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DEPUTY CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

**CONFIDENTIAL
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PURSUANT TO 31 U.S.C. § 3730(b)(2)**

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

UNITED STATES OF AMERICA,)
ex rel. DAVID L. LEWIS, PH.D.)
R. A. MCELMURRAY, III,)
and G. WILLIAM BOYCE ,)

Qui Tam Plaintiffs,)

v.)

CIVIL ACTION
FILE NO. 3:06-CV-16

JOHN WALKER, PH.D.,)
JULIA W. GASKIN,)
ROBERT B. BROBST,)
WILLIAM P. MILLER, PH.D.,)
E. WILLIAM TOLLNER, PH.D.,)
L. MARK RISSE, PH.D.,)
THE BOARD OF REGENTS OF THE)
UNIVERSITY SYSTEM OF GEORGIA,)
THE UNIVERSITY OF GEORGIA)
RESEARCH FOUNDATION, INC.)
and JOHN DOE (S))

Defendants.)

**FIRST AMENDMENT TO FALSE CLAIMS ACT
COMPLAINT AND DEMAND FOR JURY TRIAL**

COMPLAINT

David L. Lewis, Ph.D., R. A. McElmurray, III , and G. William Boyce (the "Relators") bring this action on behalf of the United States of America against the Defendants, John Walker, Ph.D., Julia W. Gaskin, Robert B. Brobst, William P. Miller, Ph.D., E. William Tollner, Ph.D., L. Mark Risse, Ph.D., Board of Regents of the University of Georgia System, University of Georgia Research Foundation, Inc., and John Doe(s), and allege as follows:

JURISDICTION AND VENUE

1. This action arises under the False Claims Act, 31 U.S.C. § 3729 *et seq.* This Court has jurisdiction in this case pursuant to 31 U.S.C. §§ 3732(a) and 3730(b), as well as pursuant to 28 U.S.C. § 1345 and 28 U.S.C. § 1331.
2. Venue is proper in this Court pursuant to 31 U.S.C. § 3732(a) because the acts proscribed by 31 U.S.C. § 3729 *et seq.*, and complained of herein, took place in this District.
3. Venue is also proper pursuant to 28 U.S.C. §§ 1331(b) and (c) because, at all times material and relevant hereto, Defendants have transacted business in this District.

PARTIES

4. Relator David L. Lewis, Ph.D. ("Relator Lewis") is a citizen of the United States and a resident of the State of Georgia. Relator Lewis was a senior-level (GS-15) Research Microbiologist in the Office of Research and Development for the United States Environmental Protection Agency (the "EPA") in Athens, Georgia. Relator Lewis is currently a Visiting Scientist at the University of Georgia ("UGA") Department of Marine Sciences and Adjunct Faculty member at UGA's Institute of Ecology.
5. Relator R. A. McElmurray, III ("Relator McElmurray") is a citizen of the United States and a resident of the State of Georgia. Relator McElmurray has been, at all times hereto and is now, an employee of R. A. McElmurray and Sons, Inc., the owner of a dairy farm in Richmond and Burke Counties, Georgia since 1946.
6. Relator G. William Boyce ("Relator Boyce") is a citizen of the United States and a resident of the State of Georgia. The Boyce family owned and operated Boyceland Dairy in Burke County, Georgia, from 1946.
7. Relators are the original source of the information provided herein to the United States. They have direct and independent knowledge of the

information upon which the allegations are based and have voluntarily provided this information to the Government, concurrent with the filing of this action under seal, as required by 31 U.S.C.A. § 3730(b)(2), before publicly proceeding with this action pursuant the False Claims Act.

8. Defendant Dr. John Walker (“Defendant Walker”), at all times relevant to this Complaint, was an employee of EPA and was the Biosolids Program Implementation Team Leader in the Office of Wastewater Management. Defendant Walker initiated and choreographed an EPA grant, which is the subject of this Complaint.¹ Defendant Walker assembled a group of researchers to carry out an EPA-funded, UGA project (the “Risse project”). The purpose of the grant, which funded the “Risse project” at UGA, was to investigate allegations in lawsuits filed against the City of Augusta by the families of Relators McElmurray and Boyce.² Defendant Walker can be served at 11356 Empire Lane, North Bethesda, Maryland 20852.

¹ Lawrence M. Risse, Julia W. Gaskin, William P. Miller, Richard McDaniel, *Metals Assessment for Burke and Richmond County Hayfields Receiving Biosolids*. EPA Assistance Agreement/ Amendment CX 827759-01-0 (August 5, 1999)

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- Defendant Walker’s written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)

9. Defendant Dr. L. Mark Risse (“Defendant Risse”), at all times relevant to this Complaint, was an Associate Professor of Engineering in the Department of Biological and Agricultural Engineering at UGA and was an academic researcher conducting federally-funded research concerning agricultural pollution prevention, water quality, and animal waste management. Defendant Risse served as the Principal Investigator of the Risse project. Defendant Risse can be served at 4990 Colham Ferry Road, Watkinsville, Georgia 30677.
10. Defendant Julia W. Gaskin (“Defendant Gaskin”) is a Land Application Specialist in the Department of Biological and Agricultural Engineering. At all times relevant to this Complaint, Defendant Gaskin was an academic researcher conducting federally-funded research concerning land application of sewage sludge, soil quality, and sustainable agriculture. Defendant Gaskin served as the Co- Principal Investigator of the Risse project and the Principal Author of Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage³ published in the Journal of

³ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage, J. Environ. Qual. **32**:146-152 (2003)

Environmental Quality (the "Gaskin paper"), which summarizes the results of the Risse project and is the subject of this Complaint. Defendant Gaskin can be served at 126 Brookview Drive, Hull, Georgia 30646.

11. Defendant William P. Miller ("Defendant Miller") is a Professor in the Department of Crop and Soil Sciences. At all times relevant to this Complaint, Defendant Miller was an academic researcher conducting federally-funded research concerning the chemistry of nutrients, trace metals and organic contaminants in waste products, including sewage sludge, and preventing contamination of soil, crops, and water from land application of such waste products. Defendant Miller served as the Co- Principal Investigator of the Risse project and co-authored the Gaskin paper. Defendant Miller can be served at 8112 Highway 334, Nicholson, Georgia 30565.
12. Defendant E. William Tollner ("Defendant Tollner") is a Professor in the Department of Biological and Agricultural Engineering. At all times relevant to this Complaint, Defendant Tollner was an academic researcher conducting federally-funded research under the Risse project and co-authored the

Gaskin paper. Defendant Tollner can be served at 1010 Rogers Road, Bogart, Georgia 30622.

13. Defendants Risse, Gaskin, Miller, and Tollner are employees of UGA in Athens, Georgia, and are subject to the jurisdiction of this Court.
14. Defendant Robert B. Brobst ("Defendant Brobst") at all times relevant to this Complaint, was an employee of the EPA and a member of a group known as the Biosolids Incident Response Team ("BIRT") at EPA, Region 8, Denver, Colorado. Defendant Brobst, at all times relevant to this Complaint, assisted Defendant Walker with the establishment, funding, and oversight of the Risse project and co-authored the Gaskin paper. Defendant Brobst can be served at 24583 Chris Drive, Evergreen, Colorado 80439.
15. Defendant Board of Regents of the University System of Georgia ("Defendant Board of Regents") is a corporation created by the Constitution of the State of Georgia and the Official Code of Georgia and is a "person" for the purposes of the False Claims Act. At all times relevant to this Complaint, Defendant Board of Regents was responsible for administering EPA Assistance Agreement CX 827759-01-0, and other assistance agreements,

which are the subject of this Complaint.⁴ Defendant Board of Regents can be served at 270 Washington Street, S.W., Atlanta, Georgia 30334.

16. Defendant University of Georgia Research Foundation, Inc. (“UGA Research Foundation”) is a domestic non-profit corporation registered with the Georgia Secretary of State. Defendant UGA Research Foundation was responsible for administering EPA Assistance Agreement CX 827759-01-0, and other assistance agreements, which are the subject of this Complaint.⁵ Defendant UGA Research Foundation is a “person” and is, therefore covered by the False Claims Act. Defendant UGA Research Foundation may be served through its registered agent Patsy M. Orr, 604 Graduate Studies Building, Athens, Georgia, 30602.
17. John Doe Defendants are other parties who participated in, and/or facilitated, federally funded grants, contracts and cooperative agreements under the direction of Defendants and are liable for violations of the False Claims Act. These Defendants will be properly served and joined as parties as they are identified through discovery.

⁴ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

⁵ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

LEGAL BACKGROUND

18. The False Claims Act, a civil statute, imposes liability for treble the government's damages and civil penalties on anyone who "knowingly presents, or causes to be presented [to the United States] a false ... claim for payment or approval." 31 U.S.C. § 3729(a)(1). The definition of "knowingly" includes acting in "deliberate ignorance" or "reckless disregard" of the truth or falsity of the information. *Id.* § 3729(b). In addition, the United States may seek up to \$10,000 in penalties for each false claim submitted before September 29, 1999, and up to \$11,000 for each false claim submitted on or after September 29, 1999. *Id.* § 3729(a); 28 C.F.R. § 85.3(a)(9).

FACTUAL ALLEGATIONS

The Risse Project: 1998-2003

19. In 1998 and 2001, the families of Relators McElmurray and Boyce sued the City of Augusta, Georgia.⁶ The lawsuits alleged that sewage sludge processed by Augusta's Messerly Wastewater Treatment Plant, which was distributed as fertilizer and applied to Relator McElmurray's family's farm

⁶ *McElmurray, v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-126; *Boyce v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-111

from 1979 through 1990, and to Relator Boyce's family's farm from 1986 through 1997, with the exception of 1995, contained hazardous chemical wastes. Their lawsuits further alleged that heavy metals and other components in these hazardous wastes were taken up by forage crops and poisoned their dairy cows, killing hundreds of head of cattle.

20. Between November 20 and 24, 1998, Defendant Walker contacted Defendants Gaskin, Brobst, Miller, and Risse to begin assembling a group of researchers to carry out the Risse project to address the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.⁷ Defendant Walker, who worked in EPA's Office of Water in Washington, DC, was EPA's national spokesperson for promoting land application of sewage sludge as safe and beneficial to the environment.⁸ Defendant Brobst headed EPA's BIRT in Boulder, Colorado, which was touted as being in charge of investigating, on

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- Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)

⁸ Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117; Administrative Law Judges, Case Nos. 2003-CAA-6, 2003-CAA-5; Complainant's reply briefs

behalf of the EPA, the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.⁹

21. The primary purpose of the Risse project was to provide EPA with technical information that the Defendants could use to discredit the lawsuits filed by the families of Relators McElmurray and Boyce, which alleged that Augusta's land-applied sewage sludge caused death and injury to dairy cattle.¹⁰
22. On December 16-17, 1998, Defendant Brobst and officials with the Georgia Environmental Protection Division ("EPD") met with other Defendants to discuss the proposed study of the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.¹¹ The attendees of the

⁹ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

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- Memorandum from Defendant Gaskin to Tyson (December 1998) (UGA 00062-63)
- Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

¹¹

- Memorandum from Defendant Gaskin to Tyson (December 1998) (UGA 00062-63)
- Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

December, 1998 meeting decided that Defendant Brobst and the other Defendants would work closely together to:

- a. analyze historical data on application rates and chemical characteristics of Augusta's sewage sludge reported to the EPD;
- b. measure uptake rates of selected heavy metals by forage grown on land treated with Augusta's sewage sludge; and
- c. analyze heavy metal concentrations in soil samples collected from land historically treated with Augusta's sewage sludge.

23. Mr. Charles Gross in EPA's Office of Water provided Defendants with a Small Grant Application Kit containing the necessary forms to apply for federal assistance.¹²

24. On or about June 15, 1999, Defendants Risse, Gaskin, and Miller submitted their grant application to EPA for funding the Risse project.¹³ Mr. Gross was identified as the EPA Project Officer and selected Defendant Brobst to be the

¹² EPA Grant Application Kit including cover letter and training document (UGA 00066; 00035-60, 00162-185; 00216)

¹³ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0.

Technical Expert who would advise him as to whether the Risse project should be funded from the standpoint of being scientifically sound.¹⁴

False Statements in the Risse Project Grant Application: 1999

25. The Federal Grants and Cooperative Agreement Act of 1977 (the "FGCA Act") sets forth the legal requirements governing the use of federal funds by employees of state and local governments and by the private sector.
26. Defendants prepared and signed each application for a grant, contract, or cooperative agreement that is the subject of this Complaint, certifying that the statements in each application were true, complete and accurate.
27. Based upon statements and information provided by UGA, EPA employees certified that the Risse project "Meets Requirements of Federal Grant & Cooperative Agreement Act."¹⁵
28. The Small Grant Application Kit, which Mr. Gross provided to Defendants, warned against violating the FGCA Act when applying for federal assistance, including possible criminal penalties for violation of the FGCA Act. The first page in the Kit, which was provided to Defendants, stated:

¹⁴ Memorandum from C. Gross to F. Roth (July 12, 1999) (UGA 00085)

¹⁵ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0.

Please consider whether your proposal is for acquisition or assistance. The Federal Grant and Cooperative Agreement Act requires Federal agencies to use a **contract** to acquire property or services that directly benefit the Federal government. A **grant or cooperative agreement** must be used to transfer money, property, services, or anything else of value, that supports or stimulates an activity to accomplish a public purpose of assistance authorized by Federal statute. **The SF-424 is only used for submitting proposals for Federal assistance.**

The direct beneficiary is the determining factor as to whether a proposal is for acquisition or assistance. If the direct beneficiary is a state or local government or other recipient, and the purpose of the support or stimulation is authorized by Federal statute, then a grant or cooperative agreement is the proper legal instrument to use. If the direct beneficiary is EPA, then a contract is the appropriate legal instrument to use, and an SF-424 is not appropriate.

[Emphasis in original].

29. Because Defendants Walker and Brobst solicited the Risse project to directly benefit EPA's (specifically, BIRT's) investigations concerning allegations made in the lawsuits filed by the families of Relators McElmurray and Boyce, the only available proper legal instrument for obtaining federal funds was a contract and not a grant or cooperative agreement. Defendants, however, completed and submitted Form SF-424 for a federally funded assistance agreement (specifically, a Small Grant) in violation of the FGCA Act.¹⁶ To

¹⁶ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

circumvent the requirements of the FGCA Act, Defendants falsely claimed that the Risse project would not directly benefit EPA, and that EPA did not solicit the work, when, as the documents conclusively show, the exact opposite was true as to both issues, proving conclusively that Defendants' representations were false.¹⁷

30. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that the Risse project be openly competed. In doing so, Defendants failed to allow minority persons an opportunity to bid for the project which certain EPA employees, including Defendant Brobst, solicited. Specifically, the Defendants claimed, falsely, that Defendant Risse was the Principal Investigator and (in collaboration with Defendant Brobst) claimed that Defendant Risse was uniquely qualified to do the work.¹⁸ To the contrary, Defendant Risse had little, if anything, to do with the actual work, and the project involved routine environmental sampling and chemical analyses that could be performed by any of a number of research institutions

¹⁷ Memorandum from C. Gross to F. Roth (July 12, 1999) (UGA 00085)

¹⁸ Defendant Brobst's review of the Risse project proposal obtained through Freedom of Information Act request to EPA

in the area, including colleges, companies and other persons that are historically African-American.

31. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that the project include a formal Quality Assurance/Quality Control ("QA/QC") Plan containing rigorous QA/QC measures for all environmental data. Defendants, in collaboration with Defendant Brobst and Mr. Gross, falsely claimed that the duration of the project was too short for QA/QC measures to be necessary.¹⁹ Also, Defendants represented in the QA/QC section of their application for federal assistance that no forage samples would be collected under drought conditions, because the drought would cause the uptake rates of heavy metals to appear misleadingly low.²⁰ Defendants submitted their application with this representation in mid-June, 1999, several weeks after they were already collecting samples that were obtained during the severe drought, as Defendants were well aware. Defendants, in fact, collected all of their forage samples during severe

¹⁹ EPA Assistance Agreement/Amendment CX 827759-01-0, Completed Decision and Approval Recommendation, p. 3.

²⁰ EPA Assistance Agreement/Amendment CX 827759-01-0, SF-424, Application for Federal Assistance, QA/QC section (UGA 00194).

drought conditions,²¹ while never amending and gaining approval of their QA/QC commitments and/or requirements.

32. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that Principal Investigators and all other key personnel regarding the Risse project disclose all financial conflicts of interest and anything that may give the appearance of a conflict of interest. Specifically, Defendant Miller failed to disclose that the Messerly Wastewater Treatment Plant had previously paid UGA for him to analyze soil samples from the Relator McElmurray's family's dairy farm in 1994.²² Defendant Gaskin also failed to identify her previous sources of funding in her curriculum vitae, which was included in her grant application, such that any conflicts could be properly determined.²³ Also, Defendant Gaskin was closely associated with the UGA's programs that promoted land application of sewage sludge as safe and beneficial. Defendant Gaskin failed to disclose that she had initiated

²¹ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003), *Materials and Methods*, p. 147

²² Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)

²³ Curriculum Vitae of Defendant Gaskin included with EPA grant application (UGA 00159-60)

the proposed project at the request of Defendant Walker of EPA, the chief advocate of the safety of sewage sludge within the EPA. Defendant Walker, who was EPA's national spokesperson for promoting land application of sewage sludge as safe and beneficial, contacted the other Defendants about assisting with EPA's investigations of the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce. Defendant Walker obtained in-house EPA funds for Defendant Brobst to investigate cattle deaths.²⁴

33. Defendants have been, and continue to be, well aware of their violations of the FGCA Act because an EPA Office of Inspector General audit of the manner in which UGA faculty use federal assistance agreements had previously uncovered many of these same violations of the FGCA Act in 1993 relating to federal assistance provided at that time.²⁵ In 1993, UGA's misuse of federal assistance agreements became the subject of high-profile

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- Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)
- Draft letter from Defendant Walker's to Assistant Administrator Perciasepe requesting internal EPA funds to support Brobst's investigations into cattle deaths (January 28, 1998)

²⁵ EPA Office of Inspector General Audit No. E1JBF2-04-0300-3100156 (Revised) (Mar. 31, 1993)

oversight hearings in both Houses of the United States Congress. These illegal agreements, which were the subject of the 1993 Audit by EPA's Office of Inspector General, were authorized by the same UGA official (Dr. Joe Key, Vice President of Research) who authorized the Risse project.²⁶

34. Thus, Defendants knowingly and illegally²⁷ obtained and used a federal assistance agreement to provide technical assistance in direct support of 40 C.F.R. Part 503, various related regulatory and policy decisions, and BIRT.

False and Fabricated Data and Information in the Gaskin Paper: 2003

35. On December 19, 2001, Defendant Gaskin, as the Principal Author, submitted the final version of the Gaskin paper to the *Journal of Environmental Quality*. It was accepted and published in the January-February 2003 issue.²⁸
36. In the Gaskin paper, Defendants represented, as being accurate, historical data regarding the characteristics and contents of Augusta's sewage sludge, uptake rates of heavy metals by forage plants grown on land historically

²⁶ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0

²⁷ In violation of the Federal Grants and Cooperative Agreement Act of 1977 and other federal and state laws

²⁸ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003)

treated with Augusta's sewage sludge, and chemical analyses of soil samples collected from land historically treated with Augusta's sewage sludge. Based upon these purportedly accurate data, Defendants concluded in the Gaskin paper that Augusta's sewage sludge program complied with federal and state environmental laws and that its sewage sludge did not pose any significant risk to cattle. Defendants knew that these data and, in fact, all of their data, including sludge quality data, documentation of application rates, soil sample analyses, and analyses of forage samples, were unreliable, false, or fabricated.²⁹ Defendants, therefore, also knew that all of the conclusions

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- Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)
 - Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
 - Memorandum from Laura L. Liggett to Jeffrey H. Larson regarding molybdenum levels in Augusta's sewage sludge (October 25, 1999)
 - Email from Glen Harris to Defendant Gaskin regarding molybdenum levels found on Relators' McElmurray's and Boyce's dairy farms (UGA 00061) (1998)
 - 1998 EPD Audit of Messerly WWTP (2000) (UGA 00221-29)
 - Defendant Miller's comments on draft version of the Gaskin paper (2001) (UGA 00435, 00442)
 - Email from Defendant Brobst to S. Shepherd, EPD, in which Defendant Brobst refers to Augusta's "sloppy" data (March 3, 2004) (UGA 03519-20)
 - Defendant Brobst's admission in that he excluded all data collected by Relators McElmurray's and Boyce's experts from the Gaskin paper (2003) (UGA 00274-75)
 - Deposition testimony of Augusta representative Allen Saxon that chemical analyses of Augusta's sludge were fabricated

in the Gaskin paper, which were based on these knowingly false, fabricated and misleading scientific data, were also false and/or misleading.

37. For example, Defendants included extensive amounts of unverified historical data concerning the alleged rates at which Augusta applied its sewage sludge to area farms.³⁰ Defendant Walker made a written record of his telephone conversation with Defendant Miller on November 25, 1998, stating that Defendant Miller “does not think there is good documentation of application rates of biosolids [by Augusta]. Data is often in gallons per field without the solids content.” In response, Defendant Walker suggested to Defendant Miller that he should just “estimate” the historical application rates from “gallonage” records and soil concentrations. This record proves that Defendant Walker was not only responsible for setting up the Risse project, but was directly involved from the very beginning in representing Augusta’s unreliable and false historical data as scientifically credible. This

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- Deposition testimony of Augusta land application supervisor Hugh Avery that land application rates were fabricated
 - UGA analyses of soil samples from Relator McElmurray’s dairy farm
 - UGA analyses of soil samples from Relator Boyce’s dairy farm
 - A&L Laboratories’ soil sample data from Relator McElmurray’s dairy farm

³⁰ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003), Tables 1, 2, p. 148.

representation was made in the Gaskin paper and various EPA-published reports, including one baseline opinion report issued by EPA Assistant Administrator G. Tracy Mehan, III.³¹ Defendant Walker assisted other Defendants in covering up fraud perpetrated by Augusta by helping Defendants craft and publish false, fabricated, and misleading scientific data in the Gaskin paper.

38. An audit of the Messerly Wastewater Treatment Plant (“WWTP”) in December of 1998, and extensive sworn testimony in Court proceedings prior to the Gaskin paper, disclosed conclusively that Augusta’s records concerning its land application program were unreliable and fraudulent.³² Employees of the WWTP admitted under oath that these data, which were later relied upon in the Gaskin paper, had been falsified by employees of Augusta. For example, actual concentrations of constituents in Augusta’s sewage sludge data were four orders of magnitude higher than the data

³¹ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

³² 1998 EPD Audit of Messerly WWTP (2000) (UGA 00221-29)

showed which was reported to the EPD.³³ Defendants, including Defendants Gaskin and Miller, knew that the data reported by Augusta were unreliable when they submitted the Gaskin paper to the scientific journal for publication. Defendant Miller, for example, wrote the following note on the final version of the manuscript when he reviewed the final version and forwarded it to Defendant Gaskin:³⁴ “We should fess up here that we DON’T Know exact rates of application, or specific characteristics of sludge applied ...??”

39. While the Gaskin paper was being prepared, EPD employees assisted in covering up Augusta’s illegal dumping of hazardous wastes through its land application program. For example, one EPD employee stated:³⁵ “...Jeff [Larson] told [EPD employees] that due to the scrutiny that the Augusta case

³³ *McElmurray, v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-126; *Boyce v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-111

- Deposition testimony of Augusta representative Allen Saxon
- Deposition testimony of Augusta land application supervisor Hugh Avery

³⁴ Defendant Miller’s comments on draft version of Gaskin paper (2001) (UGA 00442).

³⁵ Record of Communication: Westby Slade, NewFields, telephone call to Laura Liggett, EPD (May 19, 2000)

was generating, if they had [any] embarrassing material in their files, they should get rid of the document.”

40. To collect soil data on farms historically treated with Augusta’s sewage sludge, Defendants selected only non-dairy farms for sampling to use in the preparation of the Gaskin paper. Moreover, Defendants did not acknowledge in their paper that they had disregarded all results from all samples collected by experts for the dairy farms owned by families of Relators McElmurray and Boyce, which revealed toxic levels of many of the heavy metals addressed in the Gaskin paper.³⁶ Worse yet, the Defendants did not acknowledge that one of the co-authors of the Gaskin paper, Defendant Miller, assisted by his associates at UGA, had analyzed soil samples from Relators McElmurray’s and Boyce’s dairy farms and found high levels of nitrates and heavy metals.³⁷

³⁶

- Defendant Brobst’s admission in that he excluded all data collected by Relators McElmurray’s and Boyce’s experts from the Gaskin paper (2003) (UGA 00274-75)
- A&L Laboratories’ soil sample data from Relator McElmurray’s dairy farm

³⁷ Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)

41. Contrary to assurances by Defendants in their application for federal assistance that no forage samples would be collected under drought conditions,³⁸ all of the forage samples used in the Gaskin paper were, in fact, collected during a time of severe drought.³⁹ Defendants truthfully explained in their application for federal assistance that natural processes responsible for transporting metals from soil into forage require water and that analyses of samples taken during a drought will not yield results accurately reflecting the presence of contaminants in sewage sludge applied to soil. As Defendants stated, because there is no water to transport metals from the soil and into the plants during drought conditions, the levels of metals found in forage samples collected during a drought would be misleadingly low.
42. When Defendants published the information they obtained from analyses of forage samples collected during the drought, they stated that these data may actually be higher than what would be the case had the samples been

³⁸ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

³⁹ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003), *Materials and Methods*, p. 147.

collected under normal rainfall conditions.⁴⁰ There is no scientific basis for Defendants' speculation that plants, under drought conditions, may take up larger amounts of metals from soil treated with sewage sludge. Defendants did not cite any supportive references or present any rationale for such a clearly spurious statement. Moreover, Defendants never amended their QA/QC plan submitted to EPA with their application, and never gained approval of their radical, scientifically unsupported speculation that valid forage samples could be obtained during a period of severe drought.

43. Defendants fabricated their speculation that concentrations of cadmium and other heavy metals in forage samples could be *higher* compared with samples of forage grown under normal (non-drought) conditions, so that Defendants could argue that concentrations of heavy metals in forage grown on land treated with Augusta's sewage sludge prior to 1999 (during non-drought conditions) would have been even lower than the low values that they reported in the Gaskin paper.

⁴⁰ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* **32**:146-152 (2003), *Conclusions*, p. 150-151.