

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.: 651,069

SECTION 22

JAMES J. DONELON, COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF  
LOUISIANA HEALTH COOPERATIVE, INC.

VERSUS

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A.  
OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND  
SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC,  
MILLIMAN, INC., BUCK CONSULTANTS, LLC, AND TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**DECLINATORY EXCEPTION, AFFIRMATIVE DEFENSES AND ANSWER OF  
BUCK CONSULTANTS, LLC**

NOW INTO COURT, through undersigned counsel, comes Defendant, Buck Consultants, LLC (hereinafter “Buck”), who subject to and fully preserving its declinatory exception of improper venue and pending writ application for supervisory review of the denial of that exception, asserts the following Declinatory Exception, Affirmative Defenses and Answers the First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial (hereinafter “Amended Petition”) filed by Plaintiff, as follows:

**DECLINATORY EXCEPTION OF IMPROPER VENUE**

Buck reasserts its Declinatory Exception of Improper Venue (“Declinatory Exception”). The Engagement Agreement (“Engagement Agreement”) between Buck and Louisiana Health Cooperative, Inc. (“LAHC”) contractually designates the federal and state courts of New York, New York as the exclusive jurisdiction and venue with respect to any dispute between the parties. The instant action against Buck is filed in breach and violation of the exclusive forum selection clause in the Engagement Agreement, and thus should be dismissed as to Buck without prejudice. Buck files its following Affirmative Defenses and Answer subject to and fully preserving its Declinatory Exception, and further subject to and fully preserving its pending application for supervisory review of the district court’s September 19, 2017 Judgment denying the Declinatory Exception, in accordance with Louisiana Code of Civil Procedure Article 928(A).

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

All of Plaintiff's claims against Buck arise out of and are subject to the terms of the Engagement Agreement. Buck affirmatively pleads, as though set forth herein in full, all terms and conditions of the Engagement Agreement, which are fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

### **SECOND DEFENSE**

Plaintiff's Amended Petition fails to state a cause of action against Buck.

### **THIRD DEFENSE**

Plaintiff's Amended Petition fails to state a right of action against Buck.

### **FOURTH DEFENSE**

Plaintiff's claims against Buck are extinguished by the strict one-year limitations period (which has the legal effect of preemption) that is contractually agreed to and stipulated in the Engagement Agreement. Plaintiff is fully bound to those provisions as the successor to the contractual rights and obligations of LAHC. Solely in the alternative, if for any reason Plaintiff's claims are found not to arise out of the Engagement Agreement (which Buck denies), and/or the contractual requirements of the Engagement Agreement are not enforced against Plaintiff, Plaintiff's claims are extinguished by prescription, preemption and laches as a matter of law.

### **FIFTH DEFENSE**

Plaintiff's damages, if any, were caused or contributed to by the negligence, wrongdoing, want of care and fault or comparative fault of the Commissioner of Insurance (the "Commissioner") and/or Billy Bostick, as the Receiver (the "Receiver"), and their employees, agents, attorneys, and contractors, of LAHC and its officers, directors, employees, agents, and contractors, and of third parties for whom Buck is not responsible and over whom Buck had no control.

### **SIXTH DEFENSE**

Plaintiff's damages, if any, were caused by regulatory misconduct and negligence of the Commissioner, the Receiver, and their employees and agents.

### **SEVENTH DEFENSE**

Plaintiff's claims are barred by the doctrines of estoppel, waiver, ratification, and acquiescence in that the Commissioner and his employees and agents reviewed the activities now

complained of, and gave explicit or implicit approval of those activities. Buck relied to its detriment upon those actions of the Commissioner and his employees and agents.

#### **EIGHTH DEFENSE**

Plaintiff has failed to mitigate the damages that were incurred, if any. The Commissioner had knowledge of and approved the activities forming the basis of the present claims, and he failed to prevent those activities. Furthermore, the Commissioner and the Receiver, and their employees, agents, and contractors, committed acts of negligence and misconduct in the supervision and regulation of LAHC, negligence and misconduct in the conservation, rehabilitation, and liquidation of LAHC, and other acts and omissions that may be discovered and presented at trial.

#### **NINTH DEFENSE**

The negligence, wrongdoing and fault of LAHC and its officers, directors, shareholders, employees, and agents are imputed to Plaintiff and bar the claims presented.

#### **TENTH DEFENSE**

Buck had no professional relationship with and owned no duties to the Commissioner, the Louisiana Department of Insurance, the State of Louisiana, or to the members, subscribers, policyholders, providers or creditors of LAHC.

#### **ELEVENTH DEFENSE**

Plaintiff's damages, if any, were not caused by Buck.

#### **TWELFTH DEFENSE**

LAHC did not rely on Buck in taking the actions complained of, and intended to take the actions complained of regardless of any advice or counseling from Buck.

#### **THIRTEENTH DEFENSE**

Buck at all times complied with all relevant actuarial standards of practice and all applicable standards of care and practice.

#### **FOURTEENTH DEFENSE**

In the alternative, if the terms of the Engagement Agreement are for any reason not enforced against Plaintiff, Plaintiff's claims are barred due to failure of consideration.

#### **FIFTEENTH DEFENSE**

LAHC expressly waived the right to a trial by jury in the Engagement Agreement; therefore, Plaintiff, as the successor to the contractual rights and obligations of LAHC, is not

entitled to a trial by jury on any of its claims against Buck. Buck preserves its objection to trial by jury, its right to move to strike Plaintiff's jury demand, and/or to seek a bench trial.

**SIXTEENTH DEFENSE**

Plaintiff's claims and damages, if any, are contractually limited to \$500,000 pursuant to the Engagement Agreement, which is fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

**SEVENTEENTH DEFENSE**

Under the Engagement Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages. Plaintiff is fully bound to those contractual provisions as the successor to the contractual rights and obligations of LAHC.

**EIGHTEENTH DEFENSE**

Plaintiff lacks standing, right or interest to assert claims for losses or damages allegedly suffered by the creditors, providers, policyholders, members, or subscribers of LAHC, or by any other person or entity other than LAHC.

**ANSWER**

AND NOW, with full reservation of the foregoing exceptions and affirmative defenses, in response to the individually numbered paragraphs of the Amended Petition, Buck avers as follows, denying all allegations not hereinafter specifically admitted:

**1.**

The allegations of Paragraph 1 of Plaintiff's Amended Petition require no answer from Buck.

**2.**

Paragraph 2 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 2 for lack of sufficient information to justify a belief therein.

**3.**

Buck denies the allegations of Paragraph 3 insofar as they pertain to Buck, and denies the allegations for lack of sufficient information to justify a belief therein insofar as they pertain to the other Defendants.

**4.**

Paragraph 4 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, an answer is deemed necessary, Buck denies the allegations insofar as they may pertain to Plaintiff's claims against Buck.

**5.**

Buck denies the allegations of Paragraph 5 for lack of sufficient information to justify a belief therein.

**6.**

Buck denies the allegations of Paragraph 6 for lack of sufficient information to justify a belief therein.

**7.**

Buck denies the allegations of Paragraph 7 for lack of sufficient information to justify a belief therein.

**8.**

Paragraph 8 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 8 as stated.

**9.**

The allegations of Paragraph 9 of Plaintiff's Amended Petition require no answer from Buck.

**10.**

Buck denies the allegations of Paragraph 10 for lack of sufficient information to justify a belief therein.

**11.**

Buck denies the allegations of Paragraph 11 for lack of sufficient information to justify a belief therein.

**12.**

Buck denies the allegations of Paragraph 12 for lack of sufficient information to justify a belief therein.

**13.**

Buck denies the allegations of Paragraph 13(a) for lack of sufficient information to justify a belief therein. Buck denies the allegations of Paragraph 13(b), except to admit that Buck is an

LLC registered in Delaware, with its principal place of business in New York, that provided actuarial services to LAHC at particular times.

**14.**

Buck denies the allegations of Paragraph 14 for lack of sufficient information to justify a belief therein.

**15.**

Buck denies the allegations of Paragraphs 15(1), 15(2), 15(3), 15(5), and 15(6) for lack of sufficient information to justify a belief therein. Buck denies the allegations of Paragraph 15(4), except to admit that Buck provided actuarial services to LAHC at particular times.

**16.**

Buck denies the allegations of Paragraph 16 for lack of sufficient information to justify a belief therein.

**17.**

Buck denies the allegations of Paragraph 17 for lack of sufficient information to justify a belief therein.

**18.**

Buck denies the allegations of Paragraph 18 insofar as they may pertain to Buck, and denies them for lack of sufficient information to justify a belief therein insofar as they pertain to the other Defendants.

**19.**

Buck denies the allegations of Paragraph 19 insofar as they pertain to Buck. Buck denies the allegations of Paragraph 19 for lack of sufficient information to justify a belief therein insofar as they pertain to any other actuary.

**20.**

Buck denies the allegations of Paragraph 20 for lack of sufficient information to justify a belief therein.

**21.**

Buck denies the allegations of Paragraph 21 for lack of sufficient information to justify a belief therein.

**22.**

Buck denies the allegations of Paragraph 22 insofar as they pertain to Buck. Buck denies the allegations in Paragraph 22 for lack of sufficient information to justify a belief therein insofar

as they pertain to any other Defendant(s). Buck further denies that it owed any duties or obligations to the subscribers, members, providers, or creditors of LAHC.

**23.**

Buck denies the allegations of Paragraph 23 insofar as they pertain to Buck. Buck denies the allegations in Paragraph 23 for lack of sufficient information to justify a belief therein insofar as they pertain to the other Defendants.

**24.**

Buck incorporates all prior exceptions, defenses, averments, and denials as if fully set forth herein.

**25.**

Paragraph 25 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 25 for lack of sufficient information to justify a belief therein.

**26.**

Paragraph 26 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 26 for lack of sufficient information to justify a belief therein.

**27.**

Buck denies the allegations of Paragraph 27 for lack of sufficient information to justify a belief therein.

**28.**

Buck denies the allegations of Paragraph 28 for lack of sufficient information to justify a belief therein.

**29.**

Buck denies the allegations of Paragraph 29 for lack of sufficient information to justify a belief therein.

**30.**

Buck denies the allegations of Paragraph 30 for lack of sufficient information to justify a belief therein.

**31.**

Buck denies the allegations of Paragraph 31 for lack of sufficient information to justify a belief therein.

**32.**

Buck denies the allegations of Paragraph 32 for lack of sufficient information to justify a belief therein.

**33.**

Buck denies the allegations of Paragraph 33 for lack of sufficient information to justify a belief therein.

**34.**

Buck denies the allegations of Paragraph 34 for lack of sufficient information to justify a belief therein.

**35.**

Buck denies the allegations of Paragraph 35 for lack of sufficient information to justify a belief therein.

**36.**

Buck denies the allegations of Paragraph 36 for lack of sufficient information to justify a belief therein.

**37.**

Buck denies the allegations of Paragraph 37 for lack of sufficient information to justify a belief therein.

**38.**

Buck denies the allegations of Paragraph 38 for lack of sufficient information to justify a belief therein.

**39.**

Buck denies the allegations of Paragraph 39 for lack of sufficient information to justify a belief therein.

**40.**

Buck incorporates all prior exceptions, defenses, averments, and denials as if fully set forth herein.

**41.**

Buck denies the allegations of Paragraph 41 for lack of sufficient information to justify a belief therein.



**42.**

Buck denies the allegations of Paragraph 42 for lack of sufficient information to justify a belief therein.

**43.**

Buck denies the allegations of Paragraph 43 for lack of sufficient information to justify a belief therein.

**44.**

Buck denies the allegations of Paragraph 44 for lack of sufficient information to justify a belief therein.

**45.**

Buck denies the allegations of Paragraph 45 for lack of sufficient information to justify a belief therein.

**46.**

Buck denies the allegations of Paragraph 46 for lack of sufficient information to justify a belief therein.

**47.**

Buck denies the allegations of Paragraph 47 for lack of sufficient information to justify a belief therein.

**48.**

Buck denies the allegations of Paragraph 48 for lack of sufficient information to justify a belief therein.

**49.**

Buck denies the allegations of Paragraph 49 for lack of sufficient information to justify a belief therein.

**50.**

Buck denies the allegations of Paragraph 50 for lack of sufficient information to justify a belief therein.

**51.**

Buck denies the allegations of Paragraph 51 for lack of sufficient information to justify a belief therein.

**52.**

Buck denies the allegations of Paragraph 52 for lack of sufficient information to justify a belief therein.

**53.**

Buck denies the allegations of Paragraph 53 for lack of sufficient information to justify a belief therein.

**54.**

Buck denies the allegations of Paragraph 54 for lack of sufficient information to justify a belief therein.

**55.**

Buck denies the allegations of Paragraph 55 for lack of sufficient information to justify a belief therein.

**56.**

Buck denies the allegations of Paragraph 56 for lack of sufficient information to justify a belief therein.

**57.**

Buck denies the allegations of Paragraph 57 for lack of sufficient information to justify a belief therein.

**58.**

Buck denies the allegations of Paragraph 58 for lack of sufficient information to justify a belief therein.

**59.**

Buck denies the allegations of Paragraph 59 for lack of sufficient information to justify a belief therein.

**60.**

Buck denies the allegations of Paragraph 60 for lack of sufficient information to justify a belief therein.

**61.**

Buck denies the allegations of Paragraph 61 for lack of sufficient information to justify a belief therein.

**62.**

Buck denies the allegations of Paragraph 62 for lack of sufficient information to justify a belief therein.

**63.**

Buck denies the allegations of Paragraph 63 for lack of sufficient information to justify a belief therein.

**64.**

Buck denies the allegations of Paragraph 64 for lack of sufficient information to justify a belief therein.

**65.**

Buck incorporates all prior exceptions, defenses, averments, and denials as if fully set forth herein.

**66.**

Buck denies the allegations of Paragraph 66 for lack of sufficient information to justify a belief therein.

**67.**

Buck denies the allegations of Paragraph 67 for lack of sufficient information to justify a belief therein.

**68.**

Buck denies the allegations of Paragraph 68 for lack of sufficient information to justify a belief therein.

**69.**

Buck denies the allegations of Paragraph 69 for lack of sufficient information to justify a belief therein.

**70.**

Buck denies the allegations of Paragraph 70 for lack of sufficient information to justify a belief therein.

**71.**

Buck denies the allegations of Paragraph 71 for lack of sufficient information to justify a belief therein.

**72.**

Buck denies the allegations of Paragraph 72 for lack of sufficient information to justify a belief therein.

**73.**

Buck denies the allegations of Paragraph 73 for lack of sufficient information to justify a belief therein.

**74.**

Buck incorporates all prior exceptions, defenses, averments, and denials as if fully set forth herein.

**75.**

Buck denies the allegations of Paragraph 75 for lack of sufficient information to justify a belief therein.

**76.**

Buck denies the allegations of Paragraph 76 for lack of sufficient information to justify a belief therein.

**77.**

Buck denies the allegations of Paragraph 77 for lack of sufficient information to justify a belief therein.

**78.**

Buck denies the allegations of Paragraph 78 for lack of sufficient information to justify a belief therein.

**79.**

Buck denies the allegations of Paragraph 79 for lack of sufficient information to justify a belief therein.

**80.**

Buck denies the allegations of Paragraph 80 for lack of sufficient information to justify a belief therein.

**81.**

Buck denies the allegations of Paragraph 81 for lack of sufficient information to justify a belief therein.

**82.**

Buck denies the allegations of Paragraph 82 for lack of sufficient information to justify a belief therein.

**83.**

Buck denies the allegations of Paragraph 83 for lack of sufficient information to justify a belief therein.

**84.**

Buck denies the allegations of Paragraph 84 for lack of sufficient information to justify a belief therein.

**85.**

Buck denies the allegations of Paragraph 85 for lack of sufficient information to justify a belief therein.

**86.**

Buck denies the allegations of Paragraph 86 for lack of sufficient information to justify a belief therein.

**87.**

Buck denies the allegations of Paragraph 87 for lack of sufficient information to justify a belief therein.

**88.**

Buck denies the allegations of Paragraph 88 for lack of sufficient information to justify a belief therein.

**89.**

Buck denies the allegations of Paragraph 89 for lack of sufficient information to justify a belief therein.

**90.**

Buck denies the allegations of Paragraph 90 for lack of sufficient information to justify a belief therein.

**91.**

Buck denies the allegations of Paragraph 91 for lack of sufficient information to justify a belief therein.

**92.**

Buck denies the allegations of Paragraph 92 for lack of sufficient information to justify a belief therein.

**93.**

Buck denies the allegations of Paragraph 93 for lack of sufficient information to justify a belief therein.

**94.**

Buck denies the allegations of Paragraph 94 for lack of sufficient information to justify a belief therein.

**95.**

Buck denies the allegations of Paragraph 95 for lack of sufficient information to justify a belief therein.

**96.**

Buck denies the allegations of Paragraph 96 for lack of sufficient information to justify a belief therein.

**97.**

Buck denies the allegations of Paragraph 97 for lack of sufficient information to justify a belief therein.

**98.**

Buck denies the allegations of Paragraph 98 for lack of sufficient information to justify a belief therein.

**99.**

Buck denies the allegations of Paragraph 99 for lack of sufficient information to justify a belief therein.

**100.**

Buck denies the allegations of Paragraph 100 for lack of sufficient information to justify a belief therein.

**101.**

Buck denies the allegations of Paragraph 101 for lack of sufficient information to justify a belief therein.

**102.**

Buck denies the allegations of Paragraph 102 for lack of sufficient information to justify a belief therein.

**103.**

Buck denies the allegations of Paragraph 103 for lack of sufficient information to justify a belief therein.

**104.**

Buck denies the allegations of Paragraph 104, except to admit that Buck possessed the expertise needed to provide the actuarial services that it provided to LAHC.

**105.**

Buck denies the allegations of Paragraph 105, except to admit that the writings referenced in Paragraph 105 are the best and only evidence of their terms. Buck denies the allegations of Paragraph 105 to the extent they are inconsistent with the terms of the referenced writings.

**106.**

Buck denies the allegations of Paragraph 106, except to admit that the writing referenced in Paragraph 106 is the best and only evidence of its content. Buck denies the allegations of Paragraph 106 to the extent they are inconsistent with the content of the referenced writing. Buck denies all other allegations of Paragraph 106, and further avers that all work performed by Buck for LAHC was accurate, reliable and compliant with the relevant actuarial standards of practice and care.

**107.**

Buck denies the allegations of Paragraph 107 in their entirety.

**108.**

Paragraph 108 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 108, except to admit that Buck complied fully with the relevant standard of care.

**109.**

Buck denies the allegations of Paragraph 109.

**110.**

Buck denies the allegations of Paragraph 110 as stated.

**111.**

Buck denies the allegations of Paragraph 111 as stated.

**112.**

Buck denies the allegations of Paragraph 112.

**113.**

Buck denies the allegations of Paragraph 113 as stated.

**114.**

Buck denies the allegations of Paragraph 114.

**115.**

Buck denies the allegations of Paragraph 115.

**116.**

Buck denies the allegations of Paragraph 116.

**117.**

Buck denies the allegations of Paragraph 117 as stated.

**118.**

Buck denies the allegations of Paragraph 118 as stated.

**119.**

Buck denies the allegations of Paragraph 119.

**120.**

Buck denies the allegations of Paragraph 120.

**121.**

Buck denies the allegations of Paragraph 121.

**122.**

Buck denies the allegations of Paragraph 122 as stated.

**123.**

Buck denies the allegations of Paragraph 123.

**124.**

Buck denies the allegations of Paragraph 124.

**125.**

Buck denies the allegations of Paragraph 125.

**126.**

Buck denies the allegations of Paragraph 126 in their entirety.



**127.**

Buck denies the allegations of Paragraph 127 in their entirety.

**128.**

Buck incorporates all prior exceptions, defenses, averments, and denials as if fully set forth herein.

**129.**

Buck denies the allegations of Paragraph 129 for lack of sufficient information to justify a belief therein.

**130.**

Buck denies the allegations of Paragraph 130 for lack of sufficient information to justify a belief therein.

**131.**

Buck denies the allegations of Paragraph 131 for lack of sufficient information to justify a belief therein.

**132.**

Buck denies the allegations of Paragraph 132 for lack of sufficient information to justify a belief therein.

**133.**

Buck denies the allegations of Paragraph 133 for lack of sufficient information to justify a belief therein.

**134.**

Buck denies the allegations of Paragraph 134, except to admit that Buck possessed the expertise to provide the actuarial services that it provided to LAHC.

**135.**

Buck denies the allegations of Paragraph 135.

**136.**

Buck denies the allegations of Paragraph 136 for lack of sufficient information to justify a belief therein.

**137.**

Buck denies the allegations of Paragraph 137 in their entirety.

**138.**

Paragraph 138 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 138, except to admit that Buck at all times provided accurate and timely information to LAHC, in full compliance with the relevant standard of care.

**139.**

Buck denies the allegations of Paragraph 139 in their entirety, as those allegations relate to Buck. Buck denies the allegations of Paragraph 139 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

**140.**

Buck denies the allegations of Paragraph 140 in their entirety, as those allegations relate to Buck. Buck denies the allegations of Paragraph 140 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

**141.**

Paragraph 141 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 141.

**142.**

Paragraph 142 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 142.

**143.**

Paragraph 143 of Plaintiff's Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 143. Buck further avers that Plaintiff, through his contractual predecessor, contractually waived any right to trial by jury of his claims against Buck.

**PRAYER FOR RELIEF**

The Prayer for Relief in Plaintiff's Amended Petition requires no response from Buck. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of the Prayer for Relief.

NOW THEREFORE, Defendant, Buck Consultants, LLC, prays that these exceptions, answers and affirmative defenses to Plaintiff's Amended Petition be deemed good and sufficient

and that, after due proceedings herein, Plaintiff's Amended Petition and all prior petitions be dismissed, with prejudice, at Plaintiff's costs, and for such other, different, additional, and equitable relief to which Buck may be entitled.

Respectfully submitted,



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James A. Brown (La. Bar #14101)  
Mirais M. Holden (La. Bar #35173)  
A'Dair Flynt (La. Bar #37120)  
LISKOW & LEWIS  
One Shell Square  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139-5099  
Telephone: (504) 581-7979

Jamie D. Rhymes (La. Bar #24621)  
LISKOW & LEWIS  
522 Harding Street  
P.O. Box 52008  
Lafayette, LA 70505  
Telephone: (337) 232-7424

*Attorneys for Buck Consultants, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 25, 2017, a copy of the above and foregoing pleading has been served upon all known counsel of record by facsimile or by electronic mail.

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