

EXHIBIT “2”

EXHIBIT “2”

1 CODE: 2630  
2 STEPHANIE RICE, ESQ. (SBN 11627)  
3 RICHARD A. SALVATORE, ESQ. (SBN 6809)  
4 DEL HARDY, ESQ. (SBN 1172)  
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 Plaintiff

11  
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**  
14

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

20 Plaintiffs,

21 vs.

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

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

29  
30 **PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL**  
31 **COMPANY AND REFUSE INC'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND**  
32 **DAMAGES; AND PLAINTIFFS' PROPOSED ORDER**

33 Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD, a Nevada Limited Liability  
34 Company and, AMCB, LLC, a Nevada Limited Liability Company, doing business as RUBBISH  
35 RUNNERS, by and through their undersigned counsel of record, Stephanie Rice, Esq. and  
36 Richard A. Salvatore, Esq. of Winter Street Law Group, and hereby files this objection and  
37  
38

1 proposed order.

2 This Objection is made and supported by the attached Memorandum of Points and  
3 Authorities, the papers and pleadings on file and any other such matters this Court may wish to  
4 consider.

5  
6 

7 STEPHANIE RICE, ESQ. (SBN 11627)  
8 RICHARD SALVATORE, ESQ. (SBN 6809)  
9 WINTER STREET LAW GROUP  
10 96 & 98 Winter Street  
11 Reno, Nevada 89503  
12 (775) 786-5800  
13 Attorneys for Plaintiffs  
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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. RELEVANT PROCEDURAL HISTORY**

- 5 • On April 15, 2016, Plaintiffs filed their Motion to Amend Complaint to add Waste  
6 Management of Nevada, Inc. as a party;
- 7 • On May 2, 2016, Defendants filed their Opposition to Plaintiffs' Motion to Amend  
8 Complaint;
- 9 • On May 9, 2016, Plaintiffs filed their Reply to Opposition to Plaintiffs' Motion to  
10 Amend Complaint and submitted the matter to this Court for decision;
- 11 • On May 10, 2016, Reno Disposal Company and Refuse Inc. filed Defendants' Second  
12 Motion for Summary Judgment Re: Liability;
- 13 • On May 11, 2016, Reno Disposal Company and Refuse Inc. filed a third Motion for  
14 Summary Judgment Re: Damages;
- 15 • On May 25, 2016, Plaintiffs filed their Opposition to Reno Disposal Company and  
16 Refuse, Inc.'s Motion for Summary Judgment Re: Damages;
- 17 • On June 2, 2016, Reno Disposal Company and Refuse, Inc. filed their Reply to  
18 Opposition to Defendants' Motion for Summary Judgment Re: Damages and  
19 submitted the matter to this Court for decision;
- 20 • On June 7, 2016, this Court granted Plaintiffs' Motion for Leave to Amend to add  
21 Waste Management of Nevada, Inc. as a party and the very next day, Plaintiffs filed  
22 their Second Amended Complaint;
- 23 • On June 9, 2016, a Summons was issued, and all Defendants were served with the  
24 Second Amended Complaint and an Acceptance of Service was filed;
- 25 • The very next day, Plaintiffs filed their Opposition to Motion for Summary Judgment  
26 Re: Liability;
- 27 • On June 15, 2016, all Defendants' filed their Answer to Plaintiffs' Second Amended  
28 Complaint and on June 16, 2016 Waste Management of Nevada, Inc. filed Joinders to



1 Reno Disposal Company and Refuse's Motions for Summary Judgment Re: Damages  
2 and Liability;

- 3 • On June 20, 2016, Reno Disposal Company and Refuse Inc. filed their untimely Reply  
4 to Opposition to Defendants' Motion for Summary Judgment Re: Liability and  
5 submitted the matter for decision;
- 6 • On June 30, 2016, Plaintiffs' filed their Opposition to Waste Management of Nevada,  
7 Inc.'s Joinder in Reno Disposal Company and Refuse Inc.'s Motions for Summary  
8 Judgment Re: Liability and Damages, asserting NRCP 56(f) arguments requesting  
9 additional time to perform discovery, because Plaintiffs never had the opportunity to  
10 do any discovery of Defendant, Waste Management of Nevada, Inc., as well as  
11 asserting other arguments in opposition therein;
- 12 • On July 7, 2016, Waste Management of Nevada, Inc. filed its Reply to Plaintiffs'  
13 Opposition to Joinders in the Motions for Summary Judgment Re: Liability and  
14 Damages, and submitted the matter to this Court for decision;
- 15 • On July 12, 2016, this Court Ordered the parties to set Reno Disposal Company and  
16 Refuse Inc.'s Motions for Summary Judgment Re: Liability and Damages for oral  
17 argument and oral arguments were subsequently scheduled for August 18, 2016;
- 18 • On August 18, 2016, this Court heard Reno Disposal Company and Refuse Inc.'s  
19 Motions for Summary Judgment Re: Liability and Damages, which this Court granted  
20 from the bench at the conclusion of the oral arguments;
- 21 • At no time has this Court rendered a decision on Waste Management of Nevada, Inc.'s  
22 Joinder request to join in Reno Disposal Company and Refuse Inc.'s Motions for  
23 Summary Judgment. As such and to date, this Court has not Ordered Waste  
24 Management of Nevada, Inc. joined in the Motions for Summary Judgment heard and  
25 decided on August 18, 2016, nor has this Court addressed Plaintiffs' NRCP 56(f)  
26 requests for additional time to perform discovery related to Waste Management of  
27 Nevada, Inc. or other oppositional arguments set forth therein.

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1 **II. LEGAL ARGUMENT**

- 2 a. **Defendant Waste Management of Nevada, Inc., cannot be part of this Court's**  
3 **Order, because it was never joined in the respective motions, Plaintiffs**  
4 **never had the opportunity to perform any discovery as to Waste**  
5 **Management of Nevada, Inc., and the legal defenses (*Noerr* and NRS**  
6 **598a.040(3)(b)) are inapplicable to Waste Management of Nevada, Inc.**

7 As a preliminary matter and while it appears somewhat unclear in Defendants'  
8 Proposed Order, Waste Management of Nevada, Inc. simply cannot be included in the Order  
9 granting Reno Disposal Company and Refuse Inc.'s Motions to Dismiss Re: Liability and  
10 Damages as this Court has not yet addressed the pending Joinder in those Motions or the  
11 opposition thereto.

12 While Defendant Waste Management of Nevada, Inc. did file a joinder in both motions,  
13 this court never issued an order joining Waste Management of Nevada, Inc. to either motion.  
14 Furthermore, in Plaintiffs' Opposition to the Joinders, Plaintiffs requested time to perform  
15 discovery, pursuant to NRCP 56(f), and this was never addressed, considered, ordered or  
16 rejected by this Court. There has been no decision thereon either way.

17 In any event, the reasoning and analysis this Court arrived at in rendering its decision  
18 with respect to Reno Disposal Company and Refuse Inc.'s Motions for Summary Judgment Re:  
19 Liability and Damages, while disagreed with by Plaintiffs, cannot apply to Waste Management  
20 of Nevada, Inc. because Waste Management of Nevada, Inc. was not a party to the Franchise  
21 Agreement, was not designated as an approved contractor or any contractor at all by the City, it  
22 did not petition the City of Reno at all, let alone in a respect sufficient to trigger applicability of  
23 the *Noerr Pennington* Doctrine, and Waste Management of Nevada, Inc.'s conduct herein is not  
24 expressly authorized, regulated or approved by an ordinance of any city or county of this state  
25 in order to invoke the "safe harbor" provisions of NRS 598A.040(3)(b).

26 If the court recalls, Waste Management of Nevada, Inc. is the entity that actually  
27 purchased Castaway Trash Hauling, not Reno Disposal Company. See, Asset Purchase  
28 Agreement, attached to Plaintiffs' Motion for Leave to Amend filed herein, at Exhibit 3.  
However, the applicable franchise agreement was between the City of Reno and Reno Disposal  
Company, not Castaway's actual purchaser, Waste Management of Nevada, Inc. so the *Noerr*

1 *Pennington Doctrine* and any statutory immunity which Reno Disposal Company has asserted  
2 and this Court found to apply with respect to Reno Disposal Company (and Refuse, Inc. as they  
3 we the party to the Disposal Agreement with the City of Reno), does not and cannot apply to  
4 Waste Management of Nevada, Inc.

5 As such, in an effort to ensure the record is clear, the final written order this Court  
6 ultimately approves, signs and enters should clearly reflect that it is not applicable to Waste  
7 Management of Nevada, Inc. as it was not a party to the respective motions, nor is the same  
8 analysis applicable to that separate Defendant.

9 **b. Plaintiffs respectfully object to Defendants' Proposed Order as it**  
10 **does not accurately and completely reflect this Court's oral decision**  
**rendered from the bench on August 18, 2016.**

11 While Plaintiffs' disagree with the decision rendered by this Court on Reno Disposal  
12 Company and Refuse Inc.'s Motions for Summary Judgment, as well as the reasoning and  
13 analysis in arriving such decision, Plaintiffs understand that the process of drafting, reviewing  
14 and submitting a proposed Order is not to dispute the decision of the court, but to ensure that it  
15 accurately reflects the ultimate findings and decision of the court.

16 Understanding that limitation, Plaintiffs respectfully object to Reno Disposal  
17 Company and Refuse Inc.'s proposed Order because it changes and alters certain words and  
18 deviates in some respects from this Court's oral ruling from the bench. To the contrary,  
19 Plaintiffs' Proposed Order attempts to reflect exact wording from the applicable portions of  
20 the Transcript, with some minor formatting adjustments. As such, Plaintiffs' respectfully  
21 object to Reno Disposal Company and Refuse Inc.'s proposed Order as follows:

- 22 • Paragraph 2 at page 2, lines 23-28 should be changed to instead read as the exact  
23 language of the Transcript does, "After the original franchise agreements were  
24 signed by the City of Reno, Castaway assigned its rights it held under its own  
25 franchise agreement with the City of Reno to Reno Disposal. And as a result, Reno  
26 Disposal now has an exclusive **agreement**, a monopoly, to provide commercial  
27 waste disposal for the entire City of Reno." [Emphasis Added to denote Plaintiffs'  
28 requested changes]. Transcript, 86:14-19. Removing the additional language  
added by Defendants not reflected in the Transcript.
- Paragraph 7 at page 3, lines 21-25, should be changed to instead read as the exact  
language of the Transcript does by removing the following emphasized text, "The

1 Defendants' essential argument is that the assignment of the franchise agreement  
2 to Reno Disposal was done pursuant to express contractual provisions ***contained***  
3 ***in the franchise agreements, and such action was expressly*** authorized and  
4 approved by the City of Reno." Transcript, 87:18-21. The emphasized portions  
5 added by Defendants and not included in the Transcript should be removed.

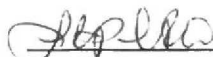
- 6 • With respect to Paragraph 8, at pages 3-4, lines 26-5, while Plaintiffs disagree  
7 with this finding by the Court and do in fact dispute much of what is set forth  
8 therein and believe such disputed facts to be supported by the record, because  
9 this is not the appropriate avenue to dispute the Court's findings, this Paragraph  
10 should simply read exactly as the transcript reads.
- 11 • Paragraph 15 at page 5, lines 10-15 should be changed to instead read as the  
12 exact language of the Transcript does, "In terms of damages, the Defendants  
13 argue that the Plaintiffs lack standing to assert their claim, because they were not  
14 qualified to service a franchise zone, that they never sought to be considered by  
15 the City of Reno to serve as a franchise zone, and that the City of Reno determined  
16 that they were not qualified ***members***." [Emphasis Added to denote Plaintiffs'  
17 requested changes]. Transcript, 89-90:20-1.

18 Plaintiffs have, by and through counsel, attempted to resolve such conflicting provisions  
19 of the Order, but have been unable to resolve these issues. As such, Plaintiffs' respectfully  
20 submit Plaintiffs' Proposed Order, consistent with the above, attached hereto as **Exhibit "1."**

### 21 **III. CONCLUSION**

22 Based on the foregoing, Plaintiffs respectfully object to Defendants' Proposed Order and  
23 request the Court enter Plaintiffs' Proposed Order, as it is more consistent with this Court's oral  
24 ruling. Additionally, whatever final written order this Court ultimately decided to enter herein,  
25 it should be made clear that Waste Management of Nevada, Inc., for the reasons set forth  
26 herein, was not a party to the respective motions for summary judgment and thus, not included  
27 in the summary judgments entered in favor of Reno Disposal Company and Refuse Inc.

28 DATED this 15<sup>th</sup> day of September, 2016.



STEPHANIE RICE, ESQ. (SBN 11627)  
RICHARD SALVATORE, ESQ. (SBN 6809)  
WINTER STREET LAW GROUP  
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 PURSUANT TO NRCP 5(B), I CERTIFY THAT I AM AN EMPLOYEE OF WINTER STREET  
3 LAW GROUP, 96 & 98 WINTER STREET, RENO, NEVADA 89503, AND THAT ON THIS DATE I  
4 SERVED THE FOREGOING DOCUMENT(S) DESCRIBED AS **PLAINTIFFS' OBJECTION TO**  
5 **DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC'S**  
6 **MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS'**  
7 **PROPOSED ORDER ON ALL PARTIES TO THIS ACTION BY:**

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

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

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

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

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

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

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

17 addressed as follows:

18 Mark Simons, Esq.  
19 Scott Hernandez, Esq.  
20 Robison, Belaustegue, Sharp and Lowe  
21 71 Washington Street  
22 Reno, Nevada 89503

23 **AFFIRMATION**

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

27 DATED this 15<sup>th</sup> day of September 2016.

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EMPLOYEE OF WINTER STREET LAW GROUP

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RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

**PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS' PROPOSED ORDER**

## EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Plaintiffs' Proposed Order Granting Reno Disposal Company and Refuse Inc.'s Motions for Summary Judgement Re: Liability and Damages	5

FILED  
Electronically  
CV15-00497  
2016-09-15 11:51:51 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5709209 : swolfe

EXHIBIT “1”

EXHIBIT “1”

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7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**  
9

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

13 Plaintiffs,

14 vs.

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

19 Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

20 **ORDER GRANTING RENO DISPOSAL COMPANY AND REFUSE INC.'S MOTIONS FOR**  
21 **SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES**

22 This matter came on for hearing on August 18, 2016, on Defendants, Reno Disposal  
23 Company and Refuse Inc.'s, Second Motion for Summary Judgment re: Liability and Defendants,  
24 Reno Disposal Company and Refuse Inc.'s, Motion for Summary Judgment re: Damages. Mark G.  
25 Simons, Esq. and Therese M. Shanks, Esq. of the law firm of Robison, Belaustegui, Sharp & Low  
26 appeared on behalf of all Defendants in this action, Reno Disposal Company, Inc. ("Reno  
27 Disposal"), Refuse, Inc. ("Refuse"), and Waste Management of Nevada, Inc. ("WMON").  
28 Stephanie Rice, Esq. and Richard A. Salvatore, Esq. of Winter Street Law Group appeared on



1 behalf of Plaintiffs, Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish  
2 Runners ("RR") (collectively, "Plaintiffs").

3 The Court has considered the motions, the oppositions thereto and the replies thereto,  
4 all papers submitted in connection with such briefing, and the arguments of counsel at the time  
5 of the hearing. In evaluating the Plaintiffs' claims of anti-competitive behavior, state trial courts  
6 are directed to look to the federal courts for guidance in these cases, and to the extent that it  
7 can, this Court has looked to the United States Supreme Court for guidance.

8 In consideration of the foregoing, this Court hereby GRANTS Reno Disposal and Refuse's  
9 Motions for Summary Judgment re: Liability and Damages for the following reasons and based  
10 on the following grounds:

11 1. This case involves a dispute over franchise agreements, plural, granted by the  
12 City of Reno to the Defendants Reno Disposal and Castaway Trash Hauling ("Castaway") back in  
13 2012.

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

18 3. The Plaintiffs' remaining contention in this case is that the Defendants hid their  
19 plan to consolidate their franchise agreements from the City, and that if their true intentions  
20 were known, the Reno City Council would never have assented to terms of the agreements in  
21 the first place. The Plaintiffs contend that this conduct violates the Nevada Unfair Trade  
22 Practices Act.

23 4. Before the Court are Defendants Reno Disposal Company and Refuse Inc.'s  
24 Motions for Summary Judgment on liability and damages. Summary judgment is proper if the  
25 pleadings and all other evidence on file demonstrates that no genuine issue of material fact  
26 exists and that the moving party is entitled to judgment as a matter of law.

27 5. When the Court decides a motion for summary judgment, it must view all other  
28

1 evidence in the light most favorable to the nonmoving party. General allegations and  
2 conclusory statements do not create a genuine issue of law.

3 6. The Defendants' essential argument is that the assignment of the franchise  
4 agreement to Reno Disposal was done pursuant to express contractual provisions, authorized  
5 and approved by the City of Reno.

6 7. The Defendants claim and the Plaintiffs concede the following: that the franchise  
7 agreements are valid contracts; that the City of Reno was authorized to enter into the franchise  
8 agreements; that the franchise agreements expressly contemplated the occurrence of a single  
9 franchise; that the franchise agreements expressly preapproved Reno Disposal acquiring  
10 Castaway's franchise rights without further City approval; and, that the City of Reno expressly  
11 approved Reno Disposal's acquisition of Castaway's franchise rights, thereby establishing a  
12 single franchise situation.

13 8. Central to the Plaintiffs' case is the argument, the contention that the agreement  
14 between Castaway and Reno Disposal several months before the public hearings constituted an  
15 unlawful conspiracy. This Court can find no evidence to support that characterization.

16 9. Looking to the United States Supreme Court in *Eastern Railroad President's*  
17 *Conference v. Noerr Motor Freight*, 365 U.S. 875, the Court, Justice Hugo Black, stated this:

18 "We accept as a starting point for our consideration of the case the same basic  
19 construction of the Sherman Antitrust Act adopted by the courts below that no  
20 violation of the act can be predicated upon mere attempts to influence the  
21 passage or enforcement of laws. It has been recognized at least since the  
22 landmark decision of this Court in *Standard Oil Company of New Jersey v.*  
23 *United States*, that the Sherman Act forbids only those trade restraints and  
24 monopolizations that are created or attempted by the acts of individuals or  
25 combination of individuals or corporations. Accordingly, it has been held that  
26 where a restraint upon trade or monopolization is the result of valid  
27 government action, as opposed to private action, no violation of the act can be  
28 made out."

Further in the opinion, Justice Black writes, "We think it equally clear that the Sherman  
Act does not prohibit two or more persons from associating together in an attempt to persuade  
the legislature or the executive," in this case, the City of Reno, "to take particular action with

1 respect to a law that would produce a restraint or a monopoly.”

2 10. The Nevada Revised Statutes clearly contemplate that safe harbor. NRS  
3 598A.040(3)(b) says that the provisions of this chapter do not apply to conduct which is  
4 expressly authorized, regulated, or approved by an ordinance of any city or county of this state.

5 11. The Court finds that the franchise agreement entered into by the City and Reno  
6 Disposal in this case is valid, unambiguous, and enforceable.

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

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

14 14. By statute, NRS 598A.040(3), the Court finds that the Plaintiffs have not  
15 sustained any injury. In fact, that they have not alleged an antitrust injury sufficient to confer  
16 standing to prove any claim under NRS 598A.060. And that Defendants Reno Disposal and  
17 Refuse’s conduct is exempt from liability, because it involves a political and not business  
18 conduct under the *Noerr* Doctrine.

19 IT IS SO ORDERED.

20 DATED this \_\_\_\_ day of September, 2016.

21  
22  
23 \_\_\_\_\_  
DISTRICT COURT JUDGE

24 Submitted by:  
Winter Street Law Group


25   
26 Stephanie Rice, Esq. (SBN 11627)  
Richard A. Salvatore (SBN 6809)  
27 Attorneys for Plaintiffs

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

Electronically Filed  
Oct 18 2016 01:13 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

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NEVADA RECYCLING AND SALVAGE,  
LTD, a Nevada Limited Liability Company;  
AMCB, LLC, a Nevada Limited Liability  
Company d/b/a RUBBISH RUNNERS,

Appellants,

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,

Respondents.

Supreme Court Case No.:71497

District Court Case No.: CV15-00497

**RESPONSE TO MOTION TO DISMISS**

Appellants, NEVADA RECYCLING AND SALVAGE, LTD ("NRS") and  
AMCB, LLC doing business as RUBBISH RUNNERS ("RR"), by and through their  
undersigned counsel of record, hereby respond to Respondents' Motion to Dismiss.  
This Response is made and based on the following Memorandum of Points and  
Authorities, the pleadings and papers on file herein and anything else this Honorable  
Court may wish to consider.

Dated this 18<sup>th</sup> day of October, 2016.

WINTER STREET LAW GROUP



STEPHANIE RICE, ESQ. (SBN 11627)  
DEL HARDY, ESQ. (SBN 1172)  
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*Attorneys for Appellants*

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            **I.     INTRODUCTION AND RELEVANT FACTS**

3            Unfortunately, the procedural status of the instant case is less than clear on all  
4 fronts. The relevant jurisdictional facts of the events occurring in the District Court  
5 are as follows:

- 6            • On April 15, 2016, Plaintiffs/Appellants herein filed their Motion to Amend  
7 Complaint to add WASTE MANAGEMENT OF NEVADA, INC.  
8 (“WMNV”) as a party;
- 9            • On May 2, 2016, Defendant/Respondents herein RENO DISPOSAL  
10 COMPANY, INC. (“RDI”) and REFUSE, INC. (“REFUSE”) filed their  
11 Opposition to Plaintiffs/Appellants’ Motion to Amend Complaint;
- 12            • On May 9, 2016, Plaintiffs/Appellants filed their Reply to Opposition to  
13 Motion to Amend Complaint and submitted the matter to the District Court  
14 for decision;
- 15            • On May 10, 2016, RDI and REFUSE filed Defendants’ Second Motion for  
16 Summary Judgment Re: Liability;
- 17            • On May 11, 2016, RDI and REFUSE filed a third Motion for Summary  
18 Judgment Re: Damages;
- 19            • On May 25, 2016, Plaintiffs/Appellants filed their Opposition to RDI and  
20 REFUSE’s Motion for Summary Judgment Re: Damages;
- 21            • On June 2, 2016, RDI and REFUSE filed their Reply to Opposition to  
22 Motion for Summary Judgment Re: Damages and submitted the matter to the  
23 District Court for decision;
- 24            • On June 7, 2016, the District Court granted Plaintiffs/Appellants’ Motion for  
25 Leave to Amend to add WMNV as a party and the very next day,  
26 Plaintiffs/Appellants filed their Second Amended Complaint;

27    ///

- On June 9, 2016, a Summons was issued, and all Defendant/Respondents were served with the Second Amended Complaint and an Acceptance of Service was filed;
- The very next day, Plaintiffs/Appellants filed their Opposition to Motion for Summary Judgment Re: Liability;
- On June 15, 2016, all Defendant/Respondents' filed their Answer to the Second Amended Complaint and on June 16, 2016 WMNV filed Joinders to RDI and REFUSE's Motions for Summary Judgment Re: Damages and Liability;
- On June 20, 2016, RDI and REFUSE filed their untimely Reply to Opposition to Motion for Summary Judgment Re: Liability and submitted the matter for decision;
- On June 30, 2016, Plaintiffs/Appellants' filed their Opposition to WMNV's Joinder in RDI and REFUSE's Motions for Summary Judgment Re: Liability and Damages, asserting NRCP 56(f) and requesting additional time to perform discovery, because Plaintiffs/Appellants never had the opportunity to do any discovery of WMNV, as well as asserting other arguments in opposition therein;
- On July 7, 2016, WMNV filed its Reply to Opposition to Joinders in the Motions for Summary Judgment Re: Liability and Damages, and submitted the matter for decision;
- On July 12, 2016, the District Court Ordered the parties to set RDI and REFUSE's Motions for Summary Judgment Re: Liability and Damages for oral argument and oral arguments were subsequently scheduled for August 18, 2016;

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- On August 18, 2016, the District Court heard RDI and REFUSE's Motions for Summary Judgment Re: Liability and Damages, which the District Court granted from the bench at the conclusion of the oral arguments;
- The District Court entered a final written Order, as proposed by Defendant/Respondents over Plaintiffs/Appellants' objections, granting Defendant/Respondents' Motions for Summary Judgment re: Liability and Damages;
- At no time did the District Court address, hear or render a decision on WMNV's Joinder request to join in RDI and REFUSE's Motions for Summary Judgment.

The final Order entered by the District Court states, "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." [Emphasis Added]. See, *Order*, attached hereto at "**Exhibit 1**," at 1:18-20. The Order further indicates, "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 and collectively referred to as "Waste Management" and/or "Defendants"*)." [Emphasis Added]. *Id.* at 1:20-24. In granting the respective Motion(s) for Summary Judgment by entering the written Order thereon, the Order does not specify whether it is applicable to all Defendants or simply RDI and REFUSE. Plaintiffs/Appellants brought this issue to the Court's attention by way of their Objection to Defendants/Respondents' Proposed Order granting the respective Summary Judgments; yet, the District Court elected to sign the Order, as proposed by Defendants/Respondents which clearly appears to include and apply to all Defendants. *Id.*; See also, *Objection to Proposed Order*, attached hereto at "**Exhibit 2**," and incorporated herein by reference.



1 As such, the way in which the written Order entered in the District Court reads,  
2 whether substantively and/or procedurally inaccurate or not, Summary Judgment  
3 appears to have been entered as to all Defendants/Respondents herein and as to all  
4 claims before the District Court; and, as such, as explained in Plaintiffs/Appellants'  
5 Joint Notice of Appeal and Joint Case Appeal Statement, Plaintiffs/Appellants have  
6 filed the instant appeal in the abundance of caution in order to timely preserve the  
7 appeals rights of both NRS and RR.

## 8 II. LEGAL ARGUMENT

9 NRAP 3A(a) provides that, "A party who is aggrieved by an appealable  
10 judgment or order may appeal from that judgment or order, with or without first  
11 moving for a new trial." NRAP 3A(b)(1) further defines "Appealable Determinations"  
12 as, "An appeal may be taken from the following judgments and orders of a district  
13 court in a civil action: (1) A final judgment entered in an action or proceeding  
14 commenced in the court in which the judgment is rendered."

15 As Respondents point out, this Court in *Brown v. MHC Stagecoach*, 129 Nev.  
16 Adv. Op. 37, 301 P.3d 850, 851 (2013) held that, "To be final, an order or judgment  
17 must dispose [ ] of all the issues presented in the case, and leave[ ] nothing for the  
18 future consideration of the court, except for post-judgment issues such as attorney's  
19 fees and costs. " (Internal Citation Omitted). This Court then went on to state, "Thus,  
20 *we look to the text of the order* statistically closing Brown's case to determine whether  
21 the order renders a final, appealable judgment." [Emphasis Added]. *Id.* at 851.

22 This is exactly what Plaintiffs/Appellants have done here- looked to the text of  
23 the Order. Plaintiffs/Appellants absolutely agree with Respondents' assertion that  
24 Plaintiffs/Appellants contend that, " 'the findings and conclusions in th[e District]  
25 Court's order granting the Summary Judgment cannot apply with any force with regard  
26 to the claims against' WM." Respondents' Motion to Dismiss, 3:5-9. However, as set  
27 forth more fully herein, the actual text of the Order appears to contradict this  
28

1 contention by including all claims against all Defendants/Respondents herein and,  
2 because the text of the Order is what the determination of a final order is based on,  
3 Plaintiffs/Appellants have proceeded with this Appeal. This is particularly true in light  
4 of the fact that Plaintiffs/Appellants herein raised this exact issue when objecting to  
5 Defendants/Respondents proposed Order and yet, despite such objections, the District  
6 Court proceeded to enter the Order proposed by Defendants/Respondents, which  
7 explicitly includes all Defendants. See, Objection to Proposed Order, attached hereto  
8 at “**Exhibit 2.**”

9 As to Respondents’ arguments regarding NRCP 54(b), Appellants respectfully  
10 disagree with such position. NRCP 54(b) provides,

11 When multiple parties are involved, the court may direct the entry of  
12 a final judgment as to one or more but fewer than all of the parties  
13 only upon an express determination that there is no just reason for  
14 delay and upon an express direction for the entry of judgment. In the  
15 absence of such determination and direction, any order or other form  
16 of decision, however designated, which adjudicates the rights and  
liabilities of fewer than all the parties shall not terminate the action  
as to any of the parties, and the order or other form of decision is  
subject to revision at any time before the entry of judgment  
adjudicating all the rights and liabilities of all the parties.

17 NRCP 54(b). As such, because here, we do not have “any order . . . which adjudicates  
18 the rights and liabilities of fewer than all the parties,” NRCP 54(b) is not appropriate.  
19 Here, the issue is that, while Plaintiffs/Appellants do not believe that all Defendants  
20 should have been included in the final Order adjudicating all remaining claims in this  
21 case, that is exactly what the final Order that was entered by the District Court purports  
22 to do. Accordingly, in this case, whether Plaintiffs/Appellants like it or not, we do  
23 have a final Order that purports to adjudicate all claims as to all parties in this case,  
24 making it appropriate for appeal.

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1       **III. CONCLUSION**

2       Based on the foregoing, Appellants respectfully request that this Court deny  
3 Respondents' Motion to Dismiss.

4  
5 Dated this 18<sup>th</sup> day of October, 2016.

WINTER STREET LAW GROUP

6   
7 STEPHANIE RICE, ESQ. (SBN 11627)  
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11 Reno, Nevada 89503  
12 (775) 786-5800  
13 *Attorneys for Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify pursuant to NRAP 25(c), that on the 18<sup>th</sup> day of October, 2016, I caused service of a true and correct copy of the above and foregoing **RESPONSE TO MOTION TO DISMISS** on all parties to this action by the method(s) indicated below:

X by using the Supreme Court Electronic Filing System:

Mark Simons, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, Nevada 89503  
Attorneys for Respondents

X by Personal Delivery/Hand Delivery addressed to:

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

DATED this 18<sup>th</sup> day of October, 2016.

  
AN EMPLOYEE OF WINTER STREET LAW GROUP

## EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Order in District Court Case No. CV15-00497	7
2	Plaintiff's Objection to Defendants' Proposed Order on Reno Disposal Company and Refuse Inc's Motions for Summary Judgment Re: Liability and Damages; and Plaintiffs' Proposed Order in District Case No. CV15-00497	15