

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4                   Electronically Filed  
5                   Oct 14 2016 02:29 p.m.  
6                   Elizabeth A. Brown  
7                   Clerk of Supreme Court

8                   NEVADA RECYCLING AND  
9                   SALVAGE, LTD.; a Nevada Limited  
10                  Liability Company; AMCB, LLC, a  
11                  Nevada Limited Liability Company  
12                  d/b/a RUBBISH RUNNERS,

13                               Appellants,

14                               vs.

15                  RENO DISPOSAL COMPANY,  
16                  INC.; a Nevada corporation d/b/a  
17                  Waste Management; REFUSE, INC.; a  
18                  Nevada corporation; and WASTE  
19                  MANAGEMENT OF NEVADA,  
20                  INC., a Nevada corporation,

21                               Respondents

**Case No.: 71497**

                    District Court Case No. CV15-00497

22  
23                               **MOTION TO DISMISS**

24                  Respondents Reno Disposal Company, Inc. ("Reno Disposal"), Refuse, Inc.  
25                  ("Refuse") and Waste Management of Nevada, Inc. ("WM"), by and through their  
26                  counsel of Robison, Belaustegui, Sharp & Low, hereby move this Court for  
27                  dismissal of the current appeal pursuant to NRAP 3A(b). This motion is made and  
28

1 based upon the attached memorandum of points and authorities, and the pleadings  
2 and papers on file herein.

3 Dated this 16<sup>th</sup> day of October, 2016.

4  
5 ROBISON, BELAUSTEGUI, SHARP & LOW  
6 A Professional Corporation  
7 71 Washington Street  
8 Reno, Nevada 89503

9 BY: 

10 Mark G. Simons, Esq.

11 Nevada Bar No. 5132

12 Therese M. Shanks, Esq.

13 Nevada Bar No. 12890

14 Robinson, Belaustegui, Sharp & Low

15 71 Washington Street

16 Reno Nevada 89503

17 (775) 329-3151

18 *Attorneys for Respondents*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. APPELLANTS HAVE TAKEN THE POSITION BEFORE THE  
DISTRICT COURT THAT THE ORDER THEY HAVE APPEALED  
IS NOT A FINAL JUDGMENT.**

Currently pending before the District Court is the issue of whether the  
appealed order granting summary judgment in favor of Respondents is a final  
judgment as to WM. Appellants Nevada Recycling and Salvage, Ltd. ("NRS")  
and AMCB, LLC ("Rubbish Runners") contend that it is not, and that it only  
binds Reno Disposal and Refuse. They admit this fact to this Court in footnote 2

1 of their Notice of Appeal and Case Appeal Statements. **Exhibit 1**, n. 2 (Notice of  
2 Appeal); **Exhibit 2**, n.2 (Case Appeal Statement).

3  
4 NRS and Rubbish Runners are currently seeking to move forward with a  
5 trial against WM. *See* **Exhibit 3** (Motion to Amend Scheduling Order). NRS  
6 and Rubbish Runners contend that “the findings and conclusion in th[e District]  
7 Court’s order granting the Summary Judgments cannot apply with any force with  
8 regard to the claims against” WM. **Exhibit 4**, p. 6 (Reply in Support of Motion  
9 to Amend Scheduling Order). Their argument is based on the fact that WM  
10 moved to join Reno Disposal’s and Refuse’s motions for summary judgment, and  
11 the District Court did not expressly permit joinder prior to granting summary  
12 judgment in favor of Respondents. *See id.*

13  
14 To address the confusion, Respondents have now filed a motion for entry  
15 of final judgment as to WM in order to allow any proper appeal to proceed.  
16  
17 **Exhibit 5** (Motion for Entry of Final Judgment). Despite adopting the position  
18 before the District Court that the judgment is not final as to all parties, neither  
19 NRS nor Rubbish Runners sought certification under NRCP 54(b) before filing  
20 this current appeal. *See* **Exhibit 6**, ¶ 4 (Affidavit of Mark G. Simons, Esq.).  
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1 **II. NRS AND RUBBISH RUNNERS ARE REQUIRED TO SEEK**  
2 **CERTIFICATION UNDER NRCP 54(b) IN LIGHT OF THEIR**  
3 **FILINGS BEFORE THE DISTRICT COURT.**

4 A party may appeal any “final judgment” to this Court. NRAP 3A(b)(1).  
5 “To be final, an order or judgment must dispose of all the issues presented in the  
6 case, and leave nothing for the future consideration of the court, except for post-  
7 judgment issues such as attorney’s fees and costs.” Brown v. MHC Stagecoach,  
8 129 Nev. \_\_\_, \_\_\_, 301 P.3d 850, 851 (2013) (internal quotations omitted). An  
9 order “which adjudicates the rights and liabilities of fewer than all the parties shall  
10 not terminate the action as to any of parties” absent a certification from the District  
11 Court to enter “final judgment as to one or more” of the parties. NRCP 54(b).  
12

13 If NRS and Rubbish Runners truly believe that they have valid claims which  
14 remain pending against WM, they have an obligation to seek Rule 54(b)  
15 certification from the District Court before attempting to initiate an appeal to this  
16 Court. Accordingly, Respondents request that this appeal be dismissed.  
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1 **III. CONCLUSION.**

2 For the foregoing reasons, Respondents request that this Court dismiss  
3 NRS's and Rubbish Runner's appeal.  
4

5 Dated this 14<sup>th</sup> day of October, 2016.  
6

7 ROBISON, BELAUSTEGUI, SHARP & LOW  
8 A Professional Corporation  
9 71 Washington Street  
10 Reno, Nevada 89503

11 BY 

12 Mark G. Simons, Esq.

13 Nevada Bar No. \_\_\_\_\_

14 Therese M. Shanks, Esq.

15 Nevada Bar No. 12890

16 Robinson, Belaustegui, Sharp & Low

17 71 Washington Street

18 Reno Nevada 89503

19 (775) 329-3151

20 *Attorneys for Respondents*  
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**CERTIFICATE OF SERVICE**

I hereby certify pursuant to NRAP 25(c), that on the \_\_\_\_ day of October, 2016, I caused service of a true and correct copy of the above and foregoing **MOTION TO DISMISS** on all parties to this action by the method(s) indicated below:


X by using the Supreme Court Electronic Filing System:

Del Hardy, Esq.  
WINTER STREET LAW GROUP  
*Attorneys for Appellants*

X by personal delivery/hand delivery addressed to:

Del Hardy, Esq.  
Stephanie Rice, Esq.  
Richard Salvatore, Esq.  
WINTER STREET LAW GROUP  
96 Winter Street  
Reno, Nevada 89503  
*Attorneys for Appellants*

DATED this 14<sup>th</sup> day of October, 2016.

  
An employee of Robison, Belaustegui, Sharp & Low

## EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Notice of Appeal	11
2	Case Appeal Statement	14
3	Motion to Amend Scheduling Order	7
4	Reply in Support of Motion to Amend Scheduling Order	11
5	Motion for Entry of Final Judgment	9
6	Affidavit of Mark G. Simons	1

# EXHIBIT 1

# EXHIBIT 1

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CODE: \$2515  
STEPHANIE RICE, ESQ. (SBN 11627)  
DEL HARDY, ESQ. (SBN 1172)  
RICHARD A. SALVATORE, ESQ. (6809)  
WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Telephone: (775) 786-5800  
Fax: (775) 329-8282  
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a  
Nevada Limited Liability Company; and,  
AMCB, LLC, a Nevada Limited Liability  
Company doing business as RUBBISH  
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada  
Corporation doing business as WASTE  
MANAGEMENT; REFUSE, INC., a Nevada  
Corporation; WASTE MANAGEMENT OF  
NEVADA, INC., a Nevada Corporation; ABC  
CORPORATIONS, I through X; BLACK AND  
WHITE COMPANIES, I through X; and, JOHN  
DOES I through X, inclusive

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

JOINT NOTICE OF APPEAL<sup>1</sup>

Notice is hereby given that Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and  
AMCB, LLC doing business as RUBBISH RUNNERS, by and through their counsel, DEL HARDY,  
ESQ., STEPHANIE RICE, ESQ., RICHARD SALVATORE, ESQ. of WINTER STREET LAW GROUP,  
hereby jointly appeal to the Supreme Court of Nevada from the Order granting Summary

<sup>1</sup> Pursuant to NRAP 3(b)(1), all Plaintiffs, having joint interests herein, hereby respectfully jointly appeal the  
District Court's Order granting Summary Judgment Regarding Liability and Damages in favor of Defendants, RENO  
DISPOSAL COMPANY, INC. doing business as WASTE MANAGEMENT and REFUSE, Inc.

1 Judgment regarding both Liability and Damages in favor of Defendants,<sup>2</sup> and against all  
2 Plaintiffs, entered in this action on the 20<sup>th</sup> day of September, 2016.

3 DATED this 6<sup>th</sup> day of October, 2016.

4  
5   
6 STEPHANIE RICE, ESQ. (SBN 11627)  
7 Attorney for Plaintiffs  
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18 <sup>2</sup> Defendant, WASTE MANAGEMENT OF NEVADA, INC., was added as a party to this action on June 8,  
19 2016. Immediately after the filing of it's Answer, WASTE MANAGEMENT OF NEVADA, INC. filed  
20 Joinders in the other Defendants already pending Motions for Summary Judgment re: Liability and  
21 Damages. Plaintiffs opposed/objected to the Joinders, attaching an NRCP 56(f) Affidavit thereto seeking  
22 time for discovery, as no discovery had been conducted against the newly added Defendant, WASTE  
23 MANAGEMENT OF NEVADA, INC. Oral arguments were held on the Motions for Summary Judgment filed  
24 by the other Defendants on August 18, 2016 and the final Order thereon was entered on September 19,  
25 2016. At no time did the Court address or rule on WASTE MANAGEMENT OF NEVADA, INC.'s Joinders  
26 and there has been no Order joining it in the other Defendants' Summary Judgment Motions to date.  
27 The final Order entering Summary Judgment on liability and damages entered herein is not clear as to  
28 whether it applies to all Defendants or only the moving Defendants, RENO DISPOSAL COMPANY, INC.  
and REFUSE, INC. The Order itself refers to "Defendants'" Motions for Summary Judgment and further  
names all Defendants, including WASTE MANAGEMENT OF NEVADA, INC., and makes the designation all  
Defendants are "collectively referred to as 'Waste Management' and/or 'Defendants' " therein. See,  
Order, attached hereto at Exhibit 1. There is currently a Motion pending before the Court which should  
provide such clarification; however, in order to preserve Plaintiffs' appeal rights and in the abundance  
of caution, Plaintiffs hereby file this Notice of Appeal and include all Defendants, unless and until such  
time as the Court rules on the Motion pending before it regarding WASTE MANAGEMENT OF NEVADA,  
INC.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **NOTICE OF APPEAL** on all parties to this action by:

✓ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

       Personal Delivery

       Facsimile (FAX) and/or Email:

       Federal Express or other overnight delivery

       Messenger Service

       Certified Mail with Return Receipt Requested

       Electronically filed

addressed as follows:

Mark Simons, Esq.  
Scott Hernandez, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, Nevada 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 17 day of October, 2016

  
AN EMPLOYEE OF WINTER STREET LAW GROUP

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IN THE SECOND JUDICIAL DISTRICT COURT

NEVADA RECYCLING AND SALVAGE, et al

V.

RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

JOINT NOTICE OF APPEAL

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Order from August 18, 2016 Hearing	7

FILED  
Electronically  
CV15-00497  
2016-10-06 03:21:05 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5744767 : yviloria

EXHIBIT "1"

EXHIBIT "1"

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND  
SALVAGE, LTD,

Case No.: CV15-00497

Dept. No.: 7

Plaintiff,

vs.

RENO DISPOSAL COMPANY, INC.,  
a Nevada corporation doing business  
as WASTE MANAGEMENT, et. al.

Defendants.

ORDER

This matter came on for hearing on August 18, 2016, on the Defendants' Second Motion for Summary Judgment re: Liability and the Defendants' Motion for Summary Judgment re: Damages. Mark G. Simons, Esq. and Therese M. Shanks, Esq. of the law firm of Robison, Belaustegui, Sharp & Low appeared on behalf of Defendants Reno Disposal Company, Inc. ("Reno Disposal"), Refuse, Inc. ("Refuse"), and Waste Management of Nevada, Inc. ("WMON") (hereinafter collectively referred to as "Waste Management" and/or "Defendants"). Stephanie Rice, Esq. and Richard A. Salvatore, Esq. of Winter Street Law Group appeared on behalf of Plaintiffs Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR") (collectively the "Plaintiffs" unless otherwise specified).

The Court has considered the motions, the oppositions thereto and the replies,

1 all papers submitted in connection with such briefing, and the arguments of counsel  
2 at the time of the hearing. In rendering its decision, the Court considered that in  
3 evaluating the Plaintiffs' claim of anti-competitive behavior, state trial courts are  
4 directed to look to the federal courts for guidance in these cases and this Court has  
5 looked to the United States Supreme Court decisions where applicable. See NRS  
6 598A.050 ("The provisions of this chapter shall be construed in harmony with  
7 prevailing judicial interpretations of the federal antitrust statutes.").

8 Based upon the Court's analysis, the undisputed facts and the unambiguous  
9 language of the franchise agreements incorporated by reference herein, and for good  
10 cause the Court GRANTS both motions for summary judgment for the following  
11 reasons and on the following grounds:

12 1. This case involves a dispute over franchise agreements, plural, for the  
13 collection of solid waste and recyclable materials granted by the City of Reno to Reno  
14 Disposal and to Castaway Trash Hauling ("Castaway") back in 2012.

15 2. After the original franchise agreements were signed by the City of Reno,  
16 Castaway assigned its rights it held under its own franchise agreement with the City  
17 of Reno to Reno Disposal. And as a result, Reno Disposal now has an exclusive right,  
18 a monopoly, to provide commercial waste disposal and collection of recyclable  
19 materials for the entire City of Reno.

20 3. Plaintiffs in this case are two trash disposal and recycling companies  
21 who do business in the City of Reno. Plaintiffs originally asserted seven causes of  
22 action. The Defendants filed a motion to dismiss the Plaintiffs' claims and this Court,  
23 after arguments and briefing on the issues presented, entered an order dismissing all  
24 of the Plaintiffs' other causes of action leaving Plaintiffs only with this claim for  
25 unfair trade practices.

26 4. The Plaintiffs' remaining contention in this case is that the Defendants  
27 hid their plan to consolidate the franchise agreements from the City, and that if their  
28 true intentions were known, the Reno City Council would never have assented to

1 terms of the franchise agreements in the first place. The Plaintiffs contend that this  
2 conduct violates the Nevada Unfair Trade Practices Act.

3 5. Before the Court are Defendants' motions for summary judgment on  
4 liability and damages. Summary judgment is proper if the pleadings and all other  
5 evidence on file demonstrates that no genuine issue of material fact exists and that  
6 the moving party is entitled to judgment as a matter of law.

7 6. When the Court decides a motion for summary judgment, it must view  
8 all other evidence in the light most favorable to the nonmoving party. General  
9 allegations and conclusory statements do not create a genuine issue of law.

10 7. The Defendants' essential argument is that the assignment of the  
11 franchise agreement to Reno Disposal was done pursuant to express contractual  
12 provisions contained in the franchise agreements, and such action was expressly  
13 authorized and approved by the City of Reno.

14 8. The Defendants claim and the Plaintiffs concede the following: that the  
15 franchise agreements are valid and unambiguous contracts; that the City of Reno was  
16 authorized to enter into the franchise agreements; that the franchise agreements  
17 expressly contemplated the consolidation of the two franchises into a single franchise;  
18 that the franchise agreements expressly preapproved Reno Disposal acquiring  
19 Castaway's franchise rights without further City of Reno approval; and that the City  
20 of Reno expressly approved Reno Disposal's acquisition of Castaway's franchise rights  
21 thereby establishing a single franchise situation.

22 9. Central to the Plaintiffs' case is the argument that the agreement  
23 between Castaway and Reno Disposal several months before the public hearings  
24 constituted a criminal conspiracy. This Court can find no evidence to support that  
25 characterization.

26 10. Looking to the United States Supreme Court in Eastern Railroad  
27 President's Conference v. Noerr Motor Freight, 365 U.S. 127, 135 (1961) (rehearing  
28 denied 365 U.S. 875), Justice Hugo Black stated:



1 We accept as the starting point for our consideration of the case the same  
2 basic construction of the Sherman Antitrust Act adopted by the courts below  
3 that no violation of the act can be predicated upon mere attempts to influence  
4 the passage or enforcement of laws. It has been recognized at least since the  
5 landmark decision of this Court in Standard Oil Company of New Jersey v.  
6 United States, that the Sherman Act forbids only those trade restraints and  
7 monopolizations that are created or attempted by the acts of individuals or  
8 combination of individuals or corporations. Accordingly, it has been held that  
9 where a restraint upon trade or monopolization is the result of valid  
10 government action, as opposed to private action, no violation of the act can be  
11 made out.

12 Further in the Noerr decision, Justice Black states: "we think it equally clear  
13 that the Sherman Act does not prohibit two or more persons from associating together  
14 in an attempt to persuade the legislature or the executive", which in this case was  
15 the City of Reno "to take particular action with respect to a law that would produce a  
16 restraint or a monopoly." Id. at 136.

17 11. The Nevada Revised Statutes clearly contemplate the safe harbor  
18 described in the Noerr decision. NRS 598A.040(3)(b) says that the provisions of this  
19 chapter do not apply to conduct which is expressly authorized, regulated, or approved  
20 by an ordinance of any city or county of this state.

21 12. The Court finds that the franchise agreement entered into by the City  
22 of Reno and Reno Disposal in this case is valid, unambiguous, and enforceable.

23 13. The Court finds that this contract, although it limits competition in the  
24 waste disposal industry, is a valid exercise of a proper government power and is  
25 specifically exempted from antitrust supervision and antitrust application.

26 14. Further, the Defendants' conduct is exempt from liability because it  
27 involves a political and not business conduct under the Noerr Doctrine discussed  
28 above.

15. In terms of damages, the Defendants argue that the Plaintiffs lack standing to assert their claim, because they were not qualified to service a franchise zone, that they never sought to be considered by the City of Reno to serve as a franchise zone, and that the City of Reno determined that they were not qualified waste haulers.

16. The Court finds that pursuant to NRS 598A.040(3) the Plaintiffs have not sustained any injury and the Plaintiffs have not alleged an antitrust injury sufficient to confer standing to prove any claim under NRS 598A.060.

IT IS SO ORDERED.

DATED this 19 day of September, 2016.

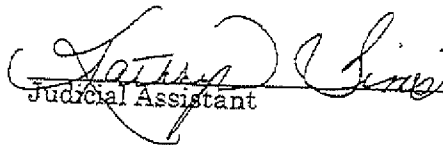
Patrick Flanagan  
PATRICK FLANAGAN  
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of September, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Stephanie Rice, Esq., attorney for Nevada Recycling and Salvage, Ltd., and AMCB, LLC.; and

Mark G. Simons, Esq., attorney for Reno Disposal Company, Inc., Refuse, Inc., and Waste Management of Nevada, Inc.

  
Judicial Assistant

# EXHIBIT 2

# EXHIBIT 2

---

1 CODE: 1310  
2 STEPHANIE RICE, ESQ. (SBN 11627)  
3 DEL HARDY, ESQ. (SBN 1172)  
4 RICHARD A. SALVATORE, ESQ. (6809)  
5 WINTER STREET LAW GROUP  
6 96 & 98 Winter Street  
7 Reno, Nevada 89503  
8 Telephone: (775) 786-5800  
9 Fax: (775) 329-8282  
10 Attorneys for Plaintiffs

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a  
Nevada Limited Liability Company; and,  
AMCB, LLC, a Nevada Limited Liability  
Company doing business as RUBBISH  
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada  
Corporation doing business as WASTE  
MANAGEMENT; REFUSE, INC., a Nevada  
Corporation; WASTE MANAGEMENT OF  
NEVADA, INC., a Nevada Corporation; ABC  
CORPORATIONS, I through X; BLACK AND  
WHITE COMPANIES, I through X; and, JOHN  
DOES I through X, inclusive

Defendants.

JOINT CASE APPEAL STATEMENT<sup>1</sup>

COMES NOW, Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC doing  
business as RUBBISH RUNNERS, by and through their attorneys, STEPHANIE RICE, ESQ., DEL  
HARDY, ESQ. and RICHARD A. SALVATORE, ESQ., of WINTER STREET LAW GROUP, hereby  
respectfully submits this Joint Case Appeal Statement as follows:

<sup>1</sup> Pursuant to NRAP 3(b)(1), all Plaintiffs, having joint interests herein, hereby respectfully jointly appeal the  
District Court's Order granting Summary Judgment Regarding Liability and Damages in favor of Defendants, RENO  
DISPOSAL COMPANY, INC. doing business as WASTE MANAGEMENT and REFUSE, Inc.

1 **1. Name of appellant(s) filing this case appeal statement:**

2 NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC doing business as  
3 RUBBISH RUNNERS

4 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

5 The Honorable Judge Patrick Flanagan

6 **3. Identify each appellant and the name and address of counsel for each appellant:**

7 Joint Appellants Herein: NEVADA RECYCLING AND SALVAGE, LTD., and  
8 AMCB, LLC doing business as RUBBISH RUNNERS

9 Counsel Name & Address: DEL HARDY, ESQ.  
10 STEPHANIE RICE, ESQ.  
11 RICHARD SALVATORE, ESQ.  
12 WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Attorneys for Joint Appellants

13 **4. Identify each respondent and the name and address of appellate counsel, if**  
14 **known, for each respondent (if the name of a respondent's appellate counsel is**  
15 **unknown, indicate as much and provide the name and address of that**  
16 **respondent's trial counsel):**

17 Respondents Herein: RENO DISPOSAL COMPANY, INC. doing business as  
18 WASTE MANAGEMENT; REFUSE, INC.; and WASTE  
19 MANAGEMENT OF NEVADA, INC.<sup>2</sup>

20 <sup>2</sup> Defendant, WASTE MANAGEMENT OF NEVADA, INC., was added as a party to this action on June 8,  
21 2016. Immediately after the filing of its Answer, WASTE MANAGEMENT OF NEVADA, INC. filed Joinders  
22 in the other Defendants already pending Motions for Summary Judgment re: Liability and Damages.  
23 Plaintiffs opposed/objected to the Joinders, attaching an NRCP 56(f) Affidavit thereto seeking time for  
24 discovery, as no discovery had been conducted against the newly added Defendant, WASTE  
25 MANAGEMENT OF NEVADA, INC. Oral arguments were held on the Motions for Summary Judgment filed  
26 by the other Defendants on August 18, 2016 and the final Order thereon was entered on September 19,  
27 2016. At no time did the Court address or rule on WASTE MANAGEMENT OF NEVADA, INC.'s Joinders  
28 and there has been no Order joining it in the other Defendants' Summary Judgment Motions to date.  
The final Order entering Summary Judgment on liability and damages entered herein is not clear as to  
whether it applies to all Defendants or only the moving Defendants, RENO DISPOSAL COMPANY, INC.  
and REFUSE, INC. The Order itself refers to "Defendants'" Motions for Summary Judgment and further  
names all Defendants, including WASTE MANAGEMENT OF NEVADA, INC., and makes the designation all  
Defendants are "collectively referred to as 'Waste Management' and/or 'Defendants' " therein. See,  
Order, attached hereto at Exhibit 1. There is currently a Motion pending before the Court which should

Cont. Answer to Question 4 above:

Appellate Counsel: Unknown

Respondents' Trial Counsel: MARK SIMONS, ESQ.  
SCOTT HERNANDEZ, ESQ.  
THERESE M. SHANKS, ESQ.  
ROBISON, BELAUSTEGUI, SHARP AND LOW  
71 Washington Street  
Reno, Nevada 89503  
Trial Counsel for Above-Named Respondents

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:

At all times herein, all attorneys identified in response to questions 3 and 4 above are believed to be licensed to practice law in Nevada. There was no grant of permission to appear under SCR 42 granted by the District Court in this matter.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Joint Appellants herein were represented by retained counsel in the District Court.

7. Whether appellant is represented by appointed or retained counsel on appeal:

Joint Appellants herein are represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A, no appellant was granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

Plaintiffs filed the Complaint on March 18, 2015.

provide such clarification; however, in order to preserve Plaintiffs' appeal rights and in the abundance of caution, Plaintiffs hereby file this Case Appeal Statement and include all Defendants, unless and until such time as the Court rules on the Motion pending before it regarding WASTE MANAGEMENT OF NEVADA, INC.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case arises from Defendants' anticompetitive scheme and course of conduct in conspiring with non-party Castaway Trash Hauling, whereby, among other things, Defendants and non-party, Castaway Trash Hauling, colluded to combine and effectuate a secret acquisition, the explicit purpose and intent of which was to create a monopoly and unlawfully exclude Plaintiff-competitors from the market. In doing so, Defendants have utilized this anticompetitive scheme to foreclose competition, to unlawfully gain a monopolistic competitive advantage, and to destroy Plaintiff-competitors, all in violation of Nevada's Unfair Trade Practice Act. ("NUTPA").

The Honorable Judge Flanagan granted Summary Judgment regarding Liability and Damages in favor of Defendants<sup>3</sup> and against Plaintiffs and an Order was entered thereon on September 19, 2016, with a Notice of Entry of Order filed September 20, 2016. Plaintiffs appeal the Order granting Summary Judgment regarding liability and damages herein.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not previously been the subject of an appeal or original writ proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

---

<sup>3</sup> Plaintiffs believe that the Order granting Summary Judgment regarding liability and damages entered herein on September 19, 2016, does not apply to Defendant, WASTE MANAGEMENT OF NEVADA, INC. However, due to the facts that: 1. Defendants herein believe the September 19, 2016 Order applies to all Defendants; 2. The Order is not clear as to which Defendants it applies to; and, 3. There is a pending Motion before the Court which should clarify this matter, but has not yet been ruled on; in the abundance of caution, Plaintiffs file the instant Joint Case Appeal Statement as to all Defendants. See, also Footnote 2 herein.



1 13. If this is a civil case, indicate whether this appeal involves the possibility of  
2 settlement:

3 While the undersigned is always hopeful that the possibility of settlement exists  
4 in all matters, in light of the contentious nature of this action, the realistic  
5 possibility of settlement in this case is unlikely, but always available for  
6 consideration.

7 DATED this 6<sup>th</sup> day of October, 2016.

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10 STEPHANIE RICE, ESQ. (SBN 11627)  
11 Attorney for Plaintiffs  
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
document(s) described as **CASE APPEAL STATEMENT** on all parties to this action by:

☒ Placing an original or true copy thereof in a sealed envelope placed for collection  
and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
ordinary business practices.

☐ Personal Delivery

☐ Facsimile (FAX) and/or Email:

☐ Federal Express or other overnight delivery

☐ Messenger Service

☐ Certified Mail with Return Receipt Requested

☐ Electronically filed


addressed as follows:

Mark Simons, Esq.  
Scott Hernandez, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, Nevada 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
document and attached exhibits, if any, do not contain the Social Security Number of any  
person.

DATED this 16<sup>th</sup> day of October, 2016.

  
AN EMPLOYEE OF WINTER STREET LAW GROUP



FILED  
Electronically  
CV15-00497  
2016-10-06 03:23:16 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5745390 : rkwaikir

EXHIBIT "1"

EXHIBIT "1"

---

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND  
SALVAGE, LTD,

Case No.: CV15-00497

Dept. No.: 7

Plaintiff,

vs.

RENO DISPOSAL COMPANY, INC.,  
a Nevada corporation doing business  
as WASTE MANAGEMENT, et. al.

Defendants.

ORDER

This matter came on for hearing on August 18, 2016, on the Defendants' Second Motion for Summary Judgment re: Liability and the Defendants' Motion for Summary Judgment re: Damages. Mark G. Simons, Esq. and Therese M. Shanks, Esq. of the law firm of Robison, Belaustegui, Sharp & Low appeared on behalf of Defendants Reno Disposal Company, Inc. ("Reno Disposal"), Refuse, Inc. ("Refuse"), and Waste Management of Nevada, Inc. ("WMON") (hereinafter collectively referred to as "Waste Management" and/or "Defendants"). Stephanie Rice, Esq. and Richard A. Salvatore, Esq. of Winter Street Law Group appeared on behalf of Plaintiffs Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR") (collectively the "Plaintiffs" unless otherwise specified).

The Court has considered the motions, the oppositions thereto and the replies,

1 all papers submitted in connection with such briefing, and the arguments of counsel  
2 at the time of the hearing. In rendering its decision, the Court considered that in  
3 evaluating the Plaintiffs' claim of anti-competitive behavior, state trial courts are  
4 directed to look to the federal courts for guidance in these cases and this Court has  
5 looked to the United States Supreme Court decisions where applicable. See NRS  
6 598A.050 ("The provisions of this chapter shall be construed in harmony with  
7 prevailing judicial interpretations of the federal antitrust statutes.").

8 Based upon the Court's analysis, the undisputed facts and the unambiguous  
9 language of the franchise agreements incorporated by reference herein, and for good  
10 cause the Court GRANTS both motions for summary judgment for the following  
11 reasons and on the following grounds:

12 1. This case involves a dispute over franchise agreements, plural, for the  
13 collection of solid waste and recyclable materials granted by the City of Reno to Reno  
14 Disposal and to Castaway Trash Hauling ("Castaway") back in 2012.

15 2. After the original franchise agreements were signed by the City of Reno,  
16 Castaway assigned its rights it held under its own franchise agreement with the City  
17 of Reno to Reno Disposal. And as a result, Reno Disposal now has an exclusive right,  
18 a monopoly, to provide commercial waste disposal and collection of recyclable  
19 materials for the entire City of Reno.

20 3. Plaintiffs in this case are two trash disposal and recycling companies  
21 who do business in the City of Reno. Plaintiffs originally asserted seven causes of  
22 action. The Defendants filed a motion to dismiss the Plaintiffs' claims and this Court,  
23 after arguments and briefing on the issues presented, entered an order dismissing all  
24 of the Plaintiffs' other causes of action leaving Plaintiffs only with this claim for  
25 unfair trade practices.

26 4. The Plaintiffs' remaining contention in this case is that the Defendants  
27 hid their plan to consolidate the franchise agreements from the City, and that if their  
28 true intentions were known, the Reno City Council would never have assented to

1 terms of the franchise agreements in the first place. The Plaintiffs contend that this  
2 conduct violates the Nevada Unfair Trade Practices Act.

3 5. Before the Court are Defendants' motions for summary judgment on  
4 liability and damages. Summary judgment is proper if the pleadings and all other  
5 evidence on file demonstrates that no genuine issue of material fact exists and that  
6 the moving party is entitled to judgment as a matter of law.

7 6. When the Court decides a motion for summary judgment, it must view  
8 all other evidence in the light most favorable to the nonmoving party. General  
9 allegations and conclusory statements do not create a genuine issue of law.

10 7. The Defendants' essential argument is that the assignment of the  
11 franchise agreement to Reno Disposal was done pursuant to express contractual  
12 provisions contained in the franchise agreements, and such action was expressly  
13 authorized and approved by the City of Reno.

14 8. The Defendants claim and the Plaintiffs concede the following: that the  
15 franchise agreements are valid and unambiguous contracts; that the City of Reno was  
16 authorized to enter into the franchise agreements; that the franchise agreements  
17 expressly contemplated the consolidation of the two franchises into a single franchise;  
18 that the franchise agreements expressly preapproved Reno Disposal acquiring  
19 Castaway's franchise rights without further City of Reno approval; and that the City  
20 of Reno expressly approved Reno Disposal's acquisition of Castaway's franchise rights  
21 thereby establishing a single franchise situation.

22 9. Central to the Plaintiffs' case is the argument that the agreement  
23 between Castaway and Reno Disposal several months before the public hearings  
24 constituted a criminal conspiracy. This Court can find no evidence to support that  
25 characterization.

26 10. Looking to the United States Supreme Court in Eastern Railroad  
27 President's Conference v. Noerr Motor Freight, 365 U.S. 127, 135 (1961) (rehearing  
28 denied 365 U.S. 875), Justice Hugo Black stated:

1 We accept as the starting point for our consideration of the case the same  
2 basic construction of the Sherman Antitrust Act adopted by the courts below  
3 that no violation of the act can be predicated upon mere attempts to influence  
4 the passage or enforcement of laws. It has been recognized at least since the  
5 landmark decision of this Court in Standard Oil Company of New Jersey v.  
6 United States, that the Sherman Act forbids only those trade restraints and  
7 monopolizations that are created or attempted by the acts of individuals or  
8 combination of individuals or corporations. Accordingly, it has been held that  
9 where a restraint upon trade or monopolization is the result of valid  
10 government action, as opposed to private action, no violation of the act can be  
11 made out.

12 Further in the Noerr decision, Justice Black states: "we think it equally clear  
13 that the Sherman Act does not prohibit two or more persons from associating together  
14 in an attempt to persuade the legislature or the executive", which in this case was  
15 the City of Reno "to take particular action with respect to a law that would produce a  
16 restraint or a monopoly." Id. at 136.

17 11. The Nevada Revised Statutes clearly contemplate the safe harbor  
18 described in the Noerr decision. NRS 598A.040(3)(b) says that the provisions of this  
19 chapter do not apply to conduct which is expressly authorized, regulated, or approved  
20 by an ordinance of any city or county of this state.

21 12. The Court finds that the franchise agreement entered into by the City  
22 of Reno and Reno Disposal in this case is valid, unambiguous, and enforceable.

23 13. The Court finds that this contract, although it limits competition in the  
24 waste disposal industry, is a valid exercise of a proper government power and is  
25 specifically exempted from antitrust supervision and antitrust application.

26 14. Further, the Defendants' conduct is exempt from liability because it  
27 involves a political and not business conduct under the Noerr Doctrine discussed  
28 above.



15. In terms of damages, the Defendants argue that the Plaintiffs lack standing to assert their claim, because they were not qualified to service a franchise zone, that they never sought to be considered by the City of Reno to serve as a franchise zone, and that the City of Reno determined that they were not qualified waste haulers.

16. The Court finds that pursuant to NRS 598A.040(3) the Plaintiffs have not sustained any injury and the Plaintiffs have not alleged an antitrust injury sufficient to confer standing to prove any claim under NRS 598A.060.

IT IS SO ORDERED.

DATED this 19 day of September, 2016.

Patrick Flanagan  
PATRICK FLANAGAN  
District Judge

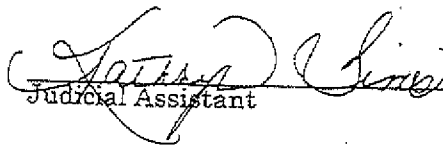
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of September, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Stephanie Rice, Esq., attorney for Nevada Recycling and Salvage, Ltd., and AMCB, LLC; and

Mark G. Simons, Esq., attorney for Reno Disposal Company, Inc., Refuse, Inc., and Waste Management of Nevada, Inc.

  
Judicial Assistant

# EXHIBIT 3

# EXHIBIT 3

---

CODE: 2380  
STEPHANIE RICE, ESQ. (SBN 11627)  
DEL HARDY, ESQ. (SBN 1172)  
RICHARD A. SALVATORE, ESQ. (6809)  
WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Telephone: (775) 786-5800  
Fax: (775) 329-8282  
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a  
Nevada Limited Liability Company; and,  
AMCB, LLC, a Nevada Limited Liability  
Company doing business as RUBBISH  
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada  
Corporation doing business as WASTE  
MANAGEMENT; REFUSE, INC., a Nevada  
Corporation; WASTE MANAGEMENT OF  
NEVADA, INC., a Nevada Corporation; ABC  
CORPORATIONS, I though X; BLACK AND  
WHITE COMPANIES, I through X; and, JOHN  
DOES I through X, inclusive

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

**MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER**

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ., DEL HARDY, ESQ. and  
RICHARD A. SALVATORE, ESQ., of WINTER STREET LAW GROUP, hereby respectfully request  
that this Court issue an Amended Scheduling Order herein to address the addition of.

This Motion is supported by the attached Memorandum of Points and Authorities, the  
papers and pleadings on file and any other matters this Court may wish to consider.

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1 Prior to the August 18, 2016 Oral Arguments (and to date), this Court has not entered an  
2 Order granting NVWM's Joinder in Reno Disposal and Refuse's Motion(s) for Summary  
3 Judgment, nor were arguments heard regarding such Joinder at the August 18, 2016 oral  
4 arguments. To be clear, this Court's August 18, 2016 oral order, granting summary judgment  
5 against Plaintiffs does not and cannot apply to NVWM, because the court never ordered NVWM  
6 joined in those motions. Accordingly, this Court has not yet addressed Plaintiffs' NRCP 56(f)  
7 request for the opportunity to do discovery, set forth in Plaintiffs' Joint Opposition to NVWM's  
8 Joinders. Thus, NVWM was not a party to the Summary Judgment Motions heard and decided  
9 on August 18, 2016. Further, as the partial records disclosed by Defendants herein reflect, it  
10 was NVWM who negotiated, formed the plan and ultimately purchased Castaway, not Reno  
11 Disposal. See, WM002078 attached to Plaintiffs' Motion to Amend at Exhibit 3. As such, this  
12 Court's holding as to Reno Disposal and Refuse's Motions for Summary Judgment that the  
13 provisions of NRS 598A.040 and the assignment allowed by the Franchise Agreements, simply  
14 cannot also apply to NVWM because NVWM was not an approved contractor thereunder and  
15 thus, NVWM cannot claim protection from such.

16 On August 18, 2016, this Court heard oral arguments on Reno Disposal and Refuse's  
17 Motions for Summary Judgment Re: Liability and Damages, which concluded with this Court  
18 issuing a ruling from the bench granting both Motions, leaving the only remaining Defendant in  
19 this action as NVWM.

20 As such and due to the facts that, NVWM had only been a party in this action for less  
21 than sixty (60) days prior to this Court granting Defendants' Motion to Stay Discovery and  
22 because this Court has not yet ruled on Plaintiffs' pending Motion to Compel, Plaintiffs  
23 respectfully request that this Court issue and Amended Scheduling Order herein to adjust the  
24 time frames and deadlines set forth therein as a result of NVWM's recent addition to this case.

## 25 **II. ARGUMENT**

### 26 **a. Legal Standard**

27 Any party may petition the Court for an extension of discovery deadlines where good  
28

1 cause exists. District Court Rule 17(1) provides, that as long as long as all opposing parties are  
2 given notice and an opportunity to object, this Court may grant a Motion to extend the time to  
3 do any act, here adjust and extend the Scheduling Order.

4 Plaintiffs herein are entitled to seek and obtain relevant information from recently  
5 added Defendant NVWM that Plaintiff believes is reasonably calculated to lead to the discovery  
6 of admissible evidence. The information that has been diligently sought by Plaintiffs for over  
7 eleven (11) months from Reno Disposal and Refuse and still not received, despite this Court's  
8 previous Order to produce it, is not only also relevant to the issues surrounding the remaining  
9 claims against Defendant NVWM herein, it will provide critical information as to the extent of  
10 NVWM's involvement in the unfair trade practice claims alleged by Plaintiffs.

11 The discovery deadline in this case is currently set for September 12, 2016, however,  
12 due to NVWM just being added to this action in mid-June, in combination with this Court's  
13 August 2, 2016 granting of Defendants' Motion to Stay Discovery and this Court's failure to rule  
14 on Plaintiffs' pending Motion to Compel, Plaintiffs have not been provided any opportunity to  
15 do discovery with respect to NVWM.<sup>1</sup>

16 In light of this Court's position that the trial date currently set to commence December  
17 12, 2016 of this year, will not be moved, Plaintiffs' respectfully request that an Amended  
18 Scheduling Order be issued reflecting slight adjustments as follows:

19 **Proposed Expedited Schedule for Completing Discovery:**

- 20 • Discovery Cut-Off to be extended to November 1, 2016;  
21 • Submission of Dispositive Motions unchanged- on or before November 11, 2016;  
22 and,  
23 • Submission of Motions in Limine unchanged- on or before November 26, 2016.

24  
25 <sup>1</sup> However, this is not due to a lack of diligence on Plaintiffs' part. To the contrary, Plaintiffs have spent extensive  
26 time trying to get Defendants to produce the records and documents this Court Ordered them to produce back on  
27 March 23, 2016, ultimately filing a Motion to Compel; Plaintiffs have issued a Deposition Subpoena, which was  
28 stayed by this Court; Plaintiffs have attempted to get Defendants to work with them to set additional Depositions;  
and, Plaintiffs have even inquired into matters regarding NVWM during Depositions that were already scheduled  
at the time this Court granted Plaintiffs' Motion for Leave to Amend to Add NVWM as a party- however, all such  
efforts by Plaintiffs were met with slamming doors by the Defendants.

1 Making just a minor adjustment to extend the Discovery Cut-Off would allow for an  
2 expedited discovery schedule, while also ensuring that the December trial date will not be  
3 continued, as this Court has expressed is its intent.

4 **III. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully requests that this Court issue an Amended  
6 Scheduling Order as set forth herein.

7 DATED this 17<sup>th</sup> day of September, 2016.

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10 STEPHANIE RICE, ESQ. (SBN 11627)  
11 *Attorney for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
document(s) described as **MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER** on  
all parties to this action by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection  
and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
ordinary business practices.

\_\_\_\_\_ Personal Delivery

\_\_\_\_\_ Facsimile (FAX): and/or Email:

\_\_\_\_\_ Federal Express or other overnight delivery

X \_\_\_\_\_ Messenger Service

\_\_\_\_\_ Certified Mail with Return Receipt Requested

X \_\_\_\_\_ Electronically filed

addressed as follows:

Mark Simons, Esq.  
Scott Hernandez, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, Nevada 89503

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
document and attached exhibits, if any, do not contain the Social Security Number of any  
person.

DATED this 12<sup>th</sup> day of September, 2016.

  
AN EMPLOYEE OF WINTER STREET LAW GROUP

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 **CATHY RYLE**  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 13-12001-2 - Expires October 22, 2017

# EXHIBIT 4

# EXHIBIT 4

---

CODE: 3795  
STEPHANIE RICE, ESQ. (SBN 11627)  
DEL HARDY, ESQ. (SBN 1172)  
RICHARD A. SALVATORE, ESQ. (6809)  
WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Telephone: (775) 786-5800  
Fax: (775) 329-8282  
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a  
Nevada Limited Liability Company; and,  
AMCB, LLC, a Nevada Limited Liability  
Company doing business as RUBBISH  
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada  
Corporation doing business as WASTE  
MANAGEMENT; REFUSE, INC., a Nevada  
Corporation; WASTE MANAGEMENT OF  
NEVADA, INC., a Nevada Corporation; ABC  
CORPORATIONS, I through X; BLACK AND  
WHITE COMPANIES, I through X; and, JOHN  
DOES I through X, inclusive

Defendants.

**REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER**

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ., DEL HARDY, ESQ. and  
RICHARD A. SALVATORE, ESQ., of WINTER STREET LAW GROUP, hereby respectfully request  
that this Court issue an Amended Scheduling Order herein to address the remaining claims  
against WASTE MANAGEMENT OF NEVADA, INC.

This Reply is supported by the attached Memorandum of Points and Authorities, the  
papers and pleadings on file and any other matters this Court may wish to consider.

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION AND PROCEDURAL HISTORY**

4 Waste Management of Nevada, Inc. ("NVWM") appeared for the very first time in this  
5 case on June 15, 2016, after being joined as a party on June 8, 2016. The day after NVWM made  
6 its first appearance in this case and after Plaintiffs had already filed their respective  
7 Oppositions to Reno Disposal Company and Refuse, Inc.'s Motions for Summary Judgment re:  
8 Liability and Damages, which were filed prior to NVWM becoming a party to this action.  
9 Literally the day after its first appearance in this case, NVWM filed Joinders in Reno Disposal  
10 Company and Refuse, Inc.'s Motions for Summary Judgment, which Plaintiffs timely opposed  
11 and ultimately submitted to this Court for decision.

12 This court never ruled on NVWM's Joinders, addressed Plaintiffs' respective Oppositions  
13 thereto, or ordered NVWM joined in the Summary Judgment Motions.

14 In short, NVWM moved to join in Reno Disposal Company and Refuse, Inc.'s previously  
15 filed Motions for Summary Judgment on liability and damages; Plaintiffs opposed such Joinders,  
16 and this court never entered an Order thereon or actually joined NVWM in Reno Disposal  
17 Company and Refuse, Inc.'s Motions for Summary Judgment. As such, this Motion for Amended  
18 Scheduling Order is both appropriate and necessary to move this case along.

19 On June 8, 2016, Plaintiffs filed their Second Amended Complaint. NVWM maintain  
20 Plaintiffs' only remaining claim is that "Defendants 'hid their plan to consolidate the franchise  
21 agreements from the City, and that if their true intentions were known, the Reno City Council  
22 would never have assented to the terms of the franchise agreements in the first place.' " *Opp. to*  
23 *Mot. for Amended Scheduling Order*, 2:15-19. While this statement is repeated in the Court's  
24 Order granting Reno Disposal Company and Refuse, Inc.'s Motions for Summary Judgment,  
25 Plaintiffs' Second Amended Complaint speaks for itself; and, Plaintiffs' Second Amended  
26 Complaint does not, in anyway whatsoever, limit the Unfair Trade Practices/Conspiracy to  
27 Restrain Trade claims to the above assertion.<sup>1</sup>

28 <sup>1</sup> For the record, this Court, over Plaintiffs' Objection, entered the [Proposed] Order granting Reno Disposal

1 Furthermore, just because the court rejected claims against Reno Disposal and Refuse,  
2 Inc., for Unfair Trade Practices/Conspiracy to Restrain Trade, does not mean the identical  
3 claims against NVWM should be dismissed, as they occupy different legal positions, as set forth  
4 below.

5 **II. AN AMENDED SCHEDULING ORDER IS WARRANTED.**

6 With respect to Plaintiffs' remaining claims for Unfair Trade Practices/Conspiracy to  
7 Restrain Trade, those claims were dismissed by this Court with respect to Reno Disposal and  
8 Refuse, Inc., on the basis of the *Noerr* Doctrine. In short, this court held that NRS  
9 598A.040(3)(b) precluded the claims against Reno Disposal, because the City was authorized to  
10 act to create a monopoly, that Reno Disposal was a party to one of the franchise agreements,  
11 and that the language of the franchise agreements with the City of Reno allowed Castaway to  
12 assign its franchise rights to Reno Disposal. See, *Order Granting Reno Disposal and Refuse, Inc.'s*  
13 *Mots. for Sum. Judgment*, 3:14-21; 4:17-28.

14 The same legal theory and analysis simply does not and cannot apply to NVWM. For  
15 example, in basing its decision on the *Noerr* Doctrine, in its Order granting Summary Judgment,  
16 this Court held, Reno Disposal and Refuse, Inc.'s "conduct is exempt from liability because it  
17 involves political and not business conduct under the *Noerr* Doctrine ..." 4:26-28. Clearly such  
18 holding, cannot apply to NVWM.

19 As the court is fully aware, NVWM was the entity who purchased Castaway and was the  
20 only purchasing party to the Asset Purchase Agreement with Castaway. NVWM was never a  
21 party to any Franchise Agreement and, unlike Reno Disposal and Refuse, Inc., the City of Reno  
22 never granted NVWM any franchise or exclusive disposal rights whatsoever. This factual  
23 difference changes the legal analysis. Just because the Court found no actionable improper  
24 conduct as to Reno Disposal and Refuse, Inc., does not mean that the same conduct is not  
25 actionable against a party that did not engage in political conduct and was not a party to either  
26

27 Company and Refuse, Inc.'s Motion(s) for Summary Judgment that was drafted and submitted by Defendants.  
28

1 Franchise Agreements with the City of Reno.<sup>2</sup> In addition, despite the fact that such statement  
2 was set forth in this Court's Order granting the Summary Judgments, NVWM's contention that  
3 "the Court found the Plaintiffs' claims failed because the Plaintiffs could not even state a valid  
4 claim because they had no injury and couldn't allege an antitrust injury" Opp., 3:19-21; this  
5 statement is completely contradicts this Court's finding in it's Order granting in part and  
6 denying in part, then Defendants' Reno Disposal and Refuse, Inc.'s Motion to Dismiss where this  
7 Court held as follows:

8 As for the Plaintiffs' UTPA claim based upon the Defendants' alleged  
9 collusion with Castaway, these allegations are subject to the heightened  
10 pleading requirements of NRCF 9(b).

11 As for these collusion claims, the Plaintiffs successfully pleaded the who,  
12 what, when, where, and how of such activities. The Plaintiffs alleged the  
13 collusion claims with the requisite specificity so as to survive a motion to  
14 dismiss.

15 The Plaintiffs' sole legal basis for their UTPA claim is set forth in NRS  
16 598A.060(1)(e) and (f), which specifically prohibit those actions which  
17 result in a monopolization of trade or commerce in the State of Nevada or a  
18 consolidation of business interests which would result in a monopolization  
19 or substantially lessen competition or be in restraint of trade. The  
20 Amended Complaint sufficiently alleges such an action on the part of Waste  
21 Management.

22 Defendants are correct that actions which are sanctioned by a municipality  
23 are exempted from the unfair trade practices liability. See NRS  
24 598A.040(3)(b). *However, as alleged in the Amended Complaint, and*  
25 *which must be accepted as true at this stage, the City of Reno originally*  
26 *intended to grant franchises to two separate entities, not one.*  
27 *Moreover, pursuant to the Plaintiffs' allegations, the consolidation of*  
28 *Castaway's franchise with Waste Managements' franchised service in*  
*the Reno area was not subject to approval by the City of Reno and,*  
*therefore results in a violation of the UTPA.*

21 [Emphasis Added]. Order on Mot. to Dismiss, 10:6-27. Of relevant note, NVWM, who again was  
22 not a party to any franchise agreement and thus, not protected by any safe harbor assertion  
23 that the City approved the transaction where NVWM purchased Castaway, because the City  
24

25  
26 <sup>2</sup> While NVWM asserts in it's Opposition herein, relying in part on Plaintiffs' Second Amended Complaint, that  
27 "Plaintiffs claim was based upon the contention that WMN participated in 'lobbying' the City to issue franchise  
28 agreements;" it is important to note that in it's Answer to the Second Amended Complaint, NVWM denied all such  
allegations. [Emphasis Added]. Opp. at 3:5-7; See also, Answer to Second Amended Complaint, 3:5.

1 unequivocally did not, NVWM was not even a party to this action at that time.<sup>3</sup>

2 In sum, with respect to NVWM's opposing arguments seeking to deny this Motion, the  
3 fact that there was no actionable conduct by Defendants Reno Disposal and Refuse, Inc. in  
4 conspiring with Castaway to create a monopoly, does not mean that NVWM did not  
5 independently commit a cognizable claim under Nevada's Unfair Trade Practices/Conspiracy to  
6 Restrain Trade statutes by conspiring with Castaway to create a monopoly. This Court held  
7 Reno Disposal was not liable for conspiring with Castaway to create a monopoly; this Court has  
8 not and cannot find the same with respect to the allegations that NVWM conspired with  
9 Castaway to create a monopoly.

10 Since NVWM was not a party to either Franchise Agreement, NVWM cannot gain the  
11 benefit of the safe harbor provisions contained in NRS 598A.040(3)(b), because NVWM's  
12 activity was not expressly authorized, regulated, or approved by any ordinance of the city or  
13 state. In fact, it could not be, because it was never party to any franchise agreement, nor was it a  
14 permissible assignee under the Franchise Agreements. See, *Second Amended Complaint*, at  
15 Exhibit 3. That is a distinction which makes a substantial difference, and this Court never  
16 implicitly or explicitly ruled on this issue. Plaintiffs believe the Court did not rule on this issue,  
17 because it was never properly before this Court, as the Court never ordered joinder of NVWM  
18 to the other Defendants' then pending Motions for Summary Judgment.

### 19 III. CONCLUSION

20 Furthermore, Defendants continue to misidentify the issues presented by Plaintiff.  
21 While NVWM contends that "this case is essentially over"(*Opp.* 5:2); to the contrary and as  
22 reflected in the electronic docket of this case, this case is still "pending active" and both the Pre-  
23 Trial Conference as well as the Jury Trial set in this matter are still on calendar and reflect that  
24 the "Outcome [thereof] is Pending." See, "Exhibit 1," attached hereto. In addition and again  
25 although NVWM appear to attempt to muddy the waters herein by arguing that NVWM "could

26  
27 <sup>3</sup> As this Court is aware, at that time, Reno Disposal Company, Inc. was interchangeably referred to as "Waste  
28 Management," as Reno Disposal Company also has a dba for "Waste Management;" however, such reference at that  
time was not one in the same as then non-party, NVWM. Answer, 2:25-27.



1 not wrongly conspire with the other Defendants to do something the franchise agreements  
2 expressly contemplated . . ." (*Opp.* 5:3-5), that is not the issue herein. While there can be no  
3 collusion between NVWM and any of the other subsidiary Defendants, that does not preclude a  
4 claim between Plaintiffs against NVWM for collusion with or a conspiracy between NVWM and  
5 Castaway. Even assuming *arguendo*, NVWM cannot have liability on an alter ego theory of  
6 liability (which has been denied by NVWM in their Answer herein), NVWM can be responsible  
7 for a conspiracy directly with Castaway.

8 In conclusion, the findings and conclusions in this Court's Order granting the Summary  
9 judgments cannot apply with any force with regard to the claims against NVWM. In fact, no  
10 discovery has been conducted against NVWM, and could not be conducted, as Plaintiffs' Second  
11 Amended Complaint adding NVWM was filed literally days before NVWM filed the subject  
12 Joinders. Plaintiffs timely opposed those Joinders, asserting that Plaintiffs did not have any  
13 chance to do discovery with respect to NVWM and seeking denial of the Joinders based on  
14 NRCP 56(f) and applicable case precedent thereunder holding, a party defending against a  
15 summary judgment motion should be given reasonable opportunity to complete discovery and  
16 show, if it can, that there is a genuine issue of material fact.<sup>4</sup>

17 Based on the foregoing, Plaintiff respectfully requests that this Court immediately issue  
18 an Amended Scheduling Order as set forth herein.

19 DATED this 23<sup>rd</sup> day of September, 2016.

20  
21   
22 STEPHANIE RICE, ESQ. (SBN 11627)  
23 Attorney for Plaintiffs

24 <sup>4</sup> See also, *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of the Fort Peck Reservation*, 323 F.3d 767,  
25 773-74 (9th Cir. 2003); *Aviation Ventures*, 121 Nev. at 118-19, 110 P.3d at 63; *Summerfield v. Coca Cola Bottling Co.*,  
113 Nev. 1291, 1293, 948 P.2d 704, 705 (1997); *Atwell v. Southwest Sec.*, 107 Nev. 820, 820 P.2d 766 (1991);  
26 *Ameritrade, Inc. v. First Interstate Bank of Nev.*, 105 Nev. 696, 782 P.2d 1318 (1989); *Halimi v. Blacketer*, 105 Nev.  
105, 770 P.2d 531 (1989); *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *Collins v. Union*  
27 *Federal Savings & Loan Assn.*, 99 Nev. 284, 662 P.2d 610 (1983); *Ottenheimer v. Real Estate Div. of Nev. Dept. of*  
28 *Commerce*, 91 Nev. 338, 535 P.2d 1284 (1975).

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
document(s) described as **REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING**  
**ORDER** on all parties to this action by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection  
and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
ordinary business practices.

\_\_\_\_\_ Personal Delivery

\_\_\_\_\_ Facsimile (FAX); and/or Email:

\_\_\_\_\_ Federal Express or other overnight delivery

X \_\_\_\_\_ Messenger Service

\_\_\_\_\_ Certified Mail with Return Receipt Requested

\_\_\_\_\_ Electronically filed

addressed as follows:

Mark Simons, Esq.  
Scott Hernandez, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, Nevada 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
document and attached exhibits, if any, do not contain the Social Security Number of any  
person.

DATED this 29<sup>th</sup> day of September, 2016.

  
AN EMPLOYEE OF WINTER STREET LAW GROUP

1                                    **AFFIDAVIT OF STEPHANIE RICE, ESQ.**

2            I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions  
3 are true of my own personal knowledge:

4            1.        That I am an attorney licensed to practice law in the State of Nevada;

5            2.        That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND  
6 SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second  
7 Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;

8            3.        That I have read and reviewed the foregoing **REPLY TO OPPOSITION TO**  
9 **MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER** and know the contents thereof;

10           4.        Based upon information and belief, I affirm that the Exhibit attached to such  
11 foregoing **REPLY TO OPPOSITION TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING**  
12 **ORDER**, above-mentioned, namely Exhibit 1, is a true and correct copy of such documents; and,

13           5.        That the same is true of my knowledge except as to those matters therein stated  
14 upon information and belief, and as to those matters I believe them to be true.

15  
16           FURTHER YOUR AFFIANT SAYETH NAUGHT.

17  
18           Dated this 29<sup>th</sup> day September, 2016.

19  
20             
21           STEPHANIE RICE

22  
23           SUBSCRIBED and SWORN TO before me  
24 this 29<sup>th</sup> day of September, 2016.

25             
26           NOTARY PUBLIC



1 IN THE SECOND JUDICIAL DISTRICT COURT

2 NEVADA RECYCLING AND SALVAGE, et al

3 V.

4 RENO DISPOSAL COMPANY, INC. et al

5 CASE NO. CV15-00497

6 REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER

7 EXHIBIT INDEX

8

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EXHIBIT #	DESCRIPTION	LENGTH
1	Electronic Docket	2

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CV15-00497  
2016-09-29 08:47:36 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5731890 : tbritor

# EXHIBIT 1

EXHIBIT "1"

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**Case Information**

Case Description: CV15-00497 - NEV RECYCLING ET AL VS RENO DISPOSAL ET AL (D7)  
 Filing Date: 18-Mar-2015  
 Case Type: GC - OTHER CIVIL MATTERS  
 Status: Pending Active

**Case Cross Reference**

Cross Reference Number

**Case Parties (top)**

Seq	Type	Name
7	JUDG - Judge	FLANAGAN, PATRICK
8	PLTF - Plaintiff	NEVADA RECYCLING AND SALVAGE LTD.,
9	PLTF - Plaintiff	AMCB, LLC DBA RUBBISH RUNNERS,
10	ATTY - Attorney	Hardy, Esq., Del L.
11	ATTY - Attorney	Rice, Esq., Stephanie
12	DEFT - Defendant	RENO DISPOSAL COMPANY, INC DBA WASTE MANAGEMENT,
13	DEFT - Defendant	REFUSE, INC.,
14	ATTY - Attorney	Simons, Esq., Mark G.
15	ATTY - Attorney	Hernandez, Esq., Scott L.
19	ATTY - Attorney	Hart, Esq., Leslie Bryan
21	ATTY - Attorney	Shanks, Esq., Therese M.
22	DEFT - Defendant	WASTE MANAGEMENT OF NEVADA, INC.,

**Event****Information**(top)

Date/Time	Hearing Judge	Event Description	Outcome
1. 12-Dec-2016 at 09:30	Honorable PATRICK FLANAGAN	H852 - TRIAL - JURY	Outcome is Pending
2. 29-Nov-2016 at 13:15	Honorable PATRICK FLANAGAN	H756 - PRE-TRIAL CONFERENCE	Outcome is Pending
3. 18-Aug-2016 at 09:00	Honorable PATRICK FLANAGAN	H640 - ORAL ARGUMENTS	D425 - Granted filed on: 18-Aug-2016 Extra Text: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT - GRANTED COUNSEL SIMONS TO PREPARE AND SUBMIT THE PROPOSED ORDER
4. 02-Aug-2016 at 13:30	Honorable PATRICK FLANAGAN	H564 - HEARING...	D425 - Granted filed on: 02-Aug-2016 Extra Text: MOTION FOR PROTECTIVE ORDER AS TO THE SHIPMAN DEPOSITION - GRANTED COURT WILL ISSUE WRITTEN ORDER AS TO THE MOTION TO COMPEL
5. 27-Jul-2016 at 13:47	Honorable DISCOVERY WESLEY AYRES	S3 - Request for Submission	S200 - Request for Submission Complet filed on: 18-Aug-2016 Extra Text: 08.18.16 - DEFENDANT'S MSJ GRANTED - ks
6. 27-Jul-2016 at 13:40	Honorable PATRICK FLANAGAN	S2 - Request for Submission	S200 - Request for Submission Complet filed on: 18-Aug-2016 Extra Text: 08.18.16 - DEFENDANT'S MSJ GRANTED - ks
7. 27-Jul-2016 at 13:38	Honorable PATRICK FLANAGAN	S1 - Request for Submission	S200 - Request for Submission Complet filed on: 18-Aug-2016 Extra Text: 08.18.16 - DEFENDANT'S MSJ GRANTED - ks
8. 25-Jul-2016 at 16:12	Honorable PATRICK FLANAGAN	S3 - Request for Submission	S200 - Request for Submission Complet filed on: 18-Aug-2016 Extra Text: 08.18.16 - DEFENDANT'S MSJ GRANTED - ks

Notice: This is NOT an Official Court Record

# EXHIBIT 5

# EXHIBIT 5

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1 **2490**

2 Mark G. Simons, Esq., NSB No. 5132  
3 Therese M. Shanks, Esq., NSB No. 12890  
4 ROBISON, BELAUSTEGUI, SHARP & LOW  
5 71 Washington Street  
6 Reno, Nevada 89503  
7 Telephone: (775) 329-3151  
8 Facsimile: (775) 329-7169  
9 Email: [msimons@rbsllaw.com](mailto:msimons@rbsllaw.com) and  
10 [tshanks@rbsllaw.com](mailto:tshanks@rbsllaw.com)

11 *Attorneys for Defendants*

12 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**

14 NEVADA RECYCLING AND SALVAGE,  
15 LTD., a Nevada Limited Liability  
16 Company; and AMCB, LLC, a Nevada  
17 Limited Liability Company dba RUBBISH  
18 RUNNERS,

**CASE NO.: CV15-00497**

**DEPT. NO.: 7**

19 Plaintiffs,

20 vs.

21 RENO DISPOSAL COMPANY, INC., a  
22 Nevada Corporation doing business as  
23 WASTE MANAGEMENT; REFUSE, INC.,  
24 a Nevada Corporation; WASTE  
25 MANAGEMENT OF NEVADA, INC., a  
26 Nevada Corporation, ABC  
27 CORPORATIONS, I through X; BLACK  
28 AND WHITE COMPANIES, I through X;  
and JOHN DOES I through X, inclusive,

Defendants.

**MOTION FOR ENTRY OF FINAL JUDGMENT**


Defendants Reno Disposal Company, Inc. ("Reno Disposal"), Refuse, Inc.



1 ("Refuse") and Waste Management of Nevada, Inc. ("WMON"),<sup>1</sup> by and through their  
2 counsel Robison, Belaustegui, Sharp & Low, hereby move this Court for entry of final  
3 judgment in this case.

4 DATED this 7<sup>th</sup> day of October, 2016.

5  
6 ROBISON, BELAUSTEGUI, SHARP & LOW  
7 A Professional Corporation  
8 71 Washington Street  
9 Reno, Nevada 89503

10   
11 MARK G. SIMONS  
12 THERESE M. SHANKS  
13 *Attorneys for Defendants*

14  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BASIS FOR MOTION.**

On September 19, 2016, the Court entered summary judgment on the summary judgments filed by Reno Disposal and Refuse ("Summary Judgment Order"). While WMON had previously filed joinders in those motions, the Court did not issue an order granting WMON's joinder. However, the Summary Judgment Order can be interpreted to impliedly apply to any claim against WMON.

Plaintiffs have taken the position that they still have viable claims against WMON upon which they can proceed to trial. See e.g., Plaintiffs' Motion to Amend Scheduling Order. Plaintiffs then take the exact opposite position and file a Notice of Appeal of the Court's Summary Judgment Order even though it is not a final order pursuant to NRCP 54.

WMON has taken the position that even though its joinders were not specifically

---

<sup>1</sup> These parties will be collectively referred to as "Defendants," unless individually identified herein.

1 granted, the legal effect of the Court's Summary Judgment Order bars any claims  
2 against WMON and no trial is necessary. Further, WMON had anticipated that the  
3 Court would be granting the joinder motions even though the Court has not yet issued  
4 its orders on the joinder given the appearance that the Summary Judgment Order  
5 resolved all claims in the litigation. WMON anticipates that the Court will enter an order  
6 addressing the parties' respective positions and/or granting WMON's joinder motions,  
7 which will then formally terminate the claims against WMON.

9 **II. REQUEST FOR ENTRY OF FINAL JUDGMENT.**

10 Pursuant to NRCP 54, and this Court's Summary Judgment Order entered  
11 September 19, 2016, the Defendants request that the Court enter final judgment in  
12 favor of the Defendants. Since the Court has not technically entered an order granting  
13 WMON's joinder in the motions for summary judgment, there is technically not a final  
14 judgment pursuant to NRCP 54(a). The Defendant's seek entry of judgment by this  
15 Court granting WMON's joinder *nun pro tunc*. In addition, Defendants request that the  
16 Court's Judgment include an award to the Defendants of their attorneys' fees and costs.  
17 Defendants concurrently file their Motion for Attorneys' Fees and Costs and their  
18 Memorandum of Costs in support of the foregoing request.

21 **III. EFFECT OF ENTRY OF FINAL JUDGMENT AS REQUESTED.**

22 Given the confusion generated by competing interpretations and the legal effect  
23 of this Court's Summary Judgment Order, the Defendants request that this Court enter  
24 an order *nun pro tunc* granting WMON's joinders in the prior motions for summary  
25 judgment, which motions were resolved by this Court's September 19, 2016, order.

27 Upon the Court granting this Motion and entering final judgment in conformance  
28 with NRCP 54, the Plaintiffs will therefore be in a position to properly effectuate and  
appeal any order of this Court. Further, the appeal would include the Court's decision

1 on the Defendants' request for fees and costs, which will allow for a simple and  
2 straightforward appeal to take place. The Defendants attach a form of Judgment  
3 hereto as Exhibit 1.

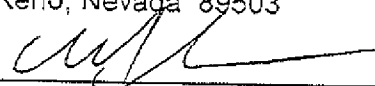
4  
5 **IV. CONCLUSION.**

6 It is requested that the Court enter final Judgment in this case, which judgment  
7 will confirm judgment on the Plaintiffs' claims against WMON, and will include an award  
8 of attorney's fees and costs in favor of Defendants. After entry of the Judgment,  
9 Plaintiffs will then be in a position to initiate any appeal should they so desire.

10 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document  
11 does not contain the social security number of any person.

12  
13 DATED this 7<sup>th</sup> day of October, 2016.

14 ROBISON, BELAUSTEGUI, SHARP & LOW  
15 A Professional Corporation  
16 71 Washington Street  
17 Reno, Nevada 89503

18   
19 MARK G. SIMONS  
20 THERESE M. SHANKS  
21 Attorneys for Defendants

22  
23  
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27  
28  
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the MOTION FOR ENTRY OF FINAL JUDGMENT on all parties to this action by the method(s) indicated below:

\_\_\_\_\_ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

X by using the Court's CM/ECF Electronic Notification System:

Del Hardy, Esq.  
Stephanie Rice, Esq.  
Richard Salvatore, Esq.  
WINTER STREET LAW GROUP  
*Attorneys for Plaintiffs*

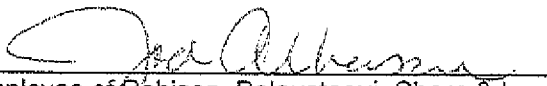
X by personal delivery/hand delivery addressed to:

Del Hardy, Esq.  
Stephanie Rice, Esq.  
Richard Salvatore, Esq.  
WINTER STREET LAW GROUP  
96 Winter Street  
Reno, Nevada 89503  
*Attorneys for Plaintiffs*

\_\_\_\_\_ by facsimile (fax) addressed to:

\_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 17<sup>th</sup> day of October, 2016.

  
Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Judgment	2

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Jacqueline Bryant  
Clerk of the Court  
Transaction # 5747127 : tbritor

# EXHIBIT 1

# EXHIBIT 1

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1 1880  
2 Mark G. Simons, Esq., NSB No. 5132  
3 Therese M. Shanks, Esq., NSB No. 12890  
4 ROBISON, BELAUSTEGUI, SHARP & LOW  
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10 [tshanks@rbsllaw.com](mailto:tshanks@rbsllaw.com)

11 *Attorneys for Defendants*

12  
13 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA  
14 IN AND FOR THE COUNTY OF WASHOE  
15

16 NEVADA RECYCLING AND SALVAGE,  
17 LTD., a Nevada Limited Liability  
18 Company; and AMCB, LLC, a Nevada  
19 Limited Liability Company dba RUBBISH  
20 RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

21 Plaintiffs,

22 vs.

23 RENO DISPOSAL COMPANY, INC., a  
24 Nevada Corporation doing business as  
25 WASTE MANAGEMENT; REFUSE, INC.,  
26 a Nevada Corporation; WASTE  
27 MANAGEMENT OF NEVADA, INC., a  
28 Nevada Corporation, ABC  
CORPORATIONS, I through X; BLACK  
AND WHITE COMPANIES, I through X;  
and JOHN DOES I through X, inclusive,

Defendants.

FINAL JUDGMENT

On September 19, 2016, this Court entered its Order Granting the following  
summary judgment motions filed by Defendants Reno Disposal Company, Inc. ("Reno  
Disposal") and Refuse, Inc. ("Refuse"): Defendants' Second Motion for Summary

1 Judgment re: Liability and Defendants' Motion for Summary Judgment re: Damages.  
2 Waste Management of Nevada, Inc. ("WMON") had sought joining in the foregoing  
3 motions, however such joinder was not recognized by the Court in a formal order.  
4 Defendants subsequently filed their Motion for Entry of Final Judgment, Motion for  
5 Attorney's Fees and Costs and Memorandum of Costs. Based upon the foregoing, the  
6 Court hereby enters judgment in favor of the Defendants, and each of them, as follows:  
7

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
9 entered in favor of Reno Disposal, Refuse and WMON and against Plaintiffs Nevada  
10 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("Rubbish  
11 Runners") as follows:  
12

13 1. Final Judgment is rendered in favor of Reno Disposal, Refuse and  
14 WMON on all of NRS's and RR's claims;

15 2. Reno Disposal, Refuse and WMON are awarded judgment against  
16 NRS and Rubbish Runners jointly and severally for their attorneys' fees in the amount  
17 of \$\_\_\_\_\_, and costs in the amount of \$\_\_\_\_\_, and, of said amounts,  
18 judgment jointly and severally against Stephanie Rice, Esq. for attorneys' fees in the  
19 amount of \$\_\_\_\_\_. Interest shall accrue from the date of entry of Judgment on  
20 the foregoing amounts at the legal rate of interest until paid in full.  
21

22 DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.  
23  
24

25 \_\_\_\_\_  
DISTRICT COURT JUDGE  
26  
27  
28



**EXHIBIT 6**

**EXHIBIT 6**

---

**AFFIDAVIT OF MARK G. SIMONS, ESQ.**  
**IN SUPPORT OF MOTION TO DISMISS**

STATE OF NEVADA    )  
                                  )ss.  
COUNTY OF WASHOE)

I, Mark G. Simons, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in Nevada and am counsel representing Respondents in this matter. I am a shareholder with the law firm of Robison, Belaustegui, Sharp & Low.


2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.

3. I submit this affidavit in support of Respondents' Motion to Dismiss ("Motion"), to which this affidavit is attached as Exhibit 6.

4. Despite adopting the position before the District Court that the judgment is not final as to all parties, neither NRS nor Rubbish Runners sought certification under NRCP 54(b) before filing this current appeal.

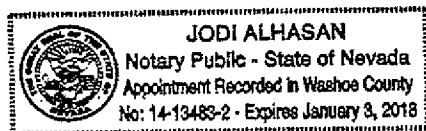
FURTHER AFFIANT SAYTETH NAUGHT.

Dated this 14<sup>th</sup> day of October, 2016.

  
MARK G. SIMONS

Subscribed and sworn to before me  
on this 14<sup>th</sup> day of September, 2016 by  
Mark G. Simons at Reno, Nevada.

  
NOTARY PUBLIC



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