

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

**GREEN GROUP HOLDINGS, LLC, a)
Georgia limited liability company and)
HOWLING COYOTE, LLC, a Georgia)
limited liability company,)**

PLAINTIFFS,)

VS.)

CIVIL ACTION NO.:

**MARY B. SCHAEFFER, ELLIS B.)
LONG, BENJAMIN EATON AND)
ESTHER CALHOUN, individually and)
as members and officers of BLACK)
BELT CITIZENS FIGHTING FOR)
HEALTH AND JUSTICE, an)
unincorporated association,)**

2:16-cv-00145-CG-N

DEFENDANTS.)

**PLAINTIFFS’ AND DEFENDANTS’ CONSOLIDATED
JOINT MOTION TO DISMISS CLAIMS WITH PREJUDICE**

COME NOW, Green Group Holdings, LLC, a Georgia limited liability company and Howling Coyote, LLC, a Georgia limited liability company (collectively “Plaintiffs”) on one hand, and Mary B. Schaeffer, Ellis B. Long, Benjamin Eaton and Esther Calhoun both individually and as members and officers of Black Belt Citizens Fighting for Health and Justice (collectively “Defendants”) and respectfully submit this Consolidated Joint Motion to Dismiss all Plaintiffs’ claims with Prejudice, and state as follows:

1. On April 6, 2016, Plaintiffs filed this action against Defendants. (Doc. 1)
2. On April 12, 2016, the Court ORDERED Plaintiffs to file an amended complaint containing a more specific allegation of the diversity of citizenship between Plaintiffs and Defendants (Doc. 8) and Plaintiffs complied by filing their amended complaint on April 22, 2016. (Doc. 10)
3. On June 2, 2016, Defendants filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6). (Doc.15)
4. The Defendants' Motion to Dismiss (Doc. 15) was fully briefed by the parties and on October 13, 2016, Hon. Katherine P. Nelson, United States Magistrate Judge, entered her Report and Recommendation that a portion of the Complaint be dismissed with prejudice and a portion of the Complaint be dismissed without prejudice with leave to file an amended complaint for the purpose of alleging additional facts sufficient to make a plausible showing of actual malice on the part of Defendants. (Doc. 41) Both parties thereafter filed their respective objections to the Magistrate Judge's Report and Recommendation. (Docs. 45 and 46)
5. The Parties thereafter began earnest settlement negotiations and have sought and received the Court's consent to extensions of briefing and filing deadlines to facilitate those negotiations (Docs. 47, 48, 49 and 50) and are now pleased to inform the Court that the parties have agreed to a settlement of all claims and executed a Settlement Agreement and Release.
6. As part of the settlement, the Plaintiffs and Defendants have agreed to stipulate to the dismissal of all Plaintiffs' claims (and the release of any available

counterclaims Defendants may have had for libel, slander, or malicious prosecution) under Fed.R.Civ.P. 41(a)(2), **with prejudice**. That settlement is attached to this Motion as Exhibit 1.

WHEREFORE, Plaintiffs and Defendants respectfully request that this Court enter an Order dismissing all claims, **with prejudice**, on the basis of the stipulations and agreements outlined above, with all parties to bear their own costs and attorney's fees.

RESPECTFULLY SUBMITTED this the 6th day of February, 2017.

//s// Lee Rowland
Lee Rowland
For Defendants

OF COUNSEL:

Lee Rowland
Dennis Parker
Rachel Goodman
Vera Eidelman
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

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11 Times Square
New York, NY 10036

Randall C. Marshall
ACLU Foundation of Alabama
P.O. Box 6179
Montgomery, AL 36106-0179

William M. Dawson
1736 Oxmoor Road
Birmingham, AL 35209

Matt Swerdlin
1736 Oxmoor Road
Birmingham, AL 35209

//s// Michael D. Smith (with permission)
Michael D. Smith (ASB-0052-H66M)
For Plaintiffs

OF COUNSEL:

SMITH & STAGGS, LLP
701 22nd Avenue, Suite 1
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Telephone: (205) 409-3140
Facsimile: (205) 409-3144
msmith@smithstaggs.com

Kirkland E Reid
JONES WALKER, LLP
11 N. Water Street, Suite 1200
Mobile, Alabama 36602
Telephone: (251) 439-7513
Facsimile: (251) 439-7358
kreid@joneswalker.com

Exhibit 1

STATE OF ALABAMA §
§
PERRY COUNTY §

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is effective as of February 10th, 2017, by and between Green Group Holdings, LLC, a Georgia limited liability company (“GGH”) and Howling Coyote, LLC, a Georgia limited liability company (“HC”) (collectively “Plaintiffs”) on one hand, and Mary B. Schaeffer, Ellis B. Long, Benjamin Eaton and Esther Calhoun both individually and as members and officers of Black Belt Citizens Fighting for Health and Justice (collectively “Defendants”), on the other hand (collectively, “the Parties”).

WHEREAS, on April 6, 2016, Plaintiffs filed suit against Defendants in the United States District Court for the Southern District of Alabama (Case No.: 16-cv-00145) alleging that Defendants had made statements regarding their business operations that were false, defamatory, misleading and constituted libel and slander that was damaging to Plaintiffs; and

WHEREAS, Defendants deny the claims made by Plaintiff and have themselves alleged, though they have not pled, that the statements made by them or at their direction were true and as a result that they have been the victim of false, defamatory, misleading statements made against them by Plaintiffs, that the Plaintiffs’ complaint constitutes a malicious prosecution or abuse of process and that they have been damaged; and

WHEREAS, the Parties now desire to resolve fully and finally any and all disputes between Plaintiffs and Defendants involving libel, slander, and malicious prosecution existing up to and including the date on which this Agreement is fully executed by the Parties;

The Parties hereby knowingly, willingly, voluntarily, freely, with the advice of counsel and without any coercion enter into and agree to the following Agreement:

1. In consideration of the provisions and requirements of this Agreement and the further sum of Zero and 01/100 DOLLARS (\$.01) in hand paid, the sufficiency of which is hereby acknowledged, Plaintiffs do hereby irrevocably and unconditionally release Defendants from any and all causes of action, demands or claims, known or unknown, accrued or unaccrued, arising out of or relating in any manner whatsoever to the alleged false, misleading, *inflammatory and libelous statements made, published, or allowed to be published by Defendants* concerning Plaintiffs and/or Arrowhead Landfill, including, but not limited to, any and all claims, known or unknown, accrued or unaccrued, arising out of or relating to any alleged injuries sustained by Plaintiffs as a result of the alleged false, misleading, inflammatory and libelous statements made, published, or allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill, which could have been asserted by Plaintiffs against the Defendants. This is a complete, final, full, absolute and unconditional release of any and all claims Plaintiffs have or may have against Defendants arising out of or relating in any manner whatsoever to the alleged false, misleading, inflammatory and libelous statements made,

Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

published, or allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill, up to and including the effective date of this Agreement.

2. In consideration of the provisions and requirements of this Agreement and the further sum of Zero and 01/100 DOLLARS (\$.01) in hand paid, the sufficiency of which is hereby acknowledged, Defendants do hereby irrevocably and unconditionally release Plaintiffs (and all of Plaintiffs' past and present officers, directors, employees, attorneys, and agents; successors, assigns, shareholders, members, owners and insurers; and all parent, subsidiary and affiliate corporations) from any and all libel, slander, and malicious prosecution claims arising out of or relating in any manner whatsoever to the claims brought against Defendants by Plaintiffs. This is a complete, final, full, absolute and unconditional release of any and all libel, slander, and malicious prosecution claims Defendants have or may have against Plaintiffs, arising out of or relating in any manner whatsoever to the alleged false, misleading, inflammatory and libelous statements made, published, or allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill, up to and including the effective date of this Agreement.

3. As a principal part of the consideration flowing between the parties under this Agreement, Plaintiffs and Defendants agree that:

- a) Plaintiffs and Defendants will each publish a joint statement in the form attached hereto as Exhibit A and made a part hereof by this reference.
- b) The Parties agree that the joint statement will be published, at a minimum, as follows:
 - in the Plaintiffs' community newsletter, including to all recipients who received any prior newsletter that included statements critical of Defendants;
 - on Plaintiffs' website(s) and Facebook page(s), and Arrowhead Landfill's website (currently <http://www.arrowheadlandfill.com/>) and Facebook page; Defendants (themselves or by or through their counsel) agree to publish or ensure publication on ACLU.org and the Black Belt Citizens Fighting for Health and Justice ("BBCFHJ") website and Facebook page;
 - by Plaintiffs' counsel reading the statement at public meetings of both the Uniontown City Council and the Perry County Commission within sixty (60) days of the effective date of this Agreement.
- c) Plaintiffs agree to make public (both on their website(s), currently <http://www.arrowheadlandfill.com/>, and by a physical public posting at Uniontown City Hall) a notice of any contract or agreement which has been entered into to take either: 1) waste allowable under their permit at Arrowhead Landfill for which the generator of such waste must prepare and submit an ADEM Form 300 for approval, or 2) any waste



Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

containing byproducts of coal combustion such as coal ash or gypsum, whether an ADEM Form 300 is required or not. The notice shall be posted within two business days of the execution of a contract or agreement to take such waste, but in no event less than 48 hours before receipt of such waste.

- d) Plaintiffs have installed a landfill final cover system that meets the current requirements of the Alabama Department of Environmental Management and the U.S. EPA for CCR waste landfills. This final cover system consists of a 6" thick vegetative support layer, an 18" thick protective soil/erosion layer, a geocomposite drainage layer, a 40 mil linear low density geomembrane material, a 12" thick infiltration layer, and a 12" thick layer of soil. The design currently in place over the closed CCR cells was approved by ADEM prior to its installation and is the same final cover system that will be used on all future CCR waste cells. See letter from Hodges, Harbin, Newberry & Tribble, Inc. dated February 1, 2017, attached hereto as Exhibit B and made a part hereof by this reference.

4. Should any Party to this Agreement bring suit seeking to enforce any provision of this Agreement or alleging a breach thereof, the prevailing Party or Parties shall be entitled to any and all court and litigation costs, including reasonable attorney's fees, incurred in enforcing this Agreement, bringing a lawsuit for breach of this Agreement or defending a lawsuit arising out of this Agreement.

5. The Parties hereby agree that this Agreement shall be construed as a product of negotiations at arms length between equally sophisticated persons advised by counsel and shall not be construed against any party.

6. This Agreement supersedes any and all other prior agreements, either in writing or oral, between the Parties with respect to the subject matter of this Agreement and any amendment or termination of this Agreement must be in writing and signed by all Parties to this Agreement.

7. If any part of this Agreement is found void or unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

8. This Agreement shall be interpreted, construed and enforced pursuant to the laws of the State of Alabama, without regard to Alabama's conflict of laws principle. Any action for breach of this Agreement shall be filed in Alabama.

9. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

SIGNATURE PAGES FOLLOW

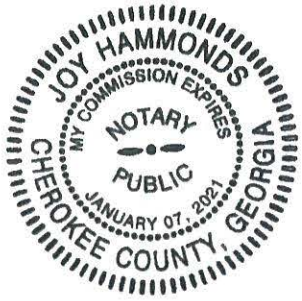
Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

STATE OF GEORGIA §
 § SS.
COUNTY OF Cherokee §

I, the undersigned, a notary public in and for the State of Georgia at Large, hereby certify that David Green, whose name as President of Howling Coyote, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such President and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand this 6th day of February, 2017.



Joy Hammonds
Notary Public
My Commission Expires: Jan. 7, 2021

Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

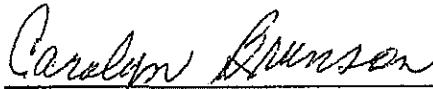
IN WITNESS WHEREOF, the undersigned has caused this Release and Settlement Agreement to be executed as of the date first written above.


Ellis B. Long

STATE OF ALABAMA §
 § ss.
COUNTY OF Leroy §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Ellis B. Long, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

GIVEN under my hand this 6 day of February, 2017.

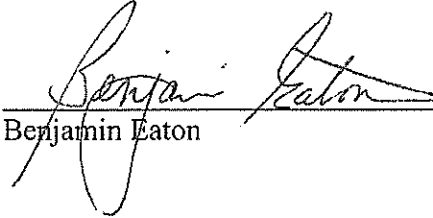


Notary Public My Commission Expires:
My Commission Expires: June 14, 2020

Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

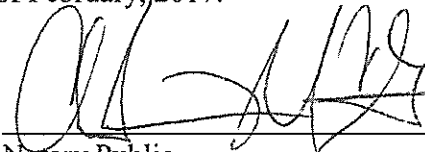
IN WITNESS WHEREOF, the undersigned has caused this Release and Settlement Agreement to be executed as of the date first written above.

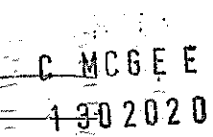

Benjamin Eaton

STATE OF ALABAMA §
 § ss.
COUNTY OF Perry §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Benjamin Eaton, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

GIVEN under my hand this 6 day of February, 2017.


Notary Public
My Commission Expires: JAN 30, 2020


C. MCGEE
1-30-2020

Release and Settlement Agreement

Green Group Holdings, LLC, et al. and Mary B. Schaeffer, et al.

IN WITNESS WHEREOF, the undersigned has caused this Release and Settlement Agreement to be executed as of the date first written above.

Esther Calhoun
Esther Calhoun

STATE OF ALABAMA §
 § ss.
COUNTY OF Perry §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Esther Calhoun, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

GIVEN under my hand this 6 day of February, 2017.

[Signature] C M S E E
Notary Public 0 0 2 0
My Commission Expires: JAN 30, 2020

Exhibit A

Joint Statement from the parties on the dismissal of the lawsuit *Green Group v. Schaeffer*

Green Group Holdings LLC and Howling Coyote LLC (“Green Group”), owners and operators of the Arrowhead Landfill in Uniontown, Alabama, and members of Black Belt Citizens Fighting for Health and Justice (“BBCFHJ”) announce that they have engaged in discussions which have led to the voluntary and permanent dismissal of the litigation filed by Green Group against members of BBCFHJ. Green Group has dismissed its claims with prejudice, and the defendants have foregone their right to bring counterclaims for libel, slander, or malicious prosecution.

BBCFHJ recognizes that Green Group has voluntarily withdrawn this lawsuit, and hopes this decision signals a new direction in the company’s approach to community relations. Green Group appreciates BBCFHJ’s devotion to its community and its members’ First Amendment right to engage in speech on matters of public concern, including the landfill’s operations in Uniontown. Green Group renews its commitments both to listening to community concerns arising from those operations and to abiding by all laws, including local ordinances, state law and state agency rules and regulations, and federal statutes, in its operation of Arrowhead Landfill.

Both Green Group and BBCFHJ are hopeful that, in the future, matters of concern to the community can be resolved through dialogue rather than lawsuits.



February 6, 2017



Joint Statement from the parties on the dismissal of the lawsuit

Green Group v. Schaeffer

Green Group Holdings LLC and Howling Coyote LLC (“Green Group”), owners and operators of the Arrowhead Landfill in Uniontown, Alabama, and members of Black Belt Citizens Fighting for Health and Justice (“BBCFHJ”) announce that they have engaged in discussions which have led to the voluntary and permanent dismissal of the litigation filed by Green Group against members of BBCFHJ. Green Group has dismissed its claims with prejudice, and the defendants have foregone their right to bring counterclaims for libel, slander, or malicious prosecution.

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Both Green Group and BBCFHJ are hopeful that, in the future, matters of concern to the community can be resolved through dialogue rather than lawsuits.

February 6, 2017

Joint Statement from the parties on the dismissal of the lawsuit
Green Group v. Schaeffer

A handwritten signature in black ink, appearing to be 'M. Schaeffer', is located in the upper right corner of the page.

Green Group Holdings LLC and Howling Coyote LLC (“Green Group”), owners and operators of the Arrowhead Landfill in Uniontown, Alabama, and members of Black Belt Citizens Fighting for Health and Justice (“BBCFHJ”) announce that they have engaged in discussions which have led to the voluntary and permanent dismissal of the litigation filed by Green Group against members of BBCFHJ. Green Group has dismissed its claims with prejudice, and the defendants have foregone their right to bring counterclaims for libel, slander, or malicious prosecution.

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Exhibit B



February 6, 2017

Michael D. Smith
Smith & Staggs, L.L.P.
701 22nd Avenue
Suite 1
Tuscaloosa, Alabama 35401

**Re: Arrowhead Landfill
Final Cover System
HHNT Project No. 3006-029-01**

Dear Mr. Smith:

The Arrowhead Landfill was permitted with a RCRA Subtitle D equivalent final cover system consisting of a 6" thick vegetative support layer, an 18" thick protective soil/erosion layer, a geocomposite drainage layer, a 40 mil linear low density geomembrane material, a 12" thick infiltration layer, and a 12" thick layer of soil. This landfill final cover system meets the requirements of the Alabama Department of Environmental Management and the U.S. EPA for CCR waste landfills. This final cover system is currently in place over several of the closed CCR cells and was approved by ADEM prior to its installation. It is the same final cover system which will be used on all future CCR waste cells.

Should you have any questions, please call.

Sincerely,

HODGES, HARBIN, NEWBERRY & TRIBBLE, INC.

A handwritten signature in blue ink, appearing to read "W. F. Hodges", is written over the typed name.

William F. Hodges, AL P.E. no. 16060, Retired
Professional Engineer

WFH/mo

A handwritten signature in blue ink, appearing to read "K. Berry", is written over the typed name.

Kevin Berry, AL P.E. no. 32951
Professional Engineer

