connections has no way of tracking the containers. All of this causes tremendous disruption to Waste Connections' work flow and its ability to conduct its business free from interruptions caused by Rubicon.

56. Waste Connections relies on containers being located on its customers' property along established routes to allow for the efficient use of resources and equipment. When containers are removed without Waste Connections' knowledge or permission, Waste Connections' truck drivers driving their routes need to interrupt their routine to report the missing container or inquire about its whereabouts with the customer. If the container is along a spur in the route, the driver will have driven extra miles to a location only to find that the container is missing, thus causing further disruption to Waste Connections' business.

57. Rubicon's practice of towing away containers also creates unreasonable risks and hazards for Waste Connections' employees. In a recent incident, on July 6, 2017, a Rubicon-hired tow truck company (Hub Wrecker Service) delivered a container to Waste Connections from the property of its customer, Safe Space Concept Inc. Waste Connections received a termination notice from Rubicon on July 1, 2017, demanding removal of the container by July 5, a mere four days later which obviously included the July 4th holiday. The driver of the tow truck had previously delivered a container to Waste Connections at Rubicon's direction, and on that prior occasion left behind a chain and "J" hook because they got stuck in the container and the driver was unable to dislodge them. On July 6th he demanded that the chain and hook be returned to him. When Waste Connections personnel told the driver the items were not on site, the driver became irate and belligerent and argued with Waste Connections personnel. As he walked out of the maintenance shop where the argument took place, he was heard muttering what sounded like "I hope that you get what you deserve." Therefore, in addition to all the other

risks and hazards caused by Rubicon's conduct, Waste Connections' personnel also have to contend with hostile and angry tow truck drivers hired by Rubicon who may engage in retaliatory acts.

RUBICON HAS ALREADY BEEN ENJOINED IN LOUISIANA

58. On June 14, 2017, after a two day trial that included expert testimony concerning the violations of state and federal safety regulations committed by Rubicon-hired tow truck companies, and the resulting grave safety risks that arise from Rubicon's unlawful and unsafe towing practices, a state district court in Louisiana enjoined Rubicon from towing Waste Connections' containers throughout Louisiana for at least 14 business days after Waste Connections receives all amounts due and owing from or on behalf of its former customers who choose to breach their existing contract with Waste Connections. The Louisiana court made it clear that Waste Connections' failure to remove its containers within 14 business days did not give Rubicon permission to tow away containers and if Rubicon did so it was acting at its peril.³

RUBICON'S UNLAWFUL CONDUCT MUST BE ENJOINED BY THIS COURT

59. Following issuance of the injunction in Louisiana, Waste Connections sought assurances from Rubicon that it would refrain from towing containers in Texas and in other states. As evidenced by Rubicon's continued brazen, unlawful, and dangerous towing activity in Houston, Rubicon will not cease towing Waste Connections' containers unless it is enjoined by a court, thus necessitating this request for temporary and permanent injunctive relief.

60. In order to prevent immediate, permanent, and irreparable injury to Waste Connections, and to the public safety, Rubicon must be enjoined from movement of Waste Connections' containers. Every day this practice continues, more lives are put at risk of severe

³ When Waste Connections moved for injunctive relief in Louisiana it did so on a nationwide basis. On June 14, 2017, the judge presiding over the action declined to exercise nationwide jurisdiction. Accordingly, Waste Connections is now seeking declaratory and injunctive relief in this Court.

harm, more violations of laws designed for the public safety occur, and Waste Connections suffers more loss of goodwill and the ability to peaceably carry on its business. With thousands of customers in this State, if Rubicon continues to tow Waste Connections' containers in the absence of an injunction, harm to Waste Connections and risk to the public will increase dramatically. Intervention of this Court is necessary to protect the interests of Waste Connections and the public.

CAUSES OF ACTION

Count I – Declaratory Judgment

61. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

62. Rubicon, through its actions in this and other jurisdictions, has shown it intends to continue to remove Waste Connections' containers from its customers' locations in violation not only of Waste Connections' contracts with its customers, but, more importantly, in violation of applicable state and federal safety regulations and in a manner that creates an unnecessary and unreasonable risk of harm to the public. As a result, Waste Connections seeks a declaration pursuant to Texas Civil Practice and Remedies Code § 37.001 et seq. from this Court that Rubicon's practice of hiring tow trucks to move Waste Connections' containers is unlawful and dangerous.

63. Specifically, Waste Connections seeks a declaration from this Court that Rubicon is not entitled to remove any property belonging to Waste Connections using tow truck companies because such conduct violates Waste Connections' contracts with its customers, violates applicable state and federal safety regulations for the securement and transportation of cargo such as waste containers, creates an unreasonable risk of harm to the public, and is causing

irreparable harm to Waste Connections. Waste Connections will present sufficient evidence to show that these requested declarations are appropriate under the Declaratory Judgment Act.

64. In addition to the requested declarations, Waste Connections requests an award of attorneys' fees under Texas Civil Practice and Remedies Code § 37.009 based on the fees incurred by Waste Connections being reasonable and necessary under the circumstances and since such an award would be equitable and just.

Count II – Tortious Interference with Contracts

65. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

66. As described above, Waste Connections has ongoing contracts with customers. Rubicon improperly and without justification interferes with these contracts by inducing Waste Connections' customers to attempt to breach their service agreements with Waste Connections. Rubicon's willful and intentional interference culminates in Rubicon towing away Waste Connections' property without authorization or right, and in violation of Waste Connections' contract with its customers for whom Rubicon purports to act as agent.

67. As a proximate cause of Rubicon's improper interference, Waste Connections is injured in the form of loss of business relationships with customers. But for Rubicon's actions, Waste Connections would have continued to service its customers under the parties' agreements, including as a result of the provision in its service agreements whereby Waste Connections' customers agree to provide Waste Connections with the opportunity and/or right to match any offer for future service.

68. Even where Rubicon pays liquidated damages to Waste Connections on behalf of a customer as a result of the customer's early cancellation, such payment does not alter the fact

that but for Rubicon's interference, the contract would have continued in effect and the customer would continue to be bound by its obligations under the contract, including honoring the obligation to provide Waste Connections with the opportunity/right to service the customer's waste disposal needs. Nor does payment of liquidated damages permit Rubicon to move Waste Connections' waste containers.

69. As a result of Rubicon's tortious interference, Waste Connections has been damaged in the form of lost profits, loss of customer goodwill, and loss of business reputation.

Count III – Conversion

70. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

71. As described above, Rubicon commits conversion of Waste Connections' property when Rubicon or its agents remove Waste Connections' waste containers from its customers' locations without authorization or legal right to take such actions.

72. The containers at issue are the property of Waste Connections. No other party has been granted the authority to move, remove, or otherwise exercise dominion over the receptacles. Despite this lack of authority, Rubicon improperly exercises dominion and control over Waste Connections' waste containers as described above. This improper exercise by Rubicon over Waste Connections' property is done intentionally with intent to deprive Waste Connections of the benefit of use of its property.

73. As a result of Rubicon's actions, Waste Connections has suffered injury in the form of loss of use of the waste containers, loss of profit that would have been derived from use of the property, and exemplary damages based on Rubicon's taking the described actions with malice and with wanton disregard for the rights of Waste Connections.

Count IV – Negligence

74. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

75. Rubicon owed a duty to Waste Connections to act as a reasonably prudent person and to use reasonable care not to engage in acts that would harm Waste Connections' business operations and reputation. Defendant violated that duty by dangerously removing Waste Connections' waste containers from its customers' locations without adequate notice to or coordination with Waste Connections.

76. As a direct result of Rubicon's continued negligent acts, Waste Connections is suffering irreparable harm to its business, loss of customer goodwill, and loss of business reputation as outlined above for which there is no adequate remedy at law, as well as monetary damages for which it is entitled to recover from Rubicon. In addition, Waste Connections may suffer additional losses as legal proceedings continue and for which it is entitled to recover additional damages.

Count V – Violation of Texas Law

77. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

78. The Texas Health & Safety Code (Texas Code, Health & Safety Code § 365.012(c)) makes it a criminal offense to transport litter or solid waste to a place that is not an approved solid waste disposal site.

79. If the litter or solid waste weighs 1000 pounds or more or has a volume of 200 cubic feet or more; or is disposed of for commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more, the offense constitutes a state jail felony. Texas Code,

Health & Safety Code § 365.012(g). The transportation of solid waste with lesser weight limitations constitutes a criminal misdemeanor for which proof of culpable mental state is not required. Texas Code, Health & Safety Code § 365.012 (e), (f), (n).

80. Pursuant to Texas Code, Health & Safety Code § 365.015, any person affected or to be affected by a violation of this provision of the Texas Code is entitled to commence a civil suit for injunctive relief to enjoin the violation.

81. Each time Rubicon arranges for, and conspires with, tow truck companies to transport Waste Connections' waste containers containing solid waste to a Waste Connections truck/container yard in Harris County, Texas, that is not an approved solid waste disposal facility, Rubicon commits a criminal offense and violates this subchapter of the Texas Code.

82. Pursuant to Texas Code, Health & Safety Code § 365.015(a), Waste Connections is entitled to an injunction to enjoin Rubicon's continued violation of this statute.

83. In addition, Waste Connections is entitled to recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to this proceeding. Texas Code, Health & Safety Code § 365.015(c).

REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

84. Waste Connections incorporates by reference all preceding paragraphs as if fully set forth herein.

85. Unless immediately enjoined and restrained as requested herein, Rubicon will, either directly or through the use of third parties, continue interfering with Waste Connections' existing contracts and moving, altering, removing, and transporting Waste Connections' waste containers and equipment in violation of applicable state and federal safety regulations.

86. The prerequisites for the granting of a temporary injunction in Texas are well-established. A temporary injunction "preserve[s] the status quo of the litigation's subject matter

pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The “status quo” is the “last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (internal quotation marks omitted). “To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru*, 84 S.W.3d at 204. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Id.* Whether to grant or deny a temporary injunction is within the trial court’s sound discretion. *Id.* Courts weigh injury to the public compared to injury to the defendant if the injunction is granted. *See Int’l Paper Co. v. Harris County*, 445 S.W.3d 379, 395 (Tex. App. – Houston [1st Dist.] 2013, no. pet.).

87. Waste Connections is likely to succeed on the merits of this lawsuit and to obtain a declaratory judgment because Rubicon’s practice of hiring tow truck companies to tow away its containers violates applicable safety regulations and creates an unnecessary risk of harm to the public. In addition, Rubicon has tortiously interfered with Waste Connections’ contracts and has committed—and continues to commit—conversion of Waste Connections’ property and negligence, all of which harms Waste Connections’ reputation and goodwill, and disrupts its business operations. Rubicon has induced Waste Connections’ customers to attempt to breach their agreements with Waste Connections, and Rubicon has taken possession of and transported Waste Connections’ waste containers without authority to do so. Even if Rubicon’s actions were arguably made in good faith, Rubicon’s conduct constitutes a conversion. For these reasons, Waste Connections has satisfied its burden of demonstrating a reasonable likelihood of succeeding on the merits.

88. As a direct and proximate result of Rubicon's actions, as more fully described above and as will be shown at the trial for temporary injunctive relief, Waste Connections has suffered and will continue to suffer irreparable harm through damage to its goodwill and reputation for which it has no adequate remedy at law. Waste Connections has built a reputation as an industry leader when it comes to safety and risk mitigation. Waste Connections' safety reputation is its differentiator in the industry, and it uses its well-earned reputation as a key marketing strategy for courting and maintaining talent, customers, and investors.

89. Each time a Rubicon-hired tow truck improperly and dangerously transports a Waste Connections container on a public road or highway, Waste Connections' goodwill is diminished. Each time a Rubicon-hired tow truck improperly manipulates a Waste Connections container, Waste Connections' goodwill is diminished. Most of all, when, not if, an accident occurs involving a Rubicon-hired tow truck's unauthorized movement of containers, Waste Connections' goodwill and reputation will be immeasurably damaged. Such conduct damages Waste Connections' reputation in ways that cannot be reasonably calculated or compensated.

90. Additionally, when Rubicon moves Waste Connections' containers without authorization and without notification, Waste Connections is unable to track and maintain its containers, wreaking havoc on its ability to conduct business in an orderly and professional manner or even to keep track of where its containers are located. The containers do not have tracking information. Prior to Rubicon's conduct, Waste Connections could rely on its system of delivering and removing its containers to know the precise location of any container at any given moment, thereby allowing it to know its exact inventory and availability to adapt and respond to customers' needs. Rubicon's conduct, however, disrupts Waste Connections' business operations which constitutes separate irreparable harm justifying temporary injunctive relief.

91. Beyond the foregoing, injunctive relief is necessary to enjoin violation of Texas Code, Health & Safety Code § 365.012(c) as set forth in Texas Code, Health & Safety Code § 365.015.

92. Unless Rubicon's conduct is restrained, Rubicon will continue to damage Waste Connections' reputation and goodwill, impair Waste Connections' ability to conduct its business in an orderly and predictable fashion, and compromise public safety.

93. Waste Connections has no adequate remedy at law to protect against Rubicon's unlawful towing of containers in violation of applicable safety regulations, interference with contracts with their customers, conversion of its property, damage to its goodwill, and interruption of its business.

94. In order to preserve the status quo during the pendency of this action, Waste Connections, therefore, asks this Court for a temporary injunction, and on final trial, a permanent injunction, directed at Rubicon, its officers, agents, servants, employees, contractors, attorneys, and other persons in active concert or participation with them, to:

1. restrain, enjoin and prohibit Rubicon (including its officers, agents, servants, employees, contractors, attorneys and other persons in active concert or participation with them), whether directly or through the use of any third party, from engaging in any movement, alteration, or removal of any waste container or other equipment belonging to Waste Connections; and,
2. mandate that Rubicon (including its officers, agents, servants, employees, contractors, attorneys and other persons in active concert or participation with them), whether directly or through the use of any third party, provide Waste Connections commercially reasonable written notice of its purported retention as agent by a Waste Connections customer.

PRAYER / REQUEST FOR RELIEF

FOR THESE REASONS, Plaintiff Waste Connections of Texas, LLC respectfully prays that:

- A. The Court set a date and time for a hearing on this application for a temporary injunction;
- B. Defendant Rubicon Global, LLC be cited to appear and answer;
- C. After hearing, the Court issue a temporary injunction enjoining Defendant Rubicon Global, LLC (including its officers, agents, servants, employees, contractors, attorneys and other persons in active concert or participation with them), whether directly or through the use of any third party, from the acts described above, including violation of Texas Code, Health & Safety Code § 365.012(c); and mandating commercially reasonable notice as described above;
- D. Plaintiff Waste Connections of Texas, LLC recover from Defendant Rubicon Global, LLC the reasonable expenses, including but not limited to attorneys' fees and court costs, incurred in obtaining the temporary and permanent injunction, and as otherwise allowed by statute or law;
- E. Upon final hearing, a permanent injunction be entered that enjoins Defendant Rubicon Global, LLC (including its officers, agents, servants, employees, contractors, attorneys and other persons in active concert or participation with them), whether directly or through the use of any third party, from the acts described above;
- F. Plaintiff Waste Connections of Texas, LLC have Declaratory Judgment against Defendant Rubicon Global, LLC that Rubicon's practice of hiring tow truck companies to move Waste Connections' containers is unlawful, violates applicable state and federal safety regulations, creates an unreasonable risk of harm and danger to the public, and is causes irreparable harm to Waste Connections of Texas, LLC; and
- G. Plaintiff Waste Connections of Texas, LLC have judgment against Defendant Rubicon Global, LLC, for:
- (1) Damages, in an amount within the jurisdictional limits of the Court of more than \$200,000 but not more than \$1,000,000;
 - (2) Attorneys' fees;
 - (3) Exemplary damages;
 - (4) Prejudgment interest from the date of injury through the date of judgment, at the maximum rate allowed by law;
 - (5) Post-judgment interest at the maximum legal rate;
 - (6) Costs of court; and

- (7) Such other and further relief to which Plaintiff Waste Connections of Texas, LLC may be entitled at law or in equity.

Request for Disclosure

Waste Connections requests that defendant disclose and produce the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure within 50 days of the service of this request.

August 7, 2017

Respectfully submitted,

BAKER HOSTETLER LLP

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