

EXHIBIT “11”

EXHIBIT “11”

1 **2540**

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 and
10 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.

NOTICE OF ENTRY OF ORDER

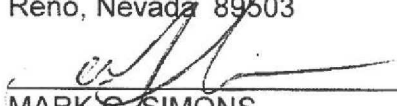
PLEASE TAKE NOTICE that an Order denying Plaintiff's Motion for Issuance of
Amended Scheduling Order was entered by the Honorable Patrick Flanagan on the 25th

1 day of October, 2016, in the above-entitled matter. See **Exhibit 1**.

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

4 DATED this 26th day of October, 2016.

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 j:\wpdata\mgs\30538.001 (waste management v rr-nrs)\p-neo (13).doc

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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 **NOTICE OF ENTRY OF ORDER** 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:

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

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

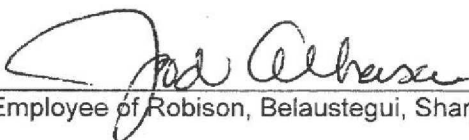
Del Hardy, Esq.
Stephanie Rice, Esq.
WINTER STREET LAW GROUP
Attorneys for Plaintiffs

___ by personal delivery/hand delivery addressed to:

___ by facsimile (fax) addressed to:

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

DATED this ___ day of October, 2016.


Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Order	2

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2016-10-26 09:35:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5776656

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, a Nevada limited
liability company, et al.

Plaintiffs,

Case No.: CV15-00497

vs.

Dept. No.: 7

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

Defendants.

ORDER

On September 12, 2016, Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD (hereafter Plaintiffs), filed its *Motion for Issuance of Amended Scheduling Order*, and submitted the matter for decision on September 29, 2016.

On October 25, 2016, an *Order* was entered wherein Final Judgment was entered in favor of Defendants, RENO DISPOSAL COMPANY, INC., a Nevada corporation doing business as WASTE MANAGEMENT. Therefore, Plaintiffs *Motion for Issuance of Amended Scheduling Order* is DENIED as moot.

DATED this 25 day of October, 2016.


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 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:

Del Hardy, Esq. for Nevada Recycling and Salvage, Ltd; and

Mark Simons, Esq. and Scott Hernandez, Esq. for Reno Disposal Co., Inc.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

EXHIBIT “10”

EXHIBIT “10”

1 **2540**

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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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
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27 CORPORATIONS, I through X; BLACK
28 AND WHITE COMPANIES, I through X;
and JOHN DOES I through X, inclusive,

Defendants.

NOTICE OF ENTRY OF ORDER

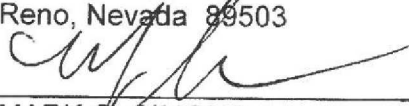
PLEASE TAKE NOTICE that an Order entering final judgment was entered by
the Honorable Patrick Flanagan on the 25th day of October, 2016, in the above-entitled

1 matter. See **Exhibit 1**.

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

4 DATED this 25th day of October, 2016.

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

14 j:\wpdata\mgs\30538.001 (waste management v rr-nrs)\p-neo (12).doc

CERTIFICATE OF SERVICE

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— 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:

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

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

☒ by personal delivery/hand delivery addressed to:

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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 25th day of October, 2016.


Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Order	3

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,

Plaintiff,

Case No.: CV15-00497

Dept. No.: 7

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*.

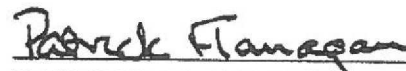
On September 19, 2016, this Court entered its *Order* granting Defendants' *Second Motion for Summary Judgment re: Liability* and Defendants' *Motion for Summary Judgment re: Damages*. WMON had sought joining in the foregoing motions for summary judgment, however, this Court did not formally recognize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

10 
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

EXHIBIT “9”

EXHIBIT “9”

1 **2540**

2 Mark G. Simons, Esq., NSB No. 5132
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10 tshanks@rbsllaw.com

11 *Attorneys for Defendants*

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13 **IN AND FOR THE COUNTY OF WASHOE**

14 NEVADA RECYCLING AND SALVAGE,
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17 Limited Liability Company dba RUBBISH
18 RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

19 Plaintiffs,

20 vs.

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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.

NOTICE OF ENTRY OF ORDER


PLEASE TAKE NOTICE that an Order granting Defendants' Motions for
Summary Judgment was entered by the Honorable Patrick Flanagan on the 19th day of

1 September, 2016, in the above-entitled matter. See **Exhibit 1**.

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

4 DATED this 20th day of September, 2016.

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 j:\wpdata\mgs\30536.001 (waste management v rr-nrs)\p-neo (11).doc

CERTIFICATE OF SERVICE

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Richard Salvatore, Esq.
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Attorneys for Plaintiffs

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Stephanie Rice, Esq.
WINTER STREET LAW GROUP
Attorneys for Plaintiffs

☐ by personal delivery/hand delivery addressed to:

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DATED this 20th day of September, 2016.


Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Order	6

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Clerk of the Court
Transaction # 5716192

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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Judicial Assistant

EXHIBIT “8”

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1 **2540**
Mark G. Simons, Esq., NSB No. 5132
2 Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
3 71 Washington Street
Reno, Nevada 89503
4 Telephone: (775) 329-3151
Facsimile: (775) 329-7169
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8 **IN AND FOR THE COUNTY OF WASHOE**
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DEPT. NO.: 7

13 Plaintiffs,

14 vs.

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AND WHITE COMPANIES, I-X; and
18 JOHN DOES I-X, inclusive,

19 Defendants.
20 _____ /

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to Dismiss
23 Verified Amended Complaint, in Part, and Denying, In Part was entered by the
24 Honorable Patrick Flanagan on the 15th day of September, 2015 in the above-entitled
25 matter. A copy of the Order is attached hereto as **Exhibit 1**.

26 ///

27 ///

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

3 DATED this 15th day of September, 2015.

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

8 _____
9 MARK G. SIMONS
10 SCOTT L. HERNANDEZ
11 Attorneys for Defendants

J:\WPData\WGS\30538.001 (Waste Management)\IP-NEO(3).wpd


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Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 15th day of September, 2015.



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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Order	-12-

EXHIBIT 1

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8 **IN AND FOR THE COUNTY OF WASHOE**

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12 Plaintiffs,

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16 REFUSE, INC., a Nevada Corporation; ABC
17 CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

18 Defendants.
19 _____/

20 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED**
21 **AMENDED COMPLAINT, IN PART, AND DENYING, IN PART**

22 This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
23 Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
24 Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
25 ("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
26 Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
27 Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
28 and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.
9

10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"¹
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.
18

19 The Defendants argue that the Plaintiffs have failed to state a claim for
20 defamation, defamation per se, that the Amended Complaint contains no defamatory
21 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
22 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
23 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
24 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
25
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.² Change
5 Footnote Numbering
6

7 The Court has considered the allegations set forth in the Amended Complaint,
8 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
9 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
10 such briefing, and the arguments of the parties at the time of the hearing. In rendering
11 its decision, the Court has accepted the factual allegations in the Amended Complaint
12 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
13 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴
14 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
15 DENIED, in part, for the following reasons and upon the following grounds:
16

17 1. The Defendants have filed the Motion to dismiss the Amended Complaint
18 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
19 motions to dismiss for failure to state a claim upon which relief can be granted.
20

21
22 Complaint, ¶19.

23 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
24 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
25 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
26 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
27 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
28 the Defendants' reply in support of the Motion in the instant ruling and order.

³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶50.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

1 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
2 treat all factual allegations as true and draw all reasonable inferences in favor of the
3 nonmoving party, in this case, the Plaintiffs.

4 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
5 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.

6 4. Dismissal is appropriate when the allegations are insufficient to establish
7 the elements for the claim for relief.

8
9 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
10 **(CLAIMS 1 AND 2).**

11 5. The elements of a defamation claim are as follows: a false and
12 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
13 publication to a third person; fault amounting to at least negligence; and actual or
14 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
15 462(1993). A statement is not defamatory if it is absolutely true or substantially true.
16 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

17 6. Here, Plaintiffs allege that Waste Management employees made false
18 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
19 following:
20

- 21 a. "We [Waste Management] are only the haulers that's allowed in Sparks
22 and Reno."
23 b. "Any other provider that goes in there, there will be fines."
24 c. "We [Waste Management] have an agreement with the city and we are
25 the only trash hauler that is allowed in either of those cities [Reno and
26 Sparks]."

27 See Amended Complaint, ¶ 34.

28 7. Plaintiffs allege that Waste Management employee, Cherolyn Gilletti,
the standard set forth in NRCP 12(b)(5) and related case law.

1 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
2 "Gilletti Email"), which read as follows:

3 " At this time Waste Management is the assigned hauler for the City
4 of Reno.

5 Solid Waste: Every business generating solid waste in the City of Reno is
6 required to subscribe to Reno Disposal Company for the collection,
7 transportation and disposal of all of franchised solid waste material
8 generated by the business, except for business to which the City of Reno
9 has specifically granted in writing an exemption. . . .

10 Recyclable Material. No business may allow or retain any service provider
11 other than Reno Disposal Company to collect, pick up, transport or deliver
12 Approved Recyclable Materials in the City of Reno in violation of the
13 exclusive commercial franchise agreement or the Reno Municipal Code."

14 See Amended Complaint, ¶ 34.

15 8. Under the Commercial Franchise Agreement, it is clear that Waste
16 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
17 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
18 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
19 intended to be broadly interpreted.

20 9. Under the Commercial Franchise Agreement, "Collection Materials" are
21 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
22 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
23 to certain exemptions. See Commercial Franchise Agreement, p. 3.

24 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
25 Management is entitled to charge fees for customers' noncompliance with the
26 Commercial Franchise Agreement.

27 11. The few exemptions to the Commercial Franchise Agreement are narrow,
28 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

7 13. "Exempted Hauler Account Materials" apply to defined existing contracts
8 between listed service providers and identified customers with approval from the City of
9 Reno and excluding services involving "Garbage."

10 14. The term "Excluded Recyclable Materials" generally permits market rate
11 purchasers of Recyclable Materials to collect them from generators of such materials.
12 The definition of Excluded Recyclable Materials makes clear that it excludes "such
13 materials collected and transported as a service" See Commercial Franchise
14 Agreement, p. 5.

15 15. A plain interpretation of the unambiguous language in the passages
16 above, shows that the Commercial Franchise Agreement was explicitly designed to
17 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
18 Materials within the City of Reno in favor of Waste Management.

19 16. While it is not literally true that Waste Management is the "only hauler that
20 is allowed in Reno and Sparks," this statement is substantially true according to the
21 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
22 statements allegedly made by Waste Management employees, set forth in Paragraph
23 34 of the Amended Complaint cannot be defamatory.

24 17. The second statement set forth in Paragraph 34 of the Amended
25 Complaint ("Any other provider that goes in there, there will be fines") is also
26
27
28

1 substantially true. The Commercial Franchise Agreement vests Waste Management
2 with the authority to assess fines for customer noncompliance and such noncompliance
3 includes the use of services which violate the Commercial Franchise Agreement.

4
5 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
6 states that Waste Management has the exclusive right to handle "all of the franchised
7 Solid Waste materials generated by the business" and that "no service provider" other
8 than Waste Management may handle "Approved Recyclable Materials." See
9 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
10 Commercial Franchise Agreement, Waste Management has the right to handle
11 "franchised" waste by definition and is the only "service provider" that may handle
12 Approved Recyclable Materials.
13

14 19. The Excluded Recyclable Materials exception, while encompassing some
15 Approved Recyclable Materials, does not include materials handled as "a service".
16

17 20. The statements set forth in Paragraphs 34 and 44 of the Amended
18 Complaint, cannot constitute defamation.

19 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
20 defamation and defamation per se is GRANTED.

21 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
22 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
23 **(CLAIMS 3 AND 4).**

24 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
25 charging customers lower rates than those specified in the Commercial Franchise
26 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
27 commercial customers with 96-gallon tote service.

28 23. Plaintiffs based their claim on their purported status as third-party
beneficiaries to both the Commercial Franchise Agreement and the Disposal

1 Agreement.

2 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
3 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
4 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
5 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
6 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
7 apply only to the exempted entities' rights to collect and handle exempted materials.
8

9 25. The Plaintiffs' argument that they have general third-party beneficiary
10 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
11 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
12 benefit them.
13

14 26. Given the exclusionary nature of the Agreements themselves, the
15 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
16 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
17 only to address the scope of duty owed to Mrs. Williams when her husband was
18 electrocuted working on a billboard in a negligence case.
19

20 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
21 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
22 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
23 Plaintiffs must allege that any violations of the Agreements interfered in some way with
24 their rights to handle exempted materials.
25

26 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
27 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
28 Beneficiary Provision.

29. Plaintiffs have alleged that the price adjustment of Exempted Drop Box

1 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
2 limited by the Commercial Franchise Agreement to temporary Drop Box services which
3 cannot, "replace, limit or reduce" services provided by Waste Management. This would
4 seem to imply that Plaintiffs were not intended to actually compete with Waste
5 Management for these services.
6

7 30. There's some question as to what affect Waste Management's alleged
8 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
9 provide exempted services but, given the language of the Commercial Franchise
10 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
11 complained of actions interfered with their rights to handle exempted materials.
12

13 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
14 breach of contract and for breach of the implied covenant of good faith and fair dealing
15 is GRANTED.

16 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
17 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

18 32. The Plaintiffs also assert claims based upon alleged price fixing and
19 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
20 alleged deviations from the price schedule in the Commercial Franchise Agreement and
21 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
22 consolidated franchise.
23

24 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
25 does not apply where the conduct is expressly authorized by local government. See
26 NRS 598A.040(3)(b).
27

28 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
the Commercial Franchise Agreement, which amounts to a substantial interference with

1 the Plaintiffs' own ability to continue to haul excepted materials.

2 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
3 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
4 fixing in violation of the UTPA is GRANTED.
5

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

9 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
10 who, what, when, where, and how of such activities, so as to survive a motion to
11 dismiss.
12

13 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
14 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
15 trade or commerce in the State of Nevada or a consolidation of business interests
16 which would result in a monopolization or substantially lessen competition or be in
17 restraint of trade. Plaintiffs have alleged such action on the part of Waste
18 Management.
19

20 39. Defendants are correct that actions which are sanctioned by a
21 municipality are exempted from the unfair trade practices liability. See NRS
22 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
23 originally intended to grant franchises to two separate entities, not one. As alleged,
24 Waste Management's action to further consolidate service in the Reno area by
25 acquiring Castaway would not be subject to approval by the City of Reno and,
26 therefore, results in a violation of the UTPA.
27

28 ///

1 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
2 have alleged the general time frame during which they believe Waste Management's
3 collusion with Castaway occurred and have stated specifically that Castaway's
4 representatives made statements to the City of Reno regarding their intentions as to the
5 proposed franchise agreement without divulging the planned acquisition.
6

7 41. This was a close call, but given the pleading standards that this Court
8 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
9 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
10 unlawful monopoly is DENIED.
11

12 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
13 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

14 42. The Court agrees with the Defendants that the claim of fraud alleged by
15 the Plaintiff in the Amended Complaint lacks specificity.

16 43. There are no allegations of an intent to defraud and Plaintiffs have not
17 shown the requisite element of reliance.

18 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
19 is GRANTED.
20

21 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
22 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

23 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
24 previously found that injunctive relief and declaratory relief was inappropriate, because
25 monetary damages are sufficient to compensate the Plaintiffs for any perceived
26 damages. The Court reaffirms that ruling.⁵

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief. These claims are DISMISSED with prejudice;

2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This claim is DISMISSED with prejudice; and

3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to alleged collusion with Castaway.

IT IS SO ORDERED.

DATED this 15 day of SEPTEMBER, 2015.


DISTRICT COURT JUDGE

EXHIBIT “7”

EXHIBIT “7”

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 “6”

EXHIBIT “6”

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6
7 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 NEVADA RECYCLING AND SALVAGE, LTD., a
10 Nevada Limited Liability Company; and AMCB,
11 LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

12 Plaintiffs,

13 vs.

14 RENO DISPOSAL COMPANY, INC., a Nevada
15 Corporation dba WASTE MANAGEMENT;
16 REFUSE, INC., a Nevada Corporation; ABC
17 CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

18 Defendants.
19 _____/

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8 permanent injunction and declaratory relief.
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13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"¹
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.
18
19

20 The Defendants argue that the Plaintiffs have failed to state a claim for
21 defamation, defamation per se, that the Amended Complaint contains no defamatory
22 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
23 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
24 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
25 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.² Change
5 Footnote Numbering

6
7 The Court has considered the allegations set forth in the Amended Complaint,
8 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
9 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
10 such briefing, and the arguments of the parties at the time of the hearing. In rendering
11 its decision, the Court has accepted the factual allegations in the Amended Complaint
12 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
13 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴
14 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
15 DENIED, in part, for the following reasons and upon the following grounds:

16
17 1. The Defendants have filed the Motion to dismiss the Amended Complaint
18 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
19 motions to dismiss for failure to state a claim upon which relief can be granted.
20

21
22 Complaint, ¶19.

23 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
24 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
25 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
26 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
27 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
28 the Defendants' reply in support of the Motion in the instant ruling and order.

³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶50.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must treat all factual allegations as true and draw all reasonable inferences in favor of the nonmoving party, in this case, the Plaintiffs.

3. Nevertheless, a claim should be dismissed if it appears beyond a doubt that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.

4. Dismissal is appropriate when the allegations are insufficient to establish the elements for the claim for relief.

A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE (CLAIMS 1 AND 2).

5. The elements of a defamation claim are as follows: a false and defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged publication to a third person; fault amounting to at least negligence; and actual or presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459, 462(1993). A statement is not defamatory if it is absolutely true or substantially true. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

6. Here, Plaintiffs allege that Waste Management employees made false statements to "customers and/or prospective customers" of the Plaintiffs, including, the following:

- a. "We [Waste Management] are only the haulers that's allowed in Sparks and Reno."
- b. "Any other provider that goes in there, there will be fines."
- c. "We [Waste Management] have an agreement with the city and we are the only trash hauler that is allowed in either of those cities [Reno and Sparks]."

See Amended Complaint, ¶ 34.

7. Plaintiffs allege that Waste Management employee, Cherolyn Gilletti, the standard set forth in NRCP 12(b)(5) and related case law.

1 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
2 "Gilletti Email"), which read as follows:

3 " . . . At this time Waste Management is the assigned hauler for the City
4 of Reno.

5 Solid Waste: Every business generating solid waste in the City of Reno is
6 required to subscribe to Reno Disposal Company for the collection,
7 transportation and disposal of all of franchised solid waste material
8 generated by the business, except for business to which the City of Reno
9 has specifically granted in writing an exemption. . . .

10 Recyclable Material. No business may allow or retain any service provider
11 other than Reno Disposal Company to collect, pick up, transport or deliver
12 Approved Recyclable Materials in the City of Reno in violation of the
13 exclusive commercial franchise agreement or the Reno Municipal Code."

14 See Amended Complaint, ¶ 34.

15 8. Under the Commercial Franchise Agreement, it is clear that Waste
16 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
17 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
18 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
19 intended to be broadly interpreted.

20 9. Under the Commercial Franchise Agreement, "Collection Materials" are
21 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
22 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
23 to certain exemptions. See Commercial Franchise Agreement, p. 3.

24 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
25 Management is entitled to charge fees for customers' noncompliance with the
26 Commercial Franchise Agreement.

27 11. The few exemptions to the Commercial Franchise Agreement are narrow,
28 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

8 13. "Exempted Hauler Account Materials" apply to defined existing contracts
9 between listed service providers and identified customers with approval from the City of
10 Reno and excluding services involving "Garbage."

12 14. The term "Excluded Recyclable Materials" generally permits market rate
13 purchasers of Recyclable Materials to collect them from generators of such materials.
14 The definition of Excluded Recyclable Materials makes clear that it excludes "such
15 materials collected and transported as a service" See Commercial Franchise
16 Agreement, p. 5.

18 15. A plain interpretation of the unambiguous language in the passages
19 above, shows that the Commercial Franchise Agreement was explicitly designed to
20 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
21 Materials within the City of Reno in favor of Waste Management.

23 16. While it is not literally true that Waste Management is the "only hauler that
24 is allowed in Reno and Sparks," this statement is substantially true according to the
25 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
26 statements allegedly made by Waste Management employees, set forth in Paragraph
27 34 of the Amended Complaint cannot be defamatory.

28 17. The second statement set forth in Paragraph 34 of the Amended
Complaint ("Any other provider that goes in there, there will be fines") is also

1 substantially true. The Commercial Franchise Agreement vests Waste Management
2 with the authority to assess fines for customer noncompliance and such noncompliance
3 includes the use of services which violate the Commercial Franchise Agreement.

4
5 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
6 states that Waste Management has the exclusive right to handle "all of the franchised
7 Solid Waste materials generated by the business" and that "no service provider" other
8 than Waste Management may handle "Approved Recyclable Materials." See
9 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
10 Commercial Franchise Agreement, Waste Management has the right to handle
11 "franchised" waste by definition and is the only "service provider" that may handle
12 Approved Recyclable Materials.

13
14 19. The Excluded Recyclable Materials exception, while encompassing some
15 Approved Recyclable Materials, does not include materials handled as "a service".

16
17 20. The statements set forth in Paragraphs 34 and 44 of the Amended
18 Complaint, cannot constitute defamation.

19
20 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
21 defamation and defamation per se is GRANTED.

22 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
23 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
24 **(CLAIMS 3 AND 4).**

25
26 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
27 charging customers lower rates than those specified in the Commercial Franchise
28 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
commercial customers with 96-gallon tote service.

23. Plaintiffs based their claim on their purported status as third-party
beneficiaries to both the Commercial Franchise Agreement and the Disposal

1 Agreement.

2 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
3 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
4 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
5 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
6 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
7 apply only to the exempted entities' rights to collect and handle exempted materials.
8

9 25. The Plaintiffs' argument that they have general third-party beneficiary
10 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
11 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
12 benefit them.
13

14 26. Given the exclusionary nature of the Agreements themselves, the
15 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
16 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
17 only to address the scope of duty owed to Mrs. Williams when her husband was
18 electrocuted working on a billboard in a negligence case.
19

20 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
21 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
22 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
23 Plaintiffs must allege that any violations of the Agreements interfered in some way with
24 their rights to handle exempted materials.
25

26 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
27 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
28 Beneficiary Provision.

29. Plaintiffs have alleged that the price adjustment of Exempted Drop Box

1 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
2 limited by the Commercial Franchise Agreement to temporary Drop Box services which
3 cannot, "replace, limit or reduce" services provided by Waste Management. This would
4 seem to imply that Plaintiffs were not intended to actually compete with Waste
5 Management for these services.
6

7 30. There's some question as to what affect Waste Management's alleged
8 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
9 provide exempted services but, given the language of the Commercial Franchise
10 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
11 complained of actions interfered with their rights to handle exempted materials.
12

13 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
14 breach of contract and for breach of the implied covenant of good faith and fair dealing
15 is GRANTED.

16 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
17 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

18 32. The Plaintiffs also assert claims based upon alleged price fixing and
19 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
20 alleged deviations from the price schedule in the Commercial Franchise Agreement and
21 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
22 consolidated franchise.
23

24 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
25 does not apply where the conduct is expressly authorized by local government. See
26 NRS 598A.040(3)(b).
27

28 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
the Commercial Franchise Agreement, which amounts to a substantial interference with

1 the Plaintiffs' own ability to continue to haul excepted materials.

2 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
3 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
4 fixing in violation of the UTPA is GRANTED.
5

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

9 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
10 who, what, when, where, and how of such activities, so as to survive a motion to
11 dismiss.
12

13 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
14 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
15 trade or commerce in the State of Nevada or a consolidation of business interests
16 which would result in a monopolization or substantially lessen competition or be in
17 restraint of trade. Plaintiffs have alleged such action on the part of Waste
18 Management.
19

20 39. Defendants are correct that actions which are sanctioned by a
21 municipality are exempted from the unfair trade practices liability. See NRS
22 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
23 originally intended to grant franchises to two separate entities, not one. As alleged,
24 Waste Management's action to further consolidate service in the Reno area by
25 acquiring Castaway would not be subject to approval by the City of Reno and,
26 therefore, results in a violation of the UTPA.
27

28 ///

1 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
2 have alleged the general time frame during which they believe Waste Management's
3 collusion with Castaway occurred and have stated specifically that Castaway's
4 representatives made statements to the City of Reno regarding their intentions as to the
5 proposed franchise agreement without divulging the planned acquisition.
6

7 41. This was a close call, but given the pleading standards that this Court
8 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
9 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
10 unlawful monopoly is DENIED.
11

12 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
13 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

14 42. The Court agrees with the Defendants that the claim of fraud alleged by
15 the Plaintiff in the Amended Complaint lacks specificity.

16 43. There are no allegations of an intent to defraud and Plaintiffs have not
17 shown the requisite element of reliance.

18 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
19 is GRANTED.
20

21 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
22 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

23 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
24 previously found that injunctive relief and declaratory relief was inappropriate, because
25 monetary damages are sufficient to compensate the Plaintiffs for any perceived
26 damages. The Court reaffirms that ruling.⁵

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief. These claims are DISMISSED with prejudice;

2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This claim is DISMISSED with prejudice; and

3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to alleged collusion with Castaway.

IT IS SO ORDERED.

DATED this 15 day of SEPTEMBER, 2015.


DISTRICT COURT JUDGE

EXHIBIT “5”

EXHIBIT “5”

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, et al.

Plaintiffs,

Case No.: CV15-00497

vs.

Dept. No.: 7

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

Defendants.

ORDER

On September 12, 2016, Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD (hereafter Plaintiffs), filed its *Motion for Issuance of Amended Scheduling Order*, and submitted the matter for decision on September 29, 2016.

On October 25, 2016, an *Order* was entered wherein Final Judgment was entered in favor of Defendants, RENO DISPOSAL COMPANY, INC., a Nevada corporation doing business as WASTE MANAGEMENT. Therefore, Plaintiff's *Motion for Issuance of Amended Scheduling Order* is DENIED as moot.

DATED this 25 day of October, 2016.


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 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:

Del Hardy, Esq. for Nevada Recycling and Salvage, Ltd; and

Mark Simons, Esq. and Scott Hernandez, Esq. for Reno Disposal Co., Inc.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

EXHIBIT “4”

EXHIBIT “4”

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.

9
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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

EXHIBIT “3”

EXHIBIT “3”

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 and
10 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.

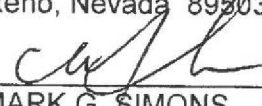
MOTION FOR ENTRY OF FINAL JUDGMENT

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

1 ("Refuse") and Waste Management of Nevada, Inc. ("WMON"),¹ 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 7th day of October, 2016.

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 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. BASIS FOR MOTION.**

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

21 Plaintiffs have taken the position that they still have viable claims against WMON
22 upon which they can proceed to trial. See e.g., Plaintiffs' Motion to Amend Scheduling
23 Order. Plaintiffs then take the exact opposite position and file a Notice of Appeal of the
24 Court's Summary Judgment Order even though it is not a final order pursuant to NRCP
25 54.

26 WMON has taken the position that even though its joinders were not specifically
27

28 ¹ 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.
8

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.
19
20

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.
26

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**.

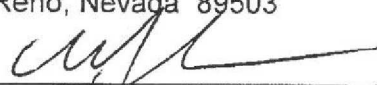
4
5 **IV. CONCLUSION.**

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 7th 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*

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[\\pawdawmgs030625.001 (waste management v. wmon)wp into 4 entry of final judgment_2.doc]

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 17th 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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2016-10-07 03:09:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5747127 : tbritton

EXHIBIT 1

EXHIBIT 1

1 **1880**

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 and
10 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.

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.
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25 _____
DISTRICT COURT JUDGE
26
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EXHIBIT “2”

EXHIBIT “2”

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.

///

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 15, 2016, Reno Disposal, Refuse and Waste Management of Nevada, Inc. ("NVWM") filed their joint Answer to Plaintiffs' Second Amended Complaint. After Plaintiffs had already filed their Oppositions to the Motions for Summary Judgment Re: Liability and Damages, on June 16, 2016, Defendants NVWM filed a Joinder in Reno Disposal and Refuse's Motions for Summary Judgment Re: Liability and Damages. Plaintiffs' opposed NVWM's Joinders on June 30, 2016 and on July 7, 2016 NVWM filed its Reply and submitted the Joinders to this Court for decision.

In the interim, Plaintiffs continued to attempt to engage in discovery, which ultimately resulted in Defendants filing a Motion for Protective Order and request to stay discovery until after the August 18, 2016 hearing and Plaintiffs filing of a Motion to Compel Defendants to participate in such discovery. On August 2, 2016, this Court heard oral arguments on the competing Motion for Protective Order and Motion to Compel and granted Defendants' Motion for Protective Order Precluding Further Discovery that Plaintiffs had requested and took Plaintiffs' Motion to Compel under submission. To date, Plaintiffs have still not received a ruling on their Motion to Compel.

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.¹

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 ¹ However, this is not due to a lack of diligence on Plaintiffs' part. To the contrary, Plaintiffs have spent extensive
25 time trying to get Defendants to produce the records and documents this Court Ordered them to produce back on
26 March 23, 2016, ultimately filing a Motion to Compel; Plaintiffs have issued a Deposition Subpoena, which was
27 stayed by this Court; Plaintiffs have attempted to get Defendants to work with them to set additional Depositions;
28 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 17th day of September, 2016.

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9 
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

☒ _____ 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 12th 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

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

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Elizabeth A. Brown
Clerk of Supreme Court

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

JOINT DOCKETING STATEMENT ¹
CONTINUATION OF EXHIBITS #2 THROUGH #11

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 file this Continuation of Exhibits for the Joint
Docketing Statement filed contemporaneously herein.

¹ In accordance with NRAP 14(e), both Appellants herein jointly file this Docketing Statement herein.

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nevada Recycling and Salvage, Ltd.,
AMCB, LLC dba Rubbush Runners

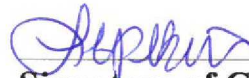
Name of appellant(s)

11/11/2016

Date

Stephanie Rice, Esq., Del Hardy, Esq.,
Richard Salvatore, Esq.

Name of counsel of record



Signature of Counsel of Record

Washoe County, Nevada
State and County Where Signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of November, 2016, I served a copy of this completed docketing statement upon all counsel of record:

X By personally serving it upon him/her; or

 By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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

Debbie A. Leonard, Esq.
McDonald Carano Wilson, LLP
100 W. Liberty Street, 10th Floor
Reno, Nevada 89501
Settlement Judge

Dated this 1st day of November, 2016.


Signature

EXHIBIT LIST – CONTINUATION OF JOINT DOCKETING STATEMENT

NO.	DESCRIPTION	PAGES
2	Motion for Issuance of Amended Scheduling Order	7
3	Motion for Entry of Final Judgment	10
4	Order for Final Judgment	4
5	Order Denying Motion for Issuance of Amended Scheduling Order	3
6	Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Par, and Denying, in Part	13
7	Order Re: Summary Judgment	7
8	Notice of Entry of Order Granting Defendants' Motion to Dismiss Verified Amended Complaint in Part and Denying in Part	18
9	Notice of Entry of Order Granting Defendants' Motions for Summary Judgment	12
10	Notice of Entry of Order entering Final Judgment	9
11	Notice of Entry of Order Denying Plaintiffs' Motion of Issuance of Amended Scheduling Order	8