

NO. _____

FIRST CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA

COREY DELAHOUSAYE (Respondent/Plaintiff)

VERSUS

STATE OF LOUISIANA, THROUGH THE OFFICE OF INSPECTOR

GENERAL, ET AL

(Applicants/Defendants)

**APPLICATION FOR WRIT OF CERTIORARI AND/OR
FOR SUPERVISORY REVIEW OF THE RULING OF THE NINETEENTH
JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA,
OVERRULING APPLICANTS' PEREMPTORY EXCEPTION OF NO
CAUSE OF ACTION**

**THE HONORABLE MICHAEL CALDWELL PRESIDING
SUIT NUMBER 646126, SECTION 24
CIVIL PROCEEDING**

**Original Writ Application filed on behalf of The Louisiana Office of
Inspector General, Stephen Street, in his official capacity as State Inspector
General, Greg Phares, and Jessica McCrary Webb (collectively "OIG
Defendants")**

Respectfully submitted,

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I. STATEMENT OF JURISDICTION

This Court has supervisory jurisdiction over Defendants-Applicants, The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb's (collectively referred to as "OIG Defendants" or "OIG") Application for Writs of Certiorari and/or Supervisory Review, pursuant to Article V, Sections 2 and 10 of the Constitution of the State of Louisiana, Louisiana Code of Civil Procedure Article 2201, and Rule 4 of the Uniform Rules of the Louisiana State Courts of Appeal.

In addition, the factors set forth in *Herlitz Construction Co., Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981), warrant immediate review of the district court's order overruling the OIG's exception of no cause of action. The Louisiana Supreme Court in *Herlitz*, instructs that judicial efficiency and fundamental fairness to the litigants dictate that the merits of the application for supervisory writs should be decided in an attempt to avoid the waste of time and expense of a possibly useless future trial on the merits, when (1) the decision of the court below is arguably incorrect, (2) when a reversal will terminate the litigation, and (3) when there is no dispute of fact to be resolved. All three of those factors militate in favor of review of the district court's erroneous ruling in this case. *Id.*

First, Applicants strongly believe that the lower court's ruling denying the OIG's exception of no cause of action is not only incorrect but that it is contrary to well-established law. The court did not decide whether the factual allegations of the petition, as amended, support the claims against the OIG Defendants. It, instead, essentially reversed its prior ruling and decided that the Respondent's legal conclusion that the OIG lacked jurisdiction to investigate the Respondent warranted the denial of the exception (this time). This, simply, is not the law. Jurisdiction is not an element, and forms no part, of any of the asserted claims of defamation, malicious prosecution, invasion of privacy, abuse of rights and process, negligence,

and Section 1983, against the OIG Defendants. Moreover, even if jurisdiction were an element of Respondent's claims, the OIG possessed such jurisdiction. These are purely legal issues that may be properly disposed of with a preemptory exception of no cause of action. When the trial court changed its ruling regarding the import of the legal issue of jurisdiction on the OIG's no cause of action exception, it committed reversible error. And because the amended facts, like the original ones, failed to state causes of action against the OIG under the law, the lower court should have again dismissed this suit. Second, the reversal of the district court's decision to overrule the OIG's exception of no cause of action may very well terminate the litigation. Unless Respondent is allowed to again amend his petition, reversal of the lower court's ruling would result in the dismissal of Respondent's claims against the OIG. Last, although this is not true of the legal conclusions, recitations and interpretations contained in the petition, the facts alleged must be accepted as true, thus satisfying the third and final *Herlitz* factor.

The *Herlitz* factors notwithstanding, Applicants will suffer irreparable harm if forced to continue to defend this meritless lawsuit. Applicants are expending time and resources (including valuable tax payer dollars) defending claims, which the trial court itself previously dismissed as unsubstantiated by the petition's factual allegations. The amended petition again failed to state sufficient facts to maintain the claims advanced in the Respondent's lawsuit. However, instead of again dismissing the claims as unsubstantiated by the facts alleged, the trial court decided this time to accept the Respondent's previously-rejected legal argument that a (since-vacated) ruling of lack of jurisdiction against the OIG (in another court and another proceeding to which the OIG was not a party) suddenly called for the maintenance of this suit. To be sure, even if the honorable trial court's theory that Respondent's claims "rest" on the issue of whether the OIG had jurisdiction to investigate Respondent were true, it erred by (1) declining to rule on this legal issue "at this

time” and (2) deciding that this yet-to-be-determined issue warranted the denial of the OIG’s exception. This is a departure from the no cause of action standard and constitutes reversible error. Immediate review of the lower court’s legally unsupportable ruling is imperative.

II. SPECIFICATIONS OF ERROR

- A. The court below erred in overruling the OIG’s exception of no cause of action based on the court’s reasoning that the legal question of jurisdiction is relevant to the sufficiency of the Respondent’s claims.
- B. Even if the lower court were correct that some or all of the Respondent’s claims “rested” on the issue of jurisdiction, it still erred in overruling the OIG’s exception of no cause of action without deciding the legal issue of jurisdiction (which can be determined based on the law and facts alleged in the petition).
- C. The court below erred in overruling the OIG’s exception of no cause of action because the facts alleged in the petition are insufficient to state a cause of action against the OIG.

III. ISSUES AND QUESTIONS OF LAW BEFORE THE COURT

- A. Does the legal question of whether the OIG had jurisdiction to investigate Respondent determine whether Respondent stated causes of action for defamation, malicious prosecution, invasion of privacy, abuse of rights, abuse of process, Section 1983 and negligence against the OIG?
- B. Do the facts alleged in the petition state a cause of action against the OIG under the legal theories asserted in the petition – whether or not jurisdiction determines the viability of Respondent’s claims?
- C. Assuming the lower court were correct in theorizing that whether Respondent stated a cause of action hinges on the issue of jurisdiction, should the court have decided this legal issue?
- D. Assuming the lower court were correct in theorizing that whether Respondent stated a cause of action hinges on the issue of jurisdiction, did the OIG have jurisdiction to investigate Respondent, as a matter of law?

IV. OVERVIEW AND SUMMARY OF ARGUMENT

The linchpin of the Respondent, Corey Delahoussaye's ("Delahoussaye" or "Respondent") lawsuit against Applicants, the Office of Inspector General (OIG), Inspector General Stephen Street, and inspectors Greg Phares and Jessica Webb (collectively "OIG Defendants" "OIG" or "Applicants"), is his criminal prosecution by the Livingston Parish District Attorney's (D.A.) Office in the 21st Judicial District Court on several counts of theft and filing false records. Delahoussaye's criminal prosecution followed the OIG's investigation (at the D.A.'s request) into the D.A.'s suspicions of Delahoussaye's fraudulent billings of the Livingston Parish Council for disaster recovery-related work. Delahoussaye's true disagreement is with the Livingston Parish D.A.'s Office. But, instead, he resorted to filing this baseless lawsuit against the next best thing. The law provides no support for the self-serving and conclusory allegations he levies against the OIG.

The recurring theme of Respondent's lawsuit is that the OIG "lacked jurisdiction to investigate" his unlawful billing of Livingston Parish while under contract with the Parish. According to him, because his petition repeatedly references the OIG's alleged lack of jurisdiction, then this legal conclusion must be accepted as true and supports his claims against the OIG. The trial court initially recognized the flaw in Delahoussaye's position. Following a hearing on the OIG's Peremptory Exception of No Cause of Action on July 25, 2016, the Honorable Michael Caldwell sustained the OIG's exception after first rejecting Respondent's argument that the OIG's lack of jurisdiction to investigate him supported his defamation, invasion of privacy, abuse of rights and process, negligence and Section 1983 claims.¹ The court dismissed all claims for failure to state causes of action against the OIG and allowed amendment of the petition.

¹ July 25, 2016 Hearing Transcript, Exhibit B, pp. 5-6.

In amending his petition, Respondent maintained the overarching theme of lack of investigative jurisdiction by the OIG. He also conveniently removed some allegations (presumably because they undermined his claims)² and added others. Several of the newly added paragraphs included quotes from, references to, and conclusory criticism of, OIG investigator Jessica Webb's criminal court testimony during her extensive examination regarding the details of her investigation of Delahoussaye. The other newly added paragraphs were quoted legal standards, legal conclusions based on such standards, and factual conclusions, which Respondent insists are "facts", which he asked the court to accept as true. Thus, the petition, as amended, failed to breathe new life into the previously dismissed claims.

The OIG Defendants again filed a Peremptory Exception of No Cause of Action. Relying on Judge Caldwell's prior pronouncement regarding the legal issue of jurisdiction and the second failure of the petition to sufficiently plead facts to support Respondent's claims, the OIG Defendants argued that the trial court's prior ruling applied and should not be disturbed. Curiously, during the October 17, 2016 hearing on the OIG's exception to the Amended Petition, Judge Caldwell this time decided that "a number of Mr. Delahoussaye's claims rests upon" whether the OIG had jurisdiction to conduct this investigation. Judge Caldwell stated that "it may still be that Mr. Delahoussaye does not have a cause of action for any of this," but that this was a "factual question" which is alleged in the petition but "cannot be resolved solely on the basis of the allegations of the petition." The Judge overruled the exception on this basis.³

Because the "new" facts of the petition still fail to state claims against the OIG, the exception should have again been sustained. The OIG denies that

² The deleted allegations include allegations that Respondent's contracted work was a "state job" (Exhibit A, ¶ 98) and that an independent auditor found, like the OIG, that Respondent had overbilled the state (*Id.* ¶¶ 18, 19, 26). Deleting these facts does not make them any less true, as these events did happen.

³ October 17, 2016 hearing transcript, Exhibit H, pp. 9-10.

jurisdiction is material to the viability of Respondent's claims. However, whether the OIG had jurisdiction to investigate Delahoussaye is a question of law, which the court incorrectly declined to determine. Even if jurisdiction were an element of the Respondent's claims, and the trial court needed to consider, as a matter of law, whether the OIG had jurisdiction to investigate Respondent's conduct, the exception should still have been sustained for several reasons. First, the legal conclusion in the petition that the OIG lacked jurisdiction is simply not true as a matter of law; second, the First Circuit previously vacated the 21st Judicial District Court ruling referenced in the petition regarding the OIG's lack of jurisdiction to investigate Respondent;⁴ and third, the applicable legal standards actually establish that the OIG had jurisdiction to investigate Respondent under the petition's factual allegations. This Court should reverse the trial court's most recent ruling on the OIG's exception.

V. STATEMENT OF THE CASE

A. THE AMENDED PETITION'S ALLEGATIONS

Delahoussaye's petition, as amended, is comprised of 173 paragraphs (mainly containing statutory quotes and legal conclusions) and raises seven (7) claims against the OIG: malicious prosecution, defamation, invasion of privacy, abuse of rights, abuse of process, negligence, and Section 1983. The petition also raises a claim of respondeat superior for the individual defendants' actions. The amended allegations fail, like the original ones, to state a cause of action against the OIG.

1. Old/Repeated Allegations

Delahoussaye alleges that C-Del, a company he founded and co-owned, "was hired by Livingston Parish" on or about October 27, 2009 "to negotiate with FEMA and the Governor's Office of Homeland Security & Emergency Preparedness ("GOHSEP") to ensure repayment of funds that had been expended on Hurricane

⁴ See First Circuit's July 30, 2015 Ruling in the matter of *State v. Delahoussaye*, Exhibit I.

Gustav cleanup.”⁵ He further alleges that C-Del’s contract with Livingston Parish was terminated on or about September 24, 2011;⁶ and that around November 18, 2011, the D.A. for the 21st Judicial District announced that Respondent was under criminal investigation in a televised interview with WAFB in Baton Rouge, Louisiana.⁷ Seven months later, in June 2012, the OIG opened an investigation on Delahoussaye at the request of counsel for the Livingston Parish Council.⁸ Respondent denied that he or his company were “employed or contracted by a state agency performing working on behalf of Livingston Parish” and on this basis inquired about the OIG’s jurisdiction to investigate.⁹ The OIG allegedly indicated that its jurisdiction stemmed from Delahoussaye’s status as a GOHSEP contractor. Respondent denied he was a contractor with GOHSEP.¹⁰

In furtherance of the pending investigation, OIG investigator Jessica Webb allegedly issued a subpoena to an engineering firm with which C-Del contracted, and later applied for a search warrant for Respondent’s residence.¹¹ Respondent alleges that the OIG “raided” his home, which was occupied by Mr. and Mrs. Delahoussaye and their two children, with the assistance of the East Baton Rouge Sheriff’s Office at 6:00 am, one week after the warrant was signed by a district judge in the 19th JDC.¹² Continuing its investigation, the OIG subsequently sent subpoenas to Anytime Fitness and the Aesthetic Medicine & Anti-Aging Clinics of Louisiana, respectively, seeking records on Delahoussaye.¹³

Respondent then alleges that 21st JDC D.A. charged him with “various crimes related to the alleged improper billing practices,” and the “charges were only

⁵ Amended Petition, Exhibit D, ¶¶ 3, 5-6.

⁶ *Id.* at ¶ 16.

⁷ *Id.* at ¶ 17.

⁸ *Id.* at ¶¶ 21-22.

⁹ *Id.* at ¶¶ 23-24.

¹⁰ *Id.* at ¶¶ 25-26.

¹¹ Amended Petition, Exhibit D, ¶¶ 27-28.

¹² *Id.* at ¶¶ 30-31.

¹³ *Id.* at ¶¶ 34-35.

possible because of the investigation conducted by the Inspector General.”¹⁴ On December 3, 2013, 21st JDC D.A., Scott M. Perrilloux, allegedly “caused 81 Counts to be filed in the 21st Judicial District Court” against him.”¹⁵ He was ultimately “charged with 55 counts of Filing False Records in violation of La. R.S. 14:133 and four counts of Theft in violation of La. R.S. 14:67.”¹⁶ Following a hearing, Judge Brenda Ricks found no probable cause for the charges brought by the D.A.¹⁷ Further, following a hearing on Delahoussaye’s Motion to Suppress evidence obtained by the OIG, the Motion was granted and the judge allegedly ruled that the OIG “did not have jurisdiction to investigate Petitioner.”¹⁸ Respondent further alleges that, after the matter was remanded to the district judge following an application for writs to the First Circuit, the medical records obtained by the OIG were suppressed and the charges against him were dismissed.¹⁹ Notably, there are no allegations of a post-remand finding of lack of jurisdiction by the OIG.

2. Newly Added Allegations

Respondent devoted several pages of his Amended Petition to a discussion of Ms. Webb’s testimony. Specifically, from paragraph 44 through 61, he selectively quotes and/or paraphrases Ms. Webb’s testimony during the probable cause hearing in the 21st JDC, extensively noting his disagreement with, and criticism of, Ms. Webb’s findings. There are no new factual allegations against the other individual defendants, Mr. Street and Mr. Phares. Respondent’s factual, legal and evidentiary conclusions and his statutory recitations are not factual allegations and need not be considered. The Amended Petition again fails to state causes of action against the OIG Defendants. All of Respondent’s claims should have been dismissed anew.

¹⁴ *Id.* at ¶¶ 37-38.

¹⁵ *Id.* at ¶¶ 39-40.

¹⁶ *Id.* at ¶ 42.

¹⁷ *Id.* at ¶ 63.

¹⁸ *Id.* at ¶ 66.

¹⁹ Amended Petition, Exhibit D, ¶¶ 68-69.

B. RULING OF THE COURT BELOW

During the July 25, 2016 hearing on the OIG's exception of no cause of action relative to the original petition, the trial court sustained the exception, dismissing all claims against the OIG.²⁰ Significantly, during that hearing Judge Caldwell stopped Respondent's argument mid-way, stating that: "... whether they [the OIG] had jurisdiction or not is something to be determined down the road. Whether you stated a cause of action on all these various claims is what's before me today."²¹ During the October 17, 2016 hearing on the OIG's exception of no cause of action relative to the amended (and still deficient) petition, Judge Caldwell effectively reversed his prior pronouncement on jurisdiction, stating:

I think a number of Mr. Delahoussaye's claims rests [sic] upon that question of whether or not the Inspector General's Office had jurisdiction to conduct this investigation at all. It may go to the abuse of process, abuse of right claims. I don't think it can go to the defamation or malicious prosecution. It may go to some sort of invasion of privacy. I don't know, but it occurs to me now in reviewing all of this that the question of jurisdiction must first be addressed. It may still be that Mr. Delahoussaye does not have a cause of action for any of this, but it may be that he does. And because that is a factual question which cannot be resolved solely on the basis of the allegations of the petition and because it is alleged in the petition that the Office of the Inspector General had no jurisdiction to go forward, I'm going to have to overrule the exception at this time, because as I said, if, in fact, as alleged, the Office had no jurisdiction to conduct such a hearing [sic] [investigation] and its jurisdiction was questioned early on and it went forward with it, some of these causes of action may survive. I think some can still go away, but that's not for me to determine now, so I'm going to have to overrule the exception of no cause of action at this point."²²

VI. THIS COURT SHOULD REVERSE THE TRIAL COURT'S DENIAL OF THE OIG'S EXCEPTION.

A. STANDARD OF REVIEW

The sufficiency of a petition subject of an exception of no cause of action is a question of law, which must be reviewed *de novo*.²³ "The function of the peremptory

²⁰ July 25, 2016 Hearing Transcript, Exhibit B; and Judgment on Exception, Exhibit C.

²¹ July 25, 2016 Hearing Transcript, Exhibit B, pp. 5-6.

²² October 17, 2016 hearing transcript, Exhibit H, pp. 9-10.

²³ *Foti v. Holliday*, 2009-0093 (La. 10/30/09), 27 So.3d 813, 817.

exception of no cause of action is to question whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition.”²⁴ “The petition must set forth the material facts upon which a cause of action is based; the allegations must be ultimate facts; conclusions of law [or] fact, and evidentiary facts will not be considered.”²⁵ Simply, the Court must only accept as true the allegations of fact contained in the Amended Petition and disregard the many conclusions of law and fact offered as factual “allegations.” Consideration of the Amended Petition’s purely factual allegations inevitably yields a ruling for the OIG.

B. UNDER THE APPLICABLE STANDARD, THE FACTS ALLEGED IN THE PETITION ARE INSUFFICIENT TO MAINTAIN RESPONDENT’S CLAIMS.

The trial court’s prior ruling sustaining the exception was correct. The second time around, the Judge inexplicably theorized (after first rejecting this same theory) that a number of the claims asserted in the petition - including *maybe* (although he was unsure) invasion of privacy, abuse of rights and process - “rest” upon the issue of whether the OIG had jurisdiction to investigate Delahoussaye. This theory is wrong. An analysis of the elements necessary to maintain the claims leveled against the OIG demonstrates that jurisdiction has no bearing on the determination of whether the facts alleged in the petition are sufficient to state a cause of action. None of the Respondent’s claims can survive the exception of no cause of action – even if some of them could be deemed to “rest” upon the OIG’s jurisdiction.

In the alternative, the legal issue of jurisdiction (assuming it is relevant to the sufficiency of Respondent’s claims) should have been decided by the Court and actually confirms the baseless nature of the claims against the OIG. The OIG is empowered by statute to “investigate the management and affairs of the covered agencies concerning waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption, and he may conduct all necessary investigations into such

²⁴ *Cleco Corp. v. Johnson*, 01–175 (La. 9/18/01), 795 So.2d 302, 304.

²⁵ *Sparks v. Donovan*, 04–388 (La. App. 3 Cir. 10/13/04), 884 So.2d 1276, 1279 (emphasis added).

areas, including but not limited to ... waste or abuse of things of value belonging to or used by the covered agencies [or] mismanagement of government operations.²⁶ The Petition expressly alleges that C-Del “was hired by Livingston Parish to negotiate with FEMA and the Governor’s Office of Homeland Security & Emergency Preparedness (“GOHSEP”) to ensure repayment of funds that had been expended on Hurricane Gustav cleanup.”²⁷ GOHSEP is part of the executive branch and is a covered agency within the meaning of the statute.²⁸ Respondent’s alleged fraudulent billing of Livingston Parish for work involving funds belonging to, or used or disseminated by, GOHSEP for disaster recovery efforts fell squarely within the OIG’s investigative jurisdiction. Simply stated, the OIG’s jurisdiction is clearly established under the law and on the face of the petition; therefore, even if it were controlling, it militates in favor of the dismissal of Respondent’s claims.

Incidentally, the proposition that the case of *Everything on Wheels Subaru, Inc. v. Subaru South*,²⁹ applies and prohibits partial grant of this exception of no cause of action or partial dismissal of the claims is misplaced. The OIG requested, and the facts of this case compel, a global dismissal of ALL Respondent’s claims.

1. DELAHOUSSAYE’S TORTIOUS INVASION OF PRIVACY CLAIM FAILS.

The trial court wrongly opined that the issue of jurisdiction “may” determine the viability of this claim. However, a review of the facts alleged in the petition and the applicable legal standard makes it clear that jurisdiction is not germane to this claim and, more importantly, that this claim cannot be maintained, in any event.

Respondent alleged in his Amended Petition, as he did in his original petition, that, during its investigation, the OIG “needlessly made public Petitioner’s medical records and the fact that he visited a tanning booth at his health club.”³⁰ He also

²⁶ La. R.S. 49:220.24(B)(5 and 4).

²⁷ Amended Petition, Exhibit D, ¶ 6.

²⁸ La. R.S. 49:220.21(A).

²⁹ 616 So.2d 1234 (La. 1993).

³⁰ Amended Petition, Exhibit D, ¶ 125.

(again) alleged that “[t]his information was released to paint Petitioner in false light and caused his privacy to be needlessly invaded.”³¹ The trial court originally (and correctly) determined that these same allegations failed to state a cause of action for tortious invasion of privacy. To defend the viability of his claim, Respondent’s Opposition to the OIG’s exception quoted Paragraphs 92-95, 68, and 71-76 of the Amended Petition,³² arguing that such paragraphs support his invasion of privacy claim. However, all of those paragraphs (with the exception of Par. 75) are quoted legal standards, interpretations of such standards, and/or factual/evidentiary conclusions, which cannot be considered on this exception. In the absence of any new factual allegations to support this claim, it should have again been dismissed.

The tort of invasion of privacy contemplates three elements are (1) a privacy interest, (2) falsity, and (3) unreasonable conduct.³³ According to the Louisiana Supreme Court: “An actionable invasion of privacy occurs only when the defendant's conduct is unreasonable and seriously interferes with the plaintiff's privacy interest.”³⁴ The reasonableness of the defendant's conduct is determined by the balancing of conflicting interests at stake, i.e., the plaintiff's interest in protecting his privacy from serious invasions and the defendant's interest in pursuing his course of conduct.³⁵ “The right of privacy is also limited by society's right to be informed about legitimate subjects of public interest.”³⁶

Louisiana law further recognizes a cause of action for “false light” invasion of privacy.³⁷ It arises from publicity which unreasonably places the plaintiff in a false light before the public.³⁸ The publicity need not be defamatory in nature, but

³¹ *Id.* at ¶ 127.

³² Opposition to Exception, Exhibit F, quoting Amended Petition, Exhibit D.

³³ *Perere v. La. Television Broadcasting Corp.*, 2000-1656 (La. App. 1 Cir. 9/28/01), 812 So.2d 673, 676.

³⁴ *Jaubert v. Crowley Post-Signal, Inc.*, 375 So.2d 1386, 1389 (La. 1979).

³⁵ *Jaubert, supra.*

³⁶ *Capital City Press v. East Baton Rouge Parish Metro. Council*, 96-1979 (La. 7/1/97), 696 So.2d, 562 and citation therein.

³⁷ *Perere, supra.*

³⁸ *Id.*

must be objectionable to a reasonable person under the circumstances and must contain either falsity or fiction.³⁹ To state a claim under the “false light” branch of the privacy doctrine, plaintiff must prove (1) defendants’ publication of information about plaintiff’s private life, (2) the publicized matter would be highly offensive to the reasonable person, and (3) the information is not of legitimate public concern.⁴⁰

The discovery of Delahoussaye’s medical records (showing that he was under general anesthesia and recovering from a tummy tuck/liposuction at the precise time that his billings indicate that he was working) and records evidencing that he was at a tanning booth (at the precise time he was allegedly working and billing the state) was a matter of legitimate public concern. Those records were relevant to the D.A.’s suspicions (and resulting criminal investigation) that Delahoussaye had unlawfully billed the state.⁴¹ His alleged improper billing practice while under state contract is criminal and/or unlawful conduct under Louisiana law – hence, the criminal charges of filing false records and theft.⁴² Criminal conduct (or, at best, abuse of public funds), especially when perpetrated against the state, is absolutely a matter of public concern,⁴³ and it far outweighs Mr. Delahoussaye’s private interest in his medical records. Numerous courts have held that merely embarrassing facts cannot serve as the basis for a claim for invasion of privacy.⁴⁴ In addition, the OIG’s conduct was reasonable because it was “authorized and justified by circumstances.”⁴⁵ The records were obtained pursuant to a *subpoena duces tecum* issued by a court of competent

³⁹ *Hines v. Arkansas La. Gas Co.*, 613 So.2d 646, 58 (La.App. 2 Cir.), *writ denied*, 617 So.2d 932 (La.1993).

⁴⁰ *Roshto v. Hebert*, 439 So.2d 428, 430 (La. 1983).

⁴¹ Compare *Sparks v. Donovan*, 2004-388 (La. App. 3 Cir. 10/13/04) 884 So.2d 1276 (where the Third Circuit affirmed the trial court’s ruling sustaining defendant’s no cause of action exception in part because defendant’s interest in obtaining plaintiff’s Rx records outweighed plaintiff’s interest in maintaining his privacy in those records).

⁴² Amended Petition, Exhibit D, ¶¶ 41-42.

⁴³ *E.g., Modica v. Taylor*, 465 F.3d 174, 80 (5th Cir. 2006).

⁴⁴ *See, e.g., Cinel v. Connick*, 15 F.3d 1338, 1346 (5th Cir. 1994) (broadcast of videotapes depicting priest engaged in homosexual activity with two young men did not constitute invasion of privacy under Louisiana law, although appellant was “no doubt” embarrassed by broadcast); and *Roshto*, 439 So.2d at 432 (“more than insensitivity or simple carelessness is required for the imposition of liability for damages when the publication is truthful, accurate and non-malicious”).

⁴⁵ *Perere*, 812 So.2d at 677.

jurisdiction, as authorized by statute.⁴⁶ That the medical records were eventually suppressed by the 21st JDC in the criminal proceeding (to which the OIG was not a party) does not mean that the OIG acted unreasonably by obtaining them. The records were central to the allegations of wrongdoing by Delahoussaye insofar that the OIG's investigation revealed that Delahoussaye had a medical procedure during the relevant time. The OIG's discovery of Respondent's records during its investigation was, thus, reasonable and certainly justified under the circumstances.

Notably, the elements of this claim, laid out extensively above, do not include jurisdiction. What's more, this Court already ruled that the OIG's jurisdiction does not govern the legitimacy of the records discovered by the OIG. It vacated the 21st JDC judge's ruling of lack of jurisdiction by the OIG in the matter of *State v. Delahoussaye* and remanded the case to the 21st JDC, with instructions that the court focus its attention instead on the evidence that formed the basis of the motion to suppress.⁴⁷ There has been no post-vacation and post-remand ruling regarding the OIG's jurisdiction. In any case, as established *supra*, the source of the OIG's investigative jurisdiction is clearly set forth in Louisiana law. The law further confers to the OIG "all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duties, powers, and functions set forth in [the pertinent Revised Statutes].⁴⁸ The OIG's statutory mandate as a law enforcement agency actually confirms the reasonableness of its investigation – whether or not jurisdiction is germane to this claim. The legal conclusion that the OIG lacked investigative jurisdiction cannot be considered on an exception of no cause of action, does not determine the sufficiency of this claim, and even if it were material, is defeated by the petition itself (which

⁴⁶ La. R.S. 49:220.24(F)(2).

⁴⁷ July 30, 2015 ruling of the First Circuit in the matter of *State v. Delahoussaye*, Exhibit I.

⁴⁸ La. R.S. 49:220.24(J).

establishes that the OIG actually had jurisdiction pursuant to the statute) and the applicable law. This claim should have been dismissed once more for the failure of the Amended Petition to allege new facts to support it.

2. DELAHOUSSAYE HAS FAILED TO STATE A CLAIM FOR ABUSE OF PROCESS.

Although the trial court previously dismissed this claim on the OIG's prior exception of no cause of action, it opined this time that this claim *may* rest upon a determination of jurisdiction by the OIG. This ruling should be reversed. Respondent's Amended Petition offered no new factual allegations sufficient to revive this claim. The single new (arguably) factual allegation supporting this claim is that the OIG "started its investigation at the request of a local authority who had a political motive."⁴⁹ This lone conclusory statement in no way establishes any wrongdoing or knowledge of wrongdoing by the OIG. Then, regurgitating the legal standard for the claims of abuse of right and process, Respondent conclusively states that the OIG "used its statutory rights in violation of moral rules, good faith or elementary fairness;"⁵⁰ "wrongfully exercised its right to investigate Petitioner without jurisdiction to do so;"⁵¹ and that "given that Petitioner had no contract with a state entity, the [OIG] had no serious or legitimate interest to investigate him."⁵² These legal conclusions should be rejected.

The elements essential to an abuse of process claim are (1) the existence of an ulterior purpose; and (2) a willful act in the use of the process not in the regular prosecution of the proceeding.⁵³ "A legal and legitimate use of process, to effect the result which such process is designed by law to accomplish, is not an abuse thereof. Regular use of process cannot constitute abuse, even though the user was actuated

⁴⁹ Amended Petition, Exhibit D, ¶ 116.

⁵⁰ *Id.* ¶ at 110.

⁵¹ *Id.*

⁵² *Id.* at ¶112.

⁵³ *Nathans v. Vuci*, 443 So.2d 690, 694 (La. App. 1 Cir.1983).

by a wrongful motive, purpose, or intent, or by malice.”⁵⁴ Abuse of process and malicious prosecution claims are often asserted together.

As is true for the malicious prosecution claim (addressed below), Delahoussaye’s abuse of process claim cannot be directed at the OIG, who did not initiate the underlying criminal proceeding. Both claims would best be asserted against the D.A.’s office – especially in light of the D.A. “alleged” political motive.⁵⁵ To the extent Delahoussaye is surmising that the OIG’s statutorily-mandated investigation and reported findings constituted a “process”, which was abused, there is no precedent for such an expansive application of the law. Even if the investigation/report could be deemed to be “a process”, there was no abuse or violation by the OIG. Again, the Legislature makes it clear that the OIG was established as a “law enforcement agency”, conferred “all investigative powers and privileges appurtenant to a law enforcement agency under state law,”⁵⁶ and may thereafter recommend whether further action by government agencies is warranted.⁵⁷

Respondent’s gratuitous complaints regarding the procedural details of the investigation (including the timing of the search warrant’s execution) and submission of findings to the D.A. are insufficient to show an ulterior motive or ill-will on the part of the OIG. Further, the search warrant for the home, like the subpoenas for his medical/gym records, were sanctioned by a court of competent jurisdiction⁵⁸ and the OIG’s broad investigative powers. Therefore, both elements of the abuse of process cause of action fail. This claim should be dismissed.

⁵⁴ *Mini-Togs, Inc. v. Young*, 354 So.2d 1389, 1390 (La. App. 2 Cir.1978) (emphasis added).

⁵⁵ Amended Petition, Exhibit D, at ¶116.

⁵⁶ La. R.S. 49:220.24(J).

⁵⁷ La. R.S. 49:220.24(B) (2 and 3).

⁵⁸ Amended Petition, Exhibit D, ¶¶ 28, 30; and ¶¶ 34 and 35.

3. DELAHOUSSAYE'S CLAIM FOR ABUSE OF RIGHT LIKEWISE FAILS.

The previous section of this memorandum amply establishes that dismissal of this claim (which is set forth in the Amended Petition as “Abuse of Right and Process”)⁵⁹ is once again appropriate. The trial court’s theory that this claim, too, *may* rest upon the issue of jurisdiction is error. The elements of an abuse of right claim include: (1) the predominate motive for exercise of the right is to cause harm; (2) there is no legitimate motive for exercise of the right; (3) exercise of the right violates moral rules, good faith and elementary fairness; or (4) exercise of the right is for a purpose other than that for which it was granted.⁶⁰ Jurisdiction is not a threshold issue for the purpose of stating a claim of abuse of right.

The allegations of the Amended Petition do not satisfy any of the actual elements of this claim. Setting aside the Amended Petition’s conclusions of law, Respondent has failed once again to offer sufficient *factual* allegations to establish that the OIG had a “motive” to “cause harm” to him through its investigation and reported findings. The motive and purpose for the OIG’s exercise of its investigatory right as a law enforcement agency stemmed from its obligation to investigate/report and not ignore the complaint of possible abuses of public funds by Delahoussaye and his company. The facts alleged do not make a contrary showing. Respondent’s medical and gym records (obtained pursuant to subpoenas)⁶¹ and other evidence confirmed discrepancies in Respondent’s billings. His disappointment that this information is now public knowledge and/or that the OIG did not blindly accept his self-serving denials is insufficient to establish an abuse of rights or bad faith by the OIG. This claim should have again been dismissed.

⁵⁹ Page 13 of the Amended Petition, Exhibit D.

⁶⁰ *Mixon v. Iberia Surgical, LLC*, 06-0878 (La. App. 3 Cir. 4/18/07), 956 So.2d 76, 81.

⁶¹ La. R.S. 49:220.24(F)(2) (addressing the OIG’s subpoena power).

4. THE PETITION'S CONCLUSORY ALLEGATIONS ARE INSUFFICIENT TO STATE SECTION 1983 AND 1988 CLAIMS AGAINST STREET, PHARES AND WEBB.

Delahoussaye also asserts a constitutional cause of action under 42 U.S.C § 1983 against public officials and OIG employees, Greg Phares and Jessica Webb, that these defendants “were acting under the color of authority” and that their actions “have impaired and deprived Petitioner of his clearly established rights, thereby making them liable to Petitioner” under Section 1983.⁶² The support for these legal conclusions is comprised of more legal conclusions.⁶³ There are no new factual allegations that are sufficient to support Respondent’s Section 1983 claim, whether under the Fourteenth or Fourth Amendment. The trial court did not state whether the issue of jurisdiction governed this claim. The insufficiency of the allegations of the Petition compel a second dismissal of this claim in any event.

To recover under Section 1983, a plaintiff must allege and prove two essential elements: (1) that the defendant’s conduct occurred under color of state law, and (2) that the defendant’s conduct deprived him or her of a right, privilege, or immunity secured by the Constitution or a law of the United States.⁶⁴ When resolving an exception of no cause of action, where the applicability of qualified immunity is apparent, courts require plaintiffs to allege with particularity material facts that establish the defendant violated a clearly established constitutional right.⁶⁵

a. Street, Phares and Webb Are Qualifiedly Immune from Suit.

In *Harlow v. Fitzgerald*,⁶⁶ the United States Supreme Court set forth the rule that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would

⁶² Amended Petition, Exhibit D, ¶¶ 149 and 159.

⁶³ *Id.* at ¶¶ 149-159.

⁶⁴ *Moresi v. Dept. of Wildlife & Fisheries*, 567 So.2d 1081 (La. 1990); 42 U.S.C. § 1983.

⁶⁵ See *Kyle v. Civil Service Com’n*, 588 So.2d 1154, 1159 (La. App. 1 Cir. 1991).

⁶⁶ 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

have known.”⁶⁷ The purpose of granting qualified immunity at an early stage of the court proceedings is “so that the costs and expenses of trial are avoided where the defense is dispositive”⁶⁸ and to protect public officials from disruptive “broad-ranging discovery.”⁶⁹ Qualified immunity, thus, operates as “an immunity from suit rather than a mere defense to liability; and [...] it is effectively lost if a case is erroneously permitted to go to trial.”⁷⁰ The defendant pleading qualified immunity is entitled to dismissal before the beginning of discovery if the plaintiff’s allegations do not state a violation of clearly established law.⁷¹

The applicability of the qualified privilege to the OIG is clear from the letter of La. R.S. 49:220.24(J) conferring discretion to the OIG relative to the exercise of its investigative function as a law enforcement agency. Delahoussaye himself recognized the breadth of the OIG’s discretionary authority by quoting the statute in his Petition.⁷² OIG employees Mr. Phares and Ms. Webb lawfully exercised discretion in the performance of their duties and are protected by qualified immunity.

b. Delahoussaye’s Allegations Do Not Sufficiently Establish that He Has Suffered a Constitutional Violation.

Delahoussaye failed to establish that constitutional violations occurred. He conclusively (and wrongly) alleged that he “enjoyed clearly established rights to his good name, reputation and liberty guaranteed to him under the 14th Amendment...” and that the OIG Defendants’ actions deprived him of these “clearly established rights.”⁷³ The United States Supreme Court, however, has held that the “interest in reputation . . . is neither ‘liberty’ nor ‘property’ guaranteed against state deprivation without due process of law.”⁷⁴ Therefore, an allegation of harm to reputation alone

⁶⁷ *Id.* at 818.

⁶⁸ *Saucier v. Katz*, 533 U.S. 194, 200 (2001), overruled partly by *Pearson v. Callahan*, 555 U.S. 223 (2009).

⁶⁹ *Anderson v. Creighton*, 483 U.S. 635, 646, n. 6 (1987).

⁷⁰ *Saucier*, 533 U.S. at 200-01 (2001).

⁷¹ *Moresi*, 567 So.2d at 1085 (citing *Harlow*, 457 U.S. at 817–18) (emphasis added).

⁷² Amended Petition, Exhibit D, ¶ 81.

⁷³ *Id.* at ¶ 98.

⁷⁴ *Paul v. Davis*, 424 U.S. 693, 712 (1976).

is insufficient to demonstrate a constitutional violation because something more than simple defamation by the state official must be involved to establish a claim under Section 1983.⁷⁵ Specifically, to establish a liberty interest protected by the Fourteenth Amendment, an individual must allege a stigma on a person's reputation by a state official, *plus* an infringement of some other protected interest.⁷⁶

Delahoussaye's conclusory allegations that Mr. Phares and Ms. Webb wrongfully obtained Petitioner's computers, medical and business records "making it impossible for him to conduct business" and that their actions caused him to "lose work and wrongfully deprived him of his property..." cannot be accepted as true;⁷⁷ but they fail, in any event, to establish an infringement on any constitutionally protected interest. So, too, the conclusory statement that Respondent lost work *as a result* of the OIG's alleged conduct is directly inconsistent with the allegation that his contract was terminated approximately nine months before the OIG began to investigate him.⁷⁸ Thus, the termination of Respondent's state employment did not and could not have been the result of the OIG Defendants' actions; and, more importantly, any purported loss of future opportunities do not rise to the level of infringement on his property/liberty rights under the law.⁷⁹

Moreover, Delahoussaye has not demonstrated an unreasonable search and seizure under the Fourth Amendment. While he conclusively claims to have been "arrested", "summonsed to appear in court" and "wrongfully deprived of his freedom" in violation of his 4th Amendment rights,⁸⁰ there are absolutely no factual allegations regarding the details of his alleged arrest, and much less, what about the arrest was unreasonable or unlawful. The allegations of the newly amended Petition

⁷⁵ *Id.* at 693, 701, and 712.

⁷⁶ *Daly v. Sprague*, 675 F.2d at 727 (5th Cir. 1982); *Tebo v. Tebo*, 550 F.3d 492, 503 (5th Cir. 2008).

⁷⁷ Amended Petition, Exhibit D, ¶¶ 156, 158.

⁷⁸ *Id.* at ¶¶ 16 and 21 (His state contract was terminated on 9/24/11 and Livingston Parish D.A. asked the OIG to investigate Plaintiff in June 2012.)

⁷⁹ *Vander Zee v. Reno*, 73 F.3d 1365, 1369 (5th Cir. 1996).

⁸⁰ Amended Petition, Exhibit D, ¶ 152.

make it impossible for the OIG to assess the precise basis of Respondent's purported constitutional rights deprivation. His challenge to the lawfulness of the search warrant/subpoena and seizure of his computers/records, based upon his legal conclusion that the OIG lacked the authority/jurisdiction to obtain them,⁸¹ fails to state a cause of action under the Fourth Amendment. The authority conferred upon the OIG by the search warrant, coupled with its broad discretion in the fulfillment of its investigative function, outweighs Delahoussaye's annoyance and inconvenience resulting from the seizure of evidence at his home pursuant to the search warrant.

The OIG Defendants are, therefore, entitled to dismissal of Delahoussaye's purported Section 1983 claim as well as his claim for attorney's fees pursuant to 42 U.S.C. § 1988,⁸² as it is intertwined, by law, with the (failed) Section 1983 claim.⁸³

5. DELAHOUSSAYE'S CLAIM FOR DEFAMATION BY THE OIG FAILS.

The OIG's investigative jurisdiction forms no part, and is not determinative, of the claim of defamation against it. The trial court agrees with this. The Petition alleges that "Mr. Street and his employees communicated multiple defamatory statements about Petitioner regarding alleged improper and illegal billing by Petitioner;" that "[s]uch statements were published in the media and were defamatory *per se*;" and that "they were false and communicated with malice."⁸⁴ The allegations of mathematical errors by Ms. Webb, even when accepted as true, do not support a finding of malice.

a. Standard Required to Properly Plead the Claim of Defamation.

There are two types of defamation: defamation *per se* and words susceptible of having a defamatory meaning.⁸⁵ The question of whether a communication is

⁸¹ *Id.* at ¶ 153-154, 156

⁸² *Id.* at ¶ 160.

⁸³ 42 U.S.C. Section 1988 (b) provides in part that: "In any action or proceeding to enforce a provision of sections 1981 ... 1983 ... of this title ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs..."

⁸⁴ Amended Petition, Exhibit D, ¶¶85-87.

⁸⁵ *Kennedy v. Sheriff of E.B.R.*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 674-5.

defamatory is ultimately a legal question for the court.⁸⁶ A defamation plaintiff must generally establish four elements: “(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury.”⁸⁷ The lack of any one of the elements is fatal to the claim.

When the plaintiff is a public official or, as here, a private plaintiff whose actions are a matter of public concern, the law imposes upon such a plaintiff an additional burden. In such cases, the “plaintiff must prove actual malice, i.e., that the defendant either knew the statement was false or acted with reckless disregard for the truth.”⁸⁸ The Louisiana Supreme Court in *Davis v. Borskey*,⁸⁹ made it clear that in order to show actual malice or reckless disregard for the truth, the burden of proof of a public official (or public figure) bringing a defamation claim is exponentially higher than that of other plaintiffs. This particular plaintiff’s burden in proving the first element of his defamation claim is “clear and convincing.”⁹⁰

The public nature and/or ramification of the OIG’s investigative findings (even accepting as true the alleged miscalculations and errors by Ms. Webb) require a heightened burden of proof which Respondent cannot meet. The Louisiana Supreme Court makes it clear that speech on matters of public concern enjoys enhanced constitutional protection.⁹¹ In particular, the High Court established that a private figure plaintiff claiming defamation from a factual misstatement on a public issue cannot recover damages without showing actual malice.⁹² Speech is a “matter of public concern” if it relates “to any matter of political, social, or other concern to

⁸⁶ *Fitzgerald v. Tucker*, 1998-2313, p. 11 (La. 6/29/99), 737 So.2d 706, 716.

⁸⁷ See *Badeaux v. Southwest Computer Bureau, Inc.*, 2005-0612, (La. 3/17/06), 929 So.2d 1211, 1218.

⁸⁸ *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390.

⁸⁹ 94-2399 (La. 9/5/95), 660 So.2d 17.

⁹⁰ *Davis*, 660 So.2d 17, 23.

⁹¹ *Romero v. Thomson Newspapers (Wisconsin), Inc.*, 94-1105 (La. 1/17/95), 648 So.2d 866, 869.

⁹² *Id.* at 870, citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

the community.”⁹³ In other words, private plaintiffs (or limited-purpose public figures) involved in a matter of public concern and public plaintiffs (or public officials/all-purpose public figures) alike must still meet the requirement of proving “actual malice”⁹⁴ as described in *New York Times Co. v. Sullivan*,⁹⁵ because the focus of the underlying conduct spoken of is its impact on the public.

Of particular relevance to this case involving the misbilling of the Livingston Parish Council by Delahoussaye (or simply stated, the misuse of tax payer dollars), the jurisprudence has made it clear that speech about the use and possible misuse of public funds is routinely held to be speech about a matter of public concern.⁹⁶ Accordingly, the OIG’s reported finding to the D.A., corroborating the D.A.’s suspicion (and the auditor’s prior consistent finding of misbillings)⁹⁷ of fraudulent billings of the state relate to a matter of public concern under the law of defamation. Under the circumstances, Delahoussaye “must prove all elements of his cause of action for defamation, including actual malice, and may not rely on any presumption based on the fact that the words are defamatory *per se*.”⁹⁸ Simply, he cannot hide behind the presumptions of falsity and actual malice by alleging defamation *per se*. He must instead (but cannot) establish, by clear and convincing evidence, that the OIG Defendants knew its findings were false and recklessly disregarded their falsity.

b. Delahoussaye Cannot Establish Actual Malice by the OIG.

While the Amended Petition references Ms. Webb’s in-court testimony, conclusively states that she either knew or should have known that her calculations

⁹³ *Kennedy v. Sheriff of E.B.R. Parish*, 05-1418 (La. 7/10/06), 935 So.2d 669, 77 n. 6.

⁹⁴ See *Trentecosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552, 560; *Starr v. Boudreaux*, *supra*.

⁹⁵ 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

⁹⁶ For examples of speech on public matters, see *Bradford v. Judson*, 44,092 (La. App. 2 Cir. 5/6/09), 12 So.3d 974, 82, *writ denied*, 09-1648 (La. 10/16/09), 19 So.3d 482 (e-mail on possible misuse of funds by nonprofit associated with a university); *Thompson v. Emmis Television Broadcasting*, 04-1020 (La. App. 4 Cir. 1/19/05), 894 So.2d 480, 83, *writ denied*, 05-417 (La. 4/22/05), 899 So.2d 580 (news report of allegations of misused church funds); and *Trentecosta*, *supra*, at 61.

⁹⁷ The prior and now-deleted allegation that an independent auditor’s investigation yielded the same result as the OIG’s investigation is quite telling – even if Plaintiff now disingenuously wishes to delete this fact. See original petition, Exhibit A, ¶¶ 18-19, 26.

⁹⁸ *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390.

and related testimony were false, and alleges that Respondent and his counsel previously explained to Ms. Webb the nature of her errors,⁹⁹ these so-called “facts” and the factual and evidentiary conclusions that the OIG’s findings were erroneous fail to establish actual malice by Ms. Webb and the OIG, under any standard (let alone, clearly and convincingly). At most, these “allegations” suggest that Ms. Webb made mathematical errors in reviewing Delahoussaye’s billing records.

Under the well-settled jurisprudence, a failure to investigate or investigate properly is insufficient to demonstrate actual malice, as a matter of law.¹⁰⁰ Like the OIG’s statements in *Davis*, *supra*, Ms. Webb’s testimony regarding the OIG’s investigative findings were based on, and supported by, its investigation. Moreover, the notion that the OIG acted with knowing falsity because it did not blindly accept Respondent’s denial of the accusations of misbillings against him likewise lacks merit, as it would render meaningless the very purpose of law enforcement. Delahoussaye’s denials of, or disagreements with, Ms. Webb’s findings do not in themselves establish falsity –especially when those findings were corroborated by an independent auditing firm which investigated him prior to the OIG’s involvement.¹⁰¹ There simply is no support in the law for Respondent’s proposed falsity/malice standard. Delahoussaye’s defamation should be dismissed once again.

c. The OIG’s Statements Are Protected by a Qualified Privilege.

Even if Delahoussaye were to somehow establish that he was defamed by the OIG through clear and convincing evidence that the OIG acted with knowing falsity (and he cannot), he would not be able to overcome the OIG’s defense of privilege.

⁹⁹ Amended Petition, Exhibit D, ¶¶ 53, 54 and 56.

¹⁰⁰ *See, e.g. Davis v. Borskey*, 94-2399 (La. 9/5/95) 660 So.2d 17, 24-25 (“While it might well have been more reasonable for [defendant] to have investigated plaintiff’s bidding practices more thoroughly ... a plaintiff cannot satisfy the . . . actual malice standard by demonstrating only that the defendant failed to investigate fully the truth of the statements before publication.”); accord, *Romero, supra*, 648 So.2d at 869.

¹⁰¹ The now-deleted allegation that an independent auditor’s investigation yielded the same result as the OIG’s investigation is quite telling. Exhibit A, ¶¶ 18-19, 26. *Compare with*, Exhibit D.

In Louisiana, privilege is a defense to a defamation action.¹⁰² Privileged communications are divided into two general classes: (1) absolute; and (2) conditional or qualified.¹⁰³ A conditional/qualified privilege, applicable here, arises in a number of instances.¹⁰⁴

The Louisiana Supreme Court has recognized that law enforcement officers should be allowed to report the fact of a criminal investigation without fear of a defamation action if the person is cleared of the charges.¹⁰⁵ With respect to the privilege regarding reports of governmental proceedings and activities, the privilege is abused if the publisher knows the matter to be false, or acts in reckless disregard as to its truth or falsity.¹⁰⁶ The Supreme Court made it clear that: “mere negligence as to falsity (or lack of reasonable grounds for believing the statement to be true) is no longer sufficient to prove abuse of the conditional privilege. Instead, knowledge or reckless disregard as to falsity is necessary for this purpose.”¹⁰⁷ The Court further explained that “[u]nder this standard, even proof of gross negligence in the publication of a false statement is insufficient to prove reckless disregard. [...] Rather, there must be evidence that the defendant was highly aware that the statements were probably false.”¹⁰⁸

A qualified privilege attaches to the OIG’s report of its investigative findings relative to Respondent’s billing practices to the 21st JDC D.A.’s office, who requested the investigation.¹⁰⁹ Thus, in order to prevail on his defamation claim, in addition to proving defamation by the OIG (which he has not done and cannot do), Delahoussaye must prove that the OIG somehow abused its privilege by including

¹⁰² *Costello v. Hardy*, 03-1146 (La.1/21/04), 864 So.2d 129, 141.

¹⁰³ *Kennedy v. Sheriff of E.B.R.*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 681.

¹⁰⁴ *Id.*

¹⁰⁵ *Trentecosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552.

¹⁰⁶ *Kennedy v.*, 935 So.2d at 684 (citing *Trentecosta*, 703 So.2d 552, 564 n.6).

¹⁰⁷ *Kennedy*, 935 So.2d at 684

¹⁰⁸ *Id.* at 688.

¹⁰⁹ Amended Petition, Exhibit D, ¶ 22.

in its reported findings and reiterating in open court, statements which the OIG knew were false and recklessly disregarded their falsity. He cannot prove abuse of the qualified privilege any more than he can prove actual malice (which requires the same level of proof) in the first instance. His defamation claim fails outright; but at a minimum, because the OIG's privilege defense cannot be defeated.

6. DELAHOUSSAYE HAS FAILED TO STATE A MALICIOUS PROSECUTION CLAIM UNDER LOUISIANA LAW.

The trial court seemingly conceded that jurisdiction does not determine the viability of this claim. The facts alleged in support of this claim and the applicable law compel its dismissal. The trial court's departure from its prior ruling sustaining the exception was wrong because there are no new factual allegations regarding the malicious prosecution claim that are remotely sufficient to now state a cause of action against the OIG Defendants.¹¹⁰ The "new" factual/legal conclusions¹¹¹ Respondent offers to try to support this claim should be ignored, as a matter of law.

Louisiana law is clear that malicious prosecution actions are not favored and "must clearly establish that the forms of justice have been perverted to the gratification of private malice and the willful oppression of the innocent."¹¹² A claim for malicious prosecution requires proof of six elements: 1) commencement or continuance of an original criminal or civil judicial proceeding; 2) legal causation by the present defendant against plaintiff who was defendant in the original proceeding; 3) its bona fide termination in favor of the present plaintiff; 4) absence of probable cause for such proceeding; 5) presence of malice therein; and 6) damages resulting to plaintiff.¹¹³ Under the Supreme Court jurisprudence, the public policy requiring that persons "fully resort to the courts" for redress of wrongs "has

¹¹⁰ Paragraphs 103, 105 and 106 of the Amended Petition, Exhibit D, are substantively the same as Paragraphs 42, 43 and 47 of the original petition, Exhibit A.

¹¹¹ See Amended Petition, Exhibit D, ¶¶ 103, 104, 107.

¹¹² *LeBlanc v. Pynes*, 46,393 (La. App. 2 Cir. 7/13/11), 69 So.3d 1273, 79, writ denied, 2011-1792 (La. 10/14/11), 74 So.3d 213; citing *Johnson v. Pearce*, 313 So.2d 812 (La. 1975).

¹¹³ *LeBlanc*, 69 So.3d at 1279.

particular relevance to public officials who are charged by law with the enforcement of laws designed to protect the public at large. Only the grossest negligence or arbitrary and capricious conduct on their part will support a claim of malicious prosecution.¹¹⁴ While none of the elements of the cause of action can be met under the facts alleged in the Petition, the OIG herein addresses the three elements which they believe to be the most fatal to Delahoussaye's claim.

a. No Commencement of a Criminal/Civil Proceeding by the OIG.

While an original criminal proceeding was instituted against Delahoussaye, the OIG Defendants did not commence that proceeding. As an investigative body, the OIG investigates and reports complaints of abuse, waste and inefficiencies relating to certain state agencies. As alleged in the Petition, Respondent and his company were under contract with Livingston Parish to negotiate the repayment of funds with covered agency(ies)GOHSEP and FEMA,¹¹⁵ thus making Respondent's conduct the proper subject of an investigation by the OIG under the law. All the OIG did was investigate the charges of misconduct brought against Delahoussaye and report its findings to the prosecuting agency, the D.A.'s Office. The OIG is not a prosecutorial body (nor is it alleged to be) and, on the face of the Petition, it did not institute the criminal proceedings against Delahoussaye. These proceedings were instead commenced by the 21st JDC D.A.¹¹⁶ This element of the claim fails.

b. Probable Cause

Louisiana law provides that this element of probable cause focuses on the present defendant's mindset in instituting the original action against the plaintiff.¹¹⁷ Importantly, the "Constitution does not guarantee that only the guilty will be arrested" or prosecuted.¹¹⁸ This element of the malicious prosecution claim also

¹¹⁴ *Johnson v. Pearce*, 313 So.2d 812, 816 (La. 1975) (emphasis added).

¹¹⁵ Amended Petition, Exhibit D, ¶¶ 3-8.

¹¹⁶ *Id.* at ¶ 37 *et seq.*

¹¹⁷ *LeBlanc, supra*, 69 So.3d at 1282 (emphasis added).

¹¹⁸ *Baker v. McCollan*, 443 U.S. 137 (1979).

contemplates the initiation of the criminal proceeding by the malicious prosecution defendant – here, the OIG Defendants. The OIG Defendants’ “mindset when they initiated the charges” is simply irrelevant without a showing that it was the OIG Defendants who initiated the proceedings. This element fails, as it does not relate or apply to the defendant against whom the malicious prosecution claim is asserted, the OIG Defendants. What the D.A’s Office did, once the OIG reported its findings to it, was beyond the control of the OIG.

c. No Malice

This element likewise fails for the reasons discussed in the context of the defamation claim. It fails also because, as is the case for the other elements of this claim, there are no allegations that the OIG prosecuted Respondent in the criminal proceedings underlying the malicious prosecution claim. If there was no prosecution by the OIG, there certainly could not have been any malice by this defendant in prosecuting the charges against Delahoussaye.

Further, imbedded in the claim of malicious prosecution is the requisite showing of legal causation. “Legal causation by the present defendant against plaintiff who was the defendant in the original proceeding” is required in a malicious prosecution claim.¹¹⁹ Put simply, there can be no actionable malicious prosecution by the OIG who had no control over the prosecution. This claim should have again been dismissed with prejudice.

7. DELAHOUSSAYE CANNOT MAINTAIN A CLAIM FOR NEGLIGENCE.

For Delahoussaye to state a claim for negligence, he has to show that the OIG did something wrong. The OIG did nothing wrong – upsetting Delahoussaye by bringing to light his unlawful actions in the course of a statutorily-sanctioned investigation does not amount to negligence. Generally, a cause of action for

¹¹⁹ *Leblanc, supra*, 69 So.3d at 1279; and *Johnson v. Pearce*, 313 So.2d 812 (La. 1975).

negligence includes five elements: (1) duty element; (2) breach; (3) the cause-in-fact; (4) the scope of liability or scope of protection; and (5) actual damages.¹²⁰ “A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability.”¹²¹

At least one element of Delahoussaye’s negligence claim fails. He cannot prove that the OIG breached the applicable standard of care in investigating and reporting its findings. The standard of care (or duty) of the OIG is set forth in La. R.S. 47:220.24. The OIG’s investigative and reporting powers are further expanded by the general provision in subpart (J) of the statute conferring “all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance” of the OIG’s investigatory function.¹²² Expanding the Inspector General’s authority even further, the catch-all provision at subsection (L) of the statute mandates that the “inspector general shall do all things necessary to carry out the functions set forth [in the statute].”¹²³ Respondent’s objections to the details of the investigation and reported findings are inconsequential, do not affect the legitimacy of the investigation under the law governing the OIG, or otherwise establish a breach of duty.

Respondent’s alleged damages include such things as loss of income, impaired ability to obtain employment, tarnished reputation due to indictment and prosecution, ceasing of operations of C-Del due to seizure of computers, embarrassment, and the like.¹²⁴ These alleged damages again point out that Delahoussaye’s lawsuit actually seeks redress for the actions of a non-party, the D.A., and not the OIG. As stated previously, Delahoussaye’s contract with the state

¹²⁰ See *Detraz v. Lee*, 05–1263 (La.1/17/07), 950 So.2d 557, 562.

¹²¹ See *Mathieu v. Imperial Toy Corporation*, 94-0952 (La.11/30/94), 646 So.2d 318, 326.

¹²² La. R.S. 47:220.24(J).

¹²³ La. R.S. 47:220.24(M) (emphasis added).

¹²⁴ Amended Petition, Exhibit D, ¶¶ 167-172.

was terminated long before the OIG investigated and reported Delahoussaye's unlawful billing practice. As such, any income lost due to the termination of the contract cannot have been caused by the OIG. Further, any embarrassment and humiliation and lost business opportunities can also not be recovered against the OIG because its statutory mandate to investigate abuses/misuses of state funds and the public's interest in the investigation of such complaints easily outweigh Respondent's interest in the confidentiality of his health records. Accordingly, the OIG did not breach any duty and there is no causation between the alleged damages and the OIG's conduct. Delahoussaye's unsupportable negligence claim should be dismissed, yet again.

8. THE RESPONDEAT SUPERIOR CLAIM ALSO WARRANTS DISMISSAL

This claim against the OIG should be dismissed for the same reasons that all of Respondent's other claims will be dismissed. As employer of the individual defendants, the claims against the OIG fail to the extent they are contingent upon non-actionable conduct by the individual defendants.

9. THE INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED.

The claims asserted against Greg Phares and Jessica Webb in their individual capacities cannot be maintained. The Petition, as amended, still alleges no facts whatsoever against these defendants in their individual capacities. In fact, in the case of Mr. Phares, the single paragraph that is directed specifically to Mr. Phares is a conclusory statement that he "participated in and/or failed to properly supervise Ms. Webb."¹²⁵ Otherwise, Mr. Phares' name is sprinkled a number of times in the Amended Petition in the context of legal conclusions that he and Ms. Webb breached their duty and/or are liable to Respondent, without any adequate factual support for the claims leveled against Phares specifically. As was the case in the original

¹²⁵ Amended Petition, Exhibit D, ¶ 155.

petition, the allegations of fact involving Ms. Webb in the Amended Petition all relate to actions taken by her in her official capacity, including her sworn testimony in the 21st Judicial District Court proceeding against Delahoussaye.

Because all actions for which these defendants are being charged were allegedly taken in their capacities as OIG investigators, Respondent has, again, failed to state a cause of action against these two defendants in their individual capacities. The claims against them should be dismissed with prejudice.

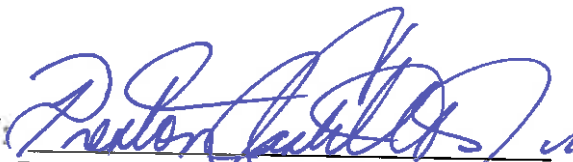
IV. CONCLUSION

The trial court's original ruling was correct. Its self-reversal constitutes reversible error. The amended and still insufficient petition fails to state a cause of action against the OIG. Further amendments would be equally futile in light of the circumstances surrounding this lawsuit. All claims should once again be dismissed, thus barring further waste of tax payer dollars on this baseless litigation.

Respectfully submitted

JEFF LANDRY
ATTORNEY GENERAL

BY



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AFFIDAVIT AND VERIFICATION OF SERVICE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

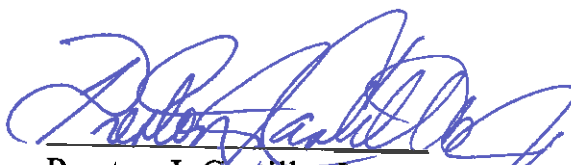
BEFORE ME, the undersigned authority, personally came and appeared Katia D. Bowman, who, being by me first duly sworn, did verify the allegations contained in this **Original Writ Application** and did depose and say that she had copies of this **Original Writ Application** filed by The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb, hand-delivered, faxed or emailed to the following:

Al J. Robert, Jr.
Law Office of Al J. Robert, Jr., LLC
757 St. Charles Avenue-Suite 301
New Orleans, LA 70130
Facsimile: 877-765-2529
Email: ajr@ajrobert.com
Counsel for Plaintiff, Corey Delahoussaye

Hon. Michael Caldwell, Judge
19th Judicial District Court
300 North Boulevard, Room 10A
Baton Rouge, LA 70801
Phone: 225-389-5012

Respondent Judge

Baton Rouge, Louisiana, this 30th day of November, 2016.

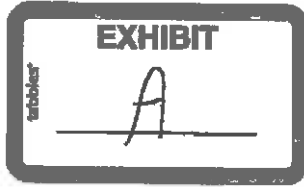

Preston J. Castille, Jr.

SWORN TO and subscribed before me, this 30th day of November, 2016.


Notary Public, Parish of East Baton Rouge

Name: _____
Bar Roll No. _____

WENDY H. ROSS
NOTARY PUBLIC
Louisiana Notary # 55626
My Commission is issued for Life



805F OK \$ 1016: OS
Ret. 128/14
FEB 25 2014
DEPUTY CLERK OF COURT

19TH JUDICIAL DISTRICT COURT
THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

SEC. 24

DOCKET NO.: 6446.126

DIVISION: 24

COREY DELAHOUSSAYE
VERSUS

STATE OF LOUISIANA, THROUGH THE OFFICE OF INSPECTOR GENERAL,
STEPHEN STREET, IN HIS OFFICIAL CAPACITY AS THE INSPECTOR GENERAL,
JESSICA MCCRARY WEBB, AND GREG PHARES

FILED: _____
DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes plaintiff Corey Delahoussaye, who respectfully files this Petition for Damages, presenting the following allegations and causes of action:

PLAINTIFF

1. Corey Delahoussaye is a Louisiana resident who has reached the age of majority.

DEFENDANTS

2. Made defendants herein are the following:
 - a. State of Louisiana, through the Office of the State Inspector General (hereinafter referred to as "Inspector General"), an entity domiciled in the Parish of East Baton Rouge, Louisiana;
 - b. Stephen B. Street, Jr., in his official capacity as the State Inspector General;
 - c. Greg Phares, a Louisiana resident who has reached the age of majority; and,

FAX COPY FILED 2/20/14
ORIGINAL FILED 2/25/14

REC'D C.P.

FEB 26 2014

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- d. Jessica McCrary Webb, a Louisiana resident who has reached the age of majority.

BACKGROUND

C-DEL, INC.

3. Petitioner founded C-Del, Inc. in 1997 and was a co-owner of the company.
4. C-Del was a consulting firm that specialized in securing permits, identifying wetlands, researching titles and negotiating right of way for private and public entities.
5. Livingston Parish hired C-Del on, or about, October 27, 2009.
6. C-Del was hired by Livingston Parish to negotiate with FEMA and the Governor's Office of Homeland Security & Emergency Preparedness ("GOHSEP") to ensure repayment of funds that had been expended on Hurricane Gustav cleanup.
7. C-Del's contract with Livingston Parish was amended to broaden its scope at various times between its signing and August 2010.
8. C-Del's contractual obligations also required it to oversee certain aspects of the cleanup efforts conducted by various contractors hired by Livingston Parish.
9. In the course of its work, C-Del uncovered questionable work and billing practices of various contractors working on Hurricane Gustav cleanup.
10. Petitioner, as an agent of C-Del, reported his concerns to Livingston Parish, both verbally and in writing.
11. Petitioner also reported his findings to the federal government after Livingston Parish failed to address the concerns that were raised.
12. Petitioner ultimately became a federal informant for the FBI and was contracted with FEMA to assist in a challenge of more than \$50 million in charges submitted to FEMA by Livingston Parish.

CONSEQUENCES

13. C-Del's contract with Livingston Parish was formally terminated on, or about, September 24, 2011, but the decision to terminate had been made in the weeks prior.

14. Around November 18, 2011, the District Attorney for the 21st Judicial District, which includes Livingston Parish, announced that Petitioner was under criminal investigation in a televised interview with WAFB in Baton Rouge, Louisiana.
15. The District Attorney also reported purported wrongdoing by Petitioner and C-Del to the federal government for investigation.
16. The federal government investigated the allegations and refused charges.
17. Nonetheless, in January 2012, Livingston Parish refused to pay C-Del for nearly \$400,000 that it billed for its work.
18. As part of its effort to justify its refusal to pay the amounts due to C-Del, Livingston Parish hired an auditor to investigate the bills submitted on behalf of C-Del.
19. On May 21, 2012, the firm finalized its report to Livingston Parish while raising alleged certain deficiencies in the amount of \$6,500 regarding the nearly \$400,000 in billings that the Livingston Parish refused to pay.
20. On June 13, 2013, counsel for Petitioner sent documents specifically disproving every concern raised in the May 21, 2013 report and indicated that Petitioner was "ready, willing, and able to cooperate in any fashion" to address the concerns.
21. During that timeframe, however, the Inspector General initiated its own investigation into C-Del and Petitioner.
- INSPECTOR GENERAL**
22. Livingston Parish requested that the Inspector General open an investigation of Petitioner and C-Del in June 2012.
23. At no time, however, was C-Del or Petitioner employed or contracted by a state agency performing working on behalf of Livingston Parish.
24. Accordingly, counsel for Petitioner and C-Del inquired about the jurisdiction of the Inspector General to investigate.
25. The Inspector General responded that it had authority to investigate on the grounds that Petitioner was a contractor with GOHSEP, a state agency.
26. The Inspector General's investigation related to the same allegations of improper billing by C-Del.

27. On July 18, 2012 Jessica Webb issued a subpoena to URS an Engineering firm, which C-Del was contracted.
28. On July 17, 2013, the Inspector General issued a search warrant in furtherance of its investigation for Mr. Delahoussaye's residence.
29. Notwithstanding the full cooperation of Petitioner and C-Del, the OIG raided Petitioner's home with the assistance of the East Baton Rouge Sheriff's Office in the early-morning hours on July 25, 2013—eight days after the warrant was signed by a district judge in the 19th JDC.
30. The raid was conducted at 6:00 am with multiple agents bearing firearms in a home that was only occupied by Mr. and Ms. Delahoussaye and their two young children.
31. There is no objectively reasonable rationale for conducting a raid in such a fashion to execute search warrant that had been obtained over a week prior
32. In August and September 2013, the Inspector General sent a subpoena to Anytime Fitness seeking its records related to Petitioner from October 27, 2009 through present, despite the fact that C-Del's contract had been terminated nearly two years prior.
33. In October 2013, The Inspector General sent a subpoena seeking medical records of Petitioner from the Aesthetic Medicine & Anti-Aging Clinics of Louisiana.
34. Moreover, on information and belief, Ms. Webb was the only witness to testify before the grand jury in support of the charges that were declined against Petitioner in November 2013.
35. In the course of C-Del's dispute with Livingston Parish, it became evident that the Inspector General was sharing records obtained from its investigation with outside parties.
36. The questionable billing and work practices identified by C-Del resulted in a dispute between Livingston Parish, its contractors, and FEMA.
37. The matter was ultimately decided by the United States Civilian Board of Contract Appeals in the Summer of 2014, in favor of FEMA.
38. As a result, approximately \$59 million of billings submitted on behalf of Livingston Parish related to the Hurricane Gustav clean-up were ultimately disallowed.

39. During those civil proceedings, however, the private contractors working for Livingston Parish provided the United States Government with copies of Petitioner's golf and gym records.

40. The only source for those records was the Inspector General.

CRIMINAL CHARGES

41. The 21st JDC District Attorney sought to charge Petitioner with various crimes related to the alleged improper billing practices.

42. The charges were supported primarily with the fruits of the investigation conducted by the Inspector General.

43. In November 25, 2013, however, a grand jury refused to indict Petitioner regarding the alleged crimes.

44. Accordingly, on December 3, 2013, Scott M. Perrilloux, District Attorney for the 21st Judicial District Court caused 81 Counts to be filed in the 21st Judicial District Court for the Parish of Livingston against Petitioner.

45. Counts 1 through 73 charged that Petitioner violated La. R.S. 14:133, entitled filing or maintaining false public records, and Counts 74 through 81 charged that Petitioner violated La. R.S. 14:67, for various allegations of theft.

46. Thereafter, on February 23, 2015, approximately 30 charges were dropped against Petitioner and Petitioner was charged with 55 counts of Filing False Records in violation of La. R.S. 14:133 and four counts of Theft in violation of La. R.S. 14:67.

47. After a hearing on February 23, 2015, a district judge in the 21st JDC found that there was no probable cause for the charges.

48. Thereafter, Petitioner filed a Motion to Suppress alleging that all of the evidence obtained by the Inspector General was obtained illegally because the agency had no authority to investigate Petitioner and C-Del, amongst other allegations.

49. A hearing was held on April 20, 2015.

50. In May 2015, the district judge granted the Motion to Suppress and ruled that the Inspector General did not have jurisdiction to investigate Petitioner.

51. The District Attorney sought a writ from the First Circuit regarding the ruling and the matter was remanded for the sole purpose of ordering the trial court for a reopened hearing on Petitioner's Motion to Suppress.

52. That hearing was held on January 14, 2016 and the trial court again suppressed the medical records obtained by the Inspector General because they were improperly obtained.

53. At the conclusion of the hearing on January 14, 2016, the charges against Petitioner were again dismissed.

54. Those charges have not been re-filed.

LACK OF JURISDICTION

55. La. R.S. 49:220.21(B) states that the purpose of the establishment of the Office of the State Inspector General is "to examine and investigate the management and affairs of *covered agencies*."

56. In furtherance of that purpose, La. R.S. 49:220.24(B) specifies that:

a. The inspector general is authorized to examine and investigate the management and affairs of the covered agencies concerning waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption, and he may conduct all necessary investigations into such areas, including but not limited to:

- (1) Misuse of state-owned automobiles, planes, watercraft, and all other movable or immovable property.
- (2) Evidence of a pattern of excessive bills on state contracts.
- (3) Unauthorized use of leave.
- (4) Mismanagement of government operations.
- (5) Waste or abuse of things of value belonging to or used by the covered agencies.
- (6) Construction, operation, and maintenance of facilities.

57. In 2008 the Inspector General was designated a "law enforcement agency," and was provided with limited investigative powers and privileges afforded to full-fledged law enforcement agencies.

58. The investigative powers and privileges are limited by the Inspector General's statutorily defined purpose and functions.

59. As stated in La. R.S. 49:220.24(j), the Inspector General is "conferred all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duty, powers, and functions set forth herein."

60. Significantly, it is not within the purpose of the Inspector General's office, or its authority, duty, power, and function as set out in La. R.S. 49:220.24, to conduct criminal investigations.

61. Nor is it within their scope of jurisdiction to investigate matters related to local governmental authorities.

62. To the extent the Inspector General has any criminal investigative authority, it is limited to assisting other law enforcement agencies and cooperating with such agencies with regard to further criminal action.

63. Since C-Del and Petitioner had no contract or other relationship with a covered agency, the Inspector General had no jurisdiction to conduct its investigation.

64. Furthermore, the Inspector General has no authority to obtain search warrants even when it has jurisdiction to investigate.

65. La. R.S. 49:220.24(C)(4) provides that "when there is evidence of what may be criminal activity," the inspector general shall report complaints to the proper federal, state, or local agency.

66. Further, La. R.S. 49:220.24 (K) requires that the referral to the appropriate law enforcement agency occur "[u]pon credible information" of such criminal activity.

67. Pursuant to La. R.S. 49:220.24(K), the Inspector General is relegated to a "back-seat" role once it determines it has credible information of criminal activity.

68. Section 49:220.24(K) provides that "[s]ubsequent to notifying the appropriate law enforcement agency, the inspector general may assist the law enforcement agency in conducting the investigation."

69. As detailed herein, the Inspector General's unlawful investigation led to unfounded criminal charges.

70. As a result of these charges, Petitioner has suffered significant damages.

CAUSES OF ACTION

CLAIM I

MALICIOUS PROSECUTION

71. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

72. Here, the efforts of the Inspector General led to: (a) the commencement or continuance of an original criminal or civil judicial proceeding; (b) its legal causation by the present defendants against plaintiff who was the criminal defendant in the original proceeding; (c) its bona fide termination in favor of the present plaintiff; (d) the absence of probable cause for such proceeding; (e) the presence of malice therein; and (f) damages conforming to legal standards resulting to plaintiff.

73. Accordingly, Defendants are liable to Petitioner for the damages he has incurred as result of their malicious prosecution of him.

CLAIM II

ABUSE OF RIGHT AND PROCESS

74. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

75. The Louisiana abuse of rights doctrine applies if one of the following conditions is met: (a) the rights were exercised exclusively for the purpose of harming another or with the predominant motive to cause harm; (b) an absence of a serious and legitimate interest that is worthy of judicial protection; (c) using the right in violation of moral rules, good faith or elementary fairness; or (d) exercising the right for a purpose other than for which it was granted. *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 520 (5th Cir.1994)(quotation omitted).

76. Similarly, the essential elements of an abuse of process claim are "(a) the existence of an ulterior purpose; and (b) a willful act in the use of the process not in the regular prosecution of the proceeding." *Duboue v. City of New Orleans*, 909 F.2d 129, 132 (5th Cir.1990).

77. At a minimum, based on the foregoing allegations outlined herein, Petitioner has outlined that the Inspector General has used its statutory rights in violation of moral rules, good faith or elementary fairness.

78. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as result of their abuse of right and process.

CLAIM III
TORTIOUS VIOLATIONS OF PRIVACY

79. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

80. In the course of its investigation, the Inspector General needlessly made public Petitioner's medical records and the fact that he visited a tanning booth at his health club.

81. This information was released to paint Petitioner in false light and caused his privacy to be needlessly invaded.

82. The Inspector General's conduct was both unreasonable and it seriously interfered with Petitioner's privacy interest.

83. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as result of their abuse of right and process.

CLAIM IV
DEFAMATION

84. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

85. Mr. Street and his employees communicated multiple defamatory statements about Petitioner regarding alleged improper and illegal billing by Petitioner.

86. Such statements were published in the media and were defamatory *per se*.

87. Notwithstanding that such words were defamatory *per se*, they were false and communicated with malice.

88. Petitioner has suffered substantial injury as a result of these allegations.

89. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as result their defamation.

CLAIM V
GENERAL NEGLIGENCE

90. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

91. The Inspector General has a duty to conform its investigations to certain standards.

92. Defendants breached that duty herein.

93. As a result of that breach, the Defendants have caused Petitioner to suffer damages he would not have otherwise suffered.

94. Accordingly, Petitioner asserts that the Defendants are also liable for his damages pursuant to La. Civil Code art. 2315.

CLAIM VI
SPOILIATION

95. In the event that any evidence has been tampered with, destroyed, alienated, modified, or allowed to deteriorate, Petitioner claims spoliation of evidence.

CLAIM VII
CONSTITUTIONAL CLAIMS

96. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

97. At all times pertinent hereto, Mr. Street, Mr. Phares, and Ms. Webb were acting under color of authority within the meaning and intent of 42 U.S.C. §1983.

98. At all times hereto, Petitioner enjoyed clearly established rights to his good name, reputation, and liberty guaranteed to him under the 14th Amendment of the United States Constitution, in addition to clearly established rights to due process also guaranteed to him under the 14th Amendment of the United States Constitution, which included his state job.

99. The actions of Mr. Street, Mr. Phares, and Ms. Webb have impaired and deprived Petitioner of his clearly established rights, thereby making the Defendants liable to Petitioner for damages pursuant to 42 U.S.C. §1983.

100. Petitioner also asserts that Defendants herein are also liable to him for attorneys fees pursuant to 42 U.S.C. §1988.

CLAIM VIII
RESPONDAT SUPERIOR

101. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

102. Defendants' actions were made in the course and scope of their employment and were made with actual malice towards Petitioner.

103. As the employer of these individuals, the Office of Inspector General is liable to Petitioner for the tortious actions of its employees.

104. As general rule, slander, under Louisiana law, constitutes individual tort that does not give rise to solidary liability; however, where employee makes slanderous statement within course and scope of his employment, the employer is solidarily liable. *Manale v. City of New Orleans, Dept. of Police, C.A.5 (La.) 1982, 673 F.2d 122.*

105. Moreover, Louisiana Civil Code article 2320 provides for master-servant tort liability, also known as vicarious liability, in pertinent part as follows: "Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.

106. Inasmuch, the State of Louisiana, through the Office of Inspector General, is also liable to Petitioner for the tortious actions of its employees sued upon herein.

DAMAGES

107. As a result of the foregoing offenses, Petitioner has lost income that he would have otherwise earned.

108. Moreover, Petitioner's reputation has been tarnished as a result of the allegations surrounding his indictment and prosecution.

109. In addition, by seizing all computers, servers and equipment, C-Del was forced to cease operations due to the seizure of crucial and vital equipment necessary to sustain and support its business.

110. These damages have also impaired his ability to gain other employment and consulting opportunities that he would have otherwise obtained.

111. Petitioner has also suffered personal humiliation, embarrassment, mental anguish, anxiety, and hurt feelings and seeks all compensatory damages available to him under the law.

112. Accordingly, Petitioner avers that Defendants are liable to him for all damages that he has occurred as a result of their wrongful conduct.

GENERAL AVERMENTS

113. Petitioner is seeking compensation for damages in excess of \$50,000, and, therefore, requests a jury trial pursuant to Louisiana Code of Civil Procedure Art. 1731.

WHEREFORE, Petitioner prays that, after due proceedings be had, there be judgment rendered herein in its favor and against Defendants, declaring the Defendants are to be liable and indebted unto Petitioner for:

- a. all damages as are just and reasonable under the circumstances,
- b. judicial interest from the date of her initial judicial demand;
- c. the award of costs and expenses to the fullest extent authorized by law, and
- d. all such other and further relief which the Court deems necessary and proper and that may be just and reasonable under the circumstances of this matter, whether in equity, or otherwise.

FILED
EAST BATON ROUGE PARISH LA
2016 FEB 25 PM 4:40
Sharon
DEPUTY CLERK OF COURT

Respectfully submitted,

Al Robert

Al J. Robert, Jr., No. 29401
LAW OFFICE OF AL J. ROBERT, JR., LLC
757 St. Charles Avenue, Suite 301
New Orleans, Louisiana 70130
Tel: 504-309-4852
Fax: 877-765-2529
ajr@ajrobert.com

ATTORNEY FOR PETITIONER

CERTIFIED TRUE AND
CORRECT COPY

MAR 04 2016
Sharon
Deputy Clerk of Court

PLEASE SERVE:

LOUISIANA INSPECTOR GENERAL
via Stephen B. Street, Jr.
150 Third Street, Third Floor
Baton Rouge, Louisiana 70801

STEPHEN B. STREET, JR.
150 Third Street, Third Floor
Baton Rouge, Louisiana 70801

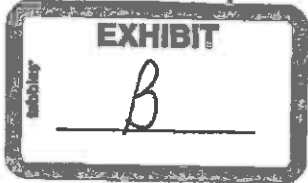
- 9*
- 01-DAMAGES
 - 02-CONTRACT
 - 03-PRISONER SUIT
 - 04-EXECUTORY PROCESS
 - 05-SUIT ON NOTES
 - 06-EVICTION
 - 07-WORKMENS COMPENSATION
 - 08-JUDICIAL REVIEW
 - 09-PROPERTY RIGHTS
 - 10-RESCUE MANDAMUS

CIVIL

- 11-COMM. PROP. PARTITIONS
- 12-PUBLIC SERV. COMM.
- 13-OTHER PARTITIONS
- 14-OTHER
- 15-D.E.Q.
- 16-
- 17-
- 18-
- 19-
- 20-

GREGORY PHARES
150 Third Street, Third Floor
Baton Rouge, Louisiana 70801

JESSICA D. MCCRARY WEBB
8222 Superior Drive
Denham Springs, LA 70726



NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION I, SECTION 24

.....
COREY DELAHOSSAYE .
V. . SUIT NO. 646,126
LOUISIANA OFFICE OF INSPECTOR .
GENERAL, ET AL .
.....

MONDAY, JULY 25, 2016

HEARING

THE HONORABLE R. MICHAEL CALDWELL, JUDGE PRESIDING

APPEARANCES:

AL ROBERT ON BEHALF OF MR. COREY DELAHOSSAYE
PRESTON CASTILLE AND KATIA BOWMAN ON BEHALF OF THE OFFICE OF
INSPECTOR GENERAL, STEPHEN STREET, GREG PHARES, AND JESSICA
WEBB

REPORTED BY: CHRISTINA GRISAFFE, CCR #2014012

MONDAY, JULY 25, 2016

THE COURT: NUMBER 13, SUIT NO. 646,126,
COREY DELAHOSSAYE VERSUS THE STATE OF LOUISIANA.
MAKE YOUR APPEARANCES FOR THE RECORD, PLEASE.

MR. ROBERT: GOOD MORNING, YOUR HONOR. AL
ROBERT, HERE ON BEHALF OF MR. COREY DELAHOSSAYE,
WHO IS ALSO PRESENT.

THE COURT: THANK YOU.

MR. CASTILLE: GOOD MORNING, YOUR HONOR.
PRESTON CASTILLE ON BEHALF OF THE OFFICE OF
INSPECTOR GENERAL, STEPHEN STREET, GREG PHARES,
AND JESSICA WEBB.

MS. BOWMAN: GOOD MORNING, YOUR HONOR. KATIA
BOWMAN ALSO HERE ON BEHALF OF THE OIG DEFENDANTS.

THE COURT: ALL RIGHT. THANK YOU. AN
EXCEPTION OF NO CAUSE OF ACTION FILED BY THE
INSPECTOR GENERAL AND THE INDIVIDUAL DEFENDANTS.
GO AHEAD, MR. CASTILLE.

MR. CASTILLE: YES, YOUR HONOR. I ASSUME,
LIKE ALL OTHERS, YOU'VE ALREADY READ THE BRIEFS,
SO I'LL LIKEWISE BE BRIEF AS WELL. I'LL POINT
OUT, THOUGH, THAT I SPECIFICALLY STATED ALL OF THE
DEFENDANTS THAT I REPRESENT FOR A PARTICULAR
REASON. AND THAT IS EACH OF THEM HAVE BEEN NAMED,
BUT WHEN YOU GO THROUGH THE PETITION AND WITH THIS
EXCEPTION OF NO CAUSE OF ACTION, THAT'S WHAT WE
ARE CONFINED TO THE FOUR CORNERS OF THE PETITION.
AND IF YOU WALK THROUGH EACH OF THE CLAIMS AS IT
RELATES TO THE INDIVIDUAL DEFENDANTS, IT IS PRETTY
EASY TO SEE THAT THE ALLEGATIONS ARE DEVOID OF ANY
SPECIFICITY THAT SUGGESTS A CAUSE OF ACTION AS IT
RELATES TO THEM, FOR EXAMPLE, GREG PHARES. WHEN

YOU READ THROUGH THE PETITION ITSELF AND ALL OF THE CAUSES OF ACTION THAT ARE ALLEGED IN TERMS OF DEFAMATION, MALICIOUS PROSECUTIONS, SECTION 1983, THERE ARE NO FACTS THAT ARE ALLEGED THAT RELATE TO THIS PARTICULAR DEFENDANT THAT WOULD SUGGEST THAT THERE IS A CAUSE OF ACTION. THERE ARE LOTS OF ARGUMENTS, AND THERE ARE LOTS OF GENERAL ACCUSATIONS THAT ARE MADE. BUT WHEN YOU LOOK AT THE PARTICULAR CLAIMS, AND YOU START OFF DEFENDANT BY DEFENDANT, AND YOU DO THE SAME THING WITH JESSICA WEBB, AND YOU DO THE SAME THING WITH STEPHEN STREET, AND THEN UP TO THE OIG. I RECOGNIZE THAT THEY ARE BROAD CLAIMS AS IT RELATES TO THE OFFICE OF INSPECTOR GENERAL GENERALLY, BUT IF YOU WALK THROUGH THE PETITION AND CONFINE OURSELVES AS WE ARE REQUIRED TO THE FOUR CORNERS OF THE PETITION, YOU DON'T SEE A CAUSE OF ACTION AS IT RELATES TO THEM. AND WHILE WE DON'T HAVE SEPARATE LAYERS, I JUST WANT TO POINT OUT THAT DISTINCTION, BUT AS IT RELATES, WE'LL JUST START OFF FOR EXAMPLE WITH THE CLAIM OF DEFAMATION.

WHEN WE LOOK AT DEFAMATION HERE, IN TERMS OF WHAT SPECIFIC DEFAMATORY STATEMENTS, THAT THEY ARE TRULY DEFAMATORY, WE DON'T HAVE THAT SORT OF SPECIFICITY THERE AS IT RELATES TO ANY OF THE DEFENDANTS. THERE ARE CERTAIN CLAIMS THAT ARE MADE, BUT THEN YOU HAVE TO TAKE INTO CONSIDERATION WHAT EXACTLY DOES THAT MEAN? IN OUR CASE, BECAUSE WE ARE THE OFFICE OF INSPECTOR GENERAL -- AND JUDGE, THIS IS ALWAYS, YOU KNOW, TAKEN OUT OF CONTEXT. OF COURSE, THE OFFICE OF INSPECTOR GENERAL HAS THIS RESPONSIBILITY UNDER THE STATUTE

TO INVESTIGATE. WE ARE AN INVESTIGATORY AGENCY,
AND WE DO THAT. WE ALSO HAVE AN OBLIGATION, A
REQUIREMENT TO REPORT THOSE FINDINGS THAT WE LEARN
FROM OUR INVESTIGATION, AND WE REPORT THAT. SO,
WHEN A PLAINTIFF COMES AND SAYS, WELL, THAT
SOMEHOW DEFAMED US, WE ARE REQUIRED TO DO OUR
INVESTIGATION, AND WE REPORT THOSE. WE ARE
AFFORDED CERTAIN PROTECTIONS IN TERMS OF
DEFAMATION, IN TERMS OF ACTUAL MALICE HAS TO BE
PROVEN. THERE ARE NO ALLEGATIONS OR NO FACTUAL
ALLEGATIONS THAT SUGGESTS THAT THERE IS THAT SORT
OF ACTUAL MALICE HERE. SAME THINGS AS IT RELATES
TO QUALIFIED PRIVILEGE. WE HAVE THESE LAYERS OF
PROTECTION BECAUSE WE ARE A LAW ENFORCEMENT
AGENCY. WE ARE AN INVESTIGATORY BODY. WE HAVE
THAT ABILITY TO DO SO, AND WHEN YOU GET THROUGH --
AND I DON'T WANT TO BELABOR IT, BUT WHEN YOU GET
THROUGH THE OTHER CLAIMS, THEY SORT OF FALL ALONG
THE SAME LINE. BUT PARTICULARLY AS IT RELATES TO
SECTION 1983, JUDGE, THERE IS THIS ALLEGATION THAT
THERE IS THESE FEDERALLY PROTECTED RIGHTS THAT
HAVE BEEN VIOLATED.

THERE IS NO SPECIFIC ALLEGATIONS OF A
FACT THAT SUGGESTS THAT THEY ARE THESE PARTICULAR
CONSTITUTIONALLY PROTECTIVE RIGHTS THAT HAVE BEEN
VIOLATED. IF YOU GO THROUGH EACH DEFENDANT,
JESSICA WEBB, GREG PHARES, STEPHEN STREET, THE
OFFICE OF INSPECTOR GENERAL, THERE ARE THESE BROAD
CONCLUSORY STATEMENTS, LEGAL CONCLUSIONS THAT ARE
MADE, THAT, OH, YEAH, WE HAD A DUE PROCESS RIGHT,
AND THESE DEFENDANTS VIOLATED THOSE DUE PROCESS
RIGHTS. I UNDERSTAND THAT THERE MIGHT BE

ARGUMENTS THAT WERE MADE IN THE MEMORANDUM, BUT THE MEMORANDA ARE NOT THE PETITION. AND THAT'S WHAT WE ARE REQUIRED TO LOOK AT, JUDGE, JUST THE PETITION. SO, IF IT'S NOT IN THE PETITION, THIS COURT, WHICH IS REQUIRED TO LOOK AT ONLY THE FOUR CORNERS OF THE PETITION, THERE IS NOTHING THERE THAT SUPPORTS IT. I RECOGNIZE THAT THE PLAINTIFF SAYS, OH, JUDGE, MAYBE AT SOME POINT IN THE FUTURE, I MIGHT BE ABLE TO AMEND AND ADD THOSE FACTS, BUT AS WE SIT HERE TODAY, THIS PETITION DOES NOT HAVE THE SPECIFICITY OR FACTUAL ALLIGATIONS THAT SUGGESTS THAT THERE IS A CAUSE OF ACTION FOR EITHER DEFAMATION OR PROSECUTION, ANY OF THE LEGAL CLAIMS, AND CERTAINLY, THE FEDERAL CLAIMS THAT ARE RAISED UNDER SECTION 1983 AND 1988, YOUR HONOR. THANK YOU.

THE COURT: MR. ROBERT?

MR. ROBERT: THANK YOU, YOUR HONOR. I THINK I'D LIKE TO START AT THE FIRST POINT THAT MR. CASTILLE MAKES, THAT OIG IS AN INVESTIGATORY AGENCY. WE DON'T DISPUTE THAT, AND I THINK BY READING THE BRIEFS, YOU REALIZE OR RECOGNIZE THAT THE OIG ITSELF RECOGNIZES THAT ITS AUTHORITY IS NOT ALL EXPANSIVE NOR ALL INCONCLUSIVE. IT HAS A LIMITED JURISDICTION TO INVESTIGATE STATE AGENCIES. THE OIG IS LOCATED IN THE OFFICE OF THE GOVERNOR, AND ITS STATUTORY AUTHORITY ONLY ALLOWS IT TO INVESTIGATE STATE WASTE. NOW, MR. DELAHOSSAYE HAD A CONTRACT WITH THE PARISH OF LIVINGSTON DIRECTLY.

THE COURT: AREN'T YOU GOING INTO THE MERITS, MR. ROBERT? AND WHETHER THEY HAD JURISDICTION OR

NOT IS SOMETHING TO BE DETERMINED DOWN THE ROAD. WHETHER YOU STATED A CAUSE OF ACTION ON ALL THESE VARIOUS CLAIMS IS WHAT'S BEFORE ME TODAY.

MR. ROBERT: CERTAINLY, YOUR HONOR, AND AS IT RELATES TO THE -- AND THE REASON I WENT THERE IS BECAUSE THEIR OPPOSITION IN THEIR REPLY SUGGESTED THEY DO HAVE JURISDICTION. AND THAT'S THE CRUX OF OUR PETITION WHICH I THINK STATES CLEARLY THAT THEY DO NOT. AS A RESULT, EVERYTHING THAT THEY DID, THEY DID NOT HAVE AUTHORITY TO DO. THAT IS WHAT IS SPECIFIED IN OUR PLEADING -- IN OUR PETITION. HOW WOULD I BEST ADDRESS IT? IF WE GO THROUGH DEFAMATION, WE'VE ALLEGED THAT THERE ARE STATEMENTS THAT WERE MADE THAT WERE DEFAMATORY, PER SE. THE ALLEGATIONS THAT MR. CASTILLE RAISES THAT WE MUST PROVE ACTUAL MALICE IS NOT ACTUALLY THE CASE UNLESS THERE ARE SHOWINGS THAT THE STATEMENTS THAT WERE MADE ARE PROTECTED BY FIRST AMENDMENT RIGHTS, AND THAT'S IN OUR PETITION.

THE COURT: BUT, SIR, DOESN'T THE LAW ON DEFAMATION REQUIRE YOU TO AT LEAST SET FORTH WHAT WAS ALLEGEDLY SAID?

MR. ROBERT: YOUR HONOR, AS IT RELATES TO -- YES, IN ORDER TO FULLY PREVAIL, YES, AND I DO NOT DENY THAT. WE'VE OUTLINED THE NATURE OF THE COMPLAINTS THAT WERE MADE. THEY'RE NOT SPECIFICALLY IN THERE. IF THE COURT REQUIRES THEM AND IF THE LAW REQUIRES THEM, WE CAN NAME THEM AND AMEND TO INCLUDE THEM. WE WOULD ASK FOR LEAVE TO DO THAT UNDER CODE OF CIVIL PROCEDURE 934.

AS IT RELATES TO THE REMAINDER OF THE ALLEGATIONS, I THINK THE ONLY OTHER ONE THAT MR.

CASTILLE FOCUSED ON WAS 1983. WE'VE SPECIFIED THROUGHOUT IN THE PETITION THAT, MS. JESSICA WEBB, WHO WAS THE INVESTIGATOR, WAS THE ONE WHO WAS OBTAINING THESE ILLEGAL SUBPOENAS AND SEARCH WARRANTS. HER SUPERVISOR WAS MR. PHARES. I DO AGREE THAT I DON'T THINK MR. PHARES IS SPECIFICALLY NAMED IN THAT REGARD, BUT IF YOU LOOK AT THE PETITION, IT RE-ALLEGES AND INCORPORATES ALL OF THE OTHER CLAIMS. AS A RESULT OF THE ALLEGATIONS THAT WERE MADE, MR. DELAHOSSAYE WAS SUBJECT TO AN UNLAWFUL AND ILLEGAL SEARCH AND SEIZURE OF HIS HOME. THEY RAIDED HIS HOUSE AT 6:30 IN THE MORNING WHEN HE AND HIS KIDS WERE STILL IN BED. DESPITE THE FACT THAT HE WAS FULLY COOPERATING WITH THE INVESTIGATION, HE WAS ARRESTED, AND ALL THOSE CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE OF THE ACTIONS OF THE DEFENDANTS, WHICH WE HAVE SPECIFIED I THINK IN SUFFICIENT DETAIL. I'M HAPPY TO ADDRESS ANY FURTHER CONCERNS, BUT I THINK EVERYTHING WAS PRETTY WELL LAID OUT IN THE OPPOSITION.

THE COURT: ALL RIGHT. THANK YOU. MR. CASTILLE, ANYTHING ELSE?

MR. CASTILLE: THE ONLY THING I'LL SAY, JUDGE, IS I READ THE CONSTITUTIONAL CLAIMS SECTIONS, AND I DON'T SEE ANY SPECIFICITY THAT THAT BEING TALKED ABOUT HERE TODAY IS JUST A VERY CONCLUSORY LANGUAGE. HE MAY AMEND AT SOME POINT, IF THE COURT ALLOWS HIM TO DO THAT OR IF THE LAW PROVIDES, BUT AS IT RELATES TO THIS PETITION, IT'S JUST NOT THERE, JUDGE.

THE COURT: ALL RIGHT. THIS IS SUIT NO.

646,126, COREY DELAHOUSSAYE VERSUS THE STATE OF LOUISIANA BEFORE THE COURT ON AN EXCEPTION OF NO CAUSE OF ACTION. MR. DELAHOUSSAYE HAS BEEN IN THE NEWS, AND HIS CASE IS WELL KNOWN. HE ALLEGES CERTAIN ACTIONS ON THE PART OF THE STATE INSPECTOR GENERAL AND TO EMPLOYEES OF THE INSPECTOR GENERAL'S OFFICE, CLAIMS OF DEFAMATION, AND ABUSE OF PROCESS, ABUSE OF RIGHT, AND NEGLIGENCE, AND 1983 ACTIONS, AND SO FORTH AND SO ON. WE ARE A FACT PLEADING STATE, AND THE PETITION DOES ALLEGE A NUMBER OF FACTS. BUT YOU STILL HAVE TO TIE THE FACTS TO THE LAW. DEFAMATION AMONG OTHERS REQUIRES SPECIFIC ALLEGATIONS CONCERNING WHAT WAS SAID AND TO WHOM IT WAS SAID AND SO FORTH, EVEN IN THE PETITION. AND I THINK THAT VAGUENESS OR LACK OF SPECIFICITY PERMEATES ALL OF THE OTHER CLAIMS ALSO. A LOT OF FACTS ARE STATED, AND THEN A LOT OF CAUSES OF ACTION ARE ALLEGED. BUT THERE IS NO TYING OF THE TWO TOGETHER.

SO, I'M GOING TO SUSTAIN THE EXCEPTION OF NO CAUSE OF ACTION. THE LAW MANDATES, HOWEVER, THAT IF THE DEFICIENCIES IN THE CAUSE OF ACTION CAN BE CURED BY AMENDMENT, THE COURT MUST ALLOW OPPORTUNITY TO AMEND, AND I WOULD CERTAINLY DO SO IN THIS CASE. THE EXCEPTION OF NO CAUSE OF ACTION IS SUSTAINED, DISMISSING PLAINTIFF'S CLAIM, BUT PLAINTIFF IS ALLOWED A PERIOD OF 28 DAYS FROM THIS DATE IN WHICH TO AMEND THE PETITION TO ATTEMPT TO CURE THE EXCEPTION.

MR. ROBERT: THANK YOU.

MR. CASTILLE: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. AND, OF COURSE, MR.

CASTILLE, IF YOU'LL PREPARE THE JUDGMENT. PLEASE
SUBMIT IT PURSUANT TO RULE 9.5, AND HAVE THE
ORIGINAL FILED AND SENT TO MY OFFICE.

MR. CASTILLE: ABSOLUTELY, YOUR HONOR. THANK
YOU.

THE COURT: THANK YOU, SIR.


(END OF TRANSCRIPT)

C E R T I F I C A T E

THIS CERTIFICATE IS VALID ONLY FOR A TRANSCRIPT ACCOMPANIED BY MY ORIGINAL SIGNATURE AND ORIGINAL REQUIRED SEAL ON THIS PAGE.

I, CHRISTINA GRISAFFE, CERTIFIED COURT REPORTER IN AND FOR THE STATE OF LOUISIANA, EMPLOYED AS AN OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL DISTRICT COURT FOR THE STATE OF LOUISIANA, AS THE OFFICER BEFORE WHOM THIS TESTIMONY WAS TAKEN, DO HEREBY CERTIFY THAT THIS TESTIMONY WAS REPORTED BY ME IN THE STENOTYPE REPORTING METHOD, WAS PREPARED AND TRANSCRIBED BY ME, AND IS A TRUE AND CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY AND UNDERSTANDING; FURTHER, THAT THE TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT FORMAT GUIDELINES REQUIRED BY STATUTE OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR TO THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 7TH DAY OF NOVEMBER, 2016.



CHRISTINA GRISAFFE, CCR

OFFICIAL COURT REPORTER

19TH JUDICIAL DISTRICT COURT

CCR #2014012

NINETEENTH JUDICIAL DISTRICT COURT
 PARISH OF EAST BATON ROUGE
 STATE OF LOUISIANA



COREY DELAHOUSSEY * NO. C646126
 *
 VERSUS *
 *
 STATE OF LOUISIANA, THROUGH * SECTION 24
 THE OFFICE OF INSPECTOR *
 GENERAL, ET AL *

JUDGMENT

This matter came before this Court on July 25, 2016 upon the Peremptory Exception of No Cause of Action filed on behalf of the Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants"). Present in court were Preston J. Castille, Jr. and Katia D. Bowman, appearing on behalf of the OIG Defendants; and Al J. Robert, Jr., appearing on behalf of Corey Delahoussaye.

CONSIDERING the applicable law, the Petition for Damages, the memoranda in support of and opposition to the exception of no cause of action, and the arguments of counsel;

IT IS ORDERED, ADJUDGED AND DECREED that the OIG Defendants' Exception of No Cause of Action be and is hereby SUSTAINED; and that plaintiff's claims against them are hereby DISMISSED without prejudice, as ordered in open court during the July 25, 2016 hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff was given 28 days from July 25, 2016 (or until August 22, 2016) to amend his Petition for Damages and plead his causes of action with the specificity required by law.

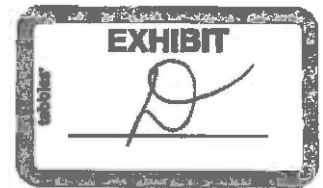
JUDGMENT RENDERED, on July 25, 2016, AND READ and SIGNED at Baton

Rouge, Louisiana, this 9th day of August, 2016.

FILED
 EAST BATON ROUGE PARISH
 2016 AUG -8 PM 1:40

R. Michael Caldwell
 JUDGE MICHAEL CALDWELL
 NINETEENTH JUDICIAL DISTRICT COURT
Preston Castille, Jr.; Katia Bowman
Al J. Robert, Jr.
Eraine Sullivan

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE



STATE OF LOUISIANA

COREY DELAHOUSSAYE	*	NUMBER C—646,126
VERSUS	*	DIVISION "1"
	*	SECTION 24
STATE OF LOUISIANA, ET AL.	*	JUDGE CALDWELL

FILED: _____
DEPUTY CLERK

FIRST-AMENDING AND RESTATED PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes plaintiff Corey Delaboussaye, who respectfully files this First-Amending and Restated Petition for Damages, which entirely restates the allegations and causes of action set forth in the Petition for Damages originally filed herein on February 22, 2016:

PLAINTIFF

1. Corey Delahoussaye is a Louisiana resident who has reached the age of majority.

DEFENDANTS

2. Made defendants herein are the following:
- State of Louisiana, through the Office of the State Inspector General (hereinafter referred to as "Inspector General"), an entity domiciled in the Parish of East Baton Rouge, Louisiana;
 - Stephen B. Street, Jr., in his official capacity as the State Inspector General;
 - Greg Phares, a Louisiana resident who has reached the age of majority; and,
 - Jessica McCrary Webb, a Louisiana resident who has reached the age of majority.

BACKGROUND

C-DEL, INC.

3. **Petitioner founded C-Del, Inc. in 1997 and was a co-owner of the company.**
4. **C-Del was a consulting firm that specialized in securing permits, identifying wetlands, researching titles and negotiating right of way for private and public entities.**
5. **Livingston Parish hired C-Del on, or about, October 27, 2009.**
6. **C-Del was hired by Livingston Parish to negotiate with FEMA and the Governor's Office of Homeland Security & Emergency Preparedness ("GOHSEP") to ensure repayment of funds that had been expended on Hurricane Gustav cleanup.**
7. **C-Del's contract with Livingston Parish was amended to broaden its scope at various times between its signing and August 2010.**
8. **C-Del's contractual obligations also required it to oversee certain aspects of the cleanup efforts conducted by various contractors hired by Livingston Parish.**
9. **Petitioner uncovered questionable work and billing practices of various contractors working on Hurricane Gustav cleanup.**
10. **Petitioner, as an agent of C-Del, reported his concerns to Livingston Parish, both verbally and in writing.**
11. **Petitioner also reported his findings to the federal government after Livingston Parish failed to address the concerns that were raised.**
12. **The questionable billing and work practices identified by Petitioner resulted in a dispute between Livingston Parish, its contractors, and FEMA.**
13. **Petitioner thereafter became a federal informant for the FBI and was later contracted with FEMA to assist in a challenge of more than \$50 million in charges submitted to FEMA by Livingston Parish.**
14. **The matter was ultimately decided by the United States Civilian Board of Contract Appeals in the Summer of 2014, in favor of FEMA.**
15. **As a result, approximately \$59 million of billings submitted on behalf of Livingston Parish related to the Hurricane Gustav clean-up were ultimately disallowed.**

CONSEQUENCES

16. C-Del's contract with Livingston Parish was formally terminated on, or about, September 24, 2011, but the decision to terminate had been made in the weeks prior.

17. Around November 18, 2011, the District Attorney for the 21st Judicial District, which includes Livingston Parish, announced that Petitioner was under criminal investigation in a televised interview with WAFB in Baton Rouge, Louisiana.

18. The District Attorney also reported purported wrongdoing by Petitioner and C-Del to the federal government for investigation.

19. The federal government never pursued any charges against Petitioner.

20. The District Attorney's allegations were made at the same time that Petitioner was working as a federal informant supporting in the proceeding between FEMA and Livingston Parish and its contractors.

INSPECTOR GENERAL

21. The Inspector General started to investigate Petitioner sometime beginning in June of 2012.

22. The investigation was purportedly opened at the request of Mr. Chris Moody, who was serving as counsel for the Livingston Parish Council.

23. At no time, however, was C-Del or Petitioner employed or contracted by a state agency performing working on behalf of Livingston Parish.

24. Accordingly, counsel for Petitioner and C-Del inquired about the jurisdiction of the Inspector General to investigate.

25. The Inspector General responded that it had authority to investigate on the grounds that Petitioner was a contractor with GOHSEP, a state agency.

26. Petitioner, however, was not a contractor of GOHSEP.

27. On July 18, 2012 Jessica Webb issued a subpoena to URS, an Engineering firm, to which C-Del was contracted.

28. On July 17, 2013, the Inspector General applied for a search warrant in furtherance of its investigation for Mr. Delahoussaye's residence

29. As detailed *infra*, Louisiana law does not provide the Inspector General authority to obtain a search warrant.

30. Notwithstanding the full cooperation of Petitioner and C-Del, the Inspector General raided Petitioner's home with the assistance of the East Baton Rouge Sheriff's Office in the early-morning hours on July 25, 2013--eight days after the warrant was signed by a district judge in the 19th JDC.

31. The raid was conducted at 6:00 am with multiple agents bearing firearms in a home that was only occupied by Mr. and Ma. Delahoussaye and their two young children.

32. There is no objectively reasonable rationale for conducting a raid in such a fashion to execute search warrant that had been obtained over a week prior.

33. Despite a lengthy investigation, there is no evidence that Ms. Webb or Mr. Phares, who were both present for the raid, ever made any attempt to review the information seized from Petitioner's residence or to otherwise use the seized information to support the Inspector General's investigation.

34. In August and September 2013, the Inspector General sent a subpoena to Anytime Fitness seeking its records related to Petitioner from October 27, 2009 through present, despite the fact that C-Del's contract had been terminated nearly two years prior.

35. In October 2013, The Inspector General sent a subpoena seeking medical records of Petitioner from the Aesthetic Medicine & Anti-Aging Clinics of Louisiana, which application was in direct violation of Louisiana law.

36. Moreover, on information and belief, Ms. Webb was the only witness to testify before the grand jury in support of the charges that were declined against Petitioner in November 2013.

CRIMINAL CHARGES

37. The 21st JDC District Attorney sought to charge Petitioner with various crimes related to the alleged improper billing practices.

38. The charges were only possible because of the investigation conducted by the Inspector General.

39. In November 25, 2013, however, a grand jury refused to indict Petitioner regarding the alleged crimes.

40. Accordingly, on December 3, 2013, Scott M. Perrilloux, District Attorney for the 21st Judicial District Court, caused 81 Counts to be filed against Petitioner in the 21st Judicial District Court for the Parish of Livingston.

41. Counts 1 through 73 charged that Petitioner violated La. R.S. 14:133, entitled filing or maintaining false public records, and Counts 74 through 81 charged that Petitioner violated La. R.S. 14:67, for various allegations of theft.

42. Thereafter, on February 23, 2015, approximately 30 charges were dropped against Petitioner and Petitioner was charged with 55 counts of Filing False Records in violation of La. R.S. 14:133 and four counts of Theft in violation of La. R.S. 14:67.

43. A probable cause hearing was held on February 23, 2015 in the 21st JDC.

44. Ms. Webb was the only witness to testify at the hearing.

45. Ms. Webb's testimony was filled with factual errors and false representations to the Court.

46. As an example, Ms. Webb's testimony supporting Count Seven blatantly misrepresented the evidence before the Court.

Q. Let's move on to activities which occurred on 8-26-2010. Did you review documents from the Anti-Aging Clinic for services that Delahoussaye would have received on that day in Baton Rouge?

A. Yes, sir.

Q. What did it reflect?

A. The receipt reflected Vela one of six, VelaShape one area, and time-stamped on the receipt is 10:00 a.m.

Q. Did you compare that to the invoice Mr. Delahoussaye submitted for reimbursement for activities conducted on behalf of the Parish on that day?

A. I did.

Q. And what did it reveal?

A. It showed that on 8-26 from 7:00 a.m. to 4:00 p.m., he worked on IED files and information provided by PEC and AFA, worked with the Corps and GOHSEP, gathered information for Corps and GOHSEP.

Q. It would have included the 10:00 a.m. time he was in Baton Rouge receiving services at the Anti-Aging Clinic?

A. Yes, sir. The receipt also gives a timeframe for the services.

Q. What's the timeframe on that particular day?

A. On 8-26-2010, treatment time, one-hour.

47. Contrary to Ms. Webb's representation, the receipt does not provide a timeframe for the services provided.

48. Furthermore, although Petitioner's timesheet may have indicated that he worked from 7:00 a.m. to 4:00 p.m., it showed he only billed Livingston Parish for eight hours, indicating that he had an hour during that time for personal time.

49. Notwithstanding, Ms. Webb testified that Petitioner had wrongfully billed Livingston Parish for the time he allegedly spent at the medical clinic.

50. Ms. Webb similarly testified that Petitioner wrongfully billed Livingston Parish \$8,700 while playing golf; \$4,930 while he underwent cosmetic procedures; \$2,175 while he worked out at Spectrum Fitness; \$797.50 while he tanned at Anytime Fitness; and \$580 while he worked on an unrelated project for another parish.

51. These allegations were false and unsupported by the evidence that Ms. Webb claimed she reviewed.

52. Ms. Webb testified that she determined the amount of improper billings by comparing Petitioner's timesheets to various records she obtained from Greystone Country Club, Aesthetic Medicine & Anti-Aging Clinic, Spectrum Fitness, Anytime Fitness, etc.

53. Ms. Webb knew, or should have known, that her calculations and associated testimony were false.

54. Specifically, her testimony at the probable cause hearing on February 23, 2015 revealed a number of troubling assumptions and erroneous conclusions:

a. Initially, Ms. Webb had no information to support the allegations that Petitioner actually filed any public records, a prerequisite to violating La. R.S. 14:133;

b. Ms. Webb repeatedly testified that she reviewed Petitioner's timesheet when determining the amount of hours purportedly falsified by Petitioner;

- c. Ms. Webb, however, was reviewing Petitioner's Daily Log;
- d. As a result of basing her investigation on the wrong documents, Ms. Webb wrongfully concluded that Petitioner had billed time that he, in fact, had not actually billed;
- e. Ms. Webb wrongfully assumed that Petitioner was at the doctor's office or under general anesthesia when he was actually working;
- f. Ms. Webb's wrongfully assumed that Petitioner was going to the tanning bed when he was not, even after she interviewed management at Anytime Fitness who advised her that there was no way to determine whether anyone was actually tanning and that the fobs could not be reliably attributed to a single individual;
- g. Ms. Webb wrongfully assumed that Petitioner was playing golf when others were using his membership and she failed to make any effort to support her conclusions that Petitioner was actually playing golf as alleged.

55. The scope of Ms. Webb's errors was significant and belied actual information that she obtained during the OIG's investigation.

56. Specifically, Petitioner and his counsel had previously met with Ms. Webb and explained the nature of her wrongful assumptions and errors.

57. The information provided to Ms. Webb by Petitioner and numerous witnesses conflicted with her testimony at the probable cause hearing.

58. The information could have been easily verified if Ms. Webb had made any effort to do so.

59. Given her plain and demonstrably wrong errors, it is clear that Ms. Webb's allegations of illegal conduct were made with actual malice and with a reckless disregard for the truth.

60. As a result of Ms. Webb's defamatory testimony, the news media reported the defamatory allegations.

61. For instance, on February 25, 2015, The Advocate reported that:

Jessica Webb, a criminal investigator with the Inspector General's Office and the state's only witness Monday, said records from de la Houssaye's golf club, two gyms and a cosmetic clinic in Baton Rouge showed he was charging the parish for work while he played golf, tanned, worked out and had liposuction, Botox, hormone therapy and other cosmetic treatments.

Webb walked the court through the charges count by count, detailing the receipts, tee schedules and electronic card swipes supporting the state's case.

By Webb's tally, deLaHoussaye had billed the parish \$8,700 while he played golf and drank Patron at Greystone Golf & Country Club in Denham Springs; \$4,930 while he had cosmetic procedures and hormone therapy at the Aesthetic Medicine & Anti-Aging Clinic in Baton Rouge; \$2,175 while he worked out at Spectrum Fitness; \$797.50 while he tanned at Anytime Fitness; and \$580 while he worked on an unrelated project in another parish.

62. As detailed by the foregoing, Ms. Webb's testimony was false and wrongfully accused Petitioner of falsifying public records and theft, which allegations constitute defamation *per se*.

63. At the conclusion of the hearing on February 23, 2015, the district judge found that there was no probable cause for the charges.

64. Thereafter, Petitioner filed a Motion to Suppress alleging that all of the evidence obtained by the Inspector General was obtained illegally because the agency had no authority to investigate Petitioner and C-Del, amongst other allegations.

65. A hearing was held on April 20, 2015.

66. In May 2015, the district judge granted the Motion to Suppress and ruled that the Inspector General did not have jurisdiction to investigate Petitioner.

67. The District Attorney sought a writ from the First Circuit regarding the ruling and the matter was remanded for the sole purpose of ordering the trial court for a reopened hearing on Petitioner's Motion to Suppress.

68. That hearing was held on January 14, 2016 and the trial court again suppressed the medical records obtained by the Inspector General because they were improperly obtained and stated the subpoenas that were used by the Inspector General's office failed to articulate the sufficient facts that would rise to the level of reasonable suspicion or constitute a reasonable basis to obtain these records.

69. At the conclusion of the hearing on January 14, 2016, the charges against Petitioner were again dismissed.

70. Those charges have not been re-filed.

71. Additionally, La. R.S. 49:220.25 provides that "records prepared or obtained by the inspector general in connection with investigations conducted by the inspector general shall be deemed confidential and protected from disclosure."

72. This confidentiality requirement is unqualified.

73. Not only does La. R.S. 49:220.25 deem investigation information confidential, it also makes it a "misdemeanor punishable by a fine of not more than two thousand dollars or imprisonment for not more than one year, or both, for the inspector general or any of his employees, or any other public official, corporation, or individual, to make public any such information or record."

74. Nonetheless, in the course of C-Del's dispute with Livingston Parish, it became evident that the Inspector General was sharing records obtained from its investigation with outside parties.

75. Specifically, during the proceedings before United States Civilian Board of Contract Appeals, the private contractors working for Livingston Parish provided the United States Government with copies of Petitioner's private records.

76. The only source for those records was the Inspector General.

LACK OF JURISDICTION

77. La. R.S. 49:220.21(B) states that the purpose of the establishment of the Office of the State Inspector General is "to examine and investigate the management and affairs of *covered agencies*."

78. In furtherance of that purpose, La. R.S. 49:220.24(B) specifies that:

- a. The inspector general is authorized to examine and investigate the management and affairs of the covered agencies concerning waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption, and he may conduct all necessary investigations into such areas, including but not limited to:
 - (1) Misuse of state-owned automobiles, planes, watercraft, and all other movable or immovable property.
 - (2) Evidence of a pattern of excessive bills on state contracts.
 - (3) Unauthorized use of leave.
 - (4) Mismanagement of government operations.
 - (5) Waste or abuse of things of value belonging to or used by the covered agencies.
 - (6) Construction, operation, and maintenance of facilities.

79. In 2008 the Inspector General was designated a "law enforcement agency," and was provided with limited investigative powers and privileges afforded to full-fledged law enforcement agencies.

80. The investigative powers and privileges are limited by the Inspector General's statutorily defined purpose and functions.

81. As stated in La. R.S. 49:220.24(J), the Inspector General is "conferred all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duty, powers, and functions set forth herein."

82. The foregoing does not authorize the Inspector General to investigate local governments like Livingston Parish.

83. Significantly, it is also not within the purpose of the Inspector General's office, or its authority, duty, power, and function as set out in La. R.S. 49:220.24, to conduct criminal investigations or to obtain search warrants.

84. To the extent the Inspector General has any criminal investigative authority, it is limited to assisting other law enforcement agencies and cooperating with such agencies with regard to further criminal action.

85. Since C-Del and Petitioner had no contract or other relationship with a covered agency, the Inspector General had no jurisdiction to conduct its investigation.

86. Furthermore, the Inspector General has no authority to obtain search warrants even when it has jurisdiction to investigate.

87. La. R.S. 49:220.24(C)(4) provides that "when there is evidence of what may be criminal activity," the inspector general shall report complaints to the proper federal, state, or local agency.

88. Further, La. R.S. 49:220.24 (K) requires that the referral to the appropriate law enforcement agency occur "[u]pon credible information" of such criminal activity.

89. Pursuant to La. R.S. 49:220.24(K), the Inspector General is relegated to a "back-seat" role once it determines it has credible information of criminal activity.

90. Section 49:220.24(K) provides that “[a]ubsequent to notifying the appropriate law enforcement agency, the inspector general may assist the law enforcement agency in conducting the investigation.”
91. In addition to investigation Petitioner outside of its jurisdiction, the Inspector General failed to comply with its own governing authority and Louisiana law when it investigated Petitioner.
92. La. R.S. 49:220.24(F)(2) provides that a subpoena or subpoena duces tecum “shall be issued only upon approval of a judge of the district court of the parish in which the Office of Inspector General is domiciled upon application in writing by the Inspector General. The judge shall issue a written decision within 72 hours after receipt of such application.”
93. The Inspector General did not comply with these requirements and failed to obtain a written decision from the district court authorizing the subpoenas duces tecum issued herein.
94. Furthermore, in *State v. Skinner*, 10 So. 3d 1212 (La. 2009), the Louisiana Supreme Court ruled that a warrant must be used to obtain medical records.
95. Accordingly, the Inspector General’s use of a subpoena to obtain Petitioner’s medical records was a blatant violation of Louisiana law.
96. In short, the Inspector General’s unlawful investigation led to unfounded criminal charges against Petitioner.
97. Moreover, all of the evidence obtained in support of those charges was suppressed due to the failure of the Inspector General to comply with Louisiana law.
98. At the probable cause hearing on February 23, 2015, Ms. Webb was asked whether she could tell the court of “any contract that [Petitioner] has with an executive department of [the State of Louisiana].
99. Tellingly, Ms. Webb could not identify any contract that would have provided the OIG jurisdiction over Mr. Delahoussaye.
100. Petitioner has suffered significant damages as a result of the Inspector General’s wrongful investigation.

CAUSES OF ACTION

CLAIM I **MALICIOUS PROSECUTION**

101. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

102. Here, the efforts of the Inspector General led to: (a) the commencement or continuance of an original criminal or civil judicial proceeding; (b) its legal causation by the present defendants against plaintiff who was the criminal defendant in the original proceeding; (c) its bona fide termination in favor of the present plaintiff; (d) the absence of probable cause for such proceeding; (e) the presence of malice therein; and (f) damages conforming to legal standards resulting to plaintiff.

103. The criminal prosecution of Mr. Delahoussaye was supported only by the Inspector General's investigation, such that it would not have continued without the actions of the Inspector General.

104. As detailed by the foregoing, Ms. Webb's flawed investigation and her erroneous and wrongful conclusions led to the charges that were filed against Mr. Delahoussaye.

105. The charges against Mr. Delahoussaye were initially declined by a grand jury.

106. After a bill of information was subsequently filed by the District Attorney, the district judge found that the charges were not supported by probable cause.

107. As detailed by the foregoing, the nature and the multitude of errors that plagued the Inspector General's investigation and Ms. Webb's testimony reveal that her allegations of illegal conduct were made with actual malice and with a reckless disregard for the truth (e.g., that she knew, or should have known, that she was incorrect).

108. Accordingly, Defendants are liable to Petitioner for the damages he has incurred as result of their malicious prosecution of him.

CLAIM II
ABUSE OF RIGHT AND PROCESS

109. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

110. The Louisiana abuse of rights doctrine applies if one of the following conditions is met: (a) the rights were exercised exclusively for the purpose of harming another or with the predominant motive to cause harm; (b) an absence of a serious and legitimate interest that is worthy of judicial protection; (c) using the right in violation of moral rules, good faith or elementary fairness; or (d) exercising the right for a purpose other than for which it was granted. *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 520 (5th Cir.1994)(quotation omitted).

111. As detailed by the factual allegations herein, the Inspector General wrongfully exercised its right to investigate Petitioner without jurisdiction to do so.

112. Moreover, given that Petitioner had no contract with a state entity, the Inspector General had no serious or legitimate interest to investigate him.

113. The Inspector General has no authority to obtain a search warrant or to conduct a criminal investigation on its own.

114. Furthermore, the Inspector General failed to comply with its own statute when obtaining a subpoena duces tecum and wrongfully used such subpoena to obtain Petitioner's medical records.

115. The Inspector General went forward with its investigation even after Petitioner raised concerns about the Inspector General's jurisdiction and authority to investigate him.

116. The Inspector General started its investigation at the request of a local authority who had political motive to harm Petitioner.

117. On information and belief, the Inspector General unlawfully shared the results of its investigation with third parties because records obtained by the Inspector General were introduced into evidence at United States Civilian Board of Contract Appeals and Petitioner's medical records were shared with members of the Livingston Parish Council.

118. Based on the facts alleged herein and the foregoing, the Inspector General's investigation constituted an abuse of right.

119. Similarly, the essential elements of an abuse of process claim are "(a) the existence of an ulterior purpose; and (b) a willful act in the use of the process not in the regular prosecution of the proceeding." *Duboue v. City of New Orleans*, 909 F.2d 129, 132 (5th Cir.1990).

120. As detailed by the foregoing, the Inspector General commenced an investigation without jurisdiction to do so and obtained a search warrant without the authority to do so.

121. These actions were taken after Petitioner raised concerns about the propriety of the Inspector General's investigation and resulted in unlawfully sharing fruits of the investigation with third parties.

122. At a minimum, based on the foregoing allegations outlined herein, Petitioner has outlined that the Inspector General has used its statutory rights in violation of moral rules, good faith or elementary fairness.

123. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as result of their abuse of right and process.

CLAIM III
TORTIOUS VIOLATIONS OF PRIVACY

124. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

125. In the course of its investigation, the Inspector General wrongfully obtained Petitioner's medical records and shared them with members of the Livingston Parish Council.

126. The Inspector General also wrongfully accused Petitioner of tanning and undergoing medical procedures when he did not do so.

127. This information was released to paint Petitioner in false light and caused his privacy to be needlessly invaded.

128. The Inspector General's conduct was both unreasonable and it seriously interfered with Petitioner's privacy interest.

129. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as result of their abuse of right and process.

CLAIM IV
DEFAMATION

130. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

131. As detailed in Paragraphs 43 through 62 herein, Ms. Webb made false statements that wrongfully accused Petitioner of illegal acts at a hearing in the 21st Judicial District Court on February 23, 2015.

132. Such statements were republished in the media and were defamatory *per se*.

133. Notwithstanding that such words were defamatory *per se*, they were false and communicated with malice and reckless disregard for the truth.

134. Petitioner has suffered substantial injury as a result of these allegations, including damage to his reputation, and the other damages set forth herein.

135. Accordingly, Defendants are also liable to Petitioner for the damages he has incurred as a result of such defamation.

CLAIM V
GENERAL NEGLIGENCE

136. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

137. The Inspector General has a duty to conform its investigations to certain standards.

138. The Inspector is governed by the Principles and Standards for Offices of Inspector General as promulgated by the Association of Inspector Generals.

139. Although La. R.S. 47:220.24(L) may provide that the OIG "shall do all things necessary to carry out the functions set forth [in the statute]," it is understood that such functions must be carried out lawfully and competently.

140. By way of reference, the Principles and Standards for Offices of Inspector General is a 52-page document that outlines a host of quality standards and guidelines that govern operations and reporting exactly like that attempted by the Inspector General here.

141. The standards are intended to assist agencies to focus their investigations on obtaining sufficient factual evidence for use in determining whether criminal, civil, or administrative actions should be initiated against the specific parties for their actions or lack of actions.

142. Critically, the document makes clear that if the Inspector General—an investigatory agency by statute—identifies evidence of improper action or inaction, its duty is to report such findings to the appropriate prosecuting authority for further action to be taken.

143. The guidelines require that due professional care should be used in conducting investigations and in preparing accompanying reports.¹

144. According to the governing standards, due professional care requires:

Standards - OIGs and their investigators should follow the Associations professional standards and comply with applicable standards of conduct.

Thoroughness - Investigations should be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure that sufficient relevant evidence is collected; pertinent issues are sufficiently resolved; and appropriate criminal, civil, contractual, or administrative remedies are considered.

Legal Requirements - Investigations should be initiated, conducted, and reported in accordance with (a) all applicable laws, rules, and regulations; (b) guidelines from applicable prosecutorial authorities; and (c) internal agency policies and procedures. Investigations will be conducted with due respect for rights and privacy of those involved.

Appropriate Techniques - Methods and techniques used in each investigation should be appropriate for the circumstances and objectives.

Objectivity - Evidence should be gathered and reported in a fair, unbiased manner in an effort to determine the validity of alleged improprieties or evaluate the likelihood of violations of statutes, rules, or regulations.

Ethics - At all times the actions of the OIG investigators should conform with the high standards expected of OIG staff.

Timeliness - Investigations must be conducted in a timely manner while recognizing the individual complexities of each investigation.

Accurate and Complete Documentation - Investigative findings, conclusions, and outcomes (such as indictments, convictions, and recoveries) should be supported by adequate documentation, including investigator notes, court orders of judgment and commitment, suspension or debarment notices, settlement agreements, and other documents) in the case file.

¹ See p. 26, Quality Standards for Investigators.
Page 16 of 20

Coordination - Appropriate OIG staff should coordinate investigations with appropriate officials. In cases where civil or administrative actions are necessary, appropriate OIG staff should coordinate actions with prosecutors and other appropriate officials

145. As outlined in the foregoing factual allegations, Mr. Street, Mr. Phares, and Ms. Webb breached their duty to conduct the investigation of Mr. Delahoussaye with due professional care.

146. As a result of that breach, the Defendants have caused Petitioner to suffer damages he would not have otherwise suffered.

147. Accordingly, Petitioner asserts that the Defendants are also liable for his damages pursuant to La. Civil Code art. 2315.

CLAIM VI
CONSTITUTIONAL CLAIMS

148. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

149. At all times pertinent hereto, Mr. Phares and Ms. Webb were acting under color of authority within the meaning and intent of 42 U.S.C. §1983.

150. As detailed by the foregoing, Mr. Phares and Ms. Webb went forward with their investigation without jurisdiction to do so.

151. At all times hereto, Petitioner enjoyed clearly established rights to his good name, reputation, and liberty guaranteed to him under the 14th Amendment of the United States Constitution, in addition to clearly established rights to due process also guaranteed to him under the 14th Amendment of the United States Constitution.

152. As a result of the actions of Ms. Webb and Mr. Phares, Plaintiff was arrested and summonsed to appear in court and he was wrongfully deprived of his freedom also violating rights secured to him under the 4th Amendment of the United States Constitution.

153. Specifically, as outlined in the foregoing, the Inspector General is not authorized by statute to conduct its own criminal investigations, or to obtain search warrants to further its investigations.

154. As outlined herein, Ms. Webb wrongfully obtained a search warrant and subpoenas duces tecum in breach of well-established law.

155. Mr. Phares, as chief investigator, participated in and/or failed to properly supervise Ms. Webb.

156. As a result of violating well-established laws, Mr. Phares and Ms. Webb wrongfully obtained Petitioner's medical records and a multitude of computers and business records that made it impossible for C-Del and Petitioner to conduct business.

157. Notably, Mr. Phares and Ms. Webb never reviewed or used the information wrongfully seized from Petitioner's home in support of the Inspector General's purported investigation.

158. The actions of Mr. Phares and Ms. Webb caused Petitioner to lose work and wrongfully deprived him of property and his ability to perform his work, along with depriving him of his right to privacy and painting him in a false light.

159. Accordingly, the actions of Mr. Phares and Ms. Webb have impaired and deprived Petitioner of his clearly established rights, thereby making the Defendants liable to Petitioner for damages pursuant to 42 U.S.C. §1983.

160. Petitioner also asserts that Defendants herein are also liable to him for attorney's fees pursuant to 42 U.S.C. §1988.

CLAIM VIII
RESPONDEAT SUPERIOR

161. Petitioner re-alleges and incorporates by reference all previous allegations as if copied in their entirety herein.

162. Defendants' actions were made in the course and scope of their employment and were made with actual malice towards Petitioner.

163. As the employer of these individuals, the Office of Inspector General is liable to Petitioner for the tortious actions of its employees.

164. As general rule, slander, under Louisiana law, constitutes individual tort that does not give rise to solidary liability; however, where employee makes slanderous statement within course and scope of his employment, the employer is solidarily liable. *Manale v. City of New Orleans, Dept. of Police*, C.A.5 (La.) 1982, 673 F.2d 122.

165. Moreover, Louisiana Civil Code article 2320 provides for master-servant tort liability, also known as vicarious liability, in pertinent part as follows: "Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.

166. Inasmuch, the State of Louisiana, through the Office of Inspector General, is also liable to Petitioner for the tortious actions of its employees sued upon herein.

DAMAGES

167. As a result of the foregoing offenses, Petitioner has lost income that he would have otherwise earned.

168. Moreover, Petitioner's reputation has been tarnished as a result of the allegations surrounding his indictment and prosecution.

169. In addition, by seizing all computers, servers and equipment, C-Del was forced to cease operations due to the seizure of crucial and vital equipment necessary to sustain and support its business.

170. These damages have also impaired his ability to gain other employment and consulting opportunities that he would have otherwise obtained.

171. Petitioner has also suffered personal humiliation, embarrassment, mental anguish, anxiety, and hurt feelings and seeks all compensatory damages available to him under the law.

172. Accordingly, Petitioner avers that Defendants are liable to him for all damages that he has occurred as a result of their wrongful conduct.

GENERAL AVERMENTS

173. Petitioner is seeking compensation for damages in excess of \$50,000, and, therefore, requests a jury trial pursuant to Louisiana Code of Civil Procedure Art. 1731.

WHEREFORE, Petitioner prays that, after due proceedings be had, there be judgment rendered herein in its favor and against Defendants, declaring the Defendants are to be liable and indebted unto Petitioner for:

- a. all damages as are just and reasonable under the circumstances,
- b. judicial interest from the date of her initial judicial demand;

- c. the award of costs and expenses to the fullest extent authorized by law; and
- d. all such other and further relief which the Court deems necessary and proper and that may be just and reasonable under the circumstances of this matter, whether in equity, or otherwise.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2016, the foregoing was served on counsel for the Inspector General via electronic mail.



Al J. Robert, Jr.



NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COREY DELAHOUSAYE	*	NO. C646126
	*	
VERSUS	*	
	*	
STATE OF LOUISIANA, THROUGH	*	SECTION 24
THE OFFICE OF INSPECTOR	*	
GENERAL, ET AL	*	

THE OIG DEFENDANTS' PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION

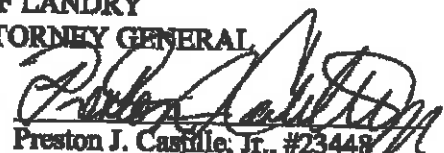
NOW INTO COURT, through undersigned counsel, come the Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants" or "OIG") and respectfully file this peremptory exception of no cause of action, seeking dismissal of all the claims asserted by Plaintiff, Corey Delahoussaye, in his First Amending and Restated Petition for Damages ("Amended Petition"). As explained in further detail in the attached memorandum, the new allegations of the Amended Petition still do not give rise to any legally cognizable causes of action against the OIG Defendants. As such, Plaintiff's claims cannot be maintained against them and they should be dismissed with prejudice, once again. Further, to the extent Greg Phares and Jessica Webb are sued in their individual capacities, these two defendants should again be dismissed, for the failure of the Amended Petition to allege any facts against them individually.

WHEREFORE, the OIG Defendants pray that plaintiff be ordered to appear and show cause why the exception should not be granted; and that, after due proceedings are had, the Court grant the exception and dismiss, with prejudice, all of plaintiff's claims against the OIG Defendants, and further dismiss Greg Phares and Jessica Webb from this lawsuit to the extent they were sued exclusively in their individual capacities.

Respectfully submitted

JEFF LANDRY
ATTORNEY GENERAL

BY:



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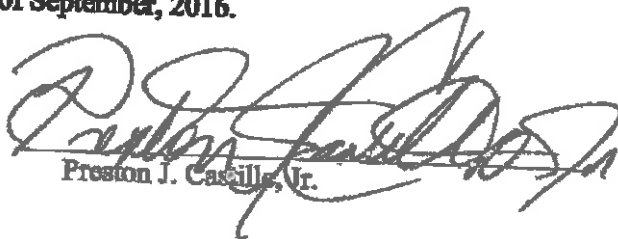
-CERTIFICATE-

I certify that a copy of the foregoing was this day either faxed, emailed, or mailed, postage prepaid, to the following:

Al J. Robert, Jr.
Law Office of Al J. Robert, Jr., LLC
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Counsel for Plaintiff

Baton Rouge, Louisiana, this 27th day of September, 2016.



Preston J. Castille, Jr.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COREY DELAHOUSSAYE * **NO. C646126**
*
VERSUS *
*
STATE OF LOUISIANA, THROUGH * **SECTION 24**
THE OFFICE OF INSPECTOR *
GENERAL, ET AL *

ORDER

Considering the foregoing Peremptory Exception of No Cause of Action filed by State Inspector General, Stephen Street in his official capacity, the Louisiana Office of Inspector General, Jessica Webb and Greg Phares, individually;

IT IS THEREFORE ORDERED that Plaintiff Corey Delahoussaye appear on the 17th day of October, 2016, at ____ o'clock ____ M., and show cause, if he can, why the exception should not be granted and all of his claims should not be dismissed with prejudice.

Baton Rouge, Louisiana, this ____ day of _____, 2016.

JUDGE, Nineteenth Judicial District Court

PLEASE SERVE:

Corey Delahoussaye

Through his Attorney of Record:

Al J. Robert, Jr.
Law Office of Al J. Robert, Jr., LLC
757 St. Charles Avenue-Suite 301
New Orleans, LA 70130

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COREY DELAHOUSSAYE * NO. C646126
*
VERSUS *
*
STATE OF LOUISIANA, THROUGH * SECTION 24
THE OFFICE OF INSPECTOR *
GENERAL, ET AL *

**THE OIG DEFENDANTS' MEMORANDUM IN SUPPORT OF
PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION**

MAY IT PLEASE THE COURT:

The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants" or "OIG") submit this memorandum in support of their exception of no cause of action, seeking dismissal with prejudice of all claims Plaintiff asserted against them in his First Amending and Restated Petition for Damages ("Amended Petition"). Like the original petition, the Amended Petition asserts claims of malicious prosecution, abuse of right, abuse of process, defamation, tortious invasion of privacy, Sections 1983 and 1988, negligence, and respondeat superior. There are no new allegations against Greg Phares, thus once again warranting dismissal of the lawsuit as to him. Similarly, the new allegations against Jessica Webb are still insufficient to give rise to the claimed causes of actions. The Court should, therefore, sustain the OIG Defendants' exception and dismiss all of Plaintiff's claims with prejudice, just as it did before.

I. **INTRODUCTION**

At the Court's direction, Plaintiff amended his petition. In so doing, Plaintiff not only added several allegations but he also conveniently removed a few (including, for example, the allegations that Livingston Parish refused to pay C-Del nearly \$400,000 for work billed to the Parish because an auditing firm investigated and reported deficiencies in C-Del's billings in May 2012;¹ and his reference to "his state job" in setting forth the deprivations of his constitutional

¹ Compare Original Petition ¶¶ 17-19, and Amended Petition ¶¶ 18-20.

rights by the OIG).² The newly added allegations seem to all be directed at defendant Jessica Webb. The allegations against the other defendants are unchanged. Looking closely at the new allegations against Ms. Webb, however, it becomes clear that the new facts alleged are still insufficient to maintain causes of action against her.

The newly added paragraphs contain quotes from, and references to, Ms. Webb's testimony during the criminal proceedings that form the basis of this lawsuit. There, Mr. Delahoussaye's counsel questioned Ms. Webb at length regarding the details of her investigation and her findings regarding the fraudulent billings of the state by Mr. Delahoussaye. Sewn within these new paragraphs are complaints that Ms. Webb's findings were erroneous. However, even if Ms. Webb's investigative findings were based on erroneous assumptions and mathematical miscalculations, as alleged, these errors fail to demonstrate malice or ill will by Ms. Webb and the OIG. This investigator was asked to, and did, investigate the charges of mis-billing which the 21st JDC District Attorney had already begun looking into (and confirmed through an independent third-party investigator) months before the OIG became involved. The Livingston Parish District Attorney's decision to prosecute Mr. Delahoussaye based on the data submitted by Ms. Webb following her investigation was beyond the OIG's control, and absolutely cannot be imputed on Ms. Webb or the OIG.

Mr. Delahoussaye's true disagreement is with the Livingston Parish District Attorney's Office. The fact that he is limited in his ability to seek redress against the District Attorney's Office – who (1) requested that the OIG investigate Mr. Delahoussaye's alleged criminal conduct in furtherance of the D.A.'s ongoing investigation, and (2) prosecuted criminal charges against Delahoussaye in federal and state court – is no justification for this baseless lawsuit against the next best thing, i.e., the investigative agency, who did no more than fulfill its statutory mandate in investigating the allegations against Delahoussaye, submit its findings to the D.A., and answer the D.A.'s questions about those findings on the witness stand. The law provides no support for the self-serving and conclusory allegations Plaintiff levies against the OIG. Because the allegations of this lawsuit, as amended, are effectively unchanged, the Court's prior ruling sustaining the exception should stand.

² Compare original petition ¶ 98, and Amended Petition ¶ 151 (omitting: "which included his state job").

II. THE AMENDED PETITION'S ALLEGATIONS

1. OLD ALLEGATIONS.

Plaintiff alleges that C-Del, a company he founded and co-owned, "was hired by Livingston Parish" on or about October 27, 2009 "to negotiate with FEMA and the Governor's Office of Homeland Security & Emergency Preparedness ("GOHSEP") to ensure repayment of funds that had been expended on Hurricane Gustav cleanup."³ He further alleges that C-Del's contract with Livingston Parish was terminated on or about September 24, 2011;⁴ and that around November 18, 2011, the District Attorney for the 21st Judicial District announced that Plaintiff was under criminal investigation in a televised interview with WAFB in Baton Rouge, Louisiana.⁵ The District Attorney also reported purported wrongdoing by Plaintiff and C-Del to the federal government for investigation.⁶ Then, in June 2012, the OIG opened an investigation on Mr. Delahoussaye at the request of counsel for the Livingston Parish Council.⁷

The precise factual allegations that are directed to the OIG are set forth in the Petition as follows:

INSPECTOR GENERAL

21. The Inspector General started to investigate Petitioner sometime beginning in June of 2012.
22. The investigation was purportedly opened at the request of Mr. Chris Moody, who was serving as counsel for the Livingston Parish Council.
23. At no time, however, was C-Del or Petitioner employed or contracted by a state agency performing working on behalf of Livingston Parish.
24. Accordingly, counsel for Petitioner and C-Del inquired about the jurisdiction of the Inspector General to investigate.
25. The Inspector General responded that it had authority to investigate on the grounds that Petitioner was a contractor with GOHSEP, a state agency.
26. Petitioner, however, was not a contractor of GOHSEP.
27. On July 18, 2012 Jessica Webb issued a subpoena to URS, an Engineering firm, to which C-Del was contracted.
28. On July 17, 2013, the Inspector General applied for a search warrant in furtherance of its investigation for Mr. Delahoussaye's residence

³ Petition ¶¶ 3, 5-6.

⁴ Petition ¶ 16.

⁵ *Id.* at ¶ 17.

⁶ *Id.* at ¶ 18.

⁷ *Id.* at ¶¶ 21-22.

29. As detailed *infra*, Louisiana law does not provide the Inspector General authority to obtain a search warrant.

30. Notwithstanding the full cooperation of Petitioner and C-Del, the Inspector General raided Petitioner's home with the assistance of the East Baton Rouge Sheriff's Office in the early-morning hours on July 25, 2013--eight days after the warrant was signed by a district judge in the 19th JDC.

31. The raid was conducted at 6:00 am with multiple agents bearing firearms in a home that was only occupied by Mr. and Ms. Delahoussaye and their two young children.

32. There is no objectively reasonable rationale for conducting a raid in such a fashion to execute search warrant that had been obtained over a week prior.

33. Despite a lengthy investigation, there is no evidence that Ms. Webb or Mr. Phares, who were both present for the raid, ever made any attempt to review the information seized from Petitioner's residence or to otherwise use the seized information to support the Inspector General's investigation.

34. In August and September 2013, the Inspector General sent a subpoena to Anytime Fitness seeking its records related to Petitioner from October 27, 2009 through present, despite the fact that C-Del's contract had been terminated nearly two years prior.

35. In October 2013, The Inspector General sent a subpoena seeking medical records of Petitioner from the Aesthetic Medicine & Anti-Aging Clinics of Louisiana, which application was in direct violation of Louisiana law.

36. Moreover, on information and belief, Ms. Webb was the only witness to testify before the grand jury in support of the charges that were declined against Petitioner in November 2013.

Plaintiff then alleges that "21st JDC District Attorney sought to charge Petitioner with various crimes related to the alleged improper billing practices," and the "charges were only possible because of the investigation conducted by the Inspector General."⁸ Plaintiff further alleges that when the grand jury failed to indict him on the alleged crimes, on "December 3, 2013, Scott M. Perrilloux, District Attorney for the 21st Judicial District Court caused 81 Counts to be filed in the 21st Judicial District Court for the Parish of Livingston against Petitioner."⁹ Petitioner alleges that he was ultimately "charged with 55 counts of Filing False Records in violation of La. R.S. 14:133 and four counts of Theft in violation of La. R.S. 14:67."¹⁰ Following a hearing on February 23, 2015, District Court Judge Brenda Ricks found no probable cause for

⁸ Petition ¶¶ 37-38.

⁹ *Id.* at ¶¶ 39-40.

¹⁰ *Id.* at ¶ 42.

the charges brought by the District Attorney.¹¹ Further, following a hearing on Plaintiff's Motion to Suppress the evidence obtained by the OIG, the Motion to Suppress was granted and the district judge allegedly ruled that the OIG "did not have jurisdiction to investigate Petitioner."¹² Plaintiff alleges that, after the matter was remanded to the district judge following an application for writs to the First Circuit, the medical records obtained by the OIG were suppressed and the charges against Plaintiff were dismissed.¹³ (Notably, there are no allegations of a post-remand finding of lack of jurisdiction by the OIG and/or that the OIG was a party to those proceedings, as would be necessary to defend the so-called lack of jurisdiction through counsel.)

2. NEW ALLEGATIONS

Plaintiff devoted several pages of his Amended Petition to a discussion of Ms. Webb's testimony. Specifically, from paragraph 44 through 61, Plaintiff selectively quotes and/or paraphrases Ms. Webb's testimony during the probable cause hearing on February 23, 2015 in the 21st JDC, noting in detail his disagreement with, and criticism of, Ms. Webb's findings. The transcript of that hearing and the exhibits offered in evidence are the best evidence of their contents. More importantly, even accepting as true Mr. Delaboussaye's conclusions that Ms. Webb's findings were based on erroneous assumptions and miscalculations (which, by law, the Court need not do), there still is no support for Plaintiff's claim that he was defamed and/or was the subject of the OIG's malice and ill will by virtue of Ms. Webb's investigation. There are no new factual allegations against the other individual defendants, Mr. Street and Mr. Phares. As such, because the Amended Petition again fails to state causes of action against the OIG Defendants, all of Plaintiff's claims should once again be dismissed with prejudice.

III. NO CAUSE OF ACTION STANDARD

"The function of the peremptory exception of no cause of action is to question whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition."¹⁴ "A 'cause of action,' when used in the context of the peremptory exception of no cause of action, refers to the operative facts that give rise to the plaintiff's right to judicially

¹¹ *Id.* at ¶ 63.

¹² *Id.* at ¶ 66.

¹³ *Id.* at ¶¶ 68-69.

¹⁴ *Washington Ind. Bank v. Monticello*, 07-1018 (La. App. 3 Cir. 2/6/08), 976 So.2d 251, 256 (quoting *Cleco Corp. v. Johnson*, 01-175 (La. 9/18/01), 795 So.2d 302, writ denied, 08-530 (La. 4/25/08), 978 So.2d 369).

assert the action against the defendant.”¹⁵ “The petition must set forth the material facts upon which a cause of action is based; the allegations must be ultimate facts; conclusions of law [or] fact, and evidentiary facts will not be considered.”¹⁶ Put simply, the Court must only accept as true the allegations of fact contained in the Amended Petition, and disregard the numerous conclusions of law and fact presented as factual “allegations.” Sole consideration of the Amended Petition’s factual allegations inevitably yields a ruling in favor of the OIG.

III. THE OIG’S EXCEPTION SHOULD BE SUSTAINED, AS NONE OF THE CLAIMS ASSERTED IN THE PETITION CAN BE MAINTAINED.

1. PLAINTIFF’S CLAIM FOR DEFAMATION BY THE OIG FAILS.

The Petition alleges that “Mr. Street and his employees communicated multiple defamatory statements about Petitioner regarding alleged improper and illegal billing by Petitioner,” that “[s]uch statements were published in the media and were defamatory *per se*,” and that “they were false and communicated with malice.”¹⁷ Because Plaintiff must, but cannot, establish actual malice, as he should, to maintain his defamation under the circumstances of this case, this claim fails as a matter of law. Indeed, as shown below, the newly added factual allegations of the lawsuit relate to Ms. Webb’s trial testimony during the 21st Judicial District Court proceedings (and Mr. Delahoussaye’s criticism of her findings as being erroneous). Those allegations of error, even when accepted as true, do not support a finding of malice, as a matter of law.

a. Standard Required to Properly Plead the Claim of Defamation in this Case.

There are two types of defamation: defamation *per se* and words susceptible of having a defamatory meaning.¹⁸ The question of whether a communication is defamatory is ultimately a legal question for the court.¹⁹ A defamation plaintiff must generally establish four elements: “(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third

¹⁵ *Bogues v. Louisiana Energy Consultants, Inc.*, 46,434 (La. App. 2 Cir. 8/10/11), 71 So.3d 1128, 1130 (citing *White v. St. Elizabeth B.C. Bd. of Dir.*, 45,213 (La. App. 2 Cir. 6/2/10), 37 So.3d 1139).

¹⁶ *Sparks v. Donovan*, 04-388 (La. App. 3 Cir. 10/13/04), 884 So.2d 1276, 1279 (quoting *Parish of Jefferson v. City of Kenner*, 95-266 (La. App. 5 Cir. 10/31/95), 663 So.2d 880) (emphasis added).

¹⁷ Petition at 85-87.

¹⁸ *Kennedy v. Sheriff of E.B.R.*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 674-5.

¹⁹ *Fitzgerald v. Tucker*, 1998-2313, p. 11 (La. 6/29/99), 737 So.2d 706, 716.

party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury.²⁰
The lack of any one of the elements is fatal to the claim.²¹

When, the plaintiff is a public official or, as here, a private plaintiff whose actions are a matter of public concern, the law imposes upon such a plaintiff an additional burden. In such cases, the "plaintiff must prove actual malice, i.e., that the defendant either knew the statement was false or acted with reckless disregard for the truth."²² The Louisiana Supreme Court in *Davis v. Borskey*,²³ made it clear that in order to show actual malice or reckless disregard for the truth, the burden of proof of a public official (or public figure) bringing a defamation claim is exponentially higher than that of other plaintiffs. This particular plaintiff's burden in proving the first element of his defamation claim is "clear and convincing."²⁴

Providing additional guidance on the actual malice standard, the court in *Starr, supra*, explained:

To establish a reckless disregard for the truth, the plaintiff must show that the false publication was made with a high degree of awareness of probable falsity, or that the defendant entertained serious doubt as to the truth of his publication. *Tarpley v. Colfax Chronicle*, 94-2919, p. 2 (La. 2/17/95), 650 So.2d 738, 740. Further, conduct which would constitute reckless disregard is typically found where a story is fabricated by the defendant, is the product of his imagination, or is so inherently improbable that only a reckless man would have put it in circulation.²⁵

More than just Plaintiff's conclusion that Ms. Webb's findings of improper billing by Mr. Delahoussaye were erroneous or even false are needed to survive the exception because the public nature and/or ramification of the OIG's investigative findings require a heightened burden of proof which Plaintiff cannot meet.

The Louisiana Supreme Court has noted that speech on matters of public concern enjoys enhanced constitutional protection.²⁶ In particular, the Louisiana Supreme Court imposes the heightened burden of showing "actual malice" on private plaintiffs when the alleged defamatory statements involve a matter of public concern. In this regard, the High Court established that a private figure plaintiff claiming defamation from a factual misstatement on a public issue

²⁰ See *Badeaux v. Southwest Computer Bureau, Inc.*, 2005-0612, (La. 3/17/06), 929 So.2d 1211, 1218.

²¹ *Badeaux*, 929 So.2d 1211, 1218.

²² *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390. (Emphasis added.)

²³ 94-2399 (La. 9/5/95), 660 So.2d 17.

²⁴ *Davis*, 660 So.2d 17, 23.

²⁵ *Starr*, 978 So.2d at 390. (Citation omitted and emphasis added.)

²⁶ *Romero v. Thomson Newspapers (Wisconsin), Inc.*, 94-1105 (La. 1/17/95), 648 So.2d 866, 869, cert. denied, 515 U.S. 1131, 115 S.Ct. 2556, 132 L.Ed.2d 810.

cannot recover damages without showing actual malice.²⁷ Speech is a “matter of public concern” if it relates “to any matter of political, social, or other concern to the community.”²⁸ In other words, private plaintiffs (or limited-purpose public figures) involved in a matter of public concern and public plaintiffs (or public officials, i.e., all-purpose public figures) alike must still meet the requirement of proving “actual malice”²⁹ as described in *New York Times Co. v. Sullivan*,³⁰ because the focus of the underlying conduct spoken of is its impact on the public.

The OIG submits that fraudulent and/or excessive billings under a state contract, the purpose of which was to ensure proper repayment of emergency and disaster relief funding for cleanup efforts following Hurricane Gustav, is a matter of public concern. Plaintiff’s alleged misconduct implicating the theft and/or misuse of taxpayer dollars certainly concerns and affects the public. This proposition is consistent with the abundant Louisiana jurisprudence addressing this precise issue. To be sure, speech about the use and possible misuse of public funds is routinely held to be speech about a matter of public concern.³¹ Accordingly, the OIG’s reported finding to the Livingston Parish District Attorney, corroborating the District Attorney’s suspicion (and the auditor’s prior consistent finding of misbillings)³² makes Delahoussaye a public figure for the limited purpose of his defamation claim against the OIG and/or relate to a matter of public concern under the law of defamation. Enhanced constitutional protection of statements regarding public matters is precisely the purpose of the heightened standard of actual malice.³³

Delahoussaye, therefore, has not stated a cause of action for, and otherwise cannot prevail on, his defamation claim without establishing actual malice. Indeed, he must prove all elements

²⁷ *Id.* at 870, citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

²⁸ *Kennedy v. Sheriff of East Baton Rouge Parish*, 05-1418 (La. 7/10/06), 935 So.2d 669, 677 n. 6, quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983).

²⁹ See *Trentacosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552, 560; *Kennedy v. Sheriff of East Baton Rouge*, 05-1418 (La. 7/10/06), 935 So.2d 669, 675-76; *Starr v. Boudreaux*, *supra*, (stating that private plaintiffs who inject themselves or become involved into a particular public controversy become public figures for this limited range of issues.) See also 12 LA. CIV. L. TREATISE, TORT LAW § 17:8 (2d ed.) (West 2016).

³⁰ 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

³¹ See, *Bradford v. Jackson*, 44,092 (La. App. 2 Cir. 5/6/09), 12 So.3d 974, 882, *writ denied*, 09-1648 (La. 10/16/09), 19 So.3d 482 (e-mail addressing possible misuse of funds by nonprofit corporation associated with Grambling University was speech about a matter of public concern); *Thompson v. Ennis Television Broadcasting*, 04-1020 (La. App. 4 Cir. 1/19/05), 894 So.2d 480, 483, *writ denied*, 05-417 (La. 4/22/05), 899 So.2d 580 (news report of allegations of misuse of church funds was speech about a matter of public interest); *Trentacosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552, 561 (statement concerning government investigation of charitable bingo game was speech about a matter of public interest); and *Modica v. Taylor*, 465 F.3d 174, 180 (5th Cir. 2006) (misuse of public funds is a matter of public concern).

³² The prior and now-deleted allegation that an independent auditor’s investigation yielded the same result as the OIG’s investigation is quite telling – even if Plaintiff now disingenuously wishes to delete this fact. See original petition ¶¶ 18-19, 26.

³³ *Romero*, 648 S.2d at 870.

of his cause of action because the law is clear that in those “cases involving statements ... made about a public figure, a plaintiff must prove all elements of his cause of action for defamation, including actual malice, and may not rely on any presumption based on the fact that the words are defamatory *per se*.”³⁴ Stated simply, Mr. Delahoussaye cannot hide behind the presumptions of falsity and actual malice by alleging defamation *per se*. The presumption simply does not apply to him.³⁵ He must instead establish, by clear and convincing evidence, that the OIG Defendants fabricated their findings regarding Delahoussaye’s abusive billing practices, or knew they were false and recklessly disregarded their falsity. He cannot meet this extremely heavy burden of proof under the facts alleged in this case.

b. Delahoussaye Cannot Establish Actual Malice by the OIG.

While the Amended Petition sets forth facts through Ms. Webb’s testimony in an attempt to support Plaintiff’s defamation claim, these new “facts” and the factual and evidentiary conclusions that the OIG’s findings were erroneous fail yet again to establish actual malice by Ms. Webb and the OIG, under any standard (let alone, clearly and convincingly). At most, the newly alleged facts show that Ms. Webb made mathematical errors in reviewing Delahoussaye’s billing records. There is, however, no support (in the Petition or otherwise) for the proposed notion that an error in the course of an investigation is somehow equitable to malice. In other words, Delahoussaye’s complaints about the manner in which the investigation was carried out do not amount to malice, even if accepted as true. Under the well-settled jurisprudence, a failure to investigate or investigate properly is insufficient to demonstrate actual malice, as a matter of law.³⁶

Like the OIG’s statements in *Davis, supra*, the OIG’s reported findings in this case were based on, and supported by, its investigation, which it had the authority and duty to conduct upon

³⁴ *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390.

³⁵ Relying on Louisiana Supreme Court precedent, the First Circuit in *Starr v. Boudreaux* made it clear that “in cases involving statements made about a public figure, where constitutional limitations [such as the OIG’s First Amendment speech] are implicated, a plaintiff must prove actual malice, implying that defamation *per se* does not apply in cases involving a public figure.” *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390, citing *Costello v. Hardy*, 2003-1146 (La. 1/21/04) 864 So.2d 129, 140-141.

³⁶ See, e.g. *Davis v. Borskey*, 94-2399 (La. 9/5/95) 660 So.2d 17, 24-25 (“While it might well have been more reasonable for the [defendant] to have investigated plaintiff’s bidding practices more thoroughly ... a plaintiff cannot satisfy the ... actual malice standard by demonstrating only that the defendant failed to investigate fully the truth of the statements before publication.”); *Romero v. Thomson Newspapers (Wisconsin), Inc.*, 94-1105 (La. 1/17/95), 648 So.2d 866, 869, cert. denied, 515 U.S. 1131, 115 S.Ct. 2556, 132 L.Ed.2d 810 (“Failure to investigate does not present a jury question on whether the statements were published with... reckless disregard for the truth.”); *Romero v. Abbeville Broad. Serv., Inc.*, 420 So.2d 1247, 1250 (La. App. 3 Cir. 1982) (“Mere proof of the failure to investigate, without more, cannot establish reckless disregard for the truth. Rather, the publisher must act with a high degree of awareness of probable falsity.”).

being alerted of Delahoussaye's abuses of state funds through his improper billing practices. While Mr. Delahoussaye strenuously disapproves and criticizes Ms. Webb's calculations and conclusions (even taking issue with the most basic of semantics used by Ms. Webb during her testimony, including her review and reliance on Delahoussaye's "Daily Log" vs. "time sheet"), the inescapable reality is that it was within the OIG's right (in fact, it was its *duty*) to investigate the alleged wrongdoing by Delahoussaye while under state contract.

Louisiana law provides that "[t]he prevention and detection of waste, inefficiencies, mismanagement, misconduct, abuse, fraud and corruption in . . . the executive branch of state government . . . is an important responsibility of the state."³⁷ The statute expressly authorizes the OIG to "examine and investigate the management and affairs of the covered agencies concerning waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption, and he may conduct all necessary investigations into such areas, including but not limited to . . . evidence of a pattern of excessive bills on state contracts [and] waste or abuse of things of value belonging to or used by the covered agencies."³⁸ When the OIG conducts an investigation, that investigation may result in the OIG publishing a written, final report of its findings. Under state law, the OIG shall report its findings to the Governor³⁹ and [s]uch reports shall be subject to the provisions of [the Louisiana Public Records Law].⁴⁰

To be sure, the OIG's law enforcement authority is broad. The OIG is designated as "a law enforcement agency and conferred all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duties, powers, and functions set forth in [the pertinent Revised Statutes]."⁴¹ (Plaintiff himself recites this statutory provision in his Petition.)⁴² The statute further provides that: "the inspector general shall [receive and] investigate complaints of waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption and, when appropriate, recommend whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted and take further action as appropriate."⁴³

³⁷ La. R.S. 49:220.21.A.

³⁸ La. R.S. 49:220.21(B); La. R.S. 49:220.24.B (2 and 5).

³⁹ La. R.S. 49:220.24(C)(5).

⁴⁰ La. R.S. 49:220.24(C)(5).

⁴¹ La. R.S. 49:220.24(J).

⁴² Petition ¶ 59.

⁴³ La. R.S. 49:220.24(B)(2 and 3).

The OIG's investigation of Delahoussaye and C-Del's unlawful billings and abuse of state funds while carrying out their contractual obligations for the state and GOHSEP, and its report to the District Attorney of its findings of improper billing were consistent with the OIG's broad statutory authority, the basis of which is outlined above. The OIG's findings were also consistent with those of the auditing firm retained by the District Attorney, at least one month before the OIG's investigation began, to investigate the same claims of wrongdoing by C-Del and Delahoussaye.⁴⁴

It bears noting that, on the face of the Amended Petition, Plaintiff's contract with the state was terminated, presumably due to the improper billings, approximately nine months before the District Attorney sought out the OIG to investigate the claimed unlawful billing practices.⁴⁵ Further, the Amended Petition also makes it clear that, long before the OIG's involvement (that is, approximately seven months before the OIG commenced its investigation), the District Attorney suspected and began investigating Delahoussaye and C-Del's allegedly false bills for time reportedly expended on work done pursuant to C-Del's contract with the state.⁴⁶ The Amended Petition, thus, fails to establish that the OIG's findings were fabricated or motivated by malice (especially considering Plaintiff's prior acknowledgement in his original petition that the auditing firm retained by the District Attorney found, like the OIG, that Delahoussaye's billing of the state was deficient).⁴⁷ Because there is no support in the Amended Petition for a finding of malice by the OIG investigators, Delahoussaye's defamation claim cannot be maintained. It should be dismissed with prejudice.

c. The OIG's Statements Are Protected by a Qualified Privilege.

Even if Delahoussaye were to somehow establish that he was defamed by the OIG through clear and convincing evidence that the OIG acted with knowledge of falsity or reckless disregard for the truth, he would not be able to overcome the OIG's defense of privilege.

In Louisiana, privilege is a defense to a defamation action.⁴⁸ "The doctrine of privilege rests upon the notion that sometimes, as a matter of public policy, in order to encourage the free communication of views in certain defined instances, one is justified in communicating

⁴⁴ Original petition, at ¶¶ 18-19.

⁴⁵ Amended Petition, at ¶¶ 16 and 21.

⁴⁶ *Id.* at ¶¶ 17, and 21.

⁴⁷ The deletion of this allegation in the Amended Petition does not somehow magically erase this fact.

⁴⁸ *Castello v. Hardy*, 03-1146 (La.1/21/04), 864 So.2d 129, 141.

defamatory information to others without incurring liability.⁴⁹ Privileged communications are divided into two general classes: (1) absolute; and (2) conditional or qualified.⁵⁰ An absolute privilege exists in a limited number of situations, such as statements by judges and legislators in judicial and legislative proceedings.⁵¹ A conditional or qualified privilege arises in a broader number of instances.⁵²

The analysis for determining whether a conditional privilege exists involves a two-step process.⁵³ First, the court must determine (1) whether the attending circumstances of a communication occasion a qualified privilege, and (2) whether the privilege was abused, which requires that the grounds for abuse-malice or lack of good faith-be examined.⁵⁴ With respect to the privilege regarding reports of governmental proceedings and activities, the privilege is abused if the publisher (a) knows the matter to be false, or (b) acts in reckless disregard as to its truth or falsity.⁵⁵

The Louisiana Supreme Court has recognized that law enforcement officers should be allowed to report the fact of a criminal investigation without fear of a defamation action if the person is cleared of the charges.⁵⁶ With respect to the privilege regarding reports of governmental proceedings and activities, the privilege is abused if the publisher knows the matter to be false, or acts in reckless disregard as to its truth or falsity.⁵⁷ Summarizing the applicability of the privilege and requirements to determine abuse of the privilege by the reporting agency, the Supreme Court made it clear that: "mere negligence as to falsity (or lack of reasonable grounds for believing the statement to be true) is no longer sufficient to prove abuse of the conditional privilege. Instead, knowledge or reckless disregard as to falsity is necessary for this purpose."⁵⁸ The Court further explained that "[u]nder this standard, even proof of gross negligence in the publication of a false statement is insufficient to prove reckless disregard.

⁴⁹ *Kennedy v. Sheriff of E.B.R.*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 681, citing *Tomer v. Brentz*, 146 So.2d 723, 725 (La. App. 3 Cir.1962).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La.7/5/94), 639 So.2d 730, 745.

⁵⁴ *Id.*

⁵⁵ *Kennedy*, 935 So.2d at 684, citing *Trentecosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552, 564 n. 16.

⁵⁶ *Trentecosta v. Beck*, 96-2388 (La. 10/21/97), 703 So.2d 552.

⁵⁷ *Kennedy v.*, 935 So.2d at 684 (citing *Trentecosta*, 703 So.2d 552, 564 n.6).

⁵⁸ *Kennedy*, 935 So.2d at 684.

[...] Rather, there must be evidence that the defendant was highly aware that the statements were probably false.⁵⁹

A qualified privilege attaches to the OIG's report and/or publication of its investigative findings relative to Delahoussaye's billing practices to the 21st JDC District Attorney's office, at whose request the investigation was initiated.⁶⁰ Thus, in order to prevail on his defamation claim, in addition to proving defamation by the OIG (which he has not done and cannot do), Delahoussaye must prove that the OIG somehow abused its privilege by including in its report, statements which the OIG knew were false and recklessly disregarded their falsity. He cannot prove abuse of the qualified privilege any more than he can prove actual malice (which requires the same level of proof) in the first instance – and this reality will not change no matter how many times Plaintiff is allowed to amend his Petition. His defamation claim fails outright; but at a minimum, because the OIG's privilege defense cannot be defeated.

2. PLAINTIFF'S TORTIOUS INVASION OF PRIVACY CLAIM ALSO FAILS.

Closely related to the tort of defamation is the tort of invasion of privacy. To support this claim, Plaintiff alleges that, “[i]n the course of its investigation, the Inspector General needlessly made public Petitioner's medical records and the fact that he visited a tanning booth at his health club.”⁶¹ He further alleges that “[t]his information was released to paint Petitioner in false light and caused his privacy to be needlessly invaded.”⁶² The Court has already determined these allegations fail to state a cause of action for tortious invasion of privacy. In light of the absence of any new factual allegations to support this claim, the Court's prior determination should stand.

The tort of invasion of privacy is defined as (1) the appropriation of an individual's name or likeness for the use or benefit of another; (2) an unreasonable intrusion upon the plaintiff's physical solitude or seclusion; (3) publicity which unreasonably places the plaintiff in a false light before the public; (4) unreasonable public disclosure of embarrassing private facts.⁶³ The Louisiana Supreme Court has emphasized, however, that not all invasions of privacy are actionable: “An actionable invasion of privacy occurs only when the defendant's conduct is

⁵⁹ *Id.* at 688.

⁶⁰ Amended Petition, ¶ 22.

⁶¹ Petition at ¶ 125.

⁶² *Id.* at ¶ 127.

⁶³ *Jaubert v. Crowley Post-Signal, Inc.*, 375 So.2d 1386 (La.1979); *Capital City Press v. East Baton Rouge Parish Metro. Council*, 96-1979 (La. 7/1/97), 696 So.2d 562, and citations therein.

unreasonable and seriously interferes with the plaintiff's privacy interest."⁶⁴ The reasonableness of the defendant's conduct is determined by the balancing of conflicting interests at stake, i.e., the plaintiff's interest in protecting his privacy from serious invasions and the defendant's interest in pursuing his course of conduct.⁶⁵ The right of privacy, like other personal rights, may be lost "by express or implied waiver or consent, or a course of conduct which prevents its assertion. Moreover, the right is not absolute; it is qualified by the rights of others."⁶⁶ "The right of privacy is also limited by society's right to be informed about legitimate subjects of public interest."⁶⁷ In analyzing a claim for invasion of privacy, the three elements to be considered are (1) a privacy interest, (2) falsity, and (3) unreasonable conduct.⁶⁸

Plaintiff's allegation that his medical records and the fact that he visited a tanning booth were "released to paint Petitioner in *false light* and caused his privacy to be needlessly invaded"⁶⁹ indicates that his claim for tortious invasion of privacy is one for false light. Louisiana law recognizes a cause of action for "false light" invasion of privacy.⁷⁰ The cause of action arises from publicity which unreasonably places the plaintiff in a false light before the public.⁷¹ The publicity need not be defamatory in nature, but must be objectionable to a reasonable person under the circumstances and must contain either falsity or fiction.⁷² To state a claim under the "false light" branch of the privacy doctrine, a plaintiff must prove that (1) the defendant publicized information concerning the plaintiff's private life, (2) the publicized matter would be highly offensive to the reasonable person, and (3) the information is not of legitimate public concern.⁷³

⁶⁴ *Jaubert v. Crowley Post-Signal, Inc.*, 375 So.2d 1386, 1389 (La. 1979).

⁶⁵ *Jaubert, supra*.

⁶⁶ *Capital City Press v. East Baton Rouge Metro. Council, supra*; see also, *Turner v. State*, 494 So.2d 1292 (La. App. 2 Cir. 1986).

⁶⁷ *Capital City Press*, 696 So.2d at 566; and *Spears v. McCormick & Co., Inc.*, 520 So.2d 805, 810 (La. App. 3 Cir. 1987).

⁶⁸ *Perere v. Louisiana Television Broadcasting Corp.*, 2000-1656 (La. App. 1 Cir. 9/28/01), 812 So.2d 673, 676.

⁶⁹ Petition at 127.

⁷⁰ *Perere, supra*; and *Smith v. Arkansas Louisiana Gas Company*, 26,180, (La. App. 2 Cir. 10/26/94), 645 So.2d 785, writ denied, 95-0035 (La.3/10/95); 650 So.2d 1179.

⁷¹ *Id.*

⁷² *Smith, supra*, at 790; and *Hines v. Arkansas Louisiana Gas Company*, 613 So.2d 646, 658 (La. App. 2 Cir.), writ denied, 617 So.2d 932 (La.1993). Parenthetically, some courts have found that where, as here, the allegedly defamatory statement relates to a matter of public interest, a plaintiff alleging a false light invasion of privacy claim must demonstrate that the information complained of was published with actual malice, i.e., with knowledge that it was false "6 or with reckless disregard for the truth. See *Time, Inc. v. Hill*, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed.2d 456 (1967); see also *Jaubert*, 375 So.2d at 1390 n.6 ("In actions for the "false light" form of invasion of privacy, the [United States Supreme Court] has held that the actual malice showing is required where the material is assertedly private but a matter of public interest.")

⁷³ *Rusho v. Hebert*, 439 So.2d 428, 430 (La. 1983); *Smith, supra*; and *Easter Seal Society v. Playboy Enterprises, Inc.*, 530 So.2d 643, 647 (La. App. 4 Cir.1988), writ denied, 532 So.2d 1390 (La. 1988).

The discovery of Delahoussaye's medical records (showing that he was under general anesthesia and recovering from a tummy tuck and liposuction at the precise time that his billings indicate that he was working) and records evidencing that he was at a tanning booth (at the precise time he was allegedly working and billed the state for that work) was a matter of legitimate public concern. Those records were relevant to the District Attorney's suspicions (and resulting criminal investigation) that Plaintiff had unlawfully billed the state.⁷⁴ Plaintiff's alleged improper billing practice while under state contract is criminal and/or unlawful conduct under Louisiana law – hence, the institution of the criminal proceedings instituted by the District Attorney asserting various charges of filing false records and theft under La. R.S. 14:133 and La. R.S. 14:67, respectively.⁷⁵ Criminal conduct (or, at best, abuse of public funds), especially when perpetrated against the state, is absolutely a matter of public concern;⁷⁶ and it far outweighs Mr. Delahoussaye's private interest in his medical records. "An invasion of the right to privacy is only actionable when the published material is private, not when it is public and newsworthy."⁷⁷

Delahoussaye's contention that he was embarrassed by the disclosure of his (lawfully obtained) medical records and the records evidencing that he was at a tanning booth is not sufficient to state a cause of action for invasion of privacy. Numerous courts have held that merely embarrassing facts cannot serve as the basis for a claim for invasion of privacy.⁷⁸ In addition, the OIG's conduct was reasonable because it was "authorized and justified by circumstances."⁷⁹ The records were obtained pursuant to a *subpoena duces tecum* issued by a court of competent jurisdiction, as authorized by statute.⁸⁰ Plaintiff's allegation that medical records were later suppressed does not affect the reasonableness of the OIG's conduct while

⁷⁴ Compare *Sparks v. Donovan*, 2004-388 (La. App. 3 Cir. 10/13/04) 884 So.2d 1276 (where the Third Circuit affirmed the trial court's decision to sustain the defendant's exception of no cause of action in part upon the court's determination that the defendant's interest in obtaining the plaintiff's prescription records, in light of the custody proceedings, outweighed the plaintiff's interest in maintaining his privacy in those records.

⁷⁵ Petition ¶¶ 41-42.

⁷⁶ See e.g., *Modica v. Taylor*, 465 F.3d 174, 180 (5th Cir. 2006) (misuse of public funds is a matter of public concern).

⁷⁷ *Romero*, at 870, citing *Jaubert v. Crowley Post-Signal, Inc.*, 375 So.2d 1386 (La.1979).

⁷⁸ See, e.g., *Chal v. Connick*, 15 F.3d 1338, 1346 (5th Cir. 1994) (broadcast of videotapes depicting priest engaged in homosexual activity with two young men did not constitute invasion of privacy under Louisiana law for publication of private facts, notwithstanding that appellant was "no doubt" embarrassed by broadcast); *Roshto*, 439 So.2d at 432 ("more than insensitivity or simple carelessness is required for the imposition of liability for damages when the publication is truthful, accurate and non-malicious"); *Romero*, 648 So.2d at 871 (Any "unfortunate consequences" to appellant are, as the Louisiana Supreme Court has recognized, "the price of a free and unfettered press.>").

⁷⁹ "Where the defendant's action is properly authorized or justified by circumstances, it is deemed to be reasonable and non-actionable even though it admits to a slight invasion of the plaintiff's privacy." *Ferere*, 812 So.2d at 677 (emphasis added), citing *Carvajal v. Levy*, 485 So.2d 586 (La. App. 4th Cir.1986) (citing *Parish Nat'l Bank v. Lane*, 397 So.2d 1282 (1981)).

⁸⁰ La. R.S. 49:220.24(F)(2).

investigating the complaint against Delahoussaye. The OIG was empowered by statute to assist the District Attorney with his criminal investigation into Delahoussaye's alleged misuse of state funds through his fraudulent billing practice. The medical records were central to the allegations of wrongdoing by Delahoussaye insofar that the OIG's investigation revealed that Delahoussaye had a medical procedure during the relevant time. The OIG's discovery of those records in furtherance of its investigation was, therefore, reasonable and certainly justified under the circumstances – notwithstanding Plaintiff's self-serving denials. This is true no matter what procedural objections Delahoussaye has raised in past proceedings (and may raise in the future) and of which he has convinced the 21st Judicial District Court Judge. Accordingly, while the OIG Defendants' reasonable conduct provides an additional basis upon which to dismiss Delahoussaye's tortious invasion of privacy claim, his failure and inability to establish that the records were false or fictitious and to disprove that they related to a matter of public concern compel dismissal of this claim.

3. PLAINTIFF HAS FAILED TO STATE A MALICIOUS PROSECUTION CLAIM UNDER LOUISIANA LAW.

Claims for malicious prosecution are highly disfavored under Louisiana law. In this case in particular, the maintenance of this claim against the OIG would be inconsistent with the law, considering that the claim is not being asserted against the prosecuting agency. Importantly, the Court has already properly dismissed this claim. There are no new factual allegations regarding this claim that are remotely sufficient to now state a cause of action for malicious prosecution against the OIG Defendants.⁸¹ The newly added factual and legal conclusions⁸² Plaintiff offers to try to support this cause of should be disregarded, as mandated by the no cause of action standard. The Court, therefore, need not expend any time or effort analyzing anew the merits of this claim where the amendment supplies nothing new to this frivolous lawsuit.

In an abundance of caution, the OIG Defendants again lay out the law, maintaining that it still supports dismissal of Plaintiff's claim. Louisiana law is clear that: "Never favored in our law, a malicious prosecution action must clearly establish that the forms of justice have been perverted to the gratification of private malice and the willful oppression of the

⁸¹ Paragraphs 103, 105 and 106 of the Amended Petition are substantively the same as Paragraphs 42, 43 and 47 of the original petition.

⁸² See Amended Petition ¶¶ 103, 104, 107.

innocent.”⁸³ A successful claim for malicious prosecution requires proof of six elements: 1) the commencement or continuance of an original criminal or civil judicial proceeding; 2) its legal causation by the present defendant against plaintiff who was defendant in the original proceeding; 3) its bona fide termination in favor of the present plaintiff; 4) the absence of probable cause for such proceeding; 5) the presence of malice therein; and 6) damages conforming to legal standards resulting to plaintiff.⁸⁴ The Supreme Court further cautions that:

... [P]ublic policy requires that all persons shall fully resort to the courts for redress of wrongs, and the law protects them when they act in good faith upon reasonable grounds in commencing either a civil or criminal proceeding. [citation omitted] This principle has particular relevance to public officials who are charged by law with the enforcement of laws designed to protect the public at large. Only the grossest negligence or arbitrary and capricious conduct on their part will support a claim of malicious prosecution.⁸⁵

The OIG Defendants submit that none of the elements of the cause of action can be met under the facts alleged in the Petition. However, the Defendants herein address the three elements which they believe to be the most fatal to Mr. Delahoussaye’s claim.

a. No Commencement of a Criminal or Civil Judicial Proceeding by the OIG.

While an original criminal proceeding was instituted against Plaintiff, the OIG Defendants did not commence that proceeding. As an investigative body, the OIG investigates and reports complaints of abuse, waste and inefficiencies perpetrated by and/or against state agencies.⁸⁶ As alleged in the Petition, Plaintiff and his company were under state contract with Livingston Parish and/or GOHSEP.⁸⁷ (C-Del’s retention by the Parish was consistent with an agreement between the Parish and GOHSEP. Under Louisiana law, GOHSEP is a covered agency within the executive branch of state government,⁸⁸ thus making any misconduct by its contractors and sub-contractors and/or any misconduct affecting, or relating to, it the proper subject of an investigation by the OIG.) This duty is imposed upon the OIG by statute. *Id.* In this case, it did just that: investigate the charges of misconduct brought against Mr. Delahoussaye and report its findings to the prosecuting agency, the District Attorney’s Office. The OIG is not a

⁸³ *LeBlanc v. Fynes*, 46,393 (La. App. 2 Cir. 7/13/11), 69 So.3d 1273, 1279, writ denied, 2011-1792 (La. 10/14/11), 74 So.3d 213; citing *Johnson v. Pearce*, 313 So.2d 812 (La. 1975) (emphasis added).

⁸⁴ *LeBlanc*, 69 So.3d at 1279; citing *Hibernia Nat’l Bank of New Orleans v. Bolleter*, 390 So.2d 842 (La. 1980); *Robinson v. Goudchaux’s*, 307 So.2d 287 (La. 1975); *Arlidge v. Sherrill*, 32,189 (La. App. 2 Cir.8/18/99); 738 So.2d 1215, 1222, writ denied, 99-2713 (La. 12/10/99); 751 So.2d 255.

⁸⁵ *Johnson v. Pearce*, 313 So.2d 812, 816 (La. 1975) (emphasis added).

⁸⁶ La. R.S. 49:220.21; and La. R.S. 49:220.24.C.

⁸⁷ Petition at ¶¶ 3-8.

⁸⁸ La. R.S. 36:4 (B)(1)(g).

prosecutorial body (nor is it alleged to be) and, on the face of the Petition, it did not institute the criminal proceedings against Delahoussaye. These proceedings were instead commenced by the 21st JDC District Attorney.⁸⁹ (Incidentally, the OIG's findings were consistent with the auditing firm previously retained by the District Attorney's Office.⁹⁰) The first element of Plaintiff's claim for malicious prosecution fails.

b. Probable Cause

Our courts' analyses and application of this element of the malicious prosecution cause of action unequivocally establishes that this claim cannot be maintained against the OIG. Plaintiff's claim fails for this reason as well. Louisiana law provides that the crucial determination regarding probable cause does not hinge upon the sufficiency of the evidence to convict, but upon whether the malicious prosecution defendant honestly and reasonably believed in the guilt of the plaintiff at the time of initiating the charges; i.e., when he pressed the charges.⁹¹ "The jurisprudence demonstrates that this element of probable cause focuses on the present defendant's mindset in instituting the original action against the plaintiff."⁹² Importantly, the "Constitution does not guarantee that only the guilty will be arrested" or prosecuted.⁹³

This element of the malicious prosecution cause of action clearly contemplates the initiation of the criminal proceeding by the malicious prosecution defendant – here, the OIG Defendants. Plaintiff does not allege that the OIG filed charges against him – because the OIG did no such thing. As previously stated, according to Plaintiff's own allegations, the criminal proceedings against Delahoussaye were filed by the District Attorney.⁹⁴ Thus, the OIG Defendants' "mindset when they initiated the charges" is simply irrelevant and inapplicable without a showing that it was the OIG Defendants who initiated the proceedings – and they did not. This element fails, as it does not relate or apply to the defendant against whom the malicious prosecution claim is asserted, the OIG Defendants. By statute, the OIG is required to investigate and publish allegations of wrongdoing relating to state agencies, including fraud,

⁸⁹ Petition at ¶ 37 *et seq.*

⁹⁰ See original petition ¶¶ at 18-19.

⁹¹ See *Tabora v. City of Kenner*, 94-613 (La. App. 5 Cir. 01/18/95), 650 So.2d 319, writ denied, 95-0402 (La. 03/30/95), 651 So.2d 843; *Reese v. City of Baton Rouge*, 93-1957 (La. App. 1 Cir. 10/7/94); 644 So.2d 674, 676-77; and *Jones v. Soileau*, 448 So.2d 1268 (La.1984).

⁹² *LaBlanc v. Pynes*, 46,393 (La. App. 2 Cir. 7/13/11), 69 So.3d 1273, 1282, writ denied, 2011-1792 (La. 10/14/11), 74 So.3d 213, citing *Hibernia Nat'l Bank of New Orleans*, *supra*; *Young Oil Co. of Louisiana, Inc. v. Durbin*, 412 So.2d 620 (La. App. 2 Cir.1982).

⁹³ *Tabora*, *supra*; *Baker v. McCollan*, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979).

⁹⁴ Petition ¶¶ at 37 *et seq.*

abuses, waste, corruption and inefficiencies; and more pertinently, “excessive bills on state contracts” and “abuse of things of value belonging” to state agencies.⁹⁵ The OIG did just that. It investigated and reported Delahoussaye’s unlawful billing of Livingston Parish to the District Attorney, in accordance with the OIG’s statutory mandate to report misconduct against the state.⁹⁶ What the District Attorney’s Office, the prosecuting agency in this case, did, once the OIG reported its findings to that Office, is beyond the control of the OIG; and the OIG should bear no responsibility for court proceedings initiated by a separate entity after the OIG completed its investigation and turned over its findings. There is, thus, no legally cognizable remedy against the OIG for the allegations raised in Delahoussaye’s Petition.

c. No Malice

This element likewise fails for the reasons discussed in the context of the defamation claim. It fails also because, as is the case for the other elements of this cause of action, there are no allegations that the OIG prosecuted Plaintiff in the criminal proceedings underlying the malicious prosecution claim. If there was no prosecution by the OIG, there certainly could not have been any malice by this defendant in its prosecution of the charges against Plaintiff. Imbedded in the claim of malicious prosecution is the requisite showing of legal causation. “Legal causation by the present defendant against plaintiff who was the defendant in the original proceeding” is required in a malicious prosecution claim.⁹⁷ Simply stated, there can be no actionable malicious prosecution by a defendant who had no control over the prosecution.

Further, no facts have been alleged that support a showing of malice by the OIG. The conclusory statement that “Ms. Webb’s flawed investigation and her erroneous and wrongful conclusions led to the charges that were filed against Mr. Delahoussaye)”⁹⁸ and that the nature and multitude of errors committed during the investigation and testimony “reveal that her allegations of illegal conduct were made with actual malice or reckless disregard for the truth” need not be considered on an exception of no cause of action. Even if these conclusions of law could be accepted as true, there is simply no factual support for a determination that Ms. Webb’s

⁹⁵ La. R.S. 49:220.24(B); see also Petition at 78, quoting this section of the statute.

⁹⁶ See La. R.S. 49:220.24.

⁹⁷ *Leblanc v. Pynes*, 46,393 (La. App. 2 Cir. 7/13/11), 69 So.3d 1273, 1279, writ denied, 2011-1792 (La. 10/14/11), 74 So.3d 213; *Johnson v. Pearce*, 313 So.2d 812 (La. 1975).

⁹⁸ Amended Petition ¶¶ 104 and 197.

mathematical miscalculations (assuming there were, in fact, errors) somehow equate malice. This claim should be dismissed with prejudice.

4. PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION FOR ABUSE OF PROCESS.

As this Court has already dismissed this claim on the OIG's prior exception of no cause of action, it need not disturb its prior ruling, as there are no new factual allegations sufficient to revive this cause of action.⁹⁹ Plaintiff's legal conclusion cannot be accepted as true. The single new factual allegation relating to this claim is the allegation that the OIG "started its investigation at the request of a local authority [presumably, the Livingston Parish District Attorney's Office] who had a political motive."¹⁰⁰ This lone gratuitous statement in no way establishes any wrongdoing or knowledge of wrongdoing by the OIG. This cause of action should once again be dismissed.

The OIG, nonetheless, offers the following arguments to support dismissal of this claim, as a matter of law. The OIG's investigation and its report of its findings to the District Attorney's Office were done in accordance with the law. Regurgitating the legal standard for the claims of abuse of right and process, Plaintiff conclusively states that the "Inspector General has used its statutory rights in violation of moral rules, good faith or elementary fairness."¹⁰¹ Plaintiff also charges that the OIG "wrongfully exercised its right to investigate Petitioner without jurisdiction to do so;"¹⁰² that "given that Petitioner had no contract with a state entity, the [OIG] had no serious or legitimate interest to investigate him;"¹⁰³ and that the OIG "started its investigation at the request of a local authority who had political motive to harm Petitioner."¹⁰⁴ These and the other legal conclusions Plaintiff offers to support this claim should be rejected by the Court, under the legal standard set forth above. The law affords no relief for abuse of process under the facts alleged in the Amended Petition.

The elements essential to an abuse of process claim are (1) the existence of an ulterior purpose; and (2) a willful act in the use of the process not in the regular prosecution of the

⁹⁹ See Amended Petition ¶¶ 111-117 and 120-121 (comprised mainly of legal and factual conclusions referencing the OIG's lack of jurisdiction to investigate Plaintiff and/or duplicative factual statements which the Court already found warranted dismissal).

¹⁰⁰ Amended Petition ¶ 116.

¹⁰¹ *Id.* ¶ at 110.

¹⁰² *Id.*

¹⁰³ *Id.* at ¶ 112.

¹⁰⁴ *Id.* at ¶ 116.

proceeding.¹⁰⁵ “A legal and legitimate use of process, to effect the result which such process is designed by law to accomplish, is not an abuse thereof. Regular use of process cannot constitute abuse, even though the user was actuated by a wrongful motive, purpose, or intent, or by malice.”¹⁰⁶ Abuse of process and malicious prosecution claims are often asserted together. “In both malicious prosecution and abuse of process, the crux of the action is not the statements made but the fact that a proceeding was maliciously and/or illegally pursued” by the defendant.¹⁰⁷

Based on these principles, abuse of process and malicious prosecution claims are both premised upon the claimant’s belief that a proceeding or judicial “process” was maliciously or illegally pursued. In other words, the sort of process contemplated under this cause of action relates to a judicial proceeding, such as the filing of a lawsuit or other judicial request for relief. As is true for the malicious prosecution claim, Delahoussaye’s abuse of process claim cannot be directed at the OIG, a defendant who did not initiate the underlying criminal proceeding. Indeed, to show an abuse in the process used by the OIG, the law requires Delahoussaye to prove that the “object of the defendant’s [the OIG] earlier suit” was illegal and “even where an ulterior motive is shown, “[a]n irregularity in the earlier proceedings must also be shown.”¹⁰⁸ Again, the OIG did not file the criminal federal and state proceedings which form the basis of Delahoussaye’s claims. Both claims would best be asserted against the prosecutorial body who filed the criminal proceedings, the District Attorney’s Office – even more so because Plaintiff gratuitously alleges that the District Attorney’s Office had a political motive against him.¹⁰⁹ Barred by the District Attorney’s immunity from asserting such claims against that entity, Delahoussaye resorts to suing instead the investigative agency in a desperate and vindictive attempt to “make someone pay”. However, the proverbial “someone” that is being sued here, the OIG, can bear no responsibility for proceedings or judicial processes that it did not initiate. Like the malicious prosecution claim, Delahoussaye’s abuse of process claim fails.

To the extent Delahoussaye is surmising that the OIG’s statutorily-mandated investigation and report of its findings constituted a “process”, which was abused through the

¹⁰⁵ *Nathans v. Vucl*, 443 So.2d 690, 694 (La. App. 1 Cir.1983).

¹⁰⁶ *Mint-Togs, Inc. v. Young*, 354 So.2d 1389, 1390 (La. App. 2 Cir.1978) (emphasis added).

¹⁰⁷ *Waguespack, Seago and Carmichael (A PLC) v. Lincoln*, 99-2016 (La. App. 1 Cir.9/22/00), 768 So.2d 287, 291 (emphasis added), quoting *Goldstein v. Serio*, 496 So.2d 412, 415 (La. App. 4 Cir.1986), writs denied, 501 So.2d 208, 209 (La.1987).

¹⁰⁸ *Mint-Togs, Inc.*, 354 So.2d at 1391 (emphasis added).

¹⁰⁹ *Id.* at ¶116.

execution of the search warrant and discovery of Plaintiff's medical and gym records, the OIG submits that there is no precedent for such an expansive application of the law. But even if the investigation and report could be deemed to be "a process", within the meaning of the law (which is denied), there was no abuse or violation by the OIG.

As previously stated, the Legislature makes it clear that the OIG was established as a "law enforcement agency", and conferred "all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duties, powers, and functions," including the power to investigate alleged misconduct, abuses of authority and mismanagement of the affairs of state agencies.¹¹⁰ The statute further provides that: "the inspector general shall [receive and] investigate complaints of waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption and, when appropriate, recommend whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted and take further action as appropriate."¹¹¹

Plaintiff's complaint regarding the procedural details of the investigation, including the manner and timing of the execution of the search warrant and the disclosure of his medical and gym records to the District Attorney – who, in turn, used them in furtherance of his investigation and court proceedings against the OIG – does not equate to a showing of ulterior motive or ill-will on the part of the OIG. The Legislature granted the OIG broad discretion in carrying out its investigations of wrongdoing implicating state agencies, including "all investigative powers appurtenant to law enforcement agencies." (Recognizing the breadth of the OIG's investigative powers, Plaintiff recites this section of the statute in his own Petition.)¹¹² In its broad discretion, the OIG investigators determined that, as distinguished from investigations of drugs and contraband, there was no urgency to execute the search warrant in this case and opted to search Mr. Delahoussaye's home, pursuant to the search warrant, a few days after its issuance and early enough in the morning so as not to interfere with Delahoussaye and/or his family work/school schedules. Further, the search warrant for Delahoussaye's home, like the subpoenas for his medical and gym records, were authorized by a court of competent jurisdiction.¹¹³ This means

¹¹⁰ La. R.S. 49:220.24(J).

¹¹¹ La. R.S. 49:220.24(B)(2 and 3).

¹¹² See Petition ¶ at 81.

¹¹³ Petition at ¶¶ 28, 30 (alleging that the OIG Defendants conducted a search "after the warrant was signed by a district judge in the 19th JDC."); and ¶¶ 34 and 35 (subpoena sent to Plaintiff's gym and health care provider, presumably upon being issued by a court).

that in addition to its statutory authority to fulfill its investigative function, the OIG's conduct was also sanctioned by a court of competent jurisdiction.

Further, at paragraph 142 of the Amended Petition, Plaintiff recognizes the OIG's authority to do the very thing Petitioner claims it lacked authority to do: "report [its investigative] findings to the appropriate prosecuting authority for further action" upon identifying evidence of improper actions. Thus, Plaintiff recognizes the plenary nature of the OIG's investigative powers and duty to report within the same document in which he objects to the propriety of the actions taken by the OIG.

There was nothing illegal or abusive about the process utilized by the OIG. (Recall that: "*A legal and legitimate use of process, to effect the result which such process is designed by law to accomplish, is not an abuse thereof.*")¹¹⁴ The factual allegations of the Amended Petition are insufficient to establish an ulterior motive by the OIG. Significantly, the abuse of process claim cannot be maintained even if the OIG was motivated by ill-will or "bad faith", as the Petition conclusively suggests. Under Louisiana's long-standing jurisprudence, a "[r]egular use of process cannot constitute abuse, even though the user was actuated by a wrongful motive, purpose, or intent, or by malice."¹¹⁵ The investigation and the reporting of findings to the proper authority amounted to a regular use of "process" (to the extent the investigation and report can even be considered a "process" under the law, which is denied); and as such, there was no abuse. Both elements of the abuse of process cause of action fail. This claim should also be dismissed with prejudice.

5. PLAINTIFF'S CAUSE OF ACTION FOR ABUSE OF RIGHT LIKEWISE FAILS.

The previous section of this memorandum amply establishes that dismissal of this claim (which is set forth in the Amended Petition as "Abuse of Right and Process")¹¹⁶ is once again appropriate due to the lack of any new factual allegations sufficient to warrant a different decision by the Court on this exception.

Addressing the law relative to this claim in an abundance of caution, the OIG states that a review of the elements necessary to establish a cause of action for abuse of right reveals that this

¹¹⁴ *Mint-Togs, Inc. v. Young*, 354 So.2d 1389, 1390 (La. App. 2 Cir.1978) (emphasis added).

¹¹⁵ *Id.*

¹¹⁶ Page 13 of the Amended Petition.

claim is very similar to an abuse of process claim, requiring showings of an ill motive and abuse by the defendant. Therefore, this claim fails for the same reasons as the abuse of process claim.

The elements of an abuse of right claim are clear. They are:¹¹⁷

- (1) The predominate motive for exercise of the right is to cause harm;
- (2) There is no legitimate motive for exercise of the right;
- (3) Exercise of the right violates moral rules, good faith and elementary fairness; or
- (4) Exercise of the right is for a purpose other than that for which it was granted.

Delahoussaye must establish every element of this cause of action in order to maintain this claim against the OIG. Yet, the allegations of his Amended Petition do not satisfy any of those elements. Setting aside Plaintiff's self-serving conclusions of law, Plaintiff has failed, on the face of his Petition, to offer sufficient factual allegations to establish that the OIG was motivated by ill will designed to "harm" Delahoussaye through its investigation and reported findings. The OIG's only motive – to respond to a complaint of wrongdoing vis-à-vis the state and aid in the District Attorney's investigation by fulfilling its statutorily-mandated investigative function – was legitimate and Plaintiff does not (and cannot honestly) make a contrary showing. There was no abuse in the OIG's exercise of its authority/right as a law enforcement agency. It was required to investigate the complaints of misconduct against Delahoussaye, and it did that. It was "required to do all things necessary to carry out its functions," and it did that. It was required to report its findings, and it did that. What it was not required and not allowed to do was ignore the complaints of possible abuses against state government by Delahoussaye and his company, and otherwise ignore its obligation to investigate those complaints and report its findings – especially when those findings were consistent with an independent investigator's prior findings following its own investigation of the complaints of wrongdoing against C-Del and Delahoussaye. Through the discovery of Plaintiff's medical and gym records (which were lawfully obtained pursuant to subpoenas)¹¹⁸ and other evidence, the OIG confirmed that Plaintiff had improperly billed the state in violation of his contract with Livingston Parish and Louisiana law. Delahoussaye's disappointment that his unlawful actions are now public knowledge is insufficient to establish that the OIG abused its rights in any way. Similarly, his criticism of the OIG's investigative findings is insufficient to establish a motive to cause harm. This claim should also be dismissed.

¹¹⁷ *Mixon v. Iberia Surgical, LLC*, 06-0878 (La. App. 3 Cir. 4/18/07), 956 So.2d 76, 81.

¹¹⁸ La. R.S. 49:220.24(F)(2) (addressing the OIG's subpoena power).

6. DELAHOUSSAYE'S VAGUE AND CONCLUSORY ALLEGATIONS ARE INSUFFICIENT TO STATE SECTION 1983 AND 1988 CLAIMS AGAINST STREET, PHARES AND WEBB.

Delahoussaye again asserts a constitutional cause of action under 42 U.S.C. § 1983 against public officials and OIG employees, Greg Phares and Jessica Webb, that these defendants "were acting under the color of authority" and that their actions "have impaired and deprived Petitioner of his clearly established rights, thereby making them liable to Petitioner" under Section 1983.¹¹⁹ The support for these legal conclusions is comprised of more legal conclusions.¹²⁰ There are no new factual allegations that are sufficient to support Plaintiff's Section 1983 claim,¹²¹ whether under the Fourteenth Amendment or the newly-raised Fourth Amendment complaints. Plaintiff has failed, once again, to state a cause of action against these defendants under Section 1983. A second dismissal of this lawsuit is warranted.

To recover under Section 1983, a plaintiff must allege and prove two essential elements: (1) that the defendant's conduct occurred under color of state law, and (2) that the defendant's conduct deprived him or her of a right, privilege, or immunity secured by the Constitution or a law of the United States.¹²² When resolving an exception of no cause of action, Louisiana courts apply a heightened standard of pleading where the applicability of qualified immunity is apparent and require plaintiffs to allege with particularity material facts that establish the defendant violated a clearly established constitutional right.¹²³ Delahoussaye's allegations do not establish a violation of constitutional rights.

a. To Maintain the Purposes of Qualified Immunity, Louisiana Courts Require a Heightened Standard of Pleading.

As previously established, the law gives the OIG broad discretion in the fulfillment of its investigative function, conferring upon it "all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of" its law enforcement duties.¹²⁴ In *Harlow v. Fitzgerald*,¹²⁵ the United States Supreme Court set forth the

¹¹⁹ Petition ¶¶ 149 and 159.

¹²⁰ See Petition ¶¶ 149-159.

¹²¹ For example, Plaintiff conclusively alleges that "Mr. Phares and Ms. Webb never reviewed or used the information wrongfully seized from Petitioner's home in support of the Inspector General's purported investigation." Petition ¶ 157. Even if this baseless conclusory allegation were true, it is unclear how this statement that the OIG did not use every single piece of evidence it discovered on Delahoussaye somehow amounts to a deprivation of constitutional rights.

¹²² *Moriel v. Dept. of Wildlife & Fisheries*, 567 So.2d 1081 (La. 1990); *Kyle v. Civil Service Com'n*, 588 So.2d 1154, 1159 (La. App. 1 Cir. 1991); 42 U.S.C. § 1983.

¹²³ See *Kyle v. Civil Service Com'n*, 588 So.2d 1154, 1159 (La. App. 1 Cir. 1991).

¹²⁴ La. R.S. 49:220.24(C).

¹²⁵ 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

rule that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”¹²⁶ The purposes of granting qualified immunity at an early stage of the court proceedings is “so that the costs and expenses of trial are avoided where the defense is dispositive”¹²⁷ and to protect public officials from disruptive “broad-ranging discovery.”¹²⁸ The costs of litigation to government officials and society as a whole include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of citizens from public office.¹²⁹ Therefore, qualified immunity operates as “an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.”¹³⁰

The Louisiana First Circuit Court of Appeal has further recognized that the purposes of qualified immunity are “effectively eviscerated when a plaintiff is allowed to state a claim with vague, broadly worded complaints which are unsupported by material facts.”¹³¹ As such, “liberal notions of notice pleading must ultimately give way to immunity doctrines that protect us from having the work of our public officials chilled or disrupted by participation in the trial or the pretrial development of civil lawsuits.”¹³² To maintain a Section 1983 claim against a public official for acts for which he is potentially immune, the petition must specifically allege “*with particularity*” all material facts that, when taken as true, establish that the government defendant violated a clearly established right.¹³³ The defendant pleading qualified immunity is entitled to dismissal *before* the beginning of discovery if the plaintiff’s allegations do not state a violation of clearly established law.¹³⁴

The applicability of the qualified privilege to the OIG is clear from the letter of La. R.S. 49:220.24(J) conferring discretion to the OIG relative to the exercise of its investigative function as a law enforcement agency. Delahoussaye himself acknowledges the breadth of the OIG’s discretionary authority by quoting the statute in his Petition, stating that the Inspector General is

¹²⁶ *Id.* at 818.

¹²⁷ *Saucier v. Katz*, 533 U.S. 194, 200 (2001), overruled in part by *Pearson v. Callahan*, 555 U.S. 223 (2009).

¹²⁸ *Anderson v. Cruikshank*, 483 U.S. 635, 646, n. 6 (1987).

¹²⁹ *Id.* at 814.

¹³⁰ *Saucier*, 533 U.S. at 200-01 (2001).

¹³¹ See *Kyle*, 588 So.2d at 1160.

¹³² *Id.* (citing *Elliot v. Perez*, 751 F.2d 1472 (5th Cir. 1985)) (emphasis added).

¹³³ *Id.*

¹³⁴ *Moreni*, 567 So.2d at 1085 (citing *Harlow*, 457 U.S. at 817-18) (emphasis added).

“conferred all investigative powers and privileges appurtenant to a law enforcement agency . . . as necessary and in furtherance of the authority, duties, powers, and functions...”¹³⁵ Thus, OIG employees, like Mr. Phares and Ms. Webb, lawfully exercised discretion in the performance of their public duties and are generally protected by qualified immunity.

b. Delahoussaye’s Allegations Do Not Establish that He Has Suffered a Constitutional Violation with Sufficient Particularity.

When faced with a question of qualified immunity, courts often conduct the two-step analysis set forth by the United States Supreme Court in *Saucier v. Katz* to determine whether the plaintiff’s allegations demonstrate a violation of a clearly established constitutional right.¹³⁶ The first inquiry is whether the facts alleged establish the defendant’s alleged conduct violated a constitutional right.¹³⁷ If no constitutional violation occurred, then the inquiry ends.¹³⁸ If the answer to the first inquiry is affirmative, then the court will determine whether the right was clearly established at the time of the conduct.¹³⁹

Delahoussaye fails to establish that constitutional violations occurred. He conclusively (and wrongly) alleges that he “enjoyed clearly established rights to his good name, reputation and liberty guaranteed to him under the 14th Amendment. . .” and that the OIG Defendants’ actions deprived him of these “clearly established rights.”¹⁴⁰ The United States Supreme Court, however, has held that the “interest in reputation . . . is neither ‘liberty’ nor ‘property’ guaranteed against state deprivation without due process of law.”¹⁴¹ Therefore, an allegation of harm to reputation alone is insufficient to demonstrate a constitutional violation and something more than simple defamation by the state official must be involved to establish a claim under Section 1983.¹⁴² Specifically, to establish a liberty interest protected by the Fourteenth Amendment, an individual must allege a stigma on a person’s reputation by a state official, *plus* an infringement of some other protected interest.¹⁴³

¹³⁵ Petition, at ¶ 81. (emphasis added).

¹³⁶ See *Rhodes v. Prince*, 360 F. App’x 555, 558 (5th Cir. 2010)(citing *Saucier*, 533 U.S. at 199-200).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Petition ¶ at 98.

¹⁴¹ *Paul v. Davis*, 424 U.S. 693, 712 (1976).

¹⁴² *Id.* at 693, 701, and 712 (stating that defamatory publications by the government, however seriously they may have harmed the plaintiff’s reputation, does not deprive him of any “liberty” or “property” interests protected by the Due Process Clause).

¹⁴³ *Daly v. Sprague*, 675 F.2d at 727 (5th Cir. 1982); *Tebo v. Tebo*, 550 F.3d 492, 503 (5th Cir. 2008).

Delahoussaye's conclusory allegations that Mr. Phares and Ms. Webb wrongfully obtained Petitioner's medical records and computers and business records "making it impossible for him to conduct business" and that their actions caused him to "lose work and wrongfully deprived him of his property..." need not be accepted as true;¹⁴⁴ but they fail, in any event, to establish an infringement of any other constitutionally protected interest. The conclusory statement that Plaintiff lost work *as a result* of the OIG's alleged conduct is directly inconsistent with the allegation that Plaintiff's contract was terminated approximately nine months before the OIG began to investigate Plaintiff.¹⁴⁵ Simply stated, the termination of Plaintiff's state employment did not and could not have been the result of the OIG Defendants' actions. As a matter of law, "[a]n either harm to reputation nor the consequent impairment of future employment opportunities are constitutionally cognizable injuries."¹⁴⁶ Therefore, any purported loss of future opportunities do not rise to the level of infringement on Plaintiff's property/liberty rights.

Moreover, Delahoussaye has not demonstrated an unreasonable search and seizure under the Fourth Amendment. While he conclusively claims to have been "arrested", "summoned to appear in court" and "wrongfully deprived of his freedom" in violation of his 4th Amendment rights,¹⁴⁷ there are absolutely no factual allegation regarding the details of his alleged arrest, and much less, what about the arrest was unreasonable or unlawful. Indeed, while the Fourth Amendment provides a safeguard against unreasonable searches and seizures, the allegations of the newly amended Petition still make it impossible for the OIG to assess the precise basis for Plaintiff's purported constitutional rights deprivation. Specifically, Plaintiff attacks the lawfulness of the search warrant and subpoena duces tecum and the seizure of his computers and business records, all based upon his recurring legal conclusion that the OIG lacked the authority/jurisdiction to obtain them.¹⁴⁸ These conclusions of law fail to state a cause of action under the Fourth Amendment.

The same holds true for Plaintiff's conclusory statement that the OIG's actions caused him to lose work, deprived him of property, deprived him of his right to privacy and painted him in a false light. Even if these conclusory allegations could be accepted as true, Plaintiff's own

¹⁴⁴ Petition ¶¶ 156, 158.

¹⁴⁵ Petition ¶¶ 16 and 21 (Plaintiff's state contract was terminated on September 24, 2011 whereas Livingston Parish requested the OIG to investigate Plaintiff in June 2012.)

¹⁴⁶ *Vander Zee v. Reno*, 73 F.3d 1365, 1369 (3rd Cir. 1996).

¹⁴⁷ Petition ¶ 152.

¹⁴⁸ Petition ¶ 153-154, 156

Petition acknowledges that the OIG applied for the search warrant and a court of competent jurisdiction, through a 19th Judicial District Court Judge, signed the application and issued the warrant (presumably upon reviewing the facts set forth the application and finding sufficient probable cause for the requested search of Plaintiff's home).¹⁴⁹ There are no allegations to support the purported unreasonableness of the search of Plaintiff's home and seizure of the computers pursuant to the lawfully obtained search warrant.¹⁵⁰ The authority conferred upon the OIG by the search warrant, coupled with its broad discretion in the fulfillment of its investigative function, outweighs Delahoussaye's (non-actionable) annoyance and inconvenience resulting from the seizure of evidence at his home pursuant to the search warrant.

In sum, Delahoussaye's purported "constitutional claims" are nothing more than a failed attempt to restate his defamation claims under § 1983. In light of a properly pled violation of constitutional right, the Court must find that the OIG Defendants were shielded by qualified immunity. The OIG Defendants are, therefore, entitled to dismissal of Delahoussaye's purported Section 1983 claim, as a matter of law. For this same reason, his claim for attorney's fees pursuant to 42 U.S.C. § 1988¹⁵¹ should also be dismissed, as it is intertwined, by law, with Plaintiff's (failed) Section 1983 claim.¹⁵²

7. PLAINTIFF CANNOT MAINTAIN A CLAIM FOR NEGLIGENCE.

For Delahoussaye to state a claim for negligence, he has to show that the OIG did something wrong. The OIG did nothing wrong – upsetting Delahoussaye by bringing to light his unlawful actions in the course of its statutorily-sanctioned investigative function does not amount to negligence. This claim is nothing more than Plaintiff's unsupportable defamation and abuse of rights/process claim framed as a "catch-all" general tort claim. Like Plaintiff's other claims, his negligence claim against the OIG is still without merit.

¹⁴⁹ See Petition at ¶¶ 28-30 (alleging that the OIG Defendants conducted a search "after the warrant was signed by a district judge in the 19th JDC.>").

¹⁵⁰ The allegation that Plaintiff's home was raised at 6:00 am by agents wearing firearms are also insufficient without more to make the search pursuant to a warrant unlawful. There are no allegations that plaintiff and his family were held at gunpoint or otherwise brutalized or that the agents stayed in the home longer than was needed to execute the search warrant. In fact, the opposite would be true when, in actuality, Ms. Webb, one of the agents performing the so-called "raid", was 8-months pregnant at the time and Mr. Phares was either chatting with Mr. Delahoussaye or stood outside of the home throughout the duration of the search. Thus, the facts alleged fail to show that the search was conducted in a manner that was so out of proportion under the circumstances to be considered unreasonable.

¹⁵¹ Petition ¶ 160.

¹⁵² 42 U.S.C. Section 1988 (b) provides in part that: "In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs..." (emphasis added).

Generally, a cause of action for negligence includes five elements: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element).¹⁵³ "A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability."¹⁵⁴

At least one element of Delahoussaye's negligence claim fails. He cannot prove that the OIG breached the applicable standard of care in investigating and reporting its findings. The standard of care (or duty) of the OIG is set forth in La. R.S. 47:220.24. The OIG did not breach its duty because it did not do anything inconsistent with the broad authority, powers, duties and functions delineated in La. R.S. 47:220.24. In fact, the OIG's investigative and reporting powers are further expanded by the general provision in subpart (J) of the statute conferring "all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance" of the OIG's investigatory function.¹⁵⁵ Expanding the Inspector General's authority even further, the catch-all provision at subsection (L) of the statute mandates that the "inspector general shall do all things necessary to carry out the functions set forth [in the statute]."¹⁵⁶ Considering such broad discretion, Delahoussaye's objections regarding the details of the investigation and reported findings are inconsequential and do not affect the legitimacy of the investigation and report under the law governing the OIG. The OIG's authority is indeed very broad and, thus, sanctions all of the actions taken by the OIG with respect to its investigation of C-Del and Delahoussaye.

Curiously, in laying out his cause of action for defamation in his Amended Petition, Plaintiff outlines a number of guidelines which purportedly govern the standard for investigations. In so doing, he states, in pertinent part, that once the OIG "identifies evidence of improper action or inaction, its duty is to report such findings to the appropriate prosecuting

¹⁵³ See *Detruz v. Lee*, 05-1263 (La.1/17/07), 950 So.2d 557, 562.

¹⁵⁴ See *Mathieu v. Imperial Toy Corporation*, 94-0952 (La.11/30/94), 646 So.2d 318, 326.

¹⁵⁵ La. R.S. 47:220.24(J).

¹⁵⁶ La. R.S. 47:220.24(M) (emphasis added).

authority for further action to be taken."¹⁵⁷ This is precisely what has happened in this case: the OIG was called upon to investigate and, once it found evidence of improper billing by C-Del, it reported those findings to the District Attorney for further action. Delahoussaye's disapproval of the findings and/or the OIG's methodology does not give rise to a breach of duty.

To the extent Plaintiff's alleged damages include such things as loss of income, impaired ability to obtain employment, tarnished reputation due to indictment and prosecution, ceasing of operations of C-Del due to seizure of computers, embarrassment, and the like,¹⁵⁸ the OIG submits that those damages point out, once again, that Delahoussaye's lawsuit actually seeks redress for the actions of a non-party, the District Attorney, and not the OIG. In particular, as stated previously, the Petition establishes that the OIG did not indict or prosecute Delahoussaye, the District Attorney did; and Delahoussaye's contract with the state was terminated long before the OIG investigated and reported Delahoussaye's unlawful billing practice, signifying that any income lost due to the termination of the contract cannot have been caused by the OIG in any event. Further, any the embarrassment and humiliation and lost business opportunities can also not be recovered against the OIG because the OIG's law enforcement duties and its statutory mandate to investigate abuses and misuse of state funds and the public's interest in the investigation of such complaints easily outweigh Plaintiff's private interest in keeping his health records confidential.

For all these reasons, the OIG did not breach any duty and there is no causation between the alleged damages and the OIG's conduct. Delahoussaye's unsupportable negligence claim should be dismissed, yet again.

8. PLAINTIFF'S RESPONDEAT SUPERIOR CLAIM LIKEWISE WARRANTS DISMISSAL

This claim against the OIG should be dismissed for the same reasons that all Plaintiff's other claims will be dismissed. As employer of the individual defendants, all claims against the OIG fail to the extent they are contingent upon non-actionable conduct of the individual defendants.

9. THE INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED.

The claims asserted against Greg Phares and Jessica Webb in their individual capacities cannot be maintained. The Petition, as amended, still alleges no facts whatsoever against these

¹⁵⁷ Petition ¶ 142.

¹⁵⁸ Petition at ¶¶ 167-172.

defendants in their individual capacities. In fact, in the case of Mr. Phares, the single paragraph that is directed specifically to Mr. Phares is a conclusory statement that he "participated in and/or failed to properly supervise Ms. Webb."¹⁵⁹ Otherwise, Mr. Phares' name is sprinkled a number of times in the Amended Petition in the context of legal conclusions that he and Ms. Webb breached their duty and/or are liable to Plaintiff, without any adequate factual support for the claims leveled against Mr. Phares specifically.

As was the case in the original petition, the allegations of fact involving Ms. Webb in the Amended Petition all relate to actions taken by her in her official capacity, including her sworn testimony in the 21st Judicial District Court proceeding against Mr. Delahoussaye.

Because all actions for which these defendants are being charged were allegedly taken in their capacities as OIG investigators, Plaintiff has, again, failed to state a cause of action against these two defendants in their individual capacities. The claims against them should be dismissed with prejudice.

IV. CONCLUSION

Delahoussaye's attempts at creatively attacking the OIG's actions through a variety of different causes of action demonstrate the weakness in his vindictive, misdirected, and futile lawsuit. There is still no support in the law for a finding of impropriety by the OIG under any legal standard based on Plaintiff's purely factual allegations, even now that the petition has been amended. Further amendments of those allegations would not change this fact based on the circumstances surrounding Plaintiff's lawsuit. All claims should be dismissed with prejudice, thus barring Plaintiff from wasting tax payer dollars and the Court's time on this baseless litigation.

Respectfully submitted

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¹⁵⁹ Petition ¶ 155.

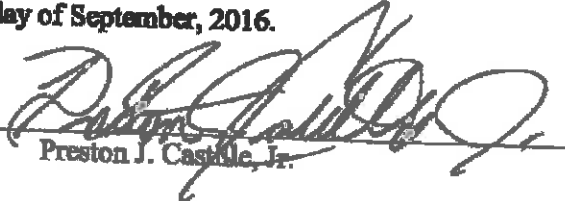
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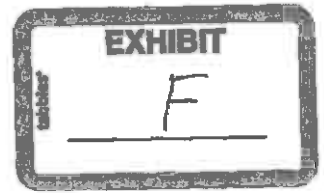
-CERTIFICATE-

I certify that a copy of the foregoing was this day either faxed, emailed, or mailed, postage prepaid, to the following:

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Baton Rouge, Louisiana, this 29th day of September, 2016.


Preston J. Castille, Jr.



19TH JUDICIAL DISTRICT COURT
THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

COREY DELAHOUSSAYE	*	NUMBER C—646,126
VERSUS	*	DIVISION "1"
	*	SECTION 24
STATE OF LOUISIANA, ET AL.	*	JUDGE CALDWELL

COREY DELAHOUSSAYE'S OPPOSITION MEMORANDUM TO DEFENDANTS' PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION

Corey Delahoussaye submits this opposition memorandum to the peremptory exception of no cause of action filed by the OIG Defendants. The Defendants assert that Petitioner fails to state a cause of action for each and every claim asserted in his petition. For the reasons outlined herein, the exception put forth by the Defendants is meritless and Mr. Delahoussaye urges that it be overruled.

I. **STANDARD OF REVIEW**

A petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief.¹ The question before the court, therefore is whether, in the light most favorable to plaintiff and with every doubt resolved in his behalf, the petition states any valid cause of action for relief.² The Louisiana Supreme Court explained the standard of review for a peremptory exception raising the objection of no cause of action in *Kinchen v. Livingston Parish Council*³ as follows:

The function of the peremptory exception of no cause of action is to question whether the law extends a remedy to anyone under the factual allegations of the

¹ *Home Distribution, Inc. v. Dollar Amusement, Inc.*, 98-1692, (La.App. 1 Cir. 9/24/99) 754 So.2d 1057.

² *Id.*

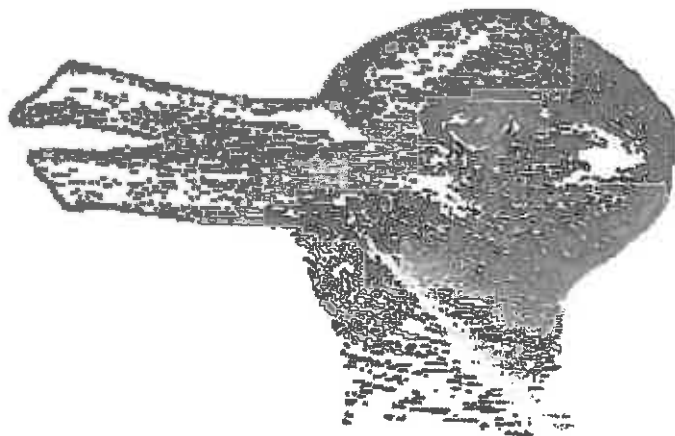
³ 07-0478 (La.10/16/07), 967 So.2d 1137, 1138 (citing *Fink v. Bryant*, 01-0987 (La.11/28/01), 801 So.2d 346, 348-49)

petition. The peremptory exception of no cause of action is designed to test the legal sufficiency of the petition by determining whether [the] plaintiff is afforded a remedy in law based on the facts alleged in the pleading. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. The exception is triable on the face of the papers and for the purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true.

Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief.

It is uncontroverted that the mover has the burden of demonstrating the petition states no cause of action.⁴ And when an exception of no cause of action is based on an affirmative defense, the exception should not be sustained unless the allegations of the petition exclude every reasonable hypothesis other than the premise upon which the defense is based.⁵ Critically, all facts pled in the petition must be accepted as true.⁶

There is little doubt that this Court sees the foregoing standards of review so frequently that they are not given extended consideration. As long as a plaintiff pleads facts that support his theory of the case, the court must accept them as true when considering an exception of no cause of action. The converse of such standard is that the court must disregard the defense's theory of the case when evaluating such exception—even if defendant's theory can be supported by plaintiff's factual allegations. Stated in different terms, if the plaintiff describes the left-side of the below drawing below as duck's beak, then this court must accept such characterization—even though the defendant may have a plausible argument that the left side of the drawing details the ears of a rabbit.



⁴ State, Div. of Admin., Office of Facility Planning and Control v. Infinity Sur. Agency, LLC, 10-2264 (La.5/10/11), 63 So.3d 940, 946.

⁵ Adams v. Owens-Corning Fiberglas Corp., 2004-1296 (La. App. 1 Cir. 09/23/05); 921 So. 2d 972, 976 citing West v. Ray, 26 So. 2d 221, 224 (1946).

Mr. Delahoussaye submits that the Defendants' arguments effectively fail to accept plaintiff's well-plead factual allegations as true and, instead, put forth their own theory of the case to support their exception of no cause of action. In the rubric of the foregoing, the Defendants have taken great pains to describe Mr. Delahoussaye's claims as a rabbit that won't fly, while ignoring the facts that indicate plaintiff's claims describe a duck that is capable of flight. As outlined by the following, Defendants' efforts miss the mark and Mr. Delahoussaye urges this Court to overrule their exception.

I. BACKGROUND

The Defendants' Memorandum in Support attempts to use the facts pled by Mr. Delahoussaye (supplemented with several of their own) to advance their own theory of the case, which can be summarized thusly:

- a. Mr. Delahoussaye had a contract with Livingston Parish.
- b. Although not referenced or alleged by Mr. Delahoussaye, the Defendants suggest that Plaintiff's contract "was consistent with an agreement between [Livingston Parish] and [the Governor's Office of Homeland Security & Emergency Preparedness (GOHSEP)]."⁷
- c. More specifically, Defendants assert "Plaintiff and his company were under state contract with Livingston Parish and/or GOHSEP."⁸
- d. Defendants assert that they were authorized to investigate Mr. Delahoussaye and his company because GOHSEP is a "covered agency" and that the OIG is authorized by La. R.S. 49:220.24(B) to investigate contractors and subcontractors of covered agencies.⁹
- e. Defendants further suggest that they properly exercised the authority granted to them by the Louisiana legislature when they obtained a subpoena and search warrant to obtain records relating to plaintiff.¹⁰
- f. Defendants repeatedly assert that Mr. Delahoussaye improperly billed the state and that such action "is criminal and/or unlawful conduct under Louisiana law."¹¹
- g. Due to these alleged "unlawful actions," the OIG argues that Mr. Delahoussaye's claims must fail even if the OIG's conclusions were based on "erroneous assumptions and mathematical miscalculations" because the OIG properly exercised its authority when conducting its investigation.¹²

⁶ *Rebardi v. Crewboats, Inc.*, 04-0641 (La.App. 1st Cir.2/11/05), 906 So.2d 455, 457.

⁷ See Defendants' Memorandum in Support, p. 17.

⁸ See Defendants' Memorandum in Support, p. 17.

⁹ See Defendants' Memorandum in Support, p. 17.

¹⁰ See Defendants' Memorandum in Support, pp. 15 - 16 and 20 - 23.

¹¹ See Defendants' Memorandum in Support, p. 8, 15 and 24.

¹² See Defendants' Memorandum in Support, p. 2, and pp. 18 - 19.

- h. Accordingly, Defendants argue that Mr. Delahoussaye fails to state a cause of action because they lawfully and properly exercised their legislative authority when they investigated him and accused him of fraudulent and excessive billing under a state contract.

The foregoing selectively references the facts alleged by Mr. Delahoussaye in an attempt to persuade this Court that Mr. Delahoussaye's petition fails to state a viable cause of action. As the following outlines, the Defendants' characterization overlooks and wrongfully discredits the multitude of factual allegations that paint a very different picture of the facts that give rise to the claims asserted herein by Mr. Delahoussaye:

- a. Mr. Delahoussaye had a contract with Livingston Parish.
- b. The Defendants suggest that Plaintiff's contract with Livingston Parish "was consistent with an agreement between [Livingston Parish] and [the Governor's Office of Homeland Security & Emergency Preparedness (GOHSEP)]."¹³
- c. Mr. Delahoussaye's petition, however, only references his contract with Livingston Parish¹⁴ and he had no contract with GOHSEP.
- d. Even if this Court were willing to go beyond the face of Mr. Delahoussaye's petition and presume that the OIG had jurisdiction because Mr. Delahoussaye and his company were a contractor or sub-contractor of GOHSEP, such conclusion would be wrong because no entity has a contract with GOHSEP.¹⁵
- e. Notwithstanding Defendants' repeated insistence that it had jurisdiction to investigate Plaintiff, the Amended and Restated Petition details facts that establish that the OIG's investigation of Mr. Delahoussaye was outside of the OIG's legislative authority.¹⁶
- f. Specifically, Mr. Delahoussaye alleges facts that outline that the OIG did not have authority to investigate local governments like Livingston Parish and that it is statutorily required to turn over any investigation to other law enforcement agencies when it finds evidence of purported criminal activity.
- g. Moreover, the petition details how the OIG failed to follow statutory requirements and Louisiana law when it obtained subpoenas to obtain Mr. Delahoussaye's records, including medical records (which may only be obtained pursuant to a warrant).
- h. The petition further outlines that plaintiff, his counsel and other witnesses all met with the OIG and explained the errors in its assumptions and calculations that led to the charges that Mr. Delahoussaye improperly billed Livingston Parish for his work.¹⁷

¹³ See Defendants' Memorandum in Support, p. 17.

¹⁴ See Amended and Restated Petition, ¶¶ 5 - 8.

¹⁵ Per the testimony of Mr. Ben Plaia, legal counsel for GOHSEP. See transcript of the proceedings taken in *State of Louisiana v. Corey Delahoussaye*, 21st JDC No. 30048 before the Honorable Brenda B. Ricks on April 20, 2015. Moreover, contrary to Defendants' suggestion, none of the money at issue was the State's money.

¹⁶ See Amended and Restated Petition, ¶¶ 77 - 100.

¹⁷ See Amended and Restated Petition, ¶¶ 45 - 53.

- i. Contrary to the conclusions of Defendants, Mr. Delahoussaye asserts that the allegations of criminal misconduct were false and unsupported by the evidence relied upon by the OIG.¹⁸
- j. Accordingly, the facts alleged by Mr. Delahoussaye paint a very different picture than that described by Defendants. Based on the allegations in the Amended and Restated Petition, the OIG wrongfully initiated an investigation without jurisdiction to do so, continued such investigation even after the lack of jurisdiction was raised by Plaintiff and his counsel, wrongfully obtained personal records, including medical records, in violation of its statutory authority and State law, and incorrectly concluded that such records supported a conclusion that Mr. Delahoussaye overbilled the State even though witnesses explained how several assumptions giving rise to such conclusions were not supported by any evidence.
- k. As a result of the foregoing, the criminal proceedings filed against Mr. Delahoussaye were dismissed for lack of probable cause¹⁹ and all of the evidence obtained by the OIG was suppressed²⁰ because the court determined that it was obtained improperly²¹ and that OIG did not have jurisdiction to conduct an investigation of Mr. Delahoussaye.

Accordingly, as addressed by the following in more detail, Mr. Delahoussaye's Amended and Restated Petition for Damages outlines ultimate facts detailing how the OIG's unauthorized and incompetent investigation led him to be wrongfully accused of stealing public funds and dragged through the media as an alleged felon. Furthering the duck/rabbit analogy, the facts outlined by Mr. Delahoussaye describe a very different picture of his claims than the theory put forth by Defendants. Considering that it is Mr. Delahoussaye's facts that must be accepted as true, Mr. Delahoussaye submits that the Defendants' exception of no cause of action is not well-founded.

II. MR. DELAHOUSSAYE ASSERTS A VIABLE CAUSE OF ACTION

Considering that all facts pled in the petition must be accepted as true, Mr. Delahoussaye has asserted the following viable claims: (1) defamation; (2) invasion of privacy; (3) malicious prosecution; (4) abuse of process; (5) abuse of right; (6) Section 1983 and 1988 claims; and (7) negligence. Defendants have not argued their cause of action in the same order that they are pled in Mr. Delahoussaye's petition. For the convenience of the Court, Mr. Delahoussaye addresses Defendants' arguments in the same order as the Defendants rather than addressing the exceptions as they are included in the petition.

¹⁸ See Amended and Restated Petition, § 51.

¹⁹ See Amended and Restated Petition, § 63.

²⁰ See Amended and Restated Petition, § 68.

²¹ See Amended and Restated Petition, § 66.

A. MR. DELAHOUSSAYE HAS A VIABLE DEFAMATION CLAIM.

Defendants assert two primary arguments: (a) that Mr. Delahoussaye must prove that the OIG Defendants acted with actual malice; and (b) that the OIG Defendants statements are protected by a qualified privilege. As detailed by the following, the Defendants' complaints are not ripe for resolution via an exception of no cause of action.

1. ACTUAL MALICE IS ADEQUATELY PLED.

Under Louisiana law, defamation is a tort involving the invasion of a person's interest in his or her reputation and good name.²² In order to prevail on a defamation claim a plaintiff must establish the following elements: (1) a false and defamatory statement concerning another person; (2) an unprivileged publication to a third party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury.²³ The fault requirement is generally referred to in the jurisprudence as malice, actual or implied.²⁴

Furthermore, pursuant to Louisiana law, words that expressly or impliedly accuse another of criminal conduct without considering extrinsic facts or circumstances are considered defamatory *per se*.²⁵ When a plaintiff proves publication of words that are defamatory *per se*, falsity, malice (or fault), and injury are presumed, but may be rebutted by the defendant.²⁶ Defendants attempt to avoid the presumption of malice and injury by suggesting that Mr. Delahoussaye must prove "actual malice" because he is a private plaintiff whose actions are a matter of public concern.²⁷ More specifically, Defendants assert that Mr. Delahoussaye must "establish, by clear and convincing evidence, that the OIG Defendants fabricated their findings regarding Delahoussaye's abusive billing practices, or knew they were false and recklessly disregarded their falsity."²⁸

Initially, Defendants wrongfully assert that Mr. Delahoussaye must establish that they fabricated their findings to prove actual malice. Rather, the Louisiana Supreme Court has held that statement is made with "actual malice" when it is made with knowledge that the

²² *Costello v. Hardy*, 864 So.2d 129, 139 (La.1/21/04).

²³ *Kennedy v. Sheriff of East Baton Rouge*, 935 So.2d 669, 674 (La. 07/10/06) quoting *Trentecosta v. Beck*, 703 So.2d 552, 559 (La.10/21/97); RESTATEMENT (SECOND) OF TORTS § 558 (1977).

²⁴ *Costello*, 864 So.2d at 139.

²⁵ 935 So.2d at 681.

²⁶ *Id.*

²⁷ See Defendants' Memorandum in Support, p. 7.

²⁸ See Defendants' Memorandum in Support, p. 9.

statement was false, or with reckless disregard of whether the statements were false or not.²⁹

Here, Mr. Delahoussaye has alleged the following in his Amended and Restated Petition:

53. Ms. Webb knew, or should have known, that her calculations and associated testimony were false.

54. Specifically, her testimony at the probable cause hearing on February 23, 2015 revealed a number of troubling assumptions and erroneous conclusions:

- a. Initially, Ms. Webb had no information to support the allegations that Petitioner actually filed any public records, a prerequisite to violating La. R.S. 14:133;
- b. Ms. Webb repeatedly testified that she reviewed Petitioner's timesheet when determining the amount of hours purportedly falsified by Petitioner;
- c. Ms. Webb, however, was reviewing Petitioner's Daily Log;
- d. As a result of basing her investigation on the wrong documents, Ms. Webb wrongfully concluded that Petitioner had billed time that he, in fact, had not actually billed;
- e. Ms. Webb wrongfully assumed that Petitioner was at the doctor's office or under general anesthesia when he was actually working;
- f. Ms. Webb's wrongfully assumed that Petitioner was going to the tanning bed when he was not, even after she interviewed management at Anytime Fitness who advised her that there was no way to determine whether anyone was actually tanning and that the fobs could not be reliably attributed to a single individual;
- g. Ms. Webb wrongfully assumed that Petitioner was playing golf when others were using his membership and she failed to make any effort to support her conclusions that Petitioner was actually playing golf as alleged.

55. The scope of Ms. Webb's errors was significant and belied actual information that she obtained during the OIG's investigation.

56. Specifically, Petitioner and his counsel had previously met with Ms. Webb and explained the nature of her wrongful assumptions and errors.

57. The information provided to Ms. Webb by Petitioner and numerous witnesses conflicted with her testimony at the probable cause hearing.

58. The information could have been easily verified if Ms. Webb had made any effort to do so.

The foregoing outlines how Ms. Webb had been provided information by Mr. Delahoussaye and his counsel, along with other witnesses, that put her on notice that her conclusions that he

²⁹ *Kennedy v. Sheriff of East Baton Rouge*, 935 So.2d 669, 675 (La. 07/10/06)

had submitted fraudulent or excessive billings was wrong. Accordingly, the Amended and Restated Petition contains detailed factual allegations that assert that Ms. Webb defamed Mr. Delahoussaye when she testified at the probable cause hearing because she had knowledge that her statements were false, or, at minimum, that she acted with reckless disregard of whether the statements were false or not (*i.e.*, with “actual malice”).

Notwithstanding, Mr. Delahoussaye does not concede that he is required to prove actual malice and he takes issue with the Defendants’ assertion that his actions were of public concern. Defendants reference Louisiana jurisprudence suggesting that the misuse of public funds is routinely held to be speech about a matter of public concern.³⁰ None of the cases that Defendants cite, however, were resolved on an exception of no cause of action. Rather, such cases went to trial or were subjects of motions for summary judgment. Furthermore, as detailed *supra*, Mr. Delahoussaye did not have a state contract. The conclusion that he was fraudulently or excessively billing resulted from the OIG’s own incompetent and negligent investigation, which are conclusory allegations that are not properly raised by the “face of the papers.” The reliance on absence of malice related to a matter of public concern is an affirmative defense:

When a libel defendant wants to raise an absence of malice defense, it must show that the plaintiff meets the public official or public figure test—a war of definitions that can, in close cases, be the major part of the suit's battle. For a public official, the defendant must show that that plaintiff was more than just a public employee. The cutoff line is a question for the state courts, and they are divided on the status some occupations, such as that of public school teachers. For a public figure, the defendant must show that the plaintiff was a high-profile person or someone who deliberately entered the public eye in an area of public debate. For a person involved in an issue of public concern, the defendant must show that there was the appropriate level of public interest.³¹

The test for triggering the heightened standard is three-fold: the defamatory words must be: (1) subject to first amendment protection (2) on a matter of public concern; and (3) about a person who is a public figure.³² These are all fact-dependent issues that must be resolved in Mr.

³⁰ See Defendants’ Memorandum in Support, p. 8.

³¹ See 22 American Jurisprudence Proof of Facts 3d 305, Affirmative Defenses in Libel Actions (2014).

³² Notably, the decisions in this regard do not change the standard for what is considered “defamatory;” rather, because Constitutional protections are indicated, those First Amendment protections supersede the normal standard for defamation, requiring a heightened standard before *state action* as a result of that speech is permissible. As stated by Justice Stewart in his concurring opinion in *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139; 93 S.Ct 2080; 36 L.Ed.2d 772 (1973), “the First Amendment protects the press from government, but that “it confers no analogous protection on the Government,” further explaining in n.7 that “Government is not restrained by the First Amendment from controlling its own expression.”

Delahoussaye's favor under the current procedural posture. For present purposes, it is notable that the United States Supreme Court has held that First Amendment protection does not extend to government entities.³³ It has also held that public employees who make statements pursuant to their official duties are not speaking as citizens for First Amendment purposes, therefore "the Constitution does not insulate their communications."³⁴ Accordingly, even though Mr. Delahoussaye has properly alleged that the Defendants acted with "actual malice," he does not concede that he must prove "actual malice" to prevail on his defamation claims.

2. THE PRIVILEGE IS INAPPLICABLE HERE.

In Louisiana, privilege is a defense to a defamation action.³⁵ A conditional or qualified privilege applies if the statement is made (1) in good faith, (2) on any subject matter of which the person communicating has an interest or in reference to which he has a duty, (3) to a person having a corresponding interest or duty.³⁶ Societal necessity requires unrestricted communication of such matters without inhibiting free communication in such instances by the fear that the communicating party will be held liable in damages if the good faith communication later turns out to be inaccurate.³⁷

Determining whether a qualified privilege exists involves a two-step process.³⁸ First, it must be determined whether the attending circumstances of a communication occasion a qualified privilege.³⁹ Second, it must be determined whether the privilege was abused, which requires that the grounds for abuse—malice or lack of good faith—be examined.⁴⁰ The second step of determining malice or abuse of the privilege is generally a question of fact for the jury unless only one conclusion can be drawn from the evidence.⁴¹ Accordingly, under Louisiana law, a defendant abuses the privilege if he (1) knows the matter to be false or (2) acts in

³³ See *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139; 93 S.Ct 2080; 36 L.Ed.2d 772 (1973) (Stewart, J., concurring) ("The First Amendment protects the press from governmental interference; it confers no analogous protection on the government"); *Id.*, at 139, n. 7 ("The purpose of the First Amendment is to protect private expression" (quoting T. Emerson, *The System of Freedom of Expression* 700 (1970))).

³⁴ *Garcetti v. Ceballos*, 547 U.S. 410, 421; 126 S. Ct. 1951; 164 L. Ed. 2d 689 (2006).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

reckless disregard as to its truth or falsity.⁴² Only those statements made with a high degree of awareness of their probable falsity meet the reckless disregard standard.⁴³ These considerations implicate well-pled allegations in the petition and they are not appropriate for resolution for an exception of no cause of action. When Mr. Delahoussaye's well-pled allegations are accepted as true, it is evident that he has stated a viable defamation claim.

B. MR. DELAHOUSSAYE HAS A VIABLE INVASION OF PRIVACY CLAIM.

"An actionable right of privacy occurs only when the defendant's conduct is unreasonable and seriously interferes with the plaintiff's privacy interest."⁴⁴ The Defendants factual allegations wrongly suggest that Mr. Delahoussaye was "under general anesthesia and recovering from a tummy tuck" and that he was "at a tanning booth" while illegally billing for his time. If this were the case, then the Defendants' argument might have some merit. Mr. Delahoussaye's allegations, however, establish that such allegations were wrong. Specifically, Mr. Delahoussaye's petition alleges the following facts that support his invasion of privacy claim:

92. La. R.S. 49:220.24(F)(2) provides that a subpoena or subpoena duces tecum "shall be issued only upon approval of a judge of the district court of the parish in which the Office of Inspector General is domiciled upon application in writing by the Inspector General. The judge shall issue a written decision within 72 hours after receipt of such application."

93. The Inspector General did not comply with these requirements and failed to obtain a written decision from the district court authorizing the subpoenas duces tecum issued herein.

94. Furthermore, in *State v. Skinner*, 10 So. 3d 1212 (La. 2009), the Louisiana Supreme Court ruled that a warrant must be used to obtain medical records.

95. Accordingly, the Inspector General's use of a subpoena to obtain Petitioner's medical records was a blatant violation of Louisiana law.

68. That hearing was held on January 14, 2016 and the trial court again suppressed the medical records obtained by the Inspector General because they were improperly obtained and stated the subpoenas that were used by the Inspector General's office failed to articulate the sufficient facts that would rise to the level of reasonable suspicion or constitute a reasonable basis to obtain these records.

71. Additionally, La. R.S. 49:220.25 provides that "records prepared or obtained by the inspector general in connection with investigations conducted by the inspector general shall be deemed confidential and protected from disclosure."

⁴² Id.

⁴³ Id.

⁴⁴ See Defendants' Memorandum in Support, pp. 13 - 14.

72. This confidentiality requirement is unqualified.

73. Not only does La. R.S. 49:220.25 deem investigation information confidential, it also makes it a "misdemeanor punishable by a fine of not more than two thousand dollars or imprisonment for not more than one year, or both, for the inspector general or any of his employees, or any other public official, corporation, or individual, to make public any such information or record."

74. Nonetheless, in the course of C-Del's dispute with Livingston Parish, it became evident that the Inspector General was sharing records obtained from its investigation with outside parties.

75. Specifically, during the proceedings before United States Civilian Board of Contract Appeals, the private contractors working for Livingston Parish provided the United States Government with copies of Petitioner's private records.

76. The only source for those records was the Inspector General.

When considered as true, these factual allegations plainly state a cause of action for invasion of privacy. Contrary to Defendants' assertion, an exception of no cause of action does not require Mr. Delahoussaye to "establish that the records were false or fictitious and to disprove that they related to a matter of public concern" to avoid dismissal of his claims.

Mr. Delahoussaye alleges that the OIG was without jurisdiction to investigate him and wrongfully concluded that he was improperly billing for his time. Even if the OIG had jurisdiction, it violated statutory law and jurisprudence when it obtained Mr. Delahoussaye's medical records without a warrant and subsequently made the contents of such records public. Accepting the foregoing allegations as true, Plaintiff's allegations properly state a cause of action for invasion of privacy.

C. MR. DELAHOUSSAYE HAS A VIABLE MALICIOUS PROSECUTION CLAIM.

Under Louisiana law, a claim for malicious prosecution requires a Plaintiff to establish: (a) the commencement or continuance of an original criminal or civil judicial proceeding; (b) its legal causation by the present defendants against plaintiff who was the criminal defendant in the original proceeding; (c) its bona fide termination in favor of the present plaintiff; (d) the absence of probable cause for such proceeding; (e) the presence of malice therein; and (f) damages conforming to legal standards resulting to plaintiff.⁴⁵ Here, the OIG Defendants contest only three of the foregoing factors: (1) commencement or continuance of a criminal or

⁴⁵ *Leblanc v. Pynes*, 46,393 (La.App. 2 Cir. 7/13/11), 69 So. 3d 1273, 1279.

civil proceeding; (2) probable cause; and (3) malice. As the following details, the Defendants' complaints are meritless.

First, the OIG correctly points out that it is not a prosecutorial body and that it did not institute the criminal proceeding against Mr. Delahoussaye. It also points out that the Livingston Parish District Attorney's Office prosecuted Mr. Delahoussaye. Inasmuch, the OIG alleges that Mr. Delahoussaye has failed to plead a cause of action because the OIG did not commence the criminal action against him. The OIG does not point to a single case in support of its position. The jurisprudence, however, only requires that a criminal action be commenced—or continued—and it does not restrict cases of malicious prosecution only to prosecutors.

For instance, in *Amas v. Brown*,⁴⁶ the Second Circuit affirmed an award of damages on a malicious prosecution claim filed by a man against his former sister-in-law for reporting to the police that he had taken items that belonged to her.⁴⁷ Even though the former sister-in-law abandoned the charges and they were ultimately expunged from his record, the court found that he had properly established a proper claim for malicious prosecution against the defendant—a citizen who was neither a prosecutor nor an investigative agency. Additionally, in *Gordy v. Burns*, the United States Fifth Circuit, applying the six Louisiana tort law elements of malicious prosecution, held:

. . . "prosecutor" is not used narrowly in the modern sense of "prosecuting attorney" but in the sense of *any* person . . . who initiates or procures a criminal proceeding. [Citation omitted]. Consequently, an officer may be liable for malicious prosecution if his "malice results in an improperly motivated prosecution without probable cause" and even if the officer had no direct influence over the prosecuting attorney. [Citation omitted]. In the typical case, an officer maliciously causes a criminal proceeding to be brought by providing false or misleading information to a prosecuting attorney or grand jury. [Citation omitted]. Nevertheless, the obtaining of an indictment will not insulate state actors from a malicious prosecution claim if a grand jury's decision has been "tainted by the malicious actions of the government officials." [Citation omitted].⁴⁸

Inasmuch, the OIG's argument that Mr. Delahoussaye has failed to state a cause of action for malicious prosecution because it is not a prosecutorial body and did not institute the criminal proceedings misstates the applicable law and it is simply wrong. The OIG's argument regarding probable cause is similarly flawed.

⁴⁶ 36,338 (La.App. 2 Cir. 9/18/2002), 828 So. 2d 138.

⁴⁷ *Id.* at 143.

⁴⁸ *Gordy v. Burns*, 294 F.3d 722, 728 (5th Cir. 2002).

In his Amended and Restated Petition, Mr. Delahoussaye asserts the following:

103. The criminal prosecution of Mr. Delahoussaye was supported only by the Inspector General's investigation, such that it would not have continued without the actions of the Inspector General.

104. As detailed by the foregoing, Ms. Webb's flawed investigation and her erroneous and wrongful conclusions led to the charges that were filed against Mr. Delahoussaye.

105. The charges against Mr. Delahoussaye were initially declined by a grand jury.

106. After a bill of information was subsequently filed by the District Attorney, the district judge found that the charges were not supported by probable cause.

107. As detailed by the foregoing, the nature and the multitude of errors that plagued the Inspector General's investigation and Ms. Webb's testimony reveal that her allegations of illegal conduct were made with actual malice and with a reckless disregard for the truth (e.g., that she knew, or should have known, that she was incorrect).

Given the current procedural posture of these proceedings, Defendants attempts to argue the existence of probable cause fails to recognize that a district court found that there was no probable cause for the charges against him and that such fact is pled in the petition. Similarly, Defendants complaints about malice are equally wanting and they overlook the allegations already outlined herein detailing how the OIG Defendants undertook this investigation without jurisdiction and the disturbing raid that the OIG conducted at Mr. Delahoussaye's home on July 25, 2013. At minimum, when accepted as true, the foregoing allegations are sufficient to establish that the OIG Defendants acted with malice in their pursuit of Mr. Delahoussaye's alleged misconduct and that the OIG did not have probable cause to pursue the investigation.

D. MR. DELAHOUSSAYE HAS A VIABLE ABUSE OF PROCESS CLAIM.

The OIG contends that the abuse of process claim cannot be maintained against the OIG because it is "an improper expansion of the law." More specifically, the OIG argues that a claim for abuse of process applies only to "a judicial proceeding, such as the filing of a lawsuit or other judicial request for relief," and because such claims must be asserted against the prosecutorial body who filed the criminal proceeding.⁴⁹ Such contentions are without merit.

⁴⁹ See Memorandum in Support, p. 20.

In *Taylor v. State*, the Court recognized a cause of action for “abuse of process” in the context of a Louisiana State Trooper with regard to an investigation he conducted, and the manner in which he went about conducting that investigation.⁵⁰ After gathering the information, the Trooper provided the information to the District Attorney.⁵¹ The Trooper did not participate in either the subsequent arrest or prosecution of the plaintiff.⁵² In that case, the Trooper at issue was not the “prosecutorial body who filed the criminal proceeding,” and his investigation was not “a judicial proceeding, such as the filing of a lawsuit or other judicial request for relief;” both of which the defendant in this case erroneously contends must be true in order to support a claim for abuse of process.

Further, although the plaintiff in *Taylor* asserted a claim for infliction of emotional distress and did not even specifically assert a claim for malicious prosecution, the court held *sua sponte* that “[t]here seems to be no reason not to recognize a plaintiff’s right to recover for damages caused by a defendant’s abuse of process when the facts so warrant.”⁵³ The Court’s basis for addressing “abuse of process” *sua sponte* was its conclusion that when there are mistakes in an investigation that are “not reasonably justified by the surrounding circumstances . . . the interest of every law-abiding citizen in being free from unwarranted or improper criminal investigation is so great that almost every such investigation might be considered extreme and outrageous.”⁵⁴ The court determined that reasonable efforts toward crime suppression should not be curtailed by civil liability for simple mistakes, but an investigator “remains obliged to act as a reasonable person would, *taking in all of the circumstances.*”

Here, the OIG Defendants suggest that the OIG was a law enforcement agency that was conferred “all investigative powers and privileges appurtenant to a law enforcement agency”⁵⁵ to support its argument that its actions with regard to Mr. Delahoussaye were appropriate. Again, the OIG Defendants overlook the well-pled allegations in the petition establishing that

⁵⁰ 92-230 (La. App. 3d. Cir. 3/31/93) 617 So. 2d 1198

⁵¹ *Id.* at 1201.

⁵² *Id.* at 1201-02.

⁵³ *Id.* at 1205.

⁵⁴ *Id.*

⁵⁵ See Memorandum in Support, p. 20.

it was without jurisdiction to conduct the investigation of Mr. Delahoussaye and that it had an ulterior motive to do so:

79. In 2008 the Inspector General was designated a "law enforcement agency," and was provided with limited investigative powers and privileges afforded to full-fledged law enforcement agencies.

80. The investigative powers and privileges are limited by the Inspector General's statutorily defined purpose and functions.

81. As stated in La. R.S. 49:220.24(j), the Inspector General is "conferred all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duty, powers, and functions set forth herein."

82. The foregoing does not authorize the Inspector General to investigate local governments like Livingston Parish.

83. Significantly, it is also not within the purpose of the Inspector General's office, or its authority, duty, power, and function as set out in La. R.S. 49:220.24, to conduct criminal investigations or to obtain search warrants.

84. To the extent the Inspector General has any criminal investigative authority, it is limited to assisting other law enforcement agencies and cooperating with such agencies with regard to further criminal action.

85. Since C-Del and Petitioner had no contract or other relationship with a covered agency, the Inspector General had no jurisdiction to conduct its investigation.

86. Furthermore, the Inspector General has no authority to obtain search warrants even when it has jurisdiction to investigate.

87. La. R.S. 49:220.24(C)(4) provides that "when there is evidence of what may be criminal activity," the inspector general shall report complaints to the proper federal, state, or local agency.

88. Further, La. R.S. 49:220.24 (K) requires that the referral to the appropriate law enforcement agency occur "[u]pon credible information" of such criminal activity.

89. Pursuant to La. R.S. 49:220.24(K), the Inspector General is relegated to a "back-seat" role once it determines it has credible information of criminal activity.

90. Section 49:220.24(K) provides that "[s]ubsequent to notifying the appropriate law enforcement agency, the inspector general may assist the law enforcement agency in conducting the investigation."

91. In addition to investigation Petitioner outside of its jurisdiction, the Inspector General failed to comply with its own governing authority and Louisiana law when it investigated Petitioner.

92. La. R.S. 49:220.24(f)(2) provides that a subpoena or subpoena duces tecum "shall be issued only upon approval of a judge of the district court of the parish in which the Office of Inspector General is domiciled

upon application in writing by the Inspector General. The judge shall issue a written decision within 72 hours after receipt of such application.”

93. The Inspector General did not comply with these requirements and failed to obtain a written decision from the district court authorizing the subpoenas duces tecum issued herein.

94. Furthermore, in *State v. Skinner*, 10 So. 3d 1212 (La. 2009), the Louisiana Supreme Court ruled that a warrant must be used to obtain medical records.

95. Accordingly, the Inspector General’s use of a subpoena to obtain Petitioner’s medical records was a blatant violation of Louisiana law.

96. In short, the Inspector General’s unlawful investigation led to unfounded criminal charges against Petitioner.

97. Moreover, all of the evidence obtained in support of those charges was suppressed due to the failure of the Inspector General to comply with Louisiana law.

98. At the probable cause hearing on February 23, 2015, Ms. Webb was asked whether she could tell the court of “any contract that [Petitioner] has with an executive department of [the State of Louisiana].

99. Tellingly, Ms. Webb could not identify any contract that would have provided the OIG jurisdiction over Mr. Delahoussaye.

The Defendants rely on their own theory of the case when they assert that “there was nothing illegal or abusive about the process utilized by the OIG.”⁵⁶ As detailed by the foregoing, the OIG’s entire investigation was unlawful and undertaken even as Mr. Delahoussaye raised concerns about its lack of jurisdiction over him. When accepted as true, these allegations state a valid cause of action for abuse of process.

E. MR. DELAHOUSSAYE HAS A VIABLE ABUSE OF RIGHT CLAIM

The Louisiana abuse of rights doctrine applies if one of the following conditions is met: (a) the rights were exercised exclusively for the purpose of harming another or with the predominant motive to cause harm; (b) an absence of a serious and legitimate interest that is worthy of judicial protection; (c) using the right in violation of moral rules, good faith or elementary fairness; or (d) exercising the right for a purpose other than for which it was granted.⁵⁷ Contrary to the allegations of the OIG Defendants, Mr. Delahoussaye does not need to establish each of the foregoing elements to state a cause of action for abuse of rights as indicated by the use of “or.”

⁵⁶ See Memorandum in Support, p. 23.

⁵⁷ *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 520 (5th Cir. 1994)(quotation omitted).

As the foregoing responses supporting Mr. Delahoussaye's claims for malicious prosecution and abuse of process makes clear, the Petition herein provides specific factual allegations of each of the elements. At minimum, the factual allegations detailing that the OIG Defendants continued their investigation after concerns about their jurisdiction were raised, supports a finding that the OIG Defendants failed to exercise their law enforcement authority in good faith and that they did so for a purpose other than for which it was granted. The OIG Defendants suggestion that the investigation of Mr. Delahoussaye "amounted to a regular use of 'process'" is premised on the wrongful belief that Mr. Delahoussaye had a state contract that provided the OIG jurisdiction and that it wasn't providing the fruits of its investigation to others for use in a suit to defend a FEMA effort seeking to recover more than \$50 million that was wrongfully paid in the wake of Hurricane Gustav. Again, Mr. Delahoussaye submits that this exception is meritless.

F. MR. DELAHOUSSAYE HAS VIABLE CLAIMS UNDER 42 U.S.C. 1983.

42 U.S.C. § 1983 imposes liability for violation of rights protected by the United States Constitution, not for violations of duties of care arising out of tort law.⁵⁸ In order to prevail in a civil rights action under § 1983, a plaintiff must prove by a preponderance of the evidence that the conduct of the defendants was under the color of state law and that the conduct resulted in a deprivation of rights, privileges, and immunities secured by the United States Constitution or a federal statute, or both.⁵⁹ The OIG Defendants do not dispute that their action constituted state action. Rather, their argument focuses on the second element and their claim for qualified immunity. The second requirement of an action brought under § 1983 "is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'⁶⁰

Here, Mr. Delahoussaye's petition readily meets any heightened standard of pleading. Specifically, as previously discussed, the Petition alleges that the OIG was put on notice about questions regarding its jurisdiction over the investigation of Mr. Delahoussaye. Notwithstanding, the OIG Defendants subsequently wrongfully obtained subpoenas and

⁵⁸ *Varnado v. Dep't of Empl. & Training, Office of Workers' Comp.*, 95-0787 (La. App. 1 Cir. 06/23/96); 687 So. 2d 1013, 1022 citing *Baker v. McCollan*, 443 U.S. 137, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979); *Ross v. Sheriff of Lafourche Parish*, 479 So. 2d 506, 512 (La. App. 1st Cir. 1985).

⁵⁹ *Id.* citing *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981); *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989); *Moresi v. State, Department of Wildlife and Fisheries*, 567 So. 2d 1081, 1084 (La. 1990); *Kyle v. Civil Service Commission*, 588 So. 2d 1154, 1159 (La. App. 1st Cir. 1991)

search warrants that were ruled unlawful.⁶¹ The Defendants failed to comply with La. R.S. 49:220.24(F)(2), which provides that a subpoena or subpoena duces tecum “shall be issued only upon approval of a judge of the district court of the parish in which the Office of Inspector General is domiciled upon application in writing by the Inspector General.” Specifically, Defendants did not comply with these requirements and failed to obtain a written decision from the district court authorizing the subpoenas duces tecum issued herein. More importantly, Defendants wrongfully obtained Plaintiff’s medical records with a subpoena in violation of the prohibition outlined in *State v. Skinner*, 10 So. 3d 1212 (La. 2009), in which the Louisiana Supreme Court made clear that a warrant must be used to obtain medical records. This conduct plainly violates statutory and constitutional rights that any reasonable law enforcement agent would have known about.

On their face, the actions outlined herein constitute violations of due process and unlawful search and seizure implicated by the 14th Amendment. Given that a district court has already ruled that the OIG Defendants lacked jurisdiction to obtain the purported evidence that they obtained regarding Mr. Delahoussaye, the Defendants’ suggestion that they “lawfully exercised discretion in the performance of their public duties and are generally protected by qualified immunity”⁶² is simply wrong and not supported by the facts alleged in the Petition.

Finally, Mr. Delahoussaye has alleged an infringement upon several protected interest:

149. At all times pertinent hereto, Mr. Phares and Ms. Webb were acting under color of authority within the meaning and intent of 42 U.S.C. §1983.

150. As detailed by the foregoing, Mr. Phares and Ms. Webb went forward with their investigation without jurisdiction to do so.

151. At all times hereto, Petitioner enjoyed clearly established rights to his good name, reputation, and liberty guaranteed to him under the 14th Amendment of the United States Constitution, in addition to clearly established rights to due process also guaranteed to him under the 14th Amendment of the United States Constitution.

152. As a result of the actions of Ms. Webb and Mr. Phares, Plaintiff was arrested and summonsed to appear in court and he was wrongfully deprived of his freedom also violating rights secured to him under the 4th Amendment of the United States Constitution.

⁶⁰ *Id.* citing *Baker v. McCollan*, 443 U.S. at 140, 99 S. Ct. at 2692.

⁶¹ See Petition, ¶ 50.

⁶² See Memorandum in Support, p. 27.

153. Specifically, as outlined in the foregoing, the Inspector General is not authorized by statute to conduct its own criminal investigations, or to obtain search warrants to further its investigations.

154. As outlined herein, Ms. Webb wrongfully obtained a search warrant and subpoenas duces tecum in breach of well-established law.

155. Mr. Phares, as chief investigator, participated in and/or failed to properly supervise Ms. Webb.

156. As a result of violating well-established laws, Mr. Phares and Ms. Webb wrongfully obtained Petitioner's medical records and a multitude of computers and business records that made it impossible for C-Del and Petitioner to conduct business.

157. Notably, Mr. Phares and Ms. Webb never reviewed or used the information wrongfully seized from Petitioner's home in support of the Inspector General's purported investigation.

158. The actions of Mr. Phares and Ms. Webb caused Petitioner to lose work and wrongfully deprived him of property and his ability to perform his work, along with depriving him of his right to privacy and painting him in a false light.

Again, the foregoing outlines ultimate facts that support Mr. Delahoussaye's claims and state a viable cause of action.

G. MR. DELAHOUSSAYE HAS VIABLE NEGLIGENCE CLAIMS.

The OIG asserts that Mr. Delahoussaye's claims for negligence are subject to dismissal because "at least one element of Delahoussaye's negligence claims fails" in that "he cannot prove that OIG breached the applicable standard of care in investigating and reporting its findings."⁶³ While the OIG correctly points out that La. R.S. 47:220.24 provides for the source of its power, it incorrectly suggests that the statute establishes the standard of care that it must operate under. Instead, as acknowledged in its own reports, the OIG is governed by the Principles and Standards for Offices of Inspector General as promulgated by the Association of Inspector Generals. Although La. R.S. 47:220.24(L) may provide that the OIG "shall do all things necessary to carry out the functions set forth [in the statute]," it is understood that such functions must be carried out lawfully and competently. Moreover, given that the petition alleges that the OIG Defendants acted beyond the scope of their jurisdiction, their suggestion that Mr. Delahoussaye "cannot prove that the OIG breached the applicable standard of care in

⁶³ See Memorandum in Support, p. 30.

investigating and reporting its findings⁶⁴ is incorrect. Accordingly, Mr. Delahoussaye urges the Court to also overrule this exception.

H. MR. DELAHOUSSAYE HAS VIABLE CLAIMS UNDER RESPONDEAT SUPERIOR

The OIG asserts that the claim against the OIG “should be dismissed for the same reasons that all Plaintiff’s other claims will be dismissed.”⁶⁵ Conversely, to the extent that Mr. Delahoussaye has demonstrated why the exceptions have no merit, he submits that his reliance on respondeat superior is proper.

I. MR. DELAHOUSSAYE HAS PROPERLY ASSERTED INDIVIDUAL CLAIMS.

The law is clear that a state is not a person within the meaning of § 1983.⁶⁶ State and arms of state government are not persons who may be sued under this section.⁶⁷ La. R.S. 13:5102 defines state agencies as any board, commission, department, agency, special district, authority, or other entity of the state. In the instant case, the OIG is an agency of the state within the contemplation of La. R.S. 13:5102. The OIG cannot be held liable for §1983 damages, such that these claims have been properly asserted against the individuals who acted under the color of state action, Mr. Street, Mr. Phares, and Ms. Webb. Again, Mr. Delahoussaye submits that this exception is meritless.

III. CONCLUSION

The OIG Defendants did not have lawful authority to investigate Mr. Delahoussaye. As a result, their attempts to rely on the authority conveyed by La. R.S. 49:220.24(j) is misplaced. Moreover, the Defendants’ repeated assertions that Mr. Delahoussaye had a state contract has no basis in fact and directly contradicts the allegations of the petition. As detailed herein, these two incorrect assumptions underlie nearly all of the exceptions put forth by Defendants and evidence that the Defendants have failed to carry their burden to demonstrate that Mr. Delahoussaye’s petition states a cause of action.

Despite Defendant’s best efforts to characterize Plaintiff’s duck as a rabbit, Mr. Delahoussaye’s petition outlines viable claims that are properly supported by factual

⁶⁴ *Id.*

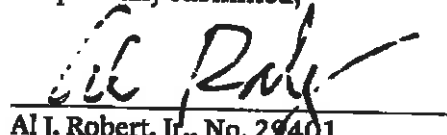
⁶⁵ See Memorandum in Support, p. 31.

⁶⁶ *Varnado v. Dep’t of Empl. & Training, Office of Workers’ Comp.*, 95-0787 (La. App. 1 Cir. 06/28/96); 687 So. 2d 1013, 1022-23 citing *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989).

⁶⁷ *Id.* citing *Quern v. Jordan*, 440 U.S. 332, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979); *Board of Examiners of Certified Shorthand Reporters v. Neyrey*, 542 So. 2d 56, 66 (La. App. 4th Cir.).

allegations. Accordingly, Mr. Delahoussaye submits that the exception of no cause of action is meritless and urges this Court to overrule it.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing has been sent by email to all counsel of record via electronic mail this October 6, 2016.



Al J. Robert, Jr.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA



COREY DELAHOUSSAYE

* NO. C646126

VERSUS

*

STATE OF LOUISIANA, THROUGH
THE OFFICE OF INSPECTOR
GENERAL, ET AL

*

*

*

SECTION 24

**THE OIG DEFENDANTS' REPLY TO OPPOSITION TO
PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION**

MAY IT PLEASE THE COURT:

The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants" or "OIG") submit this reply in response to Plaintiff, Corey Delahoussaye's ("Plaintiff" or "Delahoussaye") opposition to their Peremptory Exception of No Cause of Action. Plaintiff's Amended Petition has failed to fulfill its intended purpose – that is, add factual allegations sufficient to support Plaintiff's causes of action against the OIG. For this reason, the Court's prior ruling sustaining the exception should not be disturbed.

FILED
BY CLERK OF COURT
EAST BATON ROUGE PARISH, LA
26 OCT 13 11 PM

Summary of arguments

Plaintiff's Opposition further confirms his failure and/or inability to allege sufficient facts to defeat the OIG's exception. It is clear, from a review of the Opposition, that Plaintiff's arguments are, once again, premised upon the same fundamental misunderstanding or misinterpretation of the no cause of action standard that he demonstrated in his opposition to the OIG's previous exception. In particular, in an attempt to defeat a second dismissal of his claims, Plaintiff largely quotes multiple paragraphs of legal standards, legal conclusions based upon those legal standards, and factual conclusions, all of which he insists are "facts", which he asks the Court to accept as true. Simply calling such legal recitations and conclusions "facts" does not make them so. The standard on an exception of no cause of action is clear. To be accepted as true, the allegations must be ultimate facts; conclusions of law or fact and evidentiary facts

will not be considered.¹ By way of example, the OIG references pages 10 and 11 of Plaintiff's Opposition where Plaintiff quotes Paragraphs 92-95, 68, and 71-76, and concludes that these "factual allegations", when accepted as true, plainly state a claim for invasion of privacy. However, the quoted paragraphs are comprised primarily of statutory and jurisprudential quotes/references and Plaintiff's interpretations of, and legal conclusions based upon, these authorities. This is just one of the several instances of Plaintiff's improper attempt to support his claims with legal and factual conclusions which, by law, cannot be considered on exception of no cause of action. Plaintiff's claims against the OIG should, once again, be dismissed, for Plaintiff's continued failure (and inability) to state legally cognizable causes of action against the OIG. The Court's prior ruling should, therefore, stand.

2. Plaintiff's peculiar factual background section should be disregarded.

The OIG briefly addresses this section of Plaintiff's Opposition by asking that the Court rely instead on the Amended Petition and/or the background offered by the OIG in its original brief. Indeed, this section of Plaintiff's Opposition incorrectly and selectively summarizes the OIG's arguments and curiously quotes paragraphs of the petition, while intermittently re-stating the OIG's arguments and Plaintiff's rebuttal to those arguments. For the sake of clarity and accuracy, the OIG asks that the Court altogether ignore that section of Plaintiff's Opposition.

3. The Amended Petition fails to state a cause of action for defamation.

Plaintiff wrongly argues, in his Opposition, that the element of actual malice is adequately pled.² In support of this position, he states that under Louisiana's jurisprudence, a statement is made with "actual malice" when it is made with knowledge that the statement was false, or reckless disregard of whether the statement was false or not.³ To establish a reckless disregard for the truth, the plaintiff must show that the false publication was made with a high degree of awareness of probable falsity, or that the defendant entertained serious doubt as to the truth of his publication.⁴ Further, conduct which would constitute reckless disregard is typically found where a story is fabricated by the defendant, is the product of his imagination, or is so inherently improbable that only a reckless man would have put it in

¹ *Sparks v. Donovan*, 04-388 (La. App. 3 Cir. 10/13/04), 884 So.2d 1276, 1279 (quoting *Parish of Jefferson v. City of Kenner*, 95-266 (La. App. 5 Cir. 10/31/95), 663 So.2d 880); and *Butler v. Roeder*, 635 So.2d 1206, 1207 (La. App. 5 Cir. 1994) (emphasis added).

² Opposition to Exception, p. 6.

³ Opposition to Exception, pp. 6-7.

⁴ *Starr v. Boudreaux*, 2007-0652 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 390, citing *Turpley v. Colfax Chronicle*, 94-2919, p. 2 (La. 2/17/95), 650 So.2d 738, 740.

circulation.⁵ Stated simply, Plaintiff can only prevail on his defamation claim if he can (clearly and convincingly)⁶ establish that the OIG Defendants either knew the statement was false or fabricated the statement.

The facts alleged in the Amended Petition do not establish that Ms. Webb knew that her findings regarding Delahoussaye's improper billings and related testimony were false, and much less, that she fabricated those findings and testimony. Unsurprisingly, Plaintiff conclusively alleges that she "knew or should have known that her calculations and associated testimony were false."⁷ The proposed support for this conclusion is Paragraphs 54 through 58, quoted in Plaintiff's Opposition. Those paragraphs, however, are comprised mainly of legal, factual and/or evidentiary conclusions based upon Plaintiff's selective references to Ms. Webb's live testimony during the 21st Judicial District Court proceedings regarding her investigative findings.⁸ Plaintiff's legal, factual and/or evidentiary conclusions cannot be considered. Even the facts alleged, including specifically, that "Petitioner and his counsel had previously met with Ms. Webb and explained the nature of her wrongful assumptions and errors"⁹ are insufficient to establish actual malice. Instead, what they arguably indicate is that an investigator for a law enforcement agency decided (based on her judgment and expertise) to complete her investigation and believed she had enough credible information to disagree with Delahoussaye's self-serving denials. By concluding that Ms. Webb "was put on notice that her conclusion that he [Delahoussaye] had submitted fraudulent or excessive billings was wrong"¹⁰ and that she "defamed him when she testified at the probable cause hearing because she knew her statements were false" or acted with reckless disregard of their falsity,¹¹ Delahoussaye seems to be suggesting that an offender's denials of the complaints made against him/her conclusively establish the complaints' falsity and should systematically prompt law enforcement to close their investigation. This logic is flawed and would render meaningless the very purpose of law enforcement.

Ms. Webb was called as a witness to testify regarding her investigative findings on Mr. Delahoussaye (which findings were corroborated by an independent auditing firm which

⁵ *Starr*, 978 So.2d at 390. (Emphasis added.)

⁶ See cases cited in Memo in Support of Exception of No Cause of Action.

⁷ Page 8 of Opposition to Exception, quoting Amended Petition ¶ 53.

⁸ See Paragraphs 54, 57 and 58 of Amended Petition.

⁹ Paragraph 56 of Amended Petition.

¹⁰ Pages 7-8 of Opposition to Exception.

¹¹ *Id.* at p. 8.

investigated Delahoussaye prior to the OIG's involvement).¹² Delahoussaye's denials of, or disagreements with, Ms. Webb's findings do not in themselves establish that her findings were false or that she knew them to be false. There simply is no support in the law for what appears to be Plaintiff's proposed falsity/malice standard. And even if the Court accepts as true Plaintiff's evidentiary and factual conclusions that Ms. Webb made assumptions and committed mathematical errors during the course of her investigation, such assumptions and errors are not akin to actual malice, as previously discussed in the OIG's original brief. Plaintiff needs more to establish actual malice under the law. The facts alleged in the Amended Petition simply do not support this element of his cause of action for defamation, making a second dismissal of this claim appropriate.

Incidentally, notwithstanding Plaintiff's contrary arguments, actual malice is a necessary element of Plaintiff's defamation claim, for the reasons discussed in the OIG's original brief. Plaintiff also cites *Columbia Broadcasting System, Inc. v. Democratic National Committee*¹³ and *Garcetti v. Ceballos*¹⁴ for the proposition that the First Amendment does not extend to government entities.¹⁵ These cases are factually inapposite and certainly do not establish that First Amendment protection can never extend to government speech in a defamation action.¹⁶ In particular, these cases do not directly address the standard of proof applicable against a government defendant in the context of a defamation action; nor do they hold that the actual malice standard should not apply in defamation actions where the government is a defendant. While it may be true that the First Amendment is generally regarded to protect the speech of citizens rather than government entities, the application of the actual malice standard in defamation actions against government defendants is indeed consistent with First Amendment principles. As one court has explained, "If the unfettered interchange of ideas is a central concern of the First Amendment, then application of the First Amendment to government speech in the

¹² The prior and now-deleted allegation that an independent auditor's investigation yielded the same result as the OIG's investigation is quite telling — even if Plaintiff now disingenuously wishes to delete this fact. See original petition ¶¶ 18-19, 26.

¹³ *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139; 93 S. Ct. 2080 (1973).

¹⁴ *Garcetti v. Ceballos*, 547 U.S. 410, 421; 126 S. Ct. 1951 (2006).

¹⁵ Plaintiff's Opposition, p. 12.

¹⁶ See *Garcetti*, 547 U.S. 410, 421 (holding that the Constitution does not insulate their communications from employer discipline when public employees make statements pursuant to their official duties); and *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139 (holding that a government is not restrained by the First Amendment from controlling its own expression).

context of limited protection from liability for defamation is entirely consistent with First Amendment dogma, in that it promotes government's contribution to the marketplace of ideas."¹⁷

The OIG also adopts by reference all of the arguments, in its original brief, in support of the OIG Defendants' qualified privilege.

For all of these reasons, the Court's prior decision to sustain the OIG's exception and dismiss the defamation claim should stand.

4. The Amended Petition fails to state a cause of action for invasion of privacy.

Defending the viability of his failed cause of action for invasion of privacy, Plaintiff argues that the "petition alleges the following facts that support his invasion of privacy claim." Inexplicably, those purported supporting "facts" are Paragraphs 92-95, 68, and 71-76 of the Amended Petition and they are not "facts" at all. A simple review of the cited paragraphs reveals this:

Paragraph 92 is a quote from a statute. Paragraph 93 is a conclusory statement that the OIG did not comply with the law cited in the previous paragraph. Paragraph 94 purports to be a reference to the holding in a Louisiana Supreme Court case. Paragraph 95 is a legal conclusion that the OIG violated Louisiana law. Paragraph 68 arguably contains allegations of fact, referring to the hearing on the motion to suppress – the hearing transcript is the best evidence of its contents. Paragraph 71 is a quote from a statute. Paragraph 72 is an interpretation of the statute. Paragraph 73 is another quote from a statute. Paragraph 74 is a factual conclusion that "it became evident that that the [OIG] was sharing records obtained from its investigation with outside parties." Paragraph 75 is arguably the single factual allegation out of the 11 quoted paragraphs. Paragraph 76 factually concludes that the only source for the records was the OIG.

Apparently, Plaintiff is operating under the misconception that all representations and statements in his petition are factual allegations which must be accepted as true. As shown by the sections of the Amended Petition which Plaintiff argues are factual allegations that support his claim of invasion of privacy, that is just not the case. The legal quotes and legal/factual conclusions, even when couched as factual allegations, cannot be accepted as true. Like the original petition, Plaintiff's Amended Petition also fails to allege sufficient facts to state a claim for invasion of privacy.

¹⁷ *Nadel v. Regents of Univ. of California*, 28 Cal. App. 4th 1251, 1267, 34 Cal. Rptr. 2d 188, 197 (1994).

5. The Amended Petition fails to state a cause of action for malicious prosecution.

Plaintiff's Opposition fails to demonstrate that the law on malicious prosecution affords him a remedy under the facts alleged in the Amended Petition. Plaintiff's assertion that "the jurisprudence . . . only requires that a criminal action be commenced – or continued – and that it does not restrict cases of malicious prosecution only to prosecutors" appears to be based upon inapposite case law. Although Plaintiff sets forth all of the elements of the malicious prosecution cause of action in his Opposition, he somehow misses the fact that the law also requires a showing, among other things, of "legal causation by the present defendant against plaintiff who was the defendant in the original proceeding" AND malice by that defendant.¹⁸ Plaintiff's reliance on *Amos v. Brown*¹⁹ involving a sister-and-law reporting her brother-in-law to the police and pressing criminal charges against him for allegedly stealing her property is misplaced. While Plaintiff alleged that the fruit of the OIG's investigation was used in the filing of criminal charges against him by the District Attorney, he has not alleged that the OIG pressed charges or otherwise directed or requested the filing of the criminal proceeding.

Further, Plaintiff's reliance upon, and quote from, the Fifth Circuit case of *Gordy v. Burns*, is inapplicable here. The principles set forth in *Gordy* seem to relate to constitutional-based malicious institution of prosecution and there is no indication (since the abrogation of *Gordy*)²⁰ that such principles have been applied in the context of a state law-based malicious prosecution claim. In any event, relying on *Gordy*, Plaintiff references language indicating, in part, that "an officer maliciously causes a criminal proceeding to be brought by providing false or misleading information to a prosecuting attorney or grand jury."²¹ At a minimum, the causation and/or probable cause element of Plaintiff's malicious prosecution claim fails, for the failure of the Amended Petition to allege sufficient facts to establish the falsity of the OIG's investigative findings, for the reasons stated previously.

Plaintiff's attempt, in his Opposition, to support the viability of the probable cause element of his malicious prosecution claim also fails. In support of this element, he quotes Paragraphs 103-107 of the Amended Petition. Of these five (5) paragraphs, three are conclusory

¹⁸ *Leblanc v. Pynes*, 46,393 (La. App. 2 Cir. 7/13/11), 69 So.3d 1273, 1279, writ denied, 2011-1792 (La. 10/14/11), 74 So.3d 213; *Johnson v. Pears*, 313 So.2d 812 (La. 1975).

¹⁹ 36, 338 (La. App. 2 Cir. 9/18/02), 828 So.2d 138.

²⁰ *Gordy* was abrogated by *Castellano v. Fragono*, 352 F.3d 939 (5th Cir. 2003).

²¹ Plaintiff's Opposition, p. 12.

statements. Paragraphs 104 and 107 are legal conclusions. Paragraph 103 is an evidentiary/factual conclusion. This leaves only paragraphs 105 and 106, as factual allegations, which reference the procedural posture of the 21st JDC proceedings -- namely that the jury initially declined the charges and that the district judge found that the charges were not supported by probable cause (in litigation in which the OIG was not a party and, thus, did not have the benefit of a defense by its own counsel).

Even if both prosecution and probable cause elements could be established under the facts alleged in the Amended Petition, the claim still cannot be maintained because all of the elements of the cause of action must be met in order for Plaintiff to be afforded a legal remedy against the OIG under the facts alleged in the Amended Petition. Plaintiff argues in his Opposition that the element of malice is satisfied because he has alleged that the OIG "undertook this investigation without jurisdiction" and searched (or "raided", as Plaintiff puts it) Delahoussaye's home pursuant to a search warrant.²² The OIG denies the legal conclusion that it "lacked jurisdiction" (and the self-serving terminology used in reference to the search of Plaintiff's home). More importantly, as previously stated, Plaintiff's conclusory allegations and conclusions of law (including specifically, the OIG's lack of jurisdiction) need not be considered, as a matter of law. Accordingly, Plaintiff's request that these conclusory statements be accepted as true and that they sufficiently establish malice on the part of the OIG is meritless and should be rejected. Without the element of malice, Plaintiff's malicious prosecution claim cannot be maintained under the facts alleged in the Amended Petition. This claim should, once again, be dismissed.

6. The Amended Petition fails to state a cause of action for abuse of process.

Plaintiff's attempt at defending his continued failure to properly plead his claim for abuse of process is unconvincing. He centers his arguments in this regard upon *Taylor v. State*, which is easily distinguishable from, and inapposite to, this case.²³ There, the officer commenced an investigation of the plaintiff without reasonable suspicion and, worse, the ultimate motive for his investigation was to build a case against the plaintiff in order to lessen or avoid the likelihood that he would be held liable for his actions on the night he arrested the plaintiff.²⁴ The Third

²² Opposition, p. 13.

²³ See Plaintiff's Opposition, p. 14.

²⁴ *Taylor v. State*, 617 So.2d 1198, 1204 (La. App. 3 Cir. 1993), writ denied, 620 So.2d 875 (La. 1993).

Circuit further observed that there was evidence from which the trial court could have concluded that this investigation was initiated for the officer's own purposes, rather than for the purpose of conducting a legitimate investigation.²⁵

In this case, Plaintiff has alleged no facts that support the finding of an ulterior motive on the part of the OIG (or that the OIG was advancing its own interests/purposes and/or that it stood to gain any benefit by investigating Plaintiff) such that the circumstances and ruling in *Taylor* would be persuasive in this case. All of Plaintiff's allegations regarding the jurisdictional authority of the OIG are merely legal conclusions, clothed as fact, which this Court is not bound to accept as true. The OIG agrees that an investigator remains obligated to act as a reasonable person, taking in all of the circumstances, as Plaintiff posits. However, there is no indication (other than Plaintiff's conclusory and self-serving allegations and his legal conclusions) that the OIG acted unreasonably, without authority, or with an ulterior motive. Specifically, the "well-pled allegations" Plaintiff offers, in his Opposition, as purportedly establishing the OIG's alleged lack of jurisdiction and ulterior motive in investigating Plaintiff are Paragraphs 79-99 of the Amended Petition.²⁶ Those paragraphs are demonstrably comprised of a series of statutory quotes, legal interpretations of, and legal conclusions based upon, such statutes. The failure of the petition, as amended, to allege ultimate facts sufficient to support Plaintiff's claims demonstrates the absence of facts necessary for the maintenance of this lawsuit.

The OIG maintains that its investigation was indeed conducted for a legitimate and uninterested purpose and in accordance with Louisiana law. Thus, setting aside Plaintiff's legal conclusions regarding the OIG's purported lack of jurisdiction and notwithstanding the amendment of the petition, the petition continues to be devoid of factual allegations necessary to maintain Plaintiff's cause of action for abuse of process. This claim should be dismissed once again.

7. The Amended Petition fails to state a cause of action for abuse of rights.

Given the similarity between the abuse of process and abuse of rights claims, this claim cannot be maintained under the factual allegations of the Amended Petition for the same reasons addressed above and in the OIG's original brief. In addition, Plaintiff argues, as he did for the defamation claim, that the "factual allegations detailing that the OIG Defendants continued their

²⁵ *Id.* at 1205.

²⁶ Opposition, pp. 14-16.

investigation after concerns about their jurisdiction were raised, supports a finding that the OIG Defendants failed to exercise their law enforcement authority in good faith and that they did so for a purpose other than for which it was granted.²⁷ As previously stated, Plaintiff's own denials and/or requests that the OIG's investigation be shut down do not govern the OIG's decision to proceed with its investigation and disagree with those self-serving denials. Again, the proposed notion that the OIG or any other law enforcement agency should be required to close their investigation upon the accused person's request undermines the very existence of the criminal justice system. Further, the premise that the accused person's discontentment with the law enforcement agency's findings should now give rise to a lawsuit for defamation/malicious prosecution/abuse of rights/process is equally absurd. Plaintiff has, once again, alleged insufficient facts to state a cause of action for abuse of rights.

Parenthetically, even if it could be accepted as true (and it cannot), Plaintiff's conclusory statement that the OIG was providing the fruits of its investigation to others (beyond the 21st JDC District Attorney's Office who requisitioned the OIG's involvement in the investigation of Delahoussaye) is a conclusory statement that is not based on fact. It, too, should be disregarded, as it does nothing to further this claim.

8. The Amended Petition fails to state a cause of action under Section 1983.

To support his Section 1983 claim, Plaintiff again reiterates that the OIG was put on notice regarding its jurisdiction over the investigation of Mr. Delahoussaye but it, nonetheless, "subsequently wrongfully obtained subpoenas and search warrants that were ruled unlawful."²⁸ For the reasons addressed above, this "notice" establishes nothing at all and is insufficient to establish wrongdoing – and let alone, a deprivation of constitutional rights – by the OIG. The bottom line is that the OIG disagrees with Plaintiff then and now, based on its own (reasonable) interpretation of well-established statutory authority (which are routinely interpreted and/or applied by the courts as the OIG interpreted them in investigating Delahoussaye), and remains convinced that it absolutely had the jurisdiction and authority to investigate Plaintiff's alleged misconduct – especially after it was asked to do so by the Attorney General's Office.²⁹ This well-founded disagreement in no way makes the OIG negligent, in bad faith, or otherwise liable to

²⁷ Opposition, p. 17.

²⁸ Opposition pp. 17-18.

²⁹ Amended Petition, paragraph 22.

Plaintiff. This is true even though the 21st JDC judge ruled in favor of Delahoussaye in the criminal proceeding (to which the OIG was not a party). In concluding his argument in support of this claim, Plaintiff argues that Paragraphs 149-158 outline "ultimate facts" that support Plaintiff's claims and state a viable cause of action.³⁰ In reality, those "ultimate facts" are legal and factual conclusions which the Court cannot consider. Because the Plaintiff still alleges insufficient facts in his Amended Petition to properly state a claim under Section 1983 (and because the Opposition fails to offer viable arguments to survive this second exception of no cause of action), this claim should, once again, be dismissed.

9. The Amended Petition fails to state a cause of action for negligence.

Plaintiff's try at preventing another dismissal of his negligence claim also fails. He asks the Court to disregard the standard set forth in the statutes governing the OIG in favor of the standards promulgated by the Association of Inspector Generals.³¹ This is a circular proposition, considering that his recurring argument regarding the OIG's lack of jurisdiction and authority to seek subpoenas and search warrants in this case stems from those same statutes Plaintiff now urges the Court to discredit. In any event, in as much as Plaintiff argues that the OIG's alleged lack of jurisdiction ultimately defeats the dismissal of this claim, the Opposition fails to overcome the OIG's exception for the reasons discussed previously – that is, that the facts alleged in the newly amended petition still fail to support negligence, bad faith, or any form of liability by the OIG.

10. The Amended Petition fails to state a cause of action for respondeat superior and fails to state claims against the individual defendants.

The respondeat superior claim against the OIG should, once again, be dismissed for the same reasons that all Plaintiff's other claims will be dismissed.

Delahoussaye's response (to the OIG's well-founded arguments in favor of the dismissal of the individual defendants) that the claims against these defendants should be maintained "because the OIG cannot be held liable under Section 1983" also misses the mark and demonstrates Plaintiff's shoddy approach to the claims he has pled against the Defendants. For the reasons previously briefed, Plaintiff has failed to state a cause of action against the individual defendants, in their individual capacities, based on the facts alleged in the Amended Petition.

³⁰ Opposition, p. 19.

³¹ *Id.*

Because all actions for which these defendants are being charged were allegedly taken in their capacities as OIG investigators, Plaintiff has, again, failed to state a cause of action against these defendants in their individual capacities. In their official capacities, the individual defendants are qualifiedly immune from Plaintiff's Section 1983 claims.

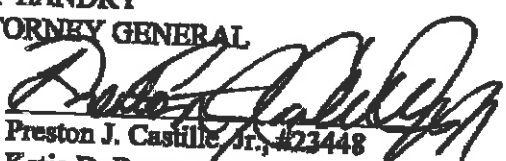
Conclusion

The Amended Petition fails to breathe new life into Plaintiff's lawsuit. The multitude of legal quotes, legal conclusion and factual conclusions added to the Amended Petition, as a matter of law, cannot be accepted as true, no matter how much Plaintiff insists that they are "factual allegations". Because he calls them so, unfortunately, does not make them so. As for the facts added and directed to Ms. Webb, at most, they show a non-actionable disagreement with Plaintiff's denials and/or non-actionable mathematical errors and assumptions. Plaintiff has failed, in his Opposition, to adequately demonstrate why the OIG's second exception of no cause of action should be overruled. This baseless lawsuit, as amended, should once again be dismissed.

Respectfully submitted

JEFF LANDRY
ATTORNEY GENERAL

BY:

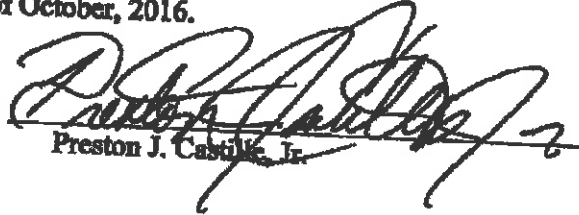

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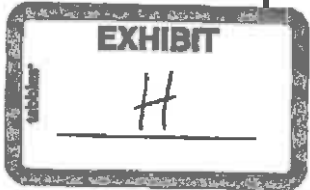
-CERTIFICATE-

I certify that a copy of the foregoing was this day either faxed, emailed, or mailed, postage prepaid, to the following:

Al J. Robert, Jr.
Law Office of Al J. Robert, Jr., LLC
757 St. Charles Avenue-Suite 301
New Orleans, LA 70130
Facsimile: 877-765-2529
Email: ajr@ajrobert.com
Counsel for Plaintiff

Baton Rouge, Louisiana, this 13th day of October, 2016.


Preston J. Castillo, Jr.



NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION I, SECTION 24

.....
COREY DELAHOUSSAYE

V.

SUIT NO. 646,126

LOUISIANA OFFICE OF INSPECTOR

GENERAL, ET AL
.....

MONDAY, OCTOBER 17, 2016

HEARING

THE HONORABLE R. MICHAEL CALDWELL, JUDGE PRESIDING

APPEARANCES:

PRESTON CASTILLE ON BEHALF OF THE OFFICE OF INSPECTOR
GENERAL, STEPHEN STREET, GREG PHARES, AND JESSICA WEBB
AL ROBERT ON BEHALF OF COREY DELAHOUSSAYE

REPORTED BY: CHRISTINA GRISAFFE, CCR #2014012

MONDAY, OCTOBER 17, 2016

THE COURT: NUMBER 12, SUIT NO. 646,126,
COREY DELAHOUSSAYE VERSUS THE STATE OF LOUISIANA.
COUNSEL, MAKE YOUR APPEARANCES, PLEASE.

MR. CASTILLE: GOOD MORNING, YOUR HONOR.
PRESTON CASTILLE ON BEHALF OF THE OFFICE OF
INSPECTOR GENERAL, INSPECTOR GENERAL STEPHEN
STREET, GREG PHARES, AND JESSICA WEBB.

THE COURT: THANK YOU.

MR. ROBERT: GOOD MORNING, YOUR HONOR. AL
ROBERT HERE ON BEHALF OF THE PLAINTIFF, MR. COREY
DELAHOUSSAYE, WHO IS ALSO PRESENT WITH ME IN
COURT.

THE COURT: ALL RIGHT. THANK YOU. GO AHEAD.
THIS IS AN EXCEPTION OF NO CAUSE OF ACTION. GO
AHEAD, MR. CASTILLE.

MR. CASTILLE: YES, YOUR HONOR. IN FACT,
THIS IS THE SECOND EXCEPTION OF NO CAUSE OF
ACTION. AS THE COURT WILL REMEMBER, THE COURT
PREVIOUSLY GRANTED OUR EXCEPTION OF NO CAUSE OF
ACTION AS IT RELATED TO THE ORIGINAL PETITION THAT
WAS FILED IN THIS MATTER. THIS COURT GRANTED
LEAVE FOR THE PLAINTIFF TO ATTEMPT TO AMEND THE
PETITION TO STATE AN ACTUAL CAUSE OF ACTION. THE
PLAINTIFF HAS DONE SO FILING AN AMENDED PETITION.
WE HAVE READ THROUGH THAT AMENDED PETITION, AS I'M
SURE THE COURT HAS, AND I'LL POINT OUT A FEW
THINGS.

FIRST OF ALL, I INDICATED VERY
SPECIFICALLY THE DEFENDANTS THAT I REPRESENTED:
ONE, BECAUSE THERE ARE NO ADDITIONAL FACTS AT ALL
AS IT RELATES TO GREG PHARES. THERE ARE NO FACTS

AT ALL ALLEGED AS IT RELATES TO STEPHEN STREET. THERE ARE NO FACTS AT ALL ADDITIONALLY ALLEGED AS IT RELATES TO THE OIG EXCEPT TO THE EXTENT THAT THEY ARE ALLEGATIONS NOW AS IT RELATES TO JESSICA WEBB, AND THE EMBODIMENT OF THOSE ALLEGATIONS, JUDGE, ARE ACTUALLY PRETTY SIMPLE, THAT IS. AND I THINK THAT WE ARE SORT OF CAUGHT UP IN THE MIDDLE OF A DISPUTE BETWEEN THE PARTY THAT IS NOT INVOLVED IN THIS LAWSUIT.

MR. DELAHOUSSAYE SEEMS TO HAVE AN ISSUE WITH THE 21st JDC DISTRICT ATTORNEY, MR. PERRILLOUX, IN THE FACT THAT HE ATTEMPTED TO PROSECUTE MR. DELAHOUSSAYE. AND WHAT'S NOW ALLEGED IN THE AMENDED PETITION IS QUOTES FROM A TRANSCRIPT FROM A PROCEEDING THAT OCCURRED WHERE MS. JESSICA WEBB IS CALLED AS A WITNESS IN THAT OTHER PROCEEDING. SHE IS SIMPLY AN INVESTIGATING OFFICER. SHE DOES AN INVESTIGATION. SHE IS PUT ON THE STAND, AND SHE IS ASKED ABOUT HER INVESTIGATION. AND THAT IS NOW WHAT MR. DELAHOUSSAYE IN HIS AMENDED PETITION SAYS, THESE ARE NOW ADDITIONAL FACTS THAT NOW SUPPORTS THAT CLAIM. I DISAGREE, JUDGE. I THINK THAT GIVEN WHAT WAS BEFORE, FRANKLY THERE WASN'T ANYTHING NOW. THIS ATTEMPT TO ADD ADDITIONAL FACTS, SAYING, WELL, MS. WEBB MADE FACTUAL MISCALCULATIONS, AND HERE IS WHAT SHE SAID IN RESPONSE TO A QUESTION BY THE DISTRICT ATTORNEY WHEN SHE WAS CALLED UNDER OATH TO TESTIFY. SUMMARY DOESN'T ARISE TO ANY OF THE LEGAL CLAIMS RAISED BY MR. DELAHOUSSAYE.

I KNOW THE COURT HAS READ ALL OF THE

BRIEFS. I DON'T WANT TO BELABOR IT, BUT, JUDGE, YOU KNOW, I HEARD YOU SAY EARLIER THAT, I'VE ALREADY RULED ON THIS ISSUE. TELL ME WHAT'S NEW, WHY I SHOULD NOW CHANGE MY POSITION. JUDGE, I DON'T THINK THAT THE PLAINTIFF HAS MET THAT BURDEN AND ALLEGED ANYTHING NEW THAT SHOULD SUGGEST TO YOU THAT YOU SHOULD CHANGE YOUR POSITION. THAT QUOTE FROM A HEARING IN ANOTHER CASE BY AN INVESTIGATOR RESPONDING TO QUESTIONS UNDER OATH CERTAINLY DOESN'T ARISE TO A CAUSE OF ACTION UNDER ANY OF THE FIVE OR SIX CLAIMS AS ALLEGED BY MR. DELAHOUSSAYE.

THE COURT: THANK YOU. MR. ROBERT?

MR. ROBERT: THANK YOU, YOUR HONOR. DEALING FIRST WITH MR. CASTILLE'S LAST COMMENT AS IT RELATES TO WHAT WAS ADDED WHEN WE WERE HERE IN JULY, YOUR HONOR. THE FIRST EXCEPTION OR FIRST PART OF THE EXCEPTION THAT WAS RAISED BY DEFENDANT WAS THAT WE FAILED TO ALLEGE WITH SUFFICIENT SPECIFICITY OUR CLAIMS AS IT RELATES TO THE DEFAMATION CLAIM. WE HAVE SINCE AMENDED AND RAISED THAT, AND THEY HAVE NOT PUT FORTH OR REURGED THAT PART OF THEIR EXCEPTION. AS IT RELATES TO EVERYTHING ELSE, YOUR HONOR, IT WAS A VERY SIMILAR ARGUMENT. I THINK YOU HAD INDICATED THAT THERE WAS PLENTY OF FACTS IN THE PETITION, BUT YOU WANTED TO SEE THEM BETTER TIED TO THE CLAIMS. SO, WE'VE ADDRESSED YOUR SPECIFIC CONCERNS, YOUR HONOR. THERE IS A SUBSTANTIAL REVISION TO THE AMENDMENT. IN FACT, IT WAS FULLY RESTATED.

NOW, AS IT RELATES TO YOUR ALLUSION

EARLIER OR ALLUDING TO THE RECENT FIRST CIRCUIT CASE, UNFORTUNATELY, I DIDN'T SEE THAT, AND I'M NOT FAMILIAR WITH IT. BUT I DO KNOW UNDER EVERYTHING ON WHEELS SUBARU THAT AN EXCEPTION OF NO CAUSE OF ACTION WHERE THE CLAIMS ARISE FROM THE SAME OPERATIVE SET OF FACTS, THAT IT'S IMPROPER TO GRANT ONE CAUSE OF ACTION WHENEVER THERE CAN BE A CLAIM AS TO ANY OF THEM. AND, I THINK, YOUR HONOR, THAT'S REALLY WHAT WE'RE HEAR ABOUT TODAY. I THINK ALL OF THESE ESSENTIALLY ARISE FROM THE SAME SET OF OPERATIVE FACTS, AND SIMPLY STATED, A PETITION SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF ANY CLAIM TO WHICH IT WOULD ENTITLE HIM TO RELIEVE.

AND I THINK WE'VE LAID IT OUT IN OUR CLAIM, YOUR HONOR, THAT MR. DELAHOUSSAYE HAD A CONTRACT WITH LIVINGSTON PARISH TO ASSIST THEM WITH THEIR HURRICANE CLEANUP AFTER HURRICANE GUSTAV. HE HAD NO CONTRACT WHATSOEVER WITH THE STATE OF LOUISIANA NOR ANY AGENCY OF THE STATE. THE INSPECTOR GENERAL'S JURISDICTION IS SUCCINCTLY LIMITED IN THE STATUTE, AND THE AUTHORIZING STATUTE IS THE LOUISIANA REVISED STATUTE 49:220.21(B). AND IT STATES THAT THE PURPOSE OF THE ESTABLISHMENT OF THE OFFICE OF THE STATE INSPECTOR GENERAL IS TO EXAMINE AND INVESTIGATE THE MANAGEMENT AND AFFAIRS OF COVERED AGENCIES. NOW, THAT WORD AGENCIES HAS SOME VERY SPECIFIC MEANING THAT I'M SURE YOUR HONOR UNDERSTANDS. IT'S EXECUTIVE AGENCIES. IT DOES NOT ENCOMPASS

LOCAL GOVERNMENT AUTHORITIES OR OTHER ENTITIES
OUTSIDE OF COVERED AGENCIES.

NOW, IN THEIR PLEADINGS, WHAT THE
DEFENDANTS POINT TO TO SUGGEST THAT THEY HAD
JURISDICTION TO INVESTIGATE MR. DELAHOUSSAYE WAS
THAT MR. DELAHOUSSAYE HAD A CONTRACT WITH GOHSEP,
THE GOVERNOR'S OFFICE OF HOMELAND SECURITY AND
EMERGENCY PREPAREDNESS. NOW, THAT GOES BEYOND THE
ALLEGATIONS IN OUR PETITION BECAUSE WE ALLEGE THAT
MR. DELAHOUSSAYE DIDN'T HAVE ANY CONTRACT WITH THE
STATE, AND THAT THEY DIDN'T HAVE JURISDICTION TO
INVESTIGATE HIM. BUT EVEN IF YOUR HONOR WANTED TO
GO BEYOND THE FOUR CORNERS OF THE PETITION, WE'VE
REFERENCED IN ONE OF OUR FOOTNOTES THAT MR. BEN
PLAIA, WHO WAS LEGAL COUNSEL FOR GOHSEP, TESTIFIED
AT ONE OF THE HEARINGS IN THE CRIMINAL ACTION.
AND HE STATED AFFIRMATIVELY AND DEFINITELY THAT
GOHSEP HAS NO CONTRACTS WITH ANYBODY. GOHSEP IS
ESSENTIALLY, AS IT RELATES TO LIVINGSTON PARISH,
IS A CONDUIT FOR THE FEDERAL MONEYS COMING FROM
FEMA GOING TO THE LOCAL AUTHORITIES. AND IF YOU
READ THROUGH THESE EXCEPTIONS THAT HAVE BEEN
REURGED BY THE OIG AND THE VARIOUS DEFENDANTS,
EVERY SINGLE COMPLAINT THAT THEY RAISE IS BASED ON
THE ASSUMPTION OR THEIR ASSUMPTION AND PRESUMPTION
THAT, ONE, WE'RE DEALING WITH STATE MONEYS, AND
TWO, THAT MR. DELAHOUSSAYE HAD A STATE CONTRACT.
AND THOSE ARE BOTH FACTS THAT HAVE NO GROUNDING IN
REALITY, YOUR HONOR.

SO, IF YOU LOOK THROUGH THEIR EXCEPTION
OF NO CAUSE OF ACTION, AND YOU COMPARE IT TO OUR
PETITION, WHAT THE COURT IS FACED WITH IS, IN A

CASE WHERE A LAW ENFORCEMENT AGENCY OPENS AND CONDUCTS AN INVESTIGATION OUTSIDE OF ITS JURISDICTION, WOULD IT GIVE RISE TO THE CLAIMS THAT WE PUT FORTH HERE. AND I THINK THERE IS NO WAY THAT YOU CAN GET AROUND THAT ASSUMPTION THAT CLEARLY, WE HAVE PUT FORTH A NUMBER OF VALID CAUSES OF ACTION THAT ARISE DIRECTLY FROM THE OIG'S EXTRA JURISDICTIONAL EXERCISE OF THEIR AUTHORITY, AND THIS ISN'T SOMETHING THAT MR. DELAHOUSSAYE LAID IN WAIT ON. THE FIRST TIME IT WAS MADE KNOWN THAT THE OIG WAS CONDUCTING THIS INVESTIGATION PURPORTEDLY ON BEHALF OF THE LIVINGSTON PARISH, HIS ATTORNEY SENT A LETTER TO MR. GREG PHARES, AND SAID, MR. PHARES WHAT IS THE AUTHORITY FOR YOUR JURISDICTION HERE. AND THEN THAT'S WHEN THEY RAISED THE SUGGESTION THAT BECAUSE MR. DELAHOUSSAYE HAD A CONTRACT WITH LIVINGSTON PARISH AND LIVINGSTON PARISH HAD A CONTRACT WITH GOHSEP, THAT SOMEHOW THAT THAT CREATES THE NECESSARY JURISDICTION.

FOR THE PURPOSES OF THESE PROCEEDINGS WHERE WE ARE TODAY, YOUR HONOR, THIS IS SIMPLY AN EXCEPTION OF NO CAUSE OF ACTION. WE HAVE PLEAD A CAUSE OF ACTION THAT THEY DON'T HAVE JURISDICTION TO INVESTIGATE MR. DELAHOUSSAYE, AND I'M HAPPY TO GO THROUGH EACH ONE OF THESE CAUSES OF ACTION WITH YOU TO SORT OF OUTLINE HOW THEIR EXCEPTIONS FAIL BECAUSE THEY RELY ON THE ASSUMPTION THAT THEY HAD JURISDICTION TO INVESTIGATE, IN WHICH WE ASSERT THEY DID NOT. SHOULD I GO THROUGH EACH OF THEM?

THE COURT: YOU CAN. SIR, YOU CAN DO WHATEVER YOU WANT TO DO. I DON'T TELL PEOPLE HOW

TO PRACTICE LAW.

MR. CASTILLE: OKAY. WELL, I GUESS IF YOU HAVE ANY SPECIFIC QUESTIONS. I DON'T WANT TO BELABOR THE ISSUE, YOUR HONOR. I STAND READY TO ADDRESS ANY SPECIFIC QUESTIONS YOU HAVE, THOUGH.

THE COURT: NO, SIR. THANK YOU.

MR. CASTILLE: YOUR HONOR, I FULLY EXPECTED MR. ROBERT WOULD RESPOND TO YOUR QUESTIONS FROM THE LAST HEARING, AND THAT IS POINT OUT SPECIFIC FACTS. THE LEGAL ARGUMENTS THAT HE RAISES TODAY ARE THE EXACT SAME LEGAL ARGUMENTS THAT HE RAISED THE LAST TIME THAT YOU RULED UPON. SO, WE ARE HERE TODAY NOT REURGING WHAT HE SAID THE FIRST TIME, BUT WHETHER OR NOT HE HAS STATED ADDITIONAL FACTS THAT RISE TO THE LEVEL OF A CAUSE OF ACTION FOR DEFAMATION, FOR ABUSIVE RIGHT, FOR SECTION 1983, SECTION 1985 BEING THOSE THINGS. AND WHAT MR. ROBERT DID NOT DO IS SAY, HERE ARE THE ADDITIONAL FACTS THAT RISE TO THAT LEVEL, THAT CHANGES WHAT WE HAD WHEN WE WERE HERE ABOUT TWO MONTHS AGO WHERE NOW YOU SHOULD REVERSE YOURSELF OR CHANGE YOUR MIND IN TERMS OF THE EARLIER DECISION. I HAVE NOT HEARD ANY OF THAT BECAUSE THERE ARE NO ADDITIONAL FACTS THAT WOULD RISE TO THAT LEVEL. ALL YOU HAVE IS A TRANSCRIPT FROM A HEARING BY AN INVESTIGATING OFFICE WHO HAD A PROBABLE CAUSE HEARING. THERE ARE NO ADDITIONAL FACTS. THE ARGUMENT -- LEGAL ARGUMENTS ABOUT JURISDICTION AND ALL OF THESE OTHER THINGS, WE'VE ARGUED THAT BEFORE. YOU HAVE ALREADY RULED ON THAT, AND I WON'T BELABOR IT TO HAVE YOU RULE ON IT AGAIN OTHER THAN TO SAY THAT I'VE ALREADY

ADDRESSED IT. YOU'VE ADDRESSED IT, AND I ASK THAT THE COURT GRANT THE EXCEPTION ONCE AGAIN.

THE COURT: ALL RIGHT. THIS IS SUIT NO. 646,126, COREY DELAHOUSSAYE VERSUS THE STATE THROUGH THE OFFICE OF INSPECTOR GENERAL. I DID GRANT AN EXCEPTION OF NO CAUSE OF ACTION AT THE EARLIER HEARING. A LOT OF THESE SAME ISSUES WERE RAISED. I GUESS, BECAUSE I FOUND THE ALLEGATIONS FOR THE INDIVIDUAL COMPLAINTS DEFICIENT, I SORT OF GLOSSED OVER THE ARGUMENT ABOUT JURISDICTION, BUT AS MR. ROBERT HAS POINTED OUT, THE SUBARU CASE TOGETHER WITH THE RECENT DECISION ON MY CASE MAKES IT CLEAR THAT IF A CAUSE OF ACTION EXISTS FOR A PORTION OF THE CLAIM ARISING OUT OF THE SAME FACTUAL SITUATIONS, THEN AN EXCEPTION OF NO CAUSE OF ACTION CANNOT BE GRANTED. I THINK A NUMBER OF MR. DELAHOUSSAYE'S CLAIMS RESTS UPON THAT QUESTION OF WHETHER OR NOT THE INSPECTOR GENERAL'S OFFICE HAD JURISDICTION TO CONDUCT THIS INVESTIGATION AT ALL. IT MAY GO TO THE ABUSE OF PROCESS, ABUSE OF RIGHT CLAIMS. I DON'T THINK IT CAN GO TO THE DEFAMATION OR MALICIOUS PROSECUTION. IT MAY GO TO SOME SORT OF INVASION OF PRIVACY. I DON'T KNOW, BUT IT OCCURS TO ME NOW IN REVIEWING ALL OF THIS THAT THE QUESTION OF JURISDICTION MUST FIRST BE ADDRESSED. IT MAY STILL BE THAT MR. DELAHOUSSAYE DOES NOT HAVE A CAUSE OF ACTION FOR ANY OF THIS, BUT IT MAY BE THAT HE DOES. AND BECAUSE THAT IS A FACTUAL QUESTION WHICH CANNOT BE RESOLVED SOLELY ON THE BASIS OF THE ALLEGATIONS OF THE PETITION AND BECAUSE IT IS ALLEGED IN THE PETITION THAT THE OFFICE OF THE INSPECTOR GENERAL HAD NO

JURISDICTION TO GO FORWARD, I'M GOING TO HAVE TO OVERRULE THE EXCEPTION AT THIS TIME, BECAUSE AS I SAID, IF, IN FACT, AS ALLEGED, THE OFFICE HAD NO JURISDICTION TO CONDUCT SUCH A HEARING AND ITS JURISDICTION WAS QUESTIONED EARLY ON AND IT WENT FORWARD WITH IT, SOME OF THESE CAUSES OF ACTION MAY SURVIVE. I THINK SOME CAN STILL GO AWAY, BUT THAT'S NOT FOR ME TO DETERMINE NOW, SO I'M GOING TO HAVE TO OVERRULE THE EXCEPTION OF NO CAUSE OF ACTION AT THIS POINT.

MR. ROBERT: THANK YOU, YOUR HONOR. WOULD YOU LIKE ME TO PREPARE THE JUDGMENT?

THE COURT: PLEASE, SIR.

MR. CASTILLE: THANK YOU, YOUR HONOR.

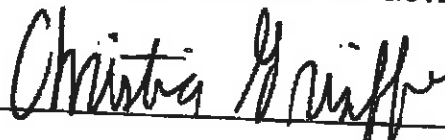
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C E R T I F I C A T E

THIS CERTIFICATE IS VALID ONLY FOR A TRANSCRIPT ACCOMPANIED BY MY ORIGINAL SIGNATURE AND ORIGINAL REQUIRED SEAL ON THIS PAGE.

I, CHRISTINA GRISAFFE, CERTIFIED COURT REPORTER IN AND FOR THE STATE OF LOUISIANA, EMPLOYED AS AN OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL DISTRICT COURT FOR THE STATE OF LOUISIANA, AS THE OFFICER BEFORE WHOM THIS TESTIMONY WAS TAKEN, DO HEREBY CERTIFY THAT THIS TESTIMONY WAS REPORTED BY ME IN THE STENOTYPE REPORTING METHOD, WAS PREPARED AND TRANSCRIBED BY ME, AND IS A TRUE AND CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY AND UNDERSTANDING; FURTHER, THAT THE TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT FORMAT GUIDELINES REQUIRED BY STATUTE OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR TO THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 7TH DAY OF NOVEMBER, 2016.



CHRISTINA GRISAFFE, CCR

OFFICIAL COURT REPORTER

19TH JUDICIAL DISTRICT COURT

CCR #2014012

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2015 KW 0919

VERSUS

COREY DELAROUSSAYE

JUL 30 2015

EXHIBIT

I

In Re: State of Louisiana, applying for supervisory writs,
21st Judicial District Court, Parish of Livingston,
No. 30048.

BEFORE: FERRIOT, SCARBOROUGH AND CHUTE, JJ.

WRIT GRANTED for the sole purpose of remanding the writ to the trial court for a reopened hearing on the defendant's motion to suppress the evidence. The trial court's ruling granting the Motion to Suppress is vacated. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was "unconstitutionally obtained." La. Code Crim. P. art. 703(A). On the trial of a motion to suppress filed under the provisions of Article 703, the burden of proof is on the defendant to prove the ground of his motion, except that the State shall have the burden of proving the admissibility of a statement by the defendant or of any evidence seized without a warrant. La. Code Crim. P. art. 703(D).

In the memorandum in support of the motion to suppress, defendant argued that any and all evidence obtained via the search warrant was obtained "illegally" and should be held inadmissible at trial. The trial court's ruling apparently suppressed all of the evidence for use at trial. However, there was no documentary evidence or testimony presented at the suppression hearing concerning the constitutionality of the search warrant, only the authority of the Inspector General to investigate the defendant and/or his business. Accordingly, at the reopened hearing, both parties are encouraged to submit whatever documentary and/or testimonial evidence they deem appropriate. The trial court is instructed to organize the evidence into three categories: (1) evidence obtained by the search warrant; (2) evidence obtained by the subpoenas duces tecum; and (3) the defendant's recorded statement. The trial court must first determine, as to each category of evidence, which party has the initial burden of proof under Article 703. Thereafter, the parties should address the constitutionality of the search warrant, and the applicability of *United States v. Leon*, 468 U.S. 897, 918-25, 104 S.Ct. 3405, 3418-20, 82 L.Ed.2d 677 (1984) to the instant case. Next, the parties should address the constitutionality of the subpoenas duces tecum, whether or not they were the "functional equivalent" of a search warrant (see *State v. Lee*, 2005-2098 (La. 1/16/08), 976 So.2d 109, 124-27, cert. denied, 555 U.S. 824, 129 S.Ct. 143, 172 L.Ed.2d 39 (2008)), and/or the applicability of *United States v. Leon* to the subpoenas. Finally, regarding the defendant's statement, the parties should address whether or not the


STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

NO. 2015 KW 0919
(PAGE 2 OF 2)

statement was voluntary and/or consensual, and the legal effect, if any, of the alleged surreptitious recording of the statement taken by the investigator. At the conclusion of the reopened hearing, the trial court's ruling should specifically address the evidence pursuant to each category. In the event of an adverse ruling, either party may file a supervisory writ with this Court seeking review of that ruling.

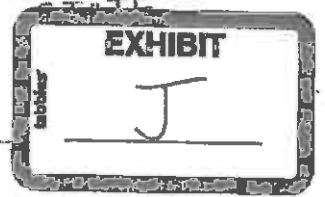
WBC
MRY
GH

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT

POSTED

OCT 25 2016



NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COREY DELAHOSSAYE

* NO. C646126

VERSUS

*

STATE OF LOUISIANA, THROUGH
THE OFFICE OF INSPECTOR
GENERAL, ET AL

*

*

*

SECTION 24

*

THE OIG DEFENDANTS' NOTICE OF INTENT TO FILE SUPERVISORY WRIT

NOW INTO COURT, through undersigned counsel, come The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants" or "OIG") and, pursuant to the provisions of Rule 4-1, *et seq.* of the Louisiana Uniform Rules of the Courts of Appeal, hereby give notice of their intent to apply to the First Circuit Court of Appeal for supervisory writ to review the October 17, 2016 open court ruling of this Court, wherein the Court OVERRULED the OIG Defendants' Peremptory Exception of No Cause of Action.

In accordance with the provisions of Rule 4-3 of the Louisiana Uniform Rules of the Court of Appeal, the OIG Defendants request that this Court set a return date within which the application for supervisory writ shall be filed with the appellate court.

WHEREFORE, The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb hereby give notice of their intention to seek a supervisory writ from the ruling of this Court overruling their peremptory exception of no cause of action.


EBR3910763

REC'D C.P.
OCT 25 2016

Respectfully submitted

JEFF LANDRY
ATTORNEY GENERAL

BY:


Preston J. Castille, Jr., #23448
Katia D. Bowman, #31700
Ne'Shira Millender, #35919
450 Laurel Street, 8th Floor (70801)
P. O. Box 2471
Baton Rouge, LA 70821
Phone: 225-387-3221
Facsimile: 225-346-8049
*Special Assistant Attorney General
Counsel to OIG Defendants*

-CERTIFICATE-

I certify that a copy of the foregoing was this day either faxed, emailed, or mailed, postage prepaid, to the following:

Al J. Robert, Jr.
Law Office of Al J. Robert, Jr., LLC
757 St. Charles Avenue-Suite 301
New Orleans, LA 70130
Facsimile: 877-765-2529
Email: ajr@ajrobert.com
Counsel for Plaintiff

Baton Rouge, Louisiana, this 24th day of October, 2016.


Katia D. Bowman

FILED
JUST BAYON ROUGE PARISH, LA

2016 OCT 24 PM 3:50


DEPUTY CLERK OF COURT

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COREY DELAHOUSSAYE

VERSUS

STATE OF LOUISIANA, THROUGH
THE OFFICE OF INSPECTOR
GENERAL, ET AL

* NO. C646126

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* SECTION 24

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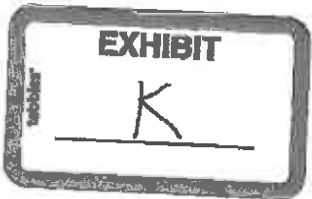
ORDER

Considering the foregoing Notice of Intent to Seek Supervisory Writ filed by The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants");

IT IS HEREBY ORDERED that OIG Defendants be and are hereby granted until the _____ day of _____, 2016 in which to file a writ application with the First Circuit Court of Appeal from the ruling of this Court OVERRULING their peremptory exception of no cause of action.

Baton Rouge, Louisiana, this _____ day of _____, 2016.

Honorable Michael Caldwell, JUDGE
19TH JUDICIAL DISTRICT COURT



NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

COREY DELAHOSSAYE * NO. C646126
VERSUS *
STATE OF LOUISIANA, THROUGH *
THE OFFICE OF INSPECTOR * SECTION 24
GENERAL, ET AL *

ORDER

Considering the foregoing Notice of Intent to Seek Supervisory Writ filed by The Louisiana Office of Inspector General, Stephen Street, in his official capacity as State Inspector General, Greg Phares, and Jessica McCrary Webb (collectively referred to as "OIG Defendants");

IT IS HEREBY ORDERED that OIG Defendants be and are hereby granted until the 30th day of NOVEMBER, 2016 in which to file a writ application with the First Circuit Court of Appeal from the ruling of this Court OVERRULING their peremptory exception of no cause of action.

Baton Rouge, Louisiana, this 26th day of October, 2016.

FILED
EAST BATON ROUGE PARISH, LA
2016 OCT 24 PM 3:50
DEPUTY CLERK OF COURT

R. Michael Caldwell
Honorable Michael Caldwell, JUDGE
19TH JUDICIAL DISTRICT COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRIT, REASONS FOR JUDGMENT/DENIAL OF JUDGMENT, ORDER / CO MAILED BY ME, WITH SUFFICIENT POSTAGE AFFIXED TO: Preston Castille, Katia Bowman
DOWNWARD CARRIER ON 10-27-16
Brenda Laik + Al J. Robert
DEPUTY CLERK OF COURT