

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

CIVIL ACTION NO. 22-CV-1127

VERSUS

JUDGE JAMES D. CAIN, JR.

ST. MARTIN PARISH GOVERNMENT
AND UNITED STATES ARMY CORPS
OF ENGINEERS

MAGISTRATE WHITEHURST

FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS AND ALTERNATIVE
FED. R. CIV. P. 12(e) MOTION FOR MORE DEFINITE STATEMENT
SUBMITTED BY ST. MARTIN PARISH GOVERNMENT

NOW INTO COURT, through undersigned counsel, comes defendant, ST. MARTIN PARISH GOVERNMENT, which for response to the State Court Petition of plaintiff, Lafayette City-Parish Consolidated Government (“LCG”), submits the following challenges to plaintiff’s lawsuit. Defendant’s accompanying Memorandum in Support of the below stated Rule 12 Motions is incorporated herein by reference.

**I. Rule 12(b)(6) Motion to Dismiss
for Failure to State a Claim Upon Which Relief Can Be Granted**

1.

LCG destroyed spoil banks in a wetlands area of St. Martin Parish, with no Permit for such activity from the St. Martin Parish Government, or the United States Army Corps of Engineers (the “Corps”). (Petition, ¶¶ 2-4, 18, 22-24).

2.

LCG seeks a Declaratory Judgment stating, *inter alia*, that LCG “**complied with all** lawful regulations, ordinances, rules, procedures and **laws** with the spoil bank project” (*Id.*, ¶ 29; *see also*,

¶ 30, and Prayer, seeking declaration that no Permit was required from the Corps).

[No Allegations Showing Consent of Co-owner(s)]

3.

LCG alleges it owns “***an interest*** in the land upon which the spoil bank sat” (*Id.*, ¶ 13), and upon which property “Lafayette Parish finally executed on this spoil bank project” in “February of 2022.” (*Id.*, ¶ 24, emphasis added). Notably, LCG does not allege it is the *sole owner* of the property on which the spoil bank removal occurred.

4.

In relation to the property on which the spoil banks were removed, LCG’s Petition references “a spoil bank that partially impeded the natural flow of water from the Vermilion Bayou into and out of the Cypress Island Swamp” (Petition, ¶ 4). LCG also references alleged studies by the U.S. Army Corps of Engineers and University of Louisiana at Lafayette which purportedly relate to removal of the referenced spoil bank. (*Id.*, ¶¶ 6, 9, 10, 11, 16). LCG alleges “coordinating with St. Martin Parish about implementing” the spoil bank removal activities. (*Id.*, ¶ 12). LCG alleges it “commissioned a model for the spoil bank project” (*Id.*, ¶ 13). LCG alleges applying for a Corps Permit, and defendant’s objections thereto. (*Id.*, ¶¶ 18-19). LCG further alleges “this spoil bank project ... had been in the works for over twenty-five years” (*Id.*, ¶ 24).

5.

Significantly, LCG also alleges its removal of the co-owned spoil bank could affect “thousands” of residents, and affect “the entire region.” (Petition, ¶ 25). LCG’s Petition, in its entirety, reflects the spoil bank removal on LCG’s co-owned property was a *substantial alteration of the co-owned property*.

6.

As per La. C.C. art. 804, in pertinent part:

“Substantial alterations ... to the thing held in indivision may be undertaken only with the consent of all the co-owners.” (Emphasis added).

7.

La. C.C. art. 804 is one of the laws relating to LCG’s “spoil bank project.” As noted above, LCG seeks a Declaratory Judgment “that it complied with all ... laws.”

8.

LCG does not allege it had the consent of any co-owner. In order for LCG to obtain a Declaratory Judgment “that it complied with ... all laws,” LCG must allege facts showing it complied with La. C.C. art. 804. The face of LCG’s Petition shows LCG has not alleged facts sufficient to show it is entitled to the Declaratory Judgment sought. Thus, LCG has failed to state a claim upon which relief can be granted through the specific Declaratory Judgment it seeks.

[Failure to Allege Any Legal Requirements or Any Compliance Actions]

9.

LCG alleges “Lafayette Parish has no liability as it complied with all lawful regulations, ordinances, rules procedures and laws with the spoil bank project.” (Petition, ¶ 13, emphasis added). LCG’s proposed Declaratory Judgment would proclaim plaintiff “complied with all lawful regulations, ordinances, rules procedures and laws with the spoil bank project.” (*Id.*, ¶ 29).

10.

LCG’s Petition fails to allege any legal requirements it references and about which it seeks a Declaratory Judgment; LCG’s Petition fails to allege any facts showing *any* compliance with *any*

laws, and which compliance actions are also the subject of LCG's proposed Declaratory Judgment.

11.

Because LCG's Petition fails to name or identify in any manner whatsoever, and states no material facts regarding:

(1) the "regulations, ordinances, rules, procedures and laws" it places at issue; and

(2) LCG's purported acts in compliance with the unknown, unalleged legal requirements,

LCG has failed to state any claim upon which relief can be granted regarding the unknown, unalleged "regulations, ordinances, rules, procedures and laws," and LCG's purported compliance therewith.

["Unclean Hands" Violation of a Valid Ordinance Precludes Declaratory Judgment]

12.

As stated by the Louisiana Third Circuit Court of Appeal:

"A city ordinance, like a state statute, is presumed to be constitutional and the party who attacks it has the burden of establishing by clear and cogent evidence that the ordinance is unconstitutional. ... *The ordinance remains valid until such time as it is judicially overturned.*"

Priola v. Calcasieu Parish Police Jury, 97-161 (La. App. 3 Cir. 6/4/97), 696 So.2d 183, 186 *writ denied*, 97-1693 (La. 10/13/97), 703 So.2d 613, quoting and adopting as its own opinion (*Id.*, p. 186) La. Atty. Gen. Op. 95-14, pp. 1208-1210, Jan. 27, 1995 (Emphasis added).

13.

LCG specifically alleges the existence of a St. Martin Parish Ordinance ("Ordinance") directly relating to spoil bank removal activities in St. Martin Parish. It is clear from LCG's Petition that LCG believes the Ordinance would have prevented LCG's removal of spoil banks in St. Martin

Parish. LCG alleges, in pertinent part:

“Approximately a year ago ... to find a way to prevent this beneficial flood prevention project from proceeding, St. Martin Parish enacted Ordinance Sec. 14-71 (No.21-07-1327-OR. The Ordinance specifically targeted Lafayette Parish. It attempted to prevent Lafayette Parish from removing dirt from its own property without first obtaining the approval of St. Martin Parish. This ordinance was clearly unconstitutional and not enforceable.”

(Petition, ¶ 23, emphasis added).

14.

Despite LCG’s erroneous legal conclusions – which aver the Ordinance “specifically targeted Lafayette Parish,” and “was clearly unconstitutional and not enforceable” (*Id.*) – LCG does not allege it challenged the Ordinance in any Court prior to February of 2022 when “Lafayette Parish finally executed on this spoil bank project” in a **wilful, complete, utter, arrogant and intentional “unclean hands” disregard of the St. Martin Parish Ordinance.**

15.

Inasmuch as the Ordinance had not been stricken down by any Court – or otherwise declared “unconstitutional and not enforceable” – the St. Martin Parish Ordinance was legal and enforceable at the time LCG destroyed the spoil bank in St. Martin Parish.

16.

Because the face of LCG’s Petition shows LCG acted with utter disregard of a valid and enforceable Ordinance at the time LCG intentionally violated the law of St. Martin Parish, LCG cannot be granted a Declaratory Judgment stating LCG “complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project” (Petition, ¶ 29). LCG thus has no cause of action for the Declaratory Judgment is seeks.

17.

Further, and although the Rule 12(b)(6) Motion will be tried on the face of plaintiff's Petition, St. Martin Parish Government states, for the record, that St. Martin Parish Ordinance No. 21-07-1327-OR was adopted more than six (6) months before LCG even acquired its undivided ownership interest in the St. Martin Parish property on which spoil bank removal activities occurred. LCG – through its counsel – was fully aware of the Ordinance before February of 2022 when LCG acquired its property interest and commenced spoil bank removal activities in St. Martin Parish. Despite this knowledge, LCG sought no relief from any Court, and completely disregarded both the Ordinance itself and the legitimate concerns of St. Martin Parish – of which LCG was also fully cognizant.

[The Corps Has Determined LCG Was Required to have A Corps Permit for Its Spoil Bank Destruction Project, Thus Precluding A Declaratory Judgment Stating LCG Complied With All Legal Requirements]

18.

St. Martin Parish Government has been advised by counsel for the Corps that an Administrative Order has been issued by the Corps, notifying and advising LCG that a Corps Permit was required for LCG's spoil bank destruction activities in St. Martin Parish; defendant herein is seeking to confirm the information from the Assistant United States Attorney, and upon such confirmation, will obtain the Administrative Order (or Orders) and, via a formal filing, will ask the Court to take judicial notice as per Fed. R. Evid. 201 of the Corp's administrative ruling. In light of the Corps finding, LCG cannot obtain a Declaratory Judgment "that it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project." The Corps' determination shows LCG has failed to state a claim for the Declaratory Judgment it seeks.

19.

From the foregoing, LCG has stated no claim upon which relief can be granted, thus warranting dismissal if its Petition; however, if in the Court’s discretion LCG’s lawsuit is not dismissed, LCG should be ordered to amend its Petition to cure the lack of proper allegations cited above. Amendment would otherwise be warranted for the reasons set forth below.

II. Alternative Rule 12(e) Motion for More Definite Statement

[Unknown, Unalleged Legal Requirements]

1.

LCG filed its Declaratory Judgment demand pursuant to La. C.C.P. art. 1872, which states:

“A person ... whose rights, status, or other legal relations **are affected by a statute, municipal ordinance, contract or franchise**, may have determined any question of construction or validity **arising under the ... statute, ordinance, contract or franchise** and obtain a declaration of rights, status, or other legal relations **thereunder**.” (Emphasis added)

2.

Plaintiff seeks a Declaratory Judgment **presumably addressing multiple statutes and other legal requirements**, as those **statutes and legal requirement** relate to LCG’s “spoil bank project.” Specifically, LCG asks for a Declaratory Judgment stating that, *inter alia*, LCG:

“complied with all lawful [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws with the spoil bank project ...”

(Petition, ¶ 29; *see also*, Prayer; emphasis and bracketed numbers added).

3.

However, plaintiff’s Petition does not state, reference, describe, list – or elucidate in any manner whatsoever – ***any*** of the “lawful” [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws that are supposedly applicable to the “spoil bank project,” and with which LCG

supposedly complied.

4.

LCG's Petition also fails to state whether any State permits were required for its "spoil bank project," or whether any specific State permits were obtained by LCG.

5.

LCG's allegations are completely open-ended, and provide no guidance whatsoever as to the specific [1] regulations, [2] ordinances [3] rules [4] procedures and [5] laws LCG seeks to place at issue, and about which LCG seeks a Declaratory Judgment. Defendant herein cannot prepare an Answer containing specific defenses and affirmative defenses relating to the unknown, unalleged legal requirements LCG claims to have followed.

6.

[Unknown, Unalleged Compliance Actions]

LCG's Petition is also devoid of allegations stating *what* LCG supposedly did to comply with all "lawful" requirements, such that defendant can prepare an Answer containing specific defenses and affirmative defenses challenging whether LCG's (unknown and unalleged) actions constituted compliance with *each of the* [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws LCG claims to have followed. LCG's Petition is completely vague and open-ended as to its purported compliance actions.

7.

[Amorphous, Unexplained "Spoil Bank Project" Allegations]

Plaintiff seeks a Declaratory Judgment regarding its "spoil bank project," and specifically declaring, *inter alia*, "that a permit from the United States Army Corps of Engineers was not

required.” (See Petition, ¶ 29; and Prayer, emphasis added).

8.

Plaintiff references its original “spoil bank project” – for which LCG sought a Permit from the U.S. Army Corps of Engineers (“Corps Permit”) (Petition, ¶ 18); plaintiff also references its revised “spoil bank project” which allegedly “did not disturb any nearby wetlands and did not fall within the jurisdiction of the Corps.” (*Id.*, ¶ 21, emphasis added).

9.

In relation to its original “spoil bank project,” LCG specifically references “removing dirt from its own property” in St. Martin Parish (*Id.*, ¶ 23). Plaintiff does not specify what – other than “removing dirt” – was included as part of its original “spoil bank project” or its revised “spoil bank project.”

10.

LCG’s Petition does not allege how “nearby wetlands” would have been disturbed by the original “spoil bank project” – such that a Corps Permit *was* admittedly required – or how the “spoil bank project” was revised so that, allegedly the revised “spoil bank project” “did not disturb any nearby wetlands and did not fall within the jurisdiction of the Corps.” (*Id.*, ¶ 23, emphasis added).

11.

LCG’s Petition also fails to allege how LCG determined nearby wetlands were [allegedly] not disturbed by the (unexplained) revised “spoil bank project” in St. Martin Parish.

12.

Defendant cannot prepare an Answer with specific defenses and affirmative defenses as to activities for which a Corps Permit was allegedly not required without: (1) knowledge of the

specific revised “spoil bank project” activities actually undertaken; (2) knowledge of how these activities differed from the original activities that LCG alleges did require a Corps Permit; and (3) knowledge of how LCG determined that nearby wetlands were allegedly not disturbed by LCG’s activities in St. Martin Parish.

13.

In summary, LCG’s Petition is completely vague as to the specific matters for which it seeks a Declaratory Judgment: LCG fails to allege each and every one of the “regulations, ordinances, rules, procedures and laws” with which it allegedly complied, and about which LCG seeks a compliance ruling via Declaratory Judgment; LCG fails to state *what* it supposedly did in compliance with all legal requirements; LCG alleges conclusions, but fails to allege facts from which it can be determined that no Corps Permit was required for the destruction of spoil banks in St. Martin Parish.

WHEREFORE, defendant herein, ST. MARTIN PARISH GOVERNMENT, prays that its Rule 12(b)(6) Motion be granted, and LCG’s lawsuit be dismissed; alternatively, in the event LCG’s lawsuit is not dismissed, defendant prays that pursuant to Rule 12(b)(6) and/or Rule 12(e), LCG be ordered to amend its Petition to cure the pleading deficiencies cited herein.

[Signature Block Next Page]

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDELL

By: s/ Steven M. Oxenhandler

Steven M. Oxenhandler, T.A. (#28405)

Michael J. O'Shee (#10268)

2001 MacArthur Drive/P.O. Box 6118

Alexandria, LA 71307-6118

Tel: (318) 445-6471 /Fax: (318) 445-6476

Email: soxenhandler@goldweems.com

Email: moshee@goldweems.com

**ATTORNEYS FOR ST. MARTIN PARISH
GOVERNMENT**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

**LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT**

CIVIL ACTION NO. 22-CV-1127

VERSUS

JUDGE JAMES D. CAIN, JR.

**ST. MARTIN PARISH GOVERNMENT
AND UNITED STATES ARMY CORPS
OF ENGINEERS**

MAGISTRATE WHITEHURST

**MEMORANDUM IN SUPPORT OF
RULE 12(b)(6) MOTION TO DISMISS AND ALTERNATIVE
RULE 12(e) MOTION FOR MORE DEFINITE STATEMENT
SUBMITTED BY ST. MARTIN PARISH GOVERNMENT**

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDELL

**Steven M. Oxenhandler, T.A. (#28405)
Michael J. O'Shee (#10268)
2001 MacArthur Drive/ P.O. Box 6118
Alexandria, LA 71307-6118
Tel: (318) 445-6471/ Fax: (318) 445-6476
Email: soxenhandler@goldweems.com
Email: moshee@goldweems.com**

**ATTORNEYS FOR DEFENDANT,
ST. MARTIN PARISH GOVERNMENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
I. BACKGROUND	1
II. LAW AND ARGUMENT	3
A. Repleading and Incorporation by Reference	3
B. Rule 12 (b)(6) Failure to State a Claim Upon Which Relief can be Granted	3
1. LCG Does Not Allege It Obtained the Consent of All Co-Owners for Destruction of the Spoil Bank on Co-Owned Property	3
2. LCG Fails to Allege <i>Any</i> Legal Requirements With Which It Allegedly Complied, and Fails to Allege <i>Any</i> Facts Showing Actual Compliance With <i>Any</i> Legal Requirements Relating to Its “Spoil Bank Project”	5
3. LCG’s Admitted and Intentional Violation of an Ordinance Does Not State A Claim Upon Which Relief Can Be Granted As to LCG’s Improper Actions With “Unclean Hands”	7
4. LCG Cannot Obtain a Declaratory Judgement That It Complied With All Laws When the U.S. Army Corps of Engineers Has Determined LCG Violated the Law in Spoil Bank Removal Without a Corps Permit	12
C. Alternative Rule 12(e) Motion for More Definite Statement	12
1. LCG Seeks a Declaratory Judgment as to Unknown, Unalleged Legal Requirements for Which No Facts are Stated	13
2. LCG Seeks a Declaratory Judgment as to Unalleged Acts of <i>Claimed</i> Compliance with Unstated Legal Requirements	13
3. Amorphous “Spoil Bank Project” Allegations	16
III. CONCLUSION	17

TABLE OF AUTHORITIES

	<u>PAGE</u>
<i>Abbott Labs. v. Gardner</i> , 387 U.S. 136 (1967).....	10
<i>Allvend, Inc. v. Payphone Commissions Co., Inc.</i> , 2001-0661 (La. App. 4 Cir. 5/23/01), 804 So.2d 27, 34.....	10
<i>Ashcroft v. Iquabel</i> , 556 U.S. 662 (2009)	17
<i>Ballstreri v. Pacifica Police Dept.</i> , 901 F.2d 696, 699 (9 th Cir. 1990).....	12
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	3, 5, 6, 7, 17
<i>Blankensip v. Blackwell</i> , 341 F.Supp.2d 911, 924 (S.D. Ohio 2004)	10
<i>Bowie v. Hodge</i> , No. 20-1218, 2020 WL 3104799 (E.D. La. June 11, 2020)	15, 16
<i>Califano v. Sanders</i> , 430 U.S. 99 (1977)	10
<i>Canal Ins. Co. v. Flores</i> , No. 3:06-84, 2009 WL 1033770 (W.D. Tex. April 14, 2009)	9, 10
<i>City of Kenner v. Kyle</i> , 02-1262 (La. App. 5 Cir. 4/8/03), 846 So.2d 34, 39	8, 9
<i>Costal Corp. v. Tex. E. Corp.</i> , 869 F.2d 817, 818 (5 th Cir. 1989).....	10
<i>Dark v. Potter</i> , 293 Fed. Appx. 254, 258 (5 th Cir. 2008)	6
<i>eBay v. MercExchange, L.L.C.</i> , 547 U.S. 388, 394 (2006)	10
<i>Frith v. Guardian Life Ins. Co.</i> , 9 F.Supp.2d 734, 737-38 (S.D. Tex. 1998).....	12
<i>Guilbeau v. Domingues</i> , 14-328 (La. App. 3 Cir. 01/1/15), 149 So.3d 825, 829-830	10
<i>Gravier’s Curator v. Carraby’s Executor</i> , 17 La. 132 (La. 1841)	11
<i>Harris v. Jefferson Parish President and Parish Council</i> , 12-715 (La. App. 5 Cir. 5/23/13), 119 So.3d 603.....	8, 9, 11
<i>Highmark, Inc. v. UPMC Health Plan, Inc.</i> , 276 F.3d 160, 174 (3 ^d Cir. 2001).....	10

In re Anderson, 539 B.R. 277 (Bankr. W.D. La. 2015) 10

Hood v. Frellsen, 31 La. Ann. 577 (La. 1879) 11

JTS Realty Corp. v. City of Baton Rouge, 499 So.2d 274 (La. App. 1 Cir. 1986) 14, 15

Keystone Driller Co. v. Gen Excavator Co., 290 U.S. 240, (1933). 10

Mulhollan v. Voorhies, 3 Mart. (n.s.) 46 (La. 1824), 1824 WL 1684. 10, 11

Priola v. Calcasieu Parish Police Jury, 97-161 (La. App. 3 Cir. 6/4/97) 8, 9

Progressive Waste Solutions of LA, Inc. v. Lafayette Consol. Government,
No. 6:12-00851, 2014 WL 2768848 (W. D. La. June 18, 2014). 17

Quaternary Resources Investigations, LLC v. Phillips, 2018-1543
(La. App. 1 Cir. 11/19/20), 316 So.3d 448 11

Torch Liquidating Trust ex rel. Bridge Associates L.L.C. v. Stockstill,
571 F.3d 377, 384 (5th Cir. 2009) 3, 5, 6

Valle v. Beauryne Builders LLC, No. 17-1463692, *1_(M.D. La. Mar. 23, 2018). 3

Veal v. Preferred Thrift & Loan of New Orleans, Inc., 234 So.2d 226
(La. App. 4 Cir. 1970). 13, 14

Venator Group Specialty, Inc. v. Matthew/Muniot Family, LLC,
322 F.3d 835 (5th Cir. 2003). 10

Vines v. City of Dallas, Texas, 851 F.Supp. 254, 259 (N.D. Tex. 1994) 12

Watkins v. Lake Charles Memorial Hosp., 2013-1137 (La. 3/25/14),
144 So.2d 944, 954, FN7 7

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 8 6

Fed. R. Civ. P. 8(a)(2). 3, 6

Fed. R. Civ. P. 12(b)(6). 1, 2, 3, 5, 7

Fed. R. Civ. P. 12(e) 1, 3, 12

FEDERAL RULES OF EVIDENCE

Fed. R. Evid. 201 12

U.S. CODE

42 U.S.C. § 4001, *et seq.* (National Flood Insurance Act of 1968) 1

LOUISIANA CODES

La. C.C. art. 804 4, 5, 17

La. C.C.P. art. 1872..... 13

LOUISIANA STATUTES

La. R.S. 33:7412(A) 14

La. R.S. 33:7412(B) 14

La. R.S. 38:84 1

La. R.S. 38:84(A) 1

OTHER AUTHORITY

La. Atty. Gen. Op. No. 95-14 (Jan. 27, 1995) 8, 9

This memorandum is submitted on behalf of defendant, St. Martin Parish Government, in response to the Petition of plaintiff, Lafayette City-Parish Consolidated Government (“LCG”). For the reasons set forth below, plaintiff’s Petition should be dismissed or amended to cure the deficiencies cited herein, as per Federal Rules of Civil Procedure 12(b)(6) and 12(e).

I. BACKGROUND

This matter arises from the destruction of spoil banks in St. Martin Parish by LCG in February of 2022. The spoil banks were part of a wetlands area in the immediate vicinity of the Vermilion River. LCG *claimed* removal of the spoil banks would “reduce flooding in Lafayette with no harm to St. Martin Parish.” (Petition, ¶ 11). Because of their location, the spoil banks fell within the ambit of St. Martin Parish’s “Flood Prevention” Ordinances (*i.e.*, Chapter 14 of the Parish Ordinances). The Chapter 14 Ordinances were enacted pursuant to La. R.S. 38:84 which provides, in pertinent part:

In order to secure for the citizens of the state of Louisiana the flood insurance coverage provided for by the National Flood Insurance Act of 1968, 42 USC 4001, et seq., all of the parishes and municipalities of the state may adopt such ordinances, rules, and regulations, including zoning and land use regulations, as are necessary to comply with the requirements of said Act and the regulations adopted pursuant thereto by the Federal Emergency Management Agency.

(La. R.S. 38:84(A), emphasis added). As per the Chapter 14 Flood Prevention Ordinances, as amended in 2021, a Parish Permit was required for “[a]ny development which includes the construction, alteration, or removal of any sort of levee or levee system” as defined in Chapter 14. While aware of the Parish Permit requirement for its intended spoil bank destruction, LCG did not apply for – or receive – a Parish Permit. Although Chapter 14 addressed “any development” in the wetlands area – *and not the identity of any individual or entity* – LCG ignored Chapter 14, and

asserted, “[t]he Ordinance specifically targeted Lafayette Parish ... This ordinance was clearly unconstitutional and not enforceable.” (Petition, ¶ 23).

LCG initially determined a Permit was required from the United States Army Corps of Engineers (the “Corps”) for its intended spoil bank destruction, and accordingly, “Lafayette Parish applied for a permit” from the Corps. (Petition, ¶ 18). LCG later “revised” its spoil bank destruction project (*Id.*, ¶ 21), and unilaterally determined the “revised” project “did not require a permit from the Corps.” (*Id.*, ¶ 22). LCG then purchased a partial ownership interest in the land on which the spoil banks were situated (*Id.*, ¶ 13), and thereafter commenced its spoil bank destruction project without any Permits from the Corps or St. Martin Parish. As stated by LCG, “[i]n February of 2022, Lafayette Parish finally executed on this spoil bank project ...” (*Id.* ¶ 24, emphasis added).

In its State Court Petition laden with derision and personal insults directed to the St. Martin Parish President (*Id.*, ¶¶ 15, 16, 17, 19, 20, 21, 25, 26, 27, 28), LCG named St. Martin Parish Government and the Corps as defendants. (*Id.*, ¶ 1). LCG also announced – with regard to its spoil bank destruction – “Lafayette Parish has no liability as it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project” (*Id.*, ¶ 28, emphasis added). In accordance with its own, prior determination of the legality of the St. Martin Parish Ordinance and Federal law relating to permit requirements of the U.S. Army Corps of Engineers, LCG “seeks a declaratory judgment that it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project ...” (*Id.*, ¶ 29; *see also*, ¶ 30 and Prayer). In response to LCG’s Petition, St. Martin Parish Government filed Exceptions of Improper Venue, Vagueness, and No Cause of Action. Defendant herein reurges its “No Cause of Action” arguments as to LCG’s Failure to State a Claim Upon Which Relief Can Be Granted (Fed. R. Civ. P. 12(b)(6)), and its “Vagueness”

arguments as per defendant's Alternative Motion for More Definite Statement (Fed. R. Civ. P. 12(e)). Defendant's arguments are more fully addressed below.

II. LAW AND ARGUMENT

A. Repleading and Incorporation by Reference

St. Martin Parish Government incorporates herein by reference its Peremptory Exceptions of No Cause of Action and its Dilatory Exception of Vagueness, together with the Memorandum in Support of defendant's Exceptions, filed in the State Court proceedings in this matter. Defendant shows its Exceptions of No Cause of Action are likewise applicable under Rule 12(b)(6), and its Dilatory Exception of Vagueness is equally applicable under Rule 12(e).

B. Rule 12(b)(6) Failure to State a Claim Upon Which Relief Can Be Granted

In order to state a claim for relief, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief ..." (Fed. R. Civ. P. 8(a)(2), emphasis added). As further stated in *Torch Liquidating Trust ex rel. Bridge Associates L.L.C. v. Stockstill*, 571 F.3d 377, 384 (5th Cir. 2009), "[d]ismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief." (Emphasis added). It is also pertinent that, "[o]n a motion to dismiss, courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Valle v. Beauryne Builders LLC*, No. 17-1463692, *1 (M.D. La. Mar. 23, 2018), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (Emphasis added). As shown below, LCG's allegations do not show it is entitled to the Declaratory Judgment it seeks.

1. LCG Does Not Allege It Obtained the Consent of All Co-Owners for Destruction of the Spoil Bank on Co-Owned Property

As noted above, LCG seeks a Declaratory Judgment stating, *inter alia*, that LCG "complied

with all lawful regulations, ordinances, rules, procedures and **laws** with the spoil bank project” (Petition, ¶ 29). LCG alleges it owns “**an interest in the land upon which the spoil bank sat**” (Petition, ¶ 13), and upon which property “**Lafayette Parish finally executed on this spoil bank project**” in “February of 2022.” (*Id.*, ¶ 24, emphasis added). **Notably, LCG does not allege it is the sole owner of the property on which the spoil bank removal occurred.**

In relation to the **property on which the spoil banks were removed**, LCG’s Petition references “**a spoil bank that partially impeded the natural flow of water from the Vermilion Bayou into and out of the Cypress Island Swamp**” (Petition, ¶ 4). LCG also references alleged studies by the U.S. Army Corps of Engineers and University of Louisiana at Lafayette which purportedly **relate to removal of the referenced St. Martin Parish spoil bank.** (*Id.*, ¶¶ 6, 9, 10, 11, 16). LCG alleges “**coordinating with St. Martin Parish about implementing**” the spoil bank removal activities **in St. Martin Parish.** (*Id.*, ¶12). LCG alleges it “**commissioned a model**” for the spoil bank project **in St. Martin Parish** (*Id.*, ¶ 13). LCG alleges applying for a Corps Permit, and defendant’s objections thereto regarding spoil bank removal **in St. Martin Parish.** (*Id.*, ¶¶18-19). LCG further alleges “**this spoil bank project ... had been in the works for over twenty-five years**” (*Id.*, ¶ 24). LCG’s Petition, **in its entirety**, reflects the spoil bank removal on LCG’s **co-owned property** was a **substantial alteration of the co-owned property.** LCG claims its **spoil bank removal on the co-owned property could affect “thousands” of residents and affect “the entire region.”** (*Id.*, ¶ 25).

As per La. C.C. art. 804, in pertinent part:

“Substantial alterations ... to the thing held in indivision may be undertaken only with the consent of all the co-owners.” (Emphasis added).

La. C.C. art. 804 is one of the **laws** relating to LCG’s “spoil bank project.” As previously

stated, LCG seeks a Declaratory Judgment “that it complied with all ... laws.” However, LCG does not allege it had the consent of any co-owner. In order for LCG to obtain a Declaratory Judgment “that it complied with ... all laws,” LCG must allege facts showing it complied with La. C.C. art. 804. Inasmuch as LCG fails to allege a central component of its claim to have complied with “all laws” – LCG has failed to state a claim for the Declaratory Judgment it seeks. Accordingly, LCG’s lawsuit should be dismissed, or, in the Court’s discretion, LCG should be ordered to amend its Petition to properly allege it obtained the consent of all co-owners before it substantially altered the co-owned property. As to this point – and while defendant acknowledges a Rule 12(b)(6) Motion is tried on the face of the complaint – for the record – defendant notes LCG will be unable to allege it had consent of all co-owners, as at least one co-owner refused to sell his ownership interest in the co-owned property to LCG, and has stated his adamant objection to LCG’s spoil bank destruction on the co-owned property.

2. LCG Fails to Allege Any Legal Requirements With Which It Allegedly Complied, and Fails to Allege Any Facts Showing Actual Compliance With Any Legal Requirements Relating to Its “Spoil Bank Project”

Pertinent here, the *Stockstill* Court – in ruling on a Motion to Dismiss – said, “[t]he plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’ ” *Stockstill*, 561 F.3d at 384, citing *Twombly, supra*. Contrary to jurisprudential requirements, LCG alleges conclusions, but not facts. LCG’s Petition boldly claims “Lafayette Parish has no liability as it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project.” (Petition, ¶ 28, emphasis added). The Petition further states, “Lafayette Parish now seeks a declaratory judgment that it complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project” (*Id.*, ¶ 29, emphasis added). However, LCG fails to allege

any of the “lawful regulations, ordinances, rules, procedures and laws” with which it supposedly complied, and which “lawful regulations, ordinances, rules, procedures and laws” the Court is asked to rule on. The conclusory averements of LCG’s Petition do not allege facts sufficient to state a claim for relief as to plaintiff’s alleged compliance with unstated and unknown “lawful regulations, ordinances, rules, procedures and laws.” On this point, the Fifth Circuit pointed out pleading requirements of Fed. R. Civ. P. 8, stating in words pertinent here:

Rule 8(a)(2) ... requires a showing rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only fair notice of the nature of the claim, but also grounds on which the claim rests.

Dark v. Potter, 293 Fed. Appx. 254, 258 (5th Cir. 2008) (quoting *Twombly*, 550 U.S. at 556, FN3) (Emphasis added). Defendant has no notice of the [1] regulations; [2] ordinances; [3] rules; [4] procedures; and [5] laws upon which the Declaratory Judgment will be based; defendant has no idea what actions LCG supposedly took in supposedly complying with the unknown regulations, the unknown ordinances, the unknown rules, the unknown procedures and the unknown laws it places at issue in this litigation.

LCG’s Petition fails to set forth specific facts as to each of the “regulations, ordinances, rules, procedures and laws” for which it seeks a Declaratory Judgment as to compliance therewith; LCG’s Petition additionally fails to allege specific facts showing how it supposedly complied with each of the “regulations, ordinances, rules, procedures and laws.” Moreover, LCG’s Petition states no facts showing actual (purported) compliance with any legal requirements whatsoever. LCG fails to meet the requirements of Fed. R. Civ. P. 8(a)(2), or the mandates of *Twombly, supra, Stockstill, supra*, and *Dark, supra*. Accordingly, plaintiff’s Petition/Complaint should be dismissed as per

Fed. R. Civ. P. 12(b)(6), or alternatively, plaintiff should be ordered to amend its Petition/Complaint to cure the deficiencies addressed above. (LCG's inadequate pleading also gives rise to defendant's Motion for More Definite Statement, as more fully addressed *infra*).

3. LCG's Admitted and Intentional Violation of an Ordinance Does Not State A Claim Upon Which Relief Can Be Granted As to LCG's Improper Actions With "Unclean Hands"

LCG admittedly violated a St. Martin Parish Ordinance directed to removal of spoil banks in St. Martin Parish. (Petition, ¶ 23). As to this point, plaintiff alleges:

This ordinance was clearly unconstitutional and not enforceable. *** Lafayette Parish finally executed on this spoil bank project ... and completed it in less than twenty-four hours.

(Petition, ¶¶ 23, 24, emphasis added). LCG's "unconstitutional and not enforceable" assertions are legal conclusions which are not accepted as true for purposes of ruling on a Rule 12(b)(b) Motion to Dismiss. Twombly, supra. Defendant is aware of language stating "invalid non-judicial directives may be disregarded" and "[v]iolators ... risk criminal sanctions if their predictions of illegality fail" (*Watkins v. Lake Charles Memorial Hosp.*, 2013-1137 (La. 3/25/14), 144 So.2d 944, 954, FN7). However, as further addressed below, the St. Martin Parish Ordinance is valid and enforceable until it is held invalid. While a Court may ultimately rule on the constitutionality of the Ordinance, LCG's lawsuit seeks a declaration that its wilful disregard of an enforceable law at the time of its actions was completely legal. LCG's allegation of illegality cannot be accepted as true for purposes of ruling on defendant's Motion to Dismiss. Thus, absent LCG's legal conclusions, plaintiff's Petition alleges LCG's knowing violation of a St. Martin Parish Ordinance, and asks that its violation of law be declared legal. Asserting its presumed authority as arbiter of the law in the first instance – and LCG's clear belief it is above the law – LCG states, "**Lafayette Parish ... was**

not obligated to wait for the St. Martin Parish President’s approval. Accordingly, it pressed forward with the spoil bank project.” (Petition, ¶ 21, emphasis added). Pertinent here are the following legal principles, which are equally applicable to City *and* Parish Ordinances:

“The law is well settled that the authority to determine the constitutionality of city ordinances is vested exclusively within the jurisdiction of the courts of this state.” *City of Kenner v. Kyle*, 02-1262 (La. App. 5 Cir. 4/8/03), 846 So.2d 34, 39 (Emphasis added).

“ ... ordinances are valid and enforceable until they are judicially held to be invalid.” *City of Kenner, supra*, 846 So.2d at 39 (Emphasis added).

“A city ordinance, like a statute, is presumed to be constitutional and the party who attacks it has the burden of establishing by clear and cogent evidence that the ordinance is unconstitutional. **The ordinance remains valid until such time as it is judicially overturned.**” *Priola v. Calcasieu Parish Police Jury*, 97-161 (La. App. 3 Cir. 6/4/97), 696 So.2d 183, 186, *writ denied*, 97-1693 (La. 10/13/97), 703 So.2d 613 (adopting *La. Atty. Gen. Op. No. 95-14*, pp. 1209-1210 (Jan. 27, 1995), emphasis added).

“Ordinances are presumed constitutional, and thus, are valid and enforceable until they are judicially held to be unconstitutional.” *Harris v. Jefferson Parish President and Parish Council*, 12-715 (La. App. 5 Cir. 5/23/13), 119 So.3d 603, 607 (Emphasis added).

Particularly pertinent to LCG’s unilateral declaration of “unconstitutionality” and subsequent complete disregard of the St. Martin Parish Ordinance is *City of Kenner, supra*. There, as explained by the Louisiana Fifth Circuit Court of Appeal, “this case was instituted as a declaratory judgment following the legislative auditor’s refusal to approve of the 2002 *ad valorem* taxes in the City of Kenner.” (*Id.*, at 39, emphasis added). Although the Legislative Auditor claimed the ordinances were unconstitutional, the Fifth Circuit affirmed the trial court’s ruling that “the legislative auditor did not have the authority to challenge the constitutionality of the Kenner city ordinances.” (*Id.*, at 38, emphasis added). Also relevant here, the appellate court examined the statute granting the Legislative Auditor’s powers and found, “this statute does not authorize the auditor to refuse to

certify the collection of property taxes based on a unilateral decision that the taxes imposed may violate constitutional provisions.” (*Id.*, at 39, emphasis added). Relevant to LCG’s unilateral decision to violate the St Martin Parish Ordinance, the Fifth Circuit said further:

The legislative auditor has no statutory or constitutional power or other authority to determine the unconstitutionality of the city ordinances, and absent a judicial determination regarding the legality of the ordinances, the auditor must accept their validity. Thus, the ordinances are valid and enforceable until they are judicially held to be invalid.

(*Id.*, at 39, emphasis added). Likewise, LCG “has no statutory or constitutional power or other authority to determine the unconstitutionality” of the St. Martin Parish Ordinance, and is required to accept its validity until such time as the Ordinance is “held to be invalid.” *City of Kenner, supra*.

In essence, plaintiff seeks the blessing of this Court for ***LCG’s assuming the role of the Court in determining the legality of an Ordinance in the first instance, and then flagrantly violating it.*** Presumably, LCG believes the Court will simply rubber-stamp LCG’s own legal determination – after the fact – as that in LCG’s apparent estimation, is the proper role of the judiciary. However, a Declaratory Judgment action cannot be used to acknowledge, embrace and reward a litigant’s blatant violation of the law. It is legally impossible for a court to declare a litigant’s admitted violation of an Ordinance to be an act in compliance “with all lawful ... ordinances ... and laws” – when, under Louisiana law – the Ordinance at issue was never invalidated by any Court, and remained “valid and enforceable” at the time of LCG’s brazen violation. See *City of Kenner, supra*; *Priola, supra*; *Harris, supra*; La. Atty. Gen. Op. 95-14 (Jan. 27, 1995). In this case, LCG has determined for itself the laws it will and will not obey, and seeks judicial approval of its admitted, repudiation of a law it finds inconvenient. LCG comes to the Court with unclean hands, thus warranting dismissal of its claim for equitable relief. As stated in *Canal*

Ins. Co. v. Flores, No. 3:06-84, 2009 WL 1033770 (W.D. Tex. April 14, 2009):

By its very nature, the Federal Declaratory Act is a form of equitable relief ... see ... *Venator Group Specialty, Inc. v. Matthew/Muniot Family, LLC*, 322 F.3d 835, 839-40 (5th Cir. 2003)... as a form of equitable relief, declaratory judgment may be foreclosed by equitable defenses, including unclean hands. See *Costal Corp. v. Tex. E. Corp.*, 869 F.2d 817, 818 (5th Cir. 1989); *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 ... (1967) (“Further, the declaratory judgment and injunctive remedies are equitable in nature, and other equitable defenses may be interposed.”) *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 ... (1977) ... see also *Blankensip v. Blackwell*, 341 F.Supp.2d 911, 924 (S.D. Ohio 2004) (refusing to grant declaratory and injunctive relief because of moving party’s unclean hands) ...

Unclean hands is historically an equitable doctrine which operates to guide a court’s discretion in granting equitable relief. See *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 394 ... (2006); see also *Keystone Driller Co. v. Gen Excavator Co.*, 290 U.S. 240, 244 ... (1933) (“It is one of the fundamental principles upon which equity jurisprudence is founded, that [a complainant] must come into court with clean hands.”).

The doctrine applies “when a party seeking relief has committed an unconscionable act immediately related to the equity the party seeks in respect to the litigation.” *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 174 (3d Cir. 2001) (citing *Keystone Driller*, 290 U.S. at 244).

(*Id.*, *16, emphasis added). The cited cases are applicable here. Also, Louisiana’s use of the clean hands doctrine was addressed in *In re Anderson*, 539 B.R. 277 (Bankr. W.D. La. 2015); there, the Court said:

Traditionally, courts have recognized the “unclean hands” doctrine as a defense to a request for equitable relief. Louisiana courts have also recognized this doctrine as a defense to a fraud claim and, as in the present case, a defense to a request for declaratory relief relating to ownership interests in a business. *Allvend, Inc. v. Payphone Commissions Co., Inc.*, 804 So.2d 27, 34 (La. App. 4 Cir. 5/23/01) (proof of plaintiff’s “unclean hands” barred fraud claim); *Guilbeau v. Domingues*, 149 So.3d 825, 829-830 (La. App. 3 Cir. 10/1/14) (unclean hands barred declaratory relief as to ownership of stock).

(*Id.*, at 286, emphasis added). The instant matter was originally brought in a Louisiana State Court; throughout its history, the Louisiana Supreme Court has refused to even hear cases tainted with the corruption of a litigant’s legally improper actions; in one such lawsuit, *Mulhollan v. Voorhies*,

3 Mart. (n.s.) 46 (La. 1824), 1824 WL 1684, the Court said, “[t]he bargain, which this witness discloses, is so corrupt a one that it cannot be the ground of an action They, who come into court with such unclean hands, ought to be told ... the temple of justice ... is the house of God – it should not be made a den of thieves.” (*Id.*, at 47-48, emphasis added). In *Gravier’s Curator v. Carraby’s Executor*, 17 La. 132 (La. 1841), 1841 WL 1235, the Louisiana Supreme Court said:

The exception certainly suggests to the court that the contracts between Gravier and the Carrabys were “illegal, immoral and contrary to public policy.” If that be true, this court is bound to notice without any plea ... and consequently it is useless to inquire whether the exception be such as the party has a right to plead in this court ...

(*Id.*, at 142, emphasis added). The violation of law is clearly against public policy. Again, in *Hood v. Frellsen*, 31 La. Ann. 577 (La. 1879), 1879 WL 7142, Louisiana’s highest judicial authority declared **“it would be shocking to every moral sense”** to allow a litigant – who had committed illegal acts – to **“invoke the aid of a court of justice, not in undoing the wrong committed, but in making it more successful.”** (*Id.*, at 581, emphasis added). That is exactly what LCG attempts to do in this litigation. A plaintiff’s improper acts are still abhorred by Louisiana courts. In *Quaternary Resources Investigations, LLC v. Phillips*, 2018-1543 (La. App. 1 Cir. 11/19/20), 316 So.3d 448, the First Circuit cited “the traditional Roman Maxim” that “no one may invoke his own turpitude,” and refused to enforce a contract that “would produce a result prohibited by law ...” (*Id.* at 468, emphasis added). Here, plaintiff invokes its “own turpitude” in seeking to make LCG’s wholesale repudiation of a valid Ordinance “more successful.” LCG seeks an impossible ruling as to the legality of an admitted violation of the law. LCG’s actions violated an existing law. Again, “Ordinances ... are valid and enforceable until they are judicially held to be unconstitutional.” *Harris, supra.* There can be no declaration that LCG’s disregard of the law,

was legal at the time of LCG's improper violation of the law. LGC's lawsuit should be dismissed, as no amendment can cure LCG's seeking of equitable relief as to its own improper acts, brought to this Court with unclean hands.

4. LCG Cannot Obtain a Declaratory Judgment That It Complied With All Laws When the U.S. Army Corps of Engineers Has Determined LCG Violated the Law in Spoil Bank Removal Without a Corps Permit

“Dismissal can be based either on a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Frith v. Guardian Life Ins. Co.*, 9 F.Supp.2d 734, 737-38 (S.D. Tex. 1998), citing *Ballstreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) and *Vines v. City of Dallas, Texas*, 851 F.Supp. 254, 259 (N.D. Tex. 1994), *affirmed*, 52 F.3d 1067 (5th Cir. 1995). (Emphasis added). Defendant has been informed by counsel for the U.S. Army Corps of Engineers (the “Corps”) that an Administrative Order has been issued to LCG by the Corps, notifying LCG, *inter alia*, that LCG's spoil bank removal in St. Martin Parish did in fact require a Corps Permit. Defendant is seeking to confirm the referenced information from the Assistant United States Attorney, and upon such confirmation, will obtain the Administrative Order (or Orders), and file a formal request for the Court to take judicial notice of the Order(s) pursuant to Fed. R. Evid. 201. Plaintiff's legal theory of having complied with “all lawful regulations, ordinances, rules, procedures and laws” is negated by findings of the Corps, and the Corps' Administrative Order(s) to LCG in relation thereto. For this reason, also, LCG's lawsuit should be dismissed.

C. Alternative Rule 12(e) Motion for More Definite Statement

Fed. R. Civ. P. 12(e) provides, in pertinent part, “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or

ambiguous that the party cannot reasonably prepare a response.” (Emphasis added). LCG’s Petition is a model of vagueness, leaving defendant impermissibly uninformed as to plaintiff’s claims, as further addressed below. If LCG’s lawsuit is not dismissed, it should be amended.

1. **LCG Seeks A Declaratory Judgment As To Unknown, Unalleged Legal Requirements For Which No Facts Are Stated**

and

2. **LCG Seeks A Declaratory Judgment As to Unalleged Acts of Claimed Compliance With Unstated Legal Requirements**

Pertinent to the above listed matters, LCG’s State Court Petition was filed under the Declaratory Judgment provisions of La. C.C.P. art. 1872, which state, in part:

A person ... whose rights ... or other legal relations are affected by a statute, municipal ordinance ... may have determined any question of construction arising under the ... statute, ordinance ... and obtain a declaration of rights ... or other legal relations thereunder.

(Emphasis added). Here, LCG asks for Declaratory Judgment as to presumably *multiple* “regulations, ordinances, rules, procedures and laws” which LCG fails to identify or reference by fact allegations. LCG also fails to allege any facts showing compliance with the referenced but unstated legal requirements. In *Veal v. Preferred Thrift & Loan of New Orleans, Inc.*, 234 So.2d 226 (La. App. 4 Cir. 1970), the Louisiana Fourth Circuit affirmed an Exception of Vagueness as to a Petition which alleged the collection of “late charges” was contrary to Louisiana law – but which failed to identify the law that was supposedly violated. (*Id.*, at 229-231). Specifically, the *Veal* plaintiff sought a refund of “late charges allegedly illegally charged by defendant.” (*Id.*, at 229, emphasis added). The Petition alleged, in part, “these charges are ... contra to the laws of the State of Louisiana ... ” (*Id.*, at 229, emphasis added). The defendant’s Exception of Vagueness was sustained by the trial court, and affirmed (as to the vagueness finding) by the Fourth Circuit. (*Id.*,

at 230, 231). Relevant here, the appellate court said, “[t]he objections pleaded by defendant’s exception in articles II and III ... are well founded.” Article III of the Exception stated: “Plaintiff’s petition is vague, especially as regards Paragraphs V and VI, **which fail to state** the amounts involved and **the specific laws of Louisiana which have been allegedly contravened.**” (*Id.*, at 230, 231, emphasis added). LCG’s Petition is equally vague as to laws LCG supposedly complied with, but which LCG fails to list, state, identify, explain or cite in any manner or with any particularity. Also, LCG makes the conclusory assertion that a St. Martin Parish Ordinance is “unconstitutional” (Petition, ¶ 23), but fails to even identify the Constitution or Constitutions purportedly violated, and further neglects to identify any provision or provisions of any Constitution or Constitutions supposedly violated. LCG alleges no facts sufficient for defendant to reasonably prepare a response; plaintiff’s specific claims are to wholly unknown. LCG presents conclusory assertions of universal legal compliance with unalleged laws. Defendant herein cannot prepare defenses relating to unknown, unstated, unexplained and unalleged “regulations, ordinances, rules, procedures and laws” supposedly complied with by LCG. Nor can defendant prepare defenses challenging LCG’s purported ***acts of compliance*** when LCG alleges no facts showing purported compliance with any legal requirements. As the Court is aware, various statutes state specific requirements and exemptions; statutes also state the manner of compliance therewith. For example, in *JTS Realty Corp. v. City of Baton Rouge*, 499 So.2d 274 (La. App. 1 Cir. 1986), the Louisiana First Circuit stated, as to statutory requirement that were *not* met in the case before it:

The industrial inducement statute under which we hold the City-Parish properly sought to proceed, LSA-R.S. 33:7412.A and B, requires that the proposed contract be placed before the public for public inspection for a period of two weeks before an ordinance is adopted granting the contract. ... The right to public inspection, for which the statute provides, would be meaningless if the body adopting the ordinance were free to substantively change the

proposed contract after it was left open to public scrutiny.

(*Id.*, at 279, emphasis added). In *JTS Realty Corp.*, *supra*, the content of the statute at issue was known, and the acts in relation to the statutory requirements were known. Such is not the case here. LCG has failed to allege – and defendant does not know – the content of any unalleged “regulations, ordinances, rules, procedures and laws” that form the heart of LCG’s Declaratory Judgment demand; plaintiff has not alleged – and defendant does not know – the facts of LCG’s alleged compliance. Clearly, defendant cannot prepare statutory defenses, statutory responses or statutory challenges if it does not know the specific statutes, regulations, ordinances, rules and procedures – or the specific acts of purported compliance therewith – that LCG seeks to place at issue, but fails to allege, cite or explain in any manner whatsoever.

In a case involving similar, vague claims as to unstated law and Constitutional provisions, *Bowie v. Hodge*, No. 20-1218, 2020 WL 3104799 (E.D. La. June 11, 2020), the Court granted a Rule 12(e) Motion, agreeing with the defendants’ argument that:

[I]t is unclear what Plaintiff means when she alleges that Defendant Gusman failed “to grant plaintiff all of the rights and privileges she is guaranteed under the laws and Constitution of the State of Louisiana as a hired civil servant” Petition at ¶ 67(A)(2), or the allegations against Defendants ... that they failed “to guarantee petitioner her rights provided by state law, and the Constitution of the State of Louisiana” *Id.* at ¶ 67(B)(1)-(2).

Alleging violations of all of state law and the state Constitution does not adequately put Defendants on notice of what claims are being brought against them and does not allow Defendants to properly prepare their defense.

(*Id.*, at *3, emphasis added). The Court said as to the quoted argument:

The Court finds the claims alleged by Plaintiff in her state court petition are vague and ambiguous, for the reasons set forth by Defendants. Accordingly, the amendment is needed to provide a more definite statement pursuant to Rule 12(e).

(*Id.*, at *4, emphasis added). The same is true here. LCG’s allegation that, supposedly, “it complied

with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project” (Petition, ¶¶ 28, 29, Prayer), is precisely the type vague assertion addressed in *Bowie, supra*. Thus, LCG should be ordered to allege the specific “regulations, ordinances, rules, procedures and laws” it claims to have obeyed, and for which it seeks a Declaratory Judgment as to supposed compliance; LCG should likewise be required to allege the specific acts it will rely on at trial to establish alleged compliance with all “regulations, ordinances, rules, procedures and laws.”

Additionally, LCG’s allegation of compliance with “all **lawful**” legal requirements (Petition, ¶¶ 28, 29, emphasis added) is completely open-ended; there is absolutely no manner of determining – from the face of LCG’s Petition – what LCG considers to be “all **lawful** regulations, ordinances, rules, procedures and laws.” LCG’s qualifier of “**lawful**” in relation to “regulations, ordinances, rules, procedures, and laws” adds a further layer of ambiguity and vagueness.

3. Amorphous “Spoil Bank Project” Allegations

LCG Seeks A Declaratory Judgment As To Unexplained Wetlands Activities and Unexplained, Conclusory Determinations That LCG Supposedly “Did Not Disturb Any Nearby Wetlands”

LCG asks for a declaration it did not need a Permit from the Corps of Engineers for its spoil bank destruction in St. Martin Parish. Plaintiff clearly admits its original “spoil bank project” required a Corps Permit (see Petition, ¶ 18, alleging LCG’s application for a Corps Permit, and ¶ 22, alleging LCG’s “revised” project “would no longer fall within the jurisdiction of the Corps”). Plaintiff further alleges its “revised” project supposedly “did not disturb any nearby wetlands” and, supposedly, “did not require a permit from the Corps.” (Petition, ¶ 22). However, LCG’s **conclusory allegations** are devoid of any facts; LCG fails to state how its “revised” project supposedly “did not disturb any nearby wetlands,” nor how LCG determined its “revised” project supposedly “did

not disturb any nearby wetlands,” nor how LCG concluded its “revised” project “did not fall within the jurisdiction of the Corps.” (See Petition, ¶ 22). LCG references “removing dirt from its own property” as being part of its **original “spoil bank project” for which a Corps Permit was required** (*Id.*, ¶ 23), but fails to allege how removal of the same dirt as part of the “revised project” did not require a Corps Permit. The **conclusion** that “nearby wetlands” were not disturbed is insufficient as a fact allegation regarding the purported absence of any need for a Permit from the Corps of Engineers. Again, LCG alleges conclusions; LCG completely fails to allege facts necessary to answer and defend against its conclusions.(Petition, ¶ 22). LCG’s conclusions are to be disregarded for purposes of ruling on a Rule 12(b)(6) Motion; as stated in *Progressive Waste Solutions of LA, Inc. v. Lafayette Consol. Government*, No. 6:12-00851, 2014 WL 2768848 (W. D. La. June 18, 2014):

In *Twombly* the United States Supreme Court established a two-pronged approach to analyzing a 12(b)(6) motion, which they expounded upon in ... *Ashcroft v. Iqubel*, 556 U.S. 662, 679 ... (2009). The first step is to disregard all conclusory allegations - legal and factual. *Id.* at 678-679 ... Next, the court must determine if the remaining well-pleaded, non-conclusory factual allegations give rise to a plausible claim for relief. *Id.* at 679.

(*Id.*, *2, emphasis added). If LCG’s **conclusions are disregarded**, we are left with a Petition demanding a Declaratory Judgment without any alleged facts showing the absence of any need for a U.S. Army Corps of Engineers Permit. Accordingly, LCG should be ordered to amend its Petition to allege sufficient facts as to the particulars addressed above.

III. **CONCLUSION**

LCG has not alleged it obtained the consent of any co-owner of the St. Martin Parish property – which consent is a specific requirement of La. C.C. art. 804. LCG’s failure to allege compliance with a specific, applicable mandate of Louisiana Civil Code precludes a Declaratory

Judgment stating LCG complied with all laws relating to its spoil bank destruction in St. Martin Parish. Moreover, the U.S. Army Corps of Engineers has determined LCG did – in fact – need a Corps Permit for LCG’s spoil bank removal, thus precluding the Declaratory Judgment sought by plaintiff.. LCG’s failure to allege the specific legal requirements with which plaintiff supposedly complied – and LCG’s failure to allege any facts showing compliance with any law – prevent the grant of a Declaratory Judgment as to those unalleged and unknown legal requirements and as to the unknown, unalleged, supposed acts of compliance. Thus, LCG has failed to state any claim for relief through an action for Declaratory Judgment. Further, LCG’s brazen, admitted and intentional unclean hands violation of a valid St. Martin Parish Ordinance states no claim for relief as to the Declaratory Judgment plaintiff seeks. LCG’s Petition is also completely vague, as it fails to allege any facts sufficient for defendant to prepare defenses regarding unknown, unalleged legal requirements, and unknown, unalleged supposed acts of compliance. Plaintiff additionally fails to allege anything other than conclusions regarding LCG’s claimed absence of any need for a Permit from the Corps of Engineers. LCG’s lawsuit should be dismissed. In the event a dismissal is not ordered, LCG should be required to amend its Petition within the delay allowed by the Court, to cure the pleading deficiencies cited herein. If LCG fails to amend as required by the Court, LCG’s claims should be dismissed, with prejudice.

[Signature Block on the Next Page]

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDELL

By: s/Steven M. Oxenhandler

Steven M. Oxenhandler, T.A. (#28405)

Michael J. O'Shee (#10268)

2001 MacArthur Drive/ P.O. Box 6118

Alexandria, LA 71307-6118

Tel: (318) 445-06471/ Fax: (38) 445-6476

Email: soxenhandler@goldweems.com

Email: moshee@goldweems.com

**ATTORNEYS FOR ST. MARTIN PARISH
GOVERNMENT**