IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

CITY OF BRANDON — PLAINTIFF

VS. — CIVIL ACTION NO. 18-142

GOLD COAST COMMODITIES, INC; ROBERT DOUGLAS; THOMAS DOUGLAS; AND JOHNS DOES 1-5 — DEFENDANTS

Complaint

COMES NOW the City of Brandon, Mississippi, and files this Complaint for money damages and injunctive relief. Specifically, the City of Brandon ("City") seeks a judgment against Defendants Gold Coast Commodities, Inc. ("Gold Coast"), Robert Douglas, and Thomas Douglas (collectively "Defendants"), for money damages caused to City property by Defendants' consistent willful, wanton, reckless, and/or negligent acts as set forth herein, and for injunctive relief prohibiting Defendants from causing further damages to City property by illegally dumping commercial wastes into the City's wastewater system.

Parties

1. Plaintiff City of Brandon is a municipal corporation founded in 1828, with its principal place of business at 1000 Municipal Drive, Brandon, Mississippi 39042.

2. Defendant Gold Coast Commodities, Inc. is a private corporation in good standing, incorporated and existing under the laws of Mississippi. Its principal place of business is 817 North College Street, Brandon, Mississippi 39042. It may be served with process by serving its registered agent Robert L. McArty, 701 Avignon Drive, Suite 201, Ridgeland,

Mississippi 39157; or by serving one of its officers, Thomas Douglas and Robert Douglas, at 817 North College Street, Brandon, Mississippi 39042.

3. Defendant Thomas Douglas is a resident of Mississippi and an officer of Gold Coast. He may be served with process at 817 North College Street, Brandon, Mississippi 39042.

4. Defendant Robert Douglas is a resident of Mississippi and an officer of Gold Coast. He may be served with process at 817 North College Street, Brandon, Mississippi 39042.

5. Defendants John Does 1-5 are individuals or corporations additionally liable for the injuries set forth herein, whose identities are not yet known to the City.

Jurisdiction and Venue

6. This Court has jurisdiction of this matter pursuant to Article VI, Section 156 of the Mississippi Constitution and Miss. Code Ann. § 9-7-81.

7. Venue is proper in this Court under Miss. Code Ann. § 11-11-3, as Defendant Gold Coast has its principal place of business in Rankin County, Mississippi, and the substantial acts, omissions, and events causing the injury complained of herein occurred in Rankin County.

Facts

8. Gold Coast, according to its website,[1] is a "fats and oils specialist." Gold Coast produces customized animal feed products using "acidulated oil seed soapstocks, UCO, poultry fat, palm fatty acids and oils, and more." The Gold Coast website also touts the company's production of biodiesel and other items tangentially related to its central business operations. As part of its production process, Gold Coast adds sulfuric acid to used oil and soapstock. Effluent from this process is then mixed with caustic (usually sodium hydroxide) and moved to wastewater disposal tanks to await disposal. Gold Coast's effluent has to be kept at extremely high temperatures because, at normal temperatures, it would be too viscous to flow.

[1] https://www.goldcoastcommodities.com, *last visited* July 5, 2018.

9. Gold Coast's business operation, by its nature, produces at least 6,000 gallons of wastewater per week. The wastewater from Gold Coast's plant is extremely acidic (*i.e.*, it has a very low pH level), extremely hot, and inappropriate for dumping into a public sewer. Gold Coast has been in operation since 1983, and therefore has or should have significant expertise on the nature of the chemicals used in its production process, as well as the nature of the wastewater produced by said process. Nevertheless, Gold Coast consistently and surreptitiously discharged its high-temperature, corrosive waste into the City's sewer system for an unknown number of years leading up to 2014.[2] In or around that year, Gold Coast entered an agreement with the City of Pelahatchie, under which Gold Coast paid a quarterly fee and additional costs for the right to transport its wastewater to Pelahatchie's sewage treatment facility (the "Pelahatchie POTW") on a once- or twice-weekly basis.

10. However, in the first ten (10) months of 2016, Gold Coast transported wastewater to the Pelahatchie POTW only two times. Instead, despite that it knew or should have known it was not safe to discharge its wastewater into the City's sewer system, Gold Coast continued to illegally discharge its wastewater into the City sewer system.

11. On or around October 6, 2016, the City complained to the Mississippi Department of Environmental Quality ("MDEQ") that oily, low-pH wastewater was being discharged into the City's sewer system by Gold Coast. *See* MDEQ Investigation Report, attached hereto as Exhibit "A." MDEQ began an investigation, during which Gold Coast employees and officers initially claimed they had no information on wastewater leaving the Gold Coast facility, and that they did not know how the low-pH wastewater got into City sewers. The investigation's first visit to Gold Coast revealed several potential MDEQ violations. *See* Exhibit "A."

[2] Indeed, Defendant Tom Douglas admitted on at least one occasion that "Gold Coast had dumped into the City of Brandon's collection system for years." *See* MDEQ Investigation Memo, attached hereto as Exhibit "C."

12. After MDEQ investigators first visited Gold Coast, truckloads of Gold Coast wastewater suddenly began regularly arriving for disposal in Pelahatchie on or about October 10, 2016. MDEQ investigators observed Gold Coast wastewater being disposed of in Pelahatchie and reported that the wastewater was dark brown in color, smelled of used oil, and was steaming and foaming as it was poured from the truck. Exhibit "A."

13. During MDEQ investigators' second visit to Gold Coast on or about October 11, 2016, Defendant Thomas Douglas claimed the wastewater was sent to Pelahatchie only infrequently because it was often not disposed of at all, but rather used to mix into Gold Coast's product to adjust fat content based on customers' specific requests. However, Gold Coast admitted that to the extent the wastewater is taken to Pelahatchie, Gold Coast had not been recording the pH, amount, date, and time of wastewater disposal, despite its contract with Pelahatchie requiring such records. Exhibit "A."

14. At the same time, the City commenced its own investigation, which revealed Gold Coast was indeed clearly dumping significant amounts of high-temperature, corrosive, low-pH wastewater into the City's sewer system. Specifically, the investigation revealed high levels of arsenic, barium, cadmium, chromium, lead, mercury, sodium, and sulfate, both at the Gold Coast point of discharge and in downstream sewer pipes. Waypoint Analytical Report Excerpt, attached hereto as Exhibit "B." Samples of wastewater taken from upstream parts of the sewer system showed pH levels between 3.89 and 6.79 and temperatures between 80.1 and 82.4 degrees Fahrenheit. Exhibit "B." Samples taken at the Gold Coast discharge point and downstream therefrom showed pH levels between 1.43 and 1.62 (*i.e.*, extremely acidic) and temperatures between 114.6 and 125.8 degrees Fahrenheit. Exhibit "B." In other words, Gold Coast's discharged wastewater was so acidic that it significantly affected the overall pH of *all*

the wastewater in the City's system downstream from its discharge point. Gold Coast's discharge of acidic wastewater was exacerbated by the wastewater's high temperature, as high temperatures increase the corrosive nature of acids.

15. Further, the City investigation revealed solidified and viscous oil and grease present in the City sewer system in the area immediately downstream from the Gold Coast facility.

16. On or about November 4, 2016, the City informed Gold Coast of the City's intention to install a monitor at Gold Coast's discharge location due to Gold Coast's continued disposal of prohibited waste into the sewer system.

17. Nevertheless, despite City ordinances setting forth the illegality of dumping such waste into the sewer system and the repeated notice attendant to the MDEQ and City investigations, Gold Coast continued dumping its prohibited wastewater into the City sewer system through at least October 2016, in violation of federal, state, and municipal regulations and laws. Thereafter, Gold Coast began having its corrosive wastewater transported into the City of Jackson and discharged into that city's public sewer system without proper treatment, thereby continuing to subvert applicable public-health and environmental laws. *See* MDEQ Investigation Memo, attached hereto as Exhibit "C." Specifically, MDEQ determined Gold Coast's untreated wastewater being discharged into the City of Jackson's sewer system resulted in numerous violations, including:

- Miss. Code Ann. § 49-17-29(2)(a), prohibiting placement of wastes in a location where they are likely to cause pollution of waters of the state; and

- Miss. Code Ann. § 49-17-43(5)(b) and 11 Miss. Admin. Code Pt. 6, Ch. 1 Rule 1.1.1.B(2)(b)(4), prohibiting introduction of pollutants into a POTW without proper pretreatment.

MDEQ Order, attached hereto as Exhibit "D." In short, Gold Coast's determination to discharge its wastewater into public sewers despite clear knowledge it was unsafe and illegal to do so reveals its indifference to, or contempt for, concerns of public health and safety.

18. The City conducted a further investigation in February 2017, with the specific purpose of determining what damage, if any, Gold Coast's illegal dumping had caused the City's sewer pipes. The investigation studied several segments of pipe downstream from Gold Coast's facility. All the pipe analyzed in the investigation was shown to be severely corroded. Some segments used reinforced concrete pipes and others used lined ductile iron pipes, and Gold Coast's acidic discharge had caused severe damage to pipes made of both materials. Several areas were so corroded that the pipes collapsed, causing untreated wastewater to flow out of the City's sewer system due to Gold Coast's discharge. The City was forced to immediately spend significant funds to repair these pipe failures, and must still expend additional resources to fully restore the integrity of its sewer system.

19. In addition to the MDEQ investigation, upon information and belief, the federal Environmental Protection Agency and/or Department of Justice is investigating Defendants because their actions described herein may constitute violations of certain criminal laws.

Count I: Negligence

20. The City re-alleges and incorporates Paragraphs 1-19 of this Complaint as if fully set forth in this Paragraph.

21. As a corporate citizen and water/sewer customer of the City, Gold Coast had a duty to avoid disposing prohibited waste into the City's sewer system. Indeed, Gold Coast knew or should have known at all pertinent times that it was prohibited from disposing of its wastewater into the City's sewer system, as evidenced by its contract to dispose of wastewater in Pelahatchie.

22. Moreover, Gold Coast has been in business as a "fats and oils specialist" since 1983. Defendants are highly knowledgeable about the chemicals utilized in Gold Coast's production process. Therefore, from Defendants' perspective it was particularly foreseeable that discharging high-temperature, highly corrosive waste into the City's sewer system would cause the exact injuries described herein.

23. Gold Coast breached its duty to the City by recklessly, wantonly, and intentionally disposing of its corrosive, low-pH wastewater into the City's sewer system on a consistent basis, and continuing to do so long after it had clear notice it was in violation of relevant ordinances.

24. Gold Coast's breach proximately caused damages to City property. Specifically, Gold Coast's prohibited waste caused severe corrosion to underground sewer pipes, which the City was forced to repair at significant expense. Additional repairs will be necessary in the near future.

25. Accordingly, Gold Coast is liable to the City for negligence.

Count II: Gross Negligence

26. The City re-alleges and incorporates Paragraphs 1-25 of this Complaint as if fully set forth in this Paragraph.

27. Gold Coast's conduct in consistently, recklessly, wantonly, and intentionally disposing of prohibited corrosive low-pH waste into the City's sewer system, despite clear notice of its duty to avoid doing so, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them.

28. Gold Coast's reckless behavior therefore rises to the level of gross negligence and is sufficient to support an award of punitive damages under Mississippi law.

Count III: Negligence Per Se

29. The City re-alleges and incorporates Paragraphs 1-28 of this Complaint as if fully set forth in this Paragraph.

30. Gold Coast's actions, as set forth in more detail below, violated several City ordinances, including:

a. Section 82-97: Prohibited Discharges into Public Sewers; and

b. Section 82-98: Restricted Discharges

c. Section 82-99: Pretreatment Facilities.

31. These violations of City ordinances, which caused exactly the type of damages the said ordinances are designed to prevent, constitute negligence as a matter of law.

Count IV: Liability Pursuant to Ordinance

32. The City re-alleges and incorporates Paragraphs 1-31 of this Complaint as if fully set forth in this Paragraph.

33. City Ordinance § 82-108(c) provides: "Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation." The "article" referenced in the ordinance is Chapter 82, Article IV – Sewer Regulations, which encompasses Sections 82-91 through 82-108. The compliance point

for the City's sewer regulations (*i.e.*, the point at which compliance is measured) is the point of discharge.

34. City Ordinance § 82-97(3) prohibits the discharge of "Any waters or wastes having a pH lower than 6.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works." Gold Coast discharged wastewater so acidic it caused the pH of the City's entire wastewater flow downstream from Gold Coast to drop below 1.5.

35. City Ordinance § 82-97(4) prohibits the discharge of

> Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

Gold Coast discharged solidified and viscous oil and grease into the City sewer system.

36. City Ordinance § 82-98(1) prohibits, subject to the discretion of the City's public works director, the discharge of "Any liquid or vapor having a temperature higher than 120 degrees Fahrenheit." Gold Coast's discharge was at a high enough temperature to raise the entire downstream sewer temperature to 125 degrees Fahrenheit.

37. City Ordinance § 82-98(2) prohibits, subject to the discretion of the City's public works director, the discharge of "Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit." Gold Coast's discharge into the City sewer system contained solidified and viscous oils and grease.

38. City Ordinance § 82-98(4) prohibits, subject to the discretion of the City's public works director, the discharge of "Any waters or wastes containing strong acid, iron, pickling

wastes, or concentrated plating solutions whether neutralized or not." City Ordinance § 89-98(8) prohibits, subject to the discretion of the City's public works director, the discharge of "Any waters or wastes having a pH in excess of 8.5 or below 6.0." Gold Coast discharged wastewater so acidic it caused the pH of the City's entire wastewater flow near the Gold Coast facility to drop below 1.5.

39. City Ordinance § 82-98(5) prohibits, subject to the discretion of the City's public works director, the discharge of

> Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the public works director for such materials.

At the Gold Coast discharge point, the City investigation revealed chromium in the amount of 1.54 mg/L. The Gold Coast discharge also contained other "objectionable" substances.

40. City Ordinance § 82-99 requires all industrial and commercial process wastewater to be pretreated prior to discharge into public sewers as necessary. The Ordinance specifically requires pretreatment of wastewater to bring arsenic to a maximum concentration of 0.5 mg/l, barium to 5.0 mg/l, cadmium to 0.02 mg/l, chromium to 0.05 mg/l, lead to 0.1 mg/l, and mercury to 0.002 mg/l. The Gold Coast discharge was not pretreated to meet these requirements.

41. Accordingly, Gold Coast has violated several provisions of Chapter 82, Article IV of the City of Brandon Ordinances, and is therefore liable to the City for its resultant damages pursuant to Ordinance § 82-108(c).

Count V: Corporate Officer Liability

42. The City re-alleges and incorporates Paragraphs 1-41 of this Complaint as if fully set forth in this Paragraph.

43. Defendants Thomas Douglas and Robert Douglas are officers of Gold Coast.

44. Both Thomas Douglas and Robert Douglas directed, directly participated in, authorized, had knowledge of, and/or gave their consent to the commission of the torts described herein.

45. Accordingly, Defendants Thomas Douglas and Robert Douglas are liable to the City for their direct participation, authorization, knowledge, and/or consent with respect to the tortious acts of Gold Coast and the resulting damages to the City.

Count VI: Permanent Injunction

46. The City re-alleges and incorporates Paragraphs 1-45 of this Complaint as if fully set forth in this Paragraph.

47. Defendants' tortious actions, and the City's resulting damages, are of such a type that if Defendants should resume their tortious activities in the future, the City would suffer additional harm.

48. The City requests that this Court issue a permanent injunction prohibiting Defendants from, at any time in the future, disposing of high-temperature, corrosive, acidic, or other prohibited waste into the City's sewer system.

49. In the absence of such injunctive relief, the City will be irreparably harmed if Defendants continue such disposal and thereby cause the City to constantly incur damages to its sewer system.

50. The injunctive relief the City seeks will cause no harm to Defendants, as it would require only that they comply in the future with already applicable laws.

51. The public interest will be served by the injunction, as the injunction will help protect the public sewer system, the proper functioning of which is vital to public health and safety in the City.

WHEREFORE, PREMISES CONSIDERED, the City requests this Court enter a judgment:

A. Awarding damages to the City commensurate with the physical damage done to City property by Gold Coast's actions described herein, in a specific amount to be proven at trial;

B. Awarding punitive damages to the City for Gold Coast's reckless, wanton, willful, and knowing acts, rising to the level of gross negligence;

C. Awarding reasonable costs, including attorneys' fees;

D. Awarding permanent injunctive relief, prohibiting Defendants from disposing of improper waste into the City's sewer system at any time in the future; and

E. Awarding such other relief as the Court may deem appropriate.

Respectfully submitted, this the 10th day of July, 2018.

CITY OF BRANDON

BY: WATKINS & EAGER PLLC

By: _____
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IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

CITY OF BRANDON — PLAINTIFF

VS. — CAUSE NO. 18-142

GOLD COAST COMMODITIES, INC.; ROBERT DOUGLAS; THOMAS DOUGLAS; and JOHN DOES 1-5 — DEFENDANTS

ANSWER AND DEFENSES OF DEFENDANT GOLD COAST COMMODITIES, INC.

Defendant Gold Coast Commodities, Inc. ("Gold Coast"), by and through counsel, files this Answer and Defenses to the Complaint filed in this cause by Plaintiff City of Brandon ("Plaintiff," "City" or "Brandon"), on or about July 10, 2018, by stating as follows:

AFFIRMATIVE DEFENSES

1. The Complaint fails, either in whole or in part, to state a claim or cause of action against this Defendant upon which relief may be granted.

2. Plaintiff's claims are barred, either in whole or in part, by the applicable statutes of limitations.

3. Plaintiff's claims are barred for failure to exhaust administrative remedies.

4. Plaintiff's claims are barred because they fall within the primary jurisdiction of federal and/or state administrative agencies.

5. The City of Brandon ordinances cited by the Complaint are void under Miss. Code Ann. § 49-17-34, which bars rules, regulations, and standards relating to water quality that are inconsistent with federal standards.

6. This Defendant pleads laches, waiver, release, estoppel, collateral estoppel, judicial estoppel, res judicata, and unclean hands.

7. Plaintiff's claims are barred because any injuries Plaintiff sustained were proximately caused by the acts or omissions of Plaintiff itself and the acts or omissions of other parties over whom this Defendant had no control and for whom this Defendant had no responsibility.

8. Any recovery against this Defendant is barred, or must be reduced, because of superseding or intervening acts or causes.

9. Plaintiff's alleged injuries were not a foreseeable consequence of any act or omission by this Defendant, and recovery for said injuries is therefore barred.

10. This Defendant invokes all rights afforded under Miss. Code Ann. § 11-7-15 and analogous common-law principles concerning contributory and/or comparative negligence.

11. This Defendant invokes all rights afforded under Miss. Code Ann. § 85-5-7 and analogous common-law principles concerning apportionment of fault as to all parties and non-parties who may be jointly or severally liable for Plaintiff's alleged injuries and damages.

12. This Defendant affirmatively alleges that Plaintiff failed to mitigate its damages.

13. Plaintiff's claim for punitive damages is barred by the Constitution and the laws of the United States; and, in particular, Plaintiff's claim of punitive damages is unconstitutional under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

14. Plaintiff's demand for punitive damages is barred by the "ex post facto" and commerce clauses of the United States Constitution.

15. Plaintiff's demand for punitive damages is barred or limited by the applicable provisions of Miss. Code Ann. § 11-1-65.

16. The Plaintiff's exemplary damages claim is unconstitutional because elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receives fair

notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a state may impose.

17. The punitive damages claim is unconstitutional to the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.

18. Plaintiff's claims for punitive damages are barred by the "Double Jeopardy Clause" of the Fifth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment.

19. An award of exemplary damages to Plaintiff would violate the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States on grounds which include the following:

(a) It is a violation of Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon a plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases.

(b) The proceedings to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process clause of the Fifth and Fourteenth Amendments and the Equal Protection clause of the Fourteenth Amendment of the United States Constitution.

(c) The procedure pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violates the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

20. An award of punitive damages to Plaintiff would violate the Constitution of the United States on the grounds set forth by the United States Supreme Court in *State Farm v. Campbell*, 538 U.S. 408 (2003).

21. Plaintiff is not entitled to attorney fees in this action.

22. This Defendant affirmatively states that he may not be held liable because any discharge was a *de minimis* cause of any injury to the City of Brandon.

23. This Defendant affirmatively states that the rule of lenity requires the statutes and ordinances at issue "strictly, resolving all doubts and ambiguities in favor of" this Defendant. *See Brown v. State*, 102 So.3d 1087, 1089 (Miss. 2012).

24. Penalties are limited by Mississippi law for any violations of the City of Brandon ordinances referenced by the Complaint. *See, e.g.*, Miss. Code Ann. § 21-13-1.

25. This Defendant reserves the right to assert additional affirmative defenses to the extent warranted by discovery and the factual developments in this case.

ANSWER

AND NOW, answering the Plaintiff's Complaint, paragraph by paragraph and without waiving any defenses, this Defendant responds as follows:

PARTIES

1. This Defendant admits the allegations of Paragraph 1.

2. This Defendant admits the allegations of Paragraph 2.

3. For lack of sufficient information, this Defendant denies the allegations of Paragraph 4.

4. This Defendant admits the allegations of Paragraph 4.

5. For lack of sufficient information, this Defendant denies the allegations of Paragraph 5.

JURISDICTION AND VENUE

6. This Defendant admits the allegations of Paragraph 6.

7. This Defendant admits that venue for this suit lies in Rankin County, Mississippi. This Defendant denies any allegation of Paragraph 7 that would impose liability on this Defendant.

FACTS

8. The first three sentences of Paragraph 8, which purport to summarize statements found on the website of Gold Coast Commodities, Inc. ("Gold Coast"), are denied because the website statements speak for themselves. This Defendant denies the remaining sentences of Paragraph 8.

9. In response to Paragraph 9, this Defendant admits that Gold Coast has been in operation since 1983, admits that its operation produces some wastewater, and admits that Gold Coast has entered into agreements with third parties for storage and treatment of wastewater. The remaining allegations of Paragraph 9 are denied. For lack of information, the allegations of footnote 2 are also denied.

10. This Defendant denies the allegations of Paragraph 10.

11. To the extent Paragraph 11 attempts to summarize written complaints and investigation reports prepared and compiled by individuals and entities other than this Defendant, those documents speak for themselves—although this Defendant does not vouch for their accuracy or completeness— and such allegations of Paragraph 11 are denied. For lack of sufficient information, any remaining allegations of Paragraph 11 are denied.

12. This Defendant denies the allegations of the first sentence of Paragraph 12. For lack of sufficient information, this Defendant denies the remaining allegations of Paragraph 12.

13. For lack of information, this Defendant denies the first sentence of Paragraph 13. This Defendant denies the second sentence of Paragraph 13.

14. The documents cited in Paragraph 14 speak for themselves, although this Defendant does not vouch for their accuracy or completeness, and therefore the allegations regarding them are denied. This Defendant denies the remaining allegations of Paragraph 14.

15. For lack of sufficient information, this Defendant denies the allegations of Paragraph 15.

16. This Defendant admits that Plaintiff informed Gold Coast of its intent to install a monitor near its facility. Any remaining allegations of Paragraph 16 are denied.

17. This Defendant denies the allegations of Paragraph 17.

18. For lack of sufficient information, this Defendant denies any allegation of Paragraph 18 regarding any investigation by Plaintiff. This Defendant denies the remaining allegations of Paragraph 18.

19. This Defendant denies the allegations of Paragraph 19.

Count I: Negligence

20. This Defendant re-alleges the responses of the preceding paragraphs.

21. In response to Paragraph 21, this Defendant admits only that Gold Coast had a duty to follow all applicable laws. The remaining allegations of Paragraph 21 are denied.

22. In response to Paragraph 22, this Defendant admits only that Gold Coast has been in business since 1983 and that he has knowledge of chemicals used by Gold Coast. The remaining allegations of Paragraph 22 are denied.

23. This Defendant denies the allegations of Paragraph 23.

24. This Defendant denies the allegations of Paragraph 24.

25. This Defendant denies the allegations of Paragraph 25.

Count II: Gross Negligence

26. This Defendant re-alleges the responses of the preceding paragraphs.

27. This Defendant denies the allegations of Paragraph 27.

28. This Defendant denies the allegations of Paragraph 28.

Count III: Negligence Per Se

29. This Defendant re-alleges the responses of the preceding paragraphs.

30. This Defendant denies the allegations of Paragraph 30.

31. This Defendant denies the allegations of Paragraph 31.

Count IV: Liability Pursuant to Ordinance

32. This Defendant re-alleges the responses of the preceding paragraphs.

33. Because the ordinances excerpted by Paragraph 33 speak for themselves, this Defendant denies the allegations of Paragraph 33.

34. Because the ordinance excerpted by Paragraph 34's first sentence speaks for itself, this Defendant denies the allegations of the first sentence of Paragraph 34. This Defendant denies the allegations of the second sentence of Paragraph 34.

35. Because the ordinance excerpted by Paragraph 35's first sentence speaks for itself, this Defendant denies the allegations of the first sentence of Paragraph 35. This Defendant denies the allegations of the second sentence of Paragraph 35.

36. Because the ordinance excerpted by Paragraph 36's first sentence speaks for itself, this Defendant denies the allegations of the first sentence of Paragraph 36. This Defendant denies the allegations of the second sentence of Paragraph 36.

37. Because the ordinance excerpted by Paragraph 37's first sentence speaks for itself, this Defendant denies the allegations of the first sentence of Paragraph 37. This Defendant denies the allegations of the second sentence of Paragraph 37.

38. Because the ordinances excerpted by Paragraph 38's first two sentences speak for themselves, this Defendant denies the allegations of those sentences. This Defendant denies the allegations of the third sentence of Paragraph 38.

39. Because the ordinance excerpted by Paragraph 39's first sentence speaks for itself, this Defendant denies the allegations of the first sentence of Paragraph 39. This Defendant denies the allegations of the second and third sentences of Paragraph 39.

40. Because the ordinance summarized by Paragraph 40's first two sentences speaks for itself, this Defendant denies the allegations of those sentences. This Defendant denies the allegations of the third sentence of Paragraph 40.

41. This Defendant denies the allegations of Paragraph 41.

Count V: Corporate Office Liability

42. This Defendant re-alleges the responses of the preceding paragraphs.

43. This Defendant admits the allegations of Paragraph 43.

44. This Defendant denies the allegations of Paragraph 44.

45. This Defendant denies the allegations of Paragraph 45.

Count VI: Permanent Injunction

46. This Defendant re-alleges the responses of the preceding paragraphs.

47. This Defendant denies the allegations of Paragraph 47.

48. Because it consists of a demand from the Plaintiff, and not a factual allegation, Paragraph 48 does not require a response from this Defendant. Nevertheless, this Defendant

denies any allegation of Paragraph 48 that may be construed to impose liability on this Defendant.

49. This Defendant denies the allegations of Paragraph 49.

50. This Defendant denies the allegations of Paragraph 50.

51. This Defendant denies the allegations of Paragraph 51.

52. This Defendant denies the allegations contained in the last unnumbered paragraph of the Complaint—which begins with the words "WHEREFORE, PREMISES CONSIDERED"—and all sub-parts of that paragraph and specifically denies that this Defendant is liable in judgment to the Plaintiff for any sum or form of relief whatsoever.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this, its Answer, be deemed good and sufficient and that, after due proceedings are had, that this Court grant judgment herein in favor of Defendant, and against Plaintiff, dismissing Plaintiff's demands with prejudice, awarding this Defendant all attorneys' fees and costs, and for all other general and equitable relief to which this Defendant is entitled.

Respectfully submitted, this, the 4th day of September 2018.

GOLD COAST COMMODITIES, INC., Defendant

BY: BALCH & BINGHAM LLP

BY: /s/ Benjamin Bryant
Of Counsel

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CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day served, via the Court's Electronic Filing System, a true and correct copy of the above and foregoing document to all counsel of record.

This, the 4th day of September, 2018.

/s/ Benjamin Bryant
Of Counsel

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

CITY OF BRANDON PLAINTIFF

v. Civil Action No. 18-142

GOLD COAST COMMODITIES, INC.; ROBERT DOUGLAS; THOMAS DOUGLAS; AND JOHN DOES 1-5 DEFENDANTS

MOTION TO INTERVENE AND PARTIALLY LIMIT DISCOVERY

Pursuant to Mississippi Rule of Civil Procedure 24, the United States of America ("the United States"), by and through the United States Department of Justice seeks to intervene for the limited purpose of moving herewith to partially limit discovery. The purpose of this motion is to prevent defendant Gold Coast Commodities ("GCC") and other named defendants from hijacking the civil discovery that is otherwise available in this case to pursue unrelated matters that are under active federal criminal investigation. Limiting the discovery to the events relating to this lawsuit will have the added benefit of helping streamline the discovery process in this case. The United States respectfully requests the Court grant its motion to intervene, limit the civil discovery process to the time period of GCC's discharges into the Brandon sewer system, and preclude discovery into the conduct of entities and individuals beyond the scope of the lawsuit.

PRELIMINARY STATEMENT

The named defendants in this lawsuit—GCC, Thomas Douglas, and Robert Douglas, *see* ECF # 1 ¶¶ 2-4 (complaint)—are not only civil defendants in these proceedings but also are implicated in an ongoing criminal investigation. The lawsuit alleges damages to the City of

Brandon's wastewater system caused by discharges from GCC's processing facility in Brandon. *Id.* ¶¶ 8-19.

Even though the lawsuit by the City of Brandon is focused on GCC's discharges of industrial waste into the city's sewage system, GCC has now turned the lawsuit into a vehicle for pursuing unshackled civil discovery into entities and individuals whom GCC engaged to dispose of waste after it was ordered to cease its illegal discharges. These entities and individuals—who are subject to deposition subpoenas—participated with GCC in disposing waste during a period unrelated to the Brandon lawsuit and are of considerable interest to federal and state regulators and to federal criminal investigators. Because of concerns that GCC is seeking to subvert the criminal investigation, the United States seeks to intervene in this lawsuit for the sole purpose of preventing interference with the federal investigation which extends well beyond the scope of Brandon's lawsuit. *See* ECF # 1 ¶¶ 8-19 (complaint).

BACKGROUND

As alleged in the lawsuit, GCC produces wastewater that the company discharged into the Brandon sewer system for a number of years. *See* ECF # 1 ¶ 9. Even though the company later purported to transport the wastewater to an alternate site in Pelahatchie, Mississippi, beginning in 2016, GCC continued to discharge wastewater into Brandon's sewer system. *Id.* ¶¶ 9-10.

In October 2016, the city contacted the Mississippi Department of Environmental Quality ("MDEQ"), which began an investigation into GCC's discharges. *See* ECF # 1 ¶ 11. As part of the investigation, GCC's Thomas Douglas admitted that "Gold Coast had dumped into the City of Brandon's collection system for years." *Id.* at 3 n.2. As the complaint alleges, "Gold Coast continued dumping its prohibited wastewater into the City sewer system through at least October

2016." *Id.* ¶ 17. On November 4, 2016, the City of Brandon informed GCC of its intention to begin monitoring its discharges into the sewer system. *Id.* ¶ 16. Thereafter, GCC made other arrangements to dispose of its wastewater. *Id.* ¶ 17.

As a result of concerns raised by GCC's disposal of its wastewater into both the Brandon sewer system and elsewhere, MDEQ enlisted the U.S. Environmental Protection Agency ("EPA") to participate in the investigation. Because of the criminal implications of the conduct, an investigation into the violation of environmental and other laws is now being undertaken by the U.S. Department of Justice Environment and Natural Resources Division's Environmental Crimes Section and the United States Attorney's Office for the Southern District of Mississippi.

While the lawsuit concerns GCC's discharges into the Brandon sewer system, the criminal investigation also involves what GCC did with its waste ***after*** the city alerted MDEQ and began monitoring GCC's waste in November 2016. The conduct of third parties involved in disposing of GCC's waste is not germane to the lawsuit, but GCC nonetheless has been pursuing civil discovery relating to the conduct of these entities and individuals, some of whom share potential criminal liability with GCC and the named defendants, but whose conduct is unrelated to the present lawsuit. *See, e.g.*, ECF ## 30-33 (GCC notices of depositions of employees associated with waste hauling business of Partridge Sibley, Inc., hired after November 2016); ECF # 46 (GCC subpoena issued to Walker Environmental Services, Inc., d/b/a Rebel High Velocity, c/o Andrew Walker, hired after November 2016 to dispose of GCC waste). *See also* ECF # 85 at 3 ¶ 6 (according to the City of Brandon, "Defendant's business dealings with Walker took place after the events alleged in the complaint" and "are relevant only to the ongoing Mississippi Department of Environmental Quality enforcement action currently facing Defendants, and potentially to an ongoing federal criminal investigation of Defendants").

As argued below, the scope of the discovery in this case should be confined to time period and subject matter of the lawsuit.

ARGUMENT

Rule 26 of the Mississippi Rules of Civil Procedure provides that the scope of discovery in civil actions is limited to matters "relevant to the issues raised by the claims or defenses of any party." MISS. R. CIV. P. 26(b)(1). This Court has the inherent authority to limit the discovery in this matter to allow the parties to litigate the issues in this lawsuit without intruding on the ongoing federal criminal proceedings. Upon consideration of the competing interests between the civil and criminal actions, it is clear that a limitation of civil discovery for this purpose is favored. The civil discovery process, if allowed to continue unabated, will reveal information about key witnesses and documents to which the criminal defendants are not entitled. This would enable prospective criminal defendants to use civil discovery to circumvent the limitations on criminal discovery and thus prejudice the Government's criminal prosecution. Disclosure of such information would compromise the public's right to a fair trial in the criminal action. A partial limitation of the civil discovery process as to matters unrelated to Brandon's lawsuit will not prejudice the civil litigants.

A. The Court Has Inherent Authority to Partially Limit Discovery

Courts have the inherent authority to enter a stay or provide other relief from discovery in a civil proceeding. A court's authority to grant such relief derives from the power of every court "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). *See Vail v. City of Jackson*, 320, 40 So.2d 151, 153 (Miss. 1949) (citing *Landis*, 299 U.S. at 248); *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 215 (1937) (citing *Landis*, 299 U.S. at 248); *Jackson v. City of*

Booneville, 738 So.2d 1241, 1246 (Miss. 1999), *overruled on other grounds*, 928 So.2d 815 (Miss. 2006) ("every court has the discretionary power to stay proceedings before it to ensure that justice is done or to provide for the efficient and economic use of judicial resources"). Courts may also stay civil proceedings and grant other appropriate relief in the interests of justice. *See SEC v. Dresser Indus., Inc*., 628 F.2d 1368, 1375 (D.C. Cir. 1980). Pursuant to this discretionary authority, courts may decide to stay civil proceedings, postpone discovery, or impose protective orders in order to protect a pending criminal investigation or prosecution. *See, e.g., In re Grand Jury Proceedings*, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993) ("[A] civil trial court may stay discovery until the grand jury investigation is completed…. Although stays delay civil proceedings, they may prove useful as the criminal process may determine and narrow the remaining civil issues.") (citing, *inter alia*, *Wehling v. CBS*, 608 F.2d 1084, 1088-89 (5th Cir.1979); Note, *Using Equitable Powers to Coordinate Parallel Civil and Criminal Actions*, 98 HARV. L. REV. 1023, 1039 (1985) (while stays may delay civil proceedings, the criminal process may help determine and narrow the remaining civil issues)).

B. A Balancing of the Interests Weighs in Favor of Issuing Relief

The facts and issues presented in the civil complaint centering on the impact of GCC's conduct on the Brandon sewer system are largely distinct from those relating to its conduct after its discharges in Brandon came to light, after which GCC shifted its discharges elsewhere. A balancing of interests weighs heavily in favor of partially limiting discovery as it relates to these latter activities having nothing to do with the subject of Brandon's lawsuit. *See, e.g., Dresser Indus*., 628 F.2d at 1375. Courts long have recognized the important considerations in the balance when presented with a motion for a stay of civil discovery based on the pendency of a criminal matter. *See Campbell v. Eastland*, 307 F.2d 478, 487 & n.2 (5th Cir. 1962), *cert. denied*,

371 U.S. 955 (1963); *In re C.F. Bean, LLC*, 2015 WL 5296771, at *3 (S.D. Miss. 2015) (Court of Appeals "has stated that '[a]dministrative policy gives priority to the public interest in law enforcement' and the district court should give 'substantial weight' to that policy in balancing 'the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities'") (quoting *Campbell*, 307 F.2d at 487).

Civil discovery as to matters unrelated to the City of Brandon's lawsuit likely will frustrate the criminal prosecution, as the witnesses and documentary evidence largely overlap. Stays of discovery in civil actions reflect a recognition of the vital interests at stake in a criminal prosecution. *See, e.g., United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970) ("Federal courts have deferred civil proceedings pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action, sometimes at the request of the prosecution.") (citing, *inter alia*, *Campbell*, 307 F.2d at 478). As the Supreme Court observed in *Landis*, private litigants must recognize that "the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience are to be promoted." *Landis*, 299 U.S. at 256.

C. Prejudice Will Result If the Court Does Not Partially Limit Discovery

Substantial harm to the Government's vital interest in enforcing the criminal law could flow from allowing discovery in the civil case to proceed unabated as to unrelated matters, due to the danger that the broad civil discovery rules will circumvent the important limitations on discovery in criminal prosecutions. The vastly different rules that apply to discovery in civil and criminal cases are important reasons for staying civil discovery in cases where there are overlapping criminal proceedings. *See, e.g., Campbell*, 307 F.2d at 487 (noting that a litigant

should not be allowed to make use of liberal discovery procedures applicable to civil suits "as a dodge to avoid the restrictions on criminal discovery").

As Judge Wisdom explained in *Campbell*: "In handling motions for a stay of a civil suit until the disposition of a criminal prosecution on related matters and in ruling on motions under the civil discovery procedures, a judge should be sensitive to the difference in the rules of discovery in civil and criminal cases." *Campbell*, 307 F.2d at 487. While the rules governing civil cases generally provide "a well-stocked battery of discovery procedures, the rules governing criminal discovery are far more restrictive." *Id.* Unlike in civil cases, federal criminal defendants ordinarily are not entitled to depose prosecution witnesses, much less engage in the type of far-ranging inquiry permitted by the civil rules. *See* FED. R. CRIM. P. 15(a) (criminal depositions permitted only in "exceptional circumstances"). Federal criminal practice allows a witness a full choice over whether to speak with any of the parties or their representatives prior to testifying in a criminal case. That basic protection is unavailable to the same witness in a civil case. Discovery in criminal cases is narrowly circumscribed for important reasons entirely independent of any generalized policy of restricting the flow of information to defendants.

Although the defendants in this civil case have not yet been named as defendants in the criminal proceedings, many of the key witnesses and subject matters in both cases overlap. To allow discovery to proceed in this civil case unabated would permit prospective criminal defendants to subvert the criminal discovery process.

Conversely, the parties in this civil case will not suffer prejudice if discovery in this case is limited or otherwise stayed. Courts routinely grant stays of civil discovery while the prosecutors conclude an investigation and seek an indictment or other resolution of ongoing criminal proceedings. *See, e.g.*, *Campbell*, 307 F.2d at 480; *Wallace v. Kato*, 549 U.S. 384, 393-

94 (2007) ("it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended"); *1984 Chevy Camaro v. Lawrence Cty. Sheriff's Dep't*, 148 So.3d 672, 675 (Miss. Ct. App. 2014) ("'[I]t is not unusual for civil forfeiture actions to be continued until after the underlying criminal proceedings are concluded.'") (quoting *One 1970 Mercury Cougar v. Tunica Cnty.*, 936 So.2d 988, 992 (Miss. Ct. App. 2006) (internal citations omitted)). This is just such a case where a limitation on discovery that exceeds the scope of the lawsuit is appropriate to avoid prejudicing the criminal proceedings. Such a limitation will also help streamline the conduct of the present litigation with the added benefit of helping bring this civil case brought on behalf of a municipality to a more prompt resolution.

CONCLUSION

Based upon all of the foregoing reasons, the United States should be permitted to intervene for the purpose of advocating that this Court limit the civil discovery process to the time period of GCC's discharges into the Brandon sewer system and preclude discovery into the conduct of entities and individuals beyond the scope of the lawsuit. The United States does not seek to stay the civil proceedings in this case. Rather, the United States proposes to simply limit discovery relating to the conduct of third parties occurring ***after*** the City of Brandon notified GCC on November 4, 2016 of its intention to monitor its discharge of waste into the Brandon sewer system. This clear demarcation would confine the discovery to the subject matter of the present lawsuit without encroaching on the ongoing criminal matters that extend beyond the focus of this case.

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Dated: August 7, 2019

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I caused to be filed the foregoing motion with the Clerk of the Court using the MEC system which sent notification of such filing to counsel of record.

/s/ *Kristi H. Johnson*
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