IN THE SUPREME COURT OF THE STATE OF NEVADA

RENO DISPOSAL COMPANY, INC., a Nevada Corporation,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF WASHOE, and THE HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents.

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company; NEVADA RECYCLING AND SALVAGE, LTD., a Nevada limited liability company; AMCB, LLC, a Nevada limited liability company dba RUBBISH RUNNDERS,

Real Parties in Interest (Defendants)

CITY OF RENO

Real Parties in Interest (Counter Defendant)

SUPREME COURT CASE NO: _____

Second Judicial District Court Case No. CV17-00143

PETITIONER'S APPENDIX VOL. 1

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CHRONOLOGICAL			
DOCUMENT	**DATE**	**VOL.**	**BATES**
Order (2nd Judicial Case No. CV15-00497)	9/19/16	1	PA_0001-0006
GSR's Opposition to Defendants' Motion to Dismiss (Dkt 20)	11/30/16	1	PA_0007-0023
Order (on Motion to Dismiss) (ECF Dkt. #47)	3/27/17	1	PA_0024-0030
GSR's First Amended Complaint (ECF Dkt. #48)	4/26/17	1	PA_0031-0044
GSR's Motion to Stay or in the Alternative Motion to Dismiss	6/30/17	1	PA_0045-0087
Order After Hearing Denying Motion for Stay or in the Alternative Motion to Dismiss	11/13/17	1	PA_0088-0094
GSR's Answer to Complaint and Counterclaim	12/4/17	1	PA_0095-0130
Counterdefendants Reno Disposal's, WMON's and WMNS' Special Motion to Dismiss Counterclaims Pursuant to NRS 41.660	1/30/18	1	PA_0131-0138
Counterdefendant City of Reno's Special Motion to Dismiss Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to Dismiss	2/5/18	1	PA_0139-0184

Joint Case Management Report (Dkt. 92)	2/21/18	1	PA_0185-0195
Reno Disposal's First Amended Verified Complaint	3/9/18	2	PA_0196-0317
Excerpts of the Deposition of Richard C. Lake	7/16/18	2	PA_0318-0332
Order Affirming (134 Nev. Advance Opinion 55)	8/2/18	2	PA_0333-0340
Order Staying All Proceedings Sua Sponte	8/6/18	2	PA_0341-0344
Reno Disposal's Motion to Vacate Order to Stay	1/25/19	2	PA_0345-0394
City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
Order Denying Motion to Vacate Stay	4/18/19	3	PA_0398-0403

ALPHABETICAL			
DOCUMENT	**DATE**	**VOL.**	**BATES**
City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
Counterdefendant City of Reno's Special Motion to Dismiss Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to Dismiss	2/5/18	1	PA_0139-0184

Excerpts of the Deposition of Richard C. Lake	7/16/18	2	PA_0318-0332
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Reno Disposal's First Amended Verified Complaint	3/9/18	2	PA_0196-0317
Reno Disposal's Motion to Vacate Order to Stay	1/25/19	2	PA_0345-0394

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 12th day of August, 2019, I caused service of a true and correct copy of the above and foregoing **PETITIONER'S APPENDIX VOL. 1** on all parties to this action by the method(s) indicated below:

X 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:

Honorable Kathleen Drakulich
Second Judicial District Court
75 Court Street, Dept. 1
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DATED this 12 day of August, 2019.

An employee of Simons Hall Johnston PC

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Clerk of the Court
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD,

Plaintiff,

vs.

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

Defendants.
_____/

Case No.: CV15-00497

Dept. No.: 7

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,

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

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

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

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

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

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

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

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

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

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

8. 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.

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this 19 day of September, 2016.

Patrick Flanagan

PATRICK FLANAGAN
District Judge

CERTIFICATE OF SERVICE

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

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

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

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING, LLC., Plaintiff, vs. REFUSE, INC.; RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO; DOES 1-10, et al. Defendants.	Case No.: 3:16-CV-00334 OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

COMES NOW, Green Solutions Recycling, LLC ("**GSR**") by and through its attorneys, John P. Sande IV, Esq. and J. Chase Whittemore, Esq., hereby submits the following Opposition to Defendants' Motion to Dismiss filed by Refuse, Inc. ("**Refuse**"), Reno Disposal Company, Inc. ("**Reno Disposal**"), Waste Management of Nevada, Inc., ("**WMN**"), and joined by the City of Reno ("**City**"). This Opposition is made and based upon the following memorandum of points and authorities, the pleadings on file in this case, and any oral arguments this Court wishes to entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Since 2006, GSR has been in the private recycling business in the Reno market. GSR markets to commercial customers as the "locally owned" and "alternative" recycling business in Reno. GSR does not collect waste, solid waste, or mixed solid waste ("**MSW**") in the City. GSR only leases bins to store "(excluded) recyclable materials" that have been sold by the generator.

There is a commonly recognized and understood distinction between "waste" and "recyclable materials." Materials, like construction materials, become "waste" when the materials are discarded by the generator with the intent to throw them away into the "waste stream." Materials, like the construction materials GSR purchases, become "recyclable materials" because the materials are not discarded by the generator but rather are sold with the intent to place them back into the "stream of commerce." However, contrary to this widely held understanding, WM and the City operate under the assumption that "waste" includes "recyclable materials," and therefore the City has the authority to limit competition regarding the collection of "recyclable materials."

On November 7, 2012, the City of Reno and Reno Disposal entered into a Franchise Agreement to displace and limit competition regarding the collection and disposal of "recyclable materials," under the incorrect assumption the City had the authority to do so pursuant to NRS 268.

The 2012 Franchise Agreement limits competition by granting to WM the exclusive right to collect recyclable materials. Moreover, the Franchise Agreement limits competition by fixing and pegging the market purchase price for construction and landscape materials, private recycling companies, like GSR, purchase from private generators. This is a per se violation of

the Sherman Antitrust Act; and additionally, is an unreasonable burden to interstate commerce.

II. LEGAL STANDARD

Defendants' move to dismiss GSR's Complaint for failure to state a cause of action. Fed. R. Civ. P. 12(b)(6) provides that a party may assert a defense by motion for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 8(a) states that a complaint should contain "a short and plain statement of the claim showing the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and that "each allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Fed. R. Civ. P. 8(a) does not require "heightened fact pleading of specifics, only enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The analysis is context-specific, which involves the "judicial experience and common sense" of the court to determine whether the complaint plausibly gives rise to an entitlement of relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief." *Id*. Facial plausibility is achieved when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. Therefore, rule 8(a) "does not impose a probability requirement...it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence" to support the allegations. *Twombly*, 550 U.S. at 556.

III. ARGUMENT

WM and the City attack various aspects of the Complaint. Each argument will be addressed in turn.

A. Refuse and WMN are proper parties at this point in the case as they are all likely parties to the alleged wrongful conduct, and additional discovery is needed to better understand the scope of each Defendant's liability.

Refuse and WMN are proper parties to this lawsuit. As recognized in Defendants' Interested Parties disclosure, Refuse and Reno Disposal are all wholly owned subsidiaries of WMN. *See* Def.'s Cert. of Interested Parties Doc. 19 filed 11/29/16. Plaintiff does not know, nor could know, which employees or agents of any one of these companies has engaged in activities sought to interfere with the legitimate business activities of Plaintiff in an attempt to limit or stifle competition or interfere with Plaintiff's contractual relations with its customers. Therefore, GSR is entitled to conduct discovery to seek answers to these unknown issues of fact. *Weisman v. LeLandais*, 532 F.2d 308, 310-311 (1976)("[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed, it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test.").

Defendants' citation to *County of Clark v. Bonanza No.1*, 96 Nev 643, 615 P.2d 939 (1980) illustrates Defendants' misunderstanding of the nature of GSR's claims. GSR does not seek damages on a theory that it is entitled to an award under the Franchise Agreement. GSR's complaint clearly states that it was Defendants' conduct in attempting to set prices and interfere with GSR's contractual relations that has created Defendants' liability.

GSR's complaint is completely dissimilar to *County of Clark v. Bonanza No. 1* where the plaintiff was seeking to recover against the defendant under an indemnity agreement plaintiff was not a party to. Obviously the plaintiff, a non-party to the indemnity agreement, cannot enforce the agreement against defendant. That is not the case in this instance. Here, GSR is not seeking contractual protections to which it is not entitled. GSR is simply seeking

redress from the City and WM for their actions limiting competition over Recyclable Materials and Excluded Recyclable Materials in the City.

B. The City does not have the authority to displace competition for the collection of recyclable materials that are NOT treated as waste.

WM moves this court to dismiss the complaint because GSR's "legal contention is wrong." Mot., p.8:8-9. WM moves this court for dismissal on these grounds but then utterly misstates GSR's argument. WM states that GSR's legal contention is that the "City did not have the authority to displace competition for the collection of recyclable materials that ***were treated as waste***," and cites to paragraph 20 of the Complaint. Mot., p.7:20-26 (emphasis added). Further, WM states, "GSR's entire Complaint is premised upon this single flawed legal conclusion." Mot., p.7:25-26. Nothing in Paragraph 20, nor anywhere else in the Complaint, does GSR allege that the City does not have the authority to displace competition for the collection of recyclable materials **that are treated as waste**. On the contrary, GSR agrees with WM: recyclable materials that are discarded and treated as waste are **not** in fact "recyclable materials" but rather are considered "other waste," and thus can be lawfully franchised pursuant to NRS 268.

Of course, this is not the legal contention that forms the basis of GSR's four claims for relief. Paragraph 20 of the Complaint states, "The City of Reno did not have the authority to enter into Franchise with regard to the collection or purchase of **recyclable material**." WM misstates this paragraph of the Complaint by adding the words "that were treated as waste" to the end of GSR's legal contention to confuse the court. Mot., p.7:25. GSR understands that recyclable materials that are *treated as waste* are not in fact "recyclable materials" but rather are "other waste" pursuant to NRS 268. WM takes two and half pages in its Motion to come to the same conclusion. *See* Mot., p.13-16. GSR completely agrees with that conclusion.

However, what WM does not seem to understand, is that pages 13-15 of Defendants' motion can be summarized to state that courts in other jurisdictions have consistently held recyclable materials that **are not discarded but rather are sold** are not to be considered as "waste;" and because they are not "waste" they cannot be subject to exclusive franchise agreements unless the state has granted the authority to do so pursuant to state statute. *See* Mot,, p.13-16; *see also Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.*, 869 P.2d 440, 442 (Cal. 1994) ("***WM of the Desert***") ("The question is whether property with a market value to its owner -- for example, a **recyclable material** -- is "waste" within the scope of the Act and its exclusive franchise provision. We conclude this property is not "waste" until it is discarded."). Furthermore, the court went on to state, "We therefore hold that the owner of *undiscarded recyclables* is not required to transfer them to the holder of an exclusive franchise under the Act." *Id*. at 446 (emphasis added). Similar to the Court in *WM of the Desert*, here this Court should determine that materials that have been sold by the generator with the intent to recycle them are "recyclable materials" (a mixed issue of law and fact) and therefore cannot be subjected to control by a holder of an exclusive franchise.

Importantly, what *WM of the Desert* and its progeny all understand is that for all intents and purposes, there are only two categories of materials: "waste" and "recyclable materials." On page 15 of WM's Motion, WM cites to *Lopez v. City of Kerman*, 2010 WL 3715641 (E.D. Cal. 2010) as persuasive authority that this court should recognize this important distinction. Mot., p.15 (citing *Lopez*) ("The relevant distinction is whether the property owner elects to sell its recyclables rather than throwing them away."). GSR agrees with WM.

In addition, GSR's legal contention is that "The City of Reno did not have the authority to enter into Franchise with regard to the collection or purchase of recyclable material" because recyclable materials are not "other waste" pursuant to NRS 268. This is a "plausible" legal

conclusion, not an "unwarranted inference," since the term "recyclable materials" is (i) plainly absent from NRS 268 and (ii) according to to other courts, the term is distinct from "waste." If the recyclable materials that are not discarded are not "other waste," then NRS 268 does not grant the City the authority to displace or limit competition in the collection and disposal of those recyclable materials. Thus, GSR alleges that the City did not have the authority to enter into the Franchise Agreement on November 7, 2012. However, because the City did enter into that Franchise Agreement, it violated section 1 of the Sherman Antitrust Act. Comp., ¶28. Thus, GSR has made a plain statement of the claim showing it is entitled to relief.

Accordingly, GSR's First Claim for Relief should survive defendants' Motion to Dismiss for failure to state a claim.

(i) The Franchise Agreement seeks to prohibit persons who collect, segregate, and sell their recyclable material to a third-party because it requires the sale to take place at "market price" and unlawfully "pegs" that market price.

Under the Sherman Antitrust Act, a per se violation occurs if the price is either "fixed" or "pegged." "When the term 'fix prices' is used, that term is used in its larger sense. A combination or conspiracy is formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate commerce is unreasonable per se under the Sherman Act." *Plymouth Dealers' Ass. of N. California, v. United States*, 279 F.2d 128, 132 (9th Cir. 1960) ("*Plymouth Dealers*"). Importantly to our discussion here, the "test is not what the actual effect is on prices, but whether such agreements interfere with 'the freedom of traders and thereby restrain their ability to sell in **accordance with their own judgment**.'" *Id*. (quoting *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 213 (1951)) (emphasis added).

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The City Memorandum dated Oct. 19, 2015 (**Exhibit 6** of Defendants' Opposition to Motion for Preliminary Injunction ("**WM Opp**.")), establishes what the term "market price" means within the context of the 2012 Franchise Agreement and "pegs" the price--a per se violation of the Sherman Antitrust Act. Under that formal interpretation, if the "total amount paid by the generator to the buyer or a buyer affiliated entity (e.g. the "container rental fee") **exceeds** the total amount received by the generator from the buyer or its affiliated entity (e.g., the "rebate"), the cardboard will be classified as Collection Materials, *not Excluded Recyclable Materials*, because the cardboard is being collected and transported as a service." WM Opp., p.11 (emphasis added). That statement, boiled down to Sherman Antitrust Act language, means the City has effectively "pegged" the market price of Excluded Recyclable Materials so that the "market price" must always be greater than the container rental fees (if the materials are to be considered Excluded Recyclable Materials). This is a per se violation of the Sherman Antitrust Act because it pegs the price of a commodity.

However, WM states "In the present case, the Franchise Agreement does not seek to prohibit persons who collect, segregate and sell their recyclable material to a third-party. Instead, the Franchise Agreement grants exclusive rights to collect recyclable materials that have been discarded and treated as waste by the generator of the waste material." Mot, p.14. Nothing contained in the Franchise Agreement supports that conclusion.

If the Franchise Agreement only "grants exclusive rights to collect recyclable materials that have been discarded and treated as waste" then why does the Franchise Agreement require excluded recyclable materials to be sold at "market price?" *See* Mot., p.6. If the Franchise Agreement only "grants exclusive rights to collect recyclable materials that have been discarded and treated as waste" then why does the Franchise Agreement dictate that if the

recyclable materials are sold to a third-party for less than the City determined "market price," then those materials are "waste" and must be collected by the holder of the exclusive franchise?

Indeed, GSR does not receive (excluded) recyclable materials that have been discarded and treated as waste by the generator of the waste material. On the contrary, GSR only receives and purchases (excluded) recyclable materials that have been sold by the generator. But because the City has regulated what "price" must be paid by GSR, the Franchise Agreement violates the Sherman Antitrust Act, the Nevada Unfair Trade Practices Act, and the Commerce Clause and GSR has suffered injury.

(ii) Nevada has articulated a clear, concise and applicable public policy regarding the collection and disposal of "solid waste" but not "recyclable materials."

The "state action" exemption does not apply to municipalities that have exceeded their statutory limits and authority granted by the State. *See City of Lafayette, La. v. Louisiana Power & Light Co.*, 435 U.S. 389, 413 (1978) ("We therefore conclude that the Parker doctrine exempts only anticompetitive conduct engaged in as an act of government by the State as sovereign, or, by its subdivisions, *pursuant to state policy* to displace competition with regulation or monopoly public service.")(emphasis added). The City of Reno does not have the authority to displace competition with regulation regarding the collection and disposal of "recyclable materials" (i.e. materials that have been sold).

Additionally, the Nevada legislature has no clear and concise public policy regarding the collection of recyclable materials. WM contends that this Court should dismiss the complaint because the City was authorized to enter into the Franchise Agreement pursuant to a "clear public policy regarding the collection and disposal of waste, including recyclable *waste* materials," and thus "there cannot be any Sherman Act liability as a matter of law." Mot., p.17:15-18. However, NRS 268 does not extend to "recyclable materials" and the clear public

policy outlined in NRS 444 does not extend to the collection and disposal of *recyclable materials*.

What is more, "Recyclable Materials" is defined in NRS 444A. NRS 444A has no similar public policy component to that found in NRS 444 because the legislature never intended to limit competition regarding recyclable materials. *See* NRS 268. Additionally, the only time "recyclable material" is used in NRS 444 is in NRS 444.585(1). This statute clearly treats "recyclable material" differently from "solid waste" since as soon as "recyclable materials" are placed "in a container by a private recycling business" the materials become the "property of the private recycling business." NRS 444A.585(1).

Furthermore, WM confuses "recyclable waste material" with "recyclable materials." *See* Mot. p.11:13 ("Accordingly, the term "other waste" includes *recyclable waste* just as it included construction waste in Douglas Disposal."). GSR agrees that "recyclable *waste* material" should be treated as "other waste" if the generator discarded the materials rather than sell the materials. But that is simply not what the Franchise Agreement effectively does. The Franchise Agreement requires private recycling businesses, like GSR, to pay the City's determined "market price" for materials that are not discarded by the generator--a per se violation of the Sherman Antitrust Act.

Typically, the price paid for a commodity in a free market is established by the laws of supply and demand. However, in this case, the City has taken it upon itself to determine what the "market price" is. If the private recycling business, like GSR, purchases the commodity (excluded recyclable materials) from an amount not satisfactory to the City, then the City regulates that the materials are "waste" and are subject to the exclusive franchise agreement. This requirement equates to displacing or limiting competition in direct conflict with the authority granted to the City by NRS 268. Since the City does not have the authority to

regulate prices of recyclable materials, the City has violated the Sherman Antitrust Act and therefore the Parker Doctrine does not apply.

(iii) The Noerr Doctrine does not immunize WM because the Franchise Agreement violates the Sherman Antitrust Act.

The Noerr Doctrine applies only to the "private individuals" who seek to "influence" anticompetitive action from the government. *City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 379-80 (1991) ("*Noerr* shields from the Sherman Act a concerted effort to influence public officials regardless of intent and purpose.")(emphasis added). Nowhere in the Complaint does GSR allege that WM improperly influenced the City of Reno and its public officials. If GSR did, then *Noerr* would apply and WM would be correct to assert *Noerr* as a defense. However, GSR alleges that the *Franchise Agreement* violates the Sherman Antitrust Act because it regulates "recyclable materials" by displacing and limiting competition without the authority from the State to do so. Consequently, in this case, the act of entering into the Franchise Agreement is the alleged misconduct not "improperly influencing public officials." Thus, the *Noerr* doctrine does not apply.

In addition, certain acts constitute per se violations of the antitrust laws, and "no explanation of why the act was done, nor what its effect might be in a particular case, is of any consequence or materiality." *Plymouth Dealers*, 279 F.2d at 131. Importantly, "[i]n the landmark case of *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), this court read (section) 1 to prohibit those classes of **contracts** or acts which the common law deemed to be undue restraints of trade and those which new times and economic conditions would make unreasonable." *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 211 (1959). Therefore, the moment WM entered into the Franchise Agreement with the City they violated the Sherman Antitrust Act because the Franchise Agreement is a "class of contracts" which is an undue

restraint of trade. If the Franchise Agreement is an undue restraint of trade, then the *Noerr* Doctrine provides no comfort for WM since the *Noerr* Doctrine does not shield from acts that are per se violations of the Act.

C. GSR's Complaint adequately pleads that limiting competition over recyclable materials is a burden to interstate commerce and thus the Court should not dismiss the Second Claim of Relief.

WM asks this Court to grant its motion because "nowhere does the Complaint allege a single burden on interstate commerce resulting from the Franchise Agreement." Mot., p.20. However, the Complaint specifically alleges that "The Agreements entered into by the Defendants improperly burdens or discriminates against interstate commerce." Comp. ¶ 36. Contrary to Defendants' assertion, GSR does not simply allege that restricting the free market of recycling is a burden to intrastate commerce, rather GSR alleges this unlawful restriction burdens int**er**state commerce. As will be proven, the (excluded) recyclable materials purchased by GSR and its affiliates are sold all over the country and internationally.

WM asks this court to dismiss this claim because GSR has not alleged how interstate commerce is burdened. However, Fed. R. Civ. P. 8 does not require "heightened pleading of specifics." Additionally, rule 8(a) "does not impose a probability requirement...it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence" to support the allegations. *Twombly*, 550 U.S. at 556.

Here, GSR alleges the Franchise Agreement is an unlawful restriction on trade and as such it unduly burdens interstate commerce. Only through discovery will we understand just how much interstate commerce is burdened. For instance, discovery could reveal that but for the Franchise Agreement and WM's unlawful activity, generators could have sold thousands of cubic yards of recyclable material more than what is now entering the stream of commerce. If that is established, then the court could determine the Franchise Agreement unduly burdens

interstate commerce. Thus, this allegation reveals a reasonable expectation that discovery will reveal evidence to support the allegation. Consequently, GSR has plead enough facts that give rise to a plausible inference that the Franchise Agreement burdens interstate commerce, and GSR is entitled to relief. Thus, the Court should not dismiss GSR's Second Claim.

D. Defendants are not exempt from the Nevada Unfair Trade Practices Act

"The Nevada Unfair Trade Practices Act ("NUPTA") proscribes anticompetitive conduct including price fixing and renders it "unlawful to conduct any part of any such activity" within the state. NRS 598A.060(1). Hence, the statute creates a remedy against interstate conspiracy that produces harm in Nevada." *In re Chocolate Confectionary Antitrust Litigation*, 602 F.Supp.2d 538, 581 (M.D. Pa. 2009) (discussing NUPTA). WM argues that RMC 5.90.005 is an enacted ordinance permitting exclusive franchise agreements for the collection and disposal of solid waste and approved recyclable materials. Regardless of whether the City had the authority to pass such an ordinance displacing competition of "recyclable materials," pursuant to NRS 598A.0404(3)(a)-(b), the City and by extension WM, are exempt from NUPTA to the extent of the ordinance, not the Franchise Agreement. For instance, RMC 5.90.005 only applies to the "collection" of certain recyclable materials. Thus, the City and WM are exempt from NUPTA as it pertains to the "collection" of certain recyclable materials, and nothing more.

Importantly, RMC 5.90.050(d) states "[t]he exclusive right of contractor hereunder to provide commercial collection services shall not apply to excluded recyclable materials." However, the City and WM have repeatedly misstated to GSR that the Franchise Agreement grants the exclusive right to collect recyclable materials that have been sold to GSR, thus violating NUPTA. Additionally, RMC 5.090.005, et seq. does not grant the City or WM to enter into a Franchise Agreement that regulates the price of "Excluded Recyclable Materials."

But that is exactly what the Franchise effectively does since the City has "pegged" the market price of "Excluded Recyclable Materials," which is not authorized by RMC 5.90.005, et seq. Thus, the City and WM are not exempt from NUPTA pursuant to NRS 598A.040(3)(a)-(b).

E. GSR's Fourth Claim of Relief does not fail as a matter of law.

First, WM argues that "GSR's Complaint should be dismissed in total because the law is clear that the City has authorized and empowered to grant Reno Disposal franchise rights for the collection of "other waste" which includes recyclable material waste." Mot., p.12:8-12. However, GSR's Fourth Claim of Relief does not relate to whether the City was authorized and empowered to grant Reno Disposal franchise rights. GSR alleges that WM tortiously interfered with GSR's contracts because WM sent threatening and misleading communications in an effort to disrupt the contractual relationship between GSR and its clients. This interference does not arise out of the City's authority to grant a franchise to WM. For example, GSR contends, and believes that it will be able to produce evidence to this Court, proving its business model complies with the Franchise Agreement because GSR only purchases "Excluded Recyclable Materials. *See* Franchise Agreement pg. 5. Should this Court agree with this assertion, it is unquestionable that WM's conduct in contacting GSR's existing clients which WM knows enjoy a contractual relationship with GSR is improper.

Second, WM argues "it was fully justified in interfering with GSR's contractual relationships" and thus the Fourth Claim of Relief "fails as a matter of law." Mot., p.22. WM was not justified in interfering with GSR's business contracts because GSR's business does not seek to collect or dispose of "waste." GSR is in the business of purchasing and collecting recyclable materials that have not been discarded by the generator. Yet, WM sent threatening emails to customers of GSR to mislead customers. That is not a "legitimate economic motive." Thus, WM was not justified in interfering with GSR's contractual relationships.

Regardless, whether WM was somehow justified in interfering with GSR's contracts is not the appropriate standard of review on a motion to dismiss for failure to state a claim. Rather, in considering a motion to dismiss, the Court must take all well-plead factual allegations as true and assess whether their veracity would lead to the relief sought.

GSR alleges it has or had valid and existing contract with various clients. Additionally, GSR alleges Defendants have made misleading statements to customers in an effort to intimidate said customers. GSR even included an example of the intimidating emails that were sent. When taken as true, it is more than "plausible" that WM tortiously interfered with GSR's contractual relationships. Thus, GSR has met its burden under the *Twombly* and *Iqbal* standard and its Fourth Claim of Relief should not be dismissed for failure to state a claim.

IV. GSR SHOULD BE GIVEN LEAVE TO AMEND ITS COMPLAINT IF THIS COURT GRANTS THE DEFENDANTS' MOTION TO DISMISS.

If this Court rules to dismiss any of GSR's claims for failure to state a claim, then GSR should be given leave to amend its Complaint to correct any pleading deficiencies. The Ninth Circuit has a "generous standard" for granting leave to amend from a dismissal for failure to state a claim, such that "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 926 (9th Cir. 2012) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). Thus, if the Court dismisses any of the four claims, then GSR respectfully requests that it be given leave to amend its Complaint to correct any pleading deficiencies.

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V. CONCLUSION

Based upon the foregoing, GSR has stated several claims upon which this Court could grant relief, and accordingly, GSR humbly and respectfully requests this Court's order dismissing Defendants' Motion to Dismiss.

Dated this 30th day of November, 2016

SANDE LAW GROUP

By: _____

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **INJUNCTION** by the method indicated:

____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

_X_ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

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Dated this 30th day of November, 2016

An employee of Sande Law Group

SANDE LAW GROUP ATTORNEYS AT LAW

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

GREEN SOLUTIONS RECYCLING, LLC, Plaintiff, v. REFUSE, INC.; RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO; and DOES 1-10; *et al.* Defendants.	Case No. 3:16-cv-00334-MMD-VPC ORDER

I. SUMMARY

Plaintiff Green Solutions Recycling, LLC ("GSR") initiates this action against the City of Reno ("the City") and three Nevada companies,[1] alleging that Defendants entered into an exclusive franchise agreement limiting competition and fixing prices for the collection of recyclable materials, thereby restraining trade in violation of both federal and state law. (ECF No. 1.) The Court ordered GSR to show cause as to why the Court has subject matter jurisdiction over the federal claims, given that the allegations appear to involve a local dispute among the City and Nevada companies and does not implicate interstate commerce. (ECF No. 35.) The Court has reviewed GSR's response ("Plaintiff's Response") (ECF No. 38), as well as Defendants' response and joinder (ECF Nos. 45,

[1]The private party defendants are Refuse, Inc. ("Refuse"), Reno Disposal Company, Inc. ("RDC") and Waste Management of Nevada, Inc. ("WMN"), who are alleged to be Nevada entities. (ECF No. 1 at 2.)

46).[2] The Court finds that GSR has satisfied the Court's Order — Defendants' alleged conduct under GSR's theory as explained in GSR's Response implicates interstate commerce. Accordingly, the Court will address the pending motions.

Before the Court are Plaintiff's Motion for Preliminary Injunction ("Plaintiff's Motion") (ECF No. 2) and Defendants' Motion to Dismiss ("Defendants' Motion") (ECF No. 15). Because the Court will grant Defendants' Motion, the Court denies Plaintiff's Motion as moot.

II. BACKGROUND

The following facts are taken primarily from the Complaint.

NRS § 268.081 permits local governments to displace or limit competition of certain services, including the collection and disposal of waste, but not the collection of "recyclable materials." (ECF No. 1 at 3.) On November 7, 2012, the City entered into an Exclusive Service Area Franchise Agreement for Commercial Solid Waste and Recycle Materials with Defendant RDC ("Franchise Agreement").[3] (ECF No. 1 at 4.) The City did not have the statutory authority under NRS § 268.081 to enter into the Franchise Agreement with respect to "the collection or purchase of recycle material." (*Id.*) In April 2016, WMN communicated with one of GSR's customers about the Franchise Agreement and the fact that only WMN was permitted to haul recycling containers. (*Id*.) Shortly thereafter, the City accused GSR of operating in violation of the Franchise Agreement. (*Id.*) According to GSR, Defendants have attempted to interfere and destroy its business by preventing GSR

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[2]Defendants do not appear to dispute GSR's contention that limiting competition on recyclable materials as characterized in GSR's opposition to Defendants' Motion and Plaintiff's Response implicates interstate commerce. Defendants, however, argue with GSR's definition of recyclable materials and challenge GSR's prudential standing. (ECF No. 45.)

[3]The Complaint references "Franchise Agreements" but it appears from Defendants' Motion and Plaintiff's opposition that the allegations here involve only a single Franchise Agreement between the City and RDC. (ECF No. 15 at 3; ECF No. 15-1; ECF No. 20 at 2.)

from "seeking or servicing clients for the collection of recyclable material.[4]" (*Id.*) Based on these allegations, GSR asserts claims for violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 ("the Act") and the Commerce Clause of the United States Constitution, and two state law claims. (*Id.* at 5-7.)

III. LEGAL STANDARD

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 US 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pleaded factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id*. at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id*. at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id*. at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id*. at 678. Where the complaint fails to

[4]This is the only indirect allegation in the Complaint as to the nature of GSR's business. GSR did assert in its opposition that "[s]ince 2006, GSR has been in the private recycling business in the Reno market." (ECF No. 20 at 2.)

"permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not 'shown' — 'that the pleader is entitled to relief.'" *Id*. at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (alteration omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570. A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under *some* viable legal theory." *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

IV. DISCUSSION

A. Claims Against WMN and Refuse

Plaintiff's claims are based on the contention that the Franchise Agreement covers the collection of recycle materials that is not within the statutory definition of "waste." (ECF No. 20 at 5-7.) The Franchise Agreement is between the City and RDC. (ECF No. 1 at 4.) Plaintiff fails to assert specific allegations as to WMN and Refuse, but generally lump them together with the other Defendants. Plaintiff argues that Refuse and RDN are wholly owned subsidiaries of WMN and Plaintiff names them because of the lack of information as to which employees or agents of these companies has engaged in the activities alleged in the Complaint. (ECF No. 20 at 4.) However, these Defendants have their own corporate identity, and the Complaint does not assert any allegations to support proceeding on an alter ego theory. Moreover, the Complaint contains only conclusory allegations as to WM and Refuse, which are not sufficient for the Court to reasonably infer more than a mere possibility of misconduct with respect to these two Defendants. The Court agrees with WMN and Refuse that the Complaint fails to state a claim against them. Claims against WMN and Refuse will be dismissed without prejudice and with leave to amend.

B. First Claim for Relief: Violation of the Act

The parties do not dispute that the Act is not implicated where the displacement or limitation on competition involves the services covered under NRS § 268.081. (ECF No. 15 at 8-9; ECF No. 20 at 5.) GSR readily acknowledges that the City has "authority to

displace competition for the collection of recyclable materials that are treated as waste." (ECF No. 20 at 5.) GSR argues, however, that "recyclable materials that are not discarded but rather are sold" are not "waste" within the meaning of NRS § 268.081 and cannot be subject to the Franchise Agreement without violating the Act.[5] (*Id.* at 6.) Defendants counter that GSR's proposed construction would require the Court to determine the waste generator's intent. (ECF No. 27 at 9-11.) Defendants also argue that materials are "waste" if there is a negative cost to have the materials removed, and the Franchise Agreement does not cover materials that are segregated and sold for profit. (*Id.* at 5-8.) Defendants argue in the alternative that 268.081(11) covers recyclable waste materials.

GSR's arguments fall short because the claim as characterized in GSR's opposition is not the claim raised in the Complaint. The Complaint does not allege that the Franchise Agreement displaces or limits competition over the collection of recyclable materials that are not discarded as waste. Instead, the Complaint alleges that the City "did not have authority to enter into the Franchise with regard to the collection or purchase of recyclable material." (ECF No. 1 at 4.) The distinction that GSR draws in its opposition is not readily apparent in its Complaint, despite GSR's protest that this allegation does not say what it actually says. (ECF No. 20 at 5.) In other words, the Complaint does not convey what GSR states in its opposition — "that recyclable materials that are *treated as waste* are not in fact 'recyclable materials' but rather are 'other waste' pursuant to NRS 268." (ECF No. 20 at 5 (emphasis in original).) GSR apparently meant to allege that the City did not have authority to displace or limit competition for the collection of recyclable materials that are not treated as waste. However, as Defendants point out, the Complaint is based on the general allegation that the City limits competition in violation of the Act by granting the exclusive Franchise Agreement for the collection of recyclable materials. The Complaint makes no distinction between recyclable materials that are discarded and recyclable

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[5]NRS § 268.081(3) provides in pertinent part that a city may displace or limit competition in the "[c]ollection and disposal of garbage and other waste."

materials that are sold. The Complaint does not even allege the nature of GSR's business, what it purportedly collects and how the "recyclable materials" it collects "are not discarded but rather are sold." (ECF No. 20 at 6.) In fact, the Complaint does not even allege that GSR is in the business of collecting recyclable materials, let alone the type of recyclable materials that GSR claims is excluded from NRS 268;081(3)'s definition of "other waste." The Complaint is devoid of any allegations to support GSR's theory of liability — that the recyclable materials it collects are not waste under NRS 268.081(3) for which the City may limit competition. As alleged, the Complaint fails to allege sufficient facts to entitle GSR to relief under the Act.

The Court will dismiss the first claim for relief with leave to amend. Based on GSR's opposition and response to the Order to Show Cause, the Court cannot at this point find that amendment will be futile.

C. Second Claim for Relief: Violation of the Commerce Clause

A claim for violation of the dormant Commerce Clause requires a showing that the offending conduct "discriminates against interstate commerce." *See C &A Carbone, Inc. v. Town of Clarkstown, New York,* 511 U.S. 383, 390 (1994).

Defendants argue that the Complaint does not allege any burden on interstate commerce. (ECF No. 15 at 21-21.) Plaintiff points to paragraph 36 of the Complaint, which alleges that "[T]he Agreements entered into by Defendants improperly burdens or discriminates against interstate commerce and thus is invalid pursuant to the Commerce Clause . . ." (ECF No. 20 at 12, citing ECF No. 1 at 6, ¶ 36.) Such general recitation of the legal requirement for establishing a claim is insufficient to state a claim for relief. *See Iqbal*, 556 U.S. at 678. In fact, the Complaint makes no allegations that the Franchise Agreement affects interstate commerce, let alone how the Agreement burdens interstate commerce.[6] The Court will dismiss this claim with leave to amend.

[6]While the Court finds that Plaintiff has satisfied the Order to show cause based on Plaintiff's Response, Plaintiff's Response cannot cure the factual and legal deficiencies of its pleadings.

D. State Law Claims

Because the Court dismisses the federal claims, the Court declines to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c). Defendants' Motion to dismiss the state law claims will be denied as moot.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion or reconsideration as they do not affect the outcome of the parties' Motions.

It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 15) is granted in part and denied in part. It is granted with respect to Plaintiff's claims against Refuse, Inc. and Waste Management of Nevada, Inc. and Plaintiff's two federal claims. It is denied as moot with respect to the two state law claims.

It is ordered that Plaintiff's Motion for Preliminary Injunction (ECF No. 2) is denied as moot.

Plaintiff is given leave to amend its Complaint, should Plaintiff wish to proceed and cure the deficiencies of its claims. Plaintiff must file an amended complaint within thirty (30) days. Failure to do so will result in dismissal of the federal claims and the claims against Refuse and WMN with prejudice.

DATED THIS 27th day of March 2017

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

COMPLAINT

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING, LLC., Plaintiff, vs. RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO, and DOES 1-10; et al. Defendants.	Case No.: 3:16-CV-334 FIRST AMENDED COMPLAINT

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Green Solutions Recycling, LLC, ("**Plaintiff**'), by and through its attorney of record, John Sande IV, of Sande Law Group, a Professional Law Corporation, complains and alleges as follows:

Introduction

1. Green Solutions Recycling, LLC ("**GSR**"), brings this action against Reno Disposal Company, Inc., ("RDC"), Waste Management of Nevada Inc., ("**Waste Management**") and the City of Reno (the "**City**") for entering into agreements seeking to restrain trade in violation of (1) Section 1 of the Sherman Antitrust Act; (2) the Commerce Clause in the 14th

Amendment of the United States Constitution; (3) the Nevada Unfair Competition Law; for (4) Tortious Interference with a Contractual Relationship and (5) Trespass to Chattels.

2. Pursuant to these agreements, the City, Reno Disposal and Waste Management of Nevada Inc., sought to limit competition for the collection and reprocessing of recyclable materials in the City and to fix the price of recyclable materials.

3. The agreements are a naked restraint of trade and are per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. It also violates Nevada's Unfair Competition laws.

4. The Defendants have threatened sanctions, lawsuits, criminal prosecution and imposed fees against customers of Plaintiff thereby stifling Plaintiff's ability to conduct business.

5. As a direct result of Defendants' conduct, Plaintiff has and continues to suffer irreparable harm.

Parties

6. Plaintiff, GSR, is a Nevada limited liability company with its principal place of business in Washoe County, Nevada.

7. Based on information and belief, Reno Disposal Co., is a Nevada corporation with its principal place of business in Washoe County. Based on information and belief, Reno Disposal Co., is a corporate affiliate of Waste Management of Nevada, Inc.

8. Based on information and belief, Waste Management of Nevada, Inc., is a Nevada corporation engaged in business in Nevada.

9. The City of Reno is a municipality of the state of Nevada.

10. Does 1 through 10, being businesses affiliated with Refuse, Inc., and/or Waste Management of Nevada, Inc.

Jurisdiction and Venue

11. This complaint alleges violations of the Sherman Act, 15 U.S.C. § 1. It is filed under, and jurisdiction is conferred upon this Court by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 16. The Plaintiff also alleges violations of State antitrust, consumer protection, and/or unfair competition and related laws, and seeks civil penalties, and/or equitable relief under those State laws. All claims under federal and state law are based upon a common nucleus of operative facts, and the entire action commenced by this Complaint constitutes a single case that would ordinarily be tried in one judicial proceeding.

12. The Court further has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337. The Court has jurisdiction over the state claims under 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case or controversy.

13. Venue is proper in this District under 15 U.S.C. §§ 22 and 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims arose in the District.

14. The activities of the Defendants, as further described herein, were within the flow of, were intended to, and did have a substantial effect on the foreign and interstate commerce of the United States.

General Allegations

A. The City lacks the authority to displace or limit competition of "recyclable materials".

15. In or about 1973, the Nevada Legislature passed what became codified as Nevada Revised Statute ("NRS") 268.081, titled "Displacement or limitation of competition: Services."

16. NRS 268.081 authorizes certain local governments, including the City of Reno, to displace or limit competition of certain services including the collection and disposal of garbage and other waste.

17. NRS 268.081 does not include the collection of recyclable material as a service that the City is authorized to displace or limit competition.

18. The Nevada Legislature subsequently amended NRS 268.081 in 1985, 1989, 2005 and 2009 and each time chose not to include the collection of recyclable material as a service that the City is authorized to displace or limit competition.

19. On November 7, 2012, the City entered into an Exclusive Service Area Franchise Agreements for Commercial Solid Waste and Recyclable Materials with Reno Disposal Company Inc., (hereinafter, "the Franchise Agreement").

20. The Franchise Agreement displaces or limits competition over the collection and transportation of recyclable materials.

21. The Nevada Legislature has never granted the express authority to municipalities to displace or limit competition over the collection, transporting, and reprocessing of recyclable materials.

22. Materials that are capable of being recycled are referred to as "recyclable materials."

23. Recyclable materials that are discarded and treated as waste by the generator are "solid waste" and thus fall within "other waste" as that term is used in NRS Chapter 268.

24. Recyclable materials that are not discarded by the generator are not "solid waste" as that term is defined in NRS 444.490.

25. The City of Reno did not have the authority to enter into Franchise with regard to the collection or purchase of recyclable material that are not discarded by the generator.

26. Upon information and belief, Plaintiff has been or is currently licensed by the City of Reno to rent and lease recycling containers to businesses.

27. Plaintiff's customers source separate materials and place recyclable materials in the recycling containers that are leased through Plaintiff.

28. Recyclable materials that are not discarded by the owner of the materials are chattels.

29. Recyclable materials that are sold by the owner of the materials are goods and commodities.

30. Plaintiff has entered into contracts to purchase source-separated recyclable materials (chattels) from its customers.

31. Plaintiff pays its customers a negotiated price in exchange for title to the source-separated recyclable materials (chattels).

32. Pursuant to the Franchise Agreement, title to recyclable materials is transferred upon the collection or pickup of the material.

33. Upon collection, the recyclable materials Plaintiff purchases from its customers are owned and controlled by Plaintiff.

34. Upon and information and belief, Plaintiff collects at least 13,000 cubic yards of recyclable materials each year from its customers.

35. Upon and information and belief, all of the material Plaintiff collects is delivered to a materials recovery facility where at least 70% of the materials are recycled, reprocessed and sold out of the State of Nevada.

36. At no additional charge to its customers, Plaintiff collects the recyclable materials that it purchases from the prior owner and delivers Plaintiff's recyclables to a materials recovery facility where the materials are recycled and sold again.

37. The Franchise Agreement displaces or limits competition over the collection of recyclable materials because pursuant to the agreement, a generator must be paid the City's predetermined "market rate" by a purchaser.

38. Subsequent to Plaintiff being licensed to rent containers in the City, on or about October 19th, 2015, the City of Reno sent a determination letter to Plaintiff that defines what "market price" is and how it must be paid by Plaintiff to its customers in order for Plaintiff to lawfully purchase recyclable materials within the City of Reno.

39. Pursuant to the Franchise Agreement, market rate is determined to mean that the price for recyclables has to be more than the cost to rent recycling containers.

40. Defendants has effectively "pegged" the price of recyclable materials-a per se violation under the Sherman Act.

41. Subsequent to entering into the unlawful franchise agreements, Defendants have intentionally engaged in unlawful acts designed to harm and ultimately destroy the business of the Plaintiff by actively preventing Plaintiff from seeking or servicing clients for the collection and purchase of recyclable materials.

B. Plaintiff's business is permissible under the Franchise Agreement.

42. Plaintiff is engaged in business of purchasing "excluded recyclable materials" as defined by the franchise agreement.

43. The Franchise Agreement does not give WMN exclusive franchise rights over the collection of excluded recyclable materials.

44. Defendants have conspired to prevent Plaintiff from engaging in its lawful enterprise.

C. Defendants' improper conduct:

45. The Defendants' agents and employees have made and continue to make misleading statements to customers or prospective customers of Plaintiff's in an effort to intimidate said customers.

46. On or about April 12, 2016 one such customer, Assistance League of Reno-Sparks received an email from an "Account Manager" of Waste Management stating in relevant part: "The two green solutions containers that you have on site are not permitted within the City of Reno. Waste Management has a franchise agreement with Reno and we are the only permitted haulers for you MSW and single stream recycling. I noticed one of the containers said 'cardboard only'. Are you receiving a refund for the cardboard commodity? If you are not, that is considered single stream and only WM is allowed to haul it."

47. On or about April 25, 2016 the City of Reno sent a letter to Plaintiffs which accused the Plaintiffs of operating in violation of the Franchise Agreement and as a result could face fines and other penalties.

48. Upon information and belief Defendants have conspired and collaborated in efforts to harass and intimidate Plaintiff's customers.

49. Defendants' actions have irreparably damaged Plaintiff and will continue to do so if not enjoined.

FIRST CLAIM FOR RELIEF

(Contract, Combination or Conspiracy in Restraint of Trade Under Section 1 of the Sherman Antitrust Act, 15 U.S.C.§ 1 against City of Reno and Reno Disposal Company)

50. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint. The allegations contained in the preceding paragraphs of this complaint and incorporate them by reference as fully set forth here.

51. For the purposes of this cause of action, the relevant geographic market is the City of Reno.

52. As described above, on or about November 7, 2012, the City of Reno and RDC entered into the Franchise Agreement that displace and limit competition without any legal authority because the Nevada Legislature never granted the authority in NRS Ch. 268 for the City to do so, and thus are in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. section 1.

53. The Franchise Agreement is an unlawful restraint of trade and a per se violation of the Sherman Antitrust Act because the agreement amounts to a conspiracy to set and raise the market price of recyclable material that are not been discarded.

54. The Franchise Agreement is an unlawful restraint of trade and a per se violation of the Sherman Antitrust Act because to legally purchase and collect recyclable material, Plaintiff must pay a price for the materials that is higher than Plaintiff may charge to collect the materials or the amount to rent recycling containers.

55. Recyclable materials that have not been discarded by the generator but rather sold are

not treated as "waste" under Nevada law or the Franchise Agreement and thus Defendants' conduct to fix, peg, and control the price of those materials is a per se violation of the Sherman Antitrust Act.

56. Plaintiff is informed and believes that by so conspiring and agreeing Defendants Reno Disposal Company, and the City of Reno have engaged in anti-competitive processes, that have perpetuated a monopoly, unreasonably restrained trade, and harmed competition in the above-defined geographic and product market, to the detriment of business and consumers, and in violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. section 1;

57. Plaintiff is informed and believes that RDC knew and intended that the result of their anti-competitive and illegal actions would be to acquire and perpetuate a monopoly, unreasonably restrain trade, and harm competition, businesses, and consumers, as more specifically alleged in paragraphs above;

58. Defendants' actions have forced other competitors to withdraw from the Relevant Market, have caused some consumers to cease or avoid doing business with Plaintiff and have raised barriers to entry in the Relevant Market.

59. Defendants' unlawful agreement injured or will injure competition in the Relevant Market and proximately caused or will cause Plaintiff economic loss and damages. This damage by reason of reduced competition, injury to competition, reduced consumer choice and decreased consumer service, is the type of injury anti-trust laws were intended to prevent. Plaintiff has thus suffered and will continue to suffer anti-trust injury.

60. Because of the anti-competitive and illegal actions by the Defendants, an unreasonable restraint of trade has occurred to which Plaintiff is entitled to preliminary injunctive relief.

61. As a further direct and proximate cause of Defendants' actions, Plaintiff has incurred attorney's fees and costs in pursuing their claims, and is entitled to recover those reasonable costs and fees pursuant to 15 U.S.C. section 15(a).

SECOND CLAIM FOR RELIEF

(U.S. Const. Article I, Section 8, Commerce Clause: Violation of 42 U.S.C. § 1983 against City of Reno and Reno Disposal Company)

62. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

63. Upon information and belief, Plaintiff's business is engaged in interstate commerce since at least 70% of the recyclable materials it purchases and collects are resold and shipped out of the State of Nevada.

64. Upon information and belief, Defendants' actions have caused Plaintiff to lose customers and has acted to encourage commercial businesses to landfill material that would otherwise be recycled and shipped out of state.

65. The Franchise Agreement entered into by the Defendants has caused less recyclable materials to enter into the stream of commerce which unduly burdens and discriminates against interstate commerce.

66. The Franchise Agreement entered into by the Defendants effectively raise the price of recyclable materials which unduly burdens and discriminates against interstate commerce.

67. Defendants' actions have had a substantial effect on interstate commerce since less materials are recycled.

68. Upon information and belief, Waste Management and/or its affiliate ships recyclable materials it collects in Reno to a materials recovery facility located in California.

69. Upon information and belief, Waste Management and/or its affiliate does not own or operate a materials recovery facility in Nevada.

70. The Franchise Agreement entered into by the Defendants improperly burdens or discriminates against interstate commerce because less recyclable materials enter into the stream of commerce and thus is invalid pursuant to the Commerce Clause of the United States Constitution, Article 1, Section 8 and therefore violates the same.

71. That the course of conduct described herein, taken under the color of state and local law is unlawful.

72. By virtue of the City's intention to undertake such unlawful conduct, Plaintiff is entitled to relief.

THIRD CLAIM FOR RELIEF

(Nevada Unfair Trade Practice Act against City of Reno and Reno Disposal)

73. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

74. By their actions stated above, Defendants violated the Nevada Unfair Trade Practices Act, N.R.S. § 598A.060.

75. The Nevada Unfair Trade Practices Act is construed in conformity with federal antitrust laws.

76. Defendants' violation of the Nevada Unfair Trade Practices Act has caused or will cause injury to Plaintiff.

77. Plaintiff is entitled to damages for Defendants' violation of the Nevada Unfair Trade Practices Act, in an amount to be demonstrated.

FOURTH CLAIM FOR RELIEF

(Tortious Interference with Contractual Relationship against all Defendants)

78. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

79. Plaintiff has or had a valid and existing contractual relationship with various clients, including the Assistance League of Reno-Sparks.

80. Waste Management and the City of Reno and have known of the foregoing contractual relationships since at least April 12, 2016.

81. Waste Management and the City of Reno have engaged in conduct designed to or intended to disrupt the contractual relationship between Plaintiff, its identified client and many other customers of Plaintiff's.

82. Without limitation, Waste Management and the City of Reno have engaged in conduct designed to or intended to disrupt the contractual relationship between Plaintiff and its identified client by unlawfully intimidating and threatening legal action against them and Plaintiff's customers.

83. As a proximate cause of Waste Management and the City of Reno's tortious interference with the Plaintiff's contractual relationships, Plaintiff has sustained injury which will be irreparable absent the entry of a preliminary injunction.

FIFTH CLAIM FOR RELIEF

(Trespass to Chattels against all Defendants)

84. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

85. Pursuant to the Franchise Agreement, title to recyclable materials is transferred upon the collection or pickup of the material.

86. The Franchise Agreement has mandated Plaintiff pay "market rate" and that price for source-separated recyclables is substantially higher than the current price paid by Plaintiff to Plaintiff's customers.

87. The Defendants have thus substantially impaired the value of Plaintiff's chattel.

88. Because the chattels value has been impaired by the Defendants, the Defendants have committed the tort of trespass to chattels.

WHEREFORE Plaintiff GSR prays for judgment as follows:

1. Injunctive relief the Court deems proper according to the evidence;

2. Judgment in their favor and against the named Defendants, according to the evidence;

3. An award of damages in their favor and against the named Defendants according to the evidence;

4. A declaration of the parties' rights and obligations;

5. An award of interest, costs and attorney's fees; and

6. Such further relief as the Court deems proper.

AFFIRMATION

The undersigned does hereby affirm that the preceding document Complaint, filed in the United States District Court for the District of Nevada, does not contain the social security number of any person.

Dated this 26th day of April 2017

SANDE LAW GROUP

By: */s/ J. Chase Whittemore*

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **COMPLAINT** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

_____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

__X__ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

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Dated this 26th day of April 2017

/s/ Jeanette Lawson
An employee of Sande Law Group

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO DISPOSAL COMPANY, INC.

Plaintiff,

vs.

GREEN SOLUTIONS RECYCLING, LLC; et al.

Defendants.

Case No.: CV17-01143

Dept. No.: 1

SANDE LAW GROUP ATTORNEYS AT LAW

MOTION TO STAY OR IN THE ALTERNATIVE MOTION TO DISMISS

Green Solutions Recycling, LLC ("GSR") through their undersigned counsel of record, the law firm of The Sande Law Group, hereby move this Honorable Court to either (1) dismiss Plaintiff's Complaint or (2) Stay the Proceeding. This Motion to Dismiss or in the alternative, Motion to Stay the Proceeding is supported by the attached Memorandum of Points and Authorities, the attached exhibits, all papers and pleadings on file herein, and any oral arguments this Court wishes to entertain.

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RESPECTFULLY SUBMITTED this 30th day of June, 2017.

The SANDE LAW GROUP

By: /s/ *J. Chase Whittemore*
J. Chase Whittemore, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Since 2006, GSR has been in the private recycling business in the Reno market. GSR markets to commercial customers as the "locally owned" and "alternative" recycling business in Reno. GSR does not collect garbage, waste, or solid waste in the City of Reno (the "City"). GSR leases recycling containers to commercial businesses. These containers are used by businesses to store nondiscarded recyclable materials. GSR then negotiates a price with their customer and purchases the nondiscarded recyclable material at the negotiated price. Both of these business practices are lawful transactions.

Without a doubt, the best way to understand what is and what is not "waste," is to look at a normal, everyday example: I go to the store. I purchase a box of tissues. When I make that purchase, the box of tissues is now mine - I own them. That box is now my personal property. My chattels. Subsequent to the purchase, I take them home. I then use the tissues over a few weeks. What is left is an empty cardboard box - a box, that if I so choose, can either be thrown away or recycled.

What happens next determines if that empty box becomes waste. Before I throw it away, before I discard it into a Waste Management waste receptacle, the empty box is still mine. I still own it. I can give it to somebody. I can let my child tear it into a million pieces. Because, it is mine.

However, when I discard the box, I place it in the waste receptacle. Because I have decided to throw it away, it is now "waste." *See Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.*, 7 Cal.4th 478 (1994) ("*WM of the Desert*"). Because I have chosen to throw it away, that empty cardboard tissue box is now subject to City of Reno local waste ordinances and the exclusive franchise agreement. Meaning, in Reno, under state and local law, no other company can pick it up from my curb. No other company can put in their waste trucks and take it to the landfill.

Now, let's rewind: The empty tissue box is still sitting on my cold counter top. I have not thrown it away. I have not discarded it. Now, I think to myself, maybe a company would like to recycle this? Maybe a company would like to pay me for this tissue box? So, I decide NOT to throw it away. Instead, I decide to sell it. To recycle it. So, I take the empty box (that is still my personal property), and I place it in a recycling container. I place it in the container for the exact purpose of storing it in a convenient place, so I can more easily sell it to someone later that specializes in purchasing and recycling recyclable materials.

Practically, in an open market, if I place enough empty tissue boxes in my recycling container, then a company will pay me a sum of money for them. Indeed, at this point, the boxes are still mine, because I have not thrown them away and I have not yet sold them. However, if I place enough empty tissue boxes in my recycling bin, then they are worth enough to a purchaser to pay me for them. So, once that purchaser/company has paid for all those empty tissue boxes, the ownership changes to the buyer. The buyer is now the proud owner of 250 empty tissue boxes. That owner can then pick up and collect those empty boxes and deliver them to a recycling center to be packaged with other like materials and then resold. And, the recycling process continues.

Importantly, in that scenario, the empty tissue boxes never become waste. Why? Because "at no point in the chain of purchase and sale of these [materials] were they ever discarded." *WM of the Desert*, 7 Cal. 4th at (quoting Darling Delaware Corp. v. District of Columbia, 380 A.2d 596, 598 (D.C. Ct. App. 1977). Meaning, no person with the right of ownership decided to discard them, therefore they never became garbage or "solid waste." And it follows that if the empty tissues boxes never became "waste" then the tissue box was never subject to the City's waste ordinances or the exclusive franchise agreement since the franchise agreement only applies to "waste." The above issues form the foundation for Plaintiff's Complaint. Indeed, they form the foundation of GSR's Federal Action as hereinafter defined below.

Presently, before this Court, are causes of action based solely on state law. No cause of action is presently before this Court that arises under the United States Constitution. However, there is a parallel case that Defendant GSR filed against Waste Management, Reno Disposal, and the City, alleging among other things, the City and Reno Disposal violated the Sherman Antitrust Act and that the Franchise Agreement violates the Commerce Clause of the United States Constitution (Case No.: 3:16-cv-00334-MMD-VPC, United States District Court – District of Nevada, **Filed 06/16/2016**). See Ex. 2 (the "Federal Action"). In the Federal Action, GSR has alleged that the City has unlawfully regulated and obstructed the free flow of nondiscarded recyclable materials across state lines and has also conspired to unlawfully restrain trade by fixing and pegging the market price of nondiscarded recyclable materials. Id. That case has very serious implications for the actions alleged in the complaint before this Court.

Additionally, before the Federal District Court, are two pending motions: Plaintiff GSR filed a Motion for Preliminary Injunction and the Defendant (Reno Disposal) filed a Motion to

Dismiss. Notably, the Federal Court has already ruled that the court has subject matter jurisdiction to hear that case since GSR has adequately alleged two causes of action that arise under the United States Constitution. See Ex. 3.

Interestingly, both the state court action and the federal action boil down to an analysis of a person's right to sell his personal property and/or the right of a governmental entity to take the personal property without appropriate compensation. Simply stated, may the City and Reno Disposal lawfully take away the ability of persons to sell their personal property for any price they see fit without the contamination of monopolistic powers? In the context of the Sherman Antitrust Act and the United States Constitution, the answer should be an emphatic no.

This Court is simply not yet the best or right place for the causes of actions complained of to be litigated by Plaintiff. The Federal Court case was filed first, the transactions and occurrences which give rise to the causes of actions are almost identical to those of the Federal Action, the Federal Action will likely have preclusive effect over this Court (or significant impact thereto), and hearing this case will result in judicial waste and unnecessary and costly expenses to the parties. Consequently, this Court should dismiss several of the alleged causes of action and order that this second-filed state court action be stayed until the first-filed Federal action is concluded.

II. STANDARDS OF REVIEW

(i) Motion to Stay

This Court has broad power to stay a pending proceeding when the parties are involved in similar litigation in Federal Court. *See Landis v. N. Am. Co.*, 299 U.S. 248, (1938) ("[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must

weigh competing interests and maintain an even balance."). Although, there is no direct Nevada case law regarding federal-state parallel litigation stay proceedings, many courts around the country, both state and federal courts, have discussed factors that this Court should weigh.

(ii) Motion to Dismiss

Defendants are entitled to dismissal of a cause of action when the plaintiff fails to state a claim upon which relief can be granted. NRCP 12(b)(5). A plaintiff fails to state a claim if it appears beyond a doubt, that it can prove no set of facts that would entitle it to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1277, 886 P.2d 454, 456 (1994). In reviewing a plaintiff's complaint, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). The Nevada Supreme Court has reiterated that dismissal is appropriate where the complaint does not contain a set of facts that would entitle the plaintiff to relief. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. Adv. Rep. 17, 252 P.3d 681, 692 (2011) (citations omitted).

III. ARGUMENT

In 2012, the City of Reno enacted ordinances never intended to give Waste Management the exclusive right to collect and transport "Excluded Recyclable Materials." The controlling provisions of RMC 5.90.050(d) declares that "[t]he exclusive right of contractor hereunder to provide commercial collection services shall not apply to excluded recyclable materials." "Excluded Recyclables," under the franchise agreement, are supposed to be those materials that have not been discarded by the owner, i.e. nondiscarded recyclables. Nondiscarded recyclables are personalty, not "waste." However, through the franchise agreement, and subsequent acts, the City and Waste Management have designed a system to unlawfully control the price of

nondiscarded recyclables. These unlawful actions by Plaintiff are the subject of on-going litigation in the Federal Action.

Further, GSR is well within its right to purchase nondiscarded recyclables from third parties. However, this state court action is designed to further the Reno Disposal's unlawful treatment of GSR so that GSR cannot purchase nondiscarded recyclables unless GSR pays the "market price" as determined by the City and reiterated in the Plaintiff's Complaint. But, that "market price" amounts to an unlawful scheme to price fix. This unlawful price fixing scheme is designed so that GSR cannot comply--as it sets the price for a commodity (nondiscarded recyclables) - at prices much higher than the current natural market garners. While this Court clearly has the expertise and competency to adjudicate this matter, the Federal Court is presently in a much better position to immediately dispose or try these matters. What is more, if the Federal Court deems these activities as unconstitutional or unlawful under the Sherman Act, then that determination will have preclusive effects on the causes of action in this state action. Consequently, GSR respectfully moves this Court to stay the proceedings until the Federal action has concluded.

A. This Court should grant GSR's Motion and Stay this Second-Filed Proceeding

Here, a stay would allow this local action to remain pending, awaiting the outcome of the other litigation. When the Federal Action has concluded, the other action may be given preclusive effect, and any issues not precluded may be tried.

This Court has many factors to consider when evaluating a motion to stay the proceeding in favor of a Federal action.[1] For example, in California, "[i]n exercising its discretion the court

[1] Plaintiff will likely argue that the four part test for stay as articulated in *Niken v. Holder*, 556 U.S. 418, 129 S.Ct. 1749 (2009) is controlling. However, the unreported case of *American Honda Motor Co., Inc. v. St. Paul Fire & Marine Ins. Co.*, 2012 WL 2921515 (D. Or. 2012) is illustrative as to why that test does not apply here.

should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." *Farmland Irrigation. Co. v. Dopplmaier, supra,* 48 Cal.2d 208, 215, 308 P.2d 732 (1957). Furthermore, the California courts favor a stay when the pending federal court case is in the same jurisdiction. "The California Supreme Court also has isolated another critical factor favoring a stay of the state court action in favor of the Federal action, a factor which happens to be present in this case—the Federal action is pending in California not some other state." *Id.* (citing *Thomson v. Continental Ins. Co.,* 66 Cal.2d 738, 747, 427 P.2d 765 (1967).

The Ninth Circuit has also provided appropriate guidelines for this Court to utilize. This Court's analysis should take into account the standard set forth in *California Dept. of Water Resources v. Powerex Corp.*, 653 F.Supp.2d 1057 (E.D. Cal. 2009) (hereinafter "*Powerex*") (following the Ninth Circuit Framework for such stays). There the court used the following framework:

> "Where it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed. Among those competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay."

Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005).

Here, this Court should grant GSR's motion to stay because no grave damage will result to the parties if such a stay is granted; rather refusing to grant the stay will result in unnecessary duplicative litigation that will cost the parties and the court valuable resources.

Furthermore, this action was filed after the Federal Action, the claims contained in this action can be alleged in the first filed action, and any determinations made by this Court will have no preclusive effects on the Federal court. Rather, a favorable outcome in the Federal court to GSR, will result in barring recovery from the entirety of Reno Disposal's claims.

(i) This Court has the discretion to stay this proceeding until the Federal Court has concluded.

For instance, in California, when a Federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action. *Clark's Fork Reclamation Dist. v. Johns,* 259 Cal.App.2d 366, 369, 66 Cal.Rptr. 370 (1968); *Thomson v. Continental Ins. Co.* 66 Cal.2d 738, 748, 59 Cal.Rptr. 101, 427 P.2d 765 (1967); *Farmland Irrigation. Co. v. Dopplmaier*, 48 Cal.2d 208, 215, 308 P.2d 732 (Cal. 1957). Similar to those cases in California, here the causes of actions alleged by Plaintiff all stem from the Franchise Agreement. The constitutional validity of the Franchise Agreement and GSR's business model are at the center of the Federal Action. Therefore, this Court should grant GSR's motion to stay since both lawsuits are similar to warrant one proceeding to move forward at a time.

(ii) Granting this Motion would not prejudice Reno Disposal since it can proceed with discovery in the Federal Action.

Under *Landis*, the Court should evaluate whether the imposition of a stay would harm the Plaintiff. *See Powerex*, 653 F.Supp.2d at 1064. First, Reno Disposal can still conduct discovery in the Federal action so a delay to these proceedings would not prejudicially delay any discovery proceedings. Second, any findings made by the Federal Court will only help this Court decide the causes of actions complained of here. Thus, Reno Disposal would not be harmed by the imposition of a stay.

(iii) This Court should stay the proceeding to save limited judicial resources because the determinations by the Federal Court would drastically influence this Court.

Further, when deciding a stay motion, the court should be cognizant of whether it would waste judicial resources and be burdensome upon the parties…" *Leyva v. Certified Grocers of Cal. Lts.*, 593 F.2d 857, 864 (9th Cir. 1979). In that vein, "If the circumstances warrant, however, a court will stay its case pending resolution of independent proceedings which bear upon the case." *Id.* (trial court had authority to stay adjudication of employment claims pending arbitration of contract claims which would be of valuable assistance to the court); *Procter & Gamble Distrib. Co. v. Lloyd's Underwriters*, 44 Misc.2d 872, 255 N.Y.S.2d 361, 364-66 (N.Y.Sup.Ct. 1964) (state trial court had authority to stay proceedings until determination of two pending federal court actions on related issues); *State v. Harbour Island, Inc.*, 601 So. 2d 1334, 1335 (Fla. Dist. Ct. App. 1992) (granting stay for non-identical cases because resolution of first-filed federal action would determine many issues in state case); *Ricigliano v. Peat, Marwick, Main & Co.*, 585 So. 2d 387 (Fla. Dist. Ct. App. 1991) (staying of second-filed Florida action in deference to substantially similar federal case); *Polaris Pub. Income Funds v. Einhorn*, 625 So. 2d 128, 129 (Fla. Dist. Ct. App. 1993) (remanded and ordered trial court grant the stay); *Local Union 199, Laborers' Int'l Union v. Plant*, 297 A.2d 37, 38-39 (Del. 1972) (comity and judicial economy ordinarily call for a stay of second-filed Delaware case).

Here, allowing this case to proceed would in fact waste judicial resources. If both the Federal action and this action move forward on parallel tracks and the Federal Court rules in favor of GSR, then certain terms and aspects of the franchise agreement may very well have been determined to be unconstitutional. Each and every cause of action complained by Plaintiff rests upon the notion that the City and Reno Disposal were fully within their respective rights to enter into the Franchise Agreement. What is more, each cause of action complained by Plaintiff necessitates that the Franchise Agreement is valid. For example, the code violations

complained of by Plaintiff may be held to be unconstitutional thereby precluding GSR from being liable for any violations. The same is true for the other claims. For instance, the doctrine of public policy would preclude Plaintiff from enforcing the terms of the Franchise Agreement (the contract) that are against state, federal or constitutional law. Thus, Plaintiff would be barred from enforcing the contract and its complained of breach of contract would fail as a matter of law.

Thus, if the Federal Court determines the Franchise Agreement is in anyway invalid would act to then preclude Plaintiff from recovering on every single cause of action. Consequently, any determination made by this Court either before or after the federal court would be drastically altered by the federal court determinations. Thus, allowing this action to move forward is almost certainly a waste of judicial resources and this Court should grant GSR's motion to stay the proceedings.

(iv) This Court should stay the proceedings because a final determination in favor of GSR by the Federal Court would undoubtedly bar Plaintiff from recovering in every single cause of action in the state court proceeding.

Every cause of action raised by the Plaintiffs rest entirely upon the notion that the franchise agreement is valid. If another court removes its validity, then Plaintiff's claims have no leg to stand on.

Because the issue being litigated in federal court is whether the City and WM acting through the franchise agreement violated the antitrust laws, this Court should stay the case until that court concludes its findings, to avoid complex duplicative proceedings. *See Chronicle Publ'g Co. v. National Broad. Co.*, 294 F.2d 744, 747-48 (9th Cir. 1961). Going through two complex and duplicative proceedings would be an unnecessary waste of judicial resources.

Additionally, the City's formal interpretations and construction do not avoid the need for federal constitutional review – they only amplify the need. *See Cedar Shake & Shingle Bureau*

v. City of Los Angeles, 997 F.2d 620, 622 (9th Cir. 1993) (three part test: uncertain state law; for which a definitive ruling would obviate the need for constitutional adjudication in the federal court; and which touches on a sensitive area of state social policy).

(v) This Court should stay the proceeding since the Federal court has in rem jurisdiction and this Court lacks in rem.

"It has been uniformly held, notwithstanding this consideration, that when the proceedings are in rem or quasi in rem the court first obtaining possession of the res should proceed to final judgment and that the court of concurrent jurisdiction should suspend proceedings and await the conclusion of the case in the court having actual or potential possession of the res." *Butler v. Judge of US Dist. Ct. In and For Nor. Dist. of Cal., Nor. Div.*, 116 F.2d 1013, 1015 (9th Cir. 1941).

Nondiscarded recyclable materials are personal property, e.g. personalty, e.g. chattels. In the Federal Action, GSR has alleged that Reno Disposal and Waste Management have unlawfully committed the tort of trespass to chattels. The cause of action is based upon the allegations that if a person does not discard recyclable material, then that material is not waste, and if the material is not waste, then the owner has the right to exercise complete dominion over the material, thereby lawfully selling it to GSR. Once GSR purchases the materials, at any price, GSR is the owner of the materials.

However, the materials GSR has purchased has been substantially devalued because of Waste Management and the City's actions that have caused harm to the value of the nondiscarded recyclables. Such a cause of action rests on which entity has lawful dominion over the property. Therefore, the cause of action is an action in rem. Thus, this Court should stay this second filed action since the Federal Action has in rem jurisdiction.

(vi) The parties in the second filed action do not need to be identical for the Court to issue a stay.

When considering a motion to stay, the parties need not be identical. *Landis*, 299 U.S. at 254, 57 S.Ct. 163 ("However, it is not a necessary prerequisite that the parties and issues in concurrent federal and state actions be identical."); *See also In re: Application for Water Rights of U.S.*, 101 P.3d 1072, (Col. 2004); *Joseph v. Shell Oil Co.*, 498 A.2d 1117, (Ct. Ch. Del. 1985); *accord Guild v. Baldwin Sec. Corp.*, 189 A.2d 716, 592 N.Y.S.2d 725, 726 (N.Y. App. Div. 1993) (denying stay for lack of complete identity)

Here, Defendants RR and NRS are not parties to the Federal action. Yet, both of those Defendants would not be harmed by staying this proceeding since the Federal action determinations will only serve to benefit them and this Court. Furthermore, two defendants, the City of Reno and Waste Management of Nevada are not parties in this lawsuit, yet they too would be served by staying this proceeding. Still, as the court in *Landis* stated, the parties need not be identical.

MOTION TO DISMISS

B. Plaintiff's Second Cause of Action should be dismissed because Defendant was privileged and justified to purchase nondiscarded recyclable materials.

The following elements must be proven to establish the tort of interference with prospective business/economic advantage: (1) a prospective contractual relationship between the plaintiff and a third party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the plaintiff by preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant's conduct. *See Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev.. 1304, 971 P.2d 1251 (1998). Here, plaintiff has merely recited the elements without properly alleging the absence or justification by the defendant.

"Privilege can exist when the defendant acts to protect his own interests." *Leavitt v. Leisure Sports Inc.*, 734 P.2d 1221, 1226 (1987) (citing *Zoby v. American Fidelity Company*, 242 F.2d 76, 79-80 (4th Cir. 1957). In *Leavitt*, the Court held that the plaintiff could not prove the tort because defendant was acting to protect the interests they had acquired via a valid contract. The Court determined that "such action was motivated by a desire to protect these interests and is privileged."

Here, Defendant only acted to protect the interests they had acquired. Notably, the City has always held that GSR is licensed to rent recycling containers (akin to the company PODS) to commercial businesses. See Complaint Ex. 2 at p. 2 (Bates Stamp WM_001817). Furthermore, GSR purchases nondiscarded recyclable materials—an act that the Plaintiff's state in their complaint as a lawful act pursuant to the franchise agreement. See Complaint at ¶ 49. Subsequent to GSR entering into valid contracts to (1) lease recycling containers and (2) purchase recyclable materials from businesses, the City then issued formal interpretations regarding the franchise agreement that stated doing *both* transactions together was unlawful.

GSR has constantly and consistently held that their business model complies with the Franchise Agreement, and it is the City and Waste Management who have twisted it in a way that violates the Sherman Act. How can the City and Waste Management state that the franchise agreement does not seek to limit the sales of nondiscarded recyclables, but then set the price for nondiscarded recyclables in a manner they know GSR cannot comply with? GSR is, and always has been, justified to purchase nondiscarded recyclables (personalty) for any price they so agree. This justification and privilege shows that Plaintiff has not alleged facts that can establish the second cause of action, and this Court should grant GSR's motion to dismiss.

IV. CONCULSION

Based on the foregoing, Defendant GSR asks this Court to grant this Motion to Stay the Proceeding or in alternative Motion to Dismiss.

AFFIRMATION

Pursuant to NRS Section 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 30th day of June, 2017

SANDE LAW GROUP

By: */s/ J. Chase Whittemore*
J. Chase Whittemore, Esq.
Nevada Bar No. 14301
Attorneys for Green Solutions Recycling, LLC

SANDE LAW GROUP ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am over the age of eighteen (18) years, and am an employee of the Sande Law Group, 6121 Lakeside Drive, Ste. 208, Reno, Nevada 89511 and not a party within this action. I further certify that on the 30th day of June, 2017, I electronically filed the foregoing **MOTION TO STAY OR IN THE ALTERNATIVE MOTION TO DISMISS** with the Clerk of the Court by using the ECF system, which served the following parties electronically:

Mark G. Simons, Esq.,
Nevada Bar No. 5132
msimons@rbsllaw.com
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
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Attorneys for Refuse Inc.; Reno Disposal Company, Inc. and Waste Management of Nevada, Inc.

Dated this 30th day of June, 2017

/s/Jeanette Lawson
An employee of Sande Law Group

SANDE LAW GROUP ATTORNEYS AT LAW

Index of Exhibits

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3.	District Court Order Denying in Part and Granting in Part dated 3-2717	7

FILED
Electronically
CV17-01143
2017-06-30 04:48:40 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6176599 : tbritton

Exhibit 1

Declaration of J. Chase Whittemore

Exhibit 1

JOHN P. SANDE, ESQ.
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J. CHASE WHITTEMORE, ESQ.
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO DISPOSAL COMPANY, INC. Plaintiff, vs. GREEN SOLUTIONS RECYCLING, LLC; et al. Defendants.	Case No.: Dept. No.:

DECLARATION OF J. CHASE WHITTEMORE IN SUPPORT OF DEFENDANT'S MOTION FOR STAY OR MOTION TO DISMISS

I, J. Chase Whittemore, do hereby declare as follows:

1. I am over the age of eighteen years and have personal knowledge regarding the facts contained herein.

2. I am licensed to practice law by the State Bar of Nevada.

3. I am an employee with the law firm of the Sande Law Group, PLLC presently counsel of record for Plaintiff Green Solutions Recycling, LLC.

4. Attached hereto as Exhibit 2 is a true and correct copy of the First Amended Complaint filed by Green Solutions Recycling LLC against Defendants City of Reno, Waste Management of Nevada, Inc., and Reno Disposal Company, Inc. on April 26, 2017.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Order Denying in Part and Granting in part dated March 27, 2017.

I declare under penalty of perjury, upon personal knowledge, that the foregoing is true and correct.

Executed on this 30th day of June 2017.

/s/ J. Chase Whittemore
J. Chase Whittemore

FILED
Electronically
CV17-01143
2017-06-30 04:48:40 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6176599 : tbritton

Exhibit 2

Plaintiffs First Amended Complaint

dated 4-26-17

Exhibit 2

COMPLAINT
JOHN P. SANDE, ESQ.
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING, LLC., Plaintiff, vs. RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO, and DOES 1-10; et al. Defendants.	Case No.: 3:16-CV-334 FIRST AMENDED COMPLAINT

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Green Solutions Recycling, LLC, ("**Plaintiff**"), by and through its attorney of record, John Sande IV, of Sande Law Group, a Professional Law Corporation, complains and alleges as follows:

Introduction

1. Green Solutions Recycling, LLC ("**GSR**"), brings this action against Reno Disposal Company, Inc., ("RDC"), Waste Management of Nevada Inc., ("**Waste Management**") and the City of Reno (the "**City**") for entering into agreements seeking to restrain trade in violation of (1) Section 1 of the Sherman Antitrust Act; (2) the Commerce Clause in the 14th

Amendment of the United States Constitution; (3) the Nevada Unfair Competition Law; for (4) Tortious Interference with a Contractual Relationship and (5) Trespass to Chattels.

2. Pursuant to these agreements, the City, Reno Disposal and Waste Management of Nevada Inc., sought to limit competition for the collection and reprocessing of recyclable materials in the City and to fix the price of recyclable materials.

3. The agreements are a naked restraint of trade and are per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. It also violates Nevada's Unfair Competition laws.

4. The Defendants have threatened sanctions, lawsuits, criminal prosecution and imposed fees against customers of Plaintiff thereby stifling Plaintiff's ability to conduct business.

5. As a direct result of Defendants' conduct, Plaintiff has and continues to suffer irreparable harm.

Parties

6. Plaintiff, GSR, is a Nevada limited liability company with its principal place of business in Washoe County, Nevada.

7. Based on information and belief, Reno Disposal Co., is a Nevada corporation with its principal place of business in Washoe County. Based on information and belief, Reno Disposal Co., is a corporate affiliate of Waste Management of Nevada, Inc.

8. Based on information and belief, Waste Management of Nevada, Inc., is a Nevada corporation engaged in business in Nevada.

9. The City of Reno is a municipality of the state of Nevada.

10. Does 1 through 10, being businesses affiliated with Refuse, Inc., and/or Waste Management of Nevada, Inc.

Jurisdiction and Venue

11. This complaint alleges violations of the Sherman Act, 15 U.S.C. § 1. It is filed under, and jurisdiction is conferred upon this Court by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 16. The Plaintiff also alleges violations of State antitrust, consumer protection, and/or unfair competition and related laws, and seeks civil penalties, and/or equitable relief under those State laws. All claims under federal and state law are based upon a common nucleus of operative facts, and the entire action commenced by this Complaint constitutes a single case that would ordinarily be tried in one judicial proceeding.

12. The Court further has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337. The Court has jurisdiction over the state claims under 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case or controversy.

13. Venue is proper in this District under 15 U.S.C. §§ 22 and 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims arose in the District.

14. The activities of the Defendants, as further described herein, were within the flow of, were intended to, and did have a substantial effect on the foreign and interstate commerce of the United States.

General Allegations

A. The City lacks the authority to displace or limit competition of "recyclable materials".

15. In or about 1973, the Nevada Legislature passed what became codified as Nevada Revised Statute ("NRS") 268.081, titled "Displacement or limitation of competition: Services."

16. NRS 268.081 authorizes certain local governments, including the City of Reno, to displace or limit competition of certain services including the collection and disposal of garbage and other waste.

17. NRS 268.081 does not include the collection of recyclable material as a service that the City is authorized to displace or limit competition.

18. The Nevada Legislature subsequently amended NRS 268.081 in 1985, 1989, 2005 and 2009 and each time chose not to include the collection of recyclable material as a service that the City is authorized to displace or limit competition.

19. On November 7, 2012, the City entered into an Exclusive Service Area Franchise Agreements for Commercial Solid Waste and Recyclable Materials with Reno Disposal Company Inc., (hereinafter, "the Franchise Agreement").

20. The Franchise Agreement displaces or limits competition over the collection and transportation of recyclable materials.

21. The Nevada Legislature has never granted the express authority to municipalities to displace or limit competition over the collection, transporting, and reprocessing of recyclable materials.

22. Materials that are capable of being recycled are referred to as "recyclable materials."

23. Recyclable materials that are discarded and treated as waste by the generator are "solid waste" and thus fall within "other waste" as that term is used in NRS Chapter 268.

24. Recyclable materials that are not discarded by the generator are not "solid waste" as that term is defined in NRS 444.490.

25. The City of Reno did not have the authority to enter into Franchise with regard to the collection or purchase of recyclable material that are not discarded by the generator.

26. Upon information and belief, Plaintiff has been or is currently licensed by the City of Reno to rent and lease recycling containers to businesses.

27. Plaintiff's customers source separate materials and place recyclable materials in the recycling containers that are leased through Plaintiff.

28. Recyclable materials that are not discarded by the owner of the materials are chattels.

29. Recyclable materials that are sold by the owner of the materials are goods and commodities.

30. Plaintiff has entered into contracts to purchase source-separated recyclable materials (chattels) from its customers.

31. Plaintiff pays its customers a negotiated price in exchange for title to the source-separated recyclable materials (chattels).

32. Pursuant to the Franchise Agreement, title to recyclable materials is transferred upon the collection or pickup of the material.

33. Upon collection, the recyclable materials Plaintiff purchases from its customers are owned and controlled by Plaintiff.

34. Upon and information and belief, Plaintiff collects at least 13,000 cubic yards of recyclable materials each year from its customers.

35. Upon and information and belief, all of the material Plaintiff collects is delivered to a materials recovery facility where at least 70% of the materials are recycled, reprocessed and sold out of the State of Nevada.

36. At no additional charge to its customers, Plaintiff collects the recyclable materials that it purchases from the prior owner and delivers Plaintiff's recyclables to a materials recovery facility where the materials are recycled and sold again.

37. The Franchise Agreement displaces or limits competition over the collection of recyclable materials because pursuant to the agreement, a generator must be paid the City's predetermined "market rate" by a purchaser.

38. Subsequent to Plaintiff being licensed to rent containers in the City, on or about October 19th, 2015, the City of Reno sent a determination letter to Plaintiff that defines what "market price" is and how it must be paid by Plaintiff to its customers in order for Plaintiff to lawfully purchase recyclable materials within the City of Reno.

39. Pursuant to the Franchise Agreement, market rate is determined to mean that the price for recyclables has to be more than the cost to rent recycling containers.

40. Defendants has effectively "pegged" the price of recyclable materials-a per se violation under the Sherman Act.

41. Subsequent to entering into the unlawful franchise agreements, Defendants have intentionally engaged in unlawful acts designed to harm and ultimately destroy the business of the Plaintiff by actively preventing Plaintiff from seeking or servicing clients for the collection and purchase of recyclable materials.

B. Plaintiff's business is permissible under the Franchise Agreement.

42. Plaintiff is engaged in business of purchasing "excluded recyclable materials" as defined by the franchise agreement.

43. The Franchise Agreement does not give WMN exclusive franchise rights over the collection of excluded recyclable materials.

44. Defendants have conspired to prevent Plaintiff from engaging in its lawful enterprise.

C. Defendants' improper conduct:

45. The Defendants' agents and employees have made and continue to make misleading statements to customers or prospective customers of Plaintiff's in an effort to intimidate said customers.

46. On or about April 12, 2016 one such customer, Assistance League of Reno-Sparks received an email from an "Account Manager" of Waste Management stating in relevant part: "The two green solutions containers that you have on site are not permitted within the City of Reno. Waste Management has a franchise agreement with Reno and we are the only permitted haulers for you MSW and single stream recycling. I noticed one of the containers said 'cardboard only'. Are you receiving a refund for the cardboard commodity? If you are not, that is considered single stream and only WM is allowed to haul it."

47. On or about April 25, 2016 the City of Reno sent a letter to Plaintiffs which accused the Plaintiffs of operating in violation of the Franchise Agreement and as a result could face fines and other penalties.

48. Upon information and belief Defendants have conspired and collaborated in efforts to harass and intimidate Plaintiff's customers.

49. Defendants' actions have irreparably damaged Plaintiff and will continue to do so if not enjoined.

FIRST CLAIM FOR RELIEF

(Contract, Combination or Conspiracy in Restraint of Trade Under Section 1 of the Sherman Antitrust Act, 15 U.S.C.§ 1 against City of Reno and Reno Disposal Company)

50. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint. The allegations contained in the preceding paragraphs of this complaint and incorporate them by reference as fully set forth here.

51. For the purposes of this cause of action, the relevant geographic market is the City of Reno.

52. As described above, on or about November 7, 2012, the City of Reno and RDC entered into the Franchise Agreement that displace and limit competition without any legal authority because the Nevada Legislature never granted the authority in NRS Ch. 268 for the City to do so, and thus are in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. section 1.

53. The Franchise Agreement is an unlawful restraint of trade and a per se violation of the Sherman Antitrust Act because the agreement amounts to a conspiracy to set and raise the market price of recyclable material that are not been discarded.

54. The Franchise Agreement is an unlawful restraint of trade and a per se violation of the Sherman Antitrust Act because to legally purchase and collect recyclable material, Plaintiff must pay a price for the materials that is higher than Plaintiff may charge to collect the materials or the amount to rent recycling containers.

55. Recyclable materials that have not been discarded by the generator but rather sold are

not treated as "waste" under Nevada law or the Franchise Agreement and thus Defendants' conduct to fix, peg, and control the price of those materials is a per se violation of the Sherman Antitrust Act.

56. Plaintiff is informed and believes that by so conspiring and agreeing Defendants Reno Disposal Company, and the City of Reno have engaged in anti-competitive processes, that have perpetuated a monopoly, unreasonably restrained trade, and harmed competition in the above-defined geographic and product market, to the detriment of business and consumers, and in violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. section 1;

57. Plaintiff is informed and believes that RDC knew and intended that the result of their anti-competitive and illegal actions would be to acquire and perpetuate a monopoly, unreasonably restrain trade, and harm competition, businesses, and consumers, as more specifically alleged in paragraphs above;

58. Defendants' actions have forced other competitors to withdraw from the Relevant Market, have caused some consumers to cease or avoid doing business with Plaintiff and have raised barriers to entry in the Relevant Market.

59. Defendants' unlawful agreement injured or will injure competition in the Relevant Market and proximately caused or will cause Plaintiff economic loss and damages. This damage by reason of reduced competition, injury to competition, reduced consumer choice and decreased consumer service, is the type of injury anti-trust laws were intended to prevent. Plaintiff has thus suffered and will continue to suffer anti-trust injury.

60. Because of the anti-competitive and illegal actions by the Defendants, an unreasonable restraint of trade has occurred to which Plaintiff is entitled to preliminary injunctive relief.

61. As a further direct and proximate cause of Defendants' actions, Plaintiff has incurred attorney's fees and costs in pursuing their claims, and is entitled to recover those reasonable costs and fees pursuant to 15 U.S.C. section 15(a).

SECOND CLAIM FOR RELIEF

(U.S. Const. Article I, Section 8, Commerce Clause: Violation of 42 U.S.C. § 1983 against City of Reno and Reno Disposal Company)

62. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

63. Upon information and belief, Plaintiff's business is engaged in interstate commerce since at least 70% of the recyclable materials it purchases and collects are resold and shipped out of the State of Nevada.

64. Upon information and belief, Defendants' actions have caused Plaintiff to lose customers and has acted to encourage commercial businesses to landfill material that would otherwise be recycled and shipped out of state.

65. The Franchise Agreement entered into by the Defendants has caused less recyclable materials to enter into the stream of commerce which unduly burdens and discriminates against interstate commerce.

66. The Franchise Agreement entered into by the Defendants effectively raise the price of recyclable materials which unduly burdens and discriminates against interstate commerce.

67. Defendants' actions have had a substantial effect on interstate commerce since less materials are recycled.

68. Upon information and belief, Waste Management and/or its affiliate ships recyclable materials it collects in Reno to a materials recovery facility located in California.

69. Upon information and belief, Waste Management and/or its affiliate does not own or operate a materials recovery facility in Nevada.

70. The Franchise Agreement entered into by the Defendants improperly burdens or discriminates against interstate commerce because less recyclable materials enter into the stream of commerce and thus is invalid pursuant to the Commerce Clause of the United States Constitution, Article 1, Section 8 and therefore violates the same.

71. That the course of conduct described herein, taken under the color of state and local law is unlawful.

72. By virtue of the City's intention to undertake such unlawful conduct, Plaintiff is entitled to relief.

THIRD CLAIM FOR RELIEF

(Nevada Unfair Trade Practice Act against City of Reno and Reno Disposal)

73. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

74. By their actions stated above, Defendants violated the Nevada Unfair Trade Practices Act, N.R.S. § 598A.060.

75. The Nevada Unfair Trade Practices Act is construed in conformity with federal antitrust laws.

76. Defendants' violation of the Nevada Unfair Trade Practices Act has caused or will cause injury to Plaintiff.

77. Plaintiff is entitled to damages for Defendants' violation of the Nevada Unfair Trade Practices Act, in an amount to be demonstrated.

FOURTH CLAIM FOR RELIEF

(Tortious Interference with Contractual Relationship against all Defendants)

78. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

79. Plaintiff has or had a valid and existing contractual relationship with various clients, including the Assistance League of Reno-Sparks.

80. Waste Management and the City of Reno and have known of the foregoing contractual relationships since at least April 12, 2016.

81. Waste Management and the City of Reno have engaged in conduct designed to or intended to disrupt the contractual relationship between Plaintiff, its identified client and many other customers of Plaintiff's.

82. Without limitation, Waste Management and the City of Reno have engaged in conduct designed to or intended to disrupt the contractual relationship between Plaintiff and its identified client by unlawfully intimidating and threatening legal action against them and Plaintiff's customers.

83. As a proximate cause of Waste Management and the City of Reno's tortious interference with the Plaintiff's contractual relationships, Plaintiff has sustained injury which will be irreparable absent the entry of a preliminary injunction.

FIFTH CLAIM FOR RELIEF

(Trespass to Chattels against all Defendants)

84. Plaintiff incorporates by reference as fully set forth here the allegations in all the foregoing paragraphs of this Complaint the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as fully set forth here;

85. Pursuant to the Franchise Agreement, title to recyclable materials is transferred upon the collection or pickup of the material.

86. The Franchise Agreement has mandated Plaintiff pay "market rate" and that price for source-separated recyclables is substantially higher than the current price paid by Plaintiff to Plaintiff's customers.

87. The Defendants have thus substantially impaired the value of Plaintiff's chattel.

88. Because the chattels value has been impaired by the Defendants, the Defendants have committed the tort of trespass to chattels.

WHEREFORE Plaintiff GSR prays for judgment as follows:

1. Injunctive relief the Court deems proper according to the evidence;

2. Judgment in their favor and against the named Defendants, according to the evidence;

3. An award of damages in their favor and against the named Defendants according to the evidence;

4. A declaration of the parties' rights and obligations;

5. An award of interest, costs and attorney's fees; and

6. Such further relief as the Court deems proper.

AFFIRMATION

The undersigned does hereby affirm that the preceding document Complaint, filed in the United States District Court for the District of Nevada, does not contain the social security number of any person.

Dated this 26th day of April 2017

SANDE LAW GROUP

By: */s/ J. Chase Whittemore*

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Attorneys for Green Solutions Recycling, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **COMPLAINT** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

_____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

__X__ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

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Attorney for City of Reno

Dated this 26th day of April 2017

/s/ Jeanette Lawson
An employee of Sande Law Group

Exhibit 3

District Courts Order Denying in Part and Granting in part dated 3-27-17

Exhibit 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

GREEN SOLUTIONS RECYCLING, LLC,

Plaintiff,

v.

REFUSE, INC.; RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO; and DOES 1-10; *et al.*

Defendants.

Case No. 3:16-cv-00334-MMD-VPC

ORDER

I. SUMMARY

Plaintiff Green Solutions Recycling, LLC ("GSR") initiates this action against the City of Reno ("the City") and three Nevada companies,[1] alleging that Defendants entered into an exclusive franchise agreement limiting competition and fixing prices for the collection of recyclable materials, thereby restraining trade in violation of both federal and state law. (ECF No. 1.) The Court ordered GSR to show cause as to why the Court has subject matter jurisdiction over the federal claims, given that the allegations appear to involve a local dispute among the City and Nevada companies and does not implicate interstate commerce. (ECF No. 35.) The Court has reviewed GSR's response ("Plaintiff's Response") (ECF No. 38), as well as Defendants' response and joinder (ECF Nos. 45,

[1]The private party defendants are Refuse, Inc. ("Refuse"), Reno Disposal Company, Inc. ("RDC") and Waste Management of Nevada, Inc. ("WMN"), who are alleged to be Nevada entities. (ECF No. 1 at 2.)

46).[2] The Court finds that GSR has satisfied the Court's Order — Defendants' alleged conduct under GSR's theory as explained in GSR's Response implicates interstate commerce. Accordingly, the Court will address the pending motions.

Before the Court are Plaintiff's Motion for Preliminary Injunction ("Plaintiff's Motion") (ECF No. 2) and Defendants' Motion to Dismiss ("Defendants' Motion") (ECF No. 15). Because the Court will grant Defendants' Motion, the Court denies Plaintiff's Motion as moot.

II. BACKGROUND

The following facts are taken primarily from the Complaint.

NRS § 268.081 permits local governments to displace or limit competition of certain services, including the collection and disposal of waste, but not the collection of "recyclable materials." (ECF No. 1 at 3.) On November 7, 2012, the City entered into an Exclusive Service Area Franchise Agreement for Commercial Solid Waste and Recycle Materials with Defendant RDC ("Franchise Agreement").[3] (ECF No. 1 at 4.) The City did not have the statutory authority under NRS § 268.081 to enter into the Franchise Agreement with respect to "the collection or purchase of recycle material." (*Id.*) In April 2016, WMN communicated with one of GSR's customers about the Franchise Agreement and the fact that only WMN was permitted to haul recycling containers. (*Id.*) Shortly thereafter, the City accused GSR of operating in violation of the Franchise Agreement. (*Id.*) According to GSR, Defendants have attempted to interfere and destroy its business by preventing GSR

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[2]Defendants do not appear to dispute GSR's contention that limiting competition on recyclable materials as characterized in GSR's opposition to Defendants' Motion and Plaintiff's Response implicates interstate commerce. Defendants, however, argue with GSR's definition of recyclable materials and challenge GSR's prudential standing. (ECF No. 45.)

[3]The Complaint references "Franchise Agreements" but it appears from Defendants' Motion and Plaintiff's opposition that the allegations here involve only a single Franchise Agreement between the City and RDC. (ECF No. 15 at 3; ECF No. 15-1; ECF No. 20 at 2.)

from "seeking or servicing clients for the collection of recyclable material.[4]" (*Id.*) Based on these allegations, GSR asserts claims for violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 ("the Act") and the Commerce Clause of the United States Constitution, and two state law claims. (*Id.* at 5-7.)

III. LEGAL STANDARD

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 US 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pleaded factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint fails to

[4]This is the only indirect allegation in the Complaint as to the nature of GSR's business. GSR did assert in its opposition that "[s]ince 2006, GSR has been in the private recycling business in the Reno market." (ECF No. 20 at 2.)

"permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not 'shown' — 'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (alteration omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570. A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under *some* viable legal theory." *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

IV. DISCUSSION

A. Claims Against WMN and Refuse

Plaintiff's claims are based on the contention that the Franchise Agreement covers the collection of recycle materials that is not within the statutory definition of "waste." (ECF No. 20 at 5-7.) The Franchise Agreement is between the City and RDC. (ECF No. 1 at 4.) Plaintiff fails to assert specific allegations as to WMN and Refuse, but generally lump them together with the other Defendants. Plaintiff argues that Refuse and RDN are wholly owned subsidiaries of WMN and Plaintiff names them because of the lack of information as to which employees or agents of these companies has engaged in the activities alleged in the Complaint. (ECF No. 20 at 4.) However, these Defendants have their own corporate identity, and the Complaint does not assert any allegations to support proceeding on an alter ego theory. Moreover, the Complaint contains only conclusory allegations as to WM and Refuse, which are not sufficient for the Court to reasonably infer more than a mere possibility of misconduct with respect to these two Defendants. The Court agrees with WMN and Refuse that the Complaint fails to state a claim against them. Claims against WMN and Refuse will be dismissed without prejudice and with leave to amend.

B. First Claim for Relief: Violation of the Act

The parties do not dispute that the Act is not implicated where the displacement or limitation on competition involves the services covered under NRS § 268.081. (ECF No. 15 at 8-9; ECF No. 20 at 5.) GSR readily acknowledges that the City has "authority to

displace competition for the collection of recyclable materials that are treated as waste." (ECF No. 20 at 5.) GSR argues, however, that "recyclable materials that are not discarded but rather are sold" are not "waste" within the meaning of NRS § 268.081 and cannot be subject to the Franchise Agreement without violating the Act.[5] (*Id.* at 6.) Defendants counter that GSR's proposed construction would require the Court to determine the waste generator's intent. (ECF No. 27 at 9-11.) Defendants also argue that materials are "waste" if there is a negative cost to have the materials removed, and the Franchise Agreement does not cover materials that are segregated and sold for profit. (*Id.* at 5-8.) Defendants argue in the alternative that 268.081(11) covers recyclable waste materials.

GSR's arguments fall short because the claim as characterized in GSR's opposition is not the claim raised in the Complaint. The Complaint does not allege that the Franchise Agreement displaces or limits competition over the collection of recyclable materials that are not discarded as waste. Instead, the Complaint alleges that the City "did not have authority to enter into the Franchise with regard to the collection or purchase of recyclable material." (ECF No. 1 at 4.) The distinction that GSR draws in its opposition is not readily apparent in its Complaint, despite GSR's protest that this allegation does not say what it actually says. (ECF No. 20 at 5.) In other words, the Complaint does not convey what GSR states in its opposition — "that recyclable materials that are *treated as waste* are not in fact 'recyclable materials' but rather are 'other waste' pursuant to NRS 268." (ECF No. 20 at 5 (emphasis in original).) GSR apparently meant to allege that the City did not have authority to displace or limit competition for the collection of recyclable materials that are not treated as waste. However, as Defendants point out, the Complaint is based on the general allegation that the City limits competition in violation of the Act by granting the exclusive Franchise Agreement for the collection of recyclable materials. The Complaint makes no distinction between recyclable materials that are discarded and recyclable

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[5]NRS § 268.081(3) provides in pertinent part that a city may displace or limit competition in the "[c]ollection and disposal of garbage and other waste."

materials that are sold. The Complaint does not even allege the nature of GSR's business, what it purportedly collects and how the "recyclable materials" it collects "are not discarded but rather are sold." (ECF No. 20 at 6.) In fact, the Complaint does not even allege that GSR is in the business of collecting recyclable materials, let alone the type of recyclable materials that GSR claims is excluded from NRS 268;081(3)'s definition of "other waste." The Complaint is devoid of any allegations to support GSR's theory of liability — that the recyclable materials it collects are not waste under NRS 268.081(3) for which the City may limit competition. As alleged, the Complaint fails to allege sufficient facts to entitle GSR to relief under the Act.

The Court will dismiss the first claim for relief with leave to amend. Based on GSR's opposition and response to the Order to Show Cause, the Court cannot at this point find that amendment will be futile.

C. Second Claim for Relief: Violation of the Commerce Clause

A claim for violation of the dormant Commerce Clause requires a showing that the offending conduct "discriminates against interstate commerce." *See C &A Carbone, Inc. v. Town of Clarkstown, New York,* 511 U.S. 383, 390 (1994).

Defendants argue that the Complaint does not allege any burden on interstate commerce. (ECF No. 15 at 21-21.) Plaintiff points to paragraph 36 of the Complaint, which alleges that "[T]he Agreements entered into by Defendants improperly burdens or discriminates against interstate commerce and thus is invalid pursuant to the Commerce Clause . . ." (ECF No. 20 at 12, citing ECF No. 1 at 6, ¶ 36.) Such general recitation of the legal requirement for establishing a claim is insufficient to state a claim for relief. *See Iqbal,* 556 U.S. at 678. In fact, the Complaint makes no allegations that the Franchise Agreement affects interstate commerce, let alone how the Agreement burdens interstate commerce.[6] The Court will dismiss this claim with leave to amend.

[6]While the Court finds that Plaintiff has satisfied the Order to show cause based on Plaintiff's Response, Plaintiff's Response cannot cure the factual and legal deficiencies of its pleadings.

D. State Law Claims

Because the Court dismisses the federal claims, the Court declines to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c). Defendants' Motion to dismiss the state law claims will be denied as moot.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion or reconsideration as they do not affect the outcome of the parties' Motions.

It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 15) is granted in part and denied in part. It is granted with respect to Plaintiff's claims against Refuse, Inc. and Waste Management of Nevada, Inc. and Plaintiff's two federal claims. It is denied as moot with respect to the two state law claims.

It is ordered that Plaintiff's Motion for Preliminary Injunction (ECF No. 2) is denied as moot.

Plaintiff is given leave to amend its Complaint, should Plaintiff wish to proceed and cure the deficiencies of its claims. Plaintiff must file an amended complaint within thirty (30) days. Failure to do so will result in dismissal of the federal claims and the claims against Refuse and WMN with prejudice.

DATED THIS 27th day of March 2017

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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2017-11-13 03:27:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6392376

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

RENO DISPOSAL COMPANY, INC., a Nevada Corporation,

Plaintiff,

v.

GREEN SOLUTIONS RECYCLING, LLC, a Nevada Limited Liability Company; NEVADA RECYCLING AND SALVAGE, LTD., a Nevada Limited Liability Company, AMCB, LLC, a Nevada Limited Liability Company dba RUBBISH RUNNERS; DOES I-X, inclusive,

Defendants.

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CASE NO.: CV17-01143

DEPT. NO.: 1

ORDER AFTER HEARING DENYING MOTION FOR STAY OR IN THE ALTERNATIVE MOTION TO DISMISS

On June 13, 2017, Reno Disposal Company, Inc. ("Reno Disposal") initiated this action against Green Solutions Recycling, LLC ("GSR"), Nevada Recycling and Salvage, LTD, ("NRS") and AMBC, LLC dba Rubbish Runners ("RR"). On June 30, 2017, GSR filed the *Motion for Stay or in the Alterative Motion to Dismiss* ("the Motion"). GSR's request for stay is based on the existence of a pending federal action filed by GSR against Reno Disposal, Waste Management and

the City of Reno.[1] GSR's request for dismissal contends that Reno Disposal's second claim for relief, intentional interference with prospective economic advantage, fails because Reno Disposal has not alleged facts that can establish the claim.

Reno Disposal filed an *Opposition* on July 20, 2017. GSR filed a *Reply* on July 25, 2017. NRS and RR filed a *Non-Opposition* to the Motion for Stay on July 26, 2017. The matter was submitted to the Court for consideration on August 3, 2017. The parties came before this Court on October 30, 2017 for oral arguments and this Court took the matter under advisement. The Motion is now before this Court for a decision.

I. Motion for Stay

Granting a stay is a matter of judicial discretion depending upon an equitable and practical assessment of the relevant circumstances. Ferguson v. Tabah, 288 F.2d 665, 672 (2d Cir. 1961). The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. Landis v. N. Am Co., 299 U.S. 248, 254, 57 S. Ct. 163, 166 (1938). How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. Id. The court has the authority to grant a stay pending the outcome of a state court action which involves substantially identical issues. Modern Equip. Co. v. Cont'l W. Ins. Co., 146 F. Supp. 2d 287, 992 (S.D. Iowa 2001). Manley v. Keystone Food Products, Inc., 859 F.2d 80 (8th Cir.1988). Where the issues or the parties are not substantially identical, there is no justification for a court to hold one proceeding in abeyance. Kistler Instrumente A.G. v. PCB Piezotronics, Inc., 419 F. Supp. 120, 123 (W.D.N.Y. 1976).

[1] Case No. 3:16-cv-00334-MMD-VPC, United States District Court—District of Nevada, filed June 16, 2016.

In the *Motion*, GSR acknowledges that the causes of action in the *Complaint* are based solely on state law. The federal action filed by GSR alleges among other things, violations of the Sherman Antitrust Act and the Commerce Clause of the United States Constitution related to a franchise agreement entered into by the City of Reno and Reno Disposal. In the federal action, GSR has alleged that the City of Reno unlawfully regulated and obstructed the free flow of nondiscarded recyclable materials across state lines and has conspired to unlawfully restrain trade by fixing and pegging the market price of nondiscarded recyclable materials. In the *Motion*, GSR alleges that the federal action has serious implications for this case and that a stay is warranted because every cause of action alleged by Reno Disposal in the instant case rests entirely upon the notion that the franchise agreement is valid.

In its *Opposition*, Reno Disposal contends that the stay is improper because the parties in the federal and state actions are not substantially identical. GSR has brought the action in federal court against the City of Reno, Waste Management and Reno Disposal. In the instant case, Reno Disposal has brought its action against GSR, NRS and RR. Reno Disposal further contends that the subject matter of the claims in the instant action and the federal action are not substantially identical, a fact which is acknowledged by GSR who admits that the *Complaint* is based entirely on state law. Moreover, Reno Disposal contends that GSR's actions in violation of the franchise agreement have thus far resulted in damages to Reno Disposal in excess of $1 million and that these damages are increasing every day.

The body of law that governs the granting of a stay makes it clear that the decision is within the court's discretion. Landis, 299 U.S. at 254. In its *Reply*, GSR has referred the Court to Lanova Corp v. Atlas Imperial Diesel Engine Co., 44 Del. 593, 64 A2d. 419 (Del. 1949), a decision from the Superior Court of Delaware regarding the validity of patents wherein the court granted the

motion for stay with respect to a state action in order to allow a federal action proceed. The court in Lanova stated that the granting of a stay is "of course, a discretion which will be used sparingly and only upon a clear showing by the moving party of hardship or inequity so great as to overbalance all possible inconvenience of delay to his opponent." Id. at 597.

The parties in the federal case initiated by GSR (against the City of Reno, Waste Management and Reno Disposal) and in the instant case initiated by Reno Disposal (against GSR, NRS and RR) are not substantially identical. Moreover, the issues in the federal case are not only not substantially identical to the issues in the instant case, they are factually very different. As Reno Disposal points out, the federal causes of action are rooted in pre franchise agreement events while the state causes of action are based entirely on post franchise agreement events. GSR contends that resolution of the federal causes of action may result in resolving the state causes of action, but that is not a certainty and there is no estimated timeframe within which the federal cause of action will be resolved.

In its *Reply*, GSR contends that it will be harmed "exponentially more severe[ly]" than the Plaintiff if the request for stay is denied since it will be required to litigate the federal and state court actions simultaneously with less resources to do so. This Court recognizes that the denial of the stay will cause both parties to move forward in separate forums, but is not convinced that as to the Plaintiff this is an "inequity so great as to overbalance all possible inconvenience of delay" to Reno Disposal. Importantly, in its *Reply*, GSR does not dispute whether Reno Disposal is incurring damages as a result of GSR's actions, but states that denial of the *Motion* will not stem the incurrence of damages. This fails to recognize that any damages that Reno Disposal may be incurring are more likely to be mitigated sooner if this state action proceeds in concert with the federal action. The uncertainty regarding the relief that the federal case may provide and the

uncertainty regarding the timing for that relief will result in prejudice to the Plaintiff who is entitled to timely relief before the Court.

Therefore, GSR's *Motion for Stay* is DENIED.

II. Motion to Dismiss

As to the alternative request for dismissal, this Court renders its decision under NRCP 12(b)(5), which states that a complaint will not be dismissed for failure to state a claim unless "it appears beyond a reasonable doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). There is a strong presumption against dismissing an action for failure to state a claim. Gilligan v. Jamco Development Corp., 108 F.3d 246, 249 (9th Cir. 1997). When determining whether to grant a moving party's motion to dismiss, all factual allegations of the complaint must be accepted as true. Vacation Village, Inc., 110 Nev. at 484, 874 P.2d at 746. The court must construe the pleading liberally and draw every fair inference in favor of the nonmoving party. Id. at 484, 874 P.2d at 746. A motion to dismiss should not be granted unless it appears beyond a doubt that a party could prove no set of facts that would entitle them to relief. Pankopf v. Peterson, 124 Nev. 43, 45, 175 P.3d 910, 912 (2008) (citing Vacation Village, 110 Nev. at 484, 874 P.2d at 746). Specifically, "the test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested. Id. at 485.

In the *Motion*, GSR argues that Reno Disposal's second cause of action for interference with prospective business/economic advantage should be dismissed because Reno Disposal merely recited the elements without properly alleging the absence of privilege or justification by the

defendants. GSR asserts that it is permitted to rent recycling containers to commercial businesses, is permitted to purchase nondiscarded recyclable materials, and acted solely to protect the interests GSR already acquired.

In the *Opposition*, Reno Disposal argues against dismissal, stating that the *Complaint* details the wrongful scheme of GSR and its knowledge that the scheme was illegal by specifically setting forth past communications between the city of Reno and the Defendants.

Having reviewed the *Complaint* and the allegations set forth therein, this Court finds that the facts alleged in the *Complaint* at ¶ 69-84 are sufficient to overcome the request for dismissal; it does not appear beyond a reasonable doubt that Reno Disposal could prove no set of facts which, if accepted by the trier of fact, would entitle it to relief. Therefore, GSR's alternative request for a dismissal is denied.

Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that GSR's *Motion to for Stay or in the Alternative Motion to Dismiss* is DENIED in its entirety.

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the *Motion to for Stay or in the Alternative Motion to Dismiss.*

DATED this 13th day of November, 2017.

KATHLEEN DRAKULICH
DISTRICT JUDGE

CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; and that on the 13th day of November, 2017, I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

MARK SIMONS, ESQ.

RICHARD SALVATORE, ESQ.

DEL HARDY, ESQ.

JOHN SANDE IV

☒ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

N/A

Danielle Kent

DANIELLE KENT
Judicial Assistant

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO DISPOSAL COMPANY, Inc., a Nevada Corporation

Plaintiff,

v.

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company; et. al

Defendants.

CASE NO.: CV17-01143

DEPT. NO.: 1

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company,

Counterclaimant,

v.

RENO DISPOSAL COMPANY, Inc., a Nevada Corporation, WASTE MANAGEMENT OF NEVADA, Inc., a Nevada corporation; WASTE MANAGEMENT NATIONAL SERVICES, Inc., a Connecticut corporation and the City of Reno, a political subdivision

Counterdefendants.

ANSWER TO COMPLAINT AND COUNTERCLAIM

COME NOW, Defendant Green Solutions Recycling, LLC ("Answering Defendant") by and through their undersigned counsel of record, and hereby answer Plaintiff's Verified Complaint ("Complaint") as follows:

GENERAL ALLEGATIONS

1. Answering Defendant admits the allegations in paragraph 1 of the Complaint.

2. Answering Defendant admits the allegations in paragraph 2 of the Complaint.

3. Answering Defendant admits the allegations in paragraph 3 of the Complaint.

4. Answering Defendant admits the allegations in paragraph 4 of the Complaint.

5. Answering Defendant denies the allegations in paragraph 5 of the Complaint.

6. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity as to the allegations in paragraph 6, and therefore deny same.

7. Answering Defendant denies the allegations in paragraph 7 of the Complaint.

8. Answering Defendant admits that a franchise agreement may be entered into by a municipality pursuant to the State of Nevada's enabling statute. Answering Defendant denies the remaining allegations in paragraph 8 of the Complaint.

9. Answering Defendant denies the allegations in paragraph 9 of the Complaint.

10. Answering Defendant denies the allegations in paragraph 10 of the Complaint.

11. Paragraph 11 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced statute speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced statute speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant admits that NRS 268.081(3) authorizes and enables an incorporated city, such as the City of Reno, may displace and limit competition in the public service of "collection and disposal of garbage and other waste." Answering Defendant denies the remaining allegations in paragraph 12 of the Complaint.

13. Answering Defendants denies the allegations in paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced statutes speaks for themselves. Therefore, no response

is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 14 of the Complaint.

15. Answering Defendant denies the allegations in paragraph 15 of the Complaint.

16. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 16, and therefore denies the same.

17. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 17, and therefore denies the same.

18. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 18, and therefore denies the same.

19. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 19, and therefore denies the same.

20. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 20, and therefore denies the same.

21. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 21, and therefore denies the same.

22. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 22, and therefore denies the same.

23. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 23, and therefore denies the same.

24. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 24, and therefore denies the same.

25. Answering Defendant denies the allegations in paragraph 25 of the Complaint.

26. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 26, and therefore denies the same.

27. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 27, and therefore denies the same.

28. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 28, and therefore denies the same.

29. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 29, and therefore denies the same.

30. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 30, and therefore denies the same.

31. Answering Defendant admits that the Agreement was entered into but is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 31 of the Complaint as to when the Agreement was entered into.

32. Answering Defendant denies the allegations in paragraph 32 of the Complaint.

33. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 33, and therefore denies same.

34. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 34, and therefore denies same.

35. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegation in paragraph 35, and therefore denies the same.

36. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 36, and therefore denies same.

37. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 37, and therefore denies same.

38. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 38, and therefore denies same.

39. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 39, and therefore denies same.

40. In response to paragraph 40 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an Answer is even required, Answering Defendant denies the allegations in paragraph 40.

41. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 41, and therefore denies the same.

42. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 42, and therefore denies the same.

43. Answering Defendant admits the allegations in paragraph 43 of the Complaint.

44. In response to paragraph 44 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 44 of the Complaint.

45. Answering Defendant admits the allegations in paragraph 45 of the Complaint.

46. Answering Defendant admits the allegations in paragraph 46 of the Complaint.

47. In response to paragraph 47 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 47 of the Complaint.

48. In response to paragraph 48 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 48 of the Complaint.

49. In response to paragraph 49 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 49 of the Complaint.

50. In response to paragraph 50 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 50 of the Complaint.

51. In response to paragraph 51 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 51 of the Complaint.

52. In response to paragraph 52 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 52 of the Complaint.

53. Answering Defendant denies the allegations in paragraph 53 of the Complaint.

54. Answering Defendant denies the allegations in paragraph 54 of the Complaint.

55. Answering Defendant denies the allegations in paragraph 55 of the Complaint.

56. Answering Defendant denies the allegations in paragraph 56 of the Complaint.

57. Answering Defendant denies the allegations in paragraph 57 of the Complaint.

58. Answering Defendant denies the allegations in paragraph 58 of the Complaint so much as it relates to Answering Defendant. As to the remaining allegations in paragraph 58, Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 58, and therefore denies the same.

59. Answering Defendant denies the allegations in paragraph 59 of the Complaint.

60. Answering Defendant denies the allegations in paragraph 60 of the Complaint so much as it relates to Answering Defendant. As to the remaining allegation in paragraph 60 of the Complaint, Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 60, and therefore denies the same.

61. Answering Defendant denies the allegations in paragraph 61 of the Complaint.

62. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 62, and therefore denies the same.

63. Answering Defendant denies the allegations in paragraph 63 of the Complaint.

64. Answering Defendant denies the allegations in paragraph 64 of the Complaint.

65. Answering Defendant denies the allegations in paragraph 65 of the Complaint.

66. Answering Defendant denies the allegations in paragraph 66 of the Complaint.

67. Answering Defendant denies the allegations in paragraph 67 of the Complaint.

68. Answering Defendant denies the allegations in paragraph 68 of the Complaint.

69. Answering Defendant denies the allegations in paragraph 69 of the Complaint.

70. Answering Defendant denies the allegations in paragraph 70 of the Complaint.

71. In response to paragraph 71 of the Complaint, Answering Defendant states that the referenced document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 71 of the Complaint.

72. In response to paragraph 72 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 72 of the Complaint

73. In response to paragraph 73 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 73 of the Complaint.

74. Answering Defendant denies the allegations in paragraph 74 of the Complaint.

75. In response to paragraph 75 of the Complaint, Answering Defendant states that the document speaks for itself, and is an improper legal conclusion, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 75 of the Complaint.

76. Answering Defendant denies the allegations in paragraph 76 of the Complaint.

77. In response to paragraph 77 of the Complaint, Answering Defendant states that the document speaks for itself, is an improper legal conclusion, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 77 of the Complaint.

78. In response to paragraph 78 of the Complaint, Answering Defendant states that the document speaks for itself, is an improper legal conclusion, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 78 of the Complaint.

79. In response to paragraph 79 of the Complaint, Answering Defendant states that the document speaks for itself, is an improper legal conclusion, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 79 of the Complaint.

80. Answering Defendant denies the allegations in paragraph 80 of the Complaint.

81. Answering Defendant denies the allegations in paragraph 81 of the Complaint.

82. Answering Defendant admits the allegations in paragraph 82 of the Complaint.

83. Answering Defendants are currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 83, and therefore denies same.

84. Answering Defendant denies the allegations in paragraph 84 of the Complaint.

85. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 85, and therefore denies same.

86. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 86, and therefore denies same.

87. Answering Defendant admits that the City has the authority to displace competition for the collection and disposal of recyclable waste materials that have become waste because they have been discarded by the generator of the materials. As to the remaining allegations in paragraph 87, Answering Defendant denies the allegations in paragraph 87 of the Complaint.

88. Answering Defendant admits the allegations in paragraph 88 of the Complaint.

89. In response to paragraph 89 of the Complaint, Answering Defendant states that the document speaks for itself, and therefore no response is required. To the extent an answer is required, Answering Defendant denies the allegations in paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced ordinances speak for themselves. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 90 of the Complaint.

91. Paragraph 91 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced ordinances speak for themselves. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity and therefore denies the same.

92. Answering Defendant denies the allegations in paragraph 92 of the Complaint.

93. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 93, and therefore denies same.

94. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 94, and therefore denies same.

95. Answering Defendants are currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 95, and therefore denies same.

96. Answering Defendant is currently without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 96, and therefore denies same.

FIRST CLAIM FOR RELIEF

(Intentional Interference with Contract – GSR, NRS, RR)

97. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

98. Answering Defendant admits the allegations in paragraph 98 of the Complaint.

99. Paragraph 99 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 99 of the Complaint.

100. Paragraph 100 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 100 of the Complaint.

101. Paragraph 101 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 101 of the Complaint.

102. Answering Defendant admits the allegations in paragraph 102 of the Complaint.

103. Answering Defendant denies the allegations in paragraph 103 of the Complaint.

104. Answering Defendant denies the allegations in paragraph 104 of the Complaint.

105. Answering Defendant denies the allegations in paragraph 105 of the Complaint.

106. Answering Defendant denies the allegations in paragraph 106 of the Complaint.

107. Answering Defendant denies the allegations in paragraph 107 of the Complaint.

SECOND CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Advantage – GSR, NRS, RR)

108. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

109. Answering Defendant admits the allegations in paragraph 109 of the Complaint.

110. Paragraph 110 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 110 of the Complaint.

111. Paragraph 111 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 111 of the Complaint.

112. Answering Defendant denies the allegations in paragraph 112 of the Complaint.

113. Answering Defendant denies the allegations in paragraph 113 of the Complaint.

114. Answering Defendant denies the allegations in paragraph 114 of the Complaint.

115. Answering Defendant denies the allegations in paragraph 115 of the Complaint.

116. Answering Defendant denies the allegations in paragraph 116 of the Complaint.

117. Answering Defendant denies the allegations in paragraph 117 of the Complaint.

THIRD CLAIM FOR RELIEF

(Civil Conspiracy – GSR, NRS, RR)

118. To the extent an answer is even required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

119. Answering Defendant denies the allegations in paragraph 119 of the Complaint.

120. Answering Defendant denies the allegations in paragraph 120 of the Complaint.

121. Answering Defendant denies the allegations in paragraph 121 of the Complaint.

122. Answering Defendant denies the allegations in paragraph 122 of the Complaint.

123. Answering Defendant denies the allegations in paragraph 123 of the Complaint.

124. Answering Defendant denies the allegations in paragraph 124 of the Complaint.

125. Answering Defendant denies the allegations in paragraph 125 of the Complaint.

FOURTH CLAIM FOR RELIEF

(Civil Aiding and Abetting – GSR, NRS, RR)

126. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

127. Answering Defendant denies the allegations in paragraph 127 of the Complaint.

128. Answering Defendant denies the allegations in paragraph 128 of the Complaint.

129. Answering Defendant denies the allegations in paragraph 129 of the Complaint.

130. Answering Defendant denies the allegations in paragraph 130 of the Complaint.

131. Answering Defendant denies the allegations in paragraph 131 of the Complaint.

132. Answering Defendant denies the allegations in paragraph 131 of the Complaint.

133. Answering Defendant denies the allegations in paragraph 133 of the Complaint.

FIFTH CLAIM FOR RELIEF

(Code Violations – GSR, NRS, RR)

134. To the extent an Answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

135. Paragraph 135 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 135 of the Complaint.

136. Paragraph 136 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced ordinances speak for themselves. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 136 of the Complaint.

137. Paragraph 137 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced ordinance speaks for itself. Therefore, no response is

required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 137 of the Complaint.

138. Paragraph 138 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced ordinance speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 138 of the Complaint.

139. Answering Defendant denies the allegations in paragraph 139 of the Complaint.

140. Answering Defendant denies the allegations in paragraph 140 of the Complaint.

141. Answering Defendant denies the allegations in paragraph 141 of the Complaint.

142. Answering Defendant denies the allegations in paragraph 142 of the Complaint.

SIXTH CLAIM FOR RELIEF

(Breach of Franchise Agreement – GSR, NRS, RR)

143. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

144. Paragraph 144 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced document speaks for itself. Therefore, no response is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 144 of the Complaint.

145. Answering Defendant denies the allegations in paragraph 145 of the Complaint.

146. Answering Defendant denies the allegations in paragraph 146 of the Complaint.

147. Answering Defendant denies the allegations in paragraph 147 of the Complaint.

SEVENTH CLAIM FOR RELIEF

(Declaratory Relief – GSR, NRS, RR)

148. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

149. Answering Defendant denies the allegations in paragraph 149 of the Complaint.

150. Paragraph 150 of the Complaint is a legal argument and an improper attempt to insert a legal conclusion. The referenced statutes speaks for themselves. Therefore, no response

is required. To the extent an answer is required, however, Answering Defendant denies the allegations in paragraph 150 of the Complaint.

151. Answering Defendant denies the allegations in paragraph 151 of the Complaint.

152. Answering Defendant denies the allegations in paragraph 152 of the Complaint.

EIGHTH CLAIM FOR RELIEF

(Injunctive Relief – GSR, NRS, RR)

153. To the extent an answer is required, Answering Defendant hereby incorporates its proceeding responses as if fully set forth here.

154. Answering Defendant denies the allegations in paragraph 154 of the Complaint.

155. Answering Defendant denies the allegations in paragraph 155 of the Complaint.

156. Answering Defendant denies the allegations in paragraph 156 of the Complaint.

157. Answering Defendant denies the allegations in paragraph 157 of the Complaint.

158. Answering Defendant denies the allegations in paragraph 158 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense:

Plaintiff's Complaint fails to state a claim against the Answering Defendant upon which relief can be granted.

Second Affirmative Defense:

The doctrine of Unclean Hands precludes Plaintiff from obtaining any relief.

Third Affirmative Defense:

Plaintiff is precluded from recovery by the doctrine of unconscionability in that Plaintiff has failed and refused to comply with the agreement it now seeks to enforce, and the relief Plaintiff seeks would constitute the invocation of this Court's powers for an unconscionable purpose, such as depriving Answering Defendants of their money, property, and rights.

Fourth Affirmative Defense:

Plaintiff is precluded from recovery by the doctrine of unjust enrichment.

Fifth Affirmative Defense:

Plaintiff is precluded from recovery by the doctrines of estoppel.

Sixth Affirmative Defense:

Plaintiff is precluded from recovery because Plaintiff has defamed Defendant.

Seventh Affirmative Defense:

Plaintiff is precluded from recovery by the doctrine of waiver.

Eighth Affirmative Defense:

Plaintiff is precluded from recovery by the principle of offset. In the event it is determined that Plaintiff has suffered damages, any recovery should be offset by the amount Plaintiff owes to Answering Defendant as a result of Plaintiff's wrongful conduct.

Ninth Affirmative Defense:

Plaintiff is precluded from recovery by the doctrine of laches in that it has failed to timely pursue whatever remedies it claims to have at law or in equity, to the detriment of Answering Defendant.

Tenth Affirmative Defense:

Plaintiff, with full knowledge of all the facts connected with or relating to the transaction alleged in the Complaint, ratified and confirmed in all respects the Defendants' acts, and accepted the benefits to Plaintiff accruing from such acts.

Eleventh Affirmative Defense:

Plaintiff is precluded from recovery by the applicable statutes of limitations.

Twelfth Affirmative Defense:

As a result of Plaintiff's acts, actions, omissions, failure to act and knowledge upon which Answering Defendant relied to their detriment, Plaintiff is estopped from bringing this action, from proving the allegations of the Complaint and from recovering any judgment against Answering Defendant.

Thirteenth Affirmative Defense:

Plaintiff's Complaint and the claims for relief contained therein alleged against Answering Defendant are barred because Plaintiff has failed to mitigate its claimed damages.

Fourteenth Affirmative Defense:

Plaintiff's Complaint and the claims for relief contained therein alleged against Answering Defendant are barred by the doctrine of litigation privilege and other protections.

Fifteenth Affirmative Defense:

Answering Defendant has, at all times, acted in good faith and have complied with each and every one of their obligations under the alleged Franchise Agreement, if any; as a consequence, Plaintiff is barred from bringing its Complaint, from proving the allegations contained therein and from recovering a judgment against Answering Defendant.

Sixteenth Affirmative Defense:

Plaintiff cannot enforce the alleged Franchise Agreement due to an ambiguity of one or more material terms in that alleged Franchise Agreement.

Seventeenth Affirmative Defense:

Plaintiff's claims as stated in the Complaint are barred and unenforceable due to the lack of seasonable and adequate notice by Plaintiff to the Answering Defendant regarding the matters claimed in the Complaint and due to Plaintiff's failure to provide Answering Defendant a valid opportunity to cure any purported breach of the alleged contract.

Eighteenth Affirmative Defense:

Plaintiff's Complaint should be dismissed as it fails to plead matters with sufficient particularity and specificity as required by the Federal Rules of Procedure, including Rule 9.

Nineteenth Affirmative Defense:

Plaintiff's Complaint and the claims for relief contained therein alleged against Answering Defendant are barred by the doctrine of *volenti non fit injuria*.

Twentieth Affirmative Defense:

Plaintiff's claims, if any, are barred based on hindrance of contact.

Twenty-First Affirmative Defense:

People or entities other than the Answering Defendant caused or contributed to the damages Plaintiff claims to have suffered.

Twenty-Second Affirmative Defense:

Plaintiff's performance under the alleged agreement was absent, untimely, incomplete and/or deficient, and Plaintiff otherwise materially breached its duties under any contract.

Twenty-Third Affirmative Defense:

Plaintiff cannot enforce the alleged contract due to a unilateral mistake regarding the material terms of the alleged agreements.

Twenty-Fourth Affirmative Defense:

Plaintiff cannot enforce the alleged contract due to a mutual mistake and/or lack of informed assent regarding the material terms of the alleged contract.

Twenty-Fifth Affirmative Defense:

The alleged contract is void.

Twenty-Sixth Affirmative Defense:

The contract was terminated, and Plaintiff failed to perform the terms and conditions of such contract; thus, Plaintiff is barred from recovery.

Twenty-Seventh Affirmative Defense:

Plaintiff is barred from recovering attorneys' fees as damages.

Twenty-Eighth Affirmative Defense:

Plaintiff is precluded from recovery because Answering Defendant acted in good faith.

Twenty-Ninth Affirmative Defense:

Plaintiff is precluded from recovery because it breached the covenant of good faith and fair dealing with respect to the alleged agreement, and excused Answering Defendants' alleged failure to perform.

Thirtieth Affirmative Defense:

Plaintiff's performance under the alleged contract was incomplete and/or deficient, and Plaintiff otherwise materially breached the alleged agreement, such that it is precluded from recovering on its claims, if any.

Thirty-First Affirmative Defense:

Plaintiff is precluded from recovery because its bad faith actions have resulted in the discharge of any contractual obligations owed to it.

Thirty-Second Affirmative Defense:

If the alleged agreement is determined to be valid, then Plaintiff has knowingly and intentionally released Answering Defendant from all other claimed conduct.

Thirty-Third Affirmative Defense:

Plaintiff's damages, if any, are the result of its own illegal, fraudulent and/or inequitable conduct.

Thirty-Fourth Affirmative Defense:

The judgment in case number CV-00497 is res judicata of Plaintiff's claims herein; Plaintiff's claims are barred by the doctrines of claim preclusion and issue preclusion.

Thirty-Fifth Affirmative Defense:

Answering Defendant's conduct was privileged, proper, lawful, necessary and/or justified.

Thirty-Sixth Affirmative Defense:

Plaintiff's claims are barred based on Plaintiff's failure to exhaust its legal remedies against the City.

Thirty-Seventh Affirmative Defense:

This action, and all of Plaintiff's claims for relief alleged herein, should be dismissed as they are frivolous, vexatious, brought without reasonable grounds, and are solely intended to harass the Defendants.

Thirty-Eighth Affirmative Defense:

Plaintiff's claims are barred based on Plaintiff's misrepresentations.

Thirty-Ninth Affirmative Defense:

Plaintiff's recovery are barred because the Franchise Agreement is unconstitutional.

Fortieth Affirmative Defense:

Plaintiff's recovery is barred by the doctrine of public policy.

Forty-First Affirmative Defense:

Plaintiff's claims are barred based on the doctrine of procedural due process.

Forty-Second Affirmative Defense:

Answering Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Answering Defendant reserve the right to seek leave of court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving same.

Forty-Third Affirmative Defense:

Pursuant to NRCP Rule 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Answering Defendant's Answer to Plaintiff's Complaint and, therefore, Answering Defendant reserves the right to amend this Answer to allege additional affirmative defenses if subsequent information so warrants.

FIRST AMENDED COUNTERCLAIM

COME NOW, Counterclaimant Green Solutions Recycling, LLC ("GSR or Counterclaimant"), by and through its undersigned counsel of record, the Sande Law Group, and hereby counterclaim against Counterdefendant Reno Disposal Company, Inc. ("Reno Disposal"), Waste Management of Nevada, Inc. ("WMON"), Waste Management National Services, Inc. ("Waste Management"), the City of Reno (the "City") and the other Counterdefendants, as follows:

JURISDICTIONAL ALLEGATIONS

1. Green Solutions Recycling, LLC is a limited liability company organized under Nevada law.

2. GSR is wholly owned by three individuals, Ryan Pinjuv, Charles Pinjuv, and Chris Bielser.

3. Based on information and belief, Reno Disposal Co., is a Nevada corporation with its principal place of business in Washoe County. Based on information and belief, Reno Disposal Co., is a corporate affiliate of Waste Management of Nevada, Inc.

4. Based on information and belief, Waste Management of Nevada, Inc., is a Nevada corporation engaged in business in Nevada.

5. Based on information and belief, Waste Management National Services, Inc., is a Connecticut corporation engaged in business in Nevada.

6. The City of Reno is a municipality of the state of Nevada.

7. Does 1 through 10, being businesses affiliated with Waste Management of Nevada, Inc.

8. Counterclaimant is unaware of the true names and capacities of the counterdefendants sued as DOES 1 through 20, and therefore sue those counterdefendants by such fictitious names. Counterclaimant is informed and believe that each fictitiously named counterdefendant is responsible in some manner for the occurrences alleged herein, and that their damages were proximately caused by these unknown counterdefendants' conduct. Counterclaimant will amend its counterclaim to allege the counterdefendants' true names and capacities when ascertained.

GENERAL ALLEGATIONS

9. Reno Disposal filed this action to harass the defendants.

10. On November 7, 2012, the City entered into an Exclusive Service Area Franchise Agreements for Commercial Solid Waste and Recyclable Materials with Reno Disposal, (hereinafter, the "Franchise Agreement").

11. At the same time, the Reno City Council adopted the current franchise ordinance, RMC 5.090 et seq.

12. The "preamble" of that ordinance states "The Reno City Council has determined that the health, safety, and welfare of its residents require that certain solid waste and recyclable material collection services be provided under one or more exclusive municipal franchise agreements **pursuant to NRS 268.081**."

13. RMC Sec. 5.90.030 establishes the "franchise right" to mean "(a) This article establishes the exclusive right for contractors to provide collection services of collection materials **pursuant to NRS 268.081**."

14. By the express terms of the Reno City Code, the franchise right is to be limited to NRS 268.081.

15. In or about 1973, the Nevada Legislature passed what became codified as Nevada Revised Statute ("NRS") 268.081, titled "Displacement or limitation of competition: Services."

16. NRS 268.081 authorizes certain local governments, including the City of Reno, to displace or limit competition of certain "public" services including the **collection and disposal of garbage and other waste.**

17. Importantly, "Recycling" is a service that NRS 268.081 does not authorize local governments to displace or limit competition.

18. Additionally, the collection of recyclable material is a service that the City is not authorized to displace or limit competition in.

19. "Recyclable material" is defined in Reno Municipal Code 5.090.010 to mean "materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or implemented after the effective date of this ordinance."

20. The Nevada Supreme Court has determined the term "garbage and other waste" includes "solid waste" as that term is defined in NRS 444.490.

21. Recyclable materials can become either (i) "waste" or (ii) non-discarded recyclables.

22. Recyclable materials do not become "waste" until the owner of the recyclable materials discards the materials as waste.

23. In Reno, the person or generator of waste materials and recyclable materials can be referred to simply as the "generator."

24. Pursuant to Nevada law, the "intent of the generator" governs.

25. The "intent of the generator" is a term to mean that if a person, i.e. the generator, places recyclable materials in a private recycling container with the intent to recycle the materials, the materials are the private property of the private recycling business. Such an election is evidence that the generator has not discarded their recyclable materials (aka "non-discarded recyclable materials"), and therefore, the non-discarded recyclable materials do not fall within the scope of NRS 268. Thus, the City is not authorized to grant an exclusive franchise over the collection of those materials.

26. On the other hand, if a person, i.e. the generator, discards materials so that they become "garbage or other waste" as that term is used in NRS 268.081, the generator has made her election and the materials are "waste" subject to the Exclusive Franchise Agreement granted to Reno Disposal by the City of Reno pursuant to NRS 268.083.

27. Because "recyclable materials" can become either (i) "non-discarded recyclables" which fall outside the scope of the "franchise right" or (ii) "waste", including an exclusive franchise pursuant to NRS 268.081 over "recyclable materials" is an illegal restraint of trade.

INTENT OF THE GENERATOR

28. NRS 444.585 is titled "Ownership of recyclable materials' unauthorized collection of recyclable materials prohibited; penalty; civil remedy."

29. NRS 444.585 states "1. From the time recyclable materials are place in a container provided by a private recycling business or the person designated by the county or other municipality to collect recyclable materials: (a) At curbside for collection; or (b) At any other appropriate site designated for collection, the recyclable materials are the property of the private recycling business or person designated by the county or other municipality to collect them, as appropriate. 2. Any person engaged in the unauthorized collection of recyclable materials is guilty of a misdemeanor. Each such unauthorized collection constitutes a separate and distinct offense. 3. As an alternative to the criminal penalty set forth in subsection 2, the county or other municipality, the private recycling business and the person designated to collect the recyclable materials may **independently enforce** the provision in this section in a **civil action**. Except as otherwise provided in NRS 445C.010 to 445C.120, inclusive, a person who

engages in the unauthorized collection of recyclable materials is liable for to the private recycling business or the person designated to make such collections, as appropriate, for **three times** the damages caused by the unauthorized collection."

30. Thus, pursuant to NRS 444.585, Nevada is an "intent of the generator" state.

31. On November 7th, 2012, the City of Reno City Council heard testimony and public comment from the proponents of the Franchise Agreement.

32. One proponent of the Franchise Agreement was Castaway Trash Hauling Company.

33. At the time of the November 7, 2012 City of Reno City Council meeting, Castaway was represented by legal counsel, Dan Reeser, Esq.

34. As a proponent of the bill, Mr. Reeser, stated to the City Council, that Nevada is an "intent of the generator state."

35. The City Council relied upon Mr. Reeser's years of experience providing sound legal advice to adopt RMS 5.090 et seq. and enter into the Franchise Agreement. As a proponent of the City's Ordinance, Mr. Reeser's statements made to the City Council are a part of the Legislative History of RMC 5.090.

36. Therefore, at the time of enactment, the City Council acted under the assumption that Nevada was an "intent of the generator" state.

37. The traditional understanding and meaning of "waste" is that materials that are discarded by the owner are "waste."

38. To discard something is to cast aside as worthless or abandon.

39. Therefore, pursuant to Nevada law, when a person, i.e. a generator, discards materials into a Reno Disposal waste receptacle, that person has *intended* for the materials to be discarded. In other words, the materials are "waste" because the *intent* of the generator was to discard the materials.

COLLECTION AND DISPOSAL

40. The term "Collection and Disposal" as it is used in NRS 268.081 is an undefined term.

41. However, the term "disposal" does not mean "recycle." And the term "recycle" does not mean "disposal."

42. According to the U.S. EPA, the term "recycling" means "the process of collecting and processing materials that would **otherwise be thrown away** as trash and turning them into new products." As such, recycling can benefit the community and the environment.

43. The Nevada Legislature amended NRS 268.081 in 1985, 1989, 2005 and 2009 and each time chose not to include the collection of recyclable material as a service that the City is authorized to displace or limit competition.

44. The Franchise Agreement displaces or limits competition over the collection and transportation of recyclable materials.

45. The Nevada Legislature has never granted the express authority to municipalities to displace or limit competition over the collection, transporting, and reprocessing of recyclable materials.

46. Materials that are capable of being recycled are referred to as "recyclable materials."

47. Recyclable materials that are discarded and treated as waste by the generator are "solid waste" and thus fall within "other waste" as that term is used in NRS Chapter 268.

48. Recyclable materials that are not discarded by the generator are not "solid waste" as that term is defined in NRS 444.490.

49. The City of Reno did not have the authority to enter into Franchise with regard to the collection or purchase of recyclable material that are not discarded by the generator.

GSR's Lawful Business within the City of Reno

50. Upon information and belief, GSR has been or is currently licensed by the City of Reno to rent and lease recycling containers to businesses.

51. When GSR on-boards a new customer, GSR instructs their customers to source separate materials and place recyclable materials in the recycling containers that are leased and rented through GSR.

52. Recyclable materials that are not discarded by the owner of the materials are chattels.

53. Recyclable materials that are sold by the owner of the materials are goods and commodities.

54. GSR has lawfully entered into contracts to purchase source-separated recyclable materials (chattels) from its customers.

55. GSR pays its customers a negotiated price in exchange for title to the source-separated recyclable materials (chattels).

56. Pursuant to the Franchise Agreement, title to recyclable materials is transferred upon the collection or pickup of the material. However, according to NRS 444.585, recyclable materials are the property of the private recycling business when the materials are placed in the private recycling container and placed curbside or another place designated for collection.

57. Upon collection, the recyclable materials GSR purchases from its customers are owned and controlled by GSR.

58. Upon and information and belief, GSR collects at least 13,000 cubic yards of recyclable materials each year from its customers.

59. The materials GSR collects from its customers consist of the following: paper, plastic, cardboard, metals, and some glass.

60. Through instruction to the customer, GSR only collects 91% or more recyclable materials and a *de minimus* amount of "waste" that is inadvertently placed in GSR's containers.

61. Upon and information and belief, all of the material GSR collects is delivered to a materials recovery facility where the materials are recycled, reprocessed, and sold out of the State of Nevada.

62. At no additional charge to its customers, GSR collects the recyclable materials that it purchases from the prior owner and delivers its recyclables to a materials recovery facility where the materials are recycled and sold again.

City of Reno's Unlawful attempt to harm GSR

63. At one time, employees of the City of Reno communicated to GSR customer's that GSR was an approved vendor to collect recyclable materials that have not been discarded by the generator.

64. GSR at all times relevant hereto, is licensed to do business in the City of Reno.

65. GSR's business license is a valuable property right.

66. After months of operating within the City of Reno, GSR became successful and delivered many recycling containers to customers.

67. Because of the success of GSR, WMON and Reno Disposal Company became angered by the increased lawful competition in the market over recyclable materials.

68. Reno Disposal became so angered by the competition that instead of lowering their prices to compete with GSR as one should when faced with competition, Reno Disposal began an onslaught of lobbying efforts with certain employees of the City of Reno to force the City of Reno to do something about GSR's lawful competition.

69. Employee(s) or agent(s) of Reno Disposal and WMON communicated with the City of Reno to concoct a plan to harm the business of GSR.

70. Employee(s) or agent(s) of Reno Disposal and WMON became frustrated with the success of GSR, and felt threatened that GSR was operating legally in the City of Reno, and that GSR had customers who were downsizing the use of their service with Reno Disposal.

71. Feeling threatened that they would lose their job among other things, Employee(s) or agent(s) of the City of Reno, Reno Disposal or WMON, concocted a plan to harm the business of GSR and to ultimately secure Reno Disposal's illegal monopoly over recyclable materials in the Reno area.

72. The plan included sending letters to GSR that GSR was not in compliance with the Franchise Agreement, even though the Counterdefendants knew GSR was operating legally under the Franchise Agreement and operating lawfully pursuant to GSR's business license.

73. Employee(s) or agent(s) of the City of Reno developed a plan included writing a letter on behalf of the City of Reno designed to further enshrine Reno Disposal's illegal monopoly, by using Administrative Interpretations that bastardize the Franchise Agreement and

completely circumvent the intent of the previous Reno City Council which was to ensure competition over recyclable materials.

74. The City of Reno's formal interpretations of the Franchise Agreement were developed so that GSR could no longer compete with Reno Disposal Company because in communist fashion, it required GSR to pay a substantial price for recyclable materials, much higher than the current "market" price for the materials.

75. Knowing that their actions were unlawful, the employee(s) or agent(s) abused their position at the City of Reno.

76. Employee(s) or agent(s) of both WMON and Reno Disposal have sent threatening communications to GSR's customers designed to intimidate, destroy, and defame the business of GSR.

77. WMON, Reno Disposal, and the City of Reno, have all conspired to prevent GSR from engaging in its lawful enterprise.

78. Agent(s) or employee(s) of WMON, Reno Disposal, Waste Management, and the City of Reno have made and continue to make misleading statements to customers or prospective customers of GSR's in an effort to intimidate said customers.

79. On or about April 12, 2016 one such customer, Assistance League of Reno-Sparks received an email from an "Account Manager" of Waste Management or WMON or Reno Disposal stating in relevant part: "The two green solutions containers that you have on site are not permitted within the City of Reno. Waste Management has a franchise agreement with Reno and we are the only permitted haulers for you MSW and single stream recycling. I noticed one of the containers said 'cardboard only'. Are you receiving a refund for the cardboard commodity? If you are not, that is considered single stream and only WM is allowed to haul it."

80. On or about April 25, 2016 the City of Reno sent a letter to GSR which accused GSR of operating in violation of the Franchise Agreement and as a result could face fines and other penalties.

81. Upon information and belief, the City of Reno has sent notices of violations to GSR's customers with reckless disregard for its truth and/or malice.

82. Upon information and belief WMON, Reno Disposal, and the City of Reno have conspired and collaborated in efforts to harass and intimidate GSR's customers.

83. Upon information and belief, City of Reno officials have tried to destroy the business of GSR by making false and reckless accusations to GSR, and to GSR's customers.

84. Acting within the scope of their duties, an employee and/or agent of the City of Reno stated to one of GSR's customers that the City of Reno "is going to put GSR out of business."

85. Waste Management improperly cancelled GSR's right to collect and purchase cardboard from local businesses by improperly claiming that Reno Disposal is the only company allowed to recycle non-discarded recyclable material in the City of Reno.

86. Counterdefendant's actions have irreparably damaged GSR and will continue to do so if not enjoined.

FIRST CAUSE OF ACTION

(Defamation Per Se – All Counterdefendants)

87. Counterclaimant re-alleges each and every allegation contained in this Counterclaim, and hereby incorporate them by this reference as if fully set forth below.

88. As noted above, Counterdefendants have made false statements to third-parties regarding GSR's ability to collect, rent, transport and purchase recyclable materials in the City of Reno.

89. Employees and agents of Counterdefenants, along with Counterdefendants, have made disparaging statements to third-parties with reckless disregard for the truth.

90. Counterdefendants have made these disparaging and incorrect statements with malice and with the intent to harm Counterclaimant's business reputation and business relationships.

91. The Counterdefendants knew that their various statements were false and/or acted in reckless disregard of the allegations' truth or falsity.

92. As a result of the Counterdefenants' false, reckless and unfounded efforts to harm the Counterclaimant's business reputation, the quality of its business services, and its property, the Counterclaimant was unable to contract with third parties.

93. As a result of the Counterdefendants' conduct, as alleged herein, the Counterclaimant sustained special damages.

94. Counterclaimant has incurred, and continue to incur, legal expenses and other costs pursuing proceedings necessary to remove the clouds upon their title that the Counterdefendants' actions have created.

95. Counterclaimant has also suffered damages as a result of the Counterdefendants' actions.

96. Counterclaimant's past, present and future costs, expenses and other damages are the direct and immediate result of the Counterdefendants' actions.

97. The Counterdefendants' actions have disparaged and impaired the title, marketability, salability, vendibility and value of the Counterclaimant's property.

98. The Counterclaimant has been forced to incur costs and expenses reasonably necessary to counteract the Counterdefendants' slanderous and disparaging acts.

99. Counterclaimant's special damages include the costs, losses, expenses and other damages incurred in this case, in any other cases the Counterclaimant may need to file to clear title, and in taking other actions to remove the doubt cast upon the title, marketability, salability, vendibility and value of the Counterclaimant's property as a result of the Counterdefendants' slanderous, spurious and disparaging acts.

100. As a direct and proximate result of the Counterdefenants' conduct, Counterclaimant has been damaged in an amount in excess of $15,000.00.

WHEREFORE, Counterclaimant prays for judgment against the Counterdefendants, as set forth below.

SECOND CAUSE OF ACTION

(Intentional Interference with Contractual Relations-All Counterdefendants)

101. Counterclaimant re-alleges each and every allegation contained in this Counterclaim, and hereby incorporate them by this reference as if fully set forth below.

102. Counterclaimant entered into valid contracts for the purchase of valuable commodities, namely recyclable materials with third parties.

103. Counterclaimant is informed and believes, and thereon allege, that the Counterdefendants knew of these contracts.

104. Counterclaimant is informed and believes, and thereon allege, that the Counterdefendants engaged in intentional acts intended or designed to disrupt the Counterclaimant's contractual relationships.

105. Counterdefendants' actions did ultimately disrupt those contracts.

106. Counterclaimant is informed and believe, and thereon allege, that the Counterdefendants undertook the above-described actions with the intent to vex, harass and annoy Counterclaimant and that said acts were done with malice, fraud and oppression. As a result, Counterclaimant is entitled to an award of exemplary damages.

107. As a direct and proximate result of the Counterdefendants' conduct, Counterclaimant have been damaged in an amount in excess of $15,000.00.

WHEREFORE, Counterclaimant prays for judgment against the Counterdefendants, as set forth below.

THIRD CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage-All Counterdefendants)

108. Counterclaimant re-alleges each and every allegation contained in this Counterclaim, and hereby incorporate them by this reference as if fully set forth below.

109. Counterclaimant enjoyed prospective contractual relationships with third parties.

110. Counterclaimant is informed and believes, and thereon alleges, that the Counterdefendants knew of these prospective relationships.

111. Counterclaimant is informed and believes, and thereon alleges, that the Counterdefendants intended to harm the Counterclaimant by preventing the relationships.

112. The Counterdefendants had no privilege or justification in interfering with the relationships.

113. Counterclaimant is informed and believe, and thereon alleges, that the Counterdefendants undertook the above-described actions with the intent to vex, harass and annoy the Counterclaimant, and that said acts were done with malice, fraud and oppression. As a result, the Counterclaimant is entitled to an award of exemplary damages.

114. Counterclaimant is informed and believe, and thereon alleges, that the Counterdefendants have intentionally injured the Counterclaimant.

115. Counterclaimant is informed and believe, and thereon alleges, that the Counterdefendants' conduct is generally culpable and not justifiable under the circumstances.

116. The Counterdefendants are liable to the Counterclaimant for their damages.

117. As a direct and proximate result of the Counterdefendants' conduct, the Counterclaimant has suffered actual harm, including damages in excess of $15,000.00.

WHEREFORE, Counterclaimant prays for judgment against the Counterdefendants, as set forth below.

FOURTH CAUSE OF ACTION

(Abuse of Process – Reno Disposal and City of Reno)

118. Counterclaimant re-alleges each and every allegation contained in this Counterclaim, and hereby incorporate them by this reference as if fully set forth below.

119. As evidenced by the Counterdefendants' conduct throughout this case, Counterclaimant is informed and believe, and thereon allege, that the Counterdefendants have an ulterior purpose, other than resolving a legal dispute, namely to improperly monopolize the recyclable market in Reno and put GSR out of business.

120. Counterclaimant is informed and believe, and thereon allege, that the Counterdefendants engaged in one or more willful acts in the use of the legal process that was not proper in the regular conduct of the proceeding.

121. The Counterdefendants' questionable conduct includes, without limitation, sending cease and desist letters to GSR and GSR's customers, sending notices of violations to

the same, actually citing and fining GSR's customers, threatening GSR's customers with jail time for recycling, preventing performance of third-party contract rights and obligations, and improperly clouding title to the Counterclaimant's properties including but not limited to its business license.

122. Counterclaimant is informed and believes, and thereon alleges, that the Counterdefendants undertook the above-described actions with the intent to vex, harass and annoy the Counterclaimant, and that said acts were done with malice, fraud and oppression. As a result, the Counterclaimant is entitled to an award of exemplary damages.

123. As a direct and proximate result of the Counterdefendants' conduct, Counterclaimant has been damaged in an amount in excess of $15,000.00.

WHEREFORE, Counterclaimant prays for judgment against the Counterdefendants, as set forth below.

FIFTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing-Reno Disposal and City of Reno)

124. Counterclaimant re-alleges each and every allegation contained in this Counterclaim, and hereby incorporate them by this reference as if fully set forth below.

125. As alleged above, the Plaintiff asserts that it has an enforceable agreement with the City of Reno.

126. The Franchise Agreement permits and denies legal rights to Counterdefendant and Counterdefendant is a third-party beneficiary under the Agreement.

127. Every contract in Nevada has implied into it a covenant that the parties thereto will act in the spirit of good faith and fair dealing.

128. Counterclaimant is informed and believes that Reno Disposal breached this covenant by acting inconsistently with the purpose and intent of the claimed agreement.

129. Counterclaimant is informed and believes that Reno Disposal's wrongful conduct includes, but is not limited to: (i) intentionally refusing and/or failing to comply with the terms of its agreements; (ii) failing to cooperate in resolving any issues that needed to be cleared to

accomplish GSR's lawful business of renting containers and purchasing recyclable materials; (iii) unlawfully encumbering Counterclaimant's property by fining GSR's customers and improperly taking away GSR's ability to collect and purchase recyclable material within the City of Reno pursuant to the franchise agreement, the law, and GSR's business license; and (iv) otherwise acting contrary to Counterclaimant's rights, title, interests and intent.

130. Through this and other conduct, the City and Reno Disposal have denied Counterclaimant's justified expectations.

131. Counterclaimant is informed and believes, and thereon alleges, that the City of Reno and Reno Disposal undertook the above-described actions with the intent to vex, harass and annoy the Counterclaimant, and that said acts were done with malice, fraud and oppression. As a result, the Counterclaimant is entitled to an award of exemplary damages.

132. As a direct and proximate result of the City of Reno and Reno Disposal's conduct, Counterclaimant has been, and will continue to be, harmed in an amount which exceeds $15,000.00.

WHEREFORE, Counterclaimant prays for judgment against the Counterdefendants, as set forth below.

SIXTH CAUSE OF ACTION

(Declaratory Relief-All Counterdefendants)

133. Counterclaimant re-alleges each and every allegation contained herein, and hereby incorporates them by this reference as if fully set forth below.

134. A dispute has arisen over the parties' respective rights under the Franchise Agreement, the law, and principles of equity.

135. This controversy is ripe for judicial determination in that the Counterdefendants now seek to avoid their obligations and have, through their actions and assertions, otherwise disrupted the Counterclaimant's business ventures and created great uncertainty.

136. Moreover, the Counterdefendants have unlawfully interfered with the Counterclaimant's credit, reputations, and standing in the community.

137. If the Counterdefendants are permitted to continue, Counterclaimant will suffer very real, substantial and irreparable harm for numerous reasons, which include, without limitation, loss of sales and investment opportunities, and further damage to their credit, reputations, and standing in the community, which such items are inherently unique and irreplaceable.

138. Counterclaimant is entitled to declaratory relief regarding their rights. Counterclaimant is also entitled to injunctive and equitable relief, as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Answering Defendant and Counterclaimant request judgment against Plaintiff and Counterdefendants, and each of them, jointly and severally, as follows:

1. That Plaintiff take nothing by way of its Complaint and that the same be dismissed with prejudice;

2. That Counterclaimant recover compensatory damages according to proof;

3. That Counterclaimant recover punitive damages according to proof;

4. That Counterclaimant recover additional damages according to statute;

5. For immediate, preliminary, and permanent injunctions enjoining Counterdefendants from taking any further action against Counterclaimant or their respective property;

6. For immediate, preliminary, and permanent injunctions enjoining Counterdefendants from seizing, misappropriating or interfering with Counterclaimant or their respective property and contract rights with third-parties;

7. For a declaration that:

(a) The Franchise Agreement is an unlawful restraint of trade.

(b) The Franchise Agreement unlawfully limits GSR's ability to purchase non-discarded recyclables within the City of Reno.

(c) GSR is lawfully allowed to collect, transport, purchase and recycle non-discarded recyclable materials within the City of Reno pursuant to Nevada law, the Franchise Agreement, and City Code.

(d) The State of Nevada did not authorize the City to enter into an exclusive franchise agreement over recyclable materials.

(e) The City did not have the authority to enter an exclusive franchise agreement with respect to the service of recycling and/or over the collection of recyclable materials.

(f) To the extent that any agreement did exist, Counterdefendants breached that agreement;

(g) Counterclaimants are entitled to quiet and peaceful possession of their respective property;

(h) Counterdefendants may not encumber or harm that property;

(i) Any claims that Counterdefendants assert as to those properties are quieted, denied, refused, rejected, and dismissed; and

(j) Otherwise sets forth the parties' respective rights, duties, and obligations;

8. For an award of the Answering Defendant's and Counterclaimant's attorneys' fees and costs of suit incurred herein;

9. For an award of interest according to law and/or proof; and

10. For such other and further relief as the Court deems equitable, just and proper.

AFFIRMATION

Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

/ / /

/ / /

DATED this 4th day of December 2017.

/s/ J. Chase Whittemore

J. Chase Whittemore
Sande Law Group

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sande Law Group, 6151 Lakeside Dr., Ste. 208, Reno, Nevada 89519, over the age of 18, and not a party within this action. I further certify that on the 4th day of December, 2017, I electronically filed the foregoing **ANSWER TO COMPLAINT AND COUNTERCLAIM** with the Clerk of the Court by using the ECF system, which served the following parties electronically:

Robison , Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff

Winter Street Law Group
96 Winter Street
Reno, NV 89503
Attorneys for Defendants Nevada Recycling and Salvage and Rubbish Runners

/s/ Jeanette Lawson
An Employee of the Sande Law Group

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIM** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

X **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

_____ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

City of Reno
Matthew L. Jensen
Deputy City Attorney
Reno City Hall
1 East 1st Street, Floor 3,
Reno, Nevada 89501
Attorney City of Reno

Dated December 4, 2017

/s/ Jeanette Lawson
An Employee of the Sande Law Group

2315
Mark G. Simons, Esq., NSB No. 5132
Therese M. Shanks, Esq. NSB 12890
ROBISON, SIMONS, SHARP & BRUST
71 Washington Street
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Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rssblaw.com
tshanks@rssblaw.com

Attorneys for Reno Disposal Company, Inc., Waste Management of Nevada, Inc., and Waste Management National Services, Inc.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO DISPOSAL COMPANY, INC., a Nevada Corporation,

Plaintiffs,

vs.

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company; NEVADA RECYCLING AND SALVAGE, LTD., a Nevada limited liability company; AMCB, LLC, a Nevada limited liability company dba RUBBISH RUNNERS DOES I through X, inclusive,

Defendants.
_____/

CASE NO.: CV17-01143

DEPT. NO.: 1

COUNTERDEFENDANTS RENO DISPOSAL'S, WMON'S AND WMNS' SPECIAL MOTION TO DISMISS COUNTERCLAIMS PURSUANT TO NRS 41.660

Plaintiff/Counterdefendant Reno Disposal Company, Inc. dba Waste Management ("Reno Disposal"), and counterdefendants Waste Management of Nevada, Inc. ("WMON") and Waste Management National Services, Inc. ("WMNS")

(collectively, "Waste Management"), by and through their counsel of Robison, Simons, Sharp & Brust, move to dismiss the counterclaims filed by Green Solutions Recycling, LLC ("GSR") pursuant to NRS 41.660. This motion is based upon the attached memorandum of points and authorities and the pleadings and papers on file herein.

DATED this 30th day of January, 2018.

ROBISON, SIMONS, SHARP & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada, 89503

MARK G. SIMONS
THERESE M. SHANKS
Attorneys for Attorneys for Reno Disposal Company, Inc., Waste Management of Nevada, Inc., and Waste Management National Services, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BASIS OF MOTION

Waste Management moves to dismiss GSR's counterclaims pursuant to NRS 41.660 because GSR's counterclaims challenge Waste Management's proper petitioning activity with the City of Reno. Under Nevada' s anti-SLAPP rule, "[a] person who engages in a good faith communication in the furtherance of the right to petition . . . is immune from any civil action for claims based upon the communication." NRS 41.650. A "good faith communication in the furtherance of the right to petition" is defined as "[c]ommunication of information or a complaint to a . . . political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity." NRS 41.637(2).

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GSR's entire counterclaim is based on its allegations that Waste Management allegedly harmed GSR by complaining about GSR to the City of the Reno. Specifically, GSR alleges:

- "Reno Disposal became so angered by the competition that . . . Reno Disposal began **an onslaught of lobbying efforts with certain employees of the City of Reno to force the City of Reno to do something about GSR's lawful competition**." Countercomplaint, ¶ 68.
- "Employee(s) or agent(s) of Reno Disposal and WMON communicated with the City of Reno to concoct a plan to harm the business of GSR." Id. at ¶ 69.
- ". . . Employee(s) or agent(s) of the City of Reno, Reno Disposal or WMON, concocted a plan to harm the business of GSR and to ultimately secure Reno Disposal's illegal monopoly over recyclable materials in the Reno area." Id. at ¶ 71.
- "Employee(s) or agent(s) of the City of Reno developed a plan included writing a letter on behalf of the City of Reno designed to further enshrine Reno Disposal's illegal monopoly, by using Administrative Interpretations that bastardize the Franchise Agreement . . ." Id. at ¶ 73.
- "Knowing that their actions were unlawful, the employee(s) or agent(s) abused their position at the City of Reno." Id. at ¶ 75.
- ". . . the City of Reno has sent notices of violations to GSR's customers . . ." Id. at ¶ 81.
- ". . . WMON, Reno Disposal, and the City of Reno have conspired and collaborated in efforts to harass and intimidate GSR's customers." Id. at ¶ 82.

These are all clearly allegations of petitioning activity. Because Waste Management is immune from liability, GSR's countercomplaint must be dismissed under Nevada's anti-SLAPP rule.

II. STANDARD OF REVIEW.

Nevada's anti-SLAPP rule protects parties from meritless claims filed "primarily to chill the defendant's exercise of First Amendment rights." John v. Douglas Cnty. Sch. Dist., 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009) (internal quotations omitted). Under anti-SLAPP, the person against whom a SLAPP lawsuit has been filed "may file a special motion to dismiss" within 60 days of service of the claims. NRS

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41.660(1)(a); NRS 41.660(2).

When a special motion to dismiss is filed, this Court must determine if Waste Management has shown, by a preponderance of the evidence, "that the claim is based on a good faith communication in furtherance of the right to petition." NRS 41.660(3)(a). Once that showing is made, the burden shifts to GSR to demonstrate "with prima facie evidence a probability of prevailing on its claims." NRS 41.660(3)(b). In rendering these determinations, this Court must consider all evidence necessary. NRS 41.660(3)(d). This Court must also stay discovery pending any ruling on the motion. NRS 41.660(3)(e).

If this Court grants the motion to dismiss, this must award Waste Management its reasonable attorney fees and cost. NRS 41.670(1)(a). This Court may also award damages in an amount up to $10,000. NRS 41.670(1)(b).

III. GSR'S COUNTERCLAIM CHALLENGES PROPER PETITIONING ACTIVITY.

A. Waste Management's Petitioning Activity is Protected by Anti-SLAPP.

A "good faith communication in the furtherance of the right to petition" is defined as "[c]ommunication of information or a complaint to a . . . political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity." NRS 41.637(2).

All GSR's claims arise from its allegations that Waste Management went to the City to complain about GSR, and the City decided to act against GSR and in favor of Waste Management because of Waste Management's complaints. GSR specifically alleges that "Reno Disposal began **an onslaught of lobbying efforts with certain employees of the City of Reno to force the City of Reno to do something about GSR's lawful competition**." Countercomplaint, ¶ 68. Thus, GSR's claims are clearly

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subject to dismissal under anti-SLAPP.

B. GSR Can Only Prevail on the Merits of Its Counterclaims by Challenging the Validity of Waste Management's Petitioning Activity in Violation of the SLAPP Statute.

The fact that GSR's actual claims challenge communications made to private individuals and not the petitioning activity itself will not remove these claims from the ambit of anti-SLAPP. "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action, but, rather, the defendant's *activity* that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning." Navellier v. Sletten, 52 P.3d 703, 711 (Cal. 2002); *see also* NRS 41.665(2) (stating that the Legislature looked to California's anti-SLAPP law for guidance in enacting Nevada's anti-SLAPP).

GSR's counterclaims are all based upon Waste Management's petitioning activity. GSR's position is this:

1. The City of Reno, at Waste Management's request, granted Waste Management an illegal monopoly over the collection and disposal of recyclable materials. Countercompl., ¶¶ 10, 49.

2. When GSR began to collect and dispose of recyclable materials, Waste Management got mad and starting "lobbying" the City of Reno to do something about GSR's collection activities. Id. at ¶ 68.

3. The City of Reno then agreed, after being petitioned by Waste Management, to uphold the allegedly illegal monopoly it granted to Waste Management. Id. at ¶ 73.

4. The City and Waste Management then wrongfully contacted GSR's clients. Id. at ¶¶ 87-138.

GSR has attempted claims based upon the last position, i.e., contact with clients.

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However, GSR cannot prevail on its claim for defamation per se unless it proves that the statements were not truthful. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). The only way it can prove a false statement is to prove that Waste Management did not have a valid monopoly over the recyclable materials, and the only way to prove that is to challenge the validity of Waste Management's petition to the City of Reno to grant and uphold the Franchise Agreement.

GSR cannot prevail on its claims for intentional interference with contract and prospective economic advantage unless it can show that Waste Management was not justified in interfering with these relationships. Consol. Generator-Nev., Inc. v. Cummins Engine Co., 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (1998). The only way that GSR can prove lack of justification, again, is to prove that Waste Management did not have a valid monopoly over the recyclable materials, and the only way to prove that is to challenge the validity of Waste Management's petition to the City of Reno to grant and uphold the Franchise Agreement.

GSR also cannot prevail on its claim for breach of the implied covenant of good faith and fair dealing or declaratory relief unless it can show that the City of Reno and Waste Management did something in violation of the "spirit" of the Franchise Agreement. Frantz v. Johnson, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000). Again, to prove that their actions were not in the spirit of the Franchise Agreement, GSR must show that Waste Management's petition (i.e. complaining) to the City of Reno, and the City of Reno's action upon that complaint was not proper. This is clearly petitioning activity.

Finally, GSR cannot prevail on its claim for abuse of process unless it shows that Waste Management's and the City's conduct in sending letters to clients was wrong. It

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would only be wrong if Waste Management's petitioning was wrong and if the City's franchise with Waste Management was wrong.

All GSR's claims fall squarely within Waste Management's protected right to petition the City for relief. They must be dismissed under Nevada's anti-SLAPP rule.

IV. CONCLUSION.

For the foregoing reasons, Waste Management respectfully requests that this Court dismiss GSR's counterclaims with prejudice, and award Waste Management reasonable attorney fees and costs and compensatory damages up to $10,000.

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

DATED this 30th day of January, 2018.

ROBISON, SIMONS, SHARP & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada, 89503

MARK G. SIMONS
THERESE M. SHANKS
Attorneys for Attorneys for Reno Disposal Company, Inc., Waste Management of Nevada, Inc., and Waste Management National Services, Inc.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SIMONS, SHARP & BRUST, and that on this date I caused to be served a true copy of the **COUNTERDEFENDANTS RENO DISPOSAL'S, WMON'S AND WMNS' SPECIAL MOTION TO DISMISS COUNTERCLAIMS PURSUANT TO NRS 41.660** 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 NRS and RR

John P. Sande, Esq.
Attorneys for GSR

____ by personal delivery/hand delivery addressed to:

____ by facsimile (fax) addressed to:

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

DATED this 30th day of January, 2018.

Employee of Robison, Simons, Sharp & Brust

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Sharp & Brust
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Code: 2290
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RENO DISPOSAL COMPANY, Inc., a Nevada Corporation

Plaintiff,

vs.

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company; et al.

Defendants.

Case No.: CV17-01143

Dept. No: 1

GREEN SOLUTIONS RECYCLING, LLC, a Nevada limited liability company; et al.

Counterclaimant,

v.

RENO DISPOSAL COMPANY, Inc., a Nevada Corporation, WASTE MANAGEMENT OF NEVADA, INC., a Nevada Corporation; WASTE MANAGEMENT NATIONAL SERVICES, inc., a Conneticut corporation and the CITY OF RENO, a Political subdivision

Counterdefendants.

/

COUNTERDEFENDANT CITY OF RENO'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 AND JOINDER IN OTHER COUNTERDEFENDANTS' SPECIAL MOTION TO DISMISS

Counterdefendant City of Reno (the "City"), by and through its legal counsel, Karl S. Hall, City Attorney, and Matthew L. Jensen, Deputy City Attorney, hereby moves this Court for

entry of an Order dismissing the Counterclaim in this action. The City additionally joins in Counterdefendants Reno Disposal, WMON and WMNS's Special Motion to Dismiss. Finally, the City seeks an award of its attorneys' fees and costs and statutory damages in the amount of $10,000. This motion is made pursuant to NRS 41.660 and NRS 41.670, the following points and authorities and exhibits attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Collection and disposal of solid waste within the City of Reno is comprehensively governed by a Franchise Agreement, entered into by the City and Reno Disposal Company, Inc. ("Reno Disposal").[1] Defendant and Counterclaimant Green Solutions Recycling ("GSR" or "Counterclaimant") conducts business, including transactions with members of the public, that violates the Franchise Agreement and the Reno Municipal Code ("RMC"). Both Reno Disposal and the City have undertaken efforts to administer and enforce the agreement.

In response to Reno Disposal's initiation of this action to enforce its rights under the Franchise Agreeement, GSR filed a Counterclaim against Reno Disposal, Waste Management of Nevada, Inc., Waste management National Services, Inc. (collectively "Reno Disposal") and the City (collectively "Counterdefendants") based entirely on communications in furtherance of the Counterdefendants' right to petition and free speech. GSR decries "lobbying efforts" that allegedly led to dissemination of "administrative interpretations" and public correspondence and enforcement related to the Franchise Agreement, all of which are good faith communications protected by Nevada's anti-SLAPP legislation.

GSR, however, can show no probability that it will prevail on its claims. The communications identified by GSR are truthful and made without any knowledge of falsehood.

[1] The City contemporaneously entered into two such agreements, identical except for their respective covered geographical areas, one with Reno Disposal and the other with another company who has since properly assigned its rights and obligations under its agreement to Reno Disposal. The result of that assignment is Reno Disposal's ownership of both contracts, singularly referred to as the "Franchise Agreement," subject of this action. The assignment itself only changed Reno Disposal's geographical area of service and made no changes to the operation of the contracts.

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GSR cannot refute that the City's communications were legitimate good faith communications in direct connection with the substantial public issue of solid waste collection and disposal, and the City is immune from any action based upon those communications. GSR's Counterclaim must be dismissed.

II. RELEVANT FACTS

On November 7, 2012, after more than five years of public process, the City approved and entered into an "Exclusive Service Area Franchise Agreement - Commercial Solid Waste and Recyclable Materials" (the "Franchise Agreement") with Reno Disposal. Complaint, p. 4, l. 6 – p. 6, l. 13; Counterclaim, p. 19, ll. 18-20; *see* Exhibit 1 to Complaint. At the time of entry into the Franchise Agreement, the City adopted Reno Municipal Code ("RMC") Chapter 5.90, Article II ("Collection and Transportation of Solid Waste and Recyclable Materials"). Counterclaim, p. 19, ll. 21-22. Adoption of ordinances follows its own public process. *See* Reno City Charter § 2.100.

The case at bar initially arises from Reno Disposal's enforcement of its rights under the Franchise Agreement against GSR and others' business operation in violation of the Franchise Agreement. *See generally* Complaint. In addition to denying Reno Disposal's allegations, GSR responds in its Counterclaim that Counterdefendants have made wrongful communications related to the interpretation and enforcement of the Franchise Agreement. *See generally* Counterclaim.

GSR alleges that Reno Disposal engaged in "lobbying efforts" and "communication" to the City regarding GSR's conduct of business in light of the Franchise Agreement. Counterclaim, p. 25, ll. 11-15. GSR alleges that, in response to the lobbying, the City sent a letter to GSR stating that GSR was not in compliance with the Franchise Agreement, Counterclaim, p. 25, ll. 23-25; p. 26, ll. 24-26, the City issued formal Administrative Interpretations regarding the Franchise Agreement, p. 25, l. 28 – p. 26, l. 4, and the City undertook enforcement actions related to the Franchise Agreement by issuing Notices of Violation, citations and fines to purported customers of GSR "for recycling." Counterclaim, p. 26, ll. 27-28; p. 30, l. 27 – p. 31, l.

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4. GSR provides no further detail regarding the letter to GSR, provides no detail regarding the administrative interpretations except that they relate to the Franchise Agreement and fails to identify a particular customer of GSR who was the subject of enforcement action.

GSR actually alleges only a single statement by an unidentified "employee and/or agent of the City of Reno" to an unidentified "GSR customer" that the City "is going to put GSR out of business." Counterclaim, p. 27, ll. 5-7. However, GSR provides no further context or detail regarding this alleged statement.

III. BASIS FOR DISMISSAL OF COMPLAINT AND AWARD OF DAMAGES

GSR's claims are entirely based on the enactment, existence and enforcement of the Franchise Agreement. The Franchise Agreement is a product of – and is necessarily reliant on – petition and free speech regarding solid waste collection and disposal, an issue of substantial public concern. Action and enforcement pursuant to the Franchise Agreement are communicated and carried out in the public sphere, and the City is immune from action based on the related communications.

A. NEVADA'S ANTI-SLAPP STATUTES

Nevada's anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes are encompassed in NRS 41.635 through 41.670. They provide that "[a] person who engages in a good faith communication in furtherance of the right to petition or the right to free speech is immune from any civil action for claims based upon the communication." NRS 41.650 (emphasis added).

NRS 41.637 defines "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" as including any:

1. Communication that is aimed at procuring any governmental . . . action, result or outcome;

2. Communication of information or a complaint to a Legislator, officer or employee of . . . this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;

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3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or

4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,

which is truthful or is made without knowledge of its falsehood.

By the plain language of Nevada's anti-SLAPP statutes, a government entity may rely on them to seek dismissal of a SLAPP complaint. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 760-761, 219 P.3d 1276, 1286 (2009)(citing *Richardson Constr. v. Clark Cty. Sch. Dist.*, 123 Nev. 61, 64, 156 P.3d 21, 23 (2007)). Further and more broadly, a party may rely on Nevada's anti-SLAPP statutes where alleged wrongful acts arise from protected activity. *John*, 125 Nev. at 761, 219 P.3d at 1286 (citing to *Raining Data Corp. v. Barrenechea*, 175 Cal.App.4th 1363, 97 Cal.Rptr.3d 196 (2009)).

Accordingly, if the City participates in or responds to a good faith communication relating to procurement of governmental action, matters of concern to the City, official proceedings authorized by law or issues of public interest, the City is absolutely immune from any civil liability for an action based on those communications.

Moreover, "the principal thrust or gravamen [of a cause of action] determines whether the anti-SLAP[P] statute applies." *Raining Data*, 175 Cal.App.4th at 1369, 97 Cal.Rptr.3d at 200 (citation omitted) Any allegation of non-protected activity that is incidental to the gravamen of a cause of action cannot serve to frustrate the purpose of anti-SLAPP statutes. *See id.* GSR cannot avoid anti-SLAPP dismissal by the mere mention of an insubstantial alleged act in its Counterclaim.

B. THE CITY JOINS IN RENO DISPOSAL'S SPECIAL MOTION TO DISMISS

The City hereby joins in Counterdefendants Reno Disposal, WMON and WMNS's Special Motion to Dismiss Counterclaims Pursuant to NRS 41.660. From any perspective, the

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acts that GSR complains of are either protected activity as defined by NRS 41.637 or acts arising from protected activity. *See John*, 125 Nev. at 761, 219 P.3d at 1286. Indeed, the gravamen of GSR's entire Counterclaim is that a citizen petitioned the government, and the government acted, publicly, in response. GSR's claims must be dismissed as to all Counterdefendants.

C. GSR'S CLAIMS ARE BASED UPON GOOD FAITH COMMUNICATIONS IN FURTHERANCE OF THE RIGHT TO PETITION OR THE RIGHT TO FREE SPEECH IN DIRECT CONNECTION WITH AN ISSUE OF PUBLIC CONCERN

A person against whom an action is filed may file an anti-SLAPP special motion to dismiss if the person can show "by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). The collection and disposal of solid waste is an issue of substantial public concern, so much so that Nevada's statutes authorize the City to "displace" and "limit competition" in the area of waste collection and disposal. NRS 268.081(3). Further, the City's franchise authority grants to the City the power "to regulate the collection and disposal of solid waste . . ." NRS 444.440.

The communications and acts of which GSR complains are all directly connected with the collection and disposal of solid waste. GSR complains of communication to the City by Reno Disposal and of communications by the City in response and in furtherance of its own interests under the Franchise Agreement, all of which is protected activity.

1. ALL COUNTERCLAIMS MUST BE DISMISSED AS ARISING FROM PROTECTED ACTIVITY

As addressed above in the City's joinder to Reno Disposal's Special Motion to Dismiss, GSR's entire Counterclaim arises from the allegations that Reno Disposal petitioned the City, and the City responded. The "lobbying" of which GSR complains is clearly protected activity. NRS 41.637(1) – (4). Likewise, the City's responsive acts and communications are themselves protected, NRS 41.637(3) and (4), and are further protected as acts arising from protected activity. *See John*, 125 Nev. at 761, 219 P.3d at 1286.

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2. THE LETTER TO GSR ALSO ARISES FROM GSR'S PROTECTED COMMUNICATION AND IS ITSELF A PROTECTED COMMUNICATION

GSR alleges that the City "accused GSR of operating in violation of the Franchise Agreement" by way of an April 25, 2016, letter. The language of GSR's allegation portrays the letter as an initial communication. However, the letter responds to an April 13, 2016, letter from GSR already discussing the issue. **Exhibit 1.** Therefore, the communication also arises from GSR's own communication and lobbying efforts with the City and is accordingly protected. *See John*, 125 Nev. at 761, 219 P.3d at 1286.

The letter is otherwise protected as a "[w]ritten . . . statement made in direct connection with an . . . official proceeding authorized by law." NRS 41.637(3). The City's letter to GSR was made in direct connection with a proceeding authorized by law, as it notified GSR of the possibility of prosecution for GSR's continued action in violation of the Franchise Agreement. Exhibit 1; *see* RMC Chapter 1.05 ("Code Enforcement – Administrative Provisions"), RMC 4.04.150 ("Grounds for denial, revocation, suspension and summary suspension of license . . ."), RMC Chapter 10.08 ("Accumulation and Disposal of Solid Waste") and RMC 10.08.090 "(Violations"). Such prosecution is a proceeding authorized by law.

Indeed, GSR includes Counterdefendants "sending cease and desist letters to GSR . . ." as a basis for its claim for abuse of process. Counterclaim p. 30, l. 16 – p. 31, l. 12. Although administrative actions do not support an abuse of process claim, GSR nonetheless must admit that the communications were made in connection with an "official proceeding authorized by law."

3. THE ADMINISTRATIVE INTERPRETATIONS ALSO ARISE FROM GSR'S PROTECTED COMMUNICATION AND ARE THEMSELVES PROTECTED COMMUNICATIONS

Counterdefendants' efforts to effectively manage and enforce the function of the Franchise Agreement included the City's issuance of formal administrative interpretations

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related to the agreement. **Exhibit 2.** Review of the memoranda reveals that they, in part, arise from GSR's own inquiries related to its business operation. Exhibit 2, October 19, 2015, memorandum. Thus, the memoranda also arise from GSR's own communication to the City.

The memoranda are otherwise protected as "[w]ritten . . . statement[s] made in direct connection with an issue under consideration by a . . . legislative body," NRS 41.637(3), and as "[c]ommunication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum." NRS 41.637(4). The memoranda both recite that they are issued at the direction of City Council, reflecting that the City Council was considering the Franchise Agreement and the issue of waste collection and disposal. Furthermore, the City Council direction and the issuance of the memoranda squarely place these communications in a place open to the public or in a public forum.

4. NOTICES OF VIOLATION ARE PROTECTED COMMUNICATIONS

GSR's claims ultimately rest on alleged contact with GSR customers. However, like the April 25, 2016, letter notifying GSR that it was operating in violation of the law, Notices of Violation (and similar communications) are protected as "[w]ritten . . . statement[s]made in direct connection with an . . . official proceeding authorized by law." NRS 41.637(3). GSR fails to identify a specific customer or communication, however the City has issued courtesy letters with informational flyers and Notices of Violation that addressed improper waste collection and disposal activity. **Exhibit 3.** The sample attached exhibit demonstrates that these communications are made in direct connection with possible prosecution for violation of the Franchise Agreement and the Reno Municipal Code. Such prosecution is a proceeding authorized by law.

5. GSR'S ALLEGED STATEMENT BY A CITY AGENT IS INCIDENTAL AND INSUBSTANTIAL

GSR alleges that a City employee or agent said to a GSR customer that the City "is going to put GSR out of business," but GSR fails to provide any further context with this allegation. By

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itself, the statement means nothing and could not support any of GSR's claims. It purports no fact and is at worst an opined prediction. It has no substance to change the gravamen of GSR's Counterclaim or any of the causes of action therein. The statement is merely incidental to any of the claims put forth by GSR and cannot remove the Counterdefendants' communications and acts from anti-SLAPP protection. *See Raining Data*, 175 Cal.App.4th at 1369, 97 Cal.Rptr.3d at 200 (citation omitted).

C. GSR CANNOT SHOW A PROBABILITY OF PREVAILING ON THE CLAIMS

The City has established that GSR's claims are based upon communications and acts protected by anti-SLAPP legislation, and GSR must now show "with prima facie evidence a probability of prevailing on the claim[s]." NRS 41.660(3)(b). However, GSR offers no evidence to dispute, and nothing here negates, that the alleged communications and acts are truthful and made without any knowledge of falsehood.

The Franchise Agreement is valid, and the Counterdefendants' reliance on the Franchise Agreement in their communications and acts is likewise valid. Before GSR can even get to the Counterdefendants' communications and acts, GSR must first prove that the Franchise Agreement is invalid as applied to GSR's business activity – and that would entail GSR invalidating Reno Disposal's clearly protected "lobbying" activity to the City to grant and uphold the Franchise Agreement.

GSR cannot otherwise prevail against the City for defamation, as it cannot prove that assertions in the Notices of Violation were untruthful. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). Neither can GSR overcome the privileged nature of the communications, based on the interests of the parties to the communications. *See Lubin v. Kunin*, 117 Nev. 107, 115, 17 P.3d 422, 428 (2001). The purported statement by a City agent is also not a statement of fact, but would be "mere rhetorical hyperbole" that fails to support GSR's claim. *Pegasus*, 118 Nev. at 715, 57 P.3d at 88.

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GSR cannot otherwise prevail against the City for intentional interference with contract and prospective economic advantage, as it cannot show that the City was not justified in acting to protect its own economic interest and rights under the Franchise Agreement. *See Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1226 (1987). The City properly acted to protect the health, safety and welfare of the community. *See* NRS 444.440.

GSR cannot otherwise prevail against the City for breach of the implied covenant of good faith and fair dealing because it cannot reasonably assert that GSR had any special element of reliance on the Franchise Agreement between the City and Reno Disposal or that the Counterdefendants took any arbitrary action to either's disadvantage. *See Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 103, Nev. 126, 128, 734 P.2d 1233, 1235 (1987)(citations omitted). GSR's shortcomings here are further demonstrated by its failure to assert facts supporting this claim against the City. *See* Counterclaim, p. 31, l. 13 – p. 32, l. 16.

GSR cannot otherwise prevail against the City for abuse of process because the City has not initiated any judicial action against GSR. *Land Baron Inv. V. Bonnie Springs Family LP*, 131 Nev. Adv. Op 69, 356 P.3d 511, 519-520 (2015). No fact exists to support GSR's assertion against the City. Furthermore, GSR cannot show any improper act in the City's administrative measures on which GSR attempts to base this claim.

Whether GSR's claims against the City arise from legitimate petitioning activity or lack proof to satisfy elements of the claims, GSR's claims also fail apart from the issue of anti-SLAPP protection. GSR's Counterclaim must be dismissed.

D. THE CITY IS ENTITLED TO FEES AND COSTS AND MAY BE AWARDED AN ADDITIONAL AMOUNT

If this Court grants this Special Motion to Dismiss, it must award the City its reasonable costs and attorney's fees. NRS 41.670(1)(a). This Court may additionally award the City an amount of up to $10,000. NRS 41.670(1)(b).

Anti-SLAPP legislation protects a citizen's ability to petition the government and protects the informed and efficient operation of government. At further issue here is the public

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health, safety and welfare that is served by an effective and efficient method of solid waste collection and disposal throughout the City. Through its Counterclaim, GSR seeks to frustrate the beneficial results of the years-long public process leading to the establishment and function of the Franchise Agreement. What GSR seeks to gain, at the expense of the public, is illegitimate profit. *See* Complaint, p. 11, l. 5 – p. 12, l. 25.

GSR has unnecessarily pulled the City into this action with its Counterclaim, placing additional strain on the City's limited resources and hindering efficiency within the City. Accordingly, the City respectfully requests that this Court award $10,000 to the City as compensatory and punitive damages in addition to costs and fees.

IV. RELIEF REQUESTED

GSR's Counterclaim is based entirely on the types of communications, and the acts arising from those communications, that are sought to be protected by anti-SLAPP legislation. For the foregoing reasons, the City respectfully requests that this Court dismiss GSR's counterclaims with prejudice, award the City reasonable attorney fees and costs and award the

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City $10,000 pursuant to NRS 41.670.

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

DATED this 5th day of February, 2018.

KARL S. HALL
Reno City Attorney

By _____
MATTHEW L. JENSEN
Deputy City Attorney
Nevada State #6357
Post Office Box 1900
Reno, Nevada 89505
(775) 334-2050
Attorneys for City of Reno

List of Exhibits

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below 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 prepaid, following ordinary business practices.

_____ Personal delivery.

__X__ CM/ECF electronic service

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

John P. Sande IV, Esq.
J. Chase Whittemore, Esq.
Sande Law Group
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Suite 208
Reno, NV 89511

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71 Washington Street
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Counsel for Refuse Inc., Reno Disposal Co. and Waste Management of Nevada

Del Hardy, Esq.
Stephanie Rice, Esq.
Richard Salvatore, Esq.
WINTER STREET LAW GROUP
96 & 98 Winter Street
Reno, NV 89503

DATED this 5th day of February, 2018.

/s/ Katie Wellman
Katie Wellman
Legal Assistant

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

EXHIBIT 1

EXHIBIT 1

April 25, 2016

Chris Bielser
Green Solutions Recycling LLC
P.O. Box 20683
Reno, NV 89515

RE: Formal Complaint Response

Dear Mr. Bielser:

In response to your complaint letter dated April 13, 2016 regarding Green Solutions Recycling taking over a hauling account for the Assistance League of Reno-Sparks located at 1701 Vassar Street in Reno, Nevada, please find our response below:

In accordance with the certain Exclusive Service Area Franchise Agreement – Commercial Solid Waste and Recyclable Materials dated November 7, 2012, the definition for Excluded Materials presented in your complaint was not complete. The definition reads as: ""Excluded Materials" means: ...(xv) Source Separated Recyclable Materials donated by the generator to any United States revenue Code Section 501(c)3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler." This means that the exclusion applies if a non-profit receives a source separated recyclable material as a gift from a generator for which the non-profit can sell to a recycler to generate revenues.

Green Solutions Recycling has placed and is servicing two containers at the location. One container is used for collecting cardboard only. However, the second container is being used to collect municipal solid waste, which is a violation of the Franchise Agreement. Per the April 11, 2016 Administrative Interpretation 16-02 ("Excluded Recyclable Materials"), Source Separated Recyclable Materials of Excluded Materials is allowed when the bin contains less than 10% contamination of the single stream recyclable material AND the buyer pays the generator for the

material such that the total amount paid by the buyer to the generator exceeds the total amount received by the buyer from the generator for collection and transportation services.

In response to your request to request that Waste Management recant their remarks, per Article 11.15 Enforcement, "Contactor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of the Franchise Agreement, and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the exclusive right and obligation to provide the Collection Services in the Exclusive Service Area.

CORRECTIVE ACTION REQUIRED: Green Solutions Recycling LLC may not continue drop box service at the location unless service is brought into compliance with the Franchise Agreement.

Additionally, Green Solutions Recycling is licensed to "rent/place containers for recyclable materials" only, and is not licensed to collect, transport, process, recycle or dispose of Solid Waste or Recyclable Materials, Exempted Drop Box Materials, Excluded Materials, Excluded Recyclable Materials within the City of Reno.

THIS VIOLATION MUST BE CORRECTED BY MAY 6, 2016. If the violation is not corrected by the date specified, an administrative citation may be issued and penalties will begin to accrue. Additional enforcement actions such revocation of permits or licenses, withholding of future municipal permits, criminal prosecution and/or civil injunction may be utilized to correct this violation(s).

Thank you for your prompt attention to this matter. If you need further information about the impending violation and/or how to comply, please contact me at barkerl@reno.gov or 775-334-2288.

Regards,

Lynne Barker

cc: Pat Pinjuv, Green Solutions Recycling LLC
Ryan Pinjuv, Green Solutions Recycling LLC
Sharon Gold, Assistance League of Reno-Sparks

EXHIBIT 2

EXHIBIT 2

PUBLIC WORKS

MEMORANDUM

DATE: October 19, 2015

TO: Mayor and City Council

THROUGH: Andrew Clinger, City Manager
Bill Thomas, Assistant City Manager

FROM: John Flansberg, Director of Public Works

SUBJECT: Administrative interpretation clarifying the scope of "Excluded Recyclable Materials"

The City's solid waste franchise agreements with Waste Management authorize the City Manager or his designee to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

Findings of Fact

1. On November 7, 2012, the City of Reno entered into commercial and residential franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

2. The Franchise Agreements define "Collection Materials" as all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials. See, Franchise Agreements, at 3.

3. On the same day, the City of Reno also entered into a disposal agreement granting the exclusive right to accept, process, dispose and recycle Collection Materials to Refuse, Inc., subject to specified exclusions provided under the Franchise Agreements (the "Disposal Agreement").

4. In general, the collection, transportation, processing, disposal and/or recycling of Collection Materials by any business other than Reno Disposal Company, Inc. is a violation of the Franchise and Disposal Agreements and the Reno Municipal Code by both the hauler and the customer receiving service.

5. On July 3, 2014, the City, Reno Disposal, Rubbish Runners and NRS entered into that certain Excluded Recyclable Materials Agreement (the "ERM Agreement").

6. In October 2014, Green Solutions Recycling, LLC ("GSR"), Nevada Recycling and Salvage, Ltd. ("NRS"), and Rubbish Runners requested a letter from the City's Business Licensing Division indicating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

7. On October 28, 2014, the City issued a letter stating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

8. On January 1, 2015, the ERM Agreement expired.

9. In light of the termination of the ERM Agreement, on May 14, 2015, the Business License Division issued a revised letter further clarifying and qualifying the scope of the business licensing for GSR, NRS and Rubbish Runners and the definition of "Excluded Recyclable Materials". The letter superseded and replaced the prior letter dated October 28, 2014.

10. On September 9, 2015, City Council directed staff to issue an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

Administrative Interpretation

The cardinal rule in interpreting contracts is to follow the intention of the contracting parties. Great Am. Airways v. Airport Auth., 103 Nev. 427, 430 (1987) citing Barringer v. Gunderson, 81 Nev. 288, 302, 402 P.2d 470, 477 (1965). Contracts will be construed from their written language and enforced as written. When a contract's language is unambiguous, this court will construe and enforce it according to that language. Power Co. v. Henry, 321 P.3d 858, 863 (Nev. 2014) (citations omitted).

Here, based on the plain language of the contract, the intent of the parties is clear. First and foremost, the parties intended to create an exclusive monopoly in favor of the franchisee, Waste Management, for the collection, transportation, processing, disposal and/or recycling of Collection Materials within the City of Reno. The language is unambiguous; specifically:

> City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, ***the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers.*** No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under this Agreement. [Emphasis Added.] See, Franchise Agreements § 3.2(A), at 14.

Moreover, the parties intended that the grant be construed as broadly as possible to eliminate third parties from interfering with, undercutting or impinging on the franchise:

> The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or

indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Id.

The parties did not, however, intend the franchise to cover Excluded Recyclable Materials:

> Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, ***Excluded Recyclable Materials,*** Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. [Emphasis added.] Id.

The Franchise Agreements define "Excluded Recyclable Materials" as either or both i) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and ii) any other Recyclable Materials that are not Approved Recyclable Materials. Id. at 5.

The purpose of the Excluded Recyclable Materials exemption is to allow businesses to sell Recyclable Materials on a secondary market. Used cardboard, for example, is a valuable commodity. Big box stores accumulate large quantities of cardboard. Rather than throwing the cardboard into a landfill, a store will bale and sell the cardboard to a third party recycler like NRS. Without the Excluded Recyclable Materials exemption, such a transaction would be illegal because only Waste Management is authorized to collect, transport, process, dispose and/or recycle cardboard—an Approved Recyclable Material—under the Franchise Agreements.

Under the Franchise Agreements and Reno Municipal Code, Excluded Recyclable Materials are distinguished from Collection Materials based upon how the materials are stored and handled.

Taking cardboard again as an example, depending on how a generator of cardboard stores and handles the cardboard, the cardboard will be classified as either Collection Materials (Solid Waste or Approved Recyclable Materials) or Excluded Recyclable Materials.

In the first instance, if a generator of cardboard fails to source separate the cardboard from all other non-recyclable materials, i.e., less than ninety percent (90%) Approved Recyclable Materials, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Accordingly, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Similarly, if a generator of cardboard source separates its cardboard from all other non-recyclable materials, but fails to sell the cardboard directly to a buyer of Recyclable Material at market price, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Thus, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Finally, if a generator of cardboard source separates cardboard from all other non-recyclable materials, sells the cardboard directly to a buyer of Recyclable Material at market price, but the total amount paid by the generator to the buyer or a buyer affiliated entity (e.g., the "container rental fee") exceeds the total amount received by the generator from the buyer or

its affiliated entity (e.g., the "rebate"), the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials, because the cardboard is being collected and transported as a service.

The reasoning behind this final interpretation deserves further explanation.

To avoid violating the franchise, a buyer of cardboard could simply charge the generator an arbitrary fee, e.g., container rental fee, convenience charge, etc... The buyer has complete control over the characterization of that fee. As long as the fee is not expressly tied to the collection or hauling of the cardboard, the characterization of the fee magically transmutes the cardboard into Excluded Recyclable Materials. In actuality, however, the buyer's profit and expenses for collecting and transporting the cardboard off-site are covered by the fee, not the revenue derived from the cardboard as a commodity. In other words, the buyer's purchasing of the cardboard is incidental to the generator's payment of the fee. Viewed in this light, the buyer's core business is collecting and transporting cardboard as a service in exchange for a fee, not purchasing Excluded Recyclable Materials.

As a bright line rule, if a generator's net out-of-pocket cost is $0, the Recyclable Materials are presumed to be Excluded Recyclable Materials. If a generator's net out-of-pocket cost is greater than $0, the Recyclable Materials are in fact Collection Materials subject to the franchise, and must be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Holding otherwise will undercut the financial and economic assumptions underpinning the franchise, and will impair the parties' ability to enforce the franchise in the future. This runs directly afoul of the stated intent of the parties in the Franchise Agreements. See, *supra*, Franchise Agreements § 3.2(A), at 14 ("[t]he preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount.").

Accordingly, and in order to avoid any code enforcement issues regarding the characterization of Excluded Recyclable Materials, the City will advise businesses the following:

- **Single stream recycling of Excluded Recyclable Materials is allowed.** However, to avoid confusion over whether a storage bin contains less than ninety percent (90%) Approved Recyclable Materials, the City strongly recommends that businesses separate, segregate and store Excluded Recyclable Materials by type, i.e., all corrugated cardboard in one bin; all mixed waste paper in a second bin; and, all plastic products in an third bin; etc.
- **The buyer of the Excluded Recyclable Materials should pay the generator for the Excluded Recyclable Materials, not vice versa.** So, for example, if the total amount of consideration paid by the generator to the buyer or a buyer affiliated entity (e.g., a "container rental fee") exceeds the total amount received by the generator from the buyer or a buyer affiliated entity (e.g., a "rebate"), the materials are being collected and transported as a service, and are properly characterized as Collection Materials, not Excluded Recyclable Materials.

Office of the City Manager

MEMORANDUM

DATE: April 11, 2016

TO: Mayor and City Council

FROM: Andrew Clinger, City Manager

SUBJECT: Administrative Interpretation 16-01("Exempted Facilities Materials Limit"); Administrative Interpretation 16-02 ("Excluded Recyclable Materials")

On November 7, 2012, the City of Reno entered into commercial franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

The Franchise Agreements authorize the City Manager or his designee to make approvals, issue interpretations, waive provisions, execute all necessary documents, enter into amendments, and otherwise take actions on behalf of the City relating to the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

On September 9, 2015 in response to questions regarding provisions in the Franchise Agreements, City Council directed the City Manager to issue administrative interpretations clarifying three (3) areas:

1. **"Excluded Recyclable Materials", specifically clarifying whether a hauler other than the Contractor named in the Agreements can collect Excluded Recyclable Materials and charge a service fee for renting containers, and collecting and transporting Excluded Recyclable Materials.**
2. **"Exempted Facilities Materials Limit", specifically whether the Agreements allow Nevada Recycling & Salvage ("NRS") to collect and haul up to 125,000 cubic yards of Collection materials directly from Commercial Customers.**
3. **"Construction of Eco-Center", specifically whether Refuse, Inc. has defaulted on the Disposal Agreement Solid Waste and Recyclable Materials by failing to construct the Eco-Center within 28 months.**

In February, 2016, after meetings with the City Attorney's Office and after further analysis regarding Council's request, I retained the services of independent Attorney Matthew J. Kreutzer from the law firm of Howard & Howard Attorneys in Las Vegas. **The findings of Mr. Kreutzer are consistent with the findings of the City Attorney's Office and those documents are attached**

to this Memorandum and serve as my final decision.

The question regarding the Eco-Center necessitates further analysis and Council will be provided an Attorney-Client Memorandum once additional information is gathered and a final determination has been made.

Attachments:

Administrative Interpretation 16-01 ("Exempted Facilities Materials Limit")
Administrative Interpretation 16-02 ("Excluded Recyclable Materials")
Analysis of Franchise Agreements with Reno Disposal Company, Inc.

Office of the City Manager

MEMORANDUM

DATE: April 11, 2016

TO: Mayor and City Council

FROM: Andrew Clinger, City Manager

SUBJECT: Administrative Interpretation 16-01 ("Exempted Facilities Materials Limit")

The City's solid waste franchise agreements with Waste Management authorize the City Manager or his designee to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

Findings of Fact

1. To provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, NRS 268.081(3) authorizes the City Council to displace or limit competition in the area of collection and disposal of garbage and other waste.

2. NRS 268.083(2) authorizes the City to grant an exclusive franchise to any person to provide those services within the boundaries of the city.

3. On November 7, 2012, the City of Reno entered into commercial franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

4. On September 9, 2015, City Council directed staff to issue an administrative interpretation clarifying the scope of "Exempted Facilities Materials Limit", and specifically, whether or not the City's Franchise Agreements allow Nevada Recycling & Salvage ("NRS") to collect and haul up to 125,000 cubic yards of Collection Materials ***directly*** from Commercial Customers within the City of Reno.

5. In February, 2016, the City Council retained special counsel, Matthew J. Kreutzer from the law firm of Howard & Howard Attorneys in Las Vegas, to independently review the Franchise Agreements, and assist the City in drafting an administrative interpretation clarifying the scope of "Exempted Facilities Materials Limit".

6. The Franchise Agreements define "Exempted Facilities Materials Limit" as follows:

> "Exempted Facility Materials Limit" for ***NRS*** shall be a total annual volume of ***Exempted Facility Materials*** from ***Contractor and the service provider under the other Commercial Franchise Agreement*** not exceeding One Hundred Twenty Five Thousand 125,000 cubic yards, which limit amount shall be increased annually in proportion to the percentage increase in the GDP [...]. See, Franchise Agreements at 7.

7. Based on this definition, the Exempted Facilities Materials Limit consists of three elements: (1) NRS; (2) Exempted Facility Materials; and (3) Contractor and the other service provider under the other Commercial Franchise.

8. As to the first element, the Franchise Agreements designate NRS as the "Exempted Facility"; specifically:

> "Exempted Facility" means of Nevada Recycling & Salvage, a Nevada limited liability company, and its premises located at 1085 Telegraph Street, Reno, Nevada, or replacement premises thereof ("NRS"). Id.

9. As to the second element, The Franchise Agreements define "Exempted Facility Materials" as:

> "Exempted Facility Materials" means ***Collection Materials*** delivered to and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit and ii) excluding Garbage. Id.

10. The Franchise Agreements further define "Collection Materials" as:

> "Collection Materials" means all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials. Id. at 3.

11. As to the third element, the Franchise Agreements define "Contractor and the other service provider under the other Commercial Franchise" as Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. Id. at 1.

12. On December 27, 2012, Castaway Trash Hauling, Inc., assigned its rights, duties and obligations under the Franchise Agreement to Reno Disposal Company, Inc. Reno Disposal, Inc., is the assignee and successor-in-interest to Castaway Trash Hauling, Inc. under the Franchise Agreements.

Administrative Interpretation

Contracts will be construed from their written language and enforced as written. When a contract's language is unambiguous, this court will construe and enforce it according to that language. Power Co. v. Henry, 321 P.3d 858, 863 (Nev. 2014) (citations omitted).

Here, the contract language is unambiguous. The Franchise Agreements authorize—but do not require—Reno Disposal Company, Inc. to deliver to NRS, and NRS to accept, process, recycle or dispose of, up to 125,000 cubic yards of Solid Waste and Approved Recyclable

Materials generated, produced or accumulated by Commercial Customers within the City of Reno.

As additional support for this construction, see Franchise Agreements § 4.4(L)(1)("[s]ubject to the Exempted Facility Material Limit and otherwise as provided in this Section 4.4 L, i) the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials ***delivered by Contractor to the Exempted Facility*** and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials." Emphasis added.)

The Exempted Facility Materials subject to the Exempted Facility Materials Limit can only be collected, hauled and delivered to NRS by Reno Disposal Company, Inc. The Franchise Agreements do not authorize NRS to collect or haul Solid Waste and Approved Recyclable Materials ***directly from*** Commercial Customers within the City of Reno.

Dated this 11 day of ~~March~~ April, 2016. KT

CITY MANAGER

Andrew Clinger

APPROVED AS TO FORM:

City Attorney's Office

Office of the City Manager

MEMORANDUM

DATE: April 11, 2016

TO: Mayor and City Council

FROM: Andrew Clinger, City Manager

SUBJECT: Administrative Interpretation 16-02 ("Excluded Recyclable Materials")

The City's solid waste franchise agreements with Waste Management authorize the City Manager or his designee to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

Findings of Fact

1. To provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, NRS 268.081(3) authorizes the City Council to displace or limit competition in the area of collection and disposal of garbage and other waste.

2. NRS 268.083(2) authorizes the City to grant an exclusive franchise to any person to provide those services within the boundaries of the city.

3. On November 7, 2012, the City of Reno entered into commercial franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

4. The Franchise Agreements define "Collection Materials" as all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials. See, Franchise Agreements, at 3.

5. On the same day, the City of Reno also entered into a disposal agreement granting the exclusive right to accept, process, dispose and recycle Collection Materials to Refuse, Inc., subject to specified exclusions provided under the Franchise Agreements (the "Disposal Agreement").

6. In general, the collection, transportation, processing, disposal and/or recycling of Collection Materials by any business other than Reno Disposal Company, Inc. is a violation of

the Franchise and Disposal Agreements and the Reno Municipal Code by both the hauler and the customer receiving service.

7. On July 3, 2014, the City, Reno Disposal, Rubbish Runners and NRS entered into that certain Excluded Recyclable Materials Agreement (the "ERM Agreement").

8. In October 2014, Green Solutions Recycling, LLC ("GSR"), Nevada Recycling and Salvage, Ltd. ("NRS"), and Rubbish Runners requested a letter from the City's Business Licensing Division indicating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

9. On October 28, 2014, the City issued a letter stating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

10. On January 1, 2015, the ERM Agreement expired.

11. In light of the termination of the ERM Agreement, on May 14, 2015, the Business License Division issued a revised letter further clarifying and qualifying the scope of the business licensing for GSR, NRS and Rubbish Runners and the definition of "Excluded Recyclable Materials". The letter superseded and replaced the prior letter dated October 28, 2014.

12. On September 9, 2015, City Council directed staff to issue an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

13. In February, 2016, the City Council retained special counsel, Matthew J. Kreutzer from the law firm of Howard & Howard Attorneys in Las Vegas, to independently review the Franchise Agreements, and assist the City in drafting an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

Administrative Interpretation

The cardinal rule in interpreting contracts is to follow the intention of the contracting parties. Great Am. Airways v. Airport Auth., 103 Nev. 427, 430 (1987) citing Barringer v. Gunderson, 81 Nev. 288, 302, 402 P.2d 470, 477 (1965). Contracts will be construed from their written language and enforced as written. When a contract's language is unambiguous, this court will construe and enforce it according to that language. Power Co. v. Henry, 321 P.3d 858, 863 (Nev. 2014) (citations omitted).

Here, based on the plain language of the contract, the intent of the parties is clear. First and foremost, the parties intend to create an exclusive monopoly in favor of the franchisee, Waste Management, for the collection, transportation, processing, disposal and/or recycling of Collection Materials within the City of Reno. The language is unambiguous; specifically:

> City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, ***the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers.*** No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility,

except as expressly provided under this Agreement. [Emphasis Added.] See, Franchise Agreements § 3.2(A), at 14.

Moreover, the parties intend that the grant be construed as broadly as possible to eliminate third parties from interfering with, undercutting or impinging on the franchise:

> The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Id.

The parties do not, however, intend the franchise to cover Excluded Recyclable Materials:

> Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, ***Excluded Recyclable Materials***, Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. [Emphasis added.] Id.

The Franchise Agreements define "Excluded Recyclable Materials"[1] as either or both i) Approved Recyclable Materials[2] from Commercial Activity that are a) separated by the generator

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[1] "Excluded Recyclable Materials" are not the equivalent of "Excluded Materials." Under the Franchise Agreements, any licensed hauler may collect, haul and dispose of Excluded Materials.

"Excluded Materials" are defined as: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii)materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States Internal Revenue Code Section 501(c)3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

[2] "Approved Recyclable Materials" are defined as:

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags,

thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and ii) any other Recyclable Materials that are not Approved Recyclable Materials. Id. at 5.

The purpose of the Excluded Recyclable Materials exemption is to allow businesses to sell Recyclable Materials on a secondary market. Used cardboard, for example, is a valuable commodity. Big box stores accumulate large quantities of cardboard. Rather than throwing the cardboard into a landfill, a store will bale and sell the cardboard to a third party recycler like NRS. Without the Excluded Recyclable Materials exemption, such a transaction would be illegal because only Waste Management is authorized to collect, transport, process, dispose and/or recycle cardboard—an Approved Recyclable Material—under the Franchise Agreements.

Under the Franchise Agreements and Reno Municipal Code, Excluded Recyclable Materials are distinguished from Collection Materials based upon how the materials are stored and handled.

Taking cardboard again as an example, depending on how a generator of cardboard stores and handles the cardboard, the cardboard will be classified as either Collection Materials (Solid Waste or Approved Recyclable Materials) or Excluded Recyclable Materials.

In the first instance, if a generator of cardboard fails to source separate the cardboard from all other non-recyclable materials, i.e., less than ninety percent (90%) Approved Recyclable Materials, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Accordingly, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Similarly, if a generator of cardboard source separates its cardboard from all other non-recyclable materials, but fails to sell the cardboard directly to a buyer of Recyclable Material at market price, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Thus, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Finally, if a generator of cardboard source separates cardboard from all other non-recyclable materials, sells the cardboard directly to a buyer of Recyclable Material at market price, but the total amount paid by the generator to the buyer or a buyer affiliated entity (e.g., the "container rental fee") exceeds the total amount received by the generator from the buyer or its affiliated entity (e.g., the "rebate"), the cardboard will be classified as Collection Materials, not

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colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)

5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the Contractor and the City.

Excluded Recyclable Materials, because the cardboard is being collected and transported as a service.

The reasoning behind this final interpretation deserves further explanation.

To avoid violating the franchise, a buyer of cardboard could simply charge the generator an arbitrary fee, e.g., container rental fee, convenience charge, etc... The buyer has complete control over the characterization of that fee. As long as the fee is not expressly tied to the collection or hauling of the cardboard, the characterization of the fee magically transmutes the cardboard into Excluded Recyclable Materials. In reality, however, the buyer's profit and expenses for collecting and transporting the cardboard off-site are covered by the fee, not the revenue derived from the cardboard as a commodity. In other words, the buyer's purchasing of the cardboard is incidental to the generator's payment of the fee. Viewed in this light, the buyer's core business is collecting and transporting cardboard as a service in exchange for a fee, not purchasing Excluded Recyclable Materials.

As a bright line rule, if a generator's net out-of-pocket cost is $0, the Recyclable Materials are presumed to be Excluded Recyclable Materials. If a generator's net out-of-pocket cost is greater than $0, the Recyclable Materials are in fact Collection Materials subject to the franchise, and must be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Holding otherwise will undercut the financial and economic assumptions underpinning the franchise, and will impair the parties' ability to enforce the franchise in the future. This runs directly afoul of the stated intent of the parties in the Franchise Agreements. See, *supra*, Franchise Agreements § 3.2(A), at 14 ("[t]he preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount.").

[Remainder of Page Intentionally Blank]

Accordingly, and in order to avoid code enforcement issues regarding the characterization of Excluded Recyclable Materials, the City will advise businesses of the following:

- **Single stream recycling of Excluded Recyclable Materials is allowed.** However, to avoid confusion over whether a storage bin contains less than ninety percent (90%) Approved Recyclable Materials, the City strongly recommends that businesses separate, segregate and store Excluded Recyclable Materials by type, i.e., all corrugated cardboard in one bin; all mixed waste paper in a second bin; and, all plastic products in an third bin; etc.
- **The buyer of the Excluded Recyclable Materials should pay the generator for the Excluded Recyclable Materials, not vice versa.** So, for example, if the total amount of consideration paid by the generator to the buyer or a buyer affiliated entity (e.g., a "container rental fee") exceeds the total amount received by the generator from the buyer or a buyer affiliated entity (e.g., a "rebate"), the materials are being collected and transported as a service, and are properly characterized as Collection Materials, not Excluded Recyclable Materials.

Dated this 11 day of ~~March~~ April, 2016.

CITY MANAGER

Andrew Clinger

APPROVED AS TO FORM:

City Attorney's Office

Direct dial: 702.667.4827 Matthew J. Kreutzer email: mjk@h2law.com

BY ELECTRONIC MAIL: thomask@reno.gov

City of Reno
c/o Andrew Clinger, City Manager
1 East First Street
Reno, NV 89505

RE: Analysis of Franchise Agreements with Reno Disposal Company, Inc.

Dear Mr. Clinger:

At your request, we have examined the following agreements between the City of Reno (the "**City**") and Reno Disposal Company, Inc.: (1) the Exclusive Service Area Franchise Agreement, Commercial Solid Waste and Recyclable Materials (the "**Commercial Agreement**"); and (2) the Exclusive Franchise Agreement, Residential Solid Waste and Recyclable Materials (the "**Residential Agreement**"). We also examined the Disposal Agreement, Solid Waste and Recyclable Materials between the City and Refuse, Inc. (the "**Disposal Agreement**"). Collectively, in this memorandum we refer to the Commercial Agreement, Residential Agreement, and Disposal Agreements as the "**Agreements.**"

QUESTIONS PRESENTED

The City has specifically directed us to analyze the following three questions:

1. Whether a hauler other than the Contractor named in the Agreements can collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Recyclable Materials.

2. Whether the Agreements allow Nevada Recycling & Salvage ("**NRS**") to collect and haul up to 125,000 cubic yards of Collection materials directly from Commercial Customers.

3. Whether Refuse, Inc. has defaulted in its obligation for the "Construction of Eco-Center" under the Disposal Agreement by failing to construct the Eco-Center within 28 months.

CONCLUSIONS

Question 1: Under the Commercial Agreement, a hauler other than the Contractor *may not* collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Recyclable Materials unless those Excluded Recyclable Materials are not Approved Recyclable Materials.

Under the Residential Agreement, "Excluded Recyclable Materials" is not a defined term; only "Excluded Materials" is defined. Under that contract, a hauler *can* collect Excluded Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Materials.

Question 2: NRS is permitted only to accept, process, recycle, and dispose of materials that are *delivered to* NRS by Contractor or by Franchised Haulers. NRS is not permitted, under the terms of either the Commercial Agreement or the Disposal Agreement, to *collect* or *haul* any Collection Materials, including the Exempted Facility Materials.

Question 3: To answer this third question, we will need additional information. In short, Refuse, Inc. is in default of the Disposal Agreement only if the City can show that Refuse, Inc. has not made any effort to commence construction of the Eco-Center, which showing may include one that Refuse, Inc. has not applied for, or attempted to obtain, any of the required approvals from local, regional, or state authorities. If Refuse, Inc. has applied for the required approvals but has failed to prosecute those applications or requests for approval, then Refuse, Inc. would probably be in default of the Disposal Agreement.

ANALYSIS

Question 1: Can Someone Other than Contractor Collect Excluded Recyclable Materials and Charge a Fee for doing so within the Applicable Service Area?

We look at this question under the Commercial and Residential Agreements, below.

Commercial Agreement

Because the defined terms are critical to interpreting the Agreements, we start by examining them.

Section 3.2.A grants to the Contractor the exclusive right to provide Collection Services to Commercial Customers within the Exclusive Service Area. Commercial Agreement, §3.2.A. As used in the Commercial Agreement, "Collection Services" means "the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area . . . excluding . . . . Excluded Recyclable Materials." Commercial Agreement, Article 1. "Collection" means pickup, removal, and transportation of Solid Waste and Approved Recyclable Materials within the Exclusive Service Area, and delivery of those materials to an appropriate Designated Facility." *Id.*

The Commercial Agreement broadly prohibits any person or entity other than the Contractor from collecting "Collection Materials" within the Exclusive Service Area. Commercial Agreement, §3.2.A. "Collection Materials" means "all Solid Waste and Approved Recyclable Materials generated, produced, or accumulated by Commercial Customers, excluding . . . . Excluded Recyclable Materials." Commercial Agreement, Article 1.

Reading all of these definitions together within the context created for them in Section 3.2.A of the Commercial Agreement, if the specific materials that will be collected are not "Excluded Recyclable Materials," then the Contractor has the exclusive right to collect those materials. As a result, it is important to also understand the definition of "Excluded Recyclable Materials."

The definition of "Excluded Recyclable Materials" includes only:

1) Approved Recyclable Materials from Commercial Activity from a generator (subject to a contents threshold of 90%) and that are sold "directly to a buyer . . . at market price." How those materials are collected or sold by the buyer is important: items are "Excluded Recyclable Materials" if the title to them "transfers to the buyer upon collection or pickup of such materials, *but not if those materials are collected and transported as a service.*"

2) Any Recyclable Materials that are not Approved Recyclable Materials (in essence, anything that are not part of the agreement between the City and the Contractor).

Commercial Agreement, Article 1 (emphasis supplied).

Interpreting all of these provisions together, it is apparent that Approved Recyclable Materials can be collected and transported by someone other than the Contractor **only if** the hauler is paying for them. In other words, if the hauler is *paying* the generator (the customer) for Approved Recyclable Materials, then they are considered "Excluded Recyclable Materials." If, however, the generator is *paying the hauler* for collecting and transporting the materials, then they are not excluded. Any Recyclable Materials that are not Approved Recyclable Materials, however, are not restricted.

The answer to question 1, then, is that a hauler other than the Contractor *may not* collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Recyclable Materials unless those Recyclable Materials are not Approved Recyclable Materials.

Residential Agreement

Under Section 3.2 of the Residential Agreement, the Contractor is given the **exclusive** right to provide Collection Services to Residential Customers within the Service Area. The Contractor is **not** given the exclusive right to provide anything other than the Collection Services. The term "Collection Services" is defined in Article I as specifically "excluding Excluded Materials and Exempted Drop Box Materials." There is no defined term in the Residential Agreement for "Excluded Recyclable Materials;" instead, the Residential Agreement uses the defined term "Excluded Materials."

To further clarify the respective rights of the Contractor, Section 3.1 also specifies that "the exclusive right of Contractor . . . shall not apply to Excluded Materials or Exempted Drop Box Materials," and further states that "Contractor and other service providers" may collect and transport those materials in the Exclusive Service Area" and that they may charge fees and charges for those services.

These provisions all lead to the conclusion that, in answer to question 1, a hauler can collect Excluded Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Materials.

Question 2: Do the Agreements allow NRS to Collect and Haul up to 125,000 Cubic Yards of Collection Materials Directly from Commercial Customers?

First, it's important to understand the definitions of the terms that are used in the Agreements. "Exempted Facility" is defined as NRS's premises located at 1085 Telegraph Street in Reno (or its replacement to those premises). Commercial Agreement, Article 1. "Exempted Facility Materials" are defined as "Collection Materials *delivered to* and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit[1]; and ii) excluding Garbage." *Id.* (emphasis supplied).

[1] The Commercial Agreement calls for the "Exempted Facility Materials Limit" to be increased annually in proportion to the increase to the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The amount was set to first increase from the 125,000 cubic yards on January 1

The Disposal Agreement expressly refers to the definitions of "Exempted Materials" and "Exempted Facility Materials" in the Commercial Agreement, and incorporates those definitions by reference. Disposal Agreement, Article 1.

Section 3.2.A of the Commercial Agreement states that the Contractor's exclusive rights within the Exclusive Service Area "shall not apply . . . [to] Exempted Facility Material *delivered to* Exempted Facilities," subject to Section 4.4.L. Commercial Agreement, §3.2.A. In Section 4.4.L, the Commercial Agreement provides that "the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials *delivered* by Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility." Commercial Agreement, §4.4.L.1 (emphasis supplied). The Commercial Agreement also says that it will not "limit or preclude the Exempted Facility from *accepting, processing, recycling or disposing* of any Exempted Facility Materials." *Id.* (emphasis supplied).

Section 3.2.G of the Disposal Agreement states that "the requirement and obligation of a Franchised Hauler to deliver all Approved Disposal Materials to a Designated Facility shall not include or apply to Exempted Facility Materials *delivered by* a Franchised Hauler to the Exempted Facility and accepted by, processed or recycled or disposed from the Exempted Facility." Disposal Agreement, §3.2.G (emphasis supplied) The Disposal Agreement also specifies that it will "not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials." *Id.*

Neither the Commercial Agreement nor the Disposal Agreement give to NRS the express right to collect and haul materials directly from commercial customers. Instead, NRS's rights are limited to its accepting, processing, recycling, or disposing of materials that are delivered to NRS. The definition of "Exempted Facility Materials" (which are the only Collection Materials that NRS is permitted to accept) is limited only to Collection Materials that are delivered to NRS *and* are accepted, processed, recycled, or disposed by NRS.

Construing all of these provisions together, it appears that NRS is permitted only to accept, process, recycle, and dispose of materials that are *delivered to* NRS by Contractor or by Franchised Haulers. NRS is not permitted, under the terms of either the Commercial Agreement or the Disposal Agreement, to collect or haul any Collection Materials, including the Exempted Facility Materials.

Question 3: Has Refuse, Inc. Defaulted on the Disposal Agreement by Failing to Construct the Eco-Center within 28 months?

Section 3.3.A of the Disposal Agreement requires the Contractor to use "commercially reasonable efforts to commence and diligently prosecute construction of the Eco-Center or other similar facilities that will provide transfer, processing, and disposal of Solid Waste and Recyclables." Disposal Agreement, §3.3.A. The Disposal Agreement also says that the "Contractor's obligations to construct and complete the Eco-Center shall be contingent upon the Contractor's obtaining all necessary permits and approvals from local, regional, or state authorities necessary for the construction and operation of the Eco-Center." *Id.*

2014, with annual increases and adjustments to be made every subsequent year. As a result, the 125,000 cubic yards number is likely larger now, as it would have increased three times, once in 2014, once in 2015, and once again on January 1 of 2016.

Based on the foregoing language, Refuse, Inc.'s obligation to construct the Eco-Center is contingent upon two things:

(1) Refuse, Inc. must be using "commercially reasonable efforts" to commence and prosecute construction of the Eco-Center; and
(2) Refuse, Inc. must obtain "all necessary permits and approvals from local, regional, or state authorities" to construct the Eco-Center.

Refuse, Inc. *is not* in default of the Disposal Agreement simply for having **not constructed** the Eco-Center. Refuse, Inc. *would be* in default if it hasn't fulfilled (or used commercially reasonable efforts to attempt to fulfill) its obligations under Section 3.3.A. To answer this question, then – as to whether Refuse, Inc. is in default of the Disposal Agreement -- we will need additional information.

Specifically, we need to know: first, what efforts has Refuse, Inc. undertaken to date to commence construction of the Eco-Center? Second, what efforts would be considered "commercially reasonable" under the circumstances? Third, has Refuse, Inc. received the necessary permits and approvals? Fourth, if Refuse, Inc. has not received the necessary permits and approvals, what steps has Refuse, Inc. taken to obtain the necessary permits and approvals?

If the City can show that Refuse, Inc. has not made any effort to commence construction of the Eco-Center or that it has not applied for, or attempted to obtain, any of the required approvals from local, regional, or state authorities, then Refuse, Inc. is in default of the Disposal Agreement. If Refuse, Inc. has applied for the required approvals but has failed to prosecute those applications or requests for approval, then Refuse, Inc. would probably be in default of the Disposal Agreement (because Refuse, Inc. has a duty to act in good faith under the Disposal Agreement, and any failure by the company to prosecute or press its applications or requests for approvals and/or permits would likely be a breach of that duty).

If, on the other hand, Refuse Inc. can show that it has either: 1) engaged in commercially reasonable efforts to construct the Eco-Facility but has failed to actually construct the Eco-Facility so for some reason outside of its control (or outside the scope of reasons that would be "commercially reasonable" for a company like Refuse, Inc. to proceed with construction); or 2) applied and sought to obtain the required permits or approvals from local, regional, or state authorities but has not been given the required permits or approval despite its having exercised commercially reasonable efforts to obtains those permits or approvals, then Refuse, Inc. would not be in violation of the Disposal Agreement.

CLOSING

We appreciate the opportunity to work with the City on this matter. If you have any follow-up questions about the analysis we present in this letter, please contact me.

Sincerely,
HOWARD AND HOWARD ATTORNEYS PLLC

Matthew J. Kreutzer

4833-4300-4974, v. 1

FILED
Electronically
CV17-01143
2018-02-05 11:37:46 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6514845 : swilliam

EXHIBIT 3

EXHIBIT 3

COURTESY LETTER

December 11, 2017

ABC Fire and Cylinder Service
C/O Lynn Earl Brown
1025 Telegraph St
Reno, NV 89502

Parcel Number: 013-323-22
Subject Property: 1025 Telegraph St

Dear Business Owner:

It has come to the attention of the Code Enforcement Division that the above listed property appears to be in violation of the Reno Municipal Code. The issue is and can be corrected by:

VIOLATION OF THE CITY OF RENO FRANCHISE AGREEMENT BY USE OF HAULERS OF RECYCLABLE MATERIALS OTHER THAN WASTE MANAGEMENT. A FLYER IS INCLUDED IN THIS COURTESY LETTER EXPLAINING THE FRANCHISE AGREEMENT AND WHO CAN HAUL RECYCLABLE MATERIALS. PLEASE COME INTO COMPLIANCE WITH THE FRANCHISE AGREEMENT AND UTILIZE WASTE MANAGEMENT AS YOUR RECYCLABLE MATERIAL HAULER.

The City of Reno acknowledges that you may not be aware of the violation, which is why you are receiving this courtesy letter. **Please be advised, Code Enforcement does not want to proceed with any type of enforcement action. However, we feel compelled to warn you that if the violation is not remedied by the inspection date, staff may commence formal procedures in accordance with the City of Reno Municipal Code. These may include requesting a show cause hearing to suspend or revoke your business license.**

An inspection of the property will be conducted on or after **January 11, 2018.**

The Code Enforcement Division is empowered to enforce compliance of the Municipal Code, but we believe we can achieve that compliance without issuing penalties or citations. Your cooperation with this matter is deeply appreciated and will assist the City of Reno in our attempts to keep our city beautiful, maintain property values and make out city great. If you have further questions concerning the franchise agreement please call the number listed on the pamphlet and speak with Lynne Barker.

Thank you,

Joseph Henry, (775) 334-2360
City of Reno – Community Development Department
P.O. Box 1900
Reno, Nevada 89505
ENF18-C00574

HOW DOES IT AFFECT YOU

In 2012, the City entered into an exclusive franchise agreement for the collection and disposal of commercial solid waste and recyclable materials with Waste Management.

THE AGREEMENT:

- Ensures that the collection, recycling and disposal of solid waste occurs in an environmentally safe, sound, and responsible manner; and;
- Protects the public health, safety and welfare of the community.

COMMERCIAL CUSTOMER REQUIREMENTS

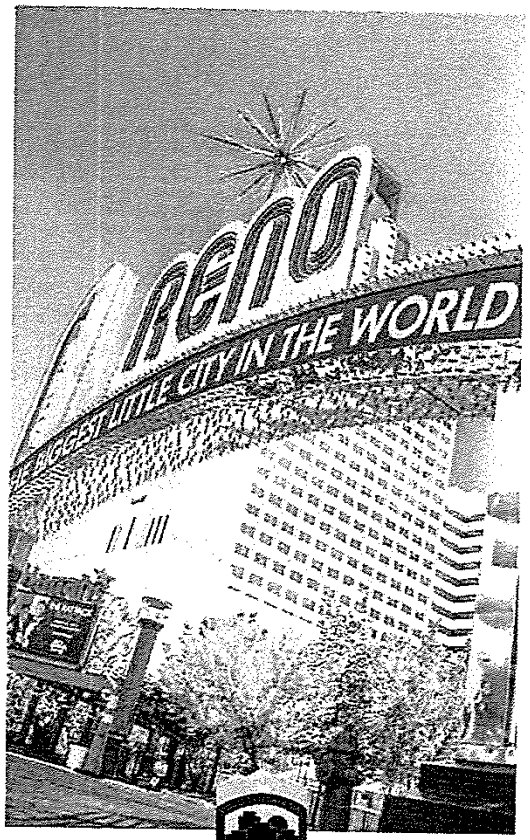
The Reno Municipal Code Title 10 requires commercial customers to subscribe to solid waste collection services with Waste Management, the franchise contractor.

For details on the exclusive right to collect solid waste and recyclable materials, review Sec. 10.08.040, which states:

> *No person or entity other than the city, its duly authorized agents, servants, employees or contractors and its subcontractors shall i) collect collection materials in contractor's exclusive service area, ii) transport anywhere in the city collection materials collected in contractor's exclusive service area, or iii) deliver any collection materials collected in contractor's exclusive service area to any disposal, processing, recycling or similar facility, except as expressly provided under this article and the agreements.*

CITY OF RENO

COMMERCIAL SOLID WASTE SERVICES



PA_0179

SOLID WASTE

"Solid waste" means all putrescible and non-putrescible waste matter in solid or semi-solid form, including but not limited to rubbish, garbage, ashes, refuse, and residue, but excluding excluded materials.

APPROVED RECYCLABLES

The list of approved recyclables that are covered by the franchise agreement through single-stream recycling or "source-separated material" (separation of any material or category of materials from other materials by the generator at the point or place of generation):

EXEMPTED DROP BOX

"Exempted drop box" applies to the collection and transportation by an exempted hauler of exempted drop box materials, using an exempted drop box, performed as temporary service and excluding any collection or transportation that would replace, limit or reduce permanent service collection by contractor.

EXCLUDED MATERIALS

- Hazardous Waste
- Volatile, corrosive, biomedical, biohazardous, and toxic substances
- Materials collected and processed at rendering facilities
- Special waste

- Incidental amounts of self-haul materials which are delivered by an individual directly to a transfer station, recycling facility or disposal facility
- Source separated recyclable materials *(i.e., a single material such as cardboard)* donated by the generator to any federally recognized non-profit organization

- Medical and Infectious Waste
- Electronic Waste
- Bulky or excessively heavy items as determined by franchise contractor

- Materials which otherwise would constitute collection materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company
- Construction and demolition debris
- Scrap metals
- Paper shredder materials

EXEMPTIONS

Exemptions to the agreement per Sec. 10.08.040 are:

> Notwithstanding any other provision of any agreement, the exclusive right of contractor shall not apply to excluded materials, exempted drop box materials, exempted hauler account materials and subject to and as provided in the agreements. Contractors and other service providers may collect and transport excluded materials and exempted drop box materials in the exclusive service area and elsewhere in the city and may charge fees and charges for services as the service provider may elect.

An additional exemption is allowed for "excluded recyclable materials" defined as approved recyclable materials from commercial activity that are:

> separated by the generator from all other materials and which contain not less than 90 percent approved recyclable materials
>
> sold by the generator directly to a buyer of recyclable material at market price, but excluding such materials collected and transported as a service

This means that if your net out-of-pocket cost is $0, the source separated material qualifies as an excluded recyclable material. In simple terms and as an example:

> If the generator (commercial customer) source separates a material (i.e., cardboard) from other materials and deposits in a container, the customer must not pay more for all fees and taxes associated with container service, collection, transportation, and disposal, than what is received for purchase of the material as a commodity.

VIOLATION OF TITLE 10

Violation of Title 10 can result in an administrative citation and penalties will begin to accrue.

- Additional enforcement actions such revocation of your businesses license or licenses, withholding of future municipal permits, criminal prosecution and/or civil injunction may be utilized to correct this violation(s).

Administrative citations can be assessed up to $1,000 per day

If you have any questions regarding the franchise agreement, please call: (775) 334-2288

PA_0180

Certified Mail
Regular Mail

NOTICE OF VIOLATION

ABC FIRE AND CYLINDER SERVICE
C/O LYNN EARL BROWN
1025 TELEGRAPH ST
RENO, NV 89502

Date of Citation:	January 12, 2018
Case Number:	ENF18-C00574
Citation Number:	ENA18-NOV00625
Subject Property:	1025 TELEGRAPH
Parcel Number:	013-323-22

Attention Business Owner:
The subject property is in violation of the provisions of the RENO MUNICIPAL CODE as detailed in the Violations and Corrective Actions Section beginning on page 2 of this Notice. Under the authority of Chapter 1.05 of the RENO MUNICIPAL CODE you are hereby being issued:

NOTICE OF VIOLATION

To avoid further fines you must correct the violations by **Monday, February 12, 2018**. If you need further information about the violations and/or how to comply please call the number listed below. **If you intend on complying but need an extension of time, there is no need to appeal this notice. Contact the officer listed below. Code Enforcement can provide you an extension for up to 14 calendar days if there is a valid cause.**

Respectfully,

Joseph Henry
Sr. Code Enforcement Officer
City of Reno
P.O. Box 1900
Reno, NV 89505
(775) 334-2229

Case Number:	ENF18-C00574
Citation Number:	ENA18-NOV00625
Subject Property:	1025 TELEGRAPH

VIOLATIONS AND CORRECTIVE ACTIONS:

The following violations have been cited:

RMC Sec 10.08.045

MANDATORY USE OF SOILD WASTE AND RECYCLABLE MATERIALS COLLECTION SERVICE WITHIN THE CITY.
USE OF SERVICE PROVIDERS OTHER THAN WASTE MANAGEMENT TO HAUL RECYCLABLE MATERIALS

The following actions are required to avoid further administrative fines being issued:

IMMEDIATELEY CEASE THE USE OF SERVICE PROVIDERS OTHER THAN WASTE MANAGEMENT TO HAUL RECYCLABLE MATERIALS. THE EXISTENCE OF CONTAINERS BELONGING TO OTHER SERVICE PROVIDERS ON SITE SHALL BE DEEMED EVIDENCE OF CONTINUED VIOLATION OF THIS NOTICE.

Case Number:	ENF18-C00574
Citation Number:	ENA18-NOV00625
Subject Property:	1025 TELEGRAPH

Important - Read the Following Carefully

All necessary permits must be secured and completed to correct the violations set forth in this notice.

Reinspection Fee - The Reno Municipal Code Section 1.05.030 provides for the recovery of costs incurred by the city for all reinspections. A reinspection fee will be levied for all reinspections required after the date of this notice until full compliance with this notice. If full compliance is not achieved by the date above mentioned correction date, you will be charged an initial reinspection fee of **$100.00**. All future required reinspection fees are **$45.00** each.

Administrative Citation - Reno Municipal Code Section 1.05.200 provides for the issuance of administrative citations for Municipal Code Violations. There are four levels of citations that can be issued progressively for a violation. The fines, as indicated above, are $100.00 for the first citation, $250.00 for the second citation and $500.00 for the third and subsequent citations for the violation(s) of the same ordinance within one year upon non-commercial properties. Commercial properties shall be subject to $1000.00 for the forth and subsequent citations for violation(s), of the same ordinance within one year. These fines are cumulative and citations may be issued for each day the violation exists.

Consequences of Failure to Correct Violation(s) - Failure to correct the violation(s) can lead to further administrative actions such as the remedies detailed in Chapter 1.05 of the Reno Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of six months in jail and $1000.00 fine.

Rights of Appeal - You have the right to appeal this administrative citation within ten (10) business days from the date of the citation. An appeal form can be obtained from the City Clerks Office located at 1 E. First Street - 2nd floor. The cost for the appeal is $50.00. For directions call 334-2030. A properly filed appeal will result in an administrative hearing. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the Reno Municipal Code Chapter 1.05 Article VI (Copies of the current Municipal Code can be electronically accessed at www.municode.com or you may contact the City Clerk's office at (775) 334-2030.)

Case Number:	ENF18-C00574
Citation Number:	ENA18-NOV00625
Subject Property:	1025 TELEGRAPH

Failure of any person to properly file a written appeal within ten (10) business days from the date of this citation shall constitute a waiver of his or her right to an administrative hearing and adjudication of the administrative citation or any portion thereof and the total amount of the fine.

JOINT CASE MANAGEMENT REPORT

JOHN P. SANDE IV, ESQ., NSB NO. 9175
john@sandelawgroup.com
J. CHASE WHITTEMORE, ESQ., NSB No. 14301
chase@sandelawgroup.com
ARGENTUM LAW
6121 Lakeside Dr., Ste 208
Reno, Nevada 89511
Telephone: (775)
Fax:
Attorneys for Green Solutions Recycling, LLC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING, LLC., Plaintiff, vs. REFUSE, INC.; RENO DISPOSAL COMPANY, INC.; WASTE MANAGEMENT OF NEVADA, INC.; CITY OF RENO; DOES 1-10, et al. Defendants.	Case No.: 3:16-CV-00334 JOINT CASE MANAGEMENT REPORT

Plaintiff Green Solutions Recycling, LLC ("**GSR**"), by and through its attorneys, Argentum Law, and Defendants Refuse, Inc. ("**Refuse**"), Reno Disposal Company, Inc. ("**Reno Disposal**"), Waste Management of Nevada, Inc., ("**WMN**"), (for ease of reference all Waste Management defendants shall be referred to as "**WM**") by and through its attorneys, Simons Law, PC and joined by the City of Reno ("**City**"), hereby submit the following JOINT CASE MANAGEMENT REPORT:

1. **Short Statement of Nature of the Case:**

GSR alleges it purchases, collects and resells non-discarded recyclable materials. GSR is a small local recycling business with a small group of customers. GSR argues that the Franchise Agreement interferes with the ability of businesses to buy and sell recyclable materials in accordance with their own judgment. GSR contends that the City and agents or employees of WM have intentionally engaged in unlawful acts designed to harm and ultimately

destroy the business of GSR. GSR alleges that WM has done this by actively preventing GSR from seeking or servicing customers for the collection and purchase of non-discarded recyclable materials. GSR further alleges that WM and the City have continuously misrepresented to GSR and its customers that GSR has no right to collect certain materials and that its business is a sham because the City granted the exclusive right to WM pursuant to a lawful franchise agreement.

A dispute in this case is whether NRS 268.081 grants the City legal authority to displace competition over the collection and disposal of non-discarded recyclable material. The parties do not dispute NRS 268.081(1) authorizes the City to displace or limit competition in the collection and disposal of garbage and other waste including waste materials that are capable of recycling. Specifically, the Court has already recognized the parties' concessions and has found that it is undisputed that City has "authority to displace competition for the collection of recyclable materials that are treated as waste." ECF No. 47, p.6:28-7:1. GSR, however, contends that it is not collecting and disposing of recyclable waste material but is instead purchasing recyclable materials from customers, and thus, the materials are not waste which would be subject to and governed by the City's franchise authority.

On November 7, 2012, the City granted an exclusive franchise (the "Franchise Agreement") to Reno Disposal in which the City, among other things, granted Reno Disposal the exclusive right to collect all the solid waste in the City including waste materials that are capable of recycling. GSR argues that to the extent the City's Franchise Agreement seeks to apply to recyclable materials that are sold by a customer to GSR, then the Franchise Agreement improperly seeks to displace competition over the collection of non-discarded recyclable materials, i.e., recyclable materials purchased by GSR from customers'. GSR has filed suit alleging violations of the Sherman Antitrust Act, the Commerce Clause, and the Nevada Unfair Trade Practices Act and the tort of Trespass to Chattels based upon these contentions.

On March 27th, 2017 the Court granted in part and denied part WM's Motion to Dismiss and gave GSR leave to amend its complaint. GSR filed an amended complaint on April 26th, 2017. Then on May 26th, 2017, the Defendants filed a second Motion to Dismiss the First Amended Complaint.

On November 29th, 2017 the Court granted in part and denied in part WM's Motion to Dismiss GSR's First Amended Complaint. The Court dismissed GSR's first and second claim as alleged against Waste Management of Nevada, Inc., and as to the second claim for relief against all parties but denied the Motion to Dismiss as to all other claims.

On November 29th, 2017, the Court also conducted an evidentiary hearing on GSR's Motion for Preliminary Injunction. Upon conclusion of the evidentiary hearing, the Court denied GSR's Motion for Preliminary Injunction.

a. GSR's First Claim for Relief

GSR alleges that the Franchise Agreement is an unreasonable restraint of trade and a per se violation of the Sherman Antitrust Act because the agreement limits competition over the collection and purchase of non-discarded recyclable materials and is an illegal price fixing scheme. GSR alleges the Nevada Legislature has not granted the City the authority to displace competition over recyclable materials that have not been discarded and, thus, the Defendants have violated the Sherman Antitrust Act without any Nevada Statute to protect them from antitrust liability.

b. GSR's Second Claim for Relief

The Court dismissed GSR's second claim for relief.

c. GSR's Third Claim for Relief

GSR alleges that the Franchise Agreement is an unreasonable restraint of trade that violates the Nevada Unfair Trade Practices Act.

d. GSR's Fourth Claim for Relief

GSR alleges WM has, and continues to, tortiously interfere with GSR's contractual relationships between GSR and its clients. After entering into the Franchise Agreement, GSR alleges the City and agents or employees of WM have intentionally engaged in unlawful acts designed to harm and ultimately destroy the business of GSR. They have done this by actively preventing GSR from seeking or servicing customers for the collection of Recyclable Material. GSR alleges WM's acts amount to a tortious interference of contractual relationships.

e. GSR's Fifth Claim for Relief

GSR alleges that it purchases non-discarded recyclable materials and those goods are chattels. Further, GSR alleges that the City of Reno and WM through the Franchise Agreement have impaired the value of GSR's chattels thereby committing the tort of Trespass to Chattels.

2. Description of the principal and factual legal disputes:

GSR disputes the authority of the City to grant an exclusive franchise for non-discarded recyclable materials under NRS 268.081, and the validity of the City's grant of the Franchise Agreement to Reno Disposal for Recyclable Materials. Defendants assert that GSR does not "purchase" recyclable materials from customers. Defendants assert that when GSR's container rental fee and "rebate" payment to the customer are considered together, GSR is merely getting paid to provide waste collection services under the pretext of "purchasing" recyclable materials. Defendants also assert that the phrase "disposal of garbage and other waste" in NRS 268.081 authorizes the City to grant an exclusive franchise for the collection and disposal of recyclable materials as these materials qualify as "other waste." Thus, Defendants argue that the Franchise Agreement is valid and that GSR's multi-contract scheme to rent containers and to provide a nominal "rebate" back to the customer violates the City's franchise authority to regulate and govern the collection and disposal of solid wastes, including recyclable waste materials.

Defendants also dispute the liability of Refuse and WMN. Neither of these defendants are parties to the Franchise Agreement upon which this litigation is based, and neither of these defendants collect or haul Recyclable Materials.

GSR contends that the Defendants have violated Section 1 of the Sherman Antitrust Act by colluding to with the City to obtain the City's grant to Reno Disposal of an exclusive franchise over recyclable materials that are treated as a commodity and not as waste. GSR does not contest or oppose the validity and/or enforceability of the remainder of the City's Franchise Agreement. Defendants argue that they, and the City, are absolutely immune from antitrust liability under the Parker and Noerr-Pennington Doctrines. These doctrines immunize state and private actors for participating in the petitioning process directed at governmental actions, and/or entering into an agreement with the government, for an exclusive right permitted by state law.

GSR also contends that the Franchise Agreement violates Nevada's Unfair Trade Practices Act (the "NUTPA"). Defendants contend that the Franchise Agreement is excluded from the NUTPA by NRS 598A.040(3)(a)-(b), which excludes any conduct authorized by statute or ordinance. This issue is currently on appeal before the Nevada Supreme Court in Appeal No. 71497, as set forth in Paragraph 8 below.

GSR also contends that Defendants have tortiously interfered with GSR's contractual relations by advising GSR and its clients that GSR's actions are in violation of the Franchise Agreement. Defendants argue that their actions are justified because any actions to enforce the terms of the Franchise Agreement are valid, truthful and authorized and they are taken to protect their own economic interests under the Franchise Agreement. Defendants further assert that GSR cannot state a claim for interference with contractual relations because GSR has not entered into any valid contract with its customers because GSR is barred from collecting and hauling recyclable waste material under the Franchise Agreement.

Finally, GSR asserts that Defendants have impaired the value of its chattels and contend that the recyclable materials it purchases are not waste but are instead a commodity. Contrary to this contention, Defendants assert that because the customers are paying out of pocket to have the recyclable materials collected and disposed of by GSR, then the materials are by definition waste subject to the terms of the Franchise Agreement

3. Jurisdiction:

Based upon the allegations asserted by GSR, his Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because GSR alleges violations of Article 1, Section 8, Clause 3 of the United States Constitution and Section 1 of the Sherman Antitrust Act. Further, because GSR alleges the recyclable materials it collects are a commodity sold interstate commerce, this Court has original jurisdiction pursuant to 28 U.S.C. §1337 because GSR alleges violations of an "Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." Additionally, GSR's Complaint alleges violations of the Sherman Act, 15 U.S.C. § 1 and that jurisdiction is conferred upon this Court by, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 16. GSR also alleges violations of State antitrust, consumer protection, and/or unfair competition and related laws, and seeks civil penalties, and/or equitable relief under those State laws. GSR alleges that all claims under federal and state law are based upon a common nucleus of operative facts, and the entire action commenced by the Complaint constitutes a single case that would ordinarily be tried in one judicial proceeding. 28 U.S.C. § 1367(a).

4. Parties:

GSR has served all known parties at this time.

5. Amendment/Addition of Parties:

The Parties do not expect to add any additional parties to the case.

6. Contemplated Motions:

GSR intends to file dispositive motions, including but not limited to a motion for summary judgment on the following issues:

(a) Whether "Recyclable Materials" is included in the definition of "other waste" pursuant to NRS 268.081;

(b) Whether the Franchise Agreement validly grants an exclusive right to Reno Disposal to collect and transport Recyclable Materials; and

(c) Whether GSR's business model complies with the Franchise Agreement.

The parties intend to file one or more motions for summary judgment.

7. Pending Motions that May Affect Compliance With a Case Management Order:

The Parties are unaware of any pending motions that may affect their ability to comply with a case management order.

8. Status of Other Related Cases:

Case No. CV15-00497, Nevada Recycling and Salvage, Ltd., et al . v. Reno Disposal Company, et. al., has been appealed from the Second Judicial District Court of the State of Nevada to the Nevada Supreme Court, Appeal No. 71497. In that case, Nevada Recycling and Salvage ("NRS") (which owns a garbage collection facility) and Rubbish Runners ("RR") (which is a small trash hauler) sued Reno Disposal, Refuse, and WMN for violating the NUTPA by acquiring a third party, Castaway Trash Hauling, who had also been granted a franchise by the City. In that litigation, NRS and RR specifically admitted that the Franchise Agreements are valid exercises of the City's authority. The Second Judicial District Court dismissed nine out of ten of NRS's and RR's claims, and granted summary judgment against NRS and RR on their remaining claim that Reno Disposal, Refuse and WMN violated the NUTPA when WMN acquired Castaway Trash Hauling. NRS and RR have appealed. NRS and RR asserted that the City was unaware of the potential of WMN acquiring Castaway Trash Hauling and based upon this contention whether NRS 598A.040 immunizes Reno Disposal, Refuse, and WMN from liability for violation of the NUTPA for entering into the Franchise Agreement.

GSR is not a party to that proceeding. However, NRS and GSR share a common member. The managing member of NRS, Christopher Biesler, is also a managing member of GSR. In addition, the evidence in the state court proceeding has established that GSR and NRS work closely together.

9. Supplemental Discovery Issues:

a. The Parties agree that no further discussion is necessary except to the timing of depositions. GSR suggests that depositions be limited to four (4) hours. Defendants do not agree, and want to reserve their right to use the full time permitted under the Federal Rules of Civil Procedure given the complexity of the claims asserted against Defendants.
b. The Parties have no suggested revisions to the discovery limitations.

10. ESI Issues:

The Parties have no issues relating to the disclosure or discovery of ESI.

11. Privilege Issues:

At this time, the Parties have no issues related to claims of privilege or work product.

12. Rule 26(a)(3) Disclosures and Objections:

This discovery will be included in the joint pretrial order.

13. Proposed Discovery Plan:

a. Deadline for the completion of discovery:

Defendants Reno Disposal, Refuse and WMN first appeared on November 16, 2016. The number of days required for discovery is 180 days from that date. The deadline for the completion of discovery will be May 15, 2017. However, the Court dismissed all claims and GSR filed the current First Amended Complaint on April 26th, 2017. Defendants Reno Disposal, Refuse and WMN appeared on May 26, 2017. Thus, the parties hereby request that a new deadline for discovery be set for July 31, 2018.

b. A deadline for amending the pleadings and adding parties:

The parties agree that the deadline for amending the pleading and adding parties has passed.

c. Dates for complete disclosure of expert testimony

a. Expert Witnesses: May 30, 2018

b. Rebuttal Expert Witnesses: June 30, 2018.

d. A deadline for the filing of dispositive motions:

August 30, 2018

e. A date by which the parties will file the joint pretrial order:

July 29th, 2018

14. Patent Issues:

N/A;

15. Certification:

The Parties met and conferred at 10:00 am on September 22, 2016 to discuss using alternative dispute-resolution processes including mediation, arbitration, and an early neutral evaluation pursuant to LR 26-1(b)(7). At this time, GSR has communicated an offer to settle but it does not appear there to be any prospects for settlement.

16. Trial:

A jury trial has not been requested. GSR estimates a 4-day trial. The Parties hereby certifies that it considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program (General Oder 2013-01) (LR 26-1(b)(8), and that the Parties have not consented to such at this time.

17. Other Matters for this Court's Consideration: None.

Dated this 21st day of February 2018

ARGRNTUM LAW

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City of Reno

By: */s/ Matthew Jensen*
Matthew Jensen, Esq.
Nevada Bar No. 6537
Attorney for City of Reno

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **JOINT CASE MANAGEMENT REPORT** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

_____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

X **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

Mark G. Simons, Esq.
mark@mgsimonslaw.com

Mathew Jensen, Esq.
jensenm@reno.gov

Dated this 21st day of February 2018

/s/ *Jeanette Lawson*

An employee of Argentum Law Group