UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PEAKER ENERGY GROUP, LLC and ENERGY COAST LOGISTICS TERMINAL, LLC	*	CIVIL ACTION
Plaintiffs	*	CASE NO: 2:14-cv-02106
v.	*	JUDGE: Kurt D. Engelhardt
CARGILL, INCORPORATED and LOUISIANA SUGAR REFINING, LLC	*	MAGISTRATE: Daniel E. Knowles, III
Defendants.	*	

PLAINTIFFS' SECOND AMENDED AND SUPERSEDING COMPLAINT

NOW INTO COURT, through undersigned counsel, come Peaker Energy Group, LLC ("Peaker") and Energy Coast Logistics Terminal, LLC ("ECLT") (collectively, "Plaintiffs"), which for their Second Amended and Superseding Complaint represent as follows:

STATEMENT OF THE COURT'S JURISDICTION

1.

Peaker is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Houston, Texas. The sole member of Peaker, Matthew Goitia ("Goitia"), is a domiciliary of the State of Texas.

2.

ECLT is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Houston, Texas. The sole member of ECLT is Goitia.

3.

Defendant Cargill, Incorporated ("Cargill") is a corporation organized and existing under the laws of the State of Delaware, registered to do business in the State of Louisiana, and with its principal place of business located in Wayzata, Minnesota.

4.

Defendant Louisiana Sugar Refining, LLC ("LSR") is a limited liability company organized and existing under the laws of the State of Delaware, registered to do business in the State of Louisiana, and with its principal place of business located in Gramercy, Louisiana. One of the members of LSR is Cargill, which is a citizen of the States of Delaware and Minnesota. The other member of LSR is Sugar Growers and Refiners, Inc. ("SUGAR"), which is a cooperative association organized and existing under the laws of the State of Louisiana and is a registered domiciliary of Breaux Bridge, Louisiana.

5.

This Court may assert personal jurisdiction over LSR because LSR is registered to do business in the State of Louisiana and its principal place of business is located in St. James Parish, Louisiana.

6.

This Court may assert personal jurisdiction over Cargill because Cargill is registered to do business in the State of Louisiana and routinely transacts business in the State of Louisiana.

7.

This action arises out of a business transaction involving Peaker, ECLT, LSR, and Cargill, related to LSR's facility located in St. James Parish, Louisiana.

8.

This Court enjoys jurisdiction pursuant to 28 U.S.C. § 1332 in this matter because there is complete diversity of citizenship between Plaintiffs and Defendants, and the amount in controversy exceeds the sum of Seventy-Five Thousand and 00/100 Dollars ($75,000.00), exclusive of interest and costs.

9.

Venue is proper in this judicial district because (i) LSR's principal place of business is located within this district; (ii) Cargill is deemed to reside in this judicial district as a result of its continuous and systematic contacts herein; and (iii) a substantial part of the acts and transactions giving rise to this suit occurred within this judicial district.

THE PARTIES

10.

Peaker is a business entity that was formed in order to monetize and serve oil, petroleum product, natural gas liquids, and biofuel demand growth across North America.

11.

Although Peaker's agents and consultants possess extensive experience and business relationships with petroleum and biofuel producers, refiners, and other end-users of crude oil, biofuels, natural gas liquids, and refined products, Peaker itself is a relatively new entrant to this field and is a small, single-member start-up entity.

12.

Peaker has special expertise in rail and shipping terminals for crude oil, biofuels, natural gas liquids, and refined products throughout North America, and Peaker, its agents, and consultants have used that expertise to develop, design, and manage such terminals.

13.

ECLT is an entity that Goitia formed for the purpose of performing Peaker's proprietary business plan to provide logistical services related to the transportation, handling, and storage of crude oil, refined products, natural gas liquids, and biofuels (the "Project"), as described herein.

14.

LSR operates a white sugar refinery located in Gramercy, Louisiana that is capable of refining two billion pounds of white sugar annually, which it can distribute by rail and truck to commercial and retail customers throughout the United States.

15.

Originally conceived in 2003, LSR's sugar refinery commenced operation in 2011.

16.

LSR is a joint venture between Cargill and SUGAR, each of which possess a 50 percent interest in the sugar refinery.

17.

According to its website, Cargill is a privately held business with worldwide operations in a variety of markets, including: agriculture commodity trading and processing; food ingredients and applications; meat, poultry, and eggs; farmer services; animal feed and nutrition; energy and industrial services; and financial services. Further, Cargill's website states that it purchases and delivers energy sources and related commodities including natural gas, refined and non-refined oil products, and petrochemicals, to its customers and has access to over 6,000 ports; and that it operates the world's largest dry bulk charter fleet of over 600 vessels and manages a fleet of 50 time-chartered tankers at any given time.

THE PROJECT

18.

Plaintiffs approached LSR on August 13, 2013, proposing that LSR lease to Plaintiffs certain assets at LSR's Terminal Site, including LSR's dock, and allow Plaintiffs to utilize LSR's rail connections. In these discussions, LSR acted through its agents—LSR's Chief Executive Officer and General Manager, Larry Faucheux, and its Business Development Consultant, Scott MacKenzie—who were vested with actual and apparent authority to act on behalf of LSR in all respects material to the Project.

19.

Specifically, Plaintiffs' proposal included the execution of their Project at LSR's Terminal Site through ECLT.

20.

The Project would generate revenue through the provision of four types of fee-based services: (i) transload service fees, which are fees generated by tank car loading and unloading; (ii) terminal throughput fees, which are fees generated from barge and vessel loading and unloading, truck loading and unloading, and tariffs for pipeline deliveries and receipts; (iii) storage and ancillary fees, which are fees generated from product storage and the handling of stored products; and (iv) tank car cleaning and general maintenance fees, which are fees generated from the cleaning and repair of tank cars.

21.

The essence of the Project was that: (i) Plaintiffs would, at their own expense, provide all of the necessary infrastructure upgrades to LSR's Terminal Site, which upgrades would inure to LSR's benefit; (ii) once upgraded, LSR's Terminal Site, including the dock, would serve as a

distribution point for crude, refined products, natural gas liquids, and biofuels; and (iii) LSR would receive substantial monthly rental payments and dock throughput payments from Plaintiffs under a separate agreement between Plaintiffs and LSR for Plaintiffs' use of the Terminal Site.

22.

Plaintiffs had scouted other possible locations for the Project and had identified more than one suitable location. Indeed, Plaintiffs were prepared to move forward with plans to develop the Project at the properties of either the Port of South Louisiana or Noranda Aluminum. Ultimately, Plaintiffs diverted away from those other prospective business partners and instead devoted their energy, resources, and attention to developing the Project with LSR because of the representations of Faucheux and MacKenzie, as further discussed herein.

23.

While other locations could have sufficed for the Project, Peaker sought out and engaged with LSR because LSR's facility provided the optimum set of circumstances, such as an existing dock (though in need of substantial repair and further investment to make the dock suitable for Plaintiffs' planned activities) with ocean-going vessel capable draft on the Mississippi River, connections to important rail lines, its proximity to oil refineries, and available farm land adjacent to LSR, which land could be developed for industrial purposes. Moreover, Faucheux and MacKenzie represented that they had the authority to make the deal happen and the ability and right to provide the necessary adjacent property for the Project.

24.

The land adjacent to LSR included two parcels: one parcel owned by Noranda Aluminum (the "Noranda Parcel") and another parcel owned by Louis Dreyfus Commodities and Imperial

Sugar (the "Dreyfus/Imperial Parcel"). Those two parcels of land were the subject of numerous discussions between Goitia and LSR's Faucheux and MacKenzie.

25.

Plaintiffs' business plan for the Project was an extremely valuable asset—as conceived, the Project was valued at nearly $1 billion. In order to ensure that the very valuable proprietary business plan for the Project would remain confidential, Peaker and LSR entered into a Non-Disclosure Agreement ("NDA"), entitled "Confidentiality Agreement – Site Business Development," dated August 20, 2013 (herein, "LSR NDA"), which was initially drafted and presented by LSR.

26.

The LSR NDA was intended to protect Plaintiffs from having their prospective business partner, LSR, usurp the Project or Plaintiffs' plans for the Project, and to prevent LSR from sharing with any third parties confidential information relating to the Project.

27.

The LSR NDA specifically precluded LSR from any "attempt in any manner to contact or deal with any . . . individuals or companies identified in the confidential information in connection with or related to the project or business plan proposed by the company [Peaker]" and from acting to "by-pass, compete, avoid, circumvent, or attempt to circumvent the company [Peaker] relative to the proposed project . . . ." Thus, the LSR NDA created an obligation in perpetuity on LSR's part not to disclose the plans for the Project or use those plans to arrogate the Project to itself.

28.

After Peaker and LSR executed the LSR NDA, between August 2013 and January 2014, Plaintiffs and LSR engaged in detailed discussions about the Project and conducted numerous meetings with each other to further the Project.

29.

Plaintiffs shared with LSR the investment thesis and business rationale for the Project, the design and development features of the Project, including engineering specifications for a proposed rail terminal to be located at the Terminal Site, upgrades to LSR's dock, a unique and proprietary design for the rail terminal, and the plan to acquire and develop the Noranda Parcel and the Dreyfus/Imperial Parcel to support the Project.

30.

Prior to approaching LSR about the Project, Peaker investigated the ownership of the Noranda Parcel and the Dreyfus/Imperial Parcel because Peaker's original intent had been to purchase the parcels itself. Peaker researched St. James Parish ownership records and directly contacted Noranda in order to determine the ownership status of the parcels. There was no indication through public records that LSR possessed any ownership rights to these parcels.

31.

When Goitia began discussing the details of the Project in and after August 2013 with Faucheux and MacKenzie, Faucheux and MacKenzie represented that LSR possessed an option to acquire the Noranda Parcel. Faucheux and MacKenzie made this representation several times throughout the course of negotiations. Specifically, Faucheux and MacKenzie repeated that LSR possessed the Noranda purchase option during an in-person meeting among Goitia, Faucheux, and MacKenzie on January 3, 2014 at LSR's offices and again during a telephone call among the

same parties on January 12, 2014. Because of the prior due diligence that Peaker had performed on the property records, Goitia questioned Faucheux and MacKenzie's assertions. Faucheux and MacKenzie replied that LSR possessed a contractual option and that such a right would commonly go unrecorded in publicly available real estate records.

32.

In truth, LSR did not possess a purchase option for the Noranda Parcel when Faucheux and MacKenzie made statements to Goitia to the effect that it did possess such an option. Faucheux and MacKenzie misrepresented its contractual rights pertaining to ownership of the Noranda Parcel in order to gain an advantage over Peaker. Specifically, if LSR owned the land rather than Noranda or Peaker, it could use its bargaining leverage as the primary cog for the Project to extract a greater amount of rent from Peaker. In addition, the owner of the Noranda Parcel would enjoy an appreciation in value of the land as a result of its conversion from agricultural uses to industrial/energy services usage.

33.

Faucheux and MacKenzie made similar misrepresentations concerning the Dreyfus/Imperial Parcel. Over the course of several meetings between August 2013 and January 2014, and specifically during the January 3, 2014 meeting at LSR's offices among Faucheux, MacKenzie, and Goitia, Faucheux and MacKenzie represented that certain of LSR's owners associated with SUGAR (but not those associated with Cargill) had formed a holding company called Over The Fence, LLC. According to Faucheux and MacKenzie, Over The Fence had swapped and acquired land with the owners of the Dreyfus/Imperial Parcel. This transaction was meant to enrich certain members of LSR, apart from and in addition to the revenues that the Project would generate for LSR.

34.

In truth, none of the purported land swaps or acquisitions had ever occurred. If Peaker had known the truth, it could have agreed to rental and throughput payments with the actual owners of the land, or purchased the land itself. Instead, LSR misrepresented the ownership rights of the Dreyfus/Imperial Parcel in order to enrich itself.

35.

Plaintiffs also shared with LSR the details of the business plan for the Project, including the customer base the Project intended to serve, the sources and methods of obtaining the crude oil that would form the core of the Project, projections for future growth and development of the Project, and unique licensing requirements necessary to serve the export markets that Peaker was actively soliciting for the Project.

36.

Between August 2013 and January 2014, on numerous occasions and with LSR's full knowledge and cooperation (and at Plaintiffs' expense), Plaintiffs and their agents, consultants, and/or contracted third parties traveled to the Terminal Site, where they performed activities in support and development of the Project.

37.

Throughout that period, LSR expressed enthusiasm for the Project and reassured Plaintiffs that the Project would go forward once LSR and Plaintiffs finalized the terms of the agreement to effectuate the Project (the "Deal").

38.

Further, on several occasions between August 2013 and January 2014, Faucheux and MacKenzie stated to Goitia that they had obtained board approval from LSR for the Project and

all that remained for the Project to be finalized was for Goitia and Faucheux to arrive at an agreement as to terms. Specifically, at least as early as October 2013, Faucheux and MacKenzie indicated to Goitia that they possessed LSR board approval for the Project. Later, during meetings that Goitia and Faucheux conducted with Will Brothers Engineering and H&K Engineering on or around November 11, 2013, representatives of both Will Brothers and H&K inquired whether the Project was on track and Faucheux replied that the only thing required for the Project to commence was for him to give his approval to final terms on behalf of LSR.

39.

Faucheux and MacKenzie's misrepresentation that the LSR board had approved the Project, subject to Faucheux's final consent to terms, caused Plaintiffs to refrain from seeking out other locations and/or business partners for the Project, thereby losing out on the opportunity to pursue the Project at another site. Additionally, that misrepresentation concerning board approval caused Plaintiffs to engage in extensive preliminary engineering and site design at the LSR site—costs that Plaintiffs otherwise would not have undertaken.

40.

Unaware of the untruth of Faucheux and MacKenzie's statements concerning LSR board approval and LSR's ownership rights in adjacent parcels—which statement were highly material to Plaintiffs' decision-making in continuing to engage with LSR on the Project and forego other opportunities—Plaintiffs worked with LSR to finalize the terms of the Deal, exchanging at least five rounds of term sheets for the Deal between October 20, 2013 and December 9, 2013.

41.

Throughout the negotiation process, Faucheux and MacKenzie represented that they had been working with local community leaders, politicians, and landowners to advance the Project;

thus, LSR became deeply involved in the joint effort between Plaintiffs and LSR to bring the Project to fruition.

42.

Plaintiffs hired and spent their own money on professional engineering firms and surveyors, and coordinated with those professionals and LSR on the plan where the proposed terminal would be located.

43.

Plaintiffs provided LSR with a detailed bullet-point summary of the survey requirements and attached sketches for the site that Peaker's rail and engineering teams had prepared.

44.

Plaintiffs and LSR engaged in detailed discussions concerning the energy requirements for the operations of the Project.

45.

Plaintiffs set up a meeting between LSR and representatives from both the Canadian National Railway and Kansas City Southern Railway to discuss the rail aspects of the Project.

46.

LSR hosted Plaintiffs and several potential customers of the Project on visits to the Project site.

47.

While negotiating with LSR, Plaintiffs—expending the combined reputational capital and acquired goodwill that their agents and consultants had built up in the energy industry through many years—worked steadily towards securing the aforementioned and other aspects and requirements of the Project, such as acquiring the proper permits and licenses, obtaining

financial backing, and soliciting customers. Plaintiffs performed all of this preliminary work at their expense (both out-of-pocket expense and the expense of foregoing other business opportunities), and undertook these expenses as a result of LSR's material misrepresentations.

48.

In sum, LSR worked jointly with Plaintiffs towards development and realization of the Project, and throughout that process indicated to Plaintiffs that finalizing the terms of the Deal would be a mere formality since Faucheux and MacKenzie had assured Goitia on several occasions that they had already secured board approval for the Project.

49.

Just prior to presenting Faucheux and MacKenzie with final terms for the Deal (to which Faucheux and MacKenzie agreed), Plaintiffs arranged a meeting with Cargill.

50.

Cargill had been suggested to Plaintiffs as a potential customer for the Project because of Cargill's interest in the energy industry through its Energy, Transportation, Metals ("ETM") division.

51.

On or about December 31, 2013, Goitia spoke by telephone with Cargill's ETM business development manager, Gaston Garrido ("Garrido"), and presented a highly generalized description of the Project. During that conversation, Goitia mentioned that Cargill was a one-half owner of the LSR site—a fact that Garrido did not know.

52.

On January 2, 2014, Goitia and Garrido met, at which time Goitia made a detailed presentation of the Project. Again, Garrido expressed surprise that Cargill had not heard about

the Project before, given Cargill's one-half interest in LSR. Garrido also disclosed to Goitia that Cargill had been trying unsuccessfully to develop a project similar to Plaintiffs' at the site of another Cargill asset several miles down the Mississippi River from the LSR site.

53.

At that January 2, 2014 meeting, Goitia also disclosed to Garrido the existence of the LSR NDA. Upon learning of the LSR NDA, Garrido admitted that Cargill would be bound to work with Plaintiffs on the Project as a result of that document.

54.

Cargill also expressed interest in becoming an equity partner in the Project. As the meeting concluded, Garrido indicated that his next step would be to introduce the Project idea to a bigger group within Cargill.

55.

Shortly after leaving the meeting with Cargill, Goitia received a telephone call from MacKenzie requesting a meeting, and expressly asking him to come alone.

56.

On January 3, 2014, Goitia met with Faucheux and MacKenzie at the LSR site. The principal topic discussed was the Deal. And at that time, Goitia, Faucheux, and MacKenzie reached a verbal agreement on the Deal, which agreement incorporated and built upon the most recent term sheet that they had exchanged. During this meeting, Faucheux again reassured Goitia that the LSR board of directors had authorized the Project to proceed once Faucheux approved the terms. The approved terms of the Deal were memorialized in a revised term sheet that Goitia sent to MacKenzie on January 8, 2014—representing the very same terms that the parties had agreed to on January 3, 2014.

57.

Also at the January 3, 2014 meeting, Goitia told Faucheux and MacKenzie that he had met with representatives of Cargill. MacKenzie mentioned that LSR had conducted discussions with other transload companies in the months of November and December of 2013 (at least three months after the LSR NDA came into effect). Specifically, MacKenzie mentioned having conducted discussions regarind the Porject with Wolverine Terminals Corp. in order to "market-check" the periodic payments that LSR would receive as a result of the Project. This disclosure prompted Goitia to remind MacKenzie that such discussions constituted a violation of the terms of the LSR NDA.

58.

By the time Plaintiffs reached agreement on the terms for the Deal with LSR, Plaintiffs had secured BBVA Compass Bank to arrange the equity and debt aspects of the Project and had secured numerous customer commitments, including one major refinery which had committed to a five-year deal for 10,000 barrels of crude oil per day to be processed through the terminal Project.

59.

After the January 3, 2014 meeting, MacKenzie sent Goitia a project evaluation form, which according to MacKenzie had to be completed on all co-located opportunities at Cargill properties, and asked that Goitia complete the form.

60.

The completed form was returned to MacKenzie by January 6, 2014.

61.

On January 7, 2014, Faucheux sent an email to Goitia inviting him to meet with the parish president of St. James Parish, Timothy P. Roussel, at Roussel's monthly St. James Business and Industry Development Group meeting, and suggested that at the meeting he would personally introduce Goitia to other business leaders in St. James Parish and that after the meeting, Faucheux and Goitia would meet personally with Roussel to discuss the Project in detail.

62.

On January 7, 2014, Goitia again met with Garrido, at which time Cargill again expressed interest in participating in Plaintiffs' Project as a joint venture and requested additional data on the Project, including financial and engineering models.

63.

At the January 7, 2014 meeting, Goitia informed Garrido that Plaintiffs and LSR had reached an agreement on the Deal at the meeting between Goitia, MacKenzie and Faucheux on January 3, 2014, and reminded Cargill about the LSR NDA and also requested that Cargill execute a similar agreement.

64.

After the January 7, 2014 meeting, Cargill sent Peaker a proposed NDA, which Peaker reviewed, edited, and returned with its comments to Cargill on January 8, 2014.

65.

On January 8, 2014, Goitia sent an email to Faucheux and MacKenzie, again reminding them of the obligations contained in the LSR NDA.

LSR REVERSES COURSE

66.

All dealings up to this appeared to Peaker to have been amicable and positive, and LSR had repeatedly assured Plaintiffs that the Deal for the Project would be consummated. Indeed, LSR and Plaintiffs had agreed to terms for the Deal at their January 3, 2014 meeting, as reflected in the terms that Goitia later delivered to MacKenzie. But once the details of the Project became known within Cargill, LSR, of which Cargill holds a one-half interest, began to back away from its previous commitments to Plaintiffs.

67.

On January 9, 2014, Goitia received a frantic telephone call from Faucheux and MacKenzie, expressing shock and concern that Goitia had discussed the Project with Cargill, despite Goitia having informed Faucheux and MacKenzie of those discussions during the meeting that occurred at LSR on January 3, 2014.

68.

In that January 9, 2014 telephone call, Faucheux and MacKenzie expressed panicked concern for their jobs and told Goitia that Peaker must step aside so that Cargill could take on the Project at the LSR site instead of Plaintiffs and without Plaintiffs' involvement.

69.

Because LSR and Plaintiffs had come to an agreement during their January 3, 2014 meeting, Goitia informed Faucheux and MacKenzie that he intended to continue with the Deal as agreed with LSR.

70.

Shortly after that January 9, 2014 telephone call with MacKenzie and Faucheux,

MacKenzie sent Goitia a lengthy email filled with misrepresentations to make it appear as though LSR had not agreed to the terms for the Deal. For instance, MacKenzie listed a number of purported "development gaps between LSR's position and Peaker's," which were completely fictitious and contrary to the prior agreement and understanding between LSR and Plaintiffs. LSR had never before mentioned any such "gaps," as Goitia later explained in a point-by-point email rebutting each of MacKenzie's spurious claims.

71.

In a telephone conversation on January 12, 2014, MacKenzie stated to Goitia that, despite the misrepresentations contained in his January 9 email to Goitia, the "real issue" was that Plaintiffs had discussed the Project with Cargill.

72.

MacKenzie was referring to Goitia's in-person and telephonic meetings with Cargill's agent, Garrido, which meetings occurred in Houston, Texas, where Plaintiffs and Garrido both are based. Goitia's January 2 and January 7, 2014 meetings with Garrido occurred at Cargill's Houston offices. Goitia's interactions with Garrido immediately preceded LSR's decision to renege on its commitments to Plaintiffs. The timing of LSR's about-face, combined with the other allegations set forth herein lead to the reasonable inference that following the Houston meetings, Cargill, through Garrido and/or other Houston-based corporate agents, contacted MacKenzie and Faucheux in a deliberate, and ultimately successful, effort to quash the developing business relationship between Plaintiffs and LSR. Given the distance between Cargill's Houston office and LSR's base of operations in Louisiana, it is plausible to infer that Cargill, through Garrido and/or other Houston-based corporate agents, contacted MacKenzie and Faucheux by phone, email, or some other means from Houston.

73.

Although Plaintiffs repeatedly communicated to LSR that they stood prepared to continue with the partnership that Plaintiffs and LSR had agreed upon, Faucheux, in an email dated February 3, 2014, stated that LSR had "terminated negotiations" with Plaintiffs.

74.

Prior to Faucheux's purported "termination" of the relationship, Cargill and Peaker entered into a Non-Disclosure Agreement entitled "Mutual Confidentiality Agreement," dated January 14, 2014 ("Cargill NDA").

75.

The Cargill NDA requires that any information Peaker discloses to Cargill be used "solely for an evaluation of a possible business transaction and for no other purpose, including any way, directly or indirectly detrimental to Discloser [Peaker]."

76.

The Cargill NDA is retroactive, relating to "[a]ny information exchanged by or between the Parties before the Effective Date," and it therefore extends to the initial discussions with Cargill described herein on December 31, 2013.

77.

Upon information and belief, LSR and Cargill violated the terms of their respective NDAs described herein by sharing information about the Project that the NDAs required to be maintained confidential.

78.

LSR and Cargill each failed to observe the terms of the NDAs that they signed with Peaker, which failure, at the very least, constitutes a breach of their respective duties of business

honesty, good faith, and fair dealing.

79.

LSR, through its continuous dealings with Plaintiffs and the representations and assurances it made to Plaintiffs throughout those dealings, upon which Plaintiffs relied to make substantial investments toward the Project, became a *de facto* partner of Plaintiffs. LSR violated its duties as Plaintiffs' partner by impermissibly sharing information and misleading Plaintiffs.

CLAIMS FOR RELIEF

80.

To the extent not previously alleged, the Defendants, Cargill and LSR, are liable to Plaintiffs for violating Louisiana law, and where applicable, Texas law. Any or all of the violations of the law render the Defendants liable jointly and severally, or *in solido*, to Plaintiffs for general and special damages, punitive damages, all other recoverable damages, all recoverable costs, and all recoverable attorney's fees.

81.

Each of the allegations made in this complaint are incorporated in the following claims of relief by reference and will not be re-alleged.

82.

Although previously alleged with particularity, the wrongdoings of the Defendants may be summarized as, but are not necessarily limited to, the following violations of Louisiana law and, where applicable, the laws of Texas.

FIRST CLAIM FOR RELIEF:
VIOLATION OF LOUISIANA UNFAIR TRADE PRACTICES ACT (LSR & CARGILL)

83.

LSR and Cargill are liable to Plaintiffs under the Louisiana Unfair Trade Practices Act

("LUTPA"), Louisiana Revised Statutes § 51:1401 *et seq.*

84.

LUTPA grants a right of action to any person, natural or juridical, who suffers an ascertainable loss as a result of another person's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Although business consumers and competitors are included in the group afforded this private right of action, they are not its exclusive members. *Cheramie Servs., Inc. v. Shell Deepwater Prod., Inc.*, 2009-1633 (La. 4/23/10), 35 So. 3d 1053, 1057.

85.

The actions taken by and the omissions made by LSR and Cargill discussed herein constitute unfair or deceptive acts or practices in the conduct of trade or commerce.

86.

Specifically, the intentionally deceptive, unethical, and unscrupulous actions and inactions of LSR and Cargill in leading Plaintiffs to believe that they were bound to enter into a business relationship, but then attempting instead to usurp Plaintiffs' proprietary business plans for the Project create liability under this law. LSR and Cargill are liable *in solido* to Plaintiffs pursuant to Louisiana Civil Code article 2324.

SECOND CLAIM FOR RELIEF:
INTENTIONAL AND NEGLIGENT MISREPRESENTATION (LSR)

87.

Given its relationship with Plaintiffs, its involvement in the development of the Project, the fact that it repeatedly assured Plaintiffs that it had full authority to agree to terms with Plaintiffs for the Project, and its ultimate agreement to final terms with Plaintiffs, LSR owed a duty to Plaintiffs to provide Plaintiffs correct, complete, and non-misleading information.

88.

LSR provided Plaintiffs with false and/or misleading information and failed to disclose material facts about the true nature of the extent of its authority to agree to the terms of the Project and its ability to arrange for the acquisition of land necessary for the Project. Plaintiffs relied upon these misrepresentations to their detriment in moving forward and evaluating the necessary investment to complete the Project and the Project's value. Plaintiffs suffered damages as a result of said misrepresentations. Accordingly, LSR committed the tort of intentional misrepresentation.

89.

At an absolute minimum, LSR negligently misrepresented and/or negligently omitted material facts about the true nature of the extent of its rights and ability to arrange for the acquisition of land necessary for the Project and its authority to agree to the terms of the Project. Accordingly, LSR committed the tort of negligent misrepresentation.

90.

Plaintiffs reasonably relied on LSR's misrepresentations regarding the aforementioned facts that were material to their dealings with LSR, and suffered damages as a result. Therefore, LSR is liable to Plaintiffs for damages under Louisiana Civil Code article 2315.

THIRD CLAIM FOR RELIEF:
FRAUD (LSR)

91.

The circumstances surrounding LSR's misrepresentations and the extent of LSR's misrepresentations give rise to a claim for fraud under Louisiana law.

92.

Given its relationship with Plaintiffs and its involvement in the development of the plans

for the Project, LSR owed duties to disclose the material facts and information surrounding its authority to agree to the terms of the Project and its ability to arrange for the acquisition of land necessary for the Project.

93.

As noted throughout this Complaint, LSR misrepresented material facts and failed to disclose material facts with the intention of deceiving Plaintiffs to obtain an unjust advantage.

94.

The fraudulent representations and omissions made by LSR, upon which Plaintiffs justifiably relied, actually induced Plaintiffs to begin detailed preparations for the Project, at their own cost, and to forego the ability to pursue other business opportunities.

95.

LSR's fraudulent actions have caused damage to Plaintiffs, and as result, Plaintiffs are entitled to damages and attorneys' fees from LSR under Louisiana Civil Code articles 1953 and 1958.

FOURTH CLAIM FOR RELIEF:
BREACH OF CONTRACT (LSR & CARGILL)

96.

LSR and Cargill are also liable to Plaintiffs for breach of their contractual obligations.

97.

Under Louisiana law, a breach of contract occurs where: (1) the defendant undertook an obligation to the plaintiff; (2) the defendant breached that obligation; and (3) the breach of contract resulted in damages to the plaintiff. *Garco, Inc. v. Rob's Cleaning & Powerwash, Inc.*, 2008-CA-1249 (La. App. 4 Cir. 4/22/2009), 12 So.3d 386 (citing *1436 Jackson Joint Venture v.*

World Constr. Co., 499 So.2d 426, 427 (La. App. 4 Cir.1986). Similarly, under Texas law, the elements of a claim for breach of contract are: (1) existence of a valid contract; (2) performance or tentative performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damage resulting to the plaintiff from the breach. *Worldwide Asset Purchasing, L.L.C. v. Rent-A-Ctr. E., Inc.*, 290 S.W.3d 554, 561 (Tex. App. 2009).

98.

Both Cargill and LSR undertook obligations to Plaintiffs under their respective NDAs, which were valid contracts. Although Plaintiffs abided by the terms of the NDAs and performed their obligations, both Cargill and LSR breached their obligations contained in the NDAs. Plaintiffs suffered damages in the form of lost expenses and lost business opportunity as a result of the actions of Cargill and LSR.

99.

The actions taken by and/or the omissions made by LSR and Cargill discussed herein constitute a breach of their contractual obligations to Plaintiffs.

100.

In addition, or in the alternative, Defendants breached their contractual obligations in bad faith and are therefore liable to Plaintiffs for all damages, foreseeable or not, that are a direct consequence of their breach.

FIFTH CLAIM FOR RELIEF:
BREACH OF CONTRACT (LSR)

101.

LSR is also liable to Plaintiffs for breach of its contractual obligations relative to the verbal agreement between Plaintiffs and LSR of January 3, 2014, which agreement is a binding obligation under Louisiana law.

102.

Under Louisiana law, a breach of contract occurs where: (1) the defendant undertook an obligation to the plaintiff; (2) the defendant breached that obligation; and (3) the breach of contract resulted in damages to the plaintiff. *Garco, Inc. v. Rob's Cleaning & Powerwash, Inc.*, 2008-CA-1249 (La. App. 4 Cir. 4/22/2009), 12 So.3d 386 (citing *1436 Jackson Joint Venture v. World Constr. Co.*, 499 So.2d 426, 427 (La. App. 4 Cir.1986).

103.

LSR undertook an obligation to Plaintiffs to proceed with the Project as agreed-upon between LSR and Plaintiffs on January 3, 2014. LSR breached its obligation to proceed with the Project as agreed-upon, and Plaintiffs have suffered damages in the form of lost expenses and lost business opportunity as a result.

104.

The actions taken by and the omissions made by LSR discussed herein constitute a breach of its contractual obligations to Plaintiffs.

105.

In addition, or in the alternative, LSR breached its contractual obligations in bad faith and is therefore liable to Plaintiffs for all damages, foreseeable or not, that are a direct consequence of its breach.

SIXTH CLAIM FOR RELIEF:
BREACH OF THE DUTY OF GOOD FAITH & FAIR DEALING (LSR & CARGILL)

106.

LSR and Cargill entered into a special relationship of trust with Plaintiffs by virtue of the respective NDAs that they signed, their course and scope of dealings, and the apparent disparity in bargaining power between Plaintiffs and Defendants.

107.

The necessity of the NDAs indicated to both LSR and Cargill that Plaintiffs were reposing their utmost trust and confidence in LSR and Cargill relative to the very valuable, proprietary business plan for the Project.

108.

That special relationship of trust and/or the apparent disparity in bargaining power imposed upon LSR and Cargill a duty of good faith and fair dealing with respect to Plaintiffs.

109.

LSR and Cargill's acts and omissions, as described herein, constitute a violation of their respective duties of good faith and fair dealing towards Plaintiffs, as a result of which Plaintiffs have suffered actual damages.

SEVENTH CLAIM FOR RELIEF:
DETRIMENTAL RELIANCE (LSR)

110.

LSR is also liable under the law of detrimental reliance, which is designed to prevent injustice by barring a party from taking a position contrary to its own prior acts, admissions, representations, or silence.

111.

Plaintiffs, to their detriment, relied upon the representations and silence of LSR regarding its authority to agree to the terms of the Project and its ability to arrange for the acquisition of land necessary for the Project. LSR's representations regarding the ownership/control of the Noranda and Dreyfus/Imperial parcels were both highly material and if Plaintiffs had known that either of those representations were untrue, Plaintiffs would have pursued other opportunities to implement the Project.

112.

Plaintiffs were reasonable in relying on LSR's representations and silence because Plaintiffs made inquiry into LSR's representations and LSR affirmatively and intentionally misled Plaintiffs.

113.

As a result of the Plaintiffs' justifiable reliance on LSR's representations and LSR's failure to provide critical information, Plaintiffs incurred damages. As a result, Plaintiffs are entitled to damages under Louisiana Civil Code article 1967.

EIGHTH CLAIM FOR RELIEF:
TORTIOUS INTERFERENCE WITH CONTRACT (CARGILL)

114.

The agreement between Plaintiffs and LSR on January 3, 2014 constituted a contractual relationship. Cargill willfully and intentionally interfered with the contractual relationship between Plaintiffs and LSR and prevented that contractual relationship from proceeding in the manner that Plaintiffs and LSR had agreed upon.

115.

Cargill's willful and intentional interference with the contractual relationship between Plaintiffs and LSR was unjustified and without right or privilege.

116.

Cargill's conduct proximately caused actual damages to Plaintiffs.

NINTH CLAIM FOR RELIEF:
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP (CARGILL)

117.

In the alternative, in the event that it is found that no contractual relationship existed

between Plaintiffs and LSR to commence the Project, Cargill is liable for interfering with Plaintiffs' prospective relationship with LSR relating to the Project.

118.

Considering all the facts and circumstances throughout the course of dealing between Plaintiffs and LSR over many months and the agreement that Plaintiffs and LSR reached on January 3, 2014, a reasonable probability existed that Plaintiffs would have entered into a business relationship with LSR for the Project.

119.

Cargill acted with a conscious desire to prevent the relationship between Plaintiffs and LSR from occurring. At the very least, Cargill acted with knowledge that interference with the relationship between Plaintiffs and LSR was substantially certain to occur.

120.

Cargill's conduct was independently tortious and unlawful and its interference proximately caused Plaintiffs to suffer actual damages.

TENTH CLAIM FOR RELIEF:
UNJUST ENRICHMENT

121.

Alternatively, in the event that this Court finds that Plaintiffs are not entitled to any of the remedies requested above from Defendants, Plaintiffs are entitled to damages under the law of unjust enrichment.

122.

Defendants have been unjustly enriched by the acquisition of Plaintiffs' proprietary business plan for the Project, and Plaintiffs have been impoverished by the loss of the time, the opportunity, and the money that it expended in the process of developing the Project with LSR

and Cargill prior to their withdrawal from the Project, to Plaintiffs' detriment. There is neither justification nor cause for Plaintiffs' impoverishment and Defendants' corresponding enrichment.

123.

Accordingly, Defendants are liable to Plaintiffs for the value of the unjust enrichment.

DAMAGES

124.

In addition to all other allegations set forth herein, as a direct and foreseeable consequence of the actions of the Defendants as alleged herein, Plaintiffs have sustained damages that comprise millions of dollars in unrecouped expenses and lost business opportunity, which opportunity the Defendants have usurped in connection with their tortious actions. Thus, Plaintiffs seek damages in an amount equal to the fair value of their expenses and their lost business opportunity, as well as all other damages and special relief available to Plaintiffs under the law, including punitive damages, all recoverable costs, legal interest from the date of filing until judgment is paid; and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Peaker Energy Group, LLC and Energy Coast Logistics Terminal, LLC pray for a trial by jury; and that after due proceedings are had, there be judgment in their favor and against Louisiana Sugar Refining, LLC and Cargill, Incorporated, *in solido*, awarding all damages to which Plaintiffs are entitled, specifically including punitive damages, as may be applicable to the extent the laws of the state of Texas apply to any claims herein; declaring that Defendants may not, in connection with or related to the proposed Project, attempt in any manner to contact or deal directly or indirectly with any third parties, individuals, or

companies identified by Plaintiffs in the confidential information Plaintiffs shared with the Defendants; declaring that Defendants may not by-pass, compete, avoid, circumvent, or attempt to circumvent Plaintiffs relative to the Project; legal interest from date of judicial demand until paid; all costs of these proceedings, reasonable attorneys' fees; and all other general and equitable relief recoverable under the law.

Dated: September 3, 2015
New Orleans, Louisiana

Respectfully Submitted,

/s/ Benjamin D. Reichard

James R. Swanson, La. Bar Roll No. 18455
Benjamin D. Reichard, La. Bar Roll No. 31933
Fishman Haygood Phelps Walmsley Willis & Swanson, L.L.P.
201 St. Charles Avenue, 46th Floor
New Orleans, Louisiana 70170-4600
Telephone: (504) 586-5252
Facsimile: (504) 586-5250
Email: jswanson@fishmanhaygood.com

AND

Gladstone N. Jones, III, La. Bar Roll No. 22221
Lynn E. Swanson, La. Bar Roll No. 22650
Jones Swanson Huddell & Garrison, L.L.C.
601 Poydras St., Suite 2655
New Orleans, Louisiana 70130
Telephone: (504) 523-2500
Facsimile: (504) 523-2508
Email: gjones@jonesswanson.com
Attorneys for Plaintiffs