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 KETHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents,

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

Real Parties of Interest (Defendants)

CITY OF RENO

Real Parties in Interest (Counter Defendants)

SUPREME COURT CASE NO.: 79383

Second Judicial District Court
Case No.: CV17-01143

RESPONDENTS' APPENDIX VOL. 1

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DOCUMENT	**DATE**	**VOL.**	**BATES**
Appellant's Opening Brief filed with the United States Court of Appeals for the Ninth Circuit in Case No. 19-15201	06/14/2019	1	GSR00001-GSR00051

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 20th day of November, 2019, I caused service of a true and correct copy of the above and foregoing **RESPONDENTS' 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:

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DATED this 20th day of November, 2019.

/s/ Mia L. Hurtado
An Employee of Argentum Law

DOCUMENT	**DATE**	**VOL.**	**BATES**
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/s/ Mia L. Hurtado
An Employee of Argentum Law

No. 19-15201

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GREEN SOLUTIONS RECYCLING, LLC,

Plaintiff-Appellant,

v.

RENO DISPOSAL COMPANY, INC., ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Nevada
No. 3:16-cv-00334
Hon. Miranda Du

APPELLANT'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiff-Appellant Green Solutions Recycling, LLC certifies as follows: Green Solutions Recycling, LLC, has no parent corporations. It has no stock, and hence, no publicly held company owns 10% or more of its stock.

Date: June 14, 2019

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INTRODUCTION

Reduce. Reuse. Recycle. Powerful words used as a constant reminder that we should all work together to conserve our natural resources and our beautiful landscapes. Appellant, Green Solutions Recycling, LLC ("GSR") set out years ago with a goal to help foster the "green" economy in the Reno, Nevada area. But through anticompetitive acts by both the City of Reno and Reno Disposal Company, Inc., dba Waste Management, GSR has been stymied by major roadblocks. GSR's recycling business has been threatened to be put out of business by local code enforcement officers. GSR's customers have been threatened with cease and desist letters by a corporation worth billions of dollars. They have been fined and threatened with criminal prosecution by a City government for the act of selling and recycling materials like cardboard.

Significantly, the power to unreasonably restrain trade, e.g. one company's control over the collection of recyclable materials market through the use of an exclusive franchise, is typically prohibited by the Sherman Act. However, anticompetitive restraints by the States "as an act of government" do not violate the Sherman Act. *See Parker v. Brown*, 317 U.S. 341, 352 (1943).

Here, the district court determined that the City of Reno is immune from Sherman Act liability because the State of Nevada has clearly authorized the City with the authority to grant a monopoly over the collection of recyclable materials.

Yet, *Parker* immunity does not apply directly to local governments. *See Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 370 (1991).

In fact, the Ninth Circuit has expressly stated that "state-action immunity is the exception rather than the rule." *Chamber of Commerce of the United States of America v. City of Seattle*, 890 F.3d 769, 781 (9th Cir. 2018). However, in certain limited instances, a political subdivision of the state, may be cloaked by the state's immunity if the anti-competitive activity was authorized by the state "pursuant to state policy to displace competition with regulation or monopoly public service." *See Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 39 (1985). Still, "[t]he state, in its sovereign capacity, must clearly intend to displace competition in a particular field with a regulatory structure . . . in the relevant market." *See Cost Mgmt. Servs., Inc. v. Wash. Nat. Gas Co.*, 99 F.3d 937, 942 (9th Cir. 1996).

Importantly, the Nevada legislature authorized municipalities with limited regulatory power to displace competition for certain "public services": the ability to grant an exclusive franchise with respect to the "collection and disposal of garbage and other waste." *See* N.R.S. §§ 268.081(3) and 268.083(2). *Notably missing* from those statutes is the Nevada Legislature's clearly articulated and affirmatively expressed state policy authorizing municipalities to grant a monopoly for *recycling*. That "clear-articulation" simply does not exist in Nevada law.

Thus, GSR filed its First Amended Complaint on April 26, 2017 against Appellees, the City of Reno, a municipality of the state of Nevada (hereinafter the

"City") and Reno Disposal Company, Inc. (hereinafter "Reno Disposal") for entering into agreements seeking to restrain trade in violation of Section 1 of the Sherman Antitrust Act in United States District Court, District of Nevada. ER 662. The allegations are based on Defendants conspiracy to preclude GSR from engaging in its business of recovering and reusing recyclable materials and preserving and expanding a private company's dominant position in the relevant market.

Vitally, recyclable materials that are not treated as waste are not "garbage and other waste" under Nevada law. Equally important, "disposal" is a distinct service from "recycling." Yet, both Reno Disposal and the City, have instituted an unlawful scheme pursuant to an exclusive franchise agreement that "pegs" the price of recyclable materials to require GSR to purchase recyclable material from willing third-party sellers at a price that exceeds the cost GSR charges its customers for bin rental services. ER 7. In so doing, the City of Reno has granted Reno Disposal a monopoly over the service of recycling by unlawfully pegging the price of recyclable materials in violation of section 1 of the Sherman Act. 15 U.S.C. § 1 (2004).

However, the district court sanctioned this improper conduct by concluding that the City was immune from Sherman Act liability pursuant to the *Parker* doctrine and granted Reno Disposal's motion for summary judgment. ER 18. The district court held that N.R.S. § 268.081(3) sufficiently authorized Reno Disposal's

monopoly over recyclable materials primarily because the term "other waste" was subjective and allowed for the City to define "other waste" in a manner that would foreseeably restrict the price of recyclable materials in the open market ER 15.

JURISDICTIONAL STATEMENT

GSR filed its First Amended Complaint on April 26, 2017. ER 662. The district court had subject matter jurisdiction pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 16. ER 658. Additionally, the district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1337. ER 658. Moreover, the district court determined subject matter jurisdiction exists not once, but twice. ER 9 & 10. Furthermore, Respondents did not dispute GSR's evidence that Defendants transport recyclable materials out of state. ER 10. Therefore, the district court had subject matter jurisdiction. ER 10.

On January 7, 2019, the district court granted Reno Disposal's motion for summary judgment and entered judgment in favor of all Defendants. ER 4. The district court's judgment is appealable pursuant to 28 U.S.C. § 1291, which gives this Court "jurisdiction of appeals from all final decisions of the district courts of the United States…except where a direct review may be had in the Supreme Court." *Id*. GSR filed its Notice of Appeal with the district court on February 4, 2019. ER 1. Thus, this appeal is timely pursuant to FRAP 4(a)(1)(A).

STATUTORY AUTHORITIES

All relevant statutory and/or regulatory authorities appear in the Addendum to this brief.

ISSUES PRESENTED

I) Whether the district court erred in holding that NRS § 268.081(3) sufficiently authorizes municipalities to grant a monopoly to a private company for the collection of recyclable materials.

II) Whether the district court erred in holding that active-state supervision is not required when the challenged anticompetitive activity is carried out by both a municipality and a private actor.

STATEMENT OF THE CASE

I. The Exclusive Franchise Agreement

In 2012, the City and Reno Disposal entered into an exclusive franchise agreement entitled "Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Materials" (hereinafter called the "Franchise Agreement"). ER 6. The City's asserted authority for entering into the Franchise Agreement was N.R.S. §§ 268.081(3) and 268.083. ER 6 & 82. The Franchise Agreement grants Reno Disposal the exclusive right to collect and remove solid waste from commercial businesses located throughout the City. ER 6; *see also* Reno Municipal Code § 5.90.030 "Franchise Right" (a) "This article establishes

the exclusive right for contractors to provide collection services pursuant to NRS 268.081."

II. Problems with the Franchise Agreement

GSR is a local Reno business that contracts with various commercial businesses in the City of Reno to rent recycling containers and to purchase recyclable materials. ER 6 & 77. GSR collects approximately 13,000 cubic yards of recyclable materials each year. ER 217. One hundred percent of the recyclable materials collected by GSR are delivered to a company called Nevada Recycling and Salvage located in Reno, Nevada that owns and operates a recycling center, more specifically referred to as a "Materials Recovery Facility." ER 219. At this facility, the materials GSR collected and delivered, are sorted, packaged, and the recyclable materials are then sold and transported outside of Nevada. ER 219.

Shortly after GSR opened for business, the City and Reno Disposal, relying solely on the Franchise Agreement and no authority under state law, required GSR to purchase recyclable materials at a price in excess of the cost of renting containers to GSR's customers. ER 153-54 and ER 78. This requirement "pegged" the price of recyclable materials that GSR purchased to the cost GSR charged customers for renting recycling containers. ER 77-78.

Additionally, the City has, on numerous occasions, directly communicated with GSR and GSR customers stating that GSR must purchase recyclable materials at higher prices or they both will be in violation of the Franchise Agreement and as

a result could face fines and criminal prosecution. ER 78-79. Additionally, Reno Disposal sent threatening demand letters to customers of GSR stating that each GSR customer was in violation of the Franchise Agreement because the business was "contracting with non-approved third-parties to collect, transport and/or dispose of waste and/or recyclable materials. Specifically, we are informed that you have contracted with Green Solutions to collect, transport and/or dispose of recyclable materials." ER 80, 181-82 and 184.

In response to GSR's legitimate business activities, the City and Reno Disposal began to send threatening letters and communications to GSR and GSR's bin rental customers claiming that the customers and GSR were both violating the law. ER 79-80. Both the City and Reno Disposal's coordinated efforts revolved around the following suppositions: (1) GSR was not purchasing and collecting "recyclable materials" but rather GSR was collecting "waste"; (2) the City granted Reno Disposal an exclusive franchise right to collect and dispose of waste and (3) GSR and the customer were violating the terms of the Franchise Agreement and City ordinances because GSR was not purchasing the recyclable materials at a price that exceeds the recycling container charge. ER 6-7.

Undisputedly, the Franchise Agreement is used by the City and Reno Disposal as a tool to ensure that no other entity, besides Reno Disposal, can offer recycling services in the City for a fee. ER 17; *see also* ER 75 ("Of note, if a

customer in the City wishes to recycle, those recycling services are provided by the City pursuant to its Franchise Agreement.").

III. Nevada Law

Fundamentally, Nevada law recognizes the distinction between waste and recyclable materials. Nevada law does not authorize the City to enter into exclusive franchise agreements over certain recyclable materials, i.e., those recyclable materials that are not discarded by the owner. Finally, the regulatory scheme in Nevada does not authorize municipalities with the authority to monopolize the collection of recyclable materials. ER 244 and 395. Yet, notwithstanding state law, the City acted beyond its own limited authority, and granted Reno Disposal the exclusive right to charge a fee to collect, transport, and recycle all recyclable materials in the City. ER 82. For instance, the Franchise Agreement states: "WHEREAS, Chapter 5.90 of the Reno Municipal Code authorizes the City Council to award an exclusive franchise for the collection, hauling and disposal of all Solid Waste and *Recyclable Material*, defined herein, within the City." ER 82 (emphasis added). Put simply, the City and Reno Disposal exceeded their statutory authority and franchised recyclable materials. *See* N.R.S. § 268.081.

IV. GSR Files Antitrust Lawsuit

On April 26, 2017, GSR filed its First Amended Complaint against both the City and Reno Disposal for violating Section 1 of the Sherman Act, 15 U.S.C. § 1 (2004). ER 656. On November 28, 2017, the district court heard oral argument on

Reno Disposal's Motion to Dismiss and conducted an evidentiary hearing on GSR's motion for preliminary injunction. ER 409. The district court granted in part and denied in part, Defendants' Motion to Dismiss and denied GSR's motion for preliminary injunction. ER 409. Months later, Reno Disposal filed three separate motions for summary judgment, however the district court denied the first two and granted Reno Disposal's Motion for Summary Judgment re: Enforceability of the Franchise Agreement. ER 5. Likewise, GSR filed a Partial Motion for Summary Judgment on its First Claim for Relief. ER 5.

V. The District Court Rules

On January 7, 2019, the district court issued an Order denying Defendants' Jurisdictional Motion, granting Defendants' Merits Motion, and denying GSR's Partial Motion for Summary Judgment as moot. ER 18.

The district court determined that the challenged restraint is the "City's grant of a monopoly over the collection of recyclable materials that Plaintiff wishes to pick up." ER 17. Initially, the district court erred by not asking the foremost question: whether that challenged activity falls within the state authorization statue at issue. ER 14. Instead, the district court simply stated that the "statue at issue authorizes anticompetitive conduct" without any analysis as to exactly what kinds of conduct that statute authorizes. ER 14.

Next, the district court improperly determined that "other waste" is subjective and therefore, the City could properly define "other waste" for "itself in

light of the term's subjectivity." ER 16. Moreover, the district court incorrectly reasoned that because the state could not list all materials that constitute "waste" it was foreseeable that any effect the City's definition of "waste" has on the prices of recyclable materials was reasonable. ER 15. Furthermore, the district court improperly concluded that "pegging" the price of recyclable materials was not "price-fixing" for purposes of the Sherman Act. ER 15. Accordingly, the district court incorrectly applied the "foreseeability test" to determine that the Nevada legislature specifically contemplated and authorized the challenged activity pursuant to a clearly and affirmatively expressed state policy. ER 15.

Additionally, the district court incorrectly held that the challenged activity was waste disposal and therefore was within a traditional municipal function. ER 17. Furthermore, the district court erroneously determined the City was the sole actor and thus, as a municipality is not required to show that its challenged activity is actively supervised by the state of Nevada. ER 17.

Ultimately, the district court held that the state-action immunity doctrine applied to the City, and thus granted Reno Disposal's Motion for Summary Judgment. ER 17.

The district court then entered judgment in favor of all Defendants. ER 1. GSR filed its Notice of Appeal with the district court on February 4, 2019. ER 32.

SUMMARY OF THE ARGUMENT

The district court incorrectly held that *Parker* immunity applied, and thus this Court should reverse. The district court determined that the Nevada legislature has authorized the City to grant a monopoly to Reno Disposal for the collection of all recyclable materials, even recyclable materials that the generator and owner of such material chose to place in the recycling stream. However, Nevada Revised Statutes ("N.R.S.") § 268.081(3) authorizes municipalities with the power to suppress competition for the "collection and disposal of garbage and other waste." N.R.S. § 268.081(3).

Therefore, the district court incorrectly determined that because the Nevada legislature has authorized cities to limit competition over the collection and disposal of garbage and other waste, the City is immune from Sherman Antitrust liability. Accordingly, the district court granted Reno Disposal's motion for summary judgment and entered judgment on behalf of all the defendants and against GSR because the court held that Nevada had expressly authorized the suppression of competition pursuant to state policy.

Additionally, the district court incorrectly determined that because "waste disposal" is a traditional municipal function the state of Nevada did not have to actively supervise the City's anticompetitive conduct. However, GSR did not challenge Reno Disposal's "waste disposal" activities. GSR challenged whether Reno Disposal and the City could lawfully suppress competition pursuant to an

exclusive franchise agreement with respect to the purchasing, selling, and collection of recyclable materials for the purpose of recycling those materials. Thus, "the challenged activity" is not "waste disposal" as the district court incorrectly determined.

Next, the district court incorrectly determined that the "active-supervision" requirement was not a prerequisite for *Parker* immunity. The district court determined that "the actor is municipality rather than a private party." However, both the City and Reno Disposal both entered into an agreement creating an unreasonable restraint of trade. Reno Disposal and the City both took actions to enforce that unlawful agreement against GSR and GSR's customers. The complained of conduct was both the City's conduct and Reno Disposal's conduct. Additionally, the evidence proves that the City did not act alone and therefore, the district court was incorrect to determine that "the actor is a municipality rather than a private party."

The Supreme Court has stated that when a private party is involved in the challenged activity, the active-supervision requirement must be satisfied to properly assert a state-action immunity defense. No such active-supervision by the state exists. The state has no oversight or input over exclusive franchise agreements. The state does not approve or set the prices that recyclable materials may be sold at. Thus, Nevada has no active-supervision. Consequently, the City

and Reno Disposal cannot properly assert *Parker* immunity as a defense and the district court's grant of summary judgment should be reversed and remanded.

STANDARD OF REVIEW

"A grant of summary judgment is reviewed de novo." *Sierra Club v. Babbitt*, 65 F.3d 1502, 1507 (9th Cir. 1995). Furthermore, purely legal questions, like interpretation of statutes, are reviewed de novo. *Sharma v. INS*, 89 F.3d 545, 547 (9th Cir. 1996). GSR appeals the district court's grant of summary judgment, thus this Court should review de novo.

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT NRS § 268.081(3) AUTHORIZES MUNICIPALITIES TO GRANT MONOPOLIES FOR THE COLLECTION OF RECYCLABLE MATERIALS.

The Supreme Court has only recognized state-action immunity "when it is clear that the challenged anticompetitive conduct is undertaken pursuant to a regulatory scheme that is the State's own." *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225 (2013) (quoting *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 635 (1992). The "relevant question is whether the regulatory structure *specifically authorizes* the conduct alleged to violate the Act." *See Cost Management Services*, 99 F.3d at 942 (emphasis added). Thus, the relevant inquiry is whether the legislature contemplated the sort of activity that is challenged. *Id*.

"The Supreme Court uses a two-part test, sometimes referred to as the *Midcal* test, to determine whether the anticompetitive acts of private parties are entitled to immunity." *Phoebe Putney*, 568 U.S. at 225. "First, the challenged restraint must be one clearly articulated and affirmative expressed as state policy, and second the policy must be actively supervised by the State." *Id*. (quoting *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980)).

Significantly, the "clear articulation test" necessitates that the court define what the challenged activity is. *See Golden State Transit Corp. v. City of Los Angeles*, 726 F.2d 1430, 1433 (9th Cir. 1984). Next, the court should determine whether that "challenged activity" falls within the state statute that authorizes municipalities to displace competition with regulation. *See Golden State*, 726 F.2d at 1433-34. Therefore, if the challenged activity does not fall within the state authorization statute, then the challenged activity would not be subject to a clearly articulated and affirmatively expressed state policy to displace competition with regulation and *Parker* immunity would not apply. *Id*.; *see also Omni*, 499 U.S. at 373; *City of Seattle*, 890 F.3d at 786.

For example, the court in *City of Seattle*, stated "[i]n cases in which the Supreme Court found the clear-articulation test to be satisfied, the initial state authorization clearly contemplated and plainly encompassed the challenged anticompetitive conduct." *Id*. at 786.

A. The Nevada Legislature Has Not Authorized Monopolies for the Collection of Recyclable Materials Pursuant to a Clearly Articulated and Affirmatively Expressed State Policy

First, the district court erred when it failed to determine what the challenged activity was and then determine whether that activity falls within the state authorization statute. ER 14. For example, the court in *Golden State*, analyzed whether the regulation of taxicabs fit within the state authorization statute. *See Golden State*, 726 F.2d at 1433-34. There, the court decided that "taxicabs" do indeed "fit squarely *within* the statutory definition of a carrier subject to state regulation." *Id*. (emphasis added). Importantly, the court in *Golden State* determined that because the "statute is read to apply to taxicabs…a clearly articulated and affirmatively expressed state policy" existed "which allows municipalities to displace competition with regulation in the taxicab industry." *Id*.

Likewise, the court in *City of Seattle* determined that the regulation of transportation services to passengers "do not encompass regulation of the payment contracts between for-hire drivers and ride-referral services." *See City of Seattle*, 890 F.3d at 786. Thus, the court came to the conclusion that the regulation of passenger rates for transportation services did not confer "the shield of state-action immunity onto anticompetitive conduct in a related market." *Id*.

Similarly, establishing a monopoly for the dispatching of air ambulances is not to be confused with a monopoly for all ambulance services. *See Medic Air Corp. v. Air Ambulance Auth.,* 843 F.2d 1187, 1189 (9th Cir. 1988). For instance,

in *Medic Air*, the *state* designated Air Ambulance as the dispatching service provider for Washoe County. *Id*. There, the court made an important distinction between ambulance services more generally and the limited immunity that was granted by the state for dispatch services because the two types of services are materially different. *Id*. Thus, the court held that antitrust "immunity did *not* reach anticompetitive conduct in the ambulance *service* market, because this was a not a necessary or reasonable consequence of the decision to establish an exclusive dispatcher." *See Shames v. Cal. Travel & Tourism Comm'n*, 626 F.3d 1079, 1084 (9th Cir.) (quoting *Medic Air*, 843 F.2d at 1189) (emphasis added).

Here, the district court determined that the state authorization statutes for purposes of *Parker* immunity is N.R.S. §§ 268.081 and 268.083. ER 14. However, the district court failed to determine whether the challenged activity falls within the state authorization statute. ER 14.

In Nevada, municipalities are authorized by N.R.S. § 268.083(2) to grant "an exclusive franchise to any person to provide" any of the services listed in N.R.S. § 268.081, including for the "collection and disposal of garbage and other waste." *See* N.R.S. §§ 268.081(3) & 268.083. However, "regulation of an industry, and even the authorization of discrete forms of anticompetitive conduct pursuant to a regulatory structure, does not establish that the State has affirmatively contemplated other forms of anticompetitive conduct that are only tangentially related." *See Phoebe Putney*, 568 U.S. at 235.

Here, the City and Reno Disposal entered into the Franchise Agreement pursuant to N.R.S. § 268.081(3). ER 6. Therefore, every Reno business that generates "waste" is captive of the Franchise Agreement and must use Reno Disposal for their "waste collection" services. ER 6 and 95. Additionally, if a Reno business does not use Reno Disposal for their waste collection services, that business is subject to fines, penalties, and criminal prosecution. ER 545. The public policy for this requirement is important: our waste needs to be collected and disposed of properly to protect the public health and safety of our communities. *See* N.R.S. § 444.440. Yet, recyclable material that is never discarded is not waste and thus, the public health and safety of Reno is not harmed by instead simply recycling it.

Additionally, unlike the court in *City of Seattle*, *Golden State*, and *Medic Air*, here, the district court did not *first* analyze whether the challenged activity falls *within* the state authorization statute. ER 14. Instead, the district court determined that a state authorization statute simply *existed* without *first* analyzing what exactly was the "challenged activity." ER 14. The district court did not define the challenged restraint until the very end of the Order when the district court *finally* analyzed whether "state-supervision" was required—the second step of the *Midcal* test. *See Midcal*, 445 U.S. at 105; *see also* ER 17 ("Given that the challenged restraint in this case—the City's grant of a monopoly over the collection of recyclable materials that Plaintiff wishes to pick up…").

Consequently, the district court then failed, as a threshold matter, to determine whether the "challenged activity" falls within the statute at issue that "expressly authorizes anticompetitive conduct". ER 14.

Importantly, the "challenged activity" is the City's grant of a monopoly to a private company over the collection of recyclable materials that GSR has purchased, collected, and delivered to a recycling facility. ER 17, 217 and 219. However, the district court determined that the challenged restraint in this case is the "City's grant of a monopoly over the collection of recyclable materials that Plaintiff wishes to pick-up." ER 17. Indeed, not only does GSR "wish to pick-up" the recyclable materials but the evidence proved that GSR did in fact collect the recyclable materials and also purchased them. ER 6 and 217.

Vitally, unlike in *Golden State*, the City's grant of a monopoly over the collection of recyclable materials does not fall *within* the state authorization statue at issue because the collection of recyclable materials is an entirely distinct activity from that of the collection of "garbage and other waste." Similar to the distinction between the regulation of transportation services and price-fixing the fees drivers pay Uber in *City of Seattle*, here, recycling is distinct from the collection of waste. Thus, the state authorization statute does not "confer the shield of state-action immunity onto anticompetitive conduct" in a related market, like a monopoly for the collection of recyclable materials. *See City of Seattle*, 890 F.3d at 786.

Importantly, recycling of recyclable materials is an activity or service entirely different than garbage collection and disposal. For instance, according to the United States Environmental Protection Agency, "recycling is the process of collecting and processing materials that would otherwise be thrown away as trash and turning them into new products." https://www.epa.gov/recycle/recycling-basics (las visited June 9, 2019). Similarly, according to the Reno Municipal Code and the Franchise Agreement, "recycling" means "the process of collection, sorting, cleansing, treating and reconstituting of recyclable materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products." *See* Reno Mun. Code § 5.90.010.

On the other hand, Reno Municipal Code defines "disposal" as "the final landfill disposal of solid waste collected by contractor but does not include other beneficial uses such as alternative daily cover." *See* Reno Mun. Code § 5.90.010. Thus, similar to the conclusion the court made in *City of Seattle*, here the service of "collection and disposal of garbage and other waste" is entirely different than that of recycling recyclable materials. *See* N.R.S. § 268.081(3).

Moreover, under Nevada law and in the City, recyclable material collection is not treated the same as the "collection and disposal of garbage and other waste." *Id*. For example, solid waste must be collected no less than once every 7 days, with very few exceptions. ER 99 ("…provided, however, Garbage Collection Services

shall be provided no less often than weekly."). On the other hand, recyclable materials are not required to be collected once every 7 days, rather recyclable materials are collected based on the business needs—if at all. ER 595 ("No. It's basically a function of economics, that picking [recyclable materials] up every other week is cheaper for the consumer than to pick it up every week."). Yet, unlike waste collection services, the collection of recyclable materials is not a mandatory requirement in the City. ER 99. Unlike recyclable materials collection, waste disposal is not a function of economics in the same sense—rather waste must be picked-up at least once per week for health reasons. Therefore, the business of "collection and disposal of garbage and other waste" is a distinct business from recycling and should be treated differently for purposes of *Parker* immunity.

For instance, the operation of convenience stores is an entirely different business from the operation of landfills. *See* N.R.S. § 268.081(7). Thus, a City could not displace competition for convenience stores under the guise of N.R.S. § 268.081(7) ("operation of landfills"). Therefore, similar to the determination in *Medic Air* that ambulance services are not the same as ambulance dispatch services, and thus should not be confused for purposes of *Parker* immunity, here, the Court should not conflate the collection of recyclable materials as the same as the collection of waste for purposes of *Parker* immunity.

Furthermore, N.R.S. § 444.585(1) states "[f]rom the time recyclable materials are placed 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." *Id*. GSR is a private recycling business licensed and operating in the City. ER 6. Accordingly, GSR has a statutorily protected right to collect recyclable materials free from the City's attempt to monopolize the recyclable materials market. *See* N.R.S. § 444.585(1). Meaning, the state's regulatory structure around recycling services never specifically contemplates recycling services to be monopolized. Therefore, the City is not authorized by the state of Nevada to grant a monopoly for the collection of **all** recyclable materials because the activity of collecting and purchasing recyclable materials *that have not been discarded by the owner*, does not fall within the state authorization statute. *See* N.R.S. § 268.081(3).

Additionally, there is no clearly articulated and affirmatively expressed state policy by the Nevada legislature to allow municipalities to conduct anti-competitive activities in the recyclable material field. For example, N.R.S. § 444A governs recycling of "solid waste originating from *residential* premises and *public* buildings." *See* N.R.S. § 444A.020(1)(a). Thus, Nevada has a very limited regulatory structure regarding recycling activities and should not be interpreted as express authorization for a municipality to grant a monopoly over the collection of

recyclable materials. Nevada has no similar statutes regarding recycling programs from commercial businesses or premises. Notably, the challenged activity stems from an exclusive franchise agreement regarding commercial businesses. ER 82. Thus, N.R.S. § 444A is completely silent as to whether the Nevada legislature has authorized municipalities to grant monopiles for the collection of recyclable materials.

Ultimately, the district court used a broad interpretation of the state authorization statute to extend immunity to anticompetitive activity which the state did not intend to sanction. Thus, the district court's analysis was erroneous, and the ultimate determination that *Parker* immunity applied to the City should be reversed by this Court.

B. The district court improperly used the "foreseeability test" to determine that Nevada expressly authorized the City of Reno to grant Reno Disposal a monopoly for the collection of recyclable materials.

If the suppression of competition is the "foreseeable result" of what the statute at issue authorizes, then *Parker* immunity may apply. *See Omni*, 499 U.S. at 372. However, "[a] foreseeable result cannot circumvent the requirement that there be express authorization in the first place: '[A] foreseeable result cannot *create* state authorization itself,' but must itself stem from express authorization, which is 'the necessary predicate for the Supreme Court's foreseeability test.'" *See City of Seattle*, 890 F.3d at 783 (quoting *Columbia Steel Casting Co. v. Portland Gen.*

Elec. Co., 111 F.3d 1427, 1444 (9th Cir.)). Consequently, courts only use the "foreseeability" test as the Court did in *Omni*, when the state authorization statute at issue does not expressly allow for the suppression of competition. *Id*.

For example, in *Omni*, the state authorization statue at issue provided that "for the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may by ordinance regulate and restrict the height, number of stories and sizes of buildings and other structures." *Omni,* 499 U.S. at fn. 3. Importantly, in *Omni*, billboards were considered "structures" and therefore, the court determined that the state authorization statute "authorize the city to regulate the size, location, and spacing of billboards." *Omni*, 499 US at 371. Thus, just like in *Golden State*, the court in *Omni* engaged in a two-part test; first and foremost, the court determined that the challenged activity of regulating the spacing of billboards was authorized by the state statute. *Id*. Once the court determined the challenged activity was authorized by state statute, only then was the court able to move to the second rung of the test and determine whether the suppression of competition was the foreseeable result of regulating the spacing of billboards. *See Omni*, 499 U.S. at 371-73. Accordingly, the court in *Omni* reasoned that because the city was allowed to regulate the size, location, and spacing of billboards that it was foreseeable that any such restrictions would likely result in the suppression of competition over new billboard

construction. *Omni*, 499 U.S. at 371. Thus, *Parker* immunity applied to the city of Columbia, South Carolina. *Id*.

Here, the district court determined that the term "other waste" was subjective and that the City would necessarily have to take into account "monetary value to the producer." ER 14. Therefore, the district court reasoned that "any effect that the City's definition has on the price of recyclable materials is a necessary consequence of enforcing the exclusive franchise it is entitled to grant." ER 15.

First, courts should not consider "subjective" motivation when conducting *Parker* immunity analysis. *See Traweek v. City and County of San Francisco*, 920 F.2d 589, 592 (1991). Yet, here, the district court determined that the term "other waste" is subjective—and thus, the City can define that term for itself. ER 16. Yet, in *Douglas Disposal, Inc. v. Wee Haul, LLC*, 170 P.3d 508, 514 (Nev. 2007), the Nevada Supreme Court determined that "other waste" is not subjective rather that term encompasses both "garbage" and "solid waste" as that term is defined in N.R.S. § 444.490. *See Douglas Disposal*, 170 P.3d at 514. Therefore, the court stated that materials contained within the meaning of N.R.S. § 444.490, like construction waste, can be lawfully franchised pursuant to N.R.S. §§ 268.081 and 268.083. *Id*. Thus, the term "other waste" is not subjective, rather the term is an objective generic term like "structures" was in *Omni*. However, unlike "billboards"

was a subset of "structures" in *Omni*, here, "recyclable materials" is not a subset of "other waste."

Additionally, materials can only become "waste" if the owner of the materials either discards the materials or abandons the materials. *See Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.*, 7 Cal. 4th 478, 869 P.2d 440 (Cal. 1994). On the other hand, if the materials are recyclable, meaning physically capable of being recycled, and the materials are never thrown away, then the materials are not "waste." ER 244 ("Waste means materials resulting from any activity that the generator has discarded as useless or unwanted. Waste does not include recyclable materials as defined by these regulations."). Thus, the concept of "waste" is not subjective.

Assuming, *arguendo*, "other waste" is subjective, a municipality granting a monopoly over the collection of recyclable materials is not a foreseeable result of the express authority for a monopoly over "waste collection." For purposes of *Parker* immunity, N.R.S. §§ 268.081(3) and 268.083(2) authorizes the City to grant Reno Disposal an exclusive franchise agreement for the service of "collection and disposal of garbage and other waste." Thus, the suppression of competition in the "waste collection" business in the City is a foreseeable consequence of N.R.S. § 268.081(3), not the suppression of competition for an entirely distinct business activity like the collection and recycling of recyclable materials would be.

Second, the district court improperly determined that the City's definition of "waste" is appropriate because any effect on the price of recyclable materials is a necessary consequence of enforcing the exclusive franchise it is entitled to grant. ER 15. Furthermore, the district court stated that the City and Reno Disposal have not "fixed" prices in the typical sense. ER 15. However, "[u]nder the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se." *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940). Accordingly, "[t]he power to fix prices, whether reasonable exercised or not, involves the power to control the market and to fix arbitrary and unreasonable prices." *Id*. "The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow." *See United States v. Trenton Potteries*, 273 U.S. 392, 396 (1927). The hallmark of conduct that is per se unreasonable is that the practice at issue appears on its face to be one that would almost always act to restrict competition within a market. *See Capital Imaging Associates, P.C. v. Mohawh Valley Medical Associates, Inc.*, 725 F.Supp. 669, 677 (N.D.N.Y. 1989).

Here, the City and Reno Disposal have stated to GSR and GSR's customers that GSR must purchase recyclable materials for a price that exceeds any costs of renting recycling containers. ER 7 ("In other words, Plaintiff's customers were required to realize a net profit from the arrangement, and thus, the rebate would

have to exceed the container rental charges."). Accordingly, the price at which recyclable materials may "lawfully" be purchased pursuant to the Franchise Agreement, is "pegged." ER 7. Thus, the district court ignored the Supreme Court in *Socony-Vacuum Oil Co.*, and determined that for purposes of *Parker* immunity, the City did not "price-fix" in the typical sense. ER 15. However, pegging the price of recyclable materials in this way has restricted competition within the Reno Market to the point that the City has effectively granted Reno Disposal with a monopoly over the collection of recyclable materials. ER 17. Thus, on its face, this scheme is an unreasonable restraint of trade, similar to any other price fixing scheme would be.

Nevertheless, unlike the state authorization statue in *Omni*, here, the state authorization statute is a "clear articulation of a state policy to authorize anticompetitive conduct" with respect to the "collection and disposal of garbage and other waste." *See* N.R.S. § 268.081(3). Therefore, the district court improperly used the foreseeability test to determine that there was a clear state policy to allow municipalities to grant a monopoly over the collection of recyclable materials. ER 16. Consequently, this Court should reverse the district court's decision to grant the City immunity from its anticompetitive conduct.

II. THE COURT SHOULD REQUIRE RENO DISPOSAL AND THE CITY TO PROVE ACTIVE STATE SUPERVISION TO MEET THE REQUIREMENTS OF PARKER IMMUNITY.

When a *private party* seeks to defend against a Sherman Antitrust lawsuit by claiming that the *private party* is immune from liability under the *Parker* doctrine, then the clearly articulated and affirmatively expressed state policy must also be "actively supervised by the State." *See Midcal*, 445 U.S. at 105. Furthermore, "[t]he active supervision requirement demands . . . that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *See N.C. State Bd. Of Dental Examiners v. FTC*, 135 S.Ct. 1101, 1112 (2015).

For example, even though the *state* designated Air Ambulance as the dispatching service provider for Washoe County, the court in *Medic Air* still had to determine that the *state* "actively supervised Air Ambulance" because Air Ambulance was a private actor. *See Medic Air Corp. v. Air Ambulance Auth.*, 843 F.2d 1187 (9th Cir. 1988). *Id*. Ultimately, after a careful review, there the court determined that the second prong of the *Midcal* test was satisfied because the state of Nevada, through the department of health, was actively supervising Air Ambulance. *Id*. Thus, Air Ambulance was immune from antitrust complaints with respect to dispatch services. *Id*.

1. The District Court Erred When It Determined That the Challenged Activity is Within a Traditional Municipal Function.

The active-supervision requirement does not apply when the challenged activity is within a traditional municipal function or when the actor is the instrumentality of the municipality. *See Grason Elec. Co. v. Sacramento Mun. Util. Dist.*, 770 F.2d 833 (9th Cir. 1985). For example, in *Grason*, the Ninth Circuit determined that SMUD was a "municipal district" performing a "governmental function." *Id*. Therefore, the court reasoned that SMUD was effectively a local government. *Id*. Consequently, there the court did not require SMUD to show active supervision by the state of California. *Id*.

Additionally, in *Ambulance Service of Reno, Inc., v. Nev. Ambulance Services.*, 819 F.2d 910 (9th Cir. 1987), the defendant Regional Emergency Medical Services Authority ("REMSA") was incorporated by the Washoe County District Board of Health. *Id* at 912. There, the court determined that the Washoe County District Board of Health was akin to a municipality for purposes of *Parker* immunity. *Id*. at 913. Therefore, because the municipality created and incorporated REMSA for the sole purpose of carrying out emergency services on behalf of the three local governments, REMSA was in fact an instrument of the municipalities. *Id*. Furthermore, the court determined that REMSA was supervised closely by the district board of health. *Id*. Accordingly, the court determined active state supervision was not necessary to afford REMSA *Parker* immunity. Id.

Here, the district court determined that "the challenged restraint in this case" is "the City's grant of a monopoly over the collection of recyclable materials that Plaintiff wishes to pick up." ER 17. Accordingly, the challenged activity has nothing to do with Reno Disposal's monopoly over waste collection and disposal. Yet, the district court stated the challenged activity was within a traditional municipal function and then oddly cited to *United Haluers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 344 (2007). However, *United Haulers* is a case about waste disposal—indicating that the district court determined that the challenged activity in this case was waste disposal services—completely contradicting the Court's later determination that the challenged activity was the City's grant of a monopoly over the collection of recyclable materials. ER 17.

To be sure, waste disposal is distinct from recyclable material collection. Recyclable materials, like cardboard boxes or paper products, do not become waste until the owner throws them away. If the owner never throws them away, then the recyclable materials never become waste. ER 244. Therefore, the collection of recyclable materials that have never been thrown away is not a typical or traditional local municipal function like "waste collection" services are.

Additionally, Reno Disposal is not an instrumentality of the City. Unlike REMSA was an instrument of the municipality in *Ambulance Services*, here, Reno Disposal was not created by the City. Rather Reno Disposal is a private company

operating for profit pursuant to its own self-interests. Additionally, Reno Disposal is "an independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venture with City." ER 127. Consequently, unlike both REMSA in *Ambulance Services* and SMUD in *Grason*, here, Reno Disposal is a private non-sovereign actor, and thus, the Court should require Reno Disposal to show active state supervision before the Court accords Reno Disposal with state-action immunity.

2. The District Court Improperly Determined that the Actor Was Solely a Municipality

Notably, when the challenged anticompetitive conduct is carried out solely by a municipality, then the "active state supervision" is not a prerequisite to exemption from the antitrust laws. *See Town of Hallie*, 471 U.S. at 39. However, when the challenged anticompetitive conduct involves both a private actor and a municipality, then the "active state supervision" is a prerequisite to exemption from the antitrust laws. *See N.C. State Bd. Of Dental Examiners*, 135 S.Ct. at 1112. Importantly, "for purposes of *Parker*, a non-sovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself." *Id*. at 1111. "The question is not whether the challenged conduct is efficient, well-functioning, or wise." *See Patrick v. Burget*, 486 U.S. 94, 100 (1988). "Rather, it is whether anticompetitive conduct engaged in by non-sovereign actors should be deemed state action and thus shielded from the antitrust laws. *Id*.

For example, in *Town of Hallie*, the alleged anticompetitive conduct and the challenged restraint were carried out solely by the City of Eau Claire. *Id*. at 46. Thus, the Supreme Court held that "the active state supervision requirement should not be imposed in cases in which the actor is a municipality." *Id*. at 46.

Here, contrary to the City of Eau Claire in *Town of Hallie*, the actors consist of two separate and distinct nonsovereign actors, both the City and Reno Disposal. ER 17 and 662. GSR alleged that both the City and Reno Disposal have engaged in a price fixing scheme. ER 662. Moreover, Reno Disposal sent threatening letters to both GSR and GSR's customers that they were violating the franchise agreement because the customers were not selling their recyclable materials to GSR for a price that exceeds the container rental charge. ER 7. Additionally, the City fined some of those same customers for violating the franchise agreement because those GSR customers were not selling their recyclable materials to GSR for a price that exceeds the container rental charge. ER 78. Thus, GSR alleged that both the City and Reno Disposal *per se* violated the Sherman Act. ER 7 and 662.

Yet, the district court's decision never considers Reno Disposal as a nonsovereign actor because the district court ignored Reno Disposal's action as a defendant entirely, simply because "Reno Disposal (is) not engaged in municipal regulation." ER 14. Yet, Reno Disposal is "entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and *City ordinances* related thereto …". ER 132 (emphasis added).

Accordingly, Reno Disposal may enforce the City's ordinances on behalf of the City. ER 132. Additionally, Reno Disposal sued GSR in state court to enforce the City's Code. *See* Case No. CV17-01143 filed in Second Judicial District Court of the State of Nevada in and for the County Washoe by Reno Disposal against GSR (Fifth Claim For Relief-Code Violations); *see also* Federal Rule of Evidence 201. Thus, the district court was incorrect to determine that Reno Disposal has not engaged in any municipal regulation. ER 14.

Regardless, both the City and Reno Disposal acted to ensure that Reno Disposal would have a monopoly over the collection of recyclable materials. ER 17. Accordingly, the district court erred in holding that the actor was solely the City. ER 17. Therefore, this Court should reverse the district court and require Reno Disposal and the City to show active state supervision as a prerequisite to *Parker* immunity.

3. Neither the City Nor Reno Disposal Can Show That the State Has Actively Supervised Their Anticompetitive Conduct.

The United States Supreme Court stated that "where state or municipal regulation by a private party is involved, however, active state supervision must be shown." *See City of Seattle*, 890 F.3d at 783 (citing *Town of Hallie*, 471 U.S. at 46).

Significantly, the Nevada legislature created solid waste management authorities to regulate the "solid waste management systems" in Nevada. *See*

N.R.S. § 444.495; *see also* ER 227. Currently, there are three solid waste management authorities in Nevada: the Washoe County Health District, the Southern Nevada Health District, and the Nevada Division of Environmental Protection of the State Department of Conservation and Natural Resources. ER 383; *see also* N.R.S. § 444.495(1-2). Moreover, a "solid waste management system" means "the entire process of storage, collection, transportation, processing, recycling and disposal of solid waste." *See* N.R.S. § 444.500.

Furthermore, each municipality or district board of health, is required to "develop a plan to provide for a solid waste management system which adequately provides for the management and disposal of solid waste within the boundaries of the municipality or within the area to be served by the system …". *See* N.R.S. § 444.510(1). Notably, each plan must be submitted to the State Department of Conservation and Natural Resources. *See* N.R.S. § 444.510(4). Moreover, "no action may be taken by that governing body or district board of health until the plan has been approved." *Id*.

Here, the City of Reno, City of Sparks and Washoe County created a district board of health called the Washoe County District Board of Health. ER 233. That district board of health is the "solid waste management authority" by legislative fiat and pursuant to an interlocal agreement. ER 233. The Washoe County District Board of Health has created a "solid waste management system" and has submitted

that plan to the State Department of Conversation and Natural Resources. ER 222 and 374. That plan was then approved by the state. ER 222.

However, the City has not submitted such a plan to the State Department of Conservation and Natural Resources and has not had a solid waste management system approved by the State. Thus, the City and Reno Disposal cannot prove that the state has actively supervised their anticompetitive conduct (granting Reno Disposal a monopoly over the collection of recyclable materials).

Fittingly, the Washoe County District Board of Health's solid waste management plan specifically states that "[b]usinesses who do not utilize (Reno Disposal) for recycling services may contract with other permitted recycling businesses. . .". ER 395. Thus, the "solid waste management authority" for the City of Reno does not authorize a monopoly over the collection of recyclable materials. ER 395. Consequently, the current regulatory scheme the Nevada legislature has created is silent on whether a municipality may grant a monopoly for the collection of recyclable materials.

Again, to obtain *Parker* immunity, the City and Reno Disposal must point to a specific state authorization statute that grants them the ability to obtain a monopoly over the collection of recyclable materials. *See City of Seattle*, 890 F.3d at 781. None exist in Nevada.

If the district court's determination is not reversed, then the active state supervision requirement would never apply to a private actor as long as the private

actor was contracted by a municipality, even in instances where said municipality itself was not authorized by state law to conduct the anticompetitive activities.

In summary, the Defendants' conspiracy to peg prices reduces services and quality, while destroying competitors in the relevant market, all under the guise of a state system which was simply and solely designed as a means to protect the health of its citizenry through proper waste removal and disposal. It was most certainly not created as a system to reward an incumbent monopolist.

Therefore, this Court should reverse the district court and remand the case for further proceedings.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the case remanded for consideration of Plaintiff's claims on the merits.

Date: June 14th, 2019

Argentum Law

/s/ J. Chase Whittemore
J. Chase Whittemore

Attorneys for Appellant Green Solutions Recycling, LLC

STATEMENT OF RELATED CASES

GSR knows of no other related cases pending in this Court.

Date: June 14, 2019

Argentum Law

/s/ J. Chase Whittemore
J. Chase Whittemore
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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,376 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Version 16.19 Times New Roman 14-point font.

Date: June 14, 2019

Argentum Law

/s/ J. Chase Whittemore
J. Chase Whittemore

Attorneys for Appellant Green Solutions Recycling, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: June 14, 2019

Argentum Law

/s/ J. Chase Whittemore
J. Chase Whittemore

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ADDENDUM

I. Nev. Rev. Stat. § 268.081 (2015)

Displacement or limitation of competition: Services.

The governing body of an incorporated city may, to provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas:

1. Ambulance service.

2. Taxicabs and other public transportation, unless regulated in that city by an agency of the State.

3. Collection and disposal of garbage and other waste.

4. Operations at an airport, including, but not limited to, the leasing of motor vehicles and the licensing of concession stands, but excluding police protection and fire protection.

5. Water and sewage treatment, unless regulated in that city by an agency of the State.

6. Concessions on, over or under property owned or leased by the city.

7. Operation of landfills.

8. Search and rescue.

9. Inspection required by any city ordinance otherwise authorized by law.

10. Except as otherwise provided in NRS 277A.330, construction and maintenance of benches and shelters for passengers of public mass transportation.

11. Any other service demanded by the inhabitants of the city which the city itself is otherwise authorized by law to provide.

II. Nev. Rev. Stat. § 268.083 (2015)

Displacement or limitation of competition: Methods.

The governing body of an incorporated city may:

1. Provide those services set forth in NRS 268.081 on an exclusive basis or, by ordinance, adopt a regulatory scheme for providing those services or controlling development on an exclusive basis within the boundaries of the city; or

2. Grant an exclusive franchise to any person to provide those services within the boundaries of the city.

III. Nev. Rev. Stat. § 444.440 (2015)

Declaration of state policy.
It is hereby declared to be the policy of this State to regulate the collection and disposal of solid waste in a manner that will:

1. Protect public health and welfare.
2. Prevent water or air pollution.
3. Prevent the spread of disease and the creation of nuisances.
4. Conserve natural resources.
5. Enhance the beauty and quality of the environment.

IV. Nev. Rev. Stat. § 444.490 (2015)

"Solid waste" defined.

1. "Solid waste" means all putrescible and nonputrescible refuse in solid or semisolid form, including, but not limited to, garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semisolid commercial and industrial waste.

2. The term does not include:

(a) Hazardous waste managed pursuant to NRS 459.400 to 459.600, inclusive.

(b) A vehicle described in subparagraph (2) of paragraph (b) of subsection 1 of NRS 444.620.

V. Nev. Rev. Stat. § 444.495 (2015)

"Solid waste management authority" defined.

"Solid waste management authority" means:

1. Except as otherwise provided in subsection 2, the district board of health in any area in which a health district has been created pursuant to NRS 439.362 or 439.370 and in any area over which the board has authority pursuant to an interlocal agreement, if the board has adopted all regulations that are necessary to carry out the provisions of NRS 444.440 to 444.620, inclusive.

2. In all other areas of the State and pursuant to NRS 704.7318, at any site previously used for the production of electricity from a coal-fired electric generating plant in this State, the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

VI. Nev. Rev. Stat. § 444.500 (2015)

"Solid waste management system" defined.

"Solid waste management system" means the entire process of storage, collection, transportation, processing, recycling and disposal of solid waste. The term includes plans and programs for the reduction of waste and public education.

VII. Nev. Rev. Stat. § 444.510 (2015) (excerpt).

Municipal solid waste management systems: Development, revision and approval of plans; cooperative agreements. (excerpt).

1. The governing body of every municipality or district board of health created pursuant to NRS 439.362 or 439.370 shall develop a plan to provide for a solid waste management system which adequately provides for the management and disposal of solid waste within the boundaries of the municipality or within the area to be served by the system, whether generated within or outside of the boundaries of the area.

4. Any plan developed by the governing body of a municipality or district board of health created pursuant to NRS 439.362 or 439.370 must be submitted to the State Department of Conservation and Natural Resources for approval according

to a schedule established by the State Environmental Commission. No action may be taken by that governing body or district board of health until the plan has been ap proved. The Department shall determine the adequacy of the plan within 90 days after receiving the plan. If the Department does not respond to the plan within 90 days, the plan shall be deemed approved and becomes effective immediately.

VIII. Nev. Rev. Stat. § 444.585 (2015)

Ownership of recyclable materials; unauthorized collection of recyclable materials prohibited; penalty; civil remedy.

1. From the time recyclable materials are placed 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,

Ê 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 provisions of 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 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.

IX. Nev. Rev. Stat. § 444A.013 (2015)

"Recyclable material" defined. "Recyclable material" means solid waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by the State Environmental Commission.

X. Nev. Rev. Stat. § 444A.020 (2015)

Adoption of regulations establishing standards for recycling or disposal of solid waste; goal of standards; methods for disposal of used or waste tires.

1. The State Environmental Commission shall adopt regulations establishing minimum standards for:

(a) Separating at the source recyclable material from other solid waste originating from residential premises and public buildings where services for the collection of solid waste are provided, including, without limitation, the placement of recycling containers on the premises of apartment complexes and condominiums where those services are provided.

(b) Establishing recycling centers for the collection and disposal of recyclable material.

(c) The disposal of hazardous household products which are capable of causing harmful physical effects if inhaled, absorbed or ingested.

2. The regulations adopted pursuant to subsection 1 must be adopted with the goal of recycling at least 25 percent of the total solid waste generated within a municipality after the second full year following the adoption of such standards.

3. The State Environmental Commission shall, by regulation, establish acceptable methods for disposing of used or waste tires consistent with the provisions of NRS 444.505, 444.507 and 444.509.

XI. Reno Municipal Code § 5.90.010 (2017) (excerpt).

"Disposal," "disposing," "dispose," or "disposed" means the final landfill disposal of solid waste collected by contractor but does not include other beneficial uses such as alternative daily cover.

"Recycle", "recycled", "recycling" means the process of collection, sorting, cleansing, treating and reconstituting of recyclable materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

XII. Reno Municipal Code § 5.90.030 (2017) (excerpt).

"Franchise Right"

(a) This article establishes the exclusive right for contractors to provide collection services pursuant to NRS 268.081, as amended.
(b) Contractors, and their respective successors or assigns, shall have the exclusive privilege of providing collection services of collection materials, subject to limitations of any applicable agreement, and city, state and federal law.