

ROBERT BURNS

NUMBER 602.922 DOCKET: 24

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

SANDY EDMONDS

STATE OF LOUISIANA

MEMORANDUM IN OPPOSITION TO EXCEPTION OF NO CAUSE OF ACTION AND SPECIAL MOTION TO STRIKE

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who submits to this Honorable Court this Memorandum in Opposition to Defendant’s Exception of No Cause of Action and Special Motion to Strike which is scheduled for hearing on Monday, November 14, 2011 at 9:30 a.m.

Defendant, through counsel, has asserted a number of prior court cases as a foundation for conveying that Defendant Edmonds is entitled to absolute immunity pursuant to CCP 971 in exercising her right of free speech where a public body is concerned. Several vexing problems exist for Defendant in posing this defense, to wit:

Ms. Edmonds is NOT an employee of the LALB or the Interior Design Board

Upon the resignation of Ms. Sherrie Wilks, the LALB’s former Executive Director effective August 7, 2009, Ms. Edmonds, as reflected in the sworn affidavit of Ms. Wilks, which is attached hereto and made a part hereof as Exhibit P-22-a, after having told Ms. Wilks numerous times that she wouldn’t have Ms. Wilks’ job because “her Board,” the Interior Design Board, “was so easy to work for and the LALB sounds like a bunch of crazy people,” nevertheless immediately accepted Ms. Wilks’ former position upon Ms. Wilks’ resignation. In fact, Ms. Edmonds informed Petitioner soon after accepting the position that, the moment Ms. Wilks resigned, she went to Ms. Dow, LALB Legal Counsel (who also is Legal Counsel for the Interior Design Board), with a list of conditions under which she would “accept the job.” After making her required conditions known to Ms. Dow, Ms. Edmonds then drafted a vague proposal for “employment” with the LALB dated August 3, 2009, which is attached hereto and made a part hereof as Exhibit P-18.

Petitioner is a CPA (inactive) and very knowledgeable of the differing work conditions under which the IRS will deem a person to be an employee vs. being an independent contractor. For that reason, Petitioner, upon reading Ms. Edmonds' proposal at the August 17, 2009 LALB meeting (a week after Ms. Edmonds had already been hired without Board approval), inquired directly of Ms. Edmonds as to how much time she would be spending in the office. Ms. Edmonds responded with words along the following: "Oh, I will be in the office more than you can imagine." Petitioner was also concerned with the fact that Ms. Edmonds' proposal stated, "this fee will cover all work done regardless of whether it is renewal season or not." Petitioner was also concerned that Ms. Edmonds provided verbal commentary at that August 17, 2009 LALB meeting in pitching her being "hired" that, "I know there will be weeks that I won't do any work at all, but then I'll be very busy during renewal season, and it should all balance out." That statement on the part of Ms. Edmonds formed the basis for why Petitioner asked if Ms. Edmonds would be in the office with any degree of regularity serving the general needs of licensees and the public at large as those needs arose.

The IRS has very specific criteria for classifying someone as an employee vs. an independent contractor. Chief among those criteria is a set of "behavioral control" issues entailing the degree of control which an employer has over an employee. The specific type items the IRS examines in making a determination of employee vs. independent contractor are outlined in Exhibit P-19, which is attached hereto and made a part hereof. Ms. Edmonds fails all of the applicable behavioral control issues analyzed by the IRS; furthermore, neither the LALB nor the Interior Design Board has on file an IRS Form SS-8 determination that Ms. Edmonds is indeed an employee.

Additionally, at the January 10, 2011 LALB meeting, after Ms. Edmonds had been on the job for 1 ½ years, Board Member Rev. Freddie Phillips inquired if a written performance evaluation had been drafted regarding Ms. Edmonds' job performance by then-Chairman James Kenneth Comer. Mr. Comer responded that no such written performance evaluation had been drafted by him and that he preferred to just give a verbal assessment that very day to the Board of Ms. Edmonds' job performance. In fact, to this date, well over two (2) years after Ms. Edmonds was "hired," there has been no formal performance evaluation regarding Ms. Edmonds' "job performance." Such a

practice is totally inconsistent with IRS guidelines regarding analyzing whether an individual is an employee or an independent contractor. Furthermore, the absence of a job evaluation is totally inconsistent with being a State employee. State employees are given written evaluations yearly by their supervisors, and these are kept on file in the personnel files of the employees!

Contrary to being “in the office more than you can imagine,” Ms. Edmonds, with the full support of the LALB, has steadfastly refused to make the LALB office open to the public even for any minimal number of hours, despite the agency being a public one supposedly serving the needs of the licensees and general public at large. Furthermore, Ms. Edmonds has readily dictated to licensees when she will arrive at the office to take care of impromptu needs that arise such as the issuing of a license for out-of-state licensees. Furthermore, Ms. Edmonds’ proposal conveys, “even when I go on vacation, you won’t need to worry about the office. I take the cell phone and laptop with me. Everything is still taken care of in a timely fashion.” Now, upon reading that commentary, one likely would infer that Ms. Edmonds is industrious and willing to handle office affairs “even when on vacation.” Well, contrary to that meaning, what Ms. Edmonds meant, but did not reduce to writing, is that she would not be taking any annual leave when she went on vacation and would instead continue to be “on the clock” just as if she was in the office working!

That particular aspect of Ms. Edmonds “job” raised serious concerns with the LALB’s former Executive Director, Sherrie Wilks, who, in sharp contrast, was required to physically be in the office anytime she was deemed “on the clock,” and, if she was not, she had to complete leave slips for taking vacations out of town. In fact, Ms. Wilks relayed to Petitioner that, on one occasion while she served as Executive Director of the LALB and Ms. Edmonds served in that same capacity for the Interior Design Board, Ms. Edmonds saw Ms. Wilks completing a leave card. Ms. Edmonds then inquired what Ms. Wilks was completing. When Ms. Wilks responded that it was a leave card for vacation she was taking the following week, Ms. Edmonds indicated that her Board (the Interior Design Board) didn’t require such paperwork. Ms. Wilks responded that it was a Louisiana State requirement and not optional and that any State employee was required to take annual leave when on vacation. Ms. Wilks even offered to provide Ms. Edmonds

with leave cards. Ms. Edmonds responded by indicating that, if anybody from the State ever said anything or made inquiry, she would just claim that she didn't know anything about it. All of these statements regarding Ms. Edmonds' attitude and manner (or lack thereof) for handling annual leave are readily substantiated via the previously referenced sworn affidavit of Ms. Sherrie Wilks (Exhibit P-22-a).

Once Ms. Wilks became aware of the office setup to which Ms. Edmonds had been afforded and the very liberal and generous terms associated with it, she became concerned about the legality of the whole setup. Ms. Wilks indicated to Petitioner that Ms. Edmonds was trying to have the freedom and the luxury of an independent contractor but still accrue the benefits of an employee in terms of accruing annual and sick leave. Further, Ms. Wilks felt strongly that going on vacations and not taking leave and claiming to be "on the clock" merely because Ms. Edmonds had a cell phone in her possession was not ethical, moral, or even legal. Accordingly, around September of 2010, Ms. Wilks began a behind-the-scenes effort to gather corroborating evidence that the arrangement that Ms. Edmonds had with the LALB (and the Interior Design Board) was improper. As referenced in her sworn affidavit, Exhibit P-22-a, and the fact that Ms. Wilks had been employed with the State in various capacities for well over 10 years, and given that she herself had been through and had passed an audit by Civil Service whereby all of her payroll-related documents had been scrutinized, Ms. Wilks knew what documents needed to be obtained to substantiate the allegations. Ms. Wilks then asked that Petitioner, along with LALB Member Rev. Freddie Phillips, obtain historical time accumulation records from Ms. Edmonds via Freedom of Information Acts, which Petitioner did for the LALB, and Rev. Phillips did for the Interior Design Board.

On October 21, 2010, Ms. Edmonds provided a response to Petitioner regarding his Freedom of Information Act request regarding her time accumulation, her usage of time sheets, etc. as it pertained to the LALB. Ms. Edmonds' response is attached hereto and made a part hereof as Exhibit P-20. Meanwhile, on November 5, 2010, Ms. Edmonds provided a response to Rev. Phillips regarding his Freedom of Information Act request regarding her time accumulation, her usage of time sheets, etc., as it pertained to the Interior Design Board. Ms. Edmonds' response is attached here to and made a part hereof as Exhibit P-20-a. Petitioner immediately noticed that it was obvious that Ms.

Edmonds had no intention of ever utilizing annual leave with the LALB as she did not even have a column for taking annual leave!

As Petitioner and Rev. Phillips gathered the payroll information on Ms. Edmonds for the two agencies, Ms. Wilks was busy calling other small State Boards and Commissions to ascertain what posted office hours they listed for serving the public (i.e. times at which a human being would staff the office) and ascertain whether any other small Board or Commission did not utilize time and attendance sheets (as is the case with Ms. Edmonds both for the LALB and the Interior Design Board). Her findings were compiled into two spreadsheets, which are attached hereto and made a part hereof as Exhibit P-21. They demonstrate than not a single other small Board of Commission fails to have office hours during which time the public is served on a walk-in basis; furthermore, no agency fails to utilize a formal time and attendance sheet (or have computer input of same which is reviewed by its Board) and leave cards were found to be mandatory at each of the other Boards and Commissions contacted.

Rev. Phillips became actively involved in the investigation of Ms. Edmonds' work arrangement largely as a result of her steadfast and adamant refusal to grant him access to the auctioneer file of Ken Buhler, an auctioneer whose license had been revoked in 2006 due to millions of dollars in losses to consignors and investors, as Mr. Buhler applied for reinstatement of a residential license at the September 20, 2010 LALB meeting. As reflected in his sworn affidavit, which is attached hereto and made a part hereof as Exhibit P-22, Rev. Phillips inquired of Ms. Edmonds regarding his ability to come into the office to view Mr. Buhler's file prior to that September 20, 2010 LALB meeting. When he did so, as reflected in Exhibit P-22, Ms. Edmonds stated to Rev. Phillips: "Freddie, this is not what I signed up for. I agreed to work 12-15 hours per week and no more." Ms. Edmonds' revelation was the first indication that anyone had gotten regarding any specific number of hours Ms. Edmonds was to work weekly, and Rev. Phillips felt that her \$20,000 annual salary was obscenely high given that she was almost never in the office and seemed to be taking little initiative to accommodate core functions that the office is designated with performing in order to protect and serve the public.

Rev. Phillips ultimately did get the opportunity to view Mr. Buhler's file in detail; however, that opportunity was presented to him only about a week after the LALB had approved reinstatement of Mr. Buhler's residential license (a vote for which Rev. Phillips dissented). During his review of Mr. Buhler's file, he uncovered several problems with his application which should have been uncovered by Ms. Edmonds during her review of his application, the most significant of which entailed the fact that Mr. Buhler failed to qualify for a reinstated Louisiana residential license since his file contained a Texas voter registration. Rev. Phillips documented all of his concerns in a certified letter to all LALB members and several other regulatory agencies. That letter, which was dated October 4, 2010, is attached hereto and made a part hereof as Exhibit P-23.

Rev. Phillips also pointed out in the letter that Ms. Edmonds failed to provide proper guidance to Mr. Dan Mahaney, an auctioneer from Indiana who conducted a major real estate auction in the French Quarter of New Orleans in July of 2010. In Ms. Edmonds' haste to scramble into the office for one of her rare such appearances, Ms. Edmonds failed to even ask of Mr. Mahaney the questions on a checklist for out-of-state auctioneers. As a result of that failure on Ms. Edmonds' part, Mr. Mahaney lacked the proper company license to conduct the auction, and he ultimately had to surrender control of the auction to Mr. Dave Gilmore, a Louisiana real estate auctioneer based in Kenner, LA. Because Mr. Mahaney had to split the commission with Mr. Gilmore, Ms. Edmonds' oversight cost Mr. Mahaney approximately \$34,000! In his letter of October 4, 2010 to all LALB Members (Exhibit P-23), Rev. Phillips expressed frustration over the Buhler and Mahaney incidents and stated that Ms. Edmonds may be in need of "remedial training." Rev. Phillips' letter ultimately became the subject of a major article published in The Advocate on October 15, 2010. That article is attached hereto and made a part hereof as Exhibit P-24.

As indicated in the next section of this memorandum, Ms. Wilks amassed considerable documentation to be presented to Louisiana State Civil Service in an attempt to resolve whether Ms. Edmonds' work arrangements were permissible or not.

Ms. Edmonds deemed committing "blatant payroll fraud" by

Louisiana Civil Service Chief of Accountability Patrick Lowery

Armed with the materials that Ms. Wilks had obtained herself and through the efforts of Rev. Phillips and Petitioner, she requested that Petitioner arrange a meeting with Ms. Melinda Robert, HR Consultant Supervisor with the Louisiana Department of Civil Service. As evidenced by the email exchange between Ms. Robert and Petitioner, which is attached hereto and made a part hereof as Exhibit P-25, Petitioner arranged that meeting on Monday, November 22, 2010 at 9:00 a.m. Furthermore, as requested by Ms. Robert, her supervisor, Mr. Patrick Lowery, who is the Chief of Accountability of Civil Service, attended the meeting as well (making the full slate of attendees Ms. Wilks, Petitioner, Ms. Robert, and Mr. Patrick Lowery).

Mr. Lowery listened very attentively to Ms. Wilks explain Ms. Edmonds' employment arrangement in great detail both with the LALB and the Interior Design Board. After asking several questions and analyzing the material Ms. Wilks presented to him, Mr. Lowery stated, "I will tell you what this is: **it's blatant payroll fraud!**" Mr. Lowery then indicated that, if Ms. Edmonds were a classified State employee, he would pursue her for payroll fraud. He relayed, however, that because she is unclassified, his "hands are tied" and that Civil Service would be unable to pursue the matter.

Mr. Lowery then inquired how the LALB or the Interior Design Board could have possibly approved work arrangements such as Ms. Edmonds has. Petitioner responded that he had concerns when Ms. Edmonds presented her proposal; however, upon Ms. Edmonds' statement at the August 17, 2009 LALB meeting assuring LALB Members that she would be in the office "more than you can imagine," Petitioner felt the arrangement would work. Her statement was heavily relied upon by Petitioner to be truthful and thereby eliminate the potential that the IRS would deem her to be an independent contractor rather than an employee. Petitioner then relayed to Mr. Lowery that he was shocked and dismayed at just how little time Ms. Edmonds was spending in the office. In fact, he referenced this fact to her in an email dated December 1, 2010 in which Petitioner openly questioned exactly for what the LALB was paying Ms. Edmonds. Petitioner reminded Ms. Edmonds of her quotation at the August 17, 2009

LALB meeting (“I’ll be in the office more than you can imagine,”) and relayed that he thought her statement was highly misleading given that the LALB was having to pay the Attorney General’s Office up to \$50/hour for a paralegal to come into the LALB’s Office to do what should be Ms. Edmonds’ job. Petitioner concluded the email by reminding Ms. Edmonds that the LALB is a “public agency.” That email is attached hereto and made a part hereof as Exhibit P-26.

Subsequent to the aforementioned email, sometime in late March of 2011, Petitioner and Rev. Phillips requested the audio tape of the August 17, 2009 LALB meeting to substantiate exactly what Ms. Edmonds had relayed regarding how much time she intended to spend in the LALB office. Ms. Edmonds, who has sole control and possession of the audio tapes of meetings, relayed in a response letter to Petitioner dated March 29, 2011, which is attached hereto and made a part hereof as Exhibit P-27, that **“the audio tape from August 17, 2009 has not been located. I will continue to search and let you know when and if it is located.”** As of the date of this submission, Petitioner has received no such notification from Ms. Edmonds. Petitioner also notes that, of all the tapes he requested prior to him commencing videotaping of the meetings, and he requested numerous other audio tapes for review, the August 17, 2009 tape is the only one to have gone inexplicably “missing.”

After Mr. Lowery stated that his “hands are tied” regarding pursuing Ms. Edmonds for “blatant payroll fraud,” he encouraged Petitioner and Ms. Edmonds to present all of the material to the Louisiana Legislative Auditor’s Office. Accordingly, Petitioner and Ms. Wilks, as reflected in Ms. Wilks’ sworn affidavit (Exhibit P-22-a), immediately upon leaving the meeting with Mr. Lowery, proceeded directly on to the Louisiana Legislative Auditor’s Office. At that office, Petitioner and Ms. Wilks met with Mr. Calvin Moore, Senior Auditor of the Compliance Audit Division, who extended about two hours of his time to review thoroughly all of the documents and take extensive hand-written notes of the work arrangement as explained by Ms. Wilks and as contrasted to her own work arrangement during her prior tenure as Executive Director of the LALB.

After stating that he, like Mr. Lowery, did not believe that being “on call” by virtue of having a cell phone equated to being “on the clock,” Mr. Moore indicated that the Louisiana Legislative Auditor’s Office was opening up a case file for the

investigation of Ms. Edmonds' unique "work arrangements" with the LALB and the Interior Design Board. Mr. Moore also actively encouraged Petitioner, Ms. Wilks, and Rev. Phillips to continue gathering payroll information as well as other evidence to substantiate that each Board (LALB and Interior Design Board) was knowledgeable of exactly what the work situation with Ms. Edmonds entailed.

LALB (and Interior Design Board) Attorney Anna Dow, in apparent uneasiness over Ms. Edmonds' work arrangements and the Freedom of Information Requests by Petitioner and Rev. Phillips, alleged at the January 10, 2011 LALB meeting that she consulted then-Civil Service Legal Counsel Robert Boland. Ms. Dow's uneasiness may have also been exacerbated by the fact that she personally had endorsed, encouraged, and recommended Ms. Edmonds' work arrangements at the LALB meeting of August 17, 2009 and the fact that Ms. Dow never recommended, nor did the Board ever even consider, advertising the position to solicit other qualified candidates for the position. Ms. Dow alleged at the January 10, 2011 LALB meeting that Mr. Boland purportedly informed Ms. Dow that she should merely have the LALB and Interior Design Board approve an "agreement" calling for Ms. Edmonds' "employment" to be "performance-based" and not a function of hours worked. Assuming Mr. Boland was even apprised of all of the details and unique aspects of Ms. Edmonds' work arrangement, he apparently offered that suggestion irrespective of the fact that Ms. Edmonds would continue to record that she works 15 hours per week for the LALB as the basis for her accrual of annual and sick leave every pay period. Ms. Dow did not elaborate as to what extent she may have conveyed the work arrangement that Ms. Edmonds had at the time with the LALB or the Interior Design Board; furthermore, while Ms. Dow stated that Mr. Boland gave Ms. Dow guidance, such guidance wasn't reduced to writing on Mr. Boland's part. Accordingly, Ms. Dow had the LALB approve such an agreement, which is attached hereto and made a part hereof as Exhibit P-28, which was hurriedly created and presented at the January 10, 2011 LALB meeting. In fact, it was stated to still be a "work in progress" right up to an hour or two prior to the meeting.

So, Ms. Edmonds, after having been so emphatic with Rev. Phillips in September of 2010 that she would work "12-15 hours a week and no more," then signs a contract four months later indicating hours worked have nothing to do with her job! The

agreement clearly states (refer to the end of the third paragraph of Exhibit P-28): "...this is a performance based contract rather than an hourly contract....) So, in theory, Ms. Edmonds can continue to report 15 hours worked per week on her own internal spreadsheet, which has never been reviewed or audited by anyone, and work as little as she so desires at whatever location she may desire (including Disneyworld) provided those who evaluate her deem her to have met "performance-based" criteria (and that "evaluation" can be verbal). Petitioner, as a CPA (inactive) knew that action, once signed by the then-Chairman of the LALB, killed any chance whatsoever that Ms. Edmonds had of being declared an "employee" by the IRS since any person performing services designated to be "results oriented" is going to be deemed to be an independent contractor by the IRS and not an employee. Furthermore, when an employer hires an employee, it is the employer who specifies the parameters of what is expected of the employee. When the process is reversed, and the "employee" dictates all of the conditions of "employment," that individual is in no way an employee but rather an independent contractor!

During that January 10, 2011 LALB meeting, LALB Member Rev. Freddie Phillips objected strenuously to the proposed "employment agreement" and insisted that the LALB should provide office hours for which the office would be open to serve the public. He was repeatedly rebuffed by other Board Members, with the stiffest commentary coming from then-Chairman Ken Comer, who resigned from the LALB before ever attending another LALB meeting. As outlined in his sworn affidavit (Exhibit P-22), in keeping with Mr. Moore's admonition to obtain evidence that the LALB really fully understood the dynamics of Ms. Edmonds' work arrangement, Rev. Phillips asked the Board a "baited question." That question follows: "So if Ms. Edmonds is vacationing in Miami, Florida and she has her cell phone with her, then we consider her to be on the job and on the clock?" All of the Board Members except Rev. Phillips responded emphatically, "Yes!" Rev. Phillips then received the following commentary from audience members in attendance at the meeting:

Marvin Henderson: "If the majority of the Board supports the work arrangement, then everybody else just needs to keep their mouth shut!"

Larry Nobles: “Every time you [referencing Rev. Freddie Phillips] come over here, it’s a show! What’s your problem? I mean, where you going with this?.....Well, you need to just get off this Board!”

As mentioned previously, Rev. Phillips also demonstrated that Ms. Edmonds cannot be considered an employee when he inquired at that January 10, 2011 LALB meeting, after Ms. Edmonds had been on the job for 1 ½ years, if a written performance evaluation had been drafted regarding Ms. Edmonds by then-Chairman James Kenneth Comer and Mr. Comer responded that no such performance evaluation had been drafted by him and that he preferred to just give a verbal assessment of Ms. Edmonds’ job performance. Furthermore, as referenced in Rev. Phillips’ affidavit (Exhibit P-22), again in keeping with Mr. Moore’s admonitions, Rev. Phillips inquired of the Board as to whether the LALB would be better served to design a job description and position such that it would be appropriate for Ms. Edmonds or anyone who would succeed her; however, again as referenced in his sworn affidavit (Exhibit P-22), the Board informed him that these “unique work arrangements” extended only to Ms. Edmonds and would not extend to anyone who succeeded her. In fact, that language was incorporated into the “employment agreement” executed by the Board and Ms. Edmonds (Exhibit P-28) where it states: **“This agreement applies to Edmonds and the Board only, and cannot be transferred to any other party.”** Wording could not possibly be more definitive in establishing that the arrangement is that of an independent contractor and not an employee! Because the “job” Ms. Edmonds has is unique to her, and, by the LALB’s own admission, the conditions would not extend to any future (true) employee, she is, without question, and independent contractor!

Ms. Wilks, who attended that January 10, 2011 LALB meeting to assist the Legislative Auditor’s investigation, contrasted Ms. Edmonds’ work arrangement with that of her own when she was LALB Executive Director in which she #1) was required to punch a time clock, #2) was required to take some form of leave (sick or annual) if she was not physically in the office, and #3) was frequently required to contact the State-approved temp agency, Westaff, and ensure a “warm body” occupied the office on days she would be out. Again, all of these facts are corroborated via Ms. Wilks’ sworn affidavit (Exhibit P-22-a).

Mr. Moore, the Senior Auditor with the Compliance Audit Division of the Legislative Auditor's Office, was provided with the You Tube links for the discussion of the January 10, 2011 meeting pertaining to Ms. Edmonds' employment situation. He was also provided with a copy of the executed "employment agreement," and the receipt of it did absolutely nothing to change his stand, nor that of the Legislative Auditor's Office, that the entire arrangement, both with the LALB and the Interior Design Board, is improper.

Furthermore, Mr. Moore, Rev. Phillips, Ms. Wilks, and Petitioner made note of the fact that Ms. Dow indicated at that January 10, 2011 LALB meeting that the Interior Design Board would need to approve a similar "employment agreement." In fact, as evidenced by Exhibit P-29, which is attached hereto and made a part hereof, Ms. Dow even billed the Interior Design Board on January 5, 2011 for a conference with Ms. Edmonds pertaining to the employment agreement and drafting of same. Petitioner and Rev. Phillips began attending and videotaping the Interior Design Board meetings in order that any such "employment agreement" adoption on the part of the Interior Design Board could be documented. As of the filing of this memorandum, no such adoption (or even discussion of same) has transpired.

As stated previously, Ms. Dow alleged that the employment agreement arose after Mr. Robert Boland, General Counsel of Louisiana Civil Service, and she spoke and he purportedly recommended drafting the agreement. Upon hearing that the Civil Service General Counsel, Robert Boland, had purportedly relayed to Ms. Dow that fixing Ms. Edmonds' work setup required no more than the LALB indicating that her position is to be a "performance-based employee," Petitioner contacted Civil Service and asked to speak with Mr. Boland. Petitioner was informed that Mr. Boland retired effective January 7, 2011 (three days prior to the "employment agreement" being adopted by the LALB). Petitioner therefore inquired if newly-appointed Civil Service General Counsel, Adrienne Bordelon, wished to stand behind Mr. Boland's alleged statement regarding Ms. Edmonds' work arrangement and the relative ease with which it could be considered acceptable. Ms. Bordelon opted instead to refer the matter back to Mr. Patrick Lowery, the Chief of Accountability for Civil Service with whom Petitioner and Ms. Wilks had met on November 22, 2010. Mr. Lowery, in turn, sent Petitioner a letter dated April 1,

2011, which is attached hereto and made a part hereof as Exhibit P-30, which relayed that Mr. Lowery acknowledged the fact that Petitioner had done as Mr. Lowery advised regarding providing all of the relevant information to the Legislative Auditor's Office and that, "We'll have to await their inquiry of the matter." Mr. Lowery even suggested another avenue: The Governor's Office of Constituent Affairs. Petitioner did contact the Governor's Office of Constituent Affairs regarding the matter, and they indicated that, since it was already a matter being pursued by the Louisiana Legislative Auditor's Office, that office would defer to them for handling the matter.

Petitioner, Ms. Wilks, and Rev. Phillips have continued to assist Mr. Moore with relevant updated payroll information pertaining to Ms. Edmonds as well as holding periodic meetings with Mr. Moore, the most recent of which was conducted on or around July 26, 2011. During that meeting, Mr. Moore was provided with the package of Edmonds-related payroll material contained in Exhibit P-31, which is attached hereto and made a part hereof. As evidenced by that material, Ms. Edmonds suddenly "got religion" and began occasionally taking annual leave after the initial payroll-related request of late October, 2010 (and even created a column for doing so!); however, one can only logically inquire that, if an "employment agreement" is "performance-based and not a function of hours," how is it appropriate to either accrue or take leave? The simple answer is that it is not because, as has been made abundantly clear, Ms. Edmonds is not an employee but rather an independent contractor! Furthermore, as previously relayed, the execution of the "employment agreement," which was supplied to Mr. Calvin Moore, did nothing to dissuade him from the observation that Ms. Edmonds was and is engaging in a work arrangement that is not proper and not in conformity with Civil Service guidelines to be considered an employee.

Also, on page six (6) of that material (Exhibit P-31), Ms. Edmonds admits in writing that there has never been any written employment agreement between herself and the Interior Design Board. Finally, and interestingly enough, Ms. Edmonds, over the course of nine (9) historical payroll periods for the Interior Design Board covering the timeframe from September 30, 2007 through April 27, 2008 magically "manufactured" 51 hours of work she'd previously not disclosed on her prior payroll spreadsheet

admission. Those 51 hours and the pay periods for which the hours were increased are highlighted on page ten (10) of that package of material (Exhibit P-31).

At that last meeting with Mr. Moore of the Legislative Auditor's Office on or around July 26, 2011, Mr. Moore informed Petitioner, Rev. Phillips, and Ms. Wilks that the on-site investigation of Ms. Edmonds' work arrangements regarding the LALB and Interior Design Board should be conducted by Legislative Auditor Field Investigators within the next year or so. Petitioner requested of Mr. Moore if it was acceptable for him to reveal the fact that the Legislative Auditor's Office has been gathering the information supplied by Petitioner, Ms. Wilks, and Rev. Phillips and that an on-site investigation would be forthcoming. Mr. Moore relayed that doing so was perfectly acceptable, and he relayed that it would be his hope and desire that, upon each Board being informed of the fact that an investigation has been ongoing, each Board would take action to remedy the present work arrangement and avoid adverse findings by the Louisiana Legislative Auditor's Office when they conduct the on-site investigation. Accordingly, Petitioner is revealing all of those facts via this memorandum.

Petitioner's most recent phone conversation with Mr. Moore transpired on Monday, October 17, 2011, with Mr. Moore relaying that Ms. Edmonds' work arrangements with the LALB and Interior Design Board have been the focus of discussion at recent Louisiana Legislative Auditor internal meetings and that an on-site investigation of Ms. Edmonds' work parameters should take place in coming months.

Ms. Dow, the LALB and Interior Design Board general counsel, who is now known to be neck deep in the present case and who, in consultation with some unnamed official at the Attorney General's Office, recommended that Ms. Edmonds call the Terrorism Unit of Louisiana State Police regarding Petitioner's videotaping, voiced great displeasure directed toward Petitioner and Rev. Phillips at the July 18, 2011 LALB meeting. Ms. Edmonds also joined in expressing great displeasure at having to fulfill the Freedom of Information Act requests of Petitioner and Rev. Phillips, the majority of which, unbeknownst to them, were being requested to facilitate the Louisiana Legislative Auditor's requests for additional payroll information regarding Ms. Edmonds work arrangement. In fact, at the July 18, 2011 LALB meeting, Ms. Dow, as captured on videotape by Petitioner, related that, after having "gotten clearance from the Louisiana

Attorney General's Office," she recommended to the LALB that it procure third-party counsel to explore "potential disciplinary action against the licenses" of Petitioner and Rev. Phillips! Meanwhile, at the same meeting, Ms. Edmonds stated that, due to the presence of Rev. Phillips "and Mr. Burns and his video camera" at the Interior Design Board meetings, "I now have EBRP Deputy Landry there also." It is interesting to note that the Interior Design Board has never taken a vote to approve retaining security for meetings; furthermore, when Petitioner requested in writing that the matter be clarified at the August 11, 2011 Interior Design Board meeting and Rev. Phillips made a similar verbal request for clarification at that meeting, Interior Design Board Chairman Deborah Steinmetz stated that the matter would not be discussed because it was not on the agenda. Petitioner and Rev. Phillips made a joint written request that the item be added to the October 20, 2011 Interior Design Board meeting; however, as evidenced by Exhibit P-32, which is attached hereto and made a part hereof, Ms. Steinmetz, via a letter dated October 6, 2011, declined the request in relaying it was not "germane" to the business of the Board or the Interior Design Industry in Louisiana. Ms. Steinmetz is believed to have responded with the letter upon consultation with Ms. Dow, general counsel; however, neither Ms. Dow nor Ms. Steinmetz offered any explanation for why it apparently was "germane" to discuss the retention of security as a result of the mere presence of Petitioner and Rev. Phillips and the meetings being videotaped by them in accordance with R. S. 42:23. Ms. Dow, by sitting stoically as Ms. Edmonds went on an approximate two-minute diatribe disparaging the characters of Petitioner and Rev. Phillips at the July 18, 2011 LALB meeting, gave the implicit presumption that such a discussion on the part of Ms. Edmonds was "germane." During that discussion, Ms. Edmonds stated that Petitioner and Rev. Phillips had "placed the Interior Design Board in a position to where we can no longer have the luxury of meeting in restaurants, and we certainly can't ask an Interior Design firm to take all of this on [Rev. Phillips and Petitioner videotaping the meetings] and let us meet at their place of business for free." Petitioner genuinely believes that, if the Interior Design Board had been meeting at licensees' places of business "for free," that such an arrangement itself represents a blatant ethics violation on the part of the Board and the licensee! Irrespective of that fact, for Mr. Edmonds to cast Petitioner and Rev. Phillips in such a derogatory light, and for Ms. Dow to tacitly endorse

Ms. Edmonds' commentary by stoically rocking her chair back and forth as captured on video and saying nothing, merely by Petitioner and Rev. Phillips exercising their statutory right pursuant to R. S. 42:23 is inexcusable and continues a consistent, and well documented, pattern on the part of Ms. Edmonds and Ms. Dow in that regard. The October 20, 2011 Interior Design Board Meeting was cancelled without any elaboration as to why and, as of the date of this submission, the meeting has not been rescheduled.

Additionally, Petitioner again heeded the advice of Patrick Lowery and advised the Governor's Office of Constituent Affairs about the calling out of the EBRP Sheriff on April 11, 2011 and Louisiana State Police Terrorism Unit on April 12, 2011 by the LALB. Petitioner informed that office of the incidents on or around Monday, April 18, 2011. Interestingly enough, then-Chairman Comer resigned from the LALB soon thereafter, so perhaps the Governor's Office of Constituent Affairs didn't view this whole incident in a light very favorable to the LALB! It's also interesting to note that the police incidents transpired only ten (10) days after Mr. Lowery's letter to Petitioner dated April 1, 2011 (Exhibit P-30), and Petitioner did in fact advise the Governor's Office of Constituent Affairs of Mr. Lowery's assertions regarding payroll fraud on the part of Ms. Edmonds on April 4, 2011 (one week before the initiation of police reports by Ms. Edmonds).

Petitioner has gone to the great lengths of providing the details relayed above in order to lay the foundation for asserting the following points:

- Ms. Edmonds is not an "employee" of either the LALB or the Interior Design Board and has instead, according to the Louisiana Civil Service Chief of Accountability, who serves as the Human Resources authority for all Louisiana State employees, Mr. Patrick Lowery, been engaging in (his words) "blatant payroll fraud."
- Ms. Edmonds, through her "payroll fraud" as assessed by Mr. Lowery, has inappropriately obtained defense counsel from the Attorney General's Office to which she is not entitled (i.e. that defense counsel has been obtained through fraudulent representations).
- Ms. Edmonds, through her "payroll fraud" as assessed by Mr. Lowery, has inappropriately obtained insurance coverage for her acts from FARA to which she

is not entitled (i.e. her insurance coverage has been obtained through fraudulent representations akin to the owner of a rental home indicating to an insurance company that he lives in the home when, in reality, he is a landlord leasing the home to a tenant).

Petitioner even posed a perplexing question during one of the meetings with Mr. Moore. Petitioner first emphasized that the LALB and Interior Design Board have openly stated (even on video at the January 10, 2011 LALB meeting) that Ms. Edmonds is considered “on the clock” when she’s vacationing in Disneyworld or Miami, Florida provided she has her cell phone with her and returns phone calls. That fact is even readily evidenced in the “employment agreement” ratified by the LALB on January 10, 2011. With that being the case, if Ms. Edmonds documents that she responded to a work-related email while on vacation and, in the process of doing so, inadvertently slips while walking through a small puddle of water and twists her ankle, is she covered by workman’s compensation or not? Mr. Moore indicated that was one of many flaws that the whole “work arrangement” that had been negotiated between the Boards and Ms. Edmonds poses.

Rev. Phillips also pointed out at the January 10, 2011 LALB meeting that Ms. Edmonds is in direct and substantial violation of the Division of Administration’s telecommuting policy, which states that telecommuting is permitted only when the employee works designated hours from home exclusively on work business and that no such hours can be used for the care of children or adult parents. In short, the Division of Administration’s telecommuting policy emphasizes that telecommuting cannot be utilized to facilitate a person’s personal lifestyle. Ms. Edmonds places her personal lifestyle above everything related to her LALB position in that she: #1) refuses to provide any office hours to serve the public whatsoever, #2) has on numerous occasions brought her two young children with her to the office when she does opt to spend some time working in the office and has permitted them to run all over the empty offices that existed at Summa Court, and #3) essentially conducts her daily life in such a way that, when she is obligated to come into the office out of sheer necessity such as for the issuance of an out-of-state auctioneer license (as with Mr. Mahaney as previously referenced in this memorandum), it’s a huge inconvenience to her schedule, causing her to hurriedly

perform the service and fail to issue someone like Mr. Mahaney a proper license (which subsequently cost him approximately \$34,000).

Petitioner has spoken directly with Mr. Mahaney regarding the incident, and he made the following near-verbatim quote: “Robert, I’m licensed in 12 states, and I’ve never seen anything as bad as Louisiana. I had to go drive through this residential neighborhood, wait at a building that looked abandoned to me, then go inside with the young lady, have her crank out a license, and we both leave. I wondered what kind of a shoe-string operation is this?” Furthermore, when Petitioner was en route to a real estate auction while riding with his co-listing partner, Mr. Dave Gilmore (the auctioneer who benefited to the tune of \$34,000 from Mr. Mahaney having to surrender control of the auction due to improper licensing), in late June of 2011, Mr. Gilmore stated to Petitioner near-verbatim: “Robert, there’s no denying that I profited handsomely from Mr. Mahaney not having proper licensing, but it’s flat not right what happened to him! There is no excuse for that office not having a proper setup or at least some procedure in place that, once he learned that he didn’t have the proper license, he should have been able to obtain one without the need for the Board to meet again.”

Nevertheless, when Rev. Phillips brought up the issue of the Division of Administration’s telecommuting policy at the January 10, 2011 LALB meeting, everyone on the LALB and Ms. Dow and Ms. Edmonds all admitted that they had no idea such a policy even existed! Ms. Edmonds, at the next LALB meeting of March 21, 2011, stated that, although she uncovered the fact that the policy does exist, she is not subjected to adhering to its provisions since she is not a direct employee of the Division of Administration.

As an Independent Contractor (or at best an “employee” assessed as engaging in “blatant payroll fraud,”) Ms. Edmonds is NOT entitled to any immunity (blanket or limited) Under CCP 971

As a result of the foregoing arguments and Ms. Edmonds clearly not conforming to the IRS definition of an “employee,” Ms. Edmonds is an independent contractor. Even under the most liberal assumption the court can grant, Ms. Edmonds is an “employee” committing “blatant payroll fraud” as a result of her exhibiting independent contractor status yet fraudulently claiming to be an employee. This fact alone precludes Ms.

Edmonds from the immunity, blanket or limited, to which Defendant asserts that she is entitled. Opposing counsel copied, in its entirety, Petitioner's Cause of Action against Ms. Dow, LALB legal counsel, for defamation, and Ms. Dow's own Special Motion to Strike. Judge Caldwell heard oral arguments pertaining to that Special Motion to Strike on September 26, 2011, and he stated flatly to Ms. Dow that she was "not entitled" to any protection under CCP 971 as she was not an employee of the LALB. He therefore denied her Special Motion to Strike. Likewise, Petitioner submits that for the foregoing reasons outlined, Ms. Edmonds is not an employee of the LALB or the Interior Design Board or, best-case scenario from Ms. Edmonds' vantage point, she is an "employee" approaching this Honorable Court with "dirty hands" in seeking immunity under CCP 971 in that she has been pointedly assessed as committing "blatant payroll fraud" by the Chief of Accountability of the Louisiana State Civil Service Department, Mr. Patrick Lowery. This is one argument Petitioner poses in requesting that this Honorable Court deny Defendant's Special Motion to Strike.

CCP 971 Intended to Protect Public from Causes of Action,

NOT Provide Public Officials with Carte Blanche

Authorization to Harass and Defame Members of the Public

Defendant has referenced Davis v. Benton as one case in supporting Defendant's Special Motion to Strike. Petitioner also strongly argued the Davis v. Benton case before Judge Caldwell on September 26, 2011 and again reiterates that case in the present case.

A statement is deemed to be made in good faith when it is made with reasonable grounds for believing it to be true: *Davis v. Benton (La.App. 1 Cir. 2/23/04), 874 So.2d 185*. Such reasonable grounds were **completely** nonexistent in this case, as neither Ms. Edmonds, Ms. Dow, nor any other party involved in the present case made even one scintilla of effort to obtain any information from Petitioner regarding the nature of his videotaping. Had anybody involved done so, Petitioner could have submitted an email with direct links to the videos located at the tops of his company webpages, just as he did in no time flat with Detective Bart Morris and his partner of Louisiana State Police Terrorism Unit. Instead, Ms. Dow and Ms. Edmonds launched off on wild speculation regarding any actions of Petitioner without one ounce of factual foundation whatsoever,

with Ms. Dow even conjecturing up absurd speculation to the Attorney General's Office regarding her belief that Petitioner was "stalking" her and Board Members! Perhaps Ms. Dow can explain at trial how such can be the case when he knew that no Board Members, Ms. Dow, nor Ms. Edmonds would be at the facility! Furthermore, if Ms. Dow wishes to contend Petitioner was "stalking" her, perhaps she can document telephone calls made to her (none exist), threatening emails sent to her (none exist), episodes of Petitioner driving by her residence (none exists), etc. What is mind-boggling to Petitioner is that some unnamed official at the Attorney General's Office apparently was persuaded by Ms. Dow's statements, without asking for any further corroboration or even asking if Ms. Dow or Ms. Edmonds had contacted Petitioner to ascertain the nature of his videos, to, at least according to Ms. Dow's affidavit, recommend that the Louisiana State Police Terrorism Unit be called out to Petitioner's home. Petitioner can only reiterate that former LSU basketball Coach Dale Brown, who has followed all of these episodes, including past audios of the LALB lambasting Rev. Freddie Phillips, Louisiana's first and only African American auctioneer and close friends with Petitioner, may have summed it up best when he said (Exhibit P-17): "Absolutely embarrassing the stupidity & arrogance. I am so proud of you that you stood up for justice."

Regarding the aforementioned case of *Davis v. Benton*, in that case, as with Defendant's motion, Benton filed a Special Motion to Strike based on Louisiana Code of Civil Procedure 971.

The case entailed a complaint filed against Baton Rouge Police Officer Victoria Davis for allegedly harassing visitors at a home owned by Mr. Barrett Benton and which he leased to his tenant, Ms. Tausha Lee. Ms. Lee telephoned Mr. Benton and complained that Officer Davis' actions of routinely requesting the driver's licenses and insurance papers of visitors to Ms. Lee's home constituted harassment. Officer Davis contended that she was merely performing her patrol duties in the neighborhood in which she also resided and alleged that the visitors were playing music which was too loud.

In the Davis case, Mr. Benton filed a written complaint with Baton Rouge Police Chief Pat Englade. Police Chief Englade submitted an Affidavit stating that a full investigation of the matter was conducted in a confidential manner through the Baton Rouge Police Department's Internal Affairs unit. He further stated that, pursuant to

departmental policies, the complaint was treated as a citizen's complaint and processed only through the appropriate channels of investigation within the police department. He averred that the complaint was handled in a confidential manner and no information regarding the complaint was released or published to the general public. He also averred that the complaint was not made known to any members of the police department, except as needed to implement an investigation and then only to the appropriate chain of command over Officer Davis.

The trial court granted Mr. Benton's Motion to Strike stating that Benton's complaint constituted free speech. The Order granting the Motion to Strike was appealed, and the appeals court affirmed the lower court's granting of the motion.

In the above referenced Davis v. Benton case, it is indisputable that Officer Davis was a **public official acting in her official capacity**. As such, the Court granted the Special Motion to Strike in stating that, to do otherwise, would send a chilling signal regarding the **public's** right to challenge activities of public officials (Officer Davis in this case). Defendant Edmonds in no way asserts that Petitioner is either a public official or that he was acting in any capacity as a public official. To the contrary, Petitioner, in filming the videos, was clearly acting as a private citizen attempting to do nothing more than promote an upcoming Glen Oaks High School 30-year reunion and provide webpage videos explaining the various aspects of real estate auctions and how they contrast with the traditional means of selling real estate. CCP 971 is intended to protect the **public** from fear of litigation when the **public** challenges the action of a public official acting in his or her capacity (as Mr. Benton did with Baton Rouge Police Officer Davis). Defendant is attempting to, without even denying that Petitioner was in no way a public official or engaging in an activity of public interest (but merely attempting to argue that, as an auctioneer, that fact, in and of itself, is a matter of public interest irrespective of the fact nobody asserts Petitioner was conducting an auction), **assert CCP 971 to permit an official of a public body to make false and scurrilous accusations regarding a member OF the public!** In doing so, Defendant Edmonds is actually taking the intended purpose of CCP 971 and twisting that purpose to attempt to obtain blanket immunity from any action she may take against any member of the public merely as a result of her "employment" with a public agency!

Ms. Edmonds Acted TOTALLY Outside of Her Authority in

Even Initiating the Police Report

Even if one were to accept the premise that Ms. Edmonds were a valid “employee” (albeit one who is, in the exact words of the Chief of Accountability of Civil Service, Patrick Lowery, “committing blatant payroll fraud”), the ensuing contention that she conducted her actions of alerting the East Baton Rouge Parish Sheriff “in the course of her employment” is fundamentally flawed. The notion that she was acting “in the course of her employment” was initially asserted by outside legal counsel, Anna Dow, and merely accepted by “default” by the Attorney General’s Office, the Office of Risk Management, and FARA.

The reality, however, is that nobody involved in this episode makes any assertion whatsoever that any auction was being conducted by Petitioner regarding his reunion-promoting filming, and Defendant readily admits in its Special Motion to Strike Memorandum that no LALB meeting was transpiring (allegation of “fake board meetings” notwithstanding). Therefore, even if one accepts Ms. Edmonds’ contention that Ms. Kennedy “contacted her later that evening” expressing her “concerns,” Ms. Edmonds should have responded, “Unless you allege Mr. Burns engaged in a license law violation, I cannot help you, nor can anyone affiliated with the LALB. I recommend that **YOU** contact the EBRP Sheriff with your concerns.” Petitioner was at no time “improperly using public property” since the Boardroom, as has been admitted by Defendant Edmonds and outside legal counsel, Anna Dow, during videotaped discussions of the LALB’s recent move to Newcastle Avenue, was **not** leased by the LALB. Furthermore, as has been admitted by Defendant, she was at no time present for any portion of any videotaping on the part of Petitioner. These combined facts, which nobody even challenges, demonstrate that Ms. Edmonds had no more authority to initiate the police call than would be the case for the Executive Director of the Louisiana Real Estate Commission (under which Petitioner is licensed), the Commissioner of Insurance (under which Petitioner held both life and health and property and casualty insurance licenses at the time of Ms. Edmonds initiating the police report), or the Executive Director of the State Board of CPAs of Louisiana (under which Petitioner holds a CPA-inactive certification). Furthermore, because Petitioner was **never** occupying any office

leased by the State, Ms. Edmonds had no more authority to initiate the police report than if someone coming out of a Circle K convenience store had gone up to her and said, “I saw Robert Burns in that Circle K, and I had fear for my safety.” One would assume Ms. Edmonds would have possessed sufficient intelligence to have responded to such a person by saying, “Well, call the police then! What do you expect me to do?” Were both of Ms. Kennedy’s hands amputated such that she was incapable of using a phone? Apparently not since she says she contacted Ms. Edmonds “later that evening” (presumably by phone though no corroboration in the way of phone records is provided despite this being the 21st century!).

Because she acted totally and completely outside of her authority to initiate any police report, Ms. Edmonds is in no way entitled to protection under CCP 971; furthermore, she cannot, after having initiated the bold action of calling the police, then transfer the blame for the incident to then-Chairman James Kenneth Comer. The fact is that Ms. Edmonds was the “first line of contact” within the LALB if one accepts Ms. Kennedy’s affidavit at face value, and she had the responsibility for recognizing that she lacked authority to be involved in the matter and never have even advanced the incident beyond herself on to Mr. Comer. Furthermore, Ms. Edmonds and Ms. Dow seemed to be very aggressive in pursuing the police visits to Petitioner (with Ms. Dow readily admitting in her affidavit that she contacted the Attorney General’s Office to seek stronger action than the mere visit by an EBRP Sheriff Deputy at Petitioner’s residence), but then when they are confronted by the present Cause of Action regarding the matter, they revert to their all-too-familiar refrain of, “It can’t be my fault. I just consulted and apprised so and so....” Without question, Petitioner has causes of actions against a multitude of individuals involved in this incident, and Ms. Edmonds is clearly one such individual and cannot absolve herself of liability either through CCP 971 or by attempting to transfer blame elsewhere.

Ms. Edmonds is now wishing to assert that Mr. Comer is responsible, and Ms. Dow subtly, without even providing the name of the individual at the Attorney General’s Office, suggests to this Honorable Court, that some unnamed official at the Attorney General’s Office guided her to recommend calling the State Police Terrorism Unit. Both these individuals wanted to “stick their chests out” when they made the calls (or

recommendations for calls), and they should be “woman enough” to keep their chests stuck out and not turn and run for cover and attempt to blame others for their actions.

EBRP Sheriff Corporal Steven Hayward Got NOTHING Wrong in His Police Report.

Defendant states that Petitioner fails to meet the first hurdle in his present Cause of Malicious Prosecution in allegedly failing to demonstrate that “the commencement or continuance of an original criminal or civil judicial proceeding” took place on the part of Defendant Edmonds. In making the assertion that Petitioner fails to clear that first hurdle, Defendant first asserts that, because the matter went nowhere with Corporal Hayward noting “cleared - prosecution denied” that Defendant Edmonds failed to “continue” the proceeding. The requirement states “commencement **OR** continuance.” The requirement does not state “commencement **AND** continuance.” Therefore, Defendant Edmonds’ logic is fundamentally flawed in that regard.

No doubt fearing that the above argument would readily be spotted by Petitioner, Defendant then seems to go to great lengths to try and substantiate that it was Ms. Kennedy, and not Ms. Edmonds, who “commenced” the police report. In fact, Defendant goes so far as to infer that Corporal Hayward got the police report wrong in identifying Ms. Edmonds as the “complainant.” Furthermore, Ms. Dow went out of her way at the July 18, 2011 LALB meeting, captured on videotape, to relay emphatically that it was the Arthritis Association who called police, a statement apparently unwilling to be corroborated by Ms. Kennedy in her sworn affidavit. Here are the facts:

- The police report clearly identifies Ms. Edmonds as the complainant, thus making her the one who “commenced” the criminal proceeding.
- The police report clearly indicates that the EBRP Deputy was dispatched to “The Louisiana Auctioneer’s Licensing Board” relative to a disturbance. It does not indicate that the EBRP Deputy was dispatched to “The Arthritis Association of Louisiana.”

Hence, the EBRP police report, contrary to Defendant’s assertions that it “got the whole episode wrong” (continuing the pattern of blaming others for Defendant’s actions and continuing the pattern of being unwilling to keep the “chest stuck out” as referenced previously) got nothing wrong; nevertheless, Defendant would have this Honorable Court

believe that everything was initiated by Ms. Kennedy of the Arthritis Association of Louisiana.

Now, without question, Ms. Kennedy has voluntarily signed a sworn affidavit which is riddled with falsehoods and scurrilous accusations against petitioner, many of which are readily proven untrue merely by Petitioner's submission of his phone records which Ms. Kennedy and Mr. Ramsey apparently chose to ignore in asserting some of these allegations in not even taking a few minutes to make these concocted assertions have any validity. Furthermore, Ms. Kennedy is made in her own affidavit to appear pretty irresponsible in that, if the affidavit is to be taken at face value, she #1) voluntarily permitted someone into the building to film promotional videos in the Boardroom **not once, not twice, but three times**, only to, after the third time, suddenly decide that she felt she allegedly needed to inform Ms. Edmonds (of all people!) of her supposed "fear for my safety" concerns! The number of scurrilous and defamatory statements made by Ms. Kennedy against Petitioner are too numerous to mention in this Memorandum, but suffice to say that, as a result of Ms. Kennedy having voluntarily signed her sworn affidavit and, upon presumably having read it, Petitioner filed a separate Cause of Action for Defamation of Character against Ms. Kennedy, Ms. Messenger, and the Arthritis Association of Louisiana on Wednesday, October 5, 2011, with that action having been assigned to this Honorable Court to be heard by Judge Fields with the docket number being 605769. Petitioner eagerly awaits the opportunity to defend his good name against these false and scurrilous accusations made on the part of Ms. Kennedy and, via Ms. Kennedy's affidavit contents, similar scurrilous accusations made on the part of Ms. Caroline Messenger.

Petitioner Most Certainly WAS "Fired" By Gov. Bobby Jindal

Defendant Edmonds references in the Memorandum of the Special Motion to Strike that Petitioner was "fired by Gov. Jindal" due to an inability to cooperate with colleagues. On that point, Defendant is 100% correct! Petitioner was in fact "fired" by Gov. Bobby Jindal, and Petitioner wears that firing as a badge of honor! Also, Petitioner was aware long before this "firing" took place that he was "making too many waves" about rampant corruption within the LALB and the inexcusable treatment to which Rev. Freddie Phillips, the first and only African American auctioneer in Louisiana's history,

was being subjected. The only other Board Member who seemed to share Petitioner's concerns regarding the blatant favoritism being shown toward some licensees with whom the Board wished to curry favors vs. other licensees whom the Board held disdain for, was in fact Rev. Phillips. Additionally, Petitioner sent an email to Greg Lindsey of the Inspector General's Office dated August 23, 2010 (18 days prior to Governor Jindal's "firing" of Petitioner), whom Petitioner was requested to meet with, along with Inspector Street, Robert Collins (General Counsel for the Inspector General's Office) on June 9, 2010 regarding Ms. Edmonds' covert copying of an Inspector General work paper. In that email, which is attached hereto and made a part hereof as Exhibit P-33, Petitioner relayed that Rev. Phillips had requested that Petitioner supply documentation to substantiate some of these blatant acts of favoritism on the part of the LALB. In the email, Petitioner made it crystal clear that he was well-aware of efforts within the auctioneer community to have Gov. Jindal remove him from the LALB, and that he could care less whether Gov. Jindal opted to exercise his prerogative to remove him from the Board. In fact, after only his third meeting on January 26, 2009 and upon realizing just how corrupt the LALB is, Petitioner, as referenced in the email, relayed that he'd called James Quinn, the then-head of Boards of Commissions, and stated that he wanted off the LALB immediately. However, Mr. Quinn requested that Petitioner "think it over" for a week and, during that time, Rev. Phillips, as reflected in his sworn affidavit (Exhibit P-22), called Petitioner requesting that he remain on the Board. Rev. Phillips indicated that, if Petitioner resigned from the Board, Rev. Phillips would be left "like a voice on an island." Accordingly, as relayed in the email, Petitioner assured Rev. Phillips that he would remain on the Board for as long as Rev. Phillips was on the Board but that, if Rev. Phillips ever stepped down, Petitioner would be stepping down simultaneously. Petitioner wishes to relay commentary verbatim contained in the email at this time: **"Let me be blunt: If the choice is having to be 'molded' into the 'good 'ole boy' network and engage in illegal and unethical practices to remain an LALB Member vs. being told by Gov. Jindal that I'm no longer desired as a Board Member, then that's not a Governor for whom I wish to serve anyway!"**

Hence, Petitioner is not exactly sure why Defendant Edmonds chose to reference this "firing" in the Memorandum, but since it was referenced (and was referenced in the

police report as well via reference to a “discharged” former Board Member), Petitioner will merely relay that, **absolutely**, he WAS “fired” by Gov. Jindal, and he is **proud** of that fact! Petitioner will also relay, however, that he remains committed to videotaping the proceedings of the LALB (a luxury he didn’t have as an LALB Member) and exposing the rampant corruption that exists within the LALB, and that two (2) other recent Board Members (a former long-time Chairman, Buster Gay, and a sitting Chairman, James Kenneth Comer) have, within the last six months, inexplicably “resigned” from the LALB. Furthermore, due to video footage taken by Petitioner contained in the January 10, 2011 LALB meeting which was provided to newsmen at WAFB, Channel 9, they chose to bring their own cameras to the LALB meeting of March 21, 2011 and seek answers from LALB legal counsel Anna Dow regarding some extremely disparaging comments made regarding Rev. Freddie Phillips, the only African American auctioneer in the history of the State of Louisiana, by two of those Board Members just referenced who have recently inexplicably “resigned.” In that respect, Petitioner is accomplishing far more as a member of the public than he ever dreamed of being able to accomplish as a Board Member!

Petitioner and Rev. Phillips attended a town hall meeting conducted by Rev. Phillips’ representative, State Rep. Regina Barrow, on Thursday, July 29, 2010 and relayed to Rep. Barrow the incredibly hostility to which Rev. Phillips has been subjected on the LALB (and Defendant Edmonds certainly hasn’t shied away from engaging in that hostility). Rep. Barrow decided to attend the LALB meeting of August 2, 2010 to witness these episodes first-hand. She was so stunned by what she witnessed that she requested a special hearing regarding Boards and Commissions appointments which was conducted by the Joint Committee of Governmental Affairs on November 17, 2010. Rep. Barrow referenced the LALB meeting of August 2, 2010 in relaying that she was “stunned at the interaction I saw on that Board.” So, yes, Petitioner wears his “firing badge” awarded to him by Gov. Jindal with honor and would not change a single thing if he had the ability to roll back the clock to the day he was appointed to the LALB. However, in hindsight, with the knowledge he now has of LALB corruption, he would have never agreed to serve on the Board in the first place! Also, just to point out, Petitioner was informed that he may wish to apply for the position because, in the recent

past, applicants for that particular Public Service District seat “all had problems,” which Petitioner later learned were past felony convictions! So, apparently, when Gov. Jindal needed Petitioner’s clean history (vs. convicted felons), Petitioner’s services were greatly appreciated (so much so that when he tried to resign after the January 26, 2009 LALB meeting, he was told to “think it over for a week”). However, once Petitioner made it clear that he was not going to stand idly by and see the LALB engage in rampant favoritism among its auctioneer license base and treat one of its members, Rev. Phillips, with extreme hostility, Gov. Jindal, through his Special Assistant, Jonathan Ringo, called Petitioner on September 8, 2010 and relayed, “We need you to resign. Things just aren’t working out.” Petitioner refused to resign and instead forced Gov. Jindal to exercise his power to remove Petitioner from the LALB, which Gov. Jindal did on September 10, 2010 (Petitioner’s 47th birthday).

Petitioner firmly believes that, just as with Petitioner, significant pressure is presently being placed upon Gov. Jindal from within the auctioneering community to remove Rev. Phillips from the LALB; however, if that is the case, Petitioner certainly commends Gov. Jindal for refraining from acquiescing to any such desires by the auctioneer community. The fact that Gov. Jindal is not agreeing to take such action, however, is now seemingly causing the LALB to “stretch” internally to find a way to get Rev. Phillips removed from the Board on its own. This fact was made most evident at the July 18, 2011 LALB meeting. At that time, Rev. Phillips referenced funds that the Board spent in defending and unanimously voting to settle a Cause of Action which Petitioner filed against the LALB for blatant Open Meetings violations at its September 20, 2010 LALB meeting. Rev. Phillips requested that the Board vote to recover those funds from the Board’s Legal Counsel, Ms. Dow. Ms. Dow fired back at Rev. Phillips, all of which is captured on videotape, in encouraging the LALB to pursue outside legal counsel to pursue disciplinary action against Rev. Phillips’ license in order that “you can no longer qualify to sit on this Board, Mr. Phillips, since your ability to do so is conditioned upon you having an auctioneer’s license.” That was actually the second time in that meeting that Ms. Dow referenced having the Board procure outside counsel to pursue “potential disciplinary action” against the licenses of Rev. Phillips and Petitioner, with her justification for the other effort being Petitioner’s aforementioned Cause of

Action for the Open Meetings law violations and Rev. Phillips having filed a Writ of Mandamus to obtain a report outlining past travel reimbursements on the part of the LALB. Ms. Dow made a less-than-subtle third attempt at taking a stab at Rev. Phillips' license at that July 18, 2011 LALB meeting. She did so when she advised Chairman Tessa Steinkamp, with whom Ms. Dow is long-time friends, to admonish Rev. Phillips regarding Auctioneering Statute 3121 (potential disciplinary action against his license for providing false testimony to the Board) as a result of her knowing Rev. Phillips was about to reference material adverse to Ms. Steinkamp involving the recent bankruptcy of the firm with which she is affiliated, New Orleans Auction Galleries. In doing so, Ms. Steinkamp, with the guidance of Ms. Dow, scolded Rev. Phillips and threatened him in a manner to which no other LALB member or audience member had been placed even after it was known that they'd given false testimony to the LALB! As a specific example, one need look no further than Exhibit P-23 (Rev. Phillips certified letter to all LALB Members and other regulatory agencies) wherein it was Rev. Phillips who highlighted Auctioneering Section 3121 in referencing all of the falsehoods Ken Buhler stated upon his license reinstatement! Furthermore, Rev. Phillips referenced nothing more than a public filing in the bankruptcy case filed by Mr. Jacob Kansas, an attorney for Latter and Blum. Mr. Kansas placed in pleadings before the Bankruptcy Court for the Eastern District of Louisiana that, in the days leading up to the bankruptcy, Ms. Steinkamp repeatedly assured Mr. Kansas that a check would be mailed to him within days pertaining to an assignment of an auction consignment contract from a tenant for whom Latter and Blum served as property manager. As if that recent July 18, 2011 episode wasn't bad enough, at the September 19, 2011 LALB meeting, Rev. Phillips, as captured on videotape, was singled out by Ms. Dow in being asked **not once, not twice, not three times, but FOUR times if he was carrying a weapon!** Is it any wonder LALB folk don't want these episodes videotaped? One would swear these tapes were, as Rep. Barrow herself told Petitioner, "in the 1950's." It is mind-boggling that dialogue such as is transpiring at LALB meetings can be taking place in the year 2011!

Malice Substantiated via Petitioner's Amended Pleadings of September 7, 2011

And the Suspicion Stirred by Freedom of Information Act Requests

Defendant asserts in her Special Motion to Strike that Petitioner failed to demonstrate malice on the part of Defendant; however, Petitioner established clear evidence of malice in his Amended Pleadings filed with this Honorable Court on September 7, 2011. Highlights from those amended pleadings follow:

- Ms. Edmonds steadfast refusal to notify Petitioner of a certified and regular mail addressed to him from the Louisiana State Board of Ethics resulting in Petitioner filing a formal complaint with the LALB against Defendant dated March 9, 2011. Had such an action been deployed for one of the auctioneers with whom Ms. Edmonds and Ms. Dow “butter up to” at LALB meetings, Ms. Edmonds would have been fired immediately. Instead, Ms. Edmonds now purports that she left a voice message but provides no phone records to demonstrate that the Ethics Board was called, and she further states that she has no obligation whatsoever to even offer Petitioner the opportunity to sign a release to have allowed him to pick up the letter. Instead, Ms. Edmonds permits the Ethics Board to obtain the impression that he was “refusing” to accept delivery (which is what Ms. Edmonds did on behalf of petitioner!).
- On April 7, 2011 (only four days before Defendant called police) Petitioner, in only two hours, producing a report of LALB travel requested by LALB Member Rev. Freddie Phillips and sending a copy of the report and a sworn affidavit to Defendant and LALB Legal Counsel, Anna Dow. An email sent to both Defendant Edmonds and Ms. Dow further expressed the disappointment and frustration Petitioner felt regarding Defendant and Ms. Dow having stalled Rev. Phillips in relaying in court pleadings (Phillips v. LALB) that the LALB was “incapable” of producing the report, that “specialized computer programmers” would be required to produce the report, and the fact that the LALB, at Ms. Dow’s initiative and without consulting the LALB, had spent \$2,000+ in a legal battle to keep Rev. Phillips from obtaining the report when the reality was that the report was incredibly easy to produce! Defendant Edmonds harbored malice toward Petitioner because he

had exposed the fact that Ms. Edmonds could have easily produced the report, but Rev. Phillips wasn't about to tell her what to do (even if it meant her expending a mere two hours of work vs. the LALB spending thousands of dollars to demonstrate to Rev. Phillips that he couldn't just obtain whatever he desired in the way of LALB records, most especially past travel records). In fact, Defendant Edmonds stated in an email to Petitioner dated April 4, 2011 (seven days before calling police), which is attached hereto and made a part hereof as Exhibit P-44, that Ms. Dow's contention was that, "The Board is under no obligation to generate a report for Mr. Phillips." She further elaborated that a report which she did generate on October 21, 2010 "only generates what is entered into the system and unfortunately there are times that travel was paid and descriptions not listed. Therefore, the report is not, in my view, a complete picture of what occurred." Essentially, Ms. Edmonds was making this statement as a prelude to what she knew would be Petitioner's ease of reviewing the fifteen (15) travel vouchers and the ease with which the report could be prepared. Further, Ms. Edmonds relayed in the April 4, 2011 email that, "The August 17, 2009 tape has been located." What Ms. Edmonds did not relay, however, is that the tape that was "located" contained only the early part of the meeting and did not contain the crucial segment wherein her employment parameters were discussed. Ms. Edmonds harbored deep malice toward Petitioner for his relentless pursuit of past LALB travel information on behalf of Rev. Phillips (so much so that she referred to Petitioner as Rev. Phillips' "friend in crime") together with his relentless attempts to demonstrate with unequivocal certainty that Ms. Edmonds badly deceived the LALB when she gave a false indication of how much time she would be spending in the LALB office at that August 17, 2009 LALB meeting (which that tape, if it were available, would demonstrate!). It's also amazing that, for a meeting comprised of two tapes, one tape can go "missing" and the other tape of the first segment of the meeting mysteriously "surfaces." Petitioner again stresses that Ms. Edmonds has enjoyed sole possession and exclusive access to and control over those LALB tapes! Petitioner will also

assert that he stated emphatically in his email to Ms. Edmonds (see Exhibit P-44), that, “If you have any doubt whatsoever, Sandy, yes, this is an office visit which Freddie Phillips’ ‘friend in crime’ (your words) is making as a personal favor to him.” Petitioner is not the one who uttered the words “friend in crime” [referencing Petitioner] at the January 10, 2011 LALB meeting; however, the fact that Petitioner would so freely and cavalierly throw those words in Defendant Edmonds’ face certainly contributed to the malice which she felt toward Petitioner in calling the EBRP Sheriff four (4) days after Petitioner’s office visit to view the records and then the Louisiana State Police Terrorism Unit the day after calling the EBRP Sheriff.

- On March 28, 2011 (11 days prior to Defendant calling police) Petitioner composed a certified letter with strongly-worded language seeking a formal LALB reprimand of Defendant Edmonds for her commentary at the March 21, 2011 LALB meeting in which she inquired, “Why would the Board choose you [referencing Rev. Freddie Phillips] as a representative given that you’re suing the Board?”
- At the January 10, 2011 LALB meeting, Defendant referred to Petitioner as Rev. Freddie Phillips’ “**friend in crime**” regarding his efforts to assist Rev. Phillips in obtaining past LALB travel information.
- On October 21, 2010, Petitioner filed a formal objection to the minutes of the August 2, 2010 LALB meeting for Ms. Edmonds’ partial quote of Rev. Phillips when the Board had voted earlier in the same meeting to refrain from specificity in the minutes and further that Defendant Edmonds left out numerous quotes of other Board Members which were highly condemnatory of Rev. Phillips and which deeply offended his State Rep. Regina Barrow, who had attended the meeting at the invitation of Petitioner and Rev. Phillips.
- Defendant’s covert copying of an Inspector General work paper and subsequent bragging of it to Petitioner and relaying the fact that it implicated former LALB Executive Director Sherrie Wilks as the complainant for alleged embezzlement of LALB funds by its former Chairman (and sitting Board

Member) and a former Consumer Member (who resigned immediately upon the allegation surfacing).

Defendant's statement in the Supplemental Memorandum in Support of the Special Motion to Strike or Exception for No Cause of Action that these assertions are not relevant or prohibitive is absurd on its face! Defendant Edmonds played as large of a role (and perhaps larger) in ridiculing Rev. Phillips and stonewalling him obtaining public records as anyone, and the fact that Petitioner is making this fact so widely known via videotaping meetings is cultivating huge malice on her part.

Perhaps the biggest source of malice toward Petitioner, however, is his request for public records entailing her payroll situation. Of course, as has been made clear in this Memorandum, Petitioner has been serving only as a conduit for providing that information to the Louisiana Legislative Auditor's Office. Nevertheless, Ms. Edmonds no doubt contemplates that the information likely has not been just being tossed into some file at Petitioner's office, so Ms. Edmonds had a clear source of malice toward Petitioner in that he is likely interfering with her ability to "keep her hand in the cookie jar" in that she is paid \$54,500 a year between the LALB and Interior Design Board, all while enjoying the luxury of running personal errands all over town, vacationing in Disneyworld (while being "on the clock") and occasionally, though as outlined with Mr. Mahaney, having her daily routine interrupted in having to go into the darn office to do something like printing out a license for an Indiana auctioneer! Ms. Edmonds likely has one of the most lucrative work arrangements of **any** State employee in Louisiana, and Petitioner has no doubt that, if many of the hard-working State employees had any clue about her work arrangements, they would be justifiably infuriated. Let's face it: Where in any entity (State government or private industry) can a person be relaxing in one's Jacuzzi or living it up in Disneyworld all while bilking the licensees of the professions that he or she purportedly serve to the tune of \$54,500 a year?

Ms. Dow, the attorney for both Boards, likely also harbors deep malice toward Petitioner in that she is the one who has been Ms. Edmonds' advocate by recommending her for the LALB job and crafting the work arrangements Ms. Edmonds enjoys and exploits so unabashedly. Further, Ms. Edmonds is essentially

the only one to review Ms. Dow's legal invoices (although Petitioner has started requesting those invoices quarterly to review and is spotting some highly questionable billings to the LALB), so Ms. Edmonds, having gotten such a lucrative work arrangement compliments of Ms. Dow, isn't likely to scrutinize Ms. Dow's billings very stringently at all!

As stated previously, Defendant's statement that these circumstances surrounding the LALB aren't relevant or prohibitive is absurd on its face! Such a statement is akin to relaying in a murder investigation that it's irrelevant that a \$1 million life insurance policy taken out weeks before by a suspect is irrelevant. The nature of the complaints against Ms. Edmonds goes directly to motive, and she had an abundance of motive to engage in an act of malicious prosecution against Petitioner, and that is exactly what she did!

Furthermore, as explicitly outlined in the sworn affidavit of former LALB Executive Director Sherrie Wilks (Exhibit P-22-a), her complaint to the Inspector General's Office entailed far more than Rev. Phillips' alleged advertising violation. In fact, that episode was largely a sideshow to the investigation. The core investigation centered around an alleged embezzlement entailing two former Board Members, one of whom was Ms. Wilks' direct supervisor at the time she "caught his hand in the cookie jar." Ms. Wilks, as evidenced in her sworn affidavit, extensively documented that former LALB Chairman Delmar "Buster" Gay and Consumer Member Ray Camp were riding together to and from Monroe, Louisiana for Board Meetings yet claiming mileage separately. As clearly indicated in Exhibit P-33-a, which is attached hereto and made a part hereof, Ms. Wilks relayed all of the events of the days right after the January 15, 2008 incident in emails to Mr. Gay and Ms. Anna Dow, LALB legal counsel. One can readily read those emails to substantiate that Mr. Gay was making Ms. Wilks' life "a living hell" for her after she called him on the carpet about the alleged mileage fraud. Ms. Wilks relayed to Ms. Dow in an email dated January 16, 2008 that Mr. Gay was repeatedly calling her relaying that he was "very disappointed" in Ms. Wilks. Also provided in Exhibit P-33-a is the returned check of Ray Camp, who happened to be the passenger on the day in question. Ms. Wilks also created a "mileage scam" worksheet in which she outlined

how much the alleged fraud could potentially total after having consulted with Jim Steele, the LALB's investigator at the time, who relayed to Ms. Wilks that he'd observed Mr. Gay and Mr. Camp riding together as a matter of routine practice for quite some time. Ms. Wilks then uncovered the fact that they became neighbors living on the same street, and she computed the amount of the potential mileage scam (even accounting for meetings at which either was absent), and produced the spreadsheet, which is attached hereto and made a part hereof as Exhibit P-34. As referenced in her sworn affidavit (Exhibit P-22-a), and reflected in Exhibit P-34, the alleged fraud totaled almost \$5,000.

Neither Ms. Edmonds nor Mr. Ramsey was in attendance at the June 9, 2010 meeting with the Inspector General. Those in attendance with LALB ties were comprised of Sherrie Wilks, Rev. Freddie Phillips, and Petitioner. Ms. Wilks filed a formal complaint with the Inspector General that did include Rev. Phillips' alleged advertising violation (for which he was cleared), but the vast majority of the substance of her complaint and the discussions at the Inspector General's Office that day entailed Mr. Gay's alleged travel voucher fraud. The other participant in the alleged fraud, Consumer Member Ray Camp, simply resigned immediately, and as evidenced by Exhibit P-35, which is attached hereto and made a part hereof, simply returned the check, not even keeping the \$97 per diem to which he was entitled for that Board Meeting. While Mr. Ramsey is correct in stating that the Inspector General Office's did not pursue charges against Ms. Edmonds for copying the work paper essentially identifying Ms. Wilks as the complainant, both Petitioner and Rev. Phillips, via his own sworn affidavit (Exhibit P-22) can attest to the fact that Inspector General Stephen Street was not at all pleased that Ms. Edmonds had copied the work paper. Petitioner states that he thinks that fact should go without even having to relay in this Memorandum as it is merely common sense. Furthermore, in Mr. Ramsey's attempt to sort of make the best of the situation in which he admits Ms. Edmonds copied the work paper "but didn't distribute it," Mr. Ramsey fails to state why Ms. Edmonds copied the work paper! What exactly was the rationale behind why Ms. Edmonds needed to keep a "personal copy" of that work paper for her own purposes? Again, Petitioner reiterates that Ms. Edmonds, upon Petitioner relaying to Ms.

Edmonds that he didn't appreciate one bit then-Chairman Comer openly speculating at the November 2009 LALB meeting that he (Petitioner) was the source of the complaint, Ms. Edmonds stated, "Oh, you don't have to worry anymore. I read the work paper to Mr. Comer, and he now *knows* who filed the complaint, and when I read it to him, he about exploded over the phone!"

Mr. Street further apologized for the fact that the Inspector General did not pursue Mr. Gay's alleged travel violations more aggressively, and he indicated that, had Ms. Wilks merely kept quiet about discovering the alleged fraud, his office would have installed GPS tracking devices on the vehicles of Mr. Camp and Mr. Gay. Thereafter, once the Inspector General's Office could have substantiated over several meetings that one vehicle was staying put while the other was in motion to Baton Rouge and back to Monore, the Inspector General's Office would have permitted the alleged fraud to continue for another 3-4 meetings, after which Mr. Street indicated that, "I would have loved nothing more than to say to Mr. Gay, upon his entrance to a Board Meeting, that, 'Mr. Gay, you and I need to have a little talk in this room over here.'"

Mr. Street also indicated to Petitioner that, while he understood the frustration that Rev. Phillips felt regarding Mr. Gay having allegedly committed this travel voucher fraud and then leading the charge to keep Rev. Freddie Phillips from attending the NALLOA Convention in 2010 as an LALB Representative (Rev. Phillips was totally unaware of the alleged fraud until Petitioner told him about it after Mr. Gay, on May 17, 2010, so brazenly kept voicing his stern opposition to Rev. Phillips attending the convention as an LALB Representative), Mr. Street indicated, "It's been my experience that people like Buster Gay inevitably end up doing themselves in sooner or later. Just be patient." Apparently, Mr. Street's historical perspective was on target because, only two months later, Mr. Gay created a firestorm of controversy. He did so by stating, on tape, at the August 2, 2010 LALB meeting, which Rep. Barrow attended, that Rev. Phillips had "been hypnotized by someone who had you withdraw \$7,000 from your church's account and give it to them." Mr. Gay attended only one more LALB meeting after that now-infamous quote, and he resigned soon after that one meeting. Paul Gates (former WAFB Investigative Reporter who listened to all of the LALB audios surrounding Rev. Phillips and the NALLOA

convention) told Petitioner that the two men he intended to hone in on for the surprise visit at the March 21, 2011 meeting were Ken Comer (who was absent) and Buster Gay (who had resigned days earlier). As mentioned previously, after Mr. Comer missed that March 21, 2011 meeting, he resigned from the LALB soon thereafter. To Petitioner's knowledge, that represented the first time in the history of the LALB that a sitting LALB Chairman resigned (Mr. Gay was "demoted" from Chairman to a mere Board Member after the alleged travel voucher fraud was presented to the Governor's Office by Ms. Wilks). In fact, after the January 10, 2011 LALB meeting, in which both Ms. Dow and Mr. Comer repeatedly threatened to sue Rev. Phillips (all captured on video by Petitioner), Mr. Comer never attended another meeting and he, like Mr. Gay, as just referenced, resigned.

Ms. Edmonds has herself subjected Rev. Phillips to numerous incidents of belittlement and inappropriate commentary on her part, and no doubt she was furious that Petitioner produced in only two hours the travel report Rev. Phillips had been fighting for almost a year to obtain from the LALB. No doubt Ms. Edmonds also didn't appreciate the fact that Rev. Phillips relayed in his letter to all Board Members (Exhibit P-23) that Ms. Edmonds likely may be in need of "remedial training." All of these facts are keenly relevant to what cultivated the malicious intent of Ms. Edmonds in initiating a call to the EBRP Sheriff's Office and, the very next day, to the State Police Terrorism Unit because she was fuming with anger at the way Petitioner was successfully bringing to light the absurd stonewalling and hostility to which Rev. Phillips was and is subjected to on the LALB and its one staff member: Ms. Sandy Edmonds.

Affidavit of Beau Box Riddled With Falsehoods EASY for Petitioner to Disprove

Defendant also submitted as part of the Supplemental Memorandum in Support of Special Motion to Strike and Exception of No Cause of Action a sworn affidavit of Mr. Beau Box. While it was incredibly easy for Petitioner to punch holes all through the affidavit of Ms. Karen Kennedy in his separate Cause of Action for Defamation of Character against her, Mr. Box's affidavit is even easier to disprove! Specifically, Mr. Box states that "**he had only one face-to-face meeting with Mr. Burns.....Moreover, no business was ever referred to Mr. Burns by BBCRE**

and Ms. Burns has at no time been requested to auction any property listed with BBCRE.” Well, let’s just start a little list of exhibits, all of which demonstrate clear and irrefutable evidence to the contrary, shall we? (Note: Identities of any prospective auction clients not within the public record as foreclosures, bankruptcies, or Federal lawsuits are blackened out in Exhibits for privacy purposes):

- **Exhibit P-36:** Email exchange between Petitioner and Matthew Laborde (Beau Box agent) entailing a proposed auction of the Deluxe Inn on Airline Highway (Mr. Laborde begins the exchange with, “Robert. This might be a good property we can pitch an auction to.” As evidenced by the numerous email exchanges, the proposal was bantered around at considerable length.
- **Exhibit P-37:** Email exchange between Petitioner, Burden Edmonds (Beau Box agent) and Robert Svendson (Beau Box agent) entailing the “xxxxx xxxxx property.” Mr. Box himself begins the correspondence in relaying, “Robert. We will be contacting you about the xxxxx property. Debt is \$350,000. Burden or Robert please email a flyer.” Again, the exchanges between Mr. Edmonds and Petitioner are fairly extensive and even include an advertising budget for a prospective auction.
- **Exhibit P-38:** Email exchange between Petitioner, Beau Box, and Elizabeth Morrison (Beau Box agent), xxxxxx xxxxxxxx, and xxxxxx xxxxxxxx regarding Messrs. xxxxxxxx and xxxxxxxx’s commercial lot in xxxxxxx, LA. Mr. Box begins the correspondence by stating: “Yes. Good idea. Liz Morrison and Robert Burns will contact you on Monday. Thanks. Send me a site plan if you have one.” Also of note, Mr. xxxxxxxx begins the correspondence with Mr. Box in stating, “xxxxxx and I own a 3-acre commercial tract well suited for a professional office park off of xxxxxxx Blvd. in xxxxxxxxxx. **Could this be sold this summer in an auction under your new JV arrangement?”** Again the email exchanges are extensive and, again, a proposed advertising budget was included for that prospective auction as well.

- **Exhibit P-39:** Email exchange between Beau Box, Mathew Laborde, and Petitioner entailing “Beau Box Lafayette Hotel.” Mr. Box relays, “call the bank now and set a conference time for later today or Monday,” in response to Petitioner relaying, “Sounds great. Just spoke with Matt. He should be in the office in about 45 minutes, at which time he will call me, **and I will come over and we’ll strategize and initiate the call.** Looking forward to it!” Mr. Box initiated the correspondence by stating, “Matt. Can you get the details of the hotel to Robert? He is copied. **Let’s pitch an auction deal to the lender.**”
- **Exhibit P-40:** Email from Petitioner to Beau Box in which Petitioner went to great lengths to update Mr. Box on the status of all of the Marge Mackey properties after they had been extensively discussed in a “strategizing session” conducted on May 19, 2010 (thus easily refuting Mr. Box’s assertion that “only one face-to-face meeting ever transpired regarding the Box / Auction Sells Fast joint venture”).
- **Exhibit P-41:** Email from Robert Burns to Beau Box and Elizabeth Morrison regarding “strategizing session” for Wednesday, May 19, 2010 at 3:00 p.m. entailing updating all bank prospects which had been discussed at the previous “strategizing session.”
- **Exhibit P-42:** A copy of the press release from Beau Box’s ad agency, The Cat’s Back Advertising, along with Petitioner’s \$75 check made payable to Beau Box Commercial Real Estate to cover his half of preparation of the press release which was largely a copy and paste of the press release Petitioner himself had prepared!
- **Exhibit P-43:** Copy of an article which ran in the online Business Report of December 1, 2010 by David Jacob covering the Beau Box / Auction Sells Fast joint venture.

Mr. Box relays that the logo of Petitioner’s firm was placed on the Beau Box website “for a short time.” That logo was placed on Mr. Box’s website in early May of 2010 to coincide with the press release, and it stayed up on Mr. Box’s website until the evening of Tuesday, April 12, 2011 (Petitioner checked), which is **the very day**

Mr. Box fired off the email to Petitioner terminating the relationship after having received “numerous complaints from clients.” Petitioner would assume “a short time” is relative, but in his mind, a year is certainly not an overly “short time!”

Given how incredibly easy it is to discredit these aspects of Mr. Box’s sworn affidavit, can any credence really be given to the remainder of it in which he relays Ms. Edmonds never called him to complain, yet Mr. Box sends his email to Petitioner on Tuesday, April 12, 2011 at 12:18 p.m. (less than three hours before the State Police Terrorism Unit visits petitioner)? Let’s examine the list of tenants at 5222 Summa Court on that particular day (building had almost no occupancy, so the list is awfully short):

- Jewish Federation (nobody has ever asserted anybody made complaint),
- Valet Grocery (nobody has ever asserted anybody made complaint),
- Electrolysis Board (nobody has ever asserted anybody made complaint),
- Arthritis Association of Louisiana (obvious potential complainant),
- Louisiana Auctioneer’s Licensing Board (obvious potential complainant).

Gee, Mr. Box says that, as a result of “numerous complaints,” he’s terminating the joint venture, yet the logical list of potential complainants sure is awfully small not to include Ms. Edmonds! Petitioner requested the identities of the complainants in a voice mail to Mr. Box soon after Petitioner responded to his email; however, as with Ms. Kennedy, Mr. Box refused to return Petitioner’s phone message.

Affidavit of Ken Comer Irrelevant

The sworn affidavit of former LALB Chairman Ken Comer submitted in the Supplemental Memorandum to Strike and Exception for No Cause of Action is irrelevant because, as Petitioner has repeatedly relayed, Ms. Edmonds had no authority to initiate the incident and advance it to Mr. Comer in the first place! Ms. Edmonds **herself** had a duty to recognize the fact that, since no auction or Board Meeting was transpiring (again, allegations of “fake Board Meetings” notwithstanding), she had no authority to involve herself in the matter. Let’s assume for a moment that Ms. Kennedy’s assertion that, after so courteously admitting Petitioner into the building, somehow later on the third day that she did so, she mysteriously became “concerned for her safety” and allegedly telephoned Ms. Edmonds to relay as much. Ms. Edmonds had a **duty** to relay that, since the reported

incident entailed no auction law violation of any kind, **Ms. Kennedy** needed to contact the EBRP Sheriff.

Of course, Ms. Kennedy had ample opportunity to do that while Petitioner was in the building. She could have easily taken Petitioner's license plate (she already had Petitioner's name) and called out the Sheriff to investigate the situation on the spot. Petitioner, who was located in the rear Boardroom, would surely have had no idea of the impending arrival of Sheriff's Deputies. Of course, such an action on Ms. Kennedy's part would be wholly inconsistent with having graciously admitted Petitioner into the building and wishing him a nice weekend on the way out (the third such time she'd done so)!

Ms. Edmonds cannot merely cast the blame for all this on up the LALB food chain. She initiated the action. She had her chest stuck out proudly when she called police. She needs to exhibit backbone (as does Ms. Dow) and discontinue trying to pass the buck of blame on to others! Now, as the mystery of what all took place on April 11, 2011 and April 12, 2011 unfolds, Petitioner is presented with an ever-growing list of candidates against whom to file causes of action, and he now has a total of five parties named pertaining to the incident: Ms. Edmonds, Ms. Dow, Ms. Kennedy, Ms. Messenger, and the Arthritis Association of Louisiana. None of those Defendants, however, is absolved by the involvement or culpability of the others, and such would not be the case for former LALB Chairman Ken Comer were Petitioner to opt to file a cause of action for his now-known role in the incident. It's much like being co-makers on a promissory note which stipulates that each maker can be held jointly and severally liable! The situation is also somewhat analogous to poking a hole in an ant pile. Once the ants emerge, they're scrambling all over the place wondering what's happened and what just transpired, but there's simply no way those ants can ever be corralled back into the ant nest from which they were stirred.

"Safety" Concerns Not Consistent With Past Circumstances or Inactions Thereof

Defendant's statement of "safety concerns," along with those of Ms. Dow, and similar alleged concerns on the part of Ms. Kennedy, are nothing more than red herrings designed to deflect attention away from the attempted intimidation of Petitioner on the part of Ms. Dow and Ms. Edmonds. Ms. Edmonds, as the one to whom Ms. Kennedy

allegedly reported her concerns, bore the responsibility for recognizing that neither she nor the LALB had the ability, the authority, nor the power to involve themselves in the matter. By failing to recognize this fact and instead allegedly alerting then-Chairman Comer of Ms. Kennedy's alleged concerns, Ms. Edmonds unquestionably inappropriately and, without proper authority, commenced the criminal proceeding against Petitioner. Ms. Dow, without so much as undertaking any effort whatsoever to ascertain the nature of Petitioner's filming visits, then provided her own assessment of events to some unnamed official at the Attorney General's Office and, apparently, that assessment by Ms. Dow must have been pretty damning toward Petitioner. Furthermore, Ms. Dow's assessment is presumed to have included something beyond a mere statement that she believed Petitioner may have been exhibiting stalking behavior toward her. If not, then the Attorney General official certainly acted irresponsibly if he or she didn't make further inquiry (e.g. "Do you have documented evidence that Petitioner has ever made harassing phone calls to you, sent harassing emails to you, driven by or hung out at or near your home or office?"). **One also has to question why the Attorney General's Office is not recusing itself from this case given that the Agency's hands were clearly involved, yet the individual who made the recommendation to Ms. Dow is so confident in his or her action that he or she is remaining anonymous in the Special Motion to Strike!**

The reality is that Ms. Edmonds and Ms. Dow were becoming increasingly perturbed by Petitioner's videotaping of meetings and his requests for public records, so they decided to engage in an episode of malicious prosecution under the thinly-veiled pretense of having "security concerns." At this time, Petitioner wishes to assert numerous other instances in which Ms. Dow and/or Ms. Edmonds (or Ms. Kennedy for that matter) could have (or perhaps should have) legitimate security concerns, yet they took no action in any way whatsoever regarding the following situations:

- At the March, 2009 LALB meeting, the Board requested to go into Executive Session at a time that there were approximately 20 audience members observing the meeting. The request was made to consider the awarding of the attorney contract for the upcoming year. Ms. Sonia Mallet was the only one to submit a proposal. Ms. Mallet now works for the Attorney General's Office and stated in the hallway that she was stunned at what all she was witnessing at that one

meeting; furthermore, Ms. Mallet said that the Executive Session the LALB was conducting was illegal (nothing new there!), and Petitioner relayed to Ms. Mallet that was the very reason he immediately left the room and refused to be a part of it (Petitioner was a Board Member at that time). Even Ms. Dow, the LALB attorney, was asked to leave the Boardroom, and she obliged. During the approximately 30-40 minutes that the LALB was in Executive Session, many of those 20 or so audience members, including Ms. Dow, freely roamed all over the building, yet there was no effort whatsoever made to ensure anyone wasn't going into empty offices or any concerns expressed about the fact everyone was being permitted unfettered access to the entire complex at 5222 Summa Court.

- A long-time tenant at 5222 Summa Court was a fitness club located toward the very back of the building. Members of that fitness club were able to leave the fitness room via an interior hallway door located very near where Ms. Edmonds' Interior Design Board office was located. Once outside the fitness room, they had access to the entire building! Furthermore, fitness club members held classes at varying times both night and day, and it would have been very easy for someone to hide in the building after classes were over and no one would have known this fact.

- After Hurricane Gustav, the American Red Cross leased a number of offices at 5222 Summa Court for emergency relief purposes. The building was utilized as a make-shift shelter for volunteers assisting those affected by the storm for about a month. The volunteers lived in the offices on cots, came and went at varying times of day and evening, roamed the building freely at all times and often left the back doors unlocked or put something on the steel exit doors to prevent them from closing all the way. Ms. Wilks, the LALB Executive Director at the time of the storm, held several talks with the American Red Cross Supervisor regarding both the unlocked doors, the fact that 5222 Summa Court was an office building, and that American Red Cross people had to wear appropriate clothing. Ms. Wilks relayed to the American Red Cross supervisor that folk were walking around in boxer shorts or towels, and that this was not an acceptable practice. People roamed freely throughout the building in very, very crowded conditions. During

that 30-day period, during which conditions were ripe for anything to have happened with unfettered access to the building and no doubt some folk occasionally exhibiting at times hostile tempers, there was not one episode of any police being called by Ms. Edmonds, Ms. Dow, Ms. Kennedy, or Ms. Messenger as a result of any “security” concerns.

- Ms. Edmonds administers the written auction examination and previously set up those taking the test in the Boardroom at Summa Court. Did Ms. Edmonds stay in the Boardroom the entire time these folk were taking their tests? These people were total strangers (as was the case for the American Red Cross as Ms. Edmonds served as Executive Director of the Interior Design Board), yet there was apparently no need for police to be called out when these folks were left unattended in the Boardroom.

On September 1, 2010, Petitioner, along with Rev. Phillips, went to the building at 5222 Summa court for purposes of examining some past travel records which had been requested by a public member because of Ms. Dow’s unsubstantiated belief that Board Members have less rights to records of the very agency for which they serve as Board Members than do members of the public. Petitioner, along with Rev. Phillips, had conducted a benefit auction for the Arthritis Association on August 27, 2010 (five days prior to the office visit) as previously referenced (Exhibit P-4). As reflected in the sworn affidavit of Rev. Phillips (Exhibit P-22), petitioner had won the bidding during the silent auction on an Edwin Edwards biography along with eight (8) glasses depicting former Gov. Edwin Edwards’ facial picture on the glasses. Ms. Karen Kennedy, Executive Director of the Arthritis Association, had informed Petitioner that he could pay on the day of his office visit of September 1, 2010; therefore, Petitioner and Rev. Phillips rang the buzzer for the office of Ms. Kennedy. She came to the door, let Petitioner and Rev. Phillips in, and Petitioner and Rev. Phillips visited with her a few minutes, and Petitioner paid Ms. Kennedy for the items.

Thereafter, Petitioner and Rev. Phillips went directly on to Ms. Edmonds, who had been assimilating the travel records. Later that day, Ms. Kennedy told Petitioner and Rev. Phillips both (simultaneously) that Ms. Edmonds had complained bitterly to her about permitting Petitioner and Rev. Phillips into the building without alerting her (the

fact that both Petitioner and Rev. Phillips were LALB members at the time notwithstanding). Hence, prior precedence exists for Ms. Edmonds somehow operating under the mistaken belief that, merely because she works for an agency which leased space in the building, she could control everything that went on in that building. Ms. Kennedy had every right to let Petitioner and Rev. Phillips into the building as Petitioner had perfectly valid business with the Arthritis Association which needed to be conducted, and Ms. Kennedy was under no obligation whatsoever to alert Ms. Edmonds of the arrival of Petitioner and Rev. Phillips. It is unclear just how Ms. Edmonds came upon the notion that her position with the LALB or Interior Design Board gave her some privilege or authority to dictate to other tenants within the building when Ms. Edmonds herself was nothing more than a representative for other tenants of the building (notably the LALB and Interior Design Board).

**Granting Defendant's Special Motion to Strike Would Run Counter
to the Intent of CCP 971 Regarding Facilitating Transparency
and Exposing Corruption of Public Agencies**

By asserting CCP 971, Defendant is actually attempting to deploy the Code for a purpose totally inconsistent from that which it was intended. In the previously referenced Davis v. Benton case, a public official (Baton Rouge Police Officer Davis) filed a suit against a private citizen (Mr. Benton) after Mr. Benton lodged a complaint against Officer Davis. As referenced previously, the Court granted Benton's Special Motion to strike on the grounds that, were it not to grant the motion, it would send a chilling message to the **public** that the **public** would need to fear filing a complaint against a public official or agency. Hence, the Defendant in Davis v. Benton (who was Benton) sought protection **as a member of the public!** In the present case, the member of the public is the **Plaintiff**, and the Defendant is attempting to subtly deploy CCP 971 to **attempt to shield the public agency and official (LALB & Ms. Edmonds, respectively) themselves and attempt to hide behind the CCP 971 shield to enable them to do or say anything they want, most specifically attempt to harass and intimidate petitioner!**

It is an indisputable fact that Petitioner filed several complaints formally with the LALB pertaining to Defendant Edmonds job performance. Similarly, Mr. Benton

filed a complaint against Baton Rouge Police Officer Davis. An appropriate comparison to what happened with Petitioner to the Davis case would be for the Baton Rouge Police Department, after having the complaint filed against Officer Davis, to have encouraged Officer Davis to speak with a store owner which Benton was known to shop at frequently. The Baton Rouge Police Department would then encourage that store owner that, the next time Benton visited the store, the store owner could merely phone the Baton Rouge Police stating that the owner had a “general fear for his safety” while Benton was shopping in the store. The Police would then be called out, along with the State Police Terrorism Unit, to interrogate Benton as a means to intimidate him and teach him a lesson of “We’ll teach you to file a complaint against one of our Police Officers.” Then, when Benton filed a suit for Malicious Prosecution, the Baton Rouge Police Department would file a Special Motion to Strike under the premise that it was the Department’s free-speech right to exercise its First Amendment privilege to state that it felt Benton may be dangerous when, in reality, the entire motivation was retaliation, and in fact was twofold. The first motivation would be Benton having filed the complaint against Officer Davis, and the second motivation would be for Benton having exposed highly questionable activity by filming incidents involving Officer Davis and other Police Officers. **That** scenario would be the equivalent of what has transpired in the present case, and seeing Davis v. Benton cited as a case to support Defendant’s Special Motion to Strike is just as inappropriate in the present case as it was in the Burns v. Dow case in which Petitioner successfully argued before Judge Caldwell on September 26, 2011 prompting Judge Caldwell to deny the motion. Likewise, Defendant’s Special Motion to Strike should be denied in the present case.

Were this Honorable Court to grant the present Special Motion to Strike, it would remove from the public record evidence which Petitioner has submitted exposing extensive corruption within a public body. Examples of that corruption include Mr. Lowery’s assertion that Ms. Edmonds is committing “blatant payroll fraud,” for which Ms. Edmonds is responsible for having dictating the terms and parameters. Furthermore, by Mr. Lowery’s assertion, Ms. Edmonds has been committing payroll fraud for four (4) years with the Interior Design Board. Yet in Ms. Wilks sworn

affidavit, Exhibit P-22-a, Ms. Wilks readily admits that she confided in Ms. Edmonds regarding alleged travel voucher fraud on the part of former LALB Chairman Buster Gay. In fact, it was the stress Ms. Wilks was under from Mr. Gay's relentless attacks which prompted her to resign. Ms. Wilks had the guts and fortitude to, at the risk of her own job, call her supervisor on the carpet for what she witnessed and investigated as pretty significant alleged travel voucher fraud totaling about 7% of the LALB's entire budget! As Ms. Wilks references in her affidavit, Mr. Gay openly encouraged the 47 auctioneers present at the 2009 Louisiana Auctioneer's Association Convention to sign a petition to have Ms. Wilks terminated. All the stress led to Ms. Wilks decision to just resign stating "no job is worth this." Yet, after having repeatedly relayed that Ms. Edmonds would not have Ms. Wilks' job, Ms. Edmonds admitted to Petitioner that she immediately went to Ms. Dow upon Ms. Wilks' resignation to state her list of conditions under which she would accept the job. Those conditions mirrored the conditions which existed (and continue to exist) with the Interior Design Board and, in so doing, Ms. Edmonds merely "doubled down" on what Mr. Lowery categorizes as "blatant payroll fraud." Mr. Calvin Moore of the Louisiana Legislative Auditor's Office relays that, as soon as manpower is freed up to pursue the work arrangement of Ms. Edmonds, such an investigation is going to be launched.

Next, we have the incredible ordeals of Rev. Phillips and Ms. Edmonds' active role in perpetrating those ordeals. Rev. Phillips merely attempted to obtain something as simple as a one-page report of past LALB travel. The bottom line is that, not only was former Executive Director Wilks bold enough to call her own supervisor on the carpet for alleged fraudulent activities, but her replacement, Ms. Edmonds, is all too willing to just "keep everyone happy" by doing whatever the Chairman in power asks of her provided nobody interferes with her own "honey hole" (a/k/a "blatant payroll fraud" by Patrick Lowery), and she can continue her own bilking of the two agencies for \$54,500 a year! Ms. Edmonds could readily perceive that Petitioner and Rev. Phillips were unwilling to go along with this "honey hole," and Ms. Edmonds was perturbed by the persistent efforts of Petitioner and Rev. Phillips to keep making Freedom of Information Act Requests regarding her payroll records. She didn't know

exactly what Petitioner and Rev. Phillips may be doing with those documents, but she no doubt pondered that whatever was being done could not be good from her vantage point. For that reason, she engaged in the act of malicious prosecution against Petitioner, and she chimed in with Ms. Dow at the July 18, 2011 LALB meeting when Ms. Dow referenced the public records requests as justification for seeking outside counsel, upon having gotten “clearance from the Attorney General’s Office” to pursue “potential disciplinary action” against the licenses of Petitioner and Rev. Phillips. Hence, were the Special Motion to Strike to be granted, it would send a chilling message to the public that efforts to root out and expose corruption of public bodies would be in vain and that such public members should just look the other way and permit the corruption to continue.

Summation and Conclusions

Defendant’s Special Motion to Strike should be denied on the grounds that:

#1) Ms. Edmonds is **not** an employee of the LALB or the Interior Design Board but rather is an independent contractor who has been improperly classified as a State “employee” by the LALB and the Interior Design Board. This fact has been well demonstrated by Mr. Patrick Lowery, the Chief of Accountability of Louisiana State Civil Service (which serves as the Human Resources Agency for all State employees) stating that her present work arrangements with the two agencies constitute “blatant payroll fraud.” With that being the case, just as Judge Caldwell ruled that Ms. Dow was ineligible to assert CCP 971, Ms. Edmonds is equally unqualified to assert that Code as immunity from civil actions.

#2) Defendant, as clearly demonstrated in Petitioner’s contrasting of the present case with *Davis v. Benton*, is attempting to assert CCP 971 for a purpose totally opposite for what the Code was intended (i.e. to protect the **public’s** right to challenge a public official or agency without fear of lawsuits instead of providing blanket immunity **TO** a public official for improperly initiating a criminal proceeding against a member of the public).

#3) Granting the Special Motion to Strike would remove from the public record the lengths that a public agency and a public official, the LALB and Ms. Edmonds, respectively, will resort to in arbitrarily harassing and engaging in heavy-handed

intimidation tactics (the Louisiana State Police Terrorism Unit, no less) against a member of the public with no probable cause or substantiation whatsoever. It would further remove from the public record an extensive exposure of public corruption transpiring within a public agency, the LALB, and thereby send a chilling message that any attempt on the part of a member of the public to expose that corruption (including the revealed assessment that Ms. Edmonds is engaging in “blatant payroll fraud”) would be in vain. Instead, it would send the message that the public member would simply be forced to submit to such harassment and intimidation on the part of a public official and public body, Ms. Edmonds and the LALB, respectively. Such a ruling would actually encourage Gestapo tactics on the parts of public bodies to quiet public members from exposing corruption within public agencies.

#4) The affidavits provided by Defendants are totally lacking in any credibility whatsoever, and Petitioner has easily disproven these “on the fly” statements from those affidavits from his own extensive phone and email records. As relayed in the initial petition, Petitioner is a very, very detail-oriented individual who prides himself on extensive organization and who graduated from LSU with a 4.000 GPA, and he can and will provide extensive character witnesses at trial to substantiate that fact. The affidavits of Ms. Kennedy and Mr. Box have been haphazardly composed and are both riddled with false statements that were extremely easy to disprove! In short, their credibility is virtually nonexistent.

Likewise, Defendant’s Exception of No Cause of Action should also be denied because Defendant has failed miserably in demonstrating that she did not initiate the police investigation into Petitioner. Even if this Court were to accept the alleged phone call (or other form of contact) from Ms. Kennedy to Ms. Edmonds, for which there is zilch in the way of substantiation (in sharp contrast to Petitioner providing extensive phone records and emails to fortify the calls that he represents that he made and correspondences that he indicates that he sent), Ms. Edmonds had a duty to recognize the fact that neither she nor the LALB had any authority to be involved in the matter. Ms. Edmonds, by her own admission in the Special Motion to Strike, indicates that she was at no time present for any filming (a fact which Defendant subtly uses to attempt to assert Ms. Edmonds didn’t initiate the police investigation); therefore, she had no first-hand

knowledge of any content of Petitioner's filming activities (which, incidentally, nobody involved in the episode even challenges the content of now that it was made so freely available to State Police Trooper Bart Morris when he visited Petitioner's home on Tuesday, April 12, 2011).

Furthermore, Petitioner was at no time in any office which was leased by the LALB, and everyone agrees the Boardroom was leased by no tenants but rather made available to any tenant (including the Arthritis Association of Louisiana). Therefore, the complaint of "improper use of public property" is baseless, and Defendant Edmonds should have known that at the time she initiated the police report. Of course, the more basic element is that Defendant Edmonds should have possessed sufficient knowledge of the situation to inform Ms. Kennedy, even if one is willing to accept that Ms. Kennedy did telephone (or make other contact to) Ms. Edmonds as she alleges in her sworn affidavit, that she had no authority to do anything since nothing Ms. Kennedy allegedly informed Ms. Edmonds of involved an auction being conducted by Petitioner. Instead, Ms. Edmonds should have informed Ms. Kennedy that, as the one who was there and had the alleged complaints, that she (Ms. Kennedy) should be the one to telephone police and report any incident. Instead, as the police report makes perfectly clear (even though Defendant now wishes to assert that the police report "got everything all wrong" but Petitioner asserts the police report got nothing wrong!), it was Ms. Edmonds who is listed as the only complainant. Furthermore, perhaps most telling of all, the report clearly indicates that the Sheriff was dispatched out to **The Auctioneer's Licensing Board!**

In the Special Motion to Strike and Exception for No Cause of Auction, all of the focus seems to be on inferring Petitioner doesn't meet criterion # 1, which requires that Petitioner demonstrate that Ms. Edmonds either initiated or continued a criminal matter against Petitioner. Not only has Petitioner clearly demonstrated that Defendant Edmonds **did** initiate a criminal proceeding against Petitioner by initiating the call to the EBRP Sheriff's department (or, in the alternative, by failing to alert Ms. Kennedy of her lack of ability to be involved, she most certainly "continued" the matter), but Petitioner demonstrated pretty clearly in his initial pleadings that he meets the other criteria for malicious prosecution as well. Furthermore, Defendant's claim that Petitioner failed to demonstrate malice on the part of Defendant Edmonds was clearly remedied by Petitioner

through his amended pleading filing to this Honorable Court on September 7, 2011 as well as the additional revelations contained within this Memorandum, particularly the submission of Freedom of Information Act Requests to assist the Louisiana Legislative Auditor's Office in its investigation of Ms. Edmonds for "blatant payroll fraud" as characterized by Mr. Patrick Lowery, the Chief of Accountability at the Louisiana Department of Civil Service.

WHEREFORE, petitioner, ROBERT EDWIN BURNS, prays that this Honorable Court deny Defendant's Special Motion to Strike and Defendant's alternative of Exception for No Cause of Action.

Respectfully Submitted,

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Certificate of Service:

I certify that a copy of the foregoing has been served upon counsel for all parties to this proceeding by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 2nd day of November 2011.
