

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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In Re:

**NEWARK WATERSHED CONSERVATION  
AND DEVELOPMENT CORPORATION,**

Debtor.

Case No.: 15-10019 (VFP)

Hon. Vincent F. Papalia

Chapter: 11

NEWARK WATERSHED CONSERVATION  
AND DEVELOPMENT CORPORATION

Adv. Pro. No.:

Debtor-Plaintiff,

v.

LINDA WATKINS-BRASHEAR; DAWAYNE  
BRASHEAR; EDIT INTERIORS; DONALD  
BERNARD SR.; DONALD BERNARD SR.  
CONSULTING; BERNARD AND  
ASSOCIATES; NEW BEGINNINGS  
ENVIRONMENTAL LLC; EDWARD MCRAE;  
CLEANER-N-GREENER; GREENER-N-  
CLEANER; CARLOS AROCHO; AROCHO  
LANDSCAPING; OSCAR N. JAMES SR.; THE  
JAMES GROUP; JAMES C. PORTER; JIM P  
ENTERPRISES, LLC; LAWRENCE BELCHER,  
CPA; WALTER FRYE, CPA; UNITY  
FINANCIAL STRATEGISTS, INC.; GARDEN  
STATE SECURITIES, INC.; DARNELL A.  
DEANS; CORY A. BOOKER; RODNEY B.  
JOHNSON; WILLIAM T. MERRITT; OSCAR S.  
JAMES II (a/k/a OSCAR JAMES, JR.);  
DONALD M. PAYNE, JR.; VAUGHN L.  
McKOY; MICHELLE THOMAS; XYZ  
CORPORATION 1-10 (FICTITIOUS NAMES);  
JOHN DOE 1-10 (FICTITIOUS NAMES)

Defendants.

The Debtor, Newark Watershed Conservation and Development Corporation (“NWCDC”), as Debtor-in-Possession and by its provisional trustees, alleges as follows:

### **INTRODUCTION**

1. In this action NWCDC seeks to recover damages from three groups of defendants, based upon a large number of wrongful acts, including misappropriation and waste of corporate assets, breach of fiduciary duty and negligence. These wrongful acts ultimately resulted in the insolvency of the NWCDC and its inability to continue to perform the public functions for which it was formed. The three groups of defendants and the general nature of their tortious conduct are:

a. The first group consists of certain officers and employees of the NWCDC who misappropriated funds, awarded no-bid contracts to friends and relatives and, as described in detail below, generally ran the NWCDC for their personal financial benefit in flagrant disregard of their fiduciary duties. This group includes (i) the NWCDC Executive Director who, for instance, collected two severance packages, issued numerous checks to herself through a “manual” checkbook she maintained in her office desk, orchestrated a “kickback” scheme involving one or more employees, and used NWCDC funds for outlandish and inappropriate purchases; and (ii) the various contractors who benefitted from the unlawful contracts;

b. The second group consists of professionals, including accountants, whose negligence and lack of diligence failed to prevent or even curtail the waste, misappropriation and unlawful conduct of management. These professionals allowed the Board’s pursuit of a program that was beyond their authority and the scope of the NWCDC’s mandate from the City of Newark (“the City”) and/or allowed the Board to improperly utilize funds which the NWCDC was obligated to return to the City of Newark. By their professional negligence these professionals not only enabled the on-going unlawful and wasteful and unauthorized conduct of management but by the fees they collected from the NWCDC for their negligent services, they caused losses from which the NWCDC has never recovered;

c. The third group is the Board of Trustees of the NWCDC (at times referenced as the “Board of Directors”), some of whom personally profited from the wrongful conduct and others who simply ignored or failed to exercise their fiduciary duties to the NWCDC and the City of Newark.

## **JURISDICTION AND VENUE**

2. Pursuant to 28 U.S.C. § 157(b)(2)(E) and (K), this Court has jurisdiction to hear the matters complained of below. Venue is proper in this district because the NWCDC is a debtor before this Court and the dispute involves claims to property of this estate.

## **THE PARTIES**

### ***The Plaintiff***

3. The NWCDC is a non-profit corporation created in 1973 to manage and plan for the conservation of the City's fresh water properties in northern New Jersey, spanning Morris, Passaic and Sussex counties, known as the Newark-Pequannock Watershed. NWCDC operated pursuant to a 1973 Newark Municipal Council ordinance authorizing the City to enter into service contracts with it. These contracts place precise limits on the functions the NWCDC could perform at the City's expense and require that any excess funds be returned to the City. In 1998, the NWCDC's contractual responsibilities grew to include oversight of the operation and management of the City's Pequannock water treatment facility. In 2009 the NWCDC's contractual responsibility was expanded to operation and management of the City's water storage reservoirs.

4. The NWCDC is incorporated pursuant to the New Jersey Nonprofit Corporation Act, *N.J.S.A. 15A:1-1 et seq.*

5. The NWCDC's Charter and By-Laws, as amended in 1994, directed the NWCDC's efforts specifically to the civic betterment, educational opportunities and social improvements relating to the planning, conservation, development and management of the City's watershed properties, Newark-Pequannock Watershed.

6. The Charter and By-Laws required the NWCDC to have a Board of Trustees ("the Board") that included from 7 to 11 trustees, including the Mayor, two members of the Newark

Municipal Council (selected by that body); and up to eight others. Not less than four of the Trustees were to be appointed by the Mayor, with the advice of the Board, and the advice and consent of the Newark Municipal Council. The officers of the NWCDC consisted of the Mayor as Chairman of the Board, a Vice-Chairman, a Secretary and a Treasurer.

7. The Board's overarching responsibility was to manage the affairs of the NWCDC, which included the review and authorization of all NWCDC contracts, leases, easements, loans, and other corporate commitments to ensure compliance with the Local Public Contracts Law ("LPCL") as applicable, as well as the preparation and approval of its annual budget.

8. The Board also had the responsibility to ensure that the financial books and records of the NWCDC were independently audited annually (with a report filed with the Mayor and Council and made available for public inspection), and to ensure that at the end of each year the net revenue of the NWCDC was returned to the City.

9. The City was to maintain oversight of the NWCDC, to ensure that the NWCDC operated in an open and transparent manner and that none of the assets, income or property of the NWCDC inured to the benefit of its trustees or officers.

10. The NWCDC's charter and by-laws also contained stringent limitations on the officers and employees of the NWCDC such that no officer or employee could (i) have any interest, directly or indirectly, in any contract to supply goods or services to the NWCDC, (ii) accept from any person, directly or indirectly, any gift, favor, service, employment, offer of employment, or any other thing of value if it is known or it should be known that the thing of value is being offered to influence his or her performance on behalf of the NWCDC in any way, and (iii) represent or negotiate, directly or indirectly, on behalf of any party other than the City in any negotiations relating to the use or disposition or control of the City's watershed properties.

11. Violations of those ethical restrictions subjected the officer or employee to removal by the Mayor.

12. As of April 2007 the Board consisted of: then-Mayor Cory Booker; Oscar James II, as Councilman, South Ward; Donald Payne, Jr., as Councilman at Large; Michelle Thomas; Vaughn McKoy; William Merritt; and Rodney Johnson. The Officers of the NWCDC were: then-Mayor Booker, Chairman, Vaughn McKoy, Vice-Chairman, Rodney Johnson, Secretary, and William Merritt, Treasurer. Linda Watkins-Brashear was the Executive Director.

13. From April 2007 to March 25, 2013 when the NWCDC voted to dissolve, the only changes to the membership of the Board were (i) Thomas resigned in April of 2010 to begin work with an entity called the Ferguson Group, which promptly received a consulting contract with the NWCDC; and (ii) McKoy resigned in June or July of 2011.

14. Mayor Booker failed to attend any of the NWCDC Board meetings. As Chairman, Mayor Booker was responsible to fill these vacancies, but failed to do so.

15. In 2010, when Oscar James II lost his seat on the Newark Municipal Council, then-Mayor Booker had the responsibility to replace James with another City Councilmember on the Board. He failed to do so and instead permitted Oscar James II to continue as a member of the NWCDC board without filling the seat designated for a City council member.

### ***The Defendants***

#### *The Executive Director and Contractors*

16. Linda Watkins-Brashear (“Watkins-Brashear”) was a long-term employee of the NWCDC. She held the position of the Executive Director of NWCDC from April of 2007 to March 25, 2013. Upon information and belief, she presently resides at 45 Nutman Place, West Orange, New Jersey 07052-5224.

17. DaWayne Brashear (“Brashear”) is the former spouse of Linda Watkins-Brashear. He owned and operated an entity that conducted business in New Jersey called Edit Interiors, which received no-bid contracts from the NWCDC through Watkins-Brashear. Upon information and belief, he presently resides at 11 Hill Street, Newark, New Jersey, 07102.

18. Edit Interiors, at all relevant times, was a business entity owned and operated in New Jersey by DaWayne Brashear. Upon information and belief, the last known address of Edit Interiors is 11 Hill Street, 2N, Newark, New Jersey 07102.

19. Donald Bernard Sr. (“Bernard”) is a former NWCDC employee who owned and operated three entities that conducted business within the State of New Jersey named (i) Donald Bernard Sr. Consulting, (ii) Bernard and Associates, and (iii) New Beginnings Environmental LLC. All three entities received no-bid contracts and/or loans from the NWCDC through Watkins-Brashear. Upon information and belief, he presently resides at 6 Summit Street #103, West Orange, New Jersey 07052.

20. Donald Bernard Sr. Consulting, at all relevant times, was a business entity owned and operated in New Jersey by Donald Bernard Sr.

21. Bernard and Associates, at all relevant times, was a business entity owned and operated in New Jersey by Donald Bernard Sr.

22. New Beginnings Environmental LLC, at all relevant times, was a business entity owned and operated in New Jersey by Donald Bernard Sr. The last known address of New Beginnings Environmental LLC is P.O. Box 32, East Orange, New Jersey 07019.

23. Edward McRae (“McRae”) is a former NWCDC employee who owned and operated an entity that conducted business within the State of New Jersey named Greener-n-Cleaner, which received a no-bid contract from the NWCDC through Watkins-Brashear to perform landscaping

services at NWCDC property. Upon information and belief, he presently resides at 77 Shephard Avenue, Newark, New Jersey 07107.

24. Cleaner-n-Greener, at all relevant times, was a business entity owned and operated in New Jersey by Edward McRae. Upon information and belief, the last known address of Greener-n-Cleaner is 77 Shephard Avenue, Newark, New Jersey 07107.

25. Greener-n-Cleaner, at all relevant times, was a business entity owned and operated in New Jersey by Edward McRae. Upon information and belief, the last known address of Greener-n-Cleaner is 77 Shephard Avenue, Newark, New Jersey 07107.

26. Carlos Arocho ("Arocho") is a former NWCDC employee who owned and operated an entity that conducted business within the State of New Jersey named Arocho Landscaping, which received a no-bid contract from the NWCDC through Watkins-Brashear to perform landscaping services at NWCDC property. Upon information and belief, he presently resides in New Jersey.

27. Arocho Landscaping, at all relevant times, was a business entity owned and operated in New Jersey by Carlos Arocho. Upon information and belief, the last known addresses of Arocho Landscaping are 46 Oriental Street, Newark, New Jersey 07104 and 181 NJ Railroad Avenue, Newark, New Jersey 07105.

28. Oscar N. James ("James I") is the father of Oscar S. James II. He owned and operated an entity that conducted business in the State of New Jersey named the James Group, which received a no-bid contract from the NWCDC through Watkins-Brashear. Upon information and belief, he resides in New Jersey.

29. The James Group, at all relevant times, was a business entity owned and operated in New Jersey by Oscar N. James. Upon information and belief, the last known business address of The James Group is 9 Merrywood Drive, West Orange, New Jersey 07052.



30. James C. Porter (“Porter”), at all relevant times, owned and operated or was associated with an entity that conducted business in the State of New Jersey named Jim P. Enterprises, LLC, located in Essex County, New Jersey, which received no-bid contracts from the NWCDC through Watkins-Brashear.

31. Jim P. Enterprises, LLC, at all relevant times was a business entity located in Essex County, New Jersey owned, operated or affiliated with Porter.

### *The Professionals*

32. Lawrence Belcher (“Belcher”), at all relevant times, was a Certified Public Accountant licensed to practice accounting in the State of New Jersey. At all relevant times he maintained a place of business at 270 Springhouse Lane, Moorestown, New Jersey 08057. He was retained by the NWCDC as its independent financial auditor. Upon information and belief, he presently resides at 1863 SE Bowie Street, Port St. Lucie, Florida 34952.

33. Walter Frye (“Frye”), at all relevant times, was a Certified Public Accountant licensed to practice accounting in the State of New Jersey. At all relevant times he was retained by the NWCDC to provide accounting support services. His business address during the relevant times included the following locations: (i) 40 Clinton Street, Suite 700, Newark, New Jersey 07102; (ii) 612 Longview Road, South Orange, New Jersey 07079; (iii) PO Box 200394, Newark, New Jersey 07102; and (iv) 320 Main Street, West Orange, New Jersey 07052. Upon information and belief, he presently resides at 27 O’Connor Cir., West Orange, New Jersey, 07052-3689.

34. Unity Financial Strategists, Inc. (“Unity Financial”) markets itself as an independent, full-service investment firm dedicated to delivering the highest level of integrity and excellence to

its clients. It was retained by the NWCDC as investment advisor and is headquartered at 100 Wall Street, New York, New York 10005.

35. Garden State Securities, Inc. (“Garden State”) markets itself as an independent, full-service brokerage and financial planning firm with a “team of experienced professionals” that provides the “highest level of customer service” by “creating innovative and evolving investment strategies”. In conjunction with Unity Financial it was involved in the improper margin trading by the Executive Director of the NWCDC as outlined below. Garden State has its offices at 328 Newman Springs Road, Red Bank, New Jersey 07701.

36. Darnell A. Deans (“Deans”), during the period relevant to this matter, was a securities broker associated with Garden State.

*Board of Trustees*

37. Cory A. Booker (“Booker”) was elected to a seat on the Newark City Council in 1998, serving on that council until July 2002. He then returned to the practice of law, becoming a principal of the law firm Booker, Rabinowitz, Trenk, Lubetkin, Tully, DiPasquale & Webster (the “Booker Firm”), which reformed after his departure as Rabinowitz, Trenk Lubetkin, Tully, DiPasquale & Webster, then later as Trenk DiPasquale Webster Della Fera Sodono PC. Booker was Mayor of the City of Newark from July 1, 2006 through October 30, 2015. During all relevant times, Booker, as Mayor of the City of Newark, was the Chairman of the NWCDC Board of Trustees.

38. Rodney B. Johnson (“Johnson”) during the relevant time was a member of the Board of Trustees for the NWCDC. Upon information and belief, he presently resides at 9 Myrtle Avenue, Unit 3, Newark, New Jersey 07107.

39. William T. Merritt (“Merritt”) during the relevant time was a member of the Board of Trustees for the NWCDC. Upon information and belief, he presently resides at 2 Rosewood Terrace, Hamilton, New Jersey 08620.

40. Oscar S. James II (“James II”) during the relevant time was a member of the Board of Trustees for the NWCDC. He served as a member of the Newark City Council until losing his seat in July 2010. Upon information and belief, he presently resides at 20 Schuyler Avenue, Apt. 3, Newark, New Jersey 07112.

41. Donald M. Payne, Jr. (“Payne”) during the relevant time was a member of the Board of Trustees for the NWCDC and a member of the Newark City Council. Upon information and belief, he presently resides in Newark, New Jersey.

42. Vaughn L. McKoy (“McKoy”) during the relevant time was a member of the Board of Trustees for the NWCDC. Upon information and belief, he presently resides at 174 Dickerson Street, Newark, New Jersey 07107.

43. Michelle Thomas (“Thomas”) during the relevant time was a member of the Board of Trustees for the NWCDC. She was also the business administrator for the City and later, following her resignation from the NWCDC board, she was hired by the Ferguson Group which was retained by the NWCDC as a consultant. Upon information and belief, she presently resides at 11240 Parkwood Court N, New Orleans, Louisiana 70128-2912.

44. XYZ Corporation 1-10 are placeholder fictitious corporations / business entities for a party or parties whose identity is presently unknown but may be ascertained during the course of discovery.

45. John Doe 1-10 are placeholder fictitious individuals for a party or parties whose identity is presently unknown but may be ascertained during the course of discovery.

### **THE FACTS**

46. The members of the Board and the professional advisors paid by the NWCDC to advise and assist in the oversight of the corporation, repeatedly and continuously abdicated their responsibilities, including the oversight of the corporation's Executive Director, Watkins-Brashear, while she misappropriated NWCDC funds for her personal benefit, repeatedly handed out no-bid contracts to friends and relatives and in numerous other ways looted the entity and engaged in transactions that clearly violated the NWCDC charter and by-laws while pursuing other activities using corporate funds from the City that were well outside the corporation's authority under its contracts with the City.

47. The Minutes from the Board meetings from April 2007 through March 2013 (collectively the "Board Minutes") demonstrate that the Board, with Booker's acquiescence, abdicated its organizational and contractual responsibilities in a number of ways:

- the Board abandoned its true purpose — the planning, conservation, development and management of the City's watershed properties — in favor of pursuing the establishment of a Municipal Utilities Authority (the "MUA") for the City, in breach of

its contracts with the City and in the process squandered the funds and assets of the NWCDC (provided by the City, now the NWCDC's largest creditor in bankruptcy);

- the Board was aware of or should have been aware through the exercise of reasonable due diligence of many, if not all, of the unlawful practices that Watkins-Brashear and others were engaged in and yet did nothing to stop or reduce the damage that was being done to the entity;

- at no time did the Board investigate to determine the accuracy of the representations being made regarding the financial condition of the NWCDC, nor did it question the professionals about the entity's internal controls or procedures with respect to the handling of cash reserves and the awarding of no-bid contracts -- two areas in which entities like the NWCDC are susceptible to abuse and areas in which the NWCDC was egregiously abused by Watkins-Brashear.

48. The Board Minutes also demonstrate that the Board violated its own Articles and By-Laws in conducting its business.

*The NWCDC Board Failed to Supervise Watkins-Brashear*

49. Prior to Booker's assumption of the Mayoral office, in or about June of 2006, Watkins-Brashear resigned her employment with the NWCDC. She received over \$209,000 in severance based on her years of service and her claimed unused vacation and sick time. A few weeks later, after Booker became Mayor, the NWCDC "rehired" Watkins-Brashear. During her brief "retirement" she was paid her salary as if she never resigned. In addition, upon information and belief, despite her "rehiring", Watkins-Brashear did not return her severance payment.

50. Upon becoming the Executive Director of the NWCDC, Watkins-Brashear entered into a NWCDC Board approved contract with the NWCDC. She reported to the NWCDC Board and the 1994 By-Laws expressly require the NWCDC Secretary and Treasurer to oversee the Executive Director's actions on behalf of the whole NWCDC Board.

51. The Board failed to supervise and monitor Watkins-Brashear, who used the NWCDC and its assets for her personal gain and for the personal gain of her friends and colleagues through numerous transactions that violated applicable New Jersey law and her fiduciary duties as an officer and employee of the NWCDC.

*Unauthorized Contract Awards and Loans*

52. Watkins-Brashear, without authorization or approval, awarded no-bid contracts totaling more than \$332,000 to her ex-husband, DaWayne Brashear, either directly or through his companies, claiming the contracts were for interior design work at the NWCDC's rented office space and City-owned structures on the Watershed property. At times, to help alleviate his companies' cash flow problems, Watkins-Brashear paid her ex-husband in advance of any work in violation of state law and even issued some of the payments via checks to DaWayne Brashear personally.

53. Watkins-Brashear, without authorization or approval, awarded no-bid contracts totaling more than \$780,000 to (i) Donald Bernard, Sr. Consulting, (ii) Bernard and Associates, and (iii) New Beginnings Environmental, LLC. Donald Bernard, Sr., a former fellow NWCDC employee, owned or had a financial interest in all three entities. The contracts involved work described as research and technical assistance, oversight of the NWCDC's land-use projects, coordinating ethics training for the NWCDC employees, supervising and monitoring other

NWCDC vendors, and acting as a special projects manager, updating the NWCDC website, and performing public relations work. The New Beginnings Environmental entity was specifically contracted to provide debris removal services and install new signage.

54. Watkins-Brashear, without authorization or approval, awarded no-bid contracts to two other entities owned by NWCDC employees for landscaping and debris and snow removal services — the same work. She awarded contracts totaling nearly \$390,000 to companies formed and owned by Edward McRae called Cleaner-n-Greener and Greener-n-Cleaner. McRae had no prior landscaping business experience and no landscaping equipment when awarded its first contract. Watkins-Brashear later hired McRae as a full-time NWCDC employee even while McRae's company was a vendor to the NWCDC. Watkins-Brashear awarded similar no-bid contracts totaling over \$600,000 to Arocho Landscaping, formed and owned by Carlos Arocho while an NWCDC employee. Watkins-Brashear awarded similar no-bid contracts totaling over \$580,000 to Jim P. Enterprises, LLC, owned and operated by James Porter.

55. Watkins-Brashear, without authorization or approval, awarded no-bid "consulting" contracts to an entity called The James Group, which was owned by James I, the father of James II, one of the NWCDC board members. The so-called "consulting" work involved (i) monitoring public meetings for opposition to the creation of a municipal utilities authority in the City in order to be able to confidentially obtain support for the MUA and (ii) locating reliable vendors to provide chemicals for the City's water treatment facility at a reasonable price, work that was accomplished mostly by internet searches. No reports of its research were ever issued. At times the James Group was paid in advance for its services in violation of state law. Development of or lobbying for an MUA was an activity not authorized by or consistent with the mandate or purpose of the NWCDC.

Pursuit of these MUA connected activities was a clear violation of the agreements upon which the NWCDC was formed and funded by the city.

56. Watkins-Brashear, without authorization or approval, agreed to a \$20,000 interest free loan of NWCDC funds to a not-for-profit entity called the National Black United Fund, Inc. (“NBUF”). William Merritt, a sitting NWCDC Board Trustee at the time, was the president and chief executive officer of NBUF.

57. Watkins-Brashear, without authorization or approval, issued NWCDC checks totaling more than \$250,000 to various community organizations, with the majority of funds going to an organization chaired by Donald Bernard, Sr.

58. A reasonably diligent Board member would have and should have been aware of these unlawful practices through appropriate monitoring of the activities of the Executive Director and the financial activities of the NWCDC.

#### *Improper Investments of Taxpayer Money*

59. In February of 2007, Watkins-Brashear signed an agreement that expanded a brokerage account the NWCDC held with United Financial to include margin trading, which involves the borrowing of funds to make securities trades.

60. N.J.S.A. § 40A:5-1 et seq., however, limits investments by local governments to traditionally conservative or “safe” investments such as government bonds, money market mutual funds and the state's Cash Management Fund. Trading on margin is not permitted.

61. The NWCDC operated nearly entirely via funding by the taxpayers of the City. For example, from 2008 through 2011, the City paid the NWCDC more than \$40.5 million under two



service contracts. The City was not permitted to invest public funds in the manner in which Watkins-Brashear invested the NWCDC funds.

62. N.J.S.A. § 40A:5-1 et seq. also requires that local governments adopt a cash management plan that provides for monthly reporting to the governing body of investments made and redeemed.

63. Even after establishing the illegal investment scheme for the NWCDC, Watkins-Brashear never created any policy controls concerning the investment of its funds. Nor did she issue any monthly reports of its investments to the City. Upon information and belief, no member of the Board nor any of the NWCDC's professional advisors raised any issue with respect to this flagrantly illegal handling of public funds.

64. From 2007 through 2010, the NWCDC spent nearly \$50,000 on the interest on the borrowed funds for the margin trades as well as excessive commissions on trading activity that was prohibited by New Jersey law.

65. In addition, the NWCDC's pension plan was inexplicably converted from a defined contribution plan to a defined benefit plan, which placed an unreasonable financial burden on the NWCDC. Not surprisingly, ultimately the pension plan became grossly underfunded, resulting in huge financial obligations of the NWCDC. In July of 2011, the Board resolved to adopt a Policy and Procedures Manual for employees, which provided for unreasonably large and generous severance payments and vacation and sick pay. On March 28, 2013, the same day as the Board voted to dissolve, the Board passed a Resolution Approving Receipt of Employee Benefits, which provided for full benefits to ineligible employees.

66. The independent professionals retained by the NWCDC were fully aware and, at times, even involved in the unlawful activities of the Executive Director but, at no time, did any of them object or report or take any action to prevent, curtail or disclose the unlawful activities.

67. The Board failed to appropriately monitor Watkins-Brashear and to prevent the unlawful conduct.

### **INVESTIGATION INTO AND DISCLOSURE OF ILLEGAL CONDUCT AT THE NWCDC**

68. In 2010, a group of Newark residents named the Newark Water Group, fought to keep the NWCDC under the control of the Newark City Council. The Water Group successfully blocked Mayor Booker's efforts to transfer the operations of the NWCDC to a Municipal Utilities Authority.

69. The Water Group commissioned an investigation into the affairs of the NWCDC, which resulted in a report issued in January 2011, entitled "Hogwild: An Analysis of the Activities of the Newark Watershed Conservation and Development Corporation" (the "Hogwild Report"). The Hogwild Report is annexed hereto and marked Exhibit "A" and incorporated herein by reference. The Hogwild Report concluded that insiders of the NWCDC had reaped unreasonable benefits and enormous resources had been siphoned into schemes benefitting those insiders and others while problems with the water and sewer infrastructure continued.

70. In December 2011, Newark Councilman, Augusto Amador formed an investigative Committee to examine the activities of the NWCDC. When Amador's Committee requested documents from the NWCDC, the NWCDC, through counsel, resisted the efforts to obtain documents. The NWCDC Board, through its counsel, filed an action in the Superior Court in Newark to restrain the activities of Amador's Committee.

71. In April of 2012, the Newark City Council requested that the State investigate the activities of the NWCDC. In early 2012, the State Comptroller rejected a request by the City to award a \$16 million contract to the NWCDC without public bidding or a public hearing.

72. In July 2012, it was revealed that the Comptroller was conducting a broad ranging investigation of the activities of the NWCDC.

73. In early 2013, the State Comptroller revealed some of its preliminary findings to City officials. At an emergency meeting held on March 25, 2013, the Board of the NWCDC voted to dissolve the corporation. In response, the City of Newark moved before the Superior Court for the appointment of provisional trustees for the NWCDC. The Court appointed four (4) provisional Trustees, three of whom currently serve as the provisional Trustees of the NWCDC.

74. On February 19, 2014, the State of New Jersey Office of the State Comptroller issued its investigative report. The report concluded that “from 2008 through 2011”, the NWCDC recklessly and improperly spent millions of dollars of public funds with little or no oversight by either its Board of Trustees or the City.” The investigation by the Comptroller further “revealed that neither the NWCDC Board nor the City provided sufficient oversight of the NWCDC”. A copy of the Comptroller’s report is annexed hereto as Exhibit “B” and incorporated herein.

*Improper Self-Enrichment and Enrichment of Colleagues*

75. Watkins-Brashear resigned her position on March 25, 2013. From January 1, 2006 until her resignation on March 25, 2013, Watkins-Brashear’s employment agreements provided for compensation totaling \$1.16 million yet she actually received payments totaling \$1.98 million.

She took over \$800,000 in unjustified excess “compensation” through nearly 70 manual checks she wrote to herself and signed herself (without a co-signor) and two severance payments.

76. Watkins-Brashear’s second severance payment occurred as a result of another Board resolution the same day the Board voted to dissolve (March 25, 2013). The Board approved a separation and settlement payout to Watkins-Brashear in the amount of \$453,805, including her unearned salary through the end of 2015, as well as the value of her unused vacation and sick time. Her employment contract with the NWCDC, however, limited her entitlement to future, unearned salary to circumstances where the NWCDC terminated her without good cause and did not permit her to resign and collect for future work that she never performed. Furthermore, Watkins-Brashear had artificially inflated the value of any unearned, future salary by maneuvering to have her contract reworked in January 2013 (2 months before her resignation) to extend her contract term from December 31, 2014 to December 31, 2015. Again, neither the Board nor the professionals did anything other than assist Watkins-Brashear in her unlawful activities.

77. Her colleagues also benefitted from the generous though improper conduct of Watkins-Brashear. For example, Watkins-Brashear authorized compensation for the NWCDC’s Business Manager in 2012 such that she received nearly \$40,000 more than her salary of \$47,736.

78. Watkins-Brashear also ran a “kickback” scheme involving at least one but possibly more than one NWCDC employee. For instance, Watkins-Brashear would instruct the employee to write a manual check in amounts ranging up to at least \$5,000 that Watkins-Brashear would sign. The employee was then instructed to go to a bank, cash the check and split the cash with Watkins-Brashear.

79. Finally, through her improper use of the NWCDC’s petty cash accounts, Watkins-Brashear garnered additional monetary “fringe” benefits for herself and her colleagues by

improperly categorizing as “petty cash” such personal expenses as diapers, mouthwash, shampoo, deodorant, soda, juice, candy, detergent, dryer sheets, imported drinking water, dinners at upscale restaurants where lobster, king crab and filet mignon were consumed along with cognac, wine, martinis and margaritas. Watkins-Brashear also used NWCDC funds to pay for her personal assistant who ran various errands such as newspaper purchases and check cashing runs.

80. In all of these unlawful activities, the independent professionals retained by the NWCDC failed to provide any of the essential safeguards they were retained to provide.

81. In addition to the neglect and/or complicity of the professionals with respect to these direct misappropriations of NWCDC cash, the Board either tacitly approved the improper expenditures or, because it never investigated the accuracy of the representations being made regarding the financial condition of the NWCDC, was unaware and failed in its duties to the NWCDC.

### **The Lack of Oversight by the Professionals**

#### *Lawrence Belcher, Jr., CPA*

82. From as early as 2000 through March 25, 2013 when the NWCDC Board voted to dissolve and then ultimately filed bankruptcy, the NWCDC engaged Lawrence Belcher, Jr., as an independent auditor annually to audit its financial statements.

83. At all relevant times, Belcher operated as a Certified Public Accountant with an address of 270 Springhouse Lane, Moorestown, New Jersey 08057.

84. In September 2004, Belcher created and issued an invoice for his services relating to his “review” of prior year audits. Specifically, Belcher charged for “[m]eetings, discussions, and research in connection with the review of [the NWCDC] audits and operations for the years ended December 31, 1998, 1999, 2000, 2001 and 2002”. The amount of the invoice was \$17,920 (64

hours at \$280/hour), which included the following hourly detail for the 2004 year: March - 19 hours; June - 5 hours; July - 10 hours; August - 27 hours; and September - 3 hours.

85. In June 2006, Belcher created and issued an invoice for his services in performing the audit of the NWCDC financial statement for the year 2005. The amount of the invoice was \$17,825.

86. All totaled, from 2000 through June 2006, Belcher was paid approximately \$130,000 for his services.

87. In May 2007, shortly after Watkins-Brashear became Executive Director, Belcher described the audit services he would provide to the NWCDC for the year 2006, which services did not substantially differ from the prior years. According to an August 2, 2007 invoice, the services starting at that point cost the NWCDC \$43,980, equivalent to approximately a 250% fee increase. Watkins-Brashear paid the invoice in full four days later without question.

88. In 2008 Belcher billed the NWCDC \$65,970 for the same audit services for the calendar year 2007. He billed an additional \$34,000 to the NWCDC for “unexpected circumstances additional audit time services”. The unexpected circumstances were not specified. Again, under the direction of Watkins-Brasher the bill was paid and not questioned.

89. Also at that time Belcher billed \$41,500 to the NWCDC for work relating to the MUA pro forma 2008 budget. His work entailed compiling the annual budget statements but did not include any review of the information or any type of audit of that information. That bill was also paid without question.

90. In 2009 the NWCDC paid \$79,800 to Belcher for his audit services of the NWCDC financial statements for the calendar year 2008. The NWCDC paid an additional \$18,400 to

Belcher for the preparation of the NWCDC's tax form 990 and CRI-200 form for the same calendar year.

91. In 2010, the NWCDC paid \$78,900 to Belcher for his audit of its 2009 financial statements. Again, Belcher encountered "unexpected circumstances", this year apparently twice because he billed the NWCDC \$9,750 in November 2010 then another \$9,940 in January 2011 again for "unexpected circumstances" relating to the audit of the 2009 statements. The NWCDC paid Belcher another \$17,625 for "nonaudit services" relating to the MUA.

92. In 2011, for the calendar year 2010, above and beyond the elevated audit fees, the NWCDC paid \$10,990 to Belcher for the preparation of the NWCDC's tax form 990 and CRI-200 form eight days after the invoice was issued.

93. All totaled, from 2007 through 2013, Belcher was paid over \$575,000 for his services.

94. For the audits that Belcher performed, he stated that his audits were performed "in accordance with the United States generally accepted auditing standards", which required him to "obtain reasonable assurance about whether the financial statements [were] free of material misstatement."

95. For the audits that Belcher performed, he opined that "the financial statements...present fairly, in all material respects, the financial position of [the NWCDC]...and the changes in net assets and cash flows for the years then ended in conformity with United States generally accepted accounting principles."

96. Belcher also affirmed that in performing his audits he "considered NWCDC internal controls over financial reporting" and "noted no matters involving the internal control over

financial reporting and its operation that [he] consider[ed] to be material weaknesses.” Belcher defined “material weakness” as “a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.”

97. In assessing the efficacy of the NWCDC’s internal financial controls, as he was required to do, Belcher completely disregarded such glaring weaknesses in the company’s internal controls as the manual checkbook that Watkins-Brashear kept in her desk and the extensive use of no-bid contracts and contracts with present and former employees and board members and other similar and obvious weaknesses.

98. Belcher’s audit of the NWCDC financial operations and records involved little more than a cursory review of highly selective financial statements.

99. For instance, his review of the vendor-related information involved the same vendors each year rather than a random selection of vendors. In addition, Belcher failed to follow the auditing guidelines suggesting an independent confirmation of the information with random vendors.

100. Another example of Belcher’s negligent review is found in the NWCDC records where expenditures of more than one million dollars to landscaping companies are classified in the financial records under various expense categories, including “Landscaping Services”, “Debt Obligations to Townships” and “Property Improvements”. Yet, Belcher failed to identify and question these classifications and failed to bring them to the attention of the NWCDC Board.



101. Further, when Belcher did discover a discrepancy between the financial statements and the financial records, he failed to adequately resolve the discrepancy. For instance, upon information and belief, during a number of audits, Belcher discovered a discrepancy involving Watkins-Brashear's salary payments and her employment contract but instead of independently obtaining information to resolve the discrepancy, Belcher requested an explanation from Watkins-Brashear herself, which she provided via a memorandum outlining fabricated justifications involving vacation time and sick days. Belcher failed to comment on the manual checks which Watkins-Brashear maintained under her exclusive possession and control. In short, Belcher failed to identify and comment on any of the glaring weaknesses and failures in the internal financial controls, the numerous no-bid contracts, the highly risky and unlawful margin trading account, and other serious financial issues.

Walter Frye, MBA, CPA

102. At all relevant times, Walter Frye was a Certified Public Accountant and a financial and management consultant who provided accounting support services to the NWCDC. His business address during the relevant times included the following locations: (i) 40 Clinton Street, Suite 700, Newark, New Jersey 07102; (ii) 612 Longview Road, South Orange, New Jersey 07079; (iii) PO Box 200394, Newark, New Jersey 07102; and (iv) 320 Main Street, West Orange, New Jersey 07052.

103. Frye's services to the NWCDC included accounting / bookkeeping activities such as account reconciliations, which included or should have included the task of reconciling the manual checks written by Watkins-Brashear into the Quickbooks computer accounting system employed by the NWCDC.

104. From 2000 through 2005, the NWCDC paid Frye approximately \$112,000 for his services.

105. From 2006 through 2013, the NWCDC paid Frye approximately \$467,000 for his services.

106. Beyond his monthly “bookkeeping” fee, Frye also began invoicing for other activities such as:

- \$3,950 - April 2008: for “support schedules and reconciliations for independent auditor”;
- \$16,600 - August 2010: for “[f]inancial and [m]anagement consulting services relating to various meetings and conference calls with Executive Director, counsel, engineers and other consultants in matters concerning the proposed operating structure and financial practices of the Newark Municipal Utility Authority; review of multiple water/sewer billing ... systems (American Water and the City of Philadelphia); attendance at Newark Municipal Council [h]earings; and attendance at [p]ublic [h]earings”;
- \$14,000 – November 2010: for “Supplemental Services per attached Statement”.

107. In providing his accountant / bookkeeping services, Frye failed to reconcile and properly note numerous suspicious checks to Watkins-Brashear and others and he negligently categorized various expenditures such as landscaping services as “Debt Obligations to Townships” and as “Property Improvements”. He also failed to reconcile or report to the NWCDC Board the suspicious activities involving the NWCDC’s petty cash account.

108. Because of his position Frye was privy to extensive information about the unlawful and wasteful activities of Watkins-Brashear. He failed in his professional fiduciary duties to report or otherwise act to report or stop them.

*Unity Financial, Garden State, Darnell Deans*

109. At all relevant times, Unity Financial and Garden State marketed themselves as independent, full-service investment firms dedicated to delivering the highest level of integrity and excellence to their clients.

110. At all relevant times, Unity Financial and Garden State were engaged by the NWCDC to provide to the NWCDC the investment expertise necessary for it to manage its investment accounts in a professional, ethical and legal manner.

111. At all relevant times, Darnell Deans was a securities broker associated with Garden State and had the responsibility to oversee the NWCDC accounts and trading activity.

112. Unity Financial, Garden State and Darnell Deans received substantial sums of money from the NWCDC for the expected services.

113. Unity Financial, Garden State and Darnell Deans each had an obligation to the NWCDC to act in the best interest of the NWCDC, without regard to its or his own financial interests. In essence, Unity Financial, Garden State and Darnell Deans each had a responsibility to “know its/his client” including whatever the trading limitations were imposed upon it as a not-for-profit entity funded by the City of Newark.

114. Unity Financial, Garden State and Darnell Deans advised and/or facilitated the unlawful, high risk investment activity engaged in by Watkins-Brashear as outlined above in

paragraphs 59 through 67. Unity Financial, Garden State and Darnell Deans each also failed to report the actions of Watkins-Brashear to the NWCDC Board.

### **The Board's Improper Pursuit of the MUA**

115. Rather than engage the Newark City Council on the issue of whether a municipal utilities authority was the best answer to Newark's water and sewer issues, Booker, as Mayor of the City of Newark and also the Chairman of the NWCDC Board, inappropriately utilized the NWCDC to pursue the issue despite it being outside the scope of the NWCDC's mandate and contractual obligations with the City. Those efforts improperly squandered the financial resources of the NWCDC (provided by the City, now the NWCDC's largest creditor) that should have been allocated and used to fulfill the contractual obligations.

116. The NWCDC was funded by the taxpayers of the City pursuant to resolutions from the City Council contracts – a services contract relating to the NWCDC's preservation, conservation, management and maintenance of the Pequannock Watershed and the surrounding lands and reservoirs (the "Watershed Property Contract") and a Memorandum of Understanding authorizing the NWCDC to operate and manage the City's Pequannock water treatment plant (the "Treatment Plant MOU").

117. The Watershed Property Contract authorized the NWCDC to manage, plan, and provide for the conservation and development of the Newark watershed properties. The NWCDC was to manage the properties, maintain the related records and documents, plan and recommend uses for the land including recreational activities, develop inter-municipal relationships with the communities surrounding the watershed properties, monitor local zoning changes that may impact

the watershed properties, analyze and recommend to the City strategies pertinent to tax appeals relating to the watershed properties, make recommendations to the City concerning fees associated with use of the watershed properties and administer and collect rents on agreements and leases relating to the watershed properties.

118. The Treatment Plant MOU directed that the NWCDC assumed full responsibility over the day-to-day operations of the facility including among other things personnel, salaries, security, janitorial, grounds services, chemical maintenance and supplies, in order to ensure that the City is supplied with up to a specified daily minimum of treated drinking water that meets the Safe Drinking Water standards set forth by the New Jersey Department of Environmental Protections.

119. Despite the clear contractual obligations and limitations set forth in both the Watershed Contract and the Treatment Plant MOU, not long after Booker assumed the Office of Mayor of the City of Newark discussions began about the NWCDC taking full control over the City of Newark's water and sewer operations via transfer to the NWCDC or by creating a Municipal Utility Authority. Watkins-Brashear stated in an email that the MUA option would "take months" due to the various political and legal hurdles. The NWCDC, Watkins-Brashear believed, could gain control of the water and sewer department merely by "a vote of confidence from the City Administration".

120. Once Booker reconstituted the NWCDC Board in April 2007, without elaboration in the Board Minute and in contravention of the NWCDC's contractual commitments to the City and in contravention of its own charter and by-laws, Watkins-Brashear and the NWCDC Board began to pursue the MUA possibility at great expense to the NWCDC.

121. Indeed, the NWCDC's acting general counsel authored a letter to Booker in which he requested the "opportunity to explore" the "natural progression" of creating an MUA and outlined the anticipated benefits including more power over the governing board by the Mayor, essential independence concerning contracting and the raising of funds via bonds, and the potential for the sale of Newark's water outside of the community.

122. Very soon thereafter, the NWCDC's acting general counsel announced to the NWCDC Board that he had contacted Booker on the MUA issue and that the NWCDC had hired a consultant to evaluate the process of forming the MUA who estimated the task would take 6-7 months and involve taking on employees, equipment and union issues. Rather than question what appears to have been activity not previously approved by the NWCDC Board, the Board Members, specifically McKoy, Johnson and Merritt, volunteered to participate in the MUA subcommittee.

123. The NWCDC Board also approved without dissent Resolution AA-14 relating to the efforts to form the MUA. Despite a financial cap included in the resolution, the NWCDC paid monies far in excess of the cap.

124. Watkins-Brashear met and contracted with various consultants to aid the NWCDC in developing the proposal for the MUA. Those consultants included law firms to advise the NWCDC on such issues as financial bonding and union and employment issues.

125. Ultimately, Watkins-Brashear and certain board members presented the MUA proposal to Booker, who gave his support to the plan.

126. Watkins-Brashear and the rest of the NWCDC Board continued their efforts to create the MUA even though such efforts took them well beyond the NWCDC's mandate and violated its commitments to the City. These efforts by the NWCDC Board, its management professionals, resulted in the waste of funds that were provided by or due back to the City. The

only benefits from those efforts accrued to the professionals who received substantial fees for their performance of work that was never should have occurred.

127. To meet the budgeted revenue projections, the NWCDC Board realized the only options were to lay off employees, collect outstanding receivables or raise rates. Not even this "red flag" jolted the NWCDC Board out of its funds-wasting path toward the MUA.

128. Not until April of 2008 did anyone on the NWCDC Board raise the question of NWCDC's responsibility "to disclose more information to Municipal Council". Yet, even then the concern was raised more so "to obtain support for an MUA" from the City Council — something that should have been obtained before spending money without authorization.

129. Ultimately the City Council did not approve of the MUA proposal.

130. Undaunted by their lack of success before the City Council, the NWCDC Board decided to push forward with the MUA. The NWCDC Board considered holding local public meetings to inform the public of their MUA-related efforts, wasting even more of the NWCDC's financial resources provided by the City. In fact, Watkins-Brashear confirmed that the NWCDC had already expended more than \$576,000 of the NWCDC's City-provided funds on consultants, legal advisors and other professionals in just over a year since beginning their MUA push. The NWCDC Board failed to recognize yet another "red flag" and urged instead to continue since the Booker Administration was in favor of the MUA.

131. Later a citizens group protested Booker's MUA plan causing Booker to instruct the NWCDC Board to cease and desist its efforts.

132. This temporary halt did not last long, however. Eventually, Booker reversed his instruction to the NWCDC Board, which then restarted its efforts by "re-hiring" several

consultants, including an entity called the Ferguson Group, a consulting firm that employed former Board member Thomas. The waste of the City's funds continued.

133. Within two months of the NWCDC Board approving new contracts for several consultants, Booker's MUA project faced a firestorm of opposition from the City Council and the Newark residents. By November of 2010, according to the Board Minutes the MUA idea was dead and that year's financial deficit for the NWCDC was, according to its "independent auditor" Lawrence Belcher, attributable to the expenses incurred in pursuing the creation of a MUA.

134. The costs incurred by the NWCDC in its improper pursuit of the MUA on behalf of the Booker Administration total into the millions of dollars. The Board should have returned those millions to the City as required by the 1994 Articles and By-Laws rather than squander it on an unpopular and unwanted MUA.

135. Each member of the Board and each of the professionals owed a duty to preserve and protect the assets of the NWCDC even at the cost of the disfavor of the Mayor responsible for their appointment or retention, making the decision to use the financial resources of the NWCDC to pursue the MUA even though the use of such funds was not authorized under the contracts between the NWCDC and the City, or within the NWCDC's mandate in its charter or by-laws, improper.

#### **Injury Resulting from the Wrongful Conduct of the Defendants**

136. As set forth in this Complaint, the NWCDC is a non-profit entity with specifically prescribed powers and responsibilities. To assure that the NWCDC operated within its prescribed limitations, the NWCDC was required to prepare annual budgets for approval by the City Council, and obtain annual independent audits of its books and records, which were to be submitted to the



Mayor of the City of Newark, to the City Council and made available for public inspection. All net revenue of the NWCDC was to be returned to the City of Newark, on an annual basis. The discovery of the wrongful conduct of the Defendants commenced a chain of events which resulted in the cessation of all business operations of the NWCDC, the termination of all of its employees and the ultimate insolvency of and bankruptcy filing by the NWCDC. Liquidated claims have been filed in the Bankruptcy Case totaling approximately \$5.5 million. The City of Newark has filed an unliquidated claim in an amount unknown, representing the recoupment of improper distributions and payments made by the NWCDC. Absent a recovery through the within action, these creditors will receive absolutely no distribution on their claims, as the NWCDC is now virtually devoid of assets or funds. Each of the separate and distinct wrongful acts described in this Complaint caused financial damage to the NWCDC. Cumulatively these wrongful acts caused the insolvency and demise of the NWCDC.

### COUNT I

#### *Breach of Fiduciary Duties Imposed by Employment Contract*

(Watkins-Brashear)

137. Plaintiff repeats the allegations of paragraphs 1 through 136.

138. By and through her employment with the NWCDC, Watkins-Brasher owed a fiduciary duty of care and loyalty to act in the best interests of the NWCDC as opposed to her own personal interests and the interests of her friends and colleagues.

139. As outlined above, through her actions Watkins-Brasher breached her fiduciary duties owed to the NWCDC.

140. As a result of her breach of her fiduciary duties to the NWCDC, the NWCDC has suffered and continues to suffer harm.

**WHEREFORE**, the NWCDC demands that judgment be entered against Watkins-Brashear in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

## **COUNT II**

### ***Aiding and Abetting Breach of Fiduciary Duty***

(DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James C. Porter, Jim P. Enterprises, LLC XYZ Corporation 1-10, John Doe 1-10)

141. Plaintiff repeats the allegations of paragraphs 1 through 140.

142. DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporation 1-10 and John Doe 1-10, acting alone and/or in concert, knew that the no-bid contracts and no-interest loans being doled out to them by Watkins-Brashear constituted a breach of her fiduciary duties to the NWCDC as its Executive Director.

143. Nonetheless, DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N.

James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporation 1-10 and John Doe 1-10, acting alone and/or in concert, provided substantial assistance and encouragement to Watkins-Brashear in order to secure those no-bid contracts and no-interest loans.

144. As a direct and proximate cause of the NWCDC's reliance on those misrepresentations, omissions and fraudulent acts, the NWCDC has suffered and continues to suffer harm.

**WHEREFORE**, the NWCDC demands that judgment be entered against DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporations 1-10 and John Doe 1-10, jointly and severally, in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

### **COUNT III**

#### ***Misappropriation of Assets and Conversion***

(Watkins-Brashear, DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporation 1-10, John Doe 1-10)

145. Plaintiff repeats the allegations of paragraphs 1 through 144.

146. Watkins-Brashear, DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporations 1-10 and John Doe 1-10, on a regular, ongoing and repeated basis, engaged in false and fraudulent acts which damaged the NWCDC and unjustly enriched the defendants listed herein and, possibly, others. Among the specific acts of misappropriation and looting of NWCDC funds committed were the following:

- the award and receipt of no-bid contracts, as outlined in paragraphs 52 through 58 above;
- the provision and receipt of interest-free loans and other forms of compensation without authorization, as outlined in paragraphs 52 through 58 above;
- the use of the NWCDC brokerage account in ways that violate New Jersey law, as outlined in paragraphs 59 through 67 above;
- the issuance of checks for unearned compensation, as outlined in paragraph 75 and 81 above;
- the falsification of employment records to increase compensation and severance payment, as outlined in paragraphs 76 and 77 above;
- the orchestration of a “kickback” scheme involving NWCDC employees, as outlined above in paragraph 78; and
- the misuse of the NWCDC accounts, including the petty cash account, for personal benefit, as outlined in paragraph 79 above.

147. As a direct and proximate cause of the misappropriation and looting described above, the NWCDC has suffered and continues to suffer harm.

**WHEREFORE**, the NWCDC demands that judgment be entered against Watkins-Brashear, DaWayne Brashear, Edit Interiors, Donald Bernard Sr., Donald Bernard Sr. Consulting, Bernard and Associates, New Beginnings Environmental LLC, Edward McRae, Cleaner-n-Greener, Greener-n-Cleaner, Carlos Arocho, Arocho Landscaping, Oscar N. James, The James Group, James Porter, Jim P. Enterprises, XYZ Corporations 1-10 and John Doe 1-10, jointly and severally, in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

#### **COUNT IV**

#### ***Negligence / Breach of Fiduciary Duties***

(Belcher)

148. Plaintiff repeats the allegations of paragraphs 1 through 147.

149. Belcher as a Certified Public Accountant was engaged to perform numerous audits of NWCDC's financial statements in accordance with Generally Accepted Accounting Standards as applicable to the auditing of public entities and to report the results, i.e., his opinion, in accordance with Generally Accepted Accounting Principles.

150. The audit services that Belcher was engaged to provide were intended, among other things, to serve as a major safeguard against exactly the kinds of misappropriation and waste that occurred at the NWCDC. Belcher's failures in his performance of these essential services

proximately caused and contributed to the accumulated losses that eventually destroyed the NWCDC.

151. In the specific ways detailed in paragraphs 82 through 101 above, and in particular, his totally inadequate review of the company's financial controls and flagrant misuse of no-bid contracts, Belcher failed to adhere to the relevant practice standards.

152. Because of his negligent audit Belcher's expressions of unqualified opinions that the NWCDC's financial statements for the years 2006 through 2012 fairly presented the financial condition of the entity were false and misleading.

153. Persons doing business with the NWCDC, in particular, the City of Newark and its taxpayer/residents, were misled by these audit reports and induced to continue funding an operation that was corrupt and wasting the City's money in ever increasing ways and amounts.

154. For these continuing inadequate services Belcher increased his fees each year such that near the end of Watkins-Brashear's time as Executive Director his fees for the audit along had increased by approximately 550%, and he was collecting substantial additional fees for services beyond the audit services which further called into question his independence as an auditor.

**WHEREFORE**, the NWCDC demands that judgment be entered against Lawrence Belcher in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

**COUNT V**  
***Negligence / Breach of Fiduciary Duties***  
(Frye)

155. Plaintiff repeats the allegations of paragraphs 1 through 154.

156. During all of the relevant years Frye was retained by the NWCDC pursuant to a contract for the provision of accounting and bookkeeping services. Pursuant to that contract Frye owed the NWCDC duties of loyalty and competence.

157. Frye's services as an accountant and bookkeeper were intended by the NWCDC to be one of the essential safeguards against the kind of waste and misappropriation that actually occurred.

158. In the course of his performance of the professional services covered by his contract with the NWCDC Frye knew or should have known of the misappropriation of funds and waste that was occurring at the NWCDC.

159. In breach of his fiduciary duties Frye did nothing to report or stop or to disassociate himself from the waste and misappropriation that was rampant.

160. Frye's breaches of his duties of loyalty and competence were proximate causes of the accumulated losses that ultimately caused the demise of the NWCDC.

**WHEREFORE**, the NWCDC demands that judgment be entered against Walter Frye in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

**COUNT VI**

***Negligence / Breach of Fiduciary Duties***  
(Unity Financial, Garden State, Darnell Deans)

161. Plaintiff repeats the allegations of paragraphs 1 through 160.

162. Unity Financial represented itself to be experts in the management and investment of its client's funds, pledging to "tailor strategic investment advice for [the NWCDC's] overall financial objectives."

163. Garden State represented itself to be a team of professionals with expertise as a full service broker and financial planning firm that provides the highest level of investment strategy customer service.

164. Darnell Deans was a securities broker associated with Garden State and directly involved in the trading activities of Watkins-Brashear.

165. Unity Financial, Garden State and Deans knew or should have known that the NWCDC was an entity funded by the taxpayers of the City of Newark.

166. Unity Financial, Garden State and Deans knew or should have known that trading on margin and the types of higher risk investing that occurred are inappropriate and unlawful for persons and entities handling the funds of governmental entities or funds otherwise provided by taxpayers.

167. Unity Financial, Garden State and Deans aided and abetted Watkins-Brashear's margin and other high risk trading of NWCDC funds and thereby violated its/his fiduciary and professional duties to the NWCDC, and proximately caused trading losses and excessive fees and costs for money management activities in which the NWCDC should never have been involved.

**WHEREFORE**, the NWCDC demands that judgment be entered against Unity Financial, Garden State and/or Darnell Deans, jointly and severally, in favor of the NWCDC:



- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

## **COUNT VII**

### ***Negligence / Breach of Fiduciary Duties***

(Booker, Payne, James II, Thomas, Merritt, Johnson, McKoy)

168. Plaintiff repeats the allegations of paragraphs 1 through 167.

169. Pursuant to N.J.S.A. § 15A:6-14 the members of the NWCDC Board were obligated to discharge their duties in good faith and with the degree of diligence, care and skill which ordinary, prudent persons would exercise under the circumstances.

170. By accepting a position as a member of the NWCDC Board, Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy accepted the responsibility to manage the corporation in a manner prescribed by the 1994 Articles and By-Laws, and to manage the corporation within the confines of its contracts with the City.

171. The responsibility they each accepted required them to ensure through their oversight of all contracts, leases, easements, loans and other commitments undertaken by the NWCDC that the NWCDC, acting by and through its Executive Director, Watkins-Brashear, stayed within its corporate constraints and ethical boundaries. Their responsibility was the ultimate essential safeguard for the NWCDC against the kind of waste and misappropriation that actually occurred.

172. As outlined above, Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy knew or should have known of the misappropriation of funds and waste of NWCDC assets and funds by Watkins-Brashear, and should have acted to prevent or stop it.

173. As outlined above, Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy knew or should have known of the contractual limitations placed on the NWCDC pursuant to its contracts with the City and knew or should have known that those contractual limitations did not permit the NWCDC to use and thus waste the funding provided by the City to pursue the issue of an MUA.

174. Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy failed to prevent or stop the waste of NWCDC funds and therefore failed to act with the degree of diligence, care, skill and competence required of them.

175. The failures of Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy are a breach of their fiduciary duty to the NWCDC.

176. As a result of their breach of fiduciary duty to the NWCDC, the NWCDC has suffered and continues to suffer harm.

**WHEREFORE**, the NWCDC demands that judgment be entered against Booker, Payne, James II, Thomas, Merritt, Johnson and McKoy, jointly and severally, in favor of the NWCDC:

- i. For compensatory damages in an amount to be proven at trial;
- ii. For punitive and exemplary damages;
- iii. For costs, including reasonable attorneys' fees and litigation costs and expenses;
- iv. For prejudgment interest; and
- v. For any such other further relief as the Court may deem just and proper.

