IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA RECYCLING AND SALVAGE, LTD.; AMCB, LLC d/b/a RUBBISH RUNNERS,

Appellants,

vs.

RENO DISPOSAL COMPANY, INC.; REFUSE, INC.; WASTE MANAGEMENT OF NEVADA, INC.,

Respondents

Case No.: 71467

District Court Case No. CV15-00497

RESPONDENTS' ANSWERING BRIEF

ROBISON, SIMONS, SHARP & BRUST

BY: _____

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NRAP 26.1 STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock:

a. Reno Disposal Company, Inc. ("Reno Disposal") is a wholly-owned subsidiary of Waste Management of Nevada Inc.

b. Refuse, Inc. ("Refuse") is a wholly-owned subsidiary of Waste Management of Nevada Inc.

c. Waste Management of Nevada Inc. ("WMON") is a wholly-owned subsidiary of Waste Management Holdings, Inc.

d. Waste Management Holdings, Inc. is a wholly owned subsidiary of Waste Management, Inc.

e. Waste Management, Inc. is publicly traded on the New York Stock Exchange symbol WM.

2. Names of all law firms whose partners or associates have appeared for the parties in this case:

a. Robison, Simons, Sharp and Brust for respondents;

b. Robison, Belaustegui, Sharp & Low for respondents;

c. Winter Street Law Group for appellants;

d. Del Hardy Law Group for appellants.

It is anticipated that these attorneys will represent the parties upon appeal.

3. If any litigant is using a pseudonym, the statement must disclose the litigant's true name: None.

DATED this 6th day of September, 2017.

ROBISON, SIMONS, SHARP & BRUST

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STATEMENT OF THE CASE[1]

This appeal concerns the grant of exclusive franchises (the "Franchise Agreements") in two different zones for waste collection by non-party City of Reno (the "City"). The Franchise Agreements were granted by the City to respondent Reno Disposal Company, Inc. ("Reno Disposal") and non-party Castaway Trash Hauling ("Castaway"). Appellants Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC ("RR") initiated the underlying action contending, among other things, that Reno Disposal, Refuse, Inc. ("Refuse") and Waste Management of Nevada, Inc. ("WMN") obtained an unlawful monopoly for waste collection when Castaway assigned its rights under its Franchise Agreement to Reno Disposal.

NRS, who owns and operates a waste disposal facility, and RR, who is a small waste hauler, argue that Castaway's assignment of its franchise rights to Reno Disposal created an illegal monopoly because the City would have awarded RR and/or NRS the franchise for Castaway's zone had the City known that Castaway would assign its rights to Reno Disposal. However, at the time of the Franchise Agreements, the City determined that Reno Disposal and Castaway were the only qualified waste collection companies capable of performing the waste collection services required by the City under the Franchise Agreements.

[1] Respondents do not include a separate NRAP 17 routing statement, jurisdictional statement or statement of issues on appeal pursuant to NRAP 28(b).

This determination was made using the City's own selection criteria. NRS and RR participated in the city hearings on the Franchise Agreements and were not found by the City to be qualified haulers. Instead, RR was designated as an "Excluded Hauler," i.e., a small waste hauler who was permitted to continue its collection services for its existing customers but who could not expand to new customers.

Applying its own selection criteria, the City determined that Reno Disposal and Castaway were the only capable and qualified waste collection companies able to perform the waste collection activities in the City. Thus, the City created two separate service zones with one zone being serviced by Reno Disposal and one zone being serviced by Castaway.

The District Court granted summary judgment on NRS's and RR's antitrust claim on the ground that Respondents are exempt from antitrust liability under NRS 598A.040(3), and the Noerr-Pennington Doctrine. Under the language of the Franchise Agreements, Castaway was allowed to assign its franchise rights to Reno Disposal without prior City knowledge or approval. Because the City is statutorily authorized to eliminate competition in the area of waste removal, the District Court found that Respondents' conduct fell squarely within NRS 598A.040(3)'s exemption precluding antitrust liability for conduct authorized by statute. The District Court further found that Respondents were

immune from antitrust liability under the Noerr-Pennington Doctrine because their complained-of private conduct involved their petitioning activities to their local government – the City.[2] Finally, the District Court found that NRS and RR lacked standing to assert an antitrust claim because they did not allege an antitrust injury given that neither was a "competitor" of Reno Disposal, and that neither were able to produce any evidence of actual damages. This appeal follows.

STATEMENT OF THE FACTS.

I. CASTAWAY AND RENO DISPOSAL ARE AWARDED THE FRANCHISE AGREEMENTS

A. RENO DISPOSAL'S ORIGINAL EXCLUSIVE FRANCHISE FOR "GARBAGE".

From 1994 until November 2012, Reno Disposal held an exclusive franchise with the City to service all of Reno's "garbage" collection service requirements. 13 JA 2625. Under the new Franchise Agreements, the waste collected by franchised waste haulers was expanded from "garbage" to all "solid waste," which includes recyclable materials and the City implemented a single stream recycling program within the City. Id.

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[2] This Court has never addressed the direct applicability of the Noerr-Pennington Doctrine to Nevada's Unfair Trade Practices Act ("NUFTA"), and a published decision on this issue would be helpful to the practitioners of this state.

B. 2007: CITY'S DESIRE TO PURSUE A COMPREHENSIVE RECYCLING PROGRAM AND TO EXPAND FRANCHISE RIGHTS.

On April 19, 2007, the City participated in a "Green Summit" that focused, in part, on single stream recycling systems. Id. at 2626. The City wanted to explore the ability to efficiently recapture recyclable products from the stream of waste, and return the "green" recyclable material back into the stream of commerce. Id. The City also wanted to expand the types of waste that would be subject to the City's franchise powers from the narrower category of "garbage" to the broader category of "solid waste." Id.

For a period of almost six years after this "Green Summit," the City participated in numerous public sessions with waste collectors that the City determined were sufficiently capable of implementing the single stream recycling program in the City. Id. These public sessions also involved the creation and implementation of the new Franchise Agreements issued by the City in November, 2012. Id.

C. RENO DISPOSAL AND CASTAWAY ARE FOUND TO BE THE ONLY QUALIFIED HAULERS.

Under the Franchise Agreements, the City expressly stated that it would use certain criteria to select which waste collection companies were qualified to receive a franchise zone:

> Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications . . . . The City established the location and boundaries of each Exclusive Area . . . . Contractor and other qualified service providers participated in the process created by and under the supervision of the City.

Id. at 2685. NRS's and RR's own NRCP 30(b)(6) representative admitted that the Franchise Agreements stated this very fact. Id. at 2628.[3]

Confusingly, despite this testimony, NRS and RR rely upon the affidavit of former councilwoman Sharon Zadra, in which she contends that the City did not have a selection process and did not implement the franchise zones for the two qualified waste collectors. *See* Appellant's Opening Brief ("AOB"), p. 5. Contrary to Ms. Zadra's defective affidavit, the express terms of the Franchise Agreements and multiple city council members and the former Mayor testified that only Reno Disposal and Castaway were selected by the City as approved franchise waste haulers. 13 JA 2629.

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[3] Q: So the City, based upon what you just said was a simple reading of this provision, determined who the potential qualified contractors would be . . . right?

A: **Yes**.

Q: And then the City created the process by which the qualified service providers would be selected; right?

A **Yes**.

13 JA 2628 (emphasis added).

II. CASTAWAY ASSIGNS ITS RIGHTS UNDER ITS FRANCHISE AGREEMENT TO RENO DISPOSAL.

A. WMN ACQUIRES CASTAWAY.

In 2012, WMN acquired Castaway. 11 JA 2279. Reno Disposal is WMN's wholly-owned subsidiary. Pursuant to WMN's acquisition, Reno Disposal was assigned Castaway's rights under the Franchise Agreement. 21 JA 4154. Although NRS and RR argue that WMN's ***acquisition*** of Castaway supports their antitrust claim, it is clear from the briefing below and before this Court that it is Castaway's ***assignment*** of its rights under the Franchise Agreement to Reno Disposal which NRS and RR contend created an illegal "monopoly."

B. NRS AND RR KNEW THAT WMN WAS ACQUIRING CASTAWAY.

Undercutting what they contend on appeal, NRS and RR knew and informed the City that Respondents had either acquired or was in the process of acquiring Castaway well before the City moved forward with entering into the Franchise Agreements. 13 JA 2633-2636. In fact, Chris Biesler, NRS's 30(b)(6) representative, specifically testified that NRS informed the Reno City Attorney about Reno Disposal's pending acquisition of Castaway in September-October, 2012--**prior** to the City's approval of the Franchise Agreements in November, 2012:

> Q: **. . . You said that Mr. Shipman [the City attorney] was told numerous times that you believed and were informed that Waste Management was already acquiring Castaway; is that right?**

A: **Yeah.**

Q: **And this all was occurring in the September-October 2012 time frame?**

A: **Yeah. Sounds about right.**

Id. at 2636 (emphasis added). Mr. Beisler then testified that NRS's and RR's statements to the City that Reno Disposal was in the process of acquiring Castaway fell on "deaf ears" at the City. Id.

NRS and RR argue that they were harmed by Reno Disposal's conduct because the City would have awarded them a franchise zone if the City knew that Reno Disposal was acquiring Castaway.[4] However, both RR and NRS freely admitted that they had **no evidence** supporting this contention and had **no idea** what the City based its selection process on for establishing qualified contractors to receive a franchise agreement. Id. at 2630. Accordingly, there was absolutely no evidence before the District Court supporting NRS's and RR's contention.[5]

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[4] 5 JA 909 ("If it had been disclosed to the City Council members that Waste Management and Castaway Trash Hauling had reached a buyout agreement prior to each company being awarded their respective Franchised Zones, then the second largest solid waste/recycling business in the City of Reno would have been Plaintiffs.")

[5] NRS and RR also argued that they could have worked together to service Castaway's zone. However, this was pure speculation and conjecture which was similarly not supported by any evidence. 13 JA 2660-2662.

C. THE CITY PRE-APPROVED CASTAWAY'S ASSIGNMENT TO RENO DISPOSAL.

NRS and RR have repeatedly ignored the express language of the Franchise Agreements in this litigation. However, the Franchise Agreements' language is important because the Franchise Agreements expressly permitted Castaway and Reno Disposal to do exactly what they did. Castaway assigned its rights for its zone to Reno Disposal pursuant to Paragraph 11.7(B) of the Franchise Agreements. 21 JA 4154. Paragraph 11.7(B) provides:

> **Except for Assignments to a Permitted Transferee** . . . Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City[.]

13 JA 2719 (Emphasis added).

The obvious meaning of this paragraph is that Castaway could not assign its rights under its Franchise Agreement for its zone without prior City approval **unless** Castaway was assigning those rights to a "Permitted Transferee." If Castaway assigned its rights to a "Permitted Transferee," City approval was not needed. Importantly, nothing in Paragraph 11.7(B) requires that Castaway notify the City of a transfer to a "Permitted Transferee." *See* id. Thus, if City approval is not needed and there is no requirement that the City actually know of the assignment, what the City did or did not know is irrelevant.

Reno Disposal was and is a "Permitted Transferee." The Franchise Agreements define "Permitted Transferee" as "a service provider under another

Commercial Service Agreement." Id. at 2681. Thus, a "Permitted Transferee" is any entity that has a "Commercial Service Agreement." The Franchise Agreements define "Commercial Service Agreement" (used interchangeably with "Commercial Franchise Agreement") as "this Agreement **and the other similar agreement between the City and the other franchised service provider** for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in exclusive service areas in the City[.]" Id. at 2675 (emphasis added). Under this definition, a person or entity is a "service provider under another Commercial Service Agreement" if they have a Franchise Agreement.

There were only **two** Franchise Agreements in existence at the time this language was drafted. Those **two** Franchise Agreements were entered into with (1) Reno Disposal, and (2) Castaway. *See* id. This means that Reno Disposal was not only a "Permitted Transferee," but was the **only** "Permitted Transferee" for Castaway. Because Reno Disposal was a "Permitted Transferee," Castaway was not required to obtain City approval of its assignment to Reno Disposal, and there was no obligation to notify the City prior to the assignment.

This language constitutes a pre-approval by the City for respondents to do exactly what they did. Under this language, the City knew or should have known that there was a very real possibility that Reno Disposal might be assigned

Castaway's franchise rights. Bill Biesler, an owner of NRS, admitted this very fact. 14 JA 2907 ("A: What happened was, that in reviewing the franchise document, there was a provision there that basically said anybody that's licensed under the franchise – and I think that's Waste Management and Castaway – could buy or sell one another without city council approval.").

D. THE CITY FORMALLY APPROVED CASTAWAY'S ASSIGNMENT OF ITS FRANCHISED MONOPOLY TO RENO DISPOSAL.

The City, in addition to pre-approving Reno Disposal's acquisition of Castaway's zone formally approved Castaway's assignment of its Franchise Agreement rights to Reno Disposal after the assignment occurred. Id. JA 2918.

III. NRS AND RR SUE RESPONDENTS.

NRS and RR initiated the underlying lawsuit against Reno Disposal and Refuse in March 2015. 1 JA 1-25. Among other claims not at issue in this appeal, they allege that these respondents violated NUPTA by conspiring with Castaway to create an illegal monopoly. 6 JA 1271.

Reno Disposal and Refuse successfully moved to dismiss all of NRS's and RR's other claims. Id. at 1272. However, the District Court denied Reno Disposal's and Refuse's motion to dismiss the NUPTA claim. 4 JA 691-702. It found that dismissal of this claim was a "close call," but allowed the claim to remain given the low threshold that NRS and RR had to achieve to defeat a motion

to dismiss. 4 JA 701. Importantly, NRS's and RR's original NUTPA claim was based upon their contention that the City "originally intended to grant franchises to two separate entities, not one," and Reno Disposal's acquisition of Castaway's zone violated the City's original intent. Id. at 700.

Reno Disposal and Refuse moved for summary judgment on the NUPTA claim, which the District Court denied pursuant to NRS's and RR's NRCP 56(f) request. 6 JA 1275. The District Court allowed NRS and RR sixty days to complete discovery because it found that "Plaintiffs have very little to support their claim." Id.

After this sixty day period, Reno Disposal and Refuse filed two new motions for summary judgment – one on liability, and one on damages. 13 JA 2615-2667; 14 JA 2923-2936. While these motions were pending, NRS and RR moved to amend their complaint to join WMN as a defendant. 18 JA 3538. Their motion was granted, and NRS's and RR's Second Amended Complaint sought to hold WMN derivatively liable for Reno Disposal's conduct under the theory of alter ego, and alleged that WMN conspired with Reno Disposal (its wholly owned subsidiary). Id. at 3538. WMN then moved to join the pending motions for summary judgment. 21 JA 4139-4140; 4141-4146. WMN's joinder in the motion for summary judgment on liability also asserted the defense of intraenterprise conspiracy theory and that no facts supporting an alter ego claim were alleged. Id.

NRS and RR opposed summary judgment and sought to create a question of fact about the City's knowledge and intent by submitting an affidavit from a former city council member Sharon Zadra. 19 JA 3769-3772. Ms. Zadra's affidavit established only one thing—she was blissfully ignorant of much of what was transpiring at the City regarding the Franchise Agreement. For instance, Ms. Zadra attempted to claim: (1) the City was unaware of Reno Disposal's potential acquisition of Castaway (despite NRS and RR admitting they repeatedly told the City of this activity and despite multiple other council members and the Mayor acknowledging this activity); (2) the City had no intention of allowing Reno Disposal to hold both franchise zones (even though the Franchise Agreement's expressed terms pre-approved Castaway's assignment of its franchise zone to Reno Disposal); and (3) that the City did not want Reno Disposal to hold both zones (even though the City executed its formal approval of the Castaway assignment of its zone to Reno Disposal). Id. Ms. Zadra's broad and hyperbolic comments of fraudulent activity and deceit running rampant through the City were nothing more than her unfounded and unsupported speculation.[6]

The District Court granted summary judgment in favor of Respondents. 26 JA 5289-94. It focused on the actual evidence before it, including the undisputed facts and express terms of the Franchise Agreement to find:

[6] Ms. Zadra was never designated by the City as its NRCP 30(b)(6) representative.

> The Defendants claim and the Plaintiffs concede the following: that the franchise agreements are valid and unambiguous contracts; that the City of Reno was authorized to enter into the franchise agreements; that the franchise agreements expressly contemplated the consolidation of the two franchises into a single franchise; that the franchise agreements expressly preapproved Reno Disposal acquiring Castaway's franchise rights without further City of Reno approval; and that the City of Reno expressly approved Reno Disposal's acquisition of Castaway's franchise rights thereby establishing a single franchise situation.[7]

Id. at 5291. These undisputed and conceded facts have not been challenged on appeal. Accordingly, these facts are controlling and dispositive of this appeal.

The District Court found that Franchise Agreement "is a valid exercise of a proper government power and is specifically exempted from antitrust supervision and antitrust application." Id. at 5292. It further found that Respondents were immune from liability "under the Noerr Doctrine." Id. Finally, it found that NRS's and RR's claim failed because they "have not sustained any injury and . . . have not alleged an antitrust injury sufficient to confer standing to prove any claim under NRS 598A.060." Id. at 5293.

The District Court did not specifically rule on WMN's joinder in the summary judgment motions prior to entering its order dismissing NRS's and RR's NUTPA claim against all Respondents. *See* id. However, the District

[7] Obviously, the City's formal ratification of the assignment of Castaway's zone to Reno Disposal utterly destroyed NRS's and RR's contention that if the City knew of the potential for Reno Disposal to acquire Castaway's zone, then the City would not have entered into the Franchise Agreement. For obvious reasons, NRS and RR continue to ignore this critical fact, for to do so would require that NRS and RR acknowledge their claim is baseless.

Court's Order did include dismissal of the claim against WMN. Id. at 5289. The District Court subsequently clarified its Order and entered judgment in favor of ***all*** Respondents, including WMN. 27 JA 5405-06. This appeal follows.

SUMMARY OF THE ARGUMENT

The District Court did not err in granting summary judgment in favor of Respondents. The NUTPA does not apply to conduct authorized by statute. Because the City is authorized to create monopolies for solid waste removal by granting franchises to specific haulers under NRS 268.081 and NRS 268.083, Respondents cannot be held liable under NUPTA because their franchise was obtained directly through the City's statutory authority to displace competition.

Furthermore, under the Noerr-Pennington Doctrine, private parties are immune from liability if the alleged antitrust behavior is behavior conducted in furtherance of the parties' right to petition their government. Although NRS and RR attempt to argue that the Noerr-Pennington Doctrine does not apply because Respondents' engaged in unlawful "pre-petitioning" activity, NRS and RR cannot escape the fact that ***all*** of the Respondents' complained-of conduct was conduct directly related to the Respondents' efforts to have the City revise its existing solid waste removal plan.

The District Court did not abuse its discretion in refusing to consider Sharon Zadra's affidavit. NRS and RR admitted that the Franchise Agreements

were unambiguous contracts, but nevertheless sought to introduce Ms. Zadra's affidavit as evidence of City intent which contradicted the express language of the agreements. The District Court properly refused to be swayed by this evidence under the parol evidence rule.

The District Court also did not err in finding that NRS and RR had no standing to assert an antitrust claim because they had sustained no injury. NRS and RR were not market competitors to Respondents because they were not qualified haulers; thus, they did not allege an antitrust injury sufficient to prevail on an antitrust claim. Furthermore, NRS and RR never presented any evidence that they were capable of performing the services provided by Castaway or Respondents. Thus, they could not prove that they would have been awarded a franchise. Without proof that they were otherwise qualified, they sustained no actual damage because they would not have been awarded a franchise even if Castaway had not assigned its rights to Reno Disposal.

Finally, the District Court did not err in denying NRS's and RR's NRCP 56(f) request and entering judgment in favor of WMN. NRS's and RR's only claim against WMN was a claim for violation of the NUPTA under the theory that WMN was derivatively liable for Reno Disposal's conduct. Because the District Court found that Reno Disposal could not be held liable as a matter of law, WMN could not be held derivatively liable. The District Court properly

denied NRS's and RR's discovery request and entered judgment in favor of WMN.

ARGUMENT

I. STANDARD OF REVIEW.

This Court "reviews the district court's grant of summary judgment de novo, without deference to the findings of lower court." Schettler v. RalRon Capital Corp., 128 Nev. Adv. Op. 20, 275 P.3d 933, 936 (Nev. 2012) (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). This court views the record in the light most favorable to the non-prevailing party. Borgerson v. Scanlon, 117 Nev. 216, 219, 19 P.3d 236, 238 (2001). "Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, indicates there is no genuine issue of material fact and the party is entitled to judgment as a matter of law." Id. at 219-20, 19 P.3d at 238.

II. THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT.

A. THE DISTRICT COURT DID NOT ERR IN FINDING THAT RESPONDENTS ARE IMMUNE FROM ANTITRUST LIABILITY.

The District Court correctly found that Respondents are immune from liability under (1) NRS 598A.040(3) and (2) the doctrine set forth in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127

(1961). This Court reviews the District Court's legal determinations de novo. Edelstein v. Bank of New York Mellon, 128 Nev. Adv. Op. 48, 286 P.3d 249, 260 (Nev. 2012). Because the City is statutorily authorized to eliminate competition for waste disposal within City limits, the District Court properly found that Respondents' activity was exempt from antitrust liability.

1. Exclusive Franchises For Collection of Waste Materials Are Constitutional.

A brief review of the City's franchise authority demonstrates the fundamental failing of NRS's and RR's claim that Respondents created an "illegal" monopoly because the City has the power to create a monopoly for waste collection. Local governments can grant franchises to collect and dispose of waste under the government's police powers. *See* United Haulers Assoc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 332 (2007) ("[W]aste disposal is typically and traditionally a function of local government exercising its police power."); Cal. Reduction Co. v. Sanitary Works of S.F., 199 U.S. 306, 318-19 (1905) (The regulation of waste through exclusive contracts is valid exercise of governmental police powers). Many states, including Nevada, have "clearly articulated and affirmatively expressed state policy" to create a monopoly for the public good, the anti-trust laws do not apply to prohibit anti-competitive conduct. *See* Cmty. Commc'n Co. v. City of Boulder, 455 U.S. 40, 54 (1982). Nevada has a strong public policy vesting municipalities with the authority to grant exclusive

franchises for the "**[c]ollection and disposal of garbage and other waste.**" NRS 268.081(3) (emphasis added).

Nevada's public policy is embodied in NRS 444.440, which states:

> It is hereby declared to be the policy of this State to regulate the collection and disposal of solid waste in a manner that will:
>
> 1. Protect public health and welfare.
> 2. Prevent water or air pollution.
> 3. Prevent the spread of disease and the creation of nuisances.
> 4. Conserve natural resources.
> 5. Enhance the beauty and quality of the environment.

NRS 444.510(1) requires "[t]he governing body of every municipality . . . [to] develop a plan to provide for a solid waste management system which adequately provides for the management and disposal of solid waste within the boundaries of the municipality[.]" Accordingly, the Legislature has articulated a clear, concise and applicable public policy regarding the collection and disposal of "solid waste." The Legislature has vested the City with the authority to enter into contracts in restraint of trade to accomplish this public policy as embodied in NRS 268.081.

2. The Legislature Granted the City Authority to Award an Exclusive Franchise for the Collection of Waste.

NRS 268.081(3) grants to the City the authority to "displace or limit competition" in the "[c]ollection and disposal of **garbage and other waste.**" (emphasis added). In Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552,

170 P.3d 508 (2007), this Court examined NRS 244.187(3), NRS 268.081's identical statutory provision that applies to counties rather than municipalities. Relying on the public policy expressed in NRS 444.510, the Court reasoned that a statute granting an exclusive franchise for waste collection was valid and enforceable. Id. at 560, 170 P.3d at 514. Thus, this Court found that NRS 444.510 "authorizes counties to grant exclusive franchises to any person or entity to provide services for the '[c]ollection and disposal of garbage and other waste.'" Id. at 559-60, 170 P.3d at 514. Accordingly, the City unquestionably has the power to create an exclusive monopoly for the collection of "garbage and other waste." NRS 268.081(3).

The Legislature clearly intended this monopoly right to extend to formal contracts, or franchise agreements, entered into between the City and third parties. NRS 444.510(1) requires all municipalities to "develop a plan to provide for a solid waste management system which adequately provides for the management and disposal of solid waste within the boundaries of the municipality."[8] To carry out this plan, the City may "enter into agreements . . . with any person . . . to carry out or develop portions of the plan provided for in subsection 1, or both, and to provide a solid waste management system, or any part thereof." NRS 444.510(3). "Solid waste management systems" specifically includes "**storage, collection,**

[8] "Solid waste" includes garbage ***and*** recyclable materials. *See* NRS 444A.013.

transportation, processing, recycling and disposal of solid waste." NRS 444.500 (emphasis added).

A franchise contract is a statutorily permitted form which the "agreements" required under NRS Chapter 444 may take. NRS 268.083(2). Under NRS 268.083(2), the City can enter into franchise agreements with third parties, such as Reno Disposal, for Reno Disposal to collect, transport, process and dispose of all solid wastes including recyclable waste. Therefore, the City's actions in entering into the Franchise Agreement were valid, legal, and proper.

3. Respondents are Immune From Liability Under NRS 598A.040(3).

Franchise agreements are exempt from any antitrust liability under the NUTPA. The NUTPA does not apply to "[c]onduct which is expressly authorized, regulated or approved by . . . [a] statute of this State or the United States[.]" NRS 598A.040(3)(a).

As set forth above, NRS 444.510, NRS 268.081 and NRS 268.083 expressly authorize the City to enter into franchise agreements to the exclusion of competition. Reno Disposal acquired its Franchise Agreement directly from the City, and it acquired the rights under Castaway's Franchise Agreement pursuant to the plain language of the Franchise Agreement. Thus, the District Court properly recognized that NRS 598A.040(3) provided a "safe harbor" for the

defendants. 26 JA 5292 ("The Nevada Revised Statutes [598A.040(3)(a)] clearly contemplate the safe harbor described in the Noerr decision."). Because the City was fully vested with the authority to grant the Franchise Agreement to Reno Disposal and to Castaway, there cannot be any anti-trust liability as a matter of law.

4. Respondents are Immune Under the Noerr-Pennington Doctrine.

The District Court also correctly held that Respondents are immune from liability under the Noerr-Pennington Doctrine. The NUTPA "shall be construed in harmony with prevailing judicial interpretations of the federal antitrust statutes." NRS 598A.050.

Under federal antitrust law, private parties are immune from liability if the alleged antitrust behavior is behavior conducted in furtherance of the parties' right to petition their government.[9] City of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365, 379–80 (1991). Referred to as the Noerr-Pennington Doctrine, this exemption "rests ultimately upon the recognition that the antitrust laws, 'tailored as they are for the business world, are not at all appropriate for

[9] This Court has previously discussed the applicability of Noerr-Pennington doctrine to Nevada's anti-SLAPP law. *See* John v. Douglas Cnty. Sch. Dist., 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009) (superseded by statute on other grounds). However, this Court has not addressed whether it applies to the NUTPA.

application in the political arena.'" Id. at 380 (quoting E. R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 141 (1961)).[10]

In Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), truck operators and their trade association sued 24 railroads, an association of presidents of those railroads, and a public relations firm alleging that all these defendants conspired together (same as alleged in this case) to restrain trade in violation of sections 1 and 2 of the Sherman Act. Id. at 129. Specifically, the truckers alleged that the defendants conspired together to engage in a "publicity campaign against the truckers designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business, to create an atmosphere of distaste for the truckers among the general public, and to impair the relationships existing between the truckers and their customers." Id.

In rejecting the truckers' arguments, the Supreme Court held "that no violation of the (Sherman) Act can be predicated upon mere attempts to influence the passage or enforcement of laws." Id. at 135. The Supreme Court reasoned that

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[10] *See also* SolarCity Corp. v. Salt River Project Agric. Improvement & Power Dist., 859 F.3d 720, 726 (9th Cir. 2017) ("Grounded in the First Amendment, that [Noerr-Pennington] doctrine insulates defendants from antitrust liability for petitioning the government."); In re Tylenol (Acetaminophen) Mktg., Sales Practices & Prod. Liab. Litig., 181 F. Supp. 3d 278, 305 (E.D. Pa. 2016) ("Essentially, businesses can't be held liable for antitrust violations for petitioning the government because their First Amendment rights supersede antitrust laws.").

even if the defendants' sole purpose in trying to influence the passage and enforcement of laws was to destroy the truckers' business, the immunity remained because "**[t]he right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so.**" Id. at 139 (emphasis added).[11]

The Noerr Court also said it was "equally clear that the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." Id. at 136. Accordingly, "the Act does not apply to mere group solicitation of governmental action . . . ." Id. at 139. Thus, the Court held that antitrust laws were not intended apply to concerted

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[11] The Supreme Court acknowledged:

> It is inevitable, whenever an attempt is made to influence legislation by a campaign of publicity, that an incidental effect of that campaign may be the infliction of some direct injury upon the interests of the party against whom the campaign is directed. And it seems equally inevitable that those conducting the campaign would be aware of, and possibly even pleased by, the prospect of such injury. To hold that the knowing infliction of such injury renders the campaign itself illegal would thus be tantamount to outlawing all such campaigns. We have already discussed the reasons which have led us to the conclusion that this has not been done by anything in the Sherman Act.

Id. at 143-44.

action by private parties seeking monopolistic legislation even though the "sole purpose in seeking to influence the passage and enforcement of laws was to destroy the truckers as competitors for the long-distance freight business." Id. at 138.[12]

Thereafter, in United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), the Court again visited the antitrust immunity established in Noerr relating to private party agreements seeking to influence legislation to grant a monopoly and reaffirmed such immunity with resounding force. In Pennington, a small coal company cross-claimed against the United Mine Workers ("UMW"), its trustees, and certain large coal operators, alleging that they had "entered into a conspiracy . . . to impose the agreed-upon wage and royalty scales upon the smaller nonunion operators . . . all for the purpose of eliminating them from the industry." Id. at 664. This contention was based upon the fact after reaching such agreement, the UMW and the large coal companies then successfully approached the Secretary of Labor to implement the minimum wage requirement

[12] In Noerr, the Supreme Court upheld the sanctity of the governmental action even though the railroad companies had intentionally lied to the public and to the local governmental officials to obtain passage of the monopolistic legislation. In reversing the district court's decision that the railroad companies' lies created antitrust liability, the Supreme Court stated this fact was irrelevant. Id. at 145. The Supreme Court held that because "the contest itself appears to have been conducted along lines normally accepted in our political system . . . that deception, reprehensible as it is, can be of no consequence so far as the [antitrust laws are] concerned." Id.

for employees of nonunion contractors, thereby making it almost impossible for the small companies to compete. Id. at 660.

The Court held that it was error for the trial court to give a jury instruction stating that the jury could find an antitrust violation if the jury found that there was an anti-competitive purpose for the agreement of the UMW and the coal companies. Id. at 670. In rejecting the trial court's reasoning, the Court held:

> **Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition. Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act.**

Id. at 657 (emphasis added).

The Pennington Court reaffirmed that "Noerr shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." Id. at 670. The Pennington Court also reaffirmed that "[n]othing could be clearer from the Court's [Noerr] opinion than that anticompetitive purpose did not illegalize the conduct there involved." Id. at 669.

More recently, in City of Columbia v. Omni Outdoor Adver, Inc., 499 U.S. 365 (1991), the Supreme Court, again relied on its reasoning in Noerr and Pennington, and held that the Sherman Act did not proscribe private citizens' conduct undertaken to influence government action, **even if that conduct involved conspiracy or bribery**. Id. at 377-79. In City of Columbia, a jury

found that a billboard company conspired with city officials to obtain legislation that protected the billboard company's monopolization of the billboard market within the city and that restrained the business of a competitor billboard company. Id. at 368–69. The Supreme Court again rejected the idea that a "conspiracy" to obtain legislation created antitrust liability as follows:

> we conclude that a "conspiracy" exception to *Noerr* must be rejected. . . . As we have described, *Parker* and *Noerr* are complementary expressions of the principle that the antitrust laws regulate business, not politics . . . .

Id. at 383.[13]

As these cases demonstrate, concerted action and agreement between private parties seeking anticompetitive restrictions (i.e., franchise agreements), are valid, legal and immunized from any antitrust liability even if there is an actual intent or purpose to destroy other businesses. The intent or purpose of the legislation becomes irrelevant since the critical and dispositive action is the right to solicit governmental bodies to enact valid laws restricting such competition. The District

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[13] The Supreme Court has consistently affirmed that group solicitation of governmental action is immune from antitrust liability. Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 499 (1988) ("Concerted efforts to restrain or monopolize trade by petitioning government officials are protected from antitrust liability under the doctrine established by Noerr."); Cal. Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972) ("We conclude that it would be destructive of rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests vis-a -vis their competitors").

Court's finding that Respondents' conduct is immune from liability is well supported by the law. The District Court should be affirmed.

5. Pre-Petition Activities Incidental to Achieving the Anticompetitive Legislative Action Fall within Noerr-Pennington.

NRS and RR attempt to avoid the Noerr-Pennington doctrine by arguing that the District Court erred in finding that such pre-petition activity was immunized from antitrust liability because Reno Disposal's petitioning activity did not occur until July or August 2012 "while the conspiracy to monopolize the Reno market occurred several months prior . . . ." AOB, p.16:14-17.

However, Noerr-Pennington immunity is not limited merely to the act of "petitioning." It also encompasses pre-petition activity of the parties, including the agreements between the parties who intend on seeking the legislative enactments restraining competition. *See* Noerr, 365 U.S. at 139 (no liability for agreement to run public ad campaign prior to seeking anticompetitive legislation); Pennington, 381 U.S. at 657 (no liability for agreeing to implement a new minimum wage then seeking anticompetitive legislation to enact the agreed upon minimum wage).

NRS and RR also argue that the agreement between Reno Disposal and Castaway constituted anticompetitive "market activity," and was, therefore, not immune under the Noerr-Pennington doctrine. AOB, 19:17-23:16. However,

they do not provide any substantive analysis of this issue other citing a number of irrelevant cases holding that market activity (such as price fixing agreements or boycotting actions in the market to influence legislation) is not immunized activity.

The law on this issue is readily distinguishable from this case. For example, in California Pharmacy Management, LLC v. Zenith Insurance Co., 669 F. Supp. 2d 1152 (C.D. Cal. 2009), the court rejected the argument that Noerr-Pennington applied to pre-petitioning activity in which the defendants specifically targeted a competitor by making false and tortious statements to the competitor's customers before any petitioning activity was contemplated. Id. at 1168. Because the defendants' conduct was "conducted antecedent to and without contemplation of litigation," the Court found that it was not activity that was protected by the Noerr-Pennington doctrine. Id.

In the present case, NRS/RR's reliance on any market activity exception to the Noerr-Pennington doctrine fails because here there is no wrongful or tortious conduct occurring between Reno Disposal and Castaway. There was no boycotting, no price fixing and absolutely no market monopolistic market activity that took place. Furthermore, the conduct which did occur, occurred in contemplation of petitioning activity. The record is clear that Reno Disposal

agreed to purchase Castaways' franchise zone if the City implemented the City's new Franchise Agreements.

NRS and RR acknowledge this very fact when they argue to this Court that Reno Disposal and Castaway acted wrongfully when "they agreed to seek two franchise zones, knowing that Castaway would never service a single day of its zone, in order to create an exclusive monopoly for RDC." AOB., p.15:14-17. The complained of activity, using NRS's and RR's own words, is that the anticompetitive conduct was an agreement to jointly seek the City's creation of two franchise zones. As stated, NRS's and RR's contentions fall square within the Noerr-Pennington framework immunizing Respondents from any antitrust liability as a matter of law. The District Court's order should be affirmed.

B. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CONSIDERING THE EVIDENCE BEFORE IT.

This Court reviews claims of evidentiary error for an abuse of discretion. Quinlan v. Camden USA, Inc., 126 Nev. 311, 316, 236 P.3d 613, 616 (2010). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law." MB Am., Inc. v. Alaska Pac. Leasing Co., 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1292 (2016).

It is well-established that a party must present competent evidence to oppose summary judgment or have judgment entered against it. Affidavits with conclusory statements and assertions are inadmissible as evidence and cannot defeat a motion for summary judgment. Catrone v. 105 Casino Corp., 82 Nev. 166, 171, 414 P.2d 106, 109 (1966) (holding that conclusions in an affidavit without factual support are inadmissible as evidence and cannot defeat a motion for summary judgment). Further, "evidence that would inadmissible at the trial of the case is inadmissible on a motion for summary judgment." Adamson v. Bowker, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969). A party cannot present contradictory facts in an attempt to manufacture a question of fact to avoid summary judgment. Bank of Las Vegas v. Hoopes, 84 Nev. 585, 586, 445 P.2d 937, 938 (1968) (holding that "a 'genuine' issue of material fact within the intendment of NRCP 56 may not be created by the conflicting sworn statements of the party against whom summary judgment was entered").

In the present appeal, NRS and RR exclusively rely upon the affidavit of Sharon Zadra in an attempt to create a question of fact as to the City's intent in entering into the Franchise Agreements and the City's conduct relating to the selection of the qualified contractors. They latch onto Ms. Zadra's statement that she would not have approved the Franchise Agreements had she been aware of

the Reno Disposal and Castaway arrangement. AOB., p 28. This affidavit does not create an issue of fact for the following reasons.

First, NRS and RR admit that the Franchise Agreements are valid and enforceable. 26 JA 5291. The City has not, and does not, contest the validity and enforceability of these agreements. Thus, even though Ms. Zadra's affidavit purported to make allegations on behalf of the City she was never designated by the City as a NRCP 30(b)(6) representative and her grandiose statements as to the City's intent, the City's knowledge and the City's actions must all be disregarded as she does not speak and has not been authorized to speak on behalf of the City with regard to the terms of the Franchise Agreements.

Second, Ms. Zadra's affidavit attempted to imply that her lack of knowledge of critical events demonstrated "the City's" lack of knowledge of the same events. This implication is false. The City is not charged with Ms. Zadra's lack of knowledge, but with the knowledge of ***all*** it its agents. As this Court holds, the knowledge of a corporation is based upon the ***totality*** of the knowledge of the corporation's agents. In re Amerco Derivative Litig., 127 Nev. 196, 252 P.3d 681, 695 (2011). Accordingly, Ms. Zadra's ignorance is not charged to the City. Instead, Ms. Zadra is charged with the knowledge obtained by all the agents of the City relating to the Franchise Agreements. This includes the knowledge of Jon Shipman, the City Staff and other City Council members all of

whom were fully aware that Reno Disposal was likely to acquire Castaway after the Franchise Agreements were entered into **because they were told by NRS and RR of such action**.

Further, NRS and RR disingenuously argue to this Court that Ms. Zadra and apparently no one else at the City allegedly knew about Reno Disposal's anticipated acquisition of Castaway. AOB, p. 7:15-18. However, NRS's own 30(b)(6) representative specifically informed the City Attorney of this activity. 13 JA 2636. Further, multiple council members and the Mayor were fully aware of this activity and/or potential activity and were entirely supportive of it because the express provisions of the Franchise Agreements allowed Reno Disposal to acquire Castaway. 13 JA 2638-2642. Therefore, NRS's and RR's attempt to present Ms. Zadra's affidavit in an effort to create a conflict as to what the City knew must be disregarded since NRS/RR is precluded from manufacturing a question of fact by attempting to contradict their own statements and admissions.

Third, NRS and RR have repeatedly admitted that the Franchise Agreements are unambiguous contracts. 26 JA 5291. This admission precludes them from attempting to present evidence contradicting the parties' expressed intent in the Franchise Agreements. Great Am. Airways, Inc. v. Airport Auth. of Washoe Cnty., 103 Nev. 427, 429, 743 P.2d 628, 629 (1987) ("The preeminent rule of construction is to ascertain the intention of the contracting parties. . . .If that

intention is clear from the text, no construction is required . . . and this court is bound by the language of the agreement. . . .").

Fourth, the content of Ms. Zadra's affidavit was properly ignored by the District Court pursuant to the parol evidence rule. This rule precludes a party from attempting to present evidence at trial seeking to contradict the express terms of a written agreement. In re Cay Clubs, 130 Nev. Adv. Op. 14, 340 P.3d 563, 574 (Nev. 2014). Ms. Zadra's affidavit contains a multitude of statements that directly contradict the unambiguous terms of the Franchise Agreements, which, as set forth above, expressly permitted Castaway to assign its rights to Reno Disposal without City knowledge or approval.

Fifth, Ms. Zadra's affidavit was also premised on her "belief" and opinion and not upon any personal knowledge. For instance, it was Ms. Zadra's belief that the City Council would not have voted for the Franchise Agreements if they knew Castaway and Reno Disposal were discussing an acquisition and that NRS/RR would have been qualified to perform waste collection activities under a Franchise Agreements. 19 JA 3770-71. Belief and opinion do not constitute personal knowledge. Saka v. Sahara-Nev. Corp., 92 Nev. 703, 705, 558 P.2d 535, 536 (1976) (holding that "facts must be made upon the affiant's personal knowledge, and there must be an affirmative showing of his competency to testify to them.").

Finally, Ms. Zadra's contention that Reno Disposal committed a fraud by acquiring Castaway because she would not have voted to approve the Franchise Agreements knowing this activity could occur is again not admissible and pure speculation. The law is clear that when a party signs a contract, it is bound by the terms therein whether she reads the terms or not. Campanelli v. Conservas Altamira, S.A., 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) ("[W]hen a party to a written contract accepts it is . . . a contract he is bound by the stipulations and conditions expressed in it whether he reads them or not." (Internal quotations omitted)). The City is bound by the admitted terms of the Franchise Agreements even though Ms. Zadra voted to approve the agreements but apparently never took the opportunity to read and comprehend the terms of such agreements. Again, the District Court found that NRS and RR had conceded that the Franchise Agreements expressly allowed Reno Disposal to acquire Castaway's franchise rights without further City approval. 26 JA 5291.

Taken together, Ms. Zadra's affidavit had no evidentiary value, was based upon speculation and conjecture and was insufficient to contradict NRS's/RR's own statements and admission in this case. Therefore, the District Court did not abuse its discretion, and must be affirmed.

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C. THE DISTRICT COURT DID NOT ERR IN FINDING THAT NRS AND RR HAD NO STANDING AND SUSTAINED NO DAMAGES.

The District Court properly held that NRS and RR did not have standing because they did not sustain any damage or injury. In order to have standing to bring an antitrust claim, the plaintiff must be able to demonstrate that it incurred an antitrust injury. Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977). This injury must be of "the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." Id. In order to sustain an antitrust injury that would create standing, the plaintiff must be a competitor in the restrained market. Eagle v. Star-Kist Foods, Inc., 812 F.2d 538, 540 (9th Cir. 1987) ("[T]he party alleging the injury must be either a consumer of the alleged violator's goods or services or a competitor of the alleged violator in the restrained market.").

Here, it is undisputed that the City selected Reno Disposal and Castaway as **the only qualified solid waste haulers** to receive a franchise agreement. NRS/RR has admitted this fact.[14] Accordingly, the contention that the Plaintiffs sustained any harm is pure speculation because the undisputed evidence is that the Plaintiffs **were not selected by the City to be capable of receiving a**

[14] 18 JA 3509 ("Q: So the City . . . determined who the potential qualified contractors would be. . . ; right? A: Yes."). *See also* 14 JA 2925-2927 detailing City's selection of qualified contractors.

franchise.[15] Therefore, NRS (a waste disposal facility) and RR (a small, local hauler) were not competitors in the restrained market. Further, any harm sustained by NRS and RR was caused by the City exercising its lawful franchise authority to restrict competition in the field of waste collection and not by any wrongful conduct of the Respondents.

Because NRS and RR were not harmed by Respondents, they have no standing to assert their claims in this action. It is well established that "behavior is not actionable unless **it actually causes** plaintiff's injuries . . . ." Sims v. Gen. Tele. & Elec., 107 Nev. 516, 524, 815 P.2d 151, 156 (1991) (emphasis added) (overruled on other grounds by Tucker v. Action Equip. & Scaffold Co., 113 Nev. 1349, 951 P.2d 1027 (1997)). NRS and RR have the burden to establish causation of an injury even under an anti-competition claim. Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 545 (1983) (plaintiff's anti-competitive claims failed because plaintiff failed to prove proximate cause or injury); MetroNet Serv. Corp. v. Qwest Corp., 383 F.3d 1124, 1131 (9th Cir. 2004) (plaintiff must prove defendant "caused" an antitrust injury); St. Louis Convention & Visitors Comm'n v. Nat'l Football League, 154 F.3d 851,

[15] NRS and RR drove this very point home when NRS and RR represented to the District Court that they "are small local hauling, collection and recycling companies." 17 JA 3242. Obviously, the City did not want to grant such a critical health and safety franchise to a small business that was incapable of such an important public health service provided to the residents of the City.

862 (8th Cir. 1998) ("In order to satisfy the causation element . . . [plaintiff] had to show that the NFL's anticompetitive acts were an actual, material cause of the alleged harm . . . ."). NRS and RR failed to establish any causal connection because it was the City's lawful action that was the alleged "cause" of NRS's and RR's purported harm.

Instead, of addressing these critical defects in their claim, NRS and RR contend that their alleged "exclusion" from the market negates their burden to prove "that the plaintiff was qualified to get or would have gotten the business." AOB, p.33:13-16. If this were true, then every person in the entire world would have standing to assert an antitrust claim. An antitrust plaintiff would never have to prove causation, or that it was a participant in and/or capable of doing the market activity from which it claims to be excluded. NRS's and RR's position is facially unworkable and contrary to the established law.

Again, the record is clear that NRS and RR were not capable of competing in the market. The City made this determination. Further, Respondents have no liability because their conduct did not create the anticompetitive market. It was the City's decision to exercise its franchise authority and create franchise zones which impacted the market. As such, the District Court was correct in concluding that NRS and RR lacked standing to assert an antitrust claim and that there was no evidence supporting any claim of damages.

D. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF WMN.

Contrary to NRS's and RR's contention, the District Court properly granted summary judgment in favor of WMN without allowing NRS and RR time to conduct discovery on their alter ego theory. NRS and RR did not asserted a separate substantive claim against WMN and their claim against WMN was based solely on a theory of alter ego derivative liability.[16] *See* 18 JA 3538. Because the District Court found that Reno Disposal was not liable, WMN could not be held liable under a theory of derivative liability.

Accordingly, the District Court did not abuse its discretion in refusing to grant NRS's and RR's NRCP 56(f) request because the NRS and RR did not assert any direct claims against WMN. Any discovery relating to NRS's and RR's alter ego theory would only be necessary if Reno Disposal had any potential liability. *See, e.g.,* United States v. Bestfoods, 524 U.S. 51, 64–65 (1998) (holding that there is a clear distinction between direct liability arising out of one's own acts and derivative liability stemming from the acts of a subsidiary entity under an alter ego claim); Local 159, 342, 343 & 444 v. Nor–Cal Plumbing, Inc., 185 F.3d 978, 985 (9th Cir.1999) ("A request to pierce the

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[16] Leek v. Cooper, 194 Cal. App. 4th 399, 418–19, 125 Cal. Rptr. 3d 56, 71 (2011) ("A claim based upon an alter ego theory is not itself a claim for substantive relief. . . . It is a procedural device by which courts will disregard the corporate entity in order to hold the alter ego individual liable on the obligations of the corporation.").

corporate veil is only a means of imposing liability for an underlying cause of action and is not a cause of action in and of itself.").

Because the District Court held that Reno Disposal had no antitrust liability, then NRS's and RR's alter claim against WMN also failed as a matter of law. The District Court's denial of NRS's and RR's NRCP 56(f) relief was proper because all discovery relating to NRS's and RR's alter ego contention became moot upon the District Court's grant of summary judgment in Reno Disposal's favor. Accordingly, the District Court should be affirmed.

CONCLUSION

This Court should affirm the orders of the District Court. The District Court did not err in granting summary judgment in favor of Respondents. The conduct of which NRS and RR complain is expressly permitted by statute; therefore, Respondents are exempt from liability under the NUTPA pursuant to NRS 598A.040(3)(a). Furthermore, Respondents are exempt from antitrust liability under the Noerr- Pennington Doctrine because all of their complained-of conduct involved their right to petition their local government. The District Court did not err in concluding that NRS and RR lacked standing and suffered no harm because NRS and RR did not present any evidence sufficient to show that they were an actual competitor, that the complained-of conduct created an antitrust injury, or that they actually suffered any damage. Similarly, the District

Court did not abuse its discretion in declining to give credence to the affidavit of former councilwoman Sharon Zadra, as the affidavit was an attempt to improperly contradict the express terms of the Franchise Agreements, and Ms. Zadra's assertions were not based upon personal knowledge or supported by factual evidence. Finally, the District Court did not err in granting summary judgment in favor of WMN and denying NRS's and RR's NRCP 56(f) request. NRS's and RR's sole theory of liability against WMN was that WMN was the alter ego of Reno Disposal and, therefore, liable to the extent that Reno Disposal was liable. Because the District Court found that Reno Disposal could not be held liable, any claim against WMN failed. Accordingly, the District Court should be affirmed.

DATED this 6th day of September, 2017.

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CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 28.2

1. I hereby certify that this Respondents' Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14 font and Times New Roman type.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 9,332 words.

3. Finally, I hereby certify that I have read this answering brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

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subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of September, 2017.

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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 6th day of September, 2017, I caused service of a true and correct copy of the above and foregoing **RESPONDENTS' ANSWERING BRIEF** on all parties to this action by the method(s) indicated below:

X by using the Supreme Court Electronic Filing System:

Del Hardy, Esq.
WINTER STREET LAW GROUP
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X by personal delivery/hand delivery addressed to:

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DATED this 6th day of September, 2017.

An employee of Robison, Simons, Sharp & Brust