

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

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4 Electronically Filed
5 Oct 25 2016 01:04 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.: 71467

 District Court Case No. CV15-00497

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23 **REPLY TO RESPONSE TO 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 submit the following reply
27 to the Response to Motion to Dismiss filed by Appellants Nevada Recycling and
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1 Salvage, Ltd. ("NRS") and AMCB, LLC doing business as Rubbish Runners
2 ("RR") on October 18, 2016.

3 Appellants' opposition is somewhat confusing. Appellants make it clear that
4 they do not believe that the summary judgment motion was granted as to WM
5 because the District Court never expressly granted WM's motion to join in Reno
6 Disposal's and Refuse's motions for summary judgment. Yet, Appellants then
7 argue to this Court that the order was a final appealable judgment that does not
8 implicate Rule 54(b) because it was granted as to all defendants.

9 If Appellants truly believe that the District Court's order did not adjudicate
10 all of the claims against WM, then the proper procedure was to seek an order under
11 Rule 54(b) rather than moving to amend the scheduling order to proceed to trial
12 while simultaneously appealing the order to this Court. *See* NRCP 54(b); *see also*
13 Knox v. Dick, 99 Nev. 514, 515-16, 665 P.2d 267, 268 (1983) (holding that an
14 order that does not adjudicate the claims as to all parties before the District Court is
15 not an final, appealable order sufficient to confer jurisdiction upon this Court under
16 NRAP 3A(b)).

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18 This Court has previously noted that doubts as to the propriety or necessity
19 of Rule 54(b) motions are properly handled in the following manner: (1) the party
20 seeking to preserve their appellate rights first must seek a Rule 54(b) certification;
21 (2) the appellant **then** must file a timely notice of appeal from the order that has
22 been certified as final; and (3) the parties may then brief to this Court "whether the
23 district court properly certified the order as final." Fernandez v. Infusaid Corp.,
24 110 Nev. 187, 192-93, 871 P.2d 292, 295 (1994). Appellants did not follow this
25 procedure. Instead, Appellants have asked the District Court to move forward with
26 trial as to WM, while simultaneously asking this Court to consider the substantive
27 merits of Appellants' claims against WM that will be decided at trial with WM if
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1 the District Court grants Appellants' motion. Clearly, Appellants' appeal must be
2 dismissed.

3 Given the District Court entered its order granting summary judgment in
4 favor of WM on October 25, 2016, this underlying case in District Court is now
5 "final" for NRCP 54 purposes. See **Exhibit 1**. Accordingly, Appellants' Appeal
6 was premature based upon the District Court's recent Order.

7 Dated this 26 day of October, 2016.

8
9 ROBISON, BELAUSTEGUI, SHARP & LOW
10 A Professional Corporation
11 71 Washington Street
12 Reno, Nevada 89503

13 BY: 

14 Mark G. Simons, Esq.

15 Nevada Bar No. 5132

16 Therese M. Shanks, Esq.

17 Nevada Bar No. 12890

18 Robinson, Belaustegui, Sharp & Low

19 71 Washington Street

20 Reno Nevada 89503

21 (775) 329-3151

22 *Attorneys for Respondents*

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 25th day of October, 2016, I caused service of a true and correct copy of the above and foregoing **REPLY TO 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:

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 29th day of October, 2016.

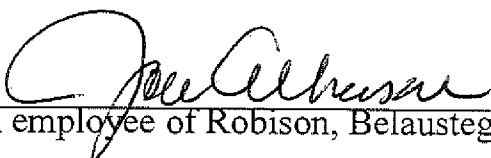

An employee of Robison, Belaustegui, Sharp & Low

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

On October 7, 2016, Defendants RENO DISPOSAL COMPANY, INC. ("Reno Disposal"), REFUSE, INC. ("Refuse"), and WASTE MANAGEMENT OF NEVADA, INC. ("WMON") (hereinafter collectively referred to as "Defendants"), filed their *Motion for Entry of Final Judgment*. On October 21, 2016, Plaintiffs NEVADA RECYCLING AND SALVAGE, LTD. ("Nevada Recycling") and AMCB, LLC. dba RUBBISH RUNNERS ("Rubbish Runners") (hereinafter collectively referred to as "Plaintiffs"), filed their *Opposition to Entry of Final Judgment*.

On September 19, 2016, this Court entered its *Order* granting Defendants' *Second Motion for Summary Judgment re: Liability* and Defendants' *Motion for Summary Judgment re: Damages*. WMON had sought joining in the foregoing motions for summary judgment, however, this Court did not formally recognize such

1 joinder by issuing an order. Therefore, Defendants filed their *Motion for Entry of*
2 *Final Judgment*. Based upon the foregoing, the Court hereby enters judgment in favor
3 of the Defendants.

4 IT IS HEREBY ORDERED, ADJUGED, AND DECREED that FINAL
5 JUDGMENT is rendered in favor of Defendants Reno Disposal, Refuse, and WMON
6 on all of Plaintiffs Nevada Recycling and Rubbish Runners' claims.

7 IT IS SO ORDERED.

8 DATED this 25 day of October, 2016.

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11 PATRICK FLANAGAN
12 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 25 day of October, 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