UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF	ş	
TEXAS, LTD.	§	
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Plaintiff,	8	
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	§	CIVIL ACTION NO.:
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	Š.	6:14-CV-00067-C
V.	§	JURY TRIAL DEMANDED
	Š.	
TEXAS DISPOSAL SYSTEMS, INC.	§	
Defendant.	§	
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<u>REPUBLIC'S UNOPPOSED MOTION FOR LEAVE</u> <u>TO SUBMIT A RESPONSE TO DEFENDANT'S SUPPLEMENT</u>

Plaintiff Republic Waste Services of Texas, Ltd. ("Republic") hereby submits its Motion for Leave and would show the Court as follows:

Defendant's supplemental filing on February 18, 2015, ECF. No. 28, was the result of counsel for Defendant and counsel for Republic conferring and reaching two agreements: (1) Republic would not oppose Defendant supplementing the summary judgment record; and (2) Defendant would not oppose Republic filing a response limited to the subject of the supplement. Pursuant to those agreements, Republic seeks leave to submit the attached response.

WHEREFORE Plaintiff Republic Waste Services of Texas, Ltd. requests that it be granted leave to submit the Response attached hereto as Exhibit A.

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Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Edwin Buffmire

Don W. Griffis State Bar No. 0847600 West Beauregard Ave., Suite 200 San Angelo, Texas 76902 (915) 481-2550 (915) 481-2564 - Fax

Charles L. Babcock State Bar No. 01479500 Patrick R. Cowlishaw State Bar No. 04932700 Edwin Buffmire State Bar No. 24078283 901 Main Street, Suite 6000 Dallas, Texas 75202 (214) 953-6000 (214) 953-5822 - Fax cbabcock@jw.com pcowlishaw@jw.com dgriffis@jw.com ebuffmire@jw.com

ATTORNEYS FOR PLAINTIFF REPUBLIC WASTE SERVICES OF TEXAS, LTD.

CERTIFICATE OF CONFERENCE

Counsel for Republic Waste Services of Texas, Ltd. conferred with counsel for Texas Disposal Systems, Inc. regarding whether the Motion is opposed. Counsel for Texas Disposal Systems, Inc. indicated that the Motion is unopposed.

> By: <u>/s/ Edwin Buffmire</u> Edwin Buffmire

CERTIFICATE OF SERVICE

This is to certify that on this 20th day of February, 2015, this document was served electronically via the Court's ECF system upon the persons on the service list below:

James A. Hemphil David A. King Graves, Dougherty, Hearon & Moody, PC 401 Congress Ave., Suite 2200 Austin, Texas 78701 (512) 480-5600

Paul Stipanovic Gossett, Harrison, Millican, & Stipanovic, PC 2 South Koenigheim P.O. Drawer 911 San Angelo, Texas 76902

ATTORNEYS FOR DEFENDANT

By: <u>/s/ Edwin Buffmire</u>

Edwin Buffmire

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EXHIBIT A

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF	§	
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REPUBLIC'S RESPONSE TO TEXAS DISPOSAL SYSTEMS, INC.'S SUMMARY JUDGMENT SUPPLEMENT

Plaintiff Republic Waste Services of Texas, Ltd. ("Republic") hereby submits its Response to Texas Disposal System's recent supplement to the summary judgment record:

Defendant's supplement confirms that its permit to haul waste within San Angelo explicitly prohibits the conduct at issue in this lawsuit. Moreover, Defendant identifies no waste collection services that its permit authorizes nor its legal significance. The permit specifically identifies Republic's 2014 Contract and prohibits any service that conflicts with Republic's exclusive rights under it. Defendant does not dispute the scope of the 2014 Contract's terms—that Republic has the exclusive right to collect all waste, including construction waste, within the City of San Angelo. Defendant's provision of construction waste services clearly "conflicts with Republic's exclusive rights" that the City of San Angelo granted to Republic (and expressly denied to Defendant). As a result, Defendant's supplement has no legal impact on the questions of law that are dispositive of this case.

Defendant's permit describes the activity that it is authorized: "any service allowed by state law or city ordinance that does not conflict with the City's contract with Republic Waste Services of Texas and the exclusive rights granted by that contract to Republic Waste Services of Texas." ECF No. 28-1 at 1 (Defendant's Supplement at Ex. A). Defendant does not dispute that the explicit terms of the 2014 Contract provide Republic the exclusive right and obligation to provide waste collection services to all construction waste customers within the City of San Angelo. See TDS Supplement at 1 (admitting that the contract "purports to grant Republic exclusive rights to provide temporary waste disposal services to a construction project"); Appendix to Republic's Brief in Support of Summary Judgment at 8, Ex. A ¶ 8, ECF No. 13 (explicitly granting Republic the exclusive right to service temporary construction waste customers). Thus, Defendant's conduct-providing waste collection services to construction waste customers—is in "conflict with the City's contract with Republic Waste Services" and expressly prohibited by its own permit. ECF No. 28-1 at 1.

Accordingly, Defendant is, in fact, exercising self-help "with no authorization from the City in any form" to conduct a business that directly contradicts both its permit and Republic's contract. The permit confirms that Defendant has no authorization from the City in any form to interfere with Republic's contract. *See* ECF No. 25 at 7 (Republic's Reply in Support of Partial Summary Judgment).

WHEREFORE Plaintiff Republic Waste Services of Texas, Ltd. requests that it be granted partial summary judgment holding that the contract between Republic and the City of San Angelo is enforceable as to the rights granted Republic regarding construction and demolition waste, that Defendant is liable for tortious interference with Republic's rights under its contract with the City of San Angelo, that Defendant be ordered to comply with the express terms of its permit, and providing for further proceedings to determine the appropriate remedies under Republic's tortious interference claim.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Edwin Buffmire

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ATTORNEYS FOR PLAINTIFF REPUBLIC WASTE SERVICES OF TEXAS, LTD.

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ATTORNEYS FOR DEFENDANT

By: <u>/s/ Edwin Buffmire</u> Edwin Buffmire

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF	§			
TEXAS, LTD.	§			
	§			
Plaintiff,	§			
	§			
	§	CIVIL A	ACTION N	NO.:
	§			
	§	6:14-CV-00067-C		
V.	§	JURY	TRIAL	DEMANDED
	§			
TEXAS DISPOSAL SYSTEMS, INC.	§			
Defendant.	§			
	§			

<u>ORDER</u>

Pending before the Court is Plaintiff Republic Waste Services of Texas, Ltd.'s Unopposed Motion for Leave to Submit a Response to Defendant's Supplement. Having carefully considered the Motion, the Court holds that Plaintiff's Unopposed Motion for Leave is hereby GRANTED.

Plaintiff shall file its proposed response no later than seven days after entry of this Order.

Dated this _____ of February, 2015.

Sam R. Cummings United States District Judge