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5 *Attorneys for Waste Management of Nevada, Inc.*

Electronically Filed
Jun 29 2020 12:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

9 WASTE MANAGEMENT OF
10 NEVADA, INC.,

11 Appellant,

12 v.

13 WEST TAYLOR STREET, LLCA, a
14 limited liability company,

15 Respondent.

Supreme Court No.: 80841
(District Court Case No. CV12-02995)

17 **JOINT APPENDIX**

18 **VOLUME 1**

20 **APPELLANTS' COUNSEL:**

21 MARK G. SIMONS, ESQ.
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RESPONDENT'S COUNSEL:

C. NICHOLAS PEREOS, ESQ.
NSB NO. 0013
1610 Meadows Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-6618
Email: cpereos@att.net

JOINT APPENDIX

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Affidavit of Teri Morrison	09/13/2017	4	JA_0739-741
Affidavit of Teri Morrison in Support of Opposition to Motion for Summary Judgment	10/18/2016	3	JA_0556-559
Appellant's Opening Brief (Case No. 74876)	07/20/2018	4	JA_0877-946
Complaint	12/03/2012	1	JA_0001-5
Declaration of C. Nicholas Pereos in Support of Opposition to Motion for Attorney Fees	01/03/2020	5	JA_1099-1101
Defendant's Answer to Plaintiff's Complaint	09/16/2013	1	JA_0009-13
Defendants' Answer to Plaintiff's Second Amended Complaint	07/14/2014	1	JA_0125-129
Defendants' Motion for Summary Judgment on Plaintiffs' Slander of Title Claim	09/06/2016	2-3	JA_0305-555
Defendant's Trial Statement	10/30/2017	4	JA_0796-863
Docket Sheet for Entire Case	05/20/2020	6	JA_1236-1255
First Amended Complaint	02/14/2014	1	JA_0020-25
First Amended Scheduling Order	04/19/2017	4	JA_0732-738
Memorandum of Costs	12/23/2019	5	JA_1008-1034

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Motion for Award of Attorneys Fees and Costs	12/26/2019	5	JA_1045-1098
Motion for Leave to File Second Amended Complaint	04/10/2014	1	JA_0048-60
Motion for Partial Summary Judgment	03/11/2014	1	JA_0026-47
Motion for Partial Summary Judgment	09/03/2014	1	JA_0150-159
Motion to Retax Costs	12/24/2019	5	JA_1035-1044
Notice of Appeal	12/02/2015	2	JA_0245-303
Notice of Appeal	01/08/2018	4	JA_0874-876
Notice of Appeal	03/19/2020	6	JA_1233-1235
Notice of Entry of Order	03/11/2020	6	JA_1222-1232
Opposition to Defendant's Motion in Limine	09/13/2017	4	JA_0742-757
Opposition to Motion for Attorneys Fees	01/03/2020	5	JA_1102-1175
Opposition to Motion for Summary Judgment on Claims for Slander of Title	10/18/2016	3	JA_0560-731
Order	07/28/2014	1	JA_0130-149
Order Denying Waste Management of Nevada, Inc.'s Motion for Award of Attorneys' Fees	03/10/2020	5	JA_1215-1221
Order Dismissing Action	12/18/2019	5	JA_1006-1007

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Order Dismissing Appeal	03/07/2016	2	JA_0304
Order Granting in Part and Denying in Part West Taylor Street, LLC's Motion to Retax Costs	03/09/2020	6	JA_1209-1214
Order Granting Motion (Supreme Court)	09/13/2018	5	JA_0979-980
Order Granting Motion in Limine to Exclude Evidence of Other Property Holdings	11/03/2017	4	JA_0870-873
Order Granting Waste Management of Nevada, Inc.'s Motion in Limine #1 re: Exclusion of C. Nicholas Pereos as Trial Advocate	11/03/2017	4	JA_0864-869
Reply Argument in Support of Motion for Partial Summary Judgment	04/11/2014	1	JA_0061-75
Reply in Support of Motion for Award of Attorneys Fees and Costs	01/06/2020	5	JA_1176-1208
Respondent's Answering Brief	08/17/2018	4	JA_0947-978
Response to Motion to Vacate Orders, Opposition to Motion for Judgment in Favor of Waste Management, Cross Motion to Summary Judgment on Liens	07/26/2019	5	JA_0981-1005
Scheduling Order	01/07/2014	1	JA_0014-19

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Second Amended Complaint	06/27/2014	1	JA_0118-124
Second Amended Scheduling Order	09/22/2017	4	JA_0790-795
Summons	01/31/2013	1	JA_0006
Summons (Alias)	06/04/2013	1	JA_0007-8
Transcript of Proceedings – Status Conference	05/07/2014	1	JA_0076-117
Waste Management of Nevada, Inc.’s Motion for Partial Reconsideration of the Court’s July 28, 2014 Order	09/26/2014	1	JA_0175-244
Waste Management of Nevada, Inc.’s Opposition to Plaintiff’s Second Motion for Partial Summary Judgment	09/25/2014	1	JA_0160-174
Waste Management of Nevada, Inc.’s Reply in Support of Motion in Limine #1 re: Exclusion of C. Nicholas Pereos as Trial Advocate	09/19/2017	4	JA_0758-789

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DATED: This 29 day of June, 2020.


JODI ALHASAN

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WEST TAYLOR STREET VS WASTE 5 Pages
District Court 12/03/2012 02:03 PM
Washoe County
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HAROLD
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1 CODE: \$1425
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

FILED
2012 DEC -3 PM 2:03
JOEY PEREOS
CLERK OF THE COURT
BY: *[Signature]*

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

10 WEST TAYLOR STREET, LLC,
11 a limited liability company,

12 Plaintiff,

13 vs.

14 WASTE MANAGEMENT OF NEVADA,
15 INC., KAREN GONZALEZ, and
16 DOES 1 THROUGH 10,

17 Defendants.

Case No. CV12 02995
Dept. No. 4

18 COMPLAINT

19 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas
20 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as
21 follows:

22 FIRST CLAIM FOR RELIEF

23 I

24 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because
25 their true names and capacities of said Defendants are not now known by Plaintiff and
26 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

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II

At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

III

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 345 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel 011-266-17.

IV

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Records Office, Reno, Nevada.

V

Subsequent to the recording of the subject lien Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

VI

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of the lien given its incorrect filing and Defendants refuses to release the subject lien.

VII

On or about November 15, 2012, Defendants caused to send to Plaintiff a notice of intent to lien for a different amount on the subject property notwithstanding the earlier lien.

1 VIII

2 Plaintiff is informed and believes and thereon alleges that the basis for any lien
3 against the subject property is by reason of Nevada Revised Statute 444.520.

4 IX

5 Pursuant to NRS 444.520, any lien against the subject property was to be
6 foreclosed consistent with foreclosure of mechanic's lien.

7 X

8 At no time has Defendant undertaken a foreclosure of any lien pursuant to the
9 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court
10 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's
11 property.

12 XI

13 Plaintiff has been required to employ the services of an attorney to file and
14 prosecute this action and is entitled to an allowance of attorneys fees as special damages
15 by reason thereof.

16 **SECOND CLAIM FOR RELIEF**

17 I

18 Adopt by reference and make a part hereof each and all of the statements and
19 averments contained in the First Claim for Relief hereinabove.

20 II

21 At all times herein mentioned, the basis for the recording of any lien for garbage
22 fees arises by reason of statutory edict. Plaintiff is informed and believes that said
23 statutory scheme does not provide for an opportunity to contest the legitimacy of the
24 recording of the lien or any opportunity to be heard by the lien debtor and no mechanism
25 for commencement of a dispute resolution concerning the lien or the amount of the lien.

26 III

27 The subject statutory scheme of NRS 444.520 mandates service of a notice of lien
28 but does not provide for any mechanism by which there is an opportunity to be heard by

1 the owner of the property, the opportunity to contest the legitimacy of the lien by the owner
2 of the property, or an obligation of the lien claimant a methodology for dispute resolution
3 to an impartial tribunal by reason of the recording of the notice of lien.

4 IV

5 Should this Court determine that there is no obligation by Defendant to
6 conform to the mechanic lien laws for the foreclosure of said lien as dictated in the statute
7 of Nevada mandating the commencement of a lawsuit within six months of the recording
8 of the lien, then the recording of said lien deprives Plaintiff of its property by due process
9 of law and the subject statute is unconstitutional according to Constitution of the State of
10 Nevada and these United States.

11 **THIRD CLAIM FOR RELIEF**

12 I

13 Adopt by reference and make a part hereof each and all of the statements and
14 averments contained in the First Claim for Relief hereinabove.

15 II

16 At all times herein mentioned, Defendants knew or should have known that the
17 recording of the subject lien was without basis or merit and that the recording would impact
18 and impair Plaintiff's ownership of the property.

19 III

20 At all time herein mentioned, Defendants have caused to slander Plaintiff's title
21 proximately causing the damages mentioned herein.

22 IV

23 As a proximate result of the foregoing, Plaintiff has sustained special damages
24 consisting of attorney's fees for purposes of removing the slanderous document from
25 Plaintiff's title ownership for an amount in excess of \$40,000.

26 V

27 As a proximate result of the foregoing, Plaintiff has sustained general damages in
28 a sum in excess of \$40,000.

VI

Plaintiff has been required to employ the services of an attorney to file and prosecute this action and is entitled to special damages by reason of the same.

WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For general damages in a sum in excess of Forty Thousand Dollars (\$40,000.00).

2. For special damages consisting of attorney's fees for a sum in excess of Forty Thousand Dollars (\$40,000.00).

3. For costs of suit herein.

4. For reasonable attorneys fees herein.

5. For such other and further relief as may be just and proper.


6. For a declaration from this Court that Plaintiff was required to comply with mechanic lien laws in connection with the recording of the subject lien referenced herein.

7. Alternatively, for a ruling from this Court that the subject statute is unconstitutional.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 3rd day of December, 2012.

C. NICHOLAS PEREOS, LTD.

By: 
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

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WEST TAYLOR STREET VS WASTE M 1 Page
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JOEY ORJUNA HASTINGS
CLERK OF THE COURT

BY 103 THE COURT
RT OF THE STATE OF NEVADA
OF WASHINGTON

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

Petitioner(s)/Plaintiff(s),

VS.
WASTE MANAGEMENT OF NEVADA, INC.,
KAREN GONZALEZ, and DOES 1 through 10
Respondent(s)/Defendant(s).

Case No

CV12 02995

Dept. No.

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is: Title to Property

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
 - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
 - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 3 day of December, 20 12

Issued on behalf of Plaintiff(s).
WEST TAYLOR STREET, LLC

Name C. Nicholas Perea, Esq.
Address: 1610 Meadow Wood Lane, Suite 202
Reno, NV 89502
Phone Number. 775/329-0678

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: [Signature] Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

ORIGINAL

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2013 JUN -4 PM 1:12

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

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

WEST TAYLOR STREET, LLC, a limited
liability company,

Petitioner(s)/Plaintiff(s),

vs.
WASTE MANAGEMENT OF NEVADA, INC.,
KAREN GONZALEZ, and DOES 1 through 10
Respondent(s)/Defendant(s).

Case No. CV12-02995

Dept. No. 4

ALIAS **SUMMONS**

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.
READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is: Title to Property

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
 - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
 - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 6th day of May, 2013

Issued on behalf of Plaintiff(s):
WEST TAYLOR STREET, LLC.

Name: C. Nicholas Pereos, Esq.
Address: 1610 Meadow Wood Lane, Suite 202
Reno, NV 89502
Phone Number: 775/329-0678

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: [Signature]
Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

PROOF OF SERVICE

Initiator: **C. Nicholas Pereos Ltd.**
1610 Meadow Wood Ln #202
Reno, NV 89502

Phone: (775) 329-0678

Attorney for: **West Taylor Street, LLC.**

Court: **2nd Judicial District Court Washoe Co.**

Plaintiff: **West Taylor Street, LLC.**

Defendant: **Waste Magagement of Nevada, Inc.**

Hearing:

Case No. **CV1202995**

File No. **178433 - 1**

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the:

Summons/Complaint

2. Party served: **Waste Magagement of Nevada, Inc.**

AKA:

AKA:

R/A:Corp Trust Co of NV
311 S. Division St.
Carson City, NV 89701

3. I served the party named in Item 2:

Authorized Individual

May 15, 2013 01:28 PM

4. Remarks:

By serving Alena Duggan, Administrative Assistant.

5. Person serving: **Dominic Manoli**

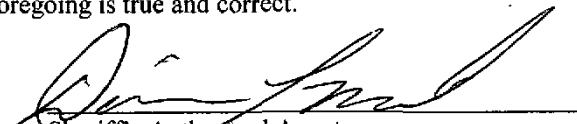
Carson City Sheriff's Department
911 East Musser Street
Carson City, Nv. 89701

Service Fee: \$21.00

Phone: (775) 887-2020 (x1712)


7. I am a Carson City Sheriff's officer and I certify that the foregoing is true and correct.

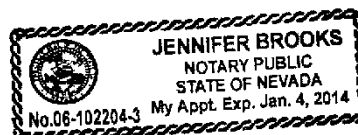
Date: May 24, 2013


Sheriff's Authorized Agent

State of Nevada
County of Carson City

This instrument was acknowledged before me, on
____ of May 2013 by Dominic Manoli


Notary Public



JA_0008

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3999011

1 **1130**

2 Gregory S. Gilbert (6310)
3 Bryan L. Wright (10804)
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7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 gsgilbert@hollandhart.com
10 blwright@hollandhart.com
11

12 - and -

13 Jerry M. Snyder (6830)
14 HOLLAND & HART LLP
15 5441 Keitzke Lane, 2nd Floor
16 Reno, Nevada 89511
17 Tel: (775) 327-3000
18 Fax: (775) 786-6179
19 jsnyder@hollandhart.com

20 *Attorneys for Defendants Waste Management*
21 *of Nevada, Inc. and Karen Gonzales*

22 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

24 WEST TAYLOR STREET, LLC, a limited
25 liability company,

26 Plaintiff,

27 vs.

28 WASTE MANAGEMENT OF NEVADA,
INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

Defendants.

CASE NO.: CV12-02995
DEPT. NO.: 4

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendants Waste Management of Nevada, Inc. ("Waste Management") and Karen Gonzales, erroneously sued as "Karen Gonzalez," (collectively, "Defendants"), by and through their counsel of record, Holland & Hart LLP, for their Answer to Plaintiff West Taylor Street, LLC's ("Plaintiff") Complaint ("Complaint"), admit, deny, and state as follows:

1. Defendants deny all allegations in the Complaint not expressly admitted, denied, or otherwise responded to herein.

FIRST CLAIM FOR RELIEF

2. Answering Paragraphs I and V of the First Claim for Relief, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

3. Answering the allegations contained in Paragraphs II, X and XI of the First Claim for Relief, Defendants deny each and every allegation contained therein.

4. Answering the allegations contained in Paragraph III of the First Claim for Relief, upon information and belief, Defendants admit only that Plaintiff currently owns certain real property located in Reno, Nevada, bearing Washoe County Assessor's Parcel Number 011-266-17. Defendants aver, upon information and belief, that said property has situated thereon a duplex with service addresses of 345 Taylor St. W, and 347 Taylor St. W.

5. Answering the allegations contained in Paragraph IV of the First Claim for Relief, Defendants admit only that Defendant Waste Management of Nevada, Inc. ("Waste Management") recorded a Notice of Lien for Garbage Fees – Residential User, on or about February 23, 2012, Document No. 4086834, for unpaid garbage services supplied to 347 Taylor St. W., Reno, Nevada. Defendants deny the remaining contentions therein.

6. Answering the allegations contained in Paragraph VI of the First Claim for Relief, Defendants admit only that Waste Management has provided Plaintiff with corroborative information supporting the February 23, 2012 lien, and that Waste Management has not expressly released that lien since it was recorded. Defendants deny the remaining contentions therein.

7. Answering the allegations contained in Paragraph VII of the First Claim for Relief, Defendants admit only that they sent a Notice of Intent to Lien to Plaintiff related to unpaid balance due for garbage services provided at 345 Taylor St. W., Reno, Nevada. Defendants deny the remaining contentions therein.

8. Paragraphs VIII and IX of the First Claim for Relief call for a legal conclusion to which no response is required. If said paragraphs are construed to contain allegations against Defendants, Defendants deny said allegations.

///

SECOND CLAIM FOR RELIEF

9. Answering Paragraph I of the Second Claim for Relief, Defendants repeat and reallege each of the above responses to every Paragraphs within the First Claim for Relief as if fully set forth herein.

10. Paragraphs II, III and IV of the Second Claim for Relief call for a legal conclusion, therefore no response is required. If said paragraphs are construed to contain allegations against Defendants, Defendants deny said allegations.

THIRD CLAIM FOR RELIEF

11. Answering Paragraph I of the Third Claim for Relief, Defendants repeat and reallege each of the above responses to every Paragraphs within the First Claim for Relief as if fully set forth herein.

12. Answering the allegations contained in Paragraphs II, III, IV, V and VI of the Third Claim for Relief, Defendants deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

As their separate affirmative defenses to Plaintiff's Complaint, Defendants asserts the following:

1. The Complaint fails to state a claim against Defendants upon which relief can be granted.

2. Plaintiff has failed to comply with obligations set forth in Chapter 30.130 of the Nevada Revised Statutes.

3. Plaintiff's claims against Defendants fail for insufficient process.

4. Plaintiff's claims against Defendants fail for insufficient service of process.

5. Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

6. Plaintiff's claims are barred by Plaintiff's unclean hands.

7. Plaintiff has failed to mitigate any damages and losses claimed to have been suffered, if any, by Plaintiff.

8. Defendants are entitled to a setoff.

9. Plaintiff has asserted its claims in bad faith, without reasonable investigation and for

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

1 an improper purpose, thereby constituting an abuse of process.

2 10. There is no basis for recovery of costs or attorneys' fees by Plaintiff from
3 Defendants.

4 11. Defendants have been required to retain the services of Holland & Hart LLP to
5 defend against these claims and are entitled to an award of their reasonable attorneys' fees and
6 costs.

7 12. At the time of the filing of Defendants' Answer, all possible affirmative defenses
8 may not have alleged inasmuch as insufficient facts and other relevant information may not have
9 been available after reasonable inquiry, and therefore, Defendants reserve the right to amend this
10 Answer to allege affirmative defenses if subsequent investigations warrants the same.

11 WHEREFORE, Defendants pray for Judgment as follows:

12 1. That Plaintiff take nothing by virtue of its Complaint on file herein, and that the
13 same be dismissed with prejudice;

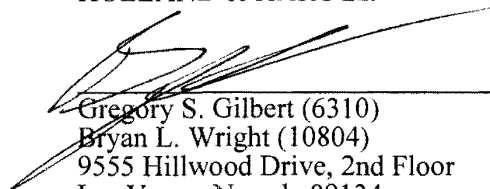
14 2. For an award of reasonable attorneys' fees and costs of suit incurred in this action;

15 3. For such other and further relief as the Court may deem just and proper.

16 The undersigned affirms under NRS 239B.030 that the preceding does not contain the social
17 security number of any person.

18 DATED this 16th day of September 2013.

19 HOLLAND & HART LLP

20
21 
22 Gregory S. Gilbert (6310)
23 Bryan L. Wright (10804)
24 9555 Hillwood Drive, 2nd Floor
25 Las Vegas, Nevada 89134

26 - and -

27 Jerry M. Snyder (6830)
28 5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

*Attorneys for Defendants Waste Management
of Nevada, Inc. and Karen Gonzales*

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 16th day of September, 2013, I served a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

C. Nicholas Pereos
C. NICHOLAS PEREOS, LTD.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-0678
cpereos@att.net

Attorneys for Plaintiff, WEST TAYLOR
STREET, LLC


An Employee of HOLLAND & HART LLP

3915

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

WEST TAYLOR STREET, LLC,

Plaintiff,

CASE NO.: CV12-02995

vs.

DEPT. NO.: 4

WASTE MANAGEMENT OF NEVADA,
INC., KAREN GONZALEZ, and DOES 1
through 10,

Defendants.

SCHEDULING ORDER

Nature of Action: SPECIFIC PERFORMANCE – TITLE TO REAL PROPERTY

Date of Filing Joint Case Conference Report(s): NOVEMBER 8, 2013

Time Required for Trial: 4 DAYS

Date of Trial: JUNE 9, 2014

Jury Demand Filed: SEPTEMBER 27, 2013–PLAINTIFF

Counsel for Plaintiff: C. NICHOLAS PEREOS, ESQ.

Counsel for Defendant: BRYAN L. WRIGHT, ESQ.

Counsel representing all parties have been heard and after consideration by the Court, IT
IS HEREBY ORDERED:

1. Complete all discovery by **APRIL 10, 2014 (60 days before Trial per JCCR).**
2. File motions to amend pleadings or add parties on or before **FEBRUARY 10, 2014 (120 days before Trial per JCCR).**

1 3. Make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before
2 **DECEMBER 10, 2013 (180 days before Trial per JCCR).**

3 4. Make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before
4 **JANUARY 10, 2014 (150 days before Trial per JCCR).**

5 5. Formally submit all dispositive motions, including motions for summary judgment
6 and motions in limine to exclude an expert's testimony, on or before **MAY 9, 2014 (31 days before**
7 **Trial).**

8 6. Other motions in limine shall be submitted for decision on or before **MAY 23,**
9 **2014 (17 days before Trial).**

10 7. Unless otherwise directed by the Court, all pretrial disclosures pursuant to N.R.C.P.
11 16.1(a)(3) must be made at least thirty (30) days before trial.

- 12 A. Unless the Court orders otherwise, legal memoranda submitted in support
13 of any motion shall not exceed fifteen (15) pages in length; opposition
14 memoranda shall not exceed fifteen (15) pages in length; reply memoranda
15 shall not exceed five (5) pages in length. These limitations are exclusive
16 of exhibits.
- 15 B. Except upon a showing of unforeseen extraordinary circumstances, the
16 Court will not entertain any pretrial motions filed or orally presented after
17 the above deadlines have passed.

17 **DISCOVERY**

18 8. Unless otherwise ordered, all discovery disputes (except disputes presented at a pretrial
19 conference or at trial) must be first heard by the Discovery Commissioner, after the following has
20 occurred:

- 21 A. Prior to filing any discovery motion, the attorney for the moving party must
22 consult with opposing counsel about the disputed issues. Counsel for each
23 side must present to each other the merits of their respective positions with
24 the same candor, specificity, and support as during the briefing of
25 discovery motions.
- 24 B. If both sides desire a discovery dispute resolution conference pursuant to
25 NRCP 16.1(d), counsel must contact the Discovery Commissioner's office,
26 at (775) 328- 3293, to obtain a date and time for the conference that is
27 convenient to all parties and the Discovery Commissioner. Upon
28 stipulation of counsel on the record, a motion may be orally presented at
 the conference. If the parties cannot agree upon the need for a conference,
 the party seeking the conference must file and submit a motion in that
 regard.
- C. A party objecting to a written discovery request must, in the original
 objection, specifically detail the reasons that support the objection, and

1 include affidavits or other evidence for any factual assertions upon which
2 an objection is based.

3 9. Motions for extensions of discovery shall be made to the Discovery Commissioner
4 prior to the expiration of the discovery deadline above.

5 10. A continuance of trial does not extend the deadline for completing discovery. A
6 request for an extension of the discovery deadline, if needed, must be included as part of any
7 motion for continuance.

8 11. A trial statement on behalf of each party shall be delivered to opposing counsel,
9 filed herein and a copy delivered to chambers no later than **JUNE 2, 2014**.

10 A. In addition to the requirements of WDCR 5, the trial statement shall contain:

- 11 (1) a concise statement of the claimed facts organized by specifically
12 listing each essential element of the party's claims or defenses and
13 separately stating the facts in support of each such element;
- 14 (2) any practical matters which may be resolved before trial (e.g.,
15 suggestions as to the order of witnesses, view of the premises,
16 availability of audio or visual equipment);
- 17 (3) a list of proposed general voir dire questions for the Court or counsel
18 to ask of the jury;
- 19 (4) a statement of any unusual evidentiary issues, with appropriate
20 citations to legal authorities on each issue; and
- 21 (5) certification by trial counsel that, prior to the filing of the trial
22 statement, they have personally met and conferred in a good faith
23 effort to resolve the case by settlement.

24 12. All jury instructions and verdict forms, whether agreed upon by both
25 parties or proposed by a party individually, shall be delivered to chambers no later than the
26 deadline to submit their Trial Statements (**JUNE 2, 2014**) unless specifically modified by the
27 Court.

- 28 A. Unless otherwise Ordered, the parties shall exchange all proposed jury
Instructions and verdict forms two weeks prior to trial. The parties should
then meet, confer, and submit to the Court one complete set of agreed-upon
set of jury instructions and verdict forms at the same time they submit their
trial statements.
- B. If the parties do not agree to all proposed instructions, they shall jointly
submit a set containing only those instructions that are mutually agreeable.
Each party must submit individually any additional proposed jury
instructions that have not been agreed upon and/or verdict forms at the
same time they submit their trial statements.
- C. All instructions should be short, concise, understandable, and neutral
statements of law and gender. Argumentative or formula instructions are
improper, will not be given, and should not be submitted.
- D. The parties are required to submit the jury instructions in the below
described format.

1. All proposed jury instructions shall be in clear, legible type on clean, white, heavy paper, 8 ½ by 11 inches in size, and not lighter than 16-lb. Weight with a black border line and no less than 24 numbered lines.
2. The last instruction **only** shall bear the signature line with the words "District Judge" typed thereunder placed on the right half of the page, a few lines below the last line of text.
3. The designation "Instruction No. "shall be at the last line, lower left hand corner of the last page of each instruction.
4. The original instructions shall not bear any markings identifying the attorney submitting the same, and shall not contain any citations of authority.
5. The authorities for instructions must be attached to the original instructions by a separate copy of the instruction including the citation.
6. The parties should also note on the separate copy of the instruction any modifications made on the instructions from statutory authority, Nevada Pattern Jury Instructions, Devitt and Blackmar, CALCRIM or other form instructions, specifically stating the modification made to the original form instructions and the authority supporting the modification. All original instructions shall be accompanied by a separate copy of the instruction containing a citation to the form instruction, statutory or case authority supporting that instruction. All modifications made to instructions taken from statutory authority, Nevada Pattern Jury Instructions, Devitt and Blackmar, CACI or other form instructions shall be specifically noted on the citation page. For any form instruction submitted from any source other than Nevada Pattern Jury Instructions, counsel shall include copies of the original instruction form.
7. For any form instruction submitted from any source other than Nevada Pattern Jury Instructions, counsel shall include copies of the original instruction form.

13. Jurors will be permitted to take notes during the trial. Jurors may be permitted to ask questions in writing during trial, screened by the Court and counsel. Any party objecting to this procedure should state this objection in the trial statement.

14. All applications for attorney's fees shall state services rendered and fees incurred for such services with sufficient specificity to enable an opposing party and the court to review such application. Any memorandum of costs and disbursements must comply with Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993) and Bobby Beresini v. PETA, 114 Nev. 1348, 971 P.2d 383 (1998).

15. Trial counsel for all parties shall contact the Courtroom Clerk (Marci Stone 775/328-3139) **no later than JUNE 2, 2014**, to arrange a date and time to mark trial exhibits. All exhibits will be marked in one numbered series (Exhibit 1, 2, 3, etc.), no matter which side is

1 offering the particular exhibit. Once trial exhibits are marked by the Clerk, they shall remain in
2 the custody of the Clerk. When marking the exhibits with the Clerk, counsel must advise the Clerk
3 of all exhibits which may be admitted without objection. In any case which involves fifteen or
4 more document exhibit pages, the exhibits shall be placed in a loose-leaf binder behind a tab noting
5 the number of each exhibit. The binder shall be clearly marked on the front and side with the case
6 caption and number, but no identification as to the party producing the binder. All document
7 exhibits shall be in **one** binder no matter which party is offering the exhibits. At the time set for
8 marking the trial exhibits, counsel for the Plaintiff shall provide the Courtroom Clerk with the
9 binder containing the number tabs. Counsel for all parties shall provide all exhibits, no matter
10 when marked, even if marked during the course of trial, in a condition appropriate for inclusion in
11 the evidence binder.

12 16. The Court expects that both sides will cooperate to try the case within the time set,
13 and confer regarding the order of witnesses, stipulated exhibits, and any other matters which will
14 expedite trial of the case.

15 17. All parties and counsel are bound by the terms of this Scheduling Order, the Nevada
16 Rules of Civil Procedure ("NRCF"), the District Court Rules ("DCR"), the Washoe District Court
17 Rules ("WDCR"), and the Nevada Revised Statutes ("NRS"), and failure to comply could result
18 in the imposition of sanctions.

19 DATED this 4 day of January, 2014.

20 Connie J. Steinberg
21 DISTRICT JUDGE
22
23
24
25
26
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28

CERTIFICATE OF SERVICE

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1 day of January, 2014, I filed the **SCHEDULING ORDER** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X **I electronically filed with the Clerk of the Court, using the ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF system:**

BRYAN WRIGHT, ESQ for WASTE MANAGEMENT OF NEVADA INC et al
MATTHEW HIPPLER, ESQ. for WASTE MANAGEMENT OF NEVADA INC et al

X **Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:**


C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502

 Placing a true copy thereof in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 1 day of January, 2014.



CV12-02995 DC-0900053748-026
WEST TAYLOR STREET VS WASTE 6 Pages
District Court 02/14/2014 01:10 PM
Washoe County 1090
n10p0m11

ORIGINAL

1 CODE: 1090
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

FILED

2014 FEB 14 PM 1:18

JOEY CARROLL HASTINGS
CLERK OF THE COURT

BY *[Signature]*
DEPUTY

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

10 WEST TAYLOR STREET, LLC,
11 a limited liability company,

Case No. CV12-02995
Dept. No. 4

12 Plaintiff,

13 vs.

14 WASTE MANAGEMENT OF NEVADA,
15 INC., KAREN GONZALEZ, and
16 DOES 1 THROUGH 10,

17 Defendants.

18 FIRST AMENDED COMPLAINT

19 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas
20 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as
21 follows:

22 FIRST CLAIM FOR RELIEF

23 I
24 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because
25 their true names and capacities of said Defendants are not now known by Plaintiff and
26 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

27 ///

28 ///

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II

At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

III

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel 011-266-17.

IV

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Records Office, Reno, Nevada.

V

Subsequent to the recording of the subject lien Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

VI

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of the lien given its incorrect filing and Defendants refuses to release the subject lien.

VII

On or about November 15, 2012, Defendants caused to send to Plaintiff a notice of intent to lien for a different amount on the subject property notwithstanding the earlier lien.

///

1 VIII

2 Plaintiff is informed and believes and thereon alleges that the basis for any lien
3 against the subject property is by reason of Nevada Revised Statute 444.520.

4 IX

5 Pursuant to NRS 444.520, any lien against the subject property was to be
6 foreclosed consistent with foreclosure of mechanic's lien.

7 X

8 At no time has Defendant undertaken a foreclosure of any lien pursuant to the
9 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court
10 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's
11 property.

12 XI

13 Plaintiff has been required to employ the services of an attorney to file and
14 prosecute this action and is entitled to an allowance of attorneys fees as special damages
15 by reason thereof.

16 **SECOND CLAIM FOR RELIEF**

17 I

18 Adopt by reference and make a part hereof each and all of the statements and
19 averments contained in the First Claim for Relief hereinabove.

20 II

21 At all times herein mentioned, the basis for the recording of any lien for garbage
22 fees arises by reason of statutory edict. Plaintiff is informed and believes that said
23 statutory scheme does not provide for an opportunity to contest the legitimacy of the
24 recording of the lien or any opportunity to be heard by the lien debtor and no mechanism
25 for commencement of a dispute resolution concerning the lien or the amount of the lien.

26 III

27 The subject statutory scheme of NRS 444.520 mandates service of a notice of lien
28 but does not provide for any mechanism by which there is an opportunity to be heard by

1 the owner of the property, the opportunity to contest the legitimacy of the lien by the owner
2 of the property, or an obligation of the lien claimant a methodology for dispute resolution
3 to an impartial tribunal by reason of the recording of the notice of lien.

4 IV

5 Should this Court determine that there is no obligation by Defendant to conform to
6 the mechanic lien laws for the foreclosure of said lien as dictated in the statute of Nevada
7 mandating the commencement of a lawsuit within six months of the recording of the lien,
8 then the recording of said lien deprives Plaintiff of its property by due process of law and
9 the subject statute is unconstitutional according to Constitution of the State of Nevada and
10 these United States.

11 **THIRD CLAIM FOR RELIEF**

12 I

13 Adopt by reference and make a part hereof each and all of the statements and
14 averments contained in the First Claim for Relief hereinabove.

15 II

16 At all times herein mentioned, Defendants knew or should have known that the
17 recording of the subject lien was without basis or merit and that the recording would impact
18 and impair Plaintiff's ownership of the property.

19 III

20 At all time herein mentioned, Defendants have caused to slander Plaintiff's title
21 proximately causing the damages mentioned herein.

22 IV

23 As a proximate result of the foregoing, Plaintiff has sustained special damages
24 consisting of attorney's fees for purposes of removing the slanderous document from
25 Plaintiff's title ownership for an amount in excess of \$40,000.

26 V

27 As a proximate result of the foregoing, Plaintiff has sustained general damages in
28 a sum in excess of \$40,000.

VI

Plaintiff has been required to employ the services of an attorney to file and prosecute this action and is entitled to special damages by reason of the same.

WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For general damages in a sum in excess of Forty Thousand Dollars (\$40,000.00).

2. For special damages consisting of attorney's fees for a sum in excess of Forty Thousand Dollars (\$40,000.00).

3. For costs of suit herein.

4. For reasonable attorneys fees herein.

5. For such other and further relief as may be just and proper.


6. For a declaration from this Court that Plaintiff was required to comply with mechanic lien laws in connection with the recording of the subject lien referenced herein.

7. Alternatively, for a ruling from this Court that the subject statute is unconstitutional.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 12th day of February, 2014.

C. NICHOLAS PEREOS, LTD.

By: 
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

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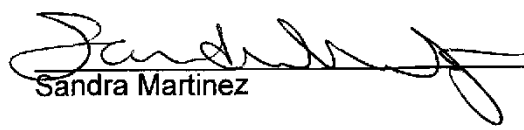
CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

Matthew B. Hippler
HOLLAND & HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511
775/327-3000
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

DATED: 2-13-14


Sandra Martinez

ORIGINAL

FILED

CV12-02995
WEST TAYLOR STREET VS WASTE 8 Pages
District Court 03/12/2014 02:26 PM
Washoe County \$2200
NOC APOMR

1 CODE: 2200
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

2014 MAR 11 PM 2:25

JOEY MORONA HASTINGS
CLERK OF THE COURT
BY: *[Signature]*
DEPUTY

7 ATTORNEYS FOR PLAINTIFF

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 WEST TAYLOR STREET, LLC,
11 a limited liability company,
12 Plaintiff,

Case No. CV12 02995
Dept. No. 4

13 vs.

14 WASTE MANAGEMENT OF NEVADA,
15 INC., KAREN GONZALEZ, and
16 DOES 1 THROUGH 10,

17 Defendants.

18 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 Plaintiff moves this Court for its order of partial summary judgment decreeing and
20 declaring that Defendant Waste Management, Inc. and/or any other Defendant involved
21 in the collection of garbage fees for services for residential property in the City of Reno
22 must comply with the mechanic's lien laws in connection with the recording of a lien for
23 delinquency of garbage services and the collection of that lien.

24 Alternatively, Plaintiff moves this Court for its order dismissing Defendant's answer
25 to the complaint and entering a judgment on liability from lack of standing to record the lien
26 for garbage fees referenced herein.

27 **A. STATEMENT OF FACTS.**

28 Plaintiff is the owner of the property located at 347 W. Taylor Street, Reno, Nevada.
On February 23, 2012, Defendant, Waste Management of Nevada, Inc., caused to record

1 a notice of lien for garbage services in the Washoe County Recorder's office, a copy of
2 which is marked **Exhibit "1"**. This is the basis for slander of title claim as discussed in the
3 First Amended Complaint. Subsequent thereto, Plaintiff communicated with Defendants
4 concerning the nature and basis of the lien and demanded that the lien be removed. The
5 lien had not been removed nor has foreclosure been started.

6 In response to recent discovery, Plaintiff requested a copy of the franchise
7 agreement that authorized Waste Management of Nevada, Inc. to collect fees for disposal
8 services in the City of Reno. In response thereto, Defendant provided a franchise
9 agreement under date of August 9, 1994 between the City of Reno and Reno Disposal Co.
10 Absent any proof of an assignment of rights by Reno Disposal Co. to Waste Management
11 of Nevada, Inc. submitted in response to this motion, Plaintiff would request a partial order
12 for summary judgment on the issue of liability as it relates to this Defendant Waste
13 Management of Nevada, Inc. They had no authorization to collect fees for garbage
14 services. Therefore, they had no authorization to lien for unpaid fees notwithstanding the
15 status of the delinquent account. In other words, Waste Management of Nevada, Inc.
16 would not have standing to lien Plaintiff's property without any assignment of rights under
17 the franchise agreement authorizing the collection of fees for garbage services.

18 Assuming that Waste Management of Nevada, Inc. has an assignment right to the
19 franchise agreement, the issue remains for this court to decide the application of the
20 mechanic's lien laws to the lien of Waste Management marked **Exhibit "1"**.

21 During discovery, the following interrogatories were asked of the Defendant:

22 **Interrogatory No. 6:**

23 "Please state your account number for disposal / garbage
24 services at 347 W. Taylor Street, Reno, Nevada."

25 **Answer:**

26 "Account No. 010-74135."

27 ///

28 ///

1 **Interrogatory No. 7:**

2 "Please state each month that you allege you did not receive
3 payment for garbage / disposal services in the years 2007,
4 2008, 2009, 2010, 2011, 2012 and 2013 for the property that
5 is the subject of this litigation."

6 **Answer:**

7 "...please see document WM000092 - WM000102 for the
8 account history for Account No. 010-74135. Said documents
9 reflect a current accounting history for the quarterly and other
10 charges that remain unpaid on each account."

11 **Interrogatory No. 8:**

12 "If in response to interrogatory number 7, if you refer to any
13 schedules, please identify on those schedules the amount that
14 represents delinquency for payment of services, the code for
15 the delinquency, the abbreviations for the 'type' of delinquency
16 and the date of the delinquency."

17 **Answer:**

18 "Please see document WM000103 through WM000150, which
19 identifies the meaning of the abbreviations in the 'Code' field
20 of the account histories referenced in response to Interrogatory
21 No. 7. The abbreviation in the 'Type' field have the following
22 meanings:"

- 23
- 24 • INV = invoice;
 - 25 • FIN = finance charge;
 - 26 • PMT = payment; and
 - 27 • ADJ = adjustment."

28 **Interrogatory No. 17:**

"Please state how you computed the amount of delinquency of
\$489.47 in your recorded notice of lien for garbage fees
referenced in the complaint identifying the amount for services;
the amount for finance charges; the amount for interest; and
any other amounts that are the component of the amount set
forth in the lien for garbage fees."

Answer:

"The referenced lien amount (\$489.47) relates to services
provided under Account No. 010-74135, for the service
address 347 W. Taylor Street W. During the period April 1,
2007, through December 31, 2011, the referenced account
was billed a total of \$1,011.29. Document Bates labeled
WM000092-102 is the account history for Account No. 010-
074135, and itemizes the total billings, including the amounts
charged for services, finance charges, interest, and any other
amounts charged. A total of \$521.82 in payments and credits

1 were posted to Account No. 010-074135, for the invoices
2 issued during the period of April 1, 2007, through December
3 31, 2011. \$1,011.29 in total charges minus \$521.82 in total
payments/credits yields a total lien amount of \$489.47."

4 In looking at the payment history of the subject account (**Exhibit "2"**) the Court will
5 notice that there is a continuing running balance on the account starting on the account
6 sheet 0092 of April 1, 2007. Without discussing the legitimacy of the billings amounts set
7 forth in these invoices, the records of Waste Management clearly establish a delinquency
8 as of April 1, 2007. A review of **Exhibit "2"** clearly demonstrates the balance never
9 reached zero. According to the response to discovery, Waste Management alleges that
10 the balance on the account swelled to \$1,011.29 as of December 31, 2011 with receipts
11 of \$521.82 resulting in the lien amount of \$489.47. The lien was recorded on February 23,
12 2012. After its recordation, there has been no activity by Defendant to enforce the lien.

13 The second claim for relief of the first amended complaint identifies the enabling
14 statute that gives the right of Defendant to lien the property but also mandates therein a
15 requirement to conform to the mechanic's lien law statutes. In this regard, Plaintiff has not
16 yet joined Nevada Attorney General as dictated by NRS 30.130 pending a decision by this
17 Court in this partial motion for summary judgment. In complying with the mechanic's lien
18 statutes, Plaintiff advances the argument that the Defendant must:

- 19 1. File its lien within ninety (90) days from the date of delinquency.
- 20 2. File an action to foreclose the lien within six (6) months from the date of
21 recordation of the lien.

22 **B. ARGUMENT.**

23 NRS 444.520 is the enabling statute that permits the Defendant to record its lien.
24 The statute provides no mechanism for resolution of a dispute other than the reference
25 contained in the statute which states:

26 "The lien may be foreclosed in the same manner as provided
27 for the foreclosure of mechanic's liens."

28 ///

1 Paragraph 3 of the statute enables the Defendant to lien the property for unpaid
2 garbage fees. Paragraph 4 mandates the Defendant to record a notice of lien. The only
3 means for enforcement of the lien after the recording of the notice of lien mandates
4 compliance with the foreclosure of mechanic's liens.

5 Once the lien is recorded against the property, it remains on the property until
6 expunged. NRS 444.520, provides no mechanism to address the legitimacy of the lien.
7 Meanwhile, the recording of a lien constitutes an involuntary encumbrance on the property.
8 If there is no mechanism to address its legitimacy, there are constitutional issues with
9 regard to the validity of the statute. In effect, the statute would constitute a taking of an
10 interest (to the amount of the lien) in the property without due process UNLESS there is
11 meaning to the language of the statute that discusses that a lien is to be foreclosed as
12 provided for in the foreclosure of a mechanic's lien.

13 A foreclosure of mechanic's lien is discussed in Chapter 108 of NRS. NRS 108.239
14 discusses enforcing the right to have a lien. NRS 444.520 creates a lien when the fee is
15 due and Defendant has not paid. Subsection 3 provides:

16 "Until paid, any fee or charge levied pursuant to subsection 1
17 constitutes a perpetual lien against the property."

18 In other words, a lien starts from the moment the charge is levied. According to NRS
19 108.226, the lien must be filed within ninety (90) days after the date of the delinquency.
20 Waste Management bills on a quarterly basis. Their own records reflect a delinquency that
21 started in 2007. With billings on a quarterly basis which coincide with the ninety (90) days
22 identified in NRS 108.226, it would appear that Waste Management considered the
23 amount of money owed to it for services rendered at the end of each quarter. In turn, this
24 would mandate the necessity to record the notice of lien ninety (90) days thereafter.
25 Accordingly, Plaintiff submits that Waste Management is to record its notice of lien within
26 ninety (90) days after the date of its delinquency, that is, ninety (90) days after the quarterly
27 payment was due and not paid for services rendered.

28 ///

1 A notice of lien is only valid for six (6) months absent the commencement of an
2 action to enforce the lien. NRS 108.233. Commencement of an action means the filing
3 of a lawsuit where one would have an opportunity to be heard and protest the legitimacy
4 of the lien. As stated earlier, NRS 444.520 provides no such vehicle but requires the Court
5 to conform to the adoption of the lien foreclosure statutes as being the mechanism to
6 enforce liens by Defendant, Waste Management, for the unpaid garbage fees. Assuming
7 the application of the mechanic lien statutes, Plaintiff submits that NRS 108.226(6) would
8 also mandate a pre-lien by Defendant after the first delinquency. The statute mandates
9 the service of a notice of intent to lien upon the owner.

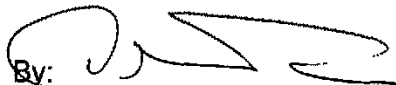
10 With the filing of the lien by Defendant, it knew that it intended to be a lien claimant.
11 Meanwhile, Defendant does nothing to enforce the lien! It just permits the lien to remain
12 of record and cloud Plaintiff's title to property. By virtue of the fact that Defendant has filed
13 the lien, it had an obligation to file its lawsuit to collect the lien within six (6) months after
14 February 23, 2012. Otherwise, the lien is to be expunged.

15 Accordingly, Plaintiff requests an order for partial summary judgment that will
16 generically rule the necessity of the Defendant to comply with the mechanic's lien statutes.
17 Specifically, Plaintiff requests a ruling from this Court that Defendant, Waste Management
18 of Nevada, Inc., is obligated to (1) record its notice of lien within ninety (90) days after the
19 quarterly billing goes delinquent and (2) an action (lawsuit) be commenced within six (6)
20 months to foreclose the lien after the recording of the lien.

21 ***The undersigned affirms that the foregoing pleading does not contain a social***
22 ***security number.***

23 DATED this 11th day of March, 2014

C. NICHOLAS PEREOS, LTD.

24
25 By: 
26 C. NICHOLAS PEREOS, ESQ.
27 1610 MEADOW WOOD LANE
28 RENO, NV 89502
ATTORNEY FOR PLAINTIFF

C:\Shared\CLIENTS\Waste Management\Pleading\Min.Partial,SJ.wpd

1 CERTIFICATE OF SERVICE BY MAIL

2 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am
3 an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for
4 mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

5 Gregory S. Gilbert
6 Bryan L. Wright
7 HOLLAND & HART
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

10 Matthew B. Hippler
11 HOLLAND & HART
12 5441 Kietzke Lane, 2nd Floor
13 Reno, NV 89511
775/327-3000
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

14
15 DATED: 3-11-14

16 
17 Sandra Martinez
18
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SCHEDULE OF EXHIBITS

1
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Exhibit 1 Notice of Lien
Exhibit 2 Payment history

EXHIBIT

CV12-02995
WEST TAYLOR STREET VS. HASTIE
District Court
Madison County
03/14/2014 02:26 PM
\$2200
AP01A

EXHIBIT

4086834
02/23/2012 10:10:37 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Katherine Burke
Fee: \$14.00 RPTT: \$0.00
Page 1 of 1

CONFIRMED COPY
ACCT #010-74135

40868346833
02/23/2012 10:10:37 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Katherine Burke
Fee: \$14.00 RPTT: \$0.00
Page 1 of 1

CONFIRMED COPY

COPY - has not been compared
with the Original Document - WCR

NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statutes Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as 347 TAYLOR ST W, RENO, NV more particularly described as follows:

Washoe County Assessor's Parcel #011-266-17

1. The owner(s) or reputed owner(s) of the described real property is/are **WEST TAYLOR STREET LLC**.
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of \$489.47, no part of which has been paid.

DATED: This 22 day of February 2012

Waste Management of Nevada Inc.

By Karen Gonzales
KAREN GONZALES

STATE OF NEVADA)
COUNTY OF WASHOE) : SS.

On the 22 day of February, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledges that she executed this instrument.

Tiffany Fuller
NOTARY PUBLIC

WHEN RECORDED MAIL TO:

Waste Management of Nevada Inc.
Attn: Karen Gonzales
100 Vassar St.
Reno, NV 89502

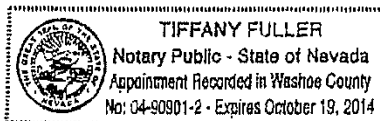


EXHIBIT 1

WTS 0015

JA_0035

EXHIBIT

2

CV12-02895
WEST TAYLOR STREET
District Court
Washington County
03/12/2014 02:26 PM
\$2200
AF01A

EXHIBIT

2

11:44 AM

Customer: 010-74135

PEREOS TRUST

Customer Payment Inquiry

12/17/2013

347 TAYLOR ST W

Item #	Date	Misc	Type Code	Debit	Credit	Total Due
	Current	11/30/2013				
	.00	.00				
			10/31/2013	87.12		
			9/30/2013	.00		
			8/31/2013		776.36	
						863.48
1377187	04/01/07	MISC TAX	INV FRA	4.71		4.71
1377187	04/01/07		INV FR2	.39		5.10
1377187	04/01/07		INV 06A	27.09		32.19
1377187	04/01/07		INV 06P	31.80		63.99
1377187	04/01/07		INV 46A	3.57		67.56
1377187	04/01/07		INV 46P	4.19		71.75
1439314	07/01/07	FIN CHRG	FIN FIN	3.59		75.34
1439314	07/01/07	MISC TAX	INV FRA	2.17		77.51
1439314	07/01/07		INV FR2	.18		77.69
1439314	07/01/07		INV 06A	27.09		104.78
1439314	07/01/07		INV 46A	3.57		108.35
1377187	07/20/07	3080	PMT SLB		20.44	87.91

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

EXHIBIT 2

WM000092

JA_0037

11:44 AM

Customer Payment Inquiry

12/17/2013

Customer: 010-74135

PEREOS TRUST

347 TAYLOR ST W

	Current	11/30/2013	10/31/2013	9/30/2013	8/31/2013	Total Due
	.00	.00	87.12	.00	776.36	863.48
Item #	Date	Misc	Type Code	Debit	Credit	Balance
1569648	10/01/07	FIN CHRG	FIN FIN	4.22		92.13
1569648	10/01/07		INV 06A	30.60		122.73
1569648	10/01/07		INV 46A	3.75		126.48
1739832	01/01/08	FIN CHRG	FIN FIN	5.93		132.41
1739832	01/01/08		INV 06A	30.60		163.01
1739832	01/01/08		INV 46A	3.75		166.76
1377187	01/09/08	3226	PMT SLB		34.35	132.41
1377187	03/31/08	3294	PMT SLB		16.96	115.45
1439314	03/31/08	3294	PMT SLB		25.07	90.38
1803476	04/01/08	FIN CHRG	FIN FIN	5.93		96.31
1803476	04/01/08		INV 06A	30.60		126.91
1803476	04/01/08		INV 46A	3.75		130.66

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000093

JA_0038

11:44 AM

Customer: 010-74135

PEREOS TRUST

Customer Payment Inquiry

12/17/2013

347 TAYLOR ST W

Item #	Date	Misc	Type	Code	Debit	Credit	Total Due
	Current	11/30/2013					
	.00	.00					
					87.12		863.48
1439314	06/27/08	3355	PMT	SLB		776.36	863.48
1569648	06/27/08	3355	PMT	SLB		11.53	119.13
1875824	07/01/08	FIN CHRG	FIN	FIN		22.82	96.31
1875824	07/01/08		INV	06A	5.55		101.86
1875824	07/01/08		INV	06A	30.60		132.46
1939961	10/01/08	FIN CHRG	FIN	FIN	3.75		136.21
1939961	10/01/08		INV	06A	5.73		141.94
1939961	10/01/08		INV	06A	32.31		174.25
1569648	10/20/08	3418	PMT	SLB	3.75		178.00
1739832	10/20/08	3418	PMT	SLB		15.75	162.25
2019746	01/01/09	FIN CHRG	FIN	FIN		20.31	141.94
2019746	01/01/09		INV	06A	6.23		148.17
					32.31		180.48

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000094

JA_0039

11:44 AM Customer Payment Inquiry 12/17/2013
 Customer: 010-74135
 PEREOS TRUST 347 TAYLOR ST W

Item #	Date	Misc	Type	Code	Debit	Credit	Total Due
	Current	11/30/2013					
		.00					863.48
							Balance
2019746	01/01/09		INV	46A	3.75		184.23
2185599	04/01/09	FIN CHRG	FIN	FIN	8.05		192.28
2185599	04/01/09		INV	06A	32.31		224.59
2185599	04/01/09		INV	46A	3.75		228.34
1739832	04/15/09	3540	PMT	SLB		19.97	208.37
1803476	04/15/09	3540	PMT	SLB		16.09	192.28
2250591	07/01/09	FIN CHRG	FIN	FIN	8.44		200.72
2250591	07/01/09		INV	06A	32.31		233.03
2250591	07/01/09		INV	46A	3.75		236.78
1803476	07/13/09	3601	PMT	SLB		24.19	212.59
1875824	07/13/09	3601	PMT	SLB		11.87	200.72
2313754	10/01/09	FIN CHRG	FIN	FIN	8.76		209.48

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

PEREOS TRUST

Customer Payment Inquiry

12/17/2013

347 TAYLOR ST W

	Current	11/30/2013	10/31/2013	9/30/2013	8/31/2013	Total Due
Item #	Date	Misc	Type Code	Debit	Credit	Balance
	.00	.00	87.12	.00	776.36	863.48
2313754	10/01/09		INV 06A	32.31		241.79
2313754	10/01/09		INV 46A	3.75		245.54
1875824	10/06/09	3648	PMT SLB		28.03	217.51
1939961	10/06/09	3648	PMT SLB		8.03	209.48
2382250	01/01/10	FIN CHRG	FIN FIN	9.05		218.53
2382250	01/01/10		INV 06A	32.31		250.84
2382250	01/01/10		INV 46A	3.75		254.59
1939961	01/18/10	3714	PMT SLB		33.76	220.83
2019746	01/18/10	3714	PMT SLB		2.30	218.53
2448207	04/01/10	FIN CHRG	FIN FIN	9.35		227.88
2448207	04/01/10		INV 06A	32.31		260.19
2448207	04/01/10		INV 46A	3.75		263.94

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
F11=Late Payment Fee F12=Previous F13=Start At Date
F14=Include Archived Items F18=Bottom Print=Print Detail

11:44 AM

Customer Payment Inquiry

12/17/2013

Customer: 010-74135

PEREOS TRUST

347 TAYLOR ST W

	Current	11/30/2013	10/31/2013	9/30/2013	8/31/2013	Total Due
	.00		87.12	.00	776.36	863.48
Item #	Date	Misc	Type Code	Debit	Credit	Balance
2448207	05/26/10	VAC	ADJ 06C		18.03	245.91
2514103	07/01/10	FIN CHRG	FIN FIN	17.78		263.69
2514103	07/01/10		INV 06A	32.31		296.00
2514103	07/01/10		INV 46A	3.75		299.75
2514103	09/22/10	VAC	ADJ 06C		36.06	263.69
2579669	10/01/10	FIN CHRG	FIN FIN	29.37		293.06
2579669	10/01/10		INV 06A	32.31		325.37
2579669	10/01/10		INV 46A	3.75		329.12
2019746	10/20/10	3891	PMT SLB		36.06	293.06
2656090	01/01/11	FIN CHRG	FIN FIN	25.99		319.05
2656090	01/01/11		INV 06A	32.31		351.36
2656090	01/01/11		INV 46A	3.75		355.11

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000097

JA_0042

11:44 AM

Customer: 010-74135

Customer Payment Inquiry

12/17/2013

PEREOS TRUST

347 TAYLOR ST W

Item #	Date	Misc	Type	Code	Debit	Credit	Total Due
	Current	11/30/2013					
	.00						
					87.12		
					.00	776.36	863.48
2019746	01/10/11	3950	PMT	SLB		3.93	351.18
2185599	01/10/11	3950	PMT	SLB		32.13	319.05
2721199	04/01/11	FIN CHRG	FIN	FIN	26.50		345.55
2721199	04/01/11		INV	06A	32.31		377.86
2721199	04/01/11		INV	46A	3.75		381.61
2185599	04/11/11	4004	PMT	SLB		11.98	369.63
2250591	04/11/11	4004	PMT	SLB		24.08	345.55
2787349	07/01/11	FIN CHRG	FIN	FIN	27.50		373.05
2787349	07/01/11		INV	06A	32.31		405.36
2787349	07/01/11		INV	46A	3.75		409.11
2250591	09/30/11	4120	PMT	SLB		20.42	388.69
2313754	09/30/11	4120	PMT	SLB		27.66	361.03

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000098

JA_0043

11:44 AM

Customer: 010-74135

Customer Payment Inquiry

12/17/2013

PEREOS TRUST

347 TAYLOR ST W

Item #	Date	Misc	Type	Code	Debit	Credit	Total Due
	Current	11/30/2013					
		.00					863.48
							Balance
2853919	10/01/11	FIN CHRG	FIN	FIN	31.50		392.53
2853919	10/01/11		INV	06A	32.31		424.84
2853919	10/01/11		INV	46A	3.75		428.59
2920601	01/01/12	FIN CHRG	FIN	FIN	32.94		461.53
2920601	01/01/12		INV	06A	32.31		493.84
2920601	01/01/12		INV	46A	3.75		497.59
2313754	01/02/12	4180	PMT	SLB		17.16	480.43
2382250	01/02/12	4180	PMT	SLB		18.90	461.53
2920601	03/05/12	LIEN FEE	ADJ	06D	50.00		511.53
2920601	03/05/12	ADM FEE	ADJ	06D	14.00		525.53
2987388	04/01/12	FIN CHRG	FIN	FIN	33.64		559.17
2987388	04/01/12		INV	06A	32.31		591.48

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000099

JA_0044

11:44 AM

Customer Payment Inquiry

12/17/2013

Customer: 010-74135

PEREOS TRUST

347 TAYLOR ST W

Item #	Date	Misc	Type	Code	Debit	Credit	Total Due
	Current	11/30/2013					
	.00	.00					
					87.12		863.48
2987388	04/01/12		INV	46A	3.75		595.23
2382250	04/09/12	4228	PMT	SLB		26.21	569.02
2448207	04/09/12	4228	PMT	SLB		9.85	559.17
3054603	07/01/12	FIN CHRG	FIN	FIN	44.58		603.75
3054603	07/01/12		INV	06A	32.31		636.06
3054603	07/01/12		INV	46A	3.75		639.81
2448207	07/02/12	4269	PMT	SLB		17.53	622.28
2514103	07/02/12	4269	PMT	SLB		17.78	604.50
2579669	07/02/12	4269	PMT	SLB		.75	603.75
2579669	09/28/12	4322	PMT	SLB		36.06	567.69
3122870	10/01/12	FIN CHRG	FIN	FIN	47.75		615.44
3122870	10/01/12		INV	06A	32.31		647.75

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000100

JA_0045

11:44 AM

Customer Payment Inquiry

12/17/2013

Customer: 010-74135

PEREOS TRUST

347 TAYLOR ST W

	Current	11/30/2013	10/31/2013	9/30/2013	8/31/2013	Total Due
	.00	.00	87.12	.00	776.36	863.48
Item #	Date	Misc	Type Code	Debit	Credit	Balance
3122870	10/01/12		INV 46A	3.75		651.50
3193292	01/01/13	FIN CHRG	FIN LPR	49.17		700.67
3193292	01/01/13		INV 06A	32.31		732.98
3193292	01/01/13		INV 46A	3.75		736.73
2579669	01/09/13	4390	PMT SLB		28.62	708.11
2656090	01/09/13	4390	PMT SLB		7.38	700.73
3317072	04/01/13	FIN CHRG	FIN LPR	52.06		752.79
3317072	04/01/13		INV 06A	32.31		785.10
3317072	04/01/13		INV 46A	3.75		788.85
2656090	04/08/13	4434	PMT SLB		36.06	752.79
3452308	07/01/13	FIN CHRG	FIN LPR	59.63		812.42
3452308	07/01/13		INV 06A	36.06		848.48

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
 F11=Late Payment Fee F12=Previous F13=Start At Date
 F14=Include Archived Items F18=Bottom Print=Print Detail

WM000101

JA_0046

11:44 AM

Customer Payment Inquiry

12/17/2013

Customer: 010-74135

PEREOS TRUST

347 TAYLOR ST W

	Current	11/30/2013	10/31/2013	9/30/2013	8/31/2013	Total Due
	.00	.00	87.12	.00	776.36	863.48
Item #	Date	Misc	Type	Code	Debit	Credit
2656090	07/15/13	4503	PMT	SLB		18.61
2721199	07/15/13	4503	PMT	SLB		17.45
3528807	10/01/13	FIN CHRG	FIN	LPR	51.06	
3528807	10/01/13		INV	06A	36.06	
2721199	10/07/13	4558	PMT	SLB		36.06
			Tot			863.48

F1=Switch Mode F2=Customer Activity F3=Exit F4=Prompt F5=Refresh
F11=Late Payment Fee F12=Previous F13=Start At Date
F14=Include Archived Items F18=Bottom Print=Print Detail

WM000102

JA_0047

CV12-02995
DC-0900055267-066
WEST TAYLOR STREET VS. WASTE
District Court 04/10/2014 11:42 AM
Washoe County
2490
VUT/ABTC

ORIGINAL

FILED

1 CODE: 2490
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

2014 APR 10 AM 11:42

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

BY *[Signature]*
DEPUTY

7 ATTORNEYS FOR PLAINTIFF

8 IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 WEST TAYLOR STREET, LLC,
11 a limited liability company,

Case No. CV12 02995

Dept. No. 4

12 Plaintiff,

13 vs.

14 WASTE MANAGEMENT OF NEVADA,
15 INC., KAREN GONZALEZ, and
16 DOES 1 THROUGH 10,

17 Defendants.

18 **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

19 Plaintiff moves this Court for leave to file a second amended Complaint. This
20 motion is made and based upon the Points and Authorities submitted herewith.

21 **POINTS AND AUTHORITIES**

22 **A. STATEMENT OF FACTS.**

23 Plaintiff is the owner of the property located at 345 and 347 West Taylor Street,
24 Reno, Nevada. On February 23, 2012, Defendant, Waste Management of Nevada, Inc.,
25 caused to record a notice of lien for garbage services at the Washoe County Recorder's
26 office as it relates to 347 West Taylor Street. On March 14, 2014, Defendant, Waste
27 Management of Nevada, Inc., caused to record a notice of lien for garbage services at the
28 Washoe County Recorder's office for 345 West Taylor Street. This last notice of lien was
received by mail on March 27, 2014. A motion for partial summary judgment was filed on

1 March 11, 2014. The substantive issues of the motion for summary judgment pertains to
2 the law for both liens. The substance for the motion for summary judgment is for the Court
3 to determine the application, if any, of the mechanic lien law statutes as they relate to the
4 enforcement of these liens as permitted under NRS 444.520 which is the enabling statute
5 that created the right of the Defendant to lien the property for unpaid fees for garbage
6 services, and the time periods for the lien rights.

7 **B. POINTS AND AUTHORITIES**

8 Plaintiff owns the duplex located at 345 and 347 West Taylor Street. On March 27,
9 2014. Plaintiff received in the mail a notice of lien with regard to 345 West Taylor Street
10 to be distinguished from 347 West Taylor Street. On April 3, 2014, Plaintiff received a
11 notice of intent to lien 347 West Taylor Street. The first amended complaint was confined
12 to the liens and the claims regarding 347 West Taylor Street. It now appears that
13 Defendants seeks to go forward with its liens for 345 and 347 West Taylor Street and
14 Plaintiff seeks to amend the Complaint to address these issues. A copy of the proposed
15 amended complaint is marked **Exhibit "1"** attached to this motion.

16 Rule 15 of the Nevada Rules of Civil Procedure provides that after a lapse of twenty
17 (20) days after the filing of a responsive pleading, a party may amend his pleading only by
18 leave of the Court, and that leave shall be freely given when justice so requires.

19 In the case of Marshall v. City of Carson, 86 Nev. 107, respondents moved,
20 pursuant to Rule 15(b) to amend their pleadings to include an affirmative defense. The
21 District Court allowed the amendment. Appellants contended that this was error. The
22 Supreme Court affirmed the ruling of the lower court, stating at page 111:

23 "Even though the respondents erred in failing to affirmatively
24 plead justification, nevertheless, NRCP 15(b) authorizes the
25 trial court to allow pleadings to be amended and requires that
26 permission shall be freely given when the presentation of the
27 merits of the action would be subverted thereby and the
28 objecting party fails to satisfy the court that the admission of
such evidence would prejudice him in maintaining his action or
defense on the merits.

"It is quite obvious that the presentation of the merits of the
action would be subverted by allowing the respondents to
present evidence of probable cause. Without this evidence

1 only 'half a case' would have been presented to the trial court
2 and the fundamental purpose of the Nevada Rules of Civil
3 Procedure, as stated in NRCP 1, would not have been met.
4 Unless the respondents were permitted to present their
5 defense there would have been no just determination of the
6 action."

7 The Court also noted that the appellants could not have been prejudiced since they
8 must have been prepared to meet the issue of probable cause and could not have claimed
9 to have been surprised or unprepared.

10 In Weiler v. Ross, 80 Nev. 380, the Court, in considering the propriety of an oral
11 motion to amend, reaffirmed the principle that leave to amend should be freely given when
12 justice requires. To the same effect as the case of Good v. District Court, 71 Nev. 38, our
13 Supreme Court concluded:

14 "We think in accordance with the mandate of Rule 15(a) NRCP
15 that leave to amend shall be freely given when justice so
16 requires."

17 In the case of Adamson v. Bowker, 85 Nev. 115, the Court recognized that the
18 propriety of a motion to amend lies within the sound discretion of the trial court. In that
19 case, the Court refused to allow leave because the record was devoid of any allegations,
20 statements or information about the nature or substance of the appellants' proposed
21 amendment. Acknowledging that the purpose of Rule 15(a) is that leave to amend shall
22 be freely given when justice so requires and that this mandate is to be heeded, the Nevada
23 Supreme Court, at page 121, stated as follows:

24 "In Forman v. Davis, *supra*, (371 U.S. 178) Justice Goldberg
25 writing for the Court said: 'If the underlying facts or
26 circumstances relied upon by a plaintiff may be a proper
27 subject of relief, he ought to be afforded an opportunity to test
28 his claim on the merits. In the absence of any apparent or
29 declared reason-- such as undue delay, bad faith or dilatory
30 motive on the part of the movant, repeated failure to cure
31 deficiencies by amendments previously allowed, undue
32 prejudice to the opposing party by virtue of allowance of the
33 amendment, futility of amendment, etc.-- the leave sought
34 should, as the Rules require, be "freely given". Of course, the
35 grant or denial of an opportunity to amend is within the
36 discretion of the District Court, but outright refusal to grant the
37 leave without any justifying reason appearing for the denial is
38 not an exercise of discretion; it is merely abuse of that

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discretion and inconsistent with the spirit of the federal rules.'
We subscribe completely to this interpretation of the intent
and purposes of NRCP 15(a)."

The undersigned affirms that the foregoing pleading does not contain a social
security number.

DATED this 9 day of April, 2014

C. NICHOLAS PEREOS, LTD.

By: 
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

C:\Shared\CLIENTS\Waste Management\Pleading\Wtn.2nd.Amend.Complaint.wpd

1 CERTIFICATE OF SERVICE BY MAIL

2 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am
3 an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for
4 mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

5 Gregory S. Gilbert
6 Bryan L. Wright
7 HOLLAND & HART
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

10
11
12 DATED: 4-9-14

13 
14 Sandra Martinez

SCHEDULE OF EXHIBITS

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Exhibit "1" Proposed Second Amended Complaint

CV12-02895
WEST TAYLOR STREET VS WASTE
District Court 04/10/2014 11:42 AM
Washoe County 2490
VMTI 0010

EXHIBIT 1

EXHIBIT 1

1 CODE: 1090
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**

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

10 *****

11 WEST TAYLOR STREET, LLC,
12 a limited liability company,

Case No. CV12-02995
Dept. No. 4

13 Plaintiff,

14 vs.

15 WASTE MANAGEMENT OF NEVADA,
16 INC., KAREN GONZALEZ, and
17 DOES 1 THROUGH 10,

18 Defendants.

19 **SECOND AMENDED COMPLAINT**

20 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas
21 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as
22 follows:

23 **FIRST CLAIM FOR RELIEF**

24 I

25 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because
26 their true names and capacities of said Defendants are not now known by Plaintiff and
27 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

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At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 345 and 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel Number 011-266-17.

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Recorders Office, Reno, Nevada. On or about November 26, 2012, Defendant did cause to record a notice of lien for garbage fees under Document No. 4177148 at the Washoe County Recorders Office, Reno, Nevada. On or about March 14, 2014, Defendant did cause to record a notice of lien for garbage fees under Document No. 4334435 at the Washoe County Recorders Office, Reno, Nevada. Plaintiff is informed and believes and thereon alleges that Defendant will continue to cause to record liens with regard to the properties at 345 and 347 West Taylor Street and that said liens will be the subject of claims set forth herein.

Subsequent to the recording of these early liens, Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for

1 the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of
2 the lien given its incorrect filing and Defendants refuses to release the subject lien.

3 VII

4 On or about November 15, 2012, Defendants caused to send to Plaintiff a notice
5 of intent to lien for a different amount on the subject property notwithstanding the earlier
6 lien.

7 VIII

8 Plaintiff is informed and believes and thereon alleges that the basis for any lien
9 against the subject property is by reason of Nevada Revised Statute 444.520.

10 IX

11 Pursuant to NRS 444.520, any lien against the subject property was to be
12 foreclosed consistent with foreclosure of mechanic's lien.

13 X

14 At all times herein mentioned, the recording of the subject liens referenced
15 hereinabove was improper and Defendant continued to record liens for purposes of
16 recognizing the improper nature of its liens previously filed.

17 XI

18 At no time has Defendant undertaken a foreclosure of any lien pursuant to the
19 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court
20 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's
21 property.

22 XII

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to an allowance of attorneys fees as special damages
25 by reason thereof.

26 ///

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1 **SECOND CLAIM FOR RELIEF**

2 I

3 Adopt by reference and make a part hereof each and all of the statements and
4 averments contained in the First Claim for Relief hereinabove.

5 II

6 At all times herein mentioned, the basis for the recording of any lien for garbage
7 fees arises by reason of statutory edict. Plaintiff is informed and believes that said
8 statutory scheme does not provide for an opportunity to contest the legitimacy of the
9 recording of the lien or any opportunity to be heard by the lien debtor and no mechanism
10 for commencement of a dispute resolution concerning the lien or the amount of the lien.

11 III

12 The subject statutory scheme of NRS 444.520 mandates service of a notice of lien
13 but does not provide for any mechanism by which there is an opportunity to be heard by
14 the owner of the property, the opportunity to contest the legitimacy of the lien by the owner
15 of the property, or an obligation of the lien claimant a methodology for dispute resolution
16 to an impartial tribunal by reason of the recording of the notice of lien.

17 IV

18 Should this Court determine that there is no obligation by Defendant to conform to
19 the mechanic lien laws for the foreclosure of said lien as dictated in the statute of Nevada
20 mandating the commencement of a lawsuit within six months of the recording of the lien,
21 then the recording of said lien deprives Plaintiff of its property by due process of law and
22 the subject statute is unconstitutional according to Constitution of the State of Nevada and
23 these United States.

24 **THIRD CLAIM FOR RELIEF**

25 I

26 Adopt by reference and make a part hereof each and all of the statements and
27 averments contained in the First Claim for Relief hereinabove.

28 ///

1 II

2 At all times herein mentioned, Defendants knew or should have known that the
3 recording of the subject lien was without basis or merit and that the recording would impact
4 and impair Plaintiff's ownership of the property. Defendant continues to record liens
5 against the subject property by reason of the impropriety of the recording of earlier liens.
6 Plaintiff is informed and believes that Defendant will continue to record liens against the
7 subject property.

8 III

9 At all time herein mentioned, Defendants have caused to slander Plaintiff's title to
10 said property and each recording of the lien constitutes a separate act of slander
11 proximately causing the damages mentioned herein. Plaintiff submits that all future
12 recordings of liens against the subject property constitute a separate act of slander and
13 Plaintiff will ask leave to amend this complaint at the time of trial to show each separate
14 act of slander.

15 IV

16 As a proximate result of the foregoing, Plaintiff has sustained special damages
17 consisting of attorney's fees for purposes of removing the slanderous document from
18 Plaintiff's title ownership for an amount in excess of \$40,000.

19 V

20 As a proximate result of the foregoing, Plaintiff has sustained general damages in
21 a sum in excess of \$40,000.

22 VI

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to special damages by reason of the same.

25 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them,
26 as follows:

27 1. For general damages in a sum in excess of Forty Thousand Dollars
28 (\$40,000.00).

1 2. For special damages consisting of attorney's fees for a sum in excess of
2 Forty Thousand Dollars (\$40,000.00).

3 3. For costs of suit herein.

4 4. For reasonable attorneys fees herein.

5 5. For such other and further relief as may be just and proper.

6 6. For a declaration from this Court that Plaintiff was required to comply with
7 mechanic lien laws in connection with the recording of the subject lien referenced herein.

8 7. Alternatively, for a ruling from this Court that the subject statute is
9 unconstitutional.

10 The undersigned affirms that the foregoing pleading does not contain a social
11 security number.

12 DATED this ____ day of April, 2014.

C. NICHOLAS PEREOS, LTD.

13
14 By: _____
15 C. NICHOLAS PEREOS, ESQ.
16 1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

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FILED

2014 APR 11 PM 3:44

JOEY HASTINGS
CLERK OF COURT
DEPUTY

CV12-02995
WEST TAYLOR STREET VS WASTE 13
District Court 04/11/2014 03:44 PM
Washoe County
3798
MT09RRC

1 CODE: 3795
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

8 IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 *****

11 WEST TAYLOR STREET, LLC,
12 a limited liability company,

Case No. CV12 02995
Dept. No. 4

13 Plaintiff,

14 vs.

15 WASTE MANAGEMENT OF NEVADA,
16 INC., KAREN GONZALEZ, and
17 DOES 1 THROUGH 10,

18 Defendants.

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REPLY ARGUMENT IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

A. INTRODUCTION.

The issue before this Court is the application of the language in the enabling statute of NRS 444.520 that states that the lien is to be foreclosed in the same manner as provided for the foreclosure mechanic's liens. Does the statute for foreclosure of mechanic's liens provide an opportunity to resolve disputes? Does the statute for foreclosure of mechanic's liens provide a time period for which these disputes are to be resolved? Is the lawsuit of this nature the only vehicle available to a property owner when the property owner disputes the legitimacy of the lien? Another issue before the Court is the time period by which liens are to be filed. Is the time period unlimited? Is there a limitation on the time period? Does the mechanic's liens foreclosure statutes provide guidance on the limitation of the time period?

C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502

JA_0061

1 At this stage of the case, Plaintiff has not yet addressed the legitimacy of the
2 quantitative amount of the liens that have been recorded against this property. Plaintiff is
3 addressing the methodology and procedures that are to be undertaken by the lien claimant
4 in enforcing the garbage lien. Defendant advances the position that its garbage lien exists
5 in perpetuity if it elects never to foreclose the garbage lien and does not have to comply
6 with the mechanic's lien statutes except as they relate to securing a judgment of
7 foreclosure. The Defendant takes the position that its garbage lien exists for unpaid
8 garbage fees in perpetuity even if it does not record a garbage lien. Meanwhile, this stated
9 argument doesn't even exist for real property taxes as will be discussed hereinafter.

10 **B. REMARKS TO FACTUAL STATEMENT.**

11 A franchise agreement attached as Exhibit 2 to the reply argument is informative.
12 Plaintiff is not disputing the existence of the franchise agreement. However, the language
13 of the franchise agreement is harmful to Defendant's position. Article 5.6 of the franchise
14 agreement (Page 13) discusses that Reno Disposal can only apply the residential rate
15 whenever there is an accumulation of garbage from the premises. It goes on to state:

16 "(ii) Billing for residential service shall be in advance ... on a
17 quarterly basis, and such charges shall be due and payable on
18 the first day of each billing period. The bill or charge for
19 residential service shall be delinquent if not fully paid on the
20 last day of each quarterly period.

21 ...
22 (iv) In case any person shall fail to pay the charges for
23 residential or commercial service, within 15 days after the
24 same become delinquent, franchise holder shall be entitled to
25 charge interest on such delinquent accounts...

26 (v) All charges and penalties provided for in the franchise shall
27 constitute a debt and obligation of the owner or reputed owner
28 of the real property..."

By executing the franchise agreement, Defendant has acknowledged that an account is
delinquent after the expiration of fifteen days following the end of the quarter if the amount
claimed to be due is not paid!

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1 **C. ARGUMENT.**

2 **1. Summary Judgment Standard:** A summary judgment under NRCP 56 is
3 appropriate when there is no genuine issue of fact and the moving party is entitled to a
4 judgment as a matter of law. Salas v. Allstate Rent-A-Car, 116 Nev. 1165, 14 P.3d 511,
5 513 (2000). The matter before the Court for decision regards application of the law so that
6 a jury in this case can be appropriately instructed. This motion is a partial summary
7 judgment asking the Court to make certain legal rulings which will define the nature of the
8 claims to be presented to the jury.

9 **2. Statutory Interpretation:** Judicial construction and intervention in
10 interpreting statutes arise from the intrinsic difficulties of language and the emergents
11 situations after enactment of the statutes not anticipated by the most gifted legislatures.
12 These situations demonstrate ambiguities in a statute that compel judicial intervention.
13 The purpose of construction is to ascertain meaning of every consideration brought to bear
14 with regarding to the statute for the solutions of the problem at hand. (Some Reflections
15 on the Reading of Statutes, by Justice Felix Frankfurter, presented at the Benjamin
16 Cardozo Lecture before The Association of the Bar of the City of New York (1947) (See
17 **Exhibit "1"**, Page 215.)) We agree with the proposition advanced by Defendant on Page
18 7, Line 20 of its brief wherein Defendant states:

19 "Statutes within a scheme and provisions within a statute must
20 be interpreted harmoniously with one another in accordance
21 with the general purpose of those statutes and should not be
22 read to produce unreasonable or absurd results." Washington
v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

22 In other words, the judicial branch of the government interprets the statute in the context
23 of the events before the Court and if the statute does not address those events, the statute
24 is to be interpreted harmoniously with other statutes that are a part thereof. When
25 Defendant advances a proposition that the lien exists in perpetuity without any limitations,
26 is this harmonious with the statutes of Nevada? When the Defendant advances the
27 proposition that the debt of the garbage lien lasts in perpetuity, is this harmonious with
28 Nevada law?

1 The issue before the Court is not the public policy supporting the collection of refuse
2 (garbage) in residential districts. The issue before the Court is a methodology for
3 resolution of disputes created by the filing of a garbage lien. Defendant wants unchecked
4 authority to record a garbage lien against property and not be held accountable for the
5 amount set forth in the garbage lien. Defendant wants this Court to accept the proposition
6 that the statute enabling it to record a garbage lien gives it unchecked authority without
7 accountability. Even the county government in regard to collection of real property taxes
8 does not have such authority as is discussed hereinafter.

9 The legislative hearings that are referenced as Exhibits 10, 11, 12 and 13 do not
10 address any of the issues before this Court. If one reads through those hearing transcripts,
11 it is evident that Republic Disposal wanted protection for a garbage lien for unpaid fees
12 notwithstanding the relationship that existed between an owner and a tenant. The
13 legislature agreed by giving Republic Disposal the right to record a garbage lien. The
14 legislature did not address the issue of dispute resolution. The legislature did not indicate
15 that the garbage lien was to have the same protections as a real property tax. In fact, the
16 comments of Assemblywoman Gerhardt, made on Page 15 of Exhibit 13 are informative:

17 "I'm always concerned about liens on a person's home; that's
18 pretty sacred. I have a problem with putting someone's home
in jeopardy for a bill that they are not really responsible for."

19 The response of the Representative of Republic Disposal is informative. Jennifer Lazovich
20 states:

21 "Republic goes through several steps prior to going to the
22 extreme step of putting on a lien. More recently, in addition to
23 several letters they send out about you not having paid your
24 bill, they have instituted language within letters, which says
that if you don't pay, this will ultimately affect your credit and
could be turned over to a collection service..." (Page 15 of
Exhibit 13.)

25 In response to inquiry by Assemblyman Horne, Jennifer Lazovich states:

26 "It operates in the same way as a mechanic's lien. The
27 ultimate step could take place; foreclosure proceedings could
28 be brought forward... By the time they start sending out those
letters, it always gets paid, even if they have taken it to the
extreme level of filing the lien." (Page 15-16 of Exhibit 13.)

1 The testimony is indicative of the attitude that Defendant seeks the unilateral right to lien
2 a person's property without accountability. But the committee hearings do tell us that the
3 committee never addressed the issue of dispute resolution before or after the recording of
4 the lien. The hearings with regard to Senate Bill 354 were primarily focused on the issue
5 of responsibility between the tenant and the landlord which Defendant acknowledged when
6 it emphasized in its brief on Page 11, Line 4, that "the owner of the property will have to
7 ultimately address the lien, even if he had a tenant in violation." The issue before this
8 Court on this pending motion has nothing to do with an owner versus a tenant. It has to
9 do with the methodology for dispute resolution of a garbage lien that has been placed
10 against a parcel of property. The facts in this case will show that there was an attempt to
11 address this issue before and after the recording of the lien with no success.

12 **3. Statutory Language in NRS 444.540:** There is no dispute that NRS
13 444.520 enables Defendant to record a garbage lien. Now the issue is what happens with
14 the lien after it's recorded? The statute tells us that the lien may be foreclosed consistent
15 with the foreclosure mechanic's liens. However, a mechanic's lien cannot be foreclosed
16 until there are certain events that occur prior to the foreclosure. If this "garbage lien" is to
17 be foreclosed in the same manner as provided for the foreclosure of mechanic's liens,
18 there are certain prerequisites that have to be followed by lien holder.

19 The Nevada Supreme Court has repeatedly held that there must be strict
20 compliance by the moving party with statutes creating a remedy particularly the foreclosure
21 of mechanic's lien. In the case of Schofield v. Copeland Lumber, 101 Nev. 83, 692 P.2d
22 519 (1985), the Nevada Supreme Court reversed the decision for summary judgment in
23 an action filed by a contractor to foreclose the mechanic's lien. In discussing the complaint
24 of foreclosure, the Supreme Court observed:

25 "The mechanic's lien is a creature of statute, unknown at
26 common law. Strict compliance with the statute creating the
27 remedy is therefore required before a party is entitled to any
28 benefits occasion by its existence.... If one pursues his
statutory remedy by filing a complaint to perfect a mechanic's
lien, he necessarily implies full compliance with the statutory
prerequisite giving rise to the cause of action." Id. at Page 84.

1 Although the Nevada Supreme Court has recognized that strict compliance with the
2 language of the mechanic's lien is not required in connection with the content of the lien,
3 the same does not hold true in connection with compliance with the statute to perfect and
4 foreclose the lien. In Fisher Bros., Inc. v. Harrah Realty Co., 92 Nev. 65, 545 P.2d 203
5 (1976). Harrah's contracted with Stolte, Inc. Stolte engaged Terry Construction. Terry
6 Construction engaged Fisher Brothers. Harrah paid Terry Construction. Terry
7 Construction did not pay Fisher Brothers. In an action to foreclose the lien, the Court
8 observed:

9 "Strict compliance with the statutes creating the remedy is
10 therefore required before a party is entitled to any benefits
11 occasioned by its existence [citation omitted]. If one pursues
12 his statutory remedy by filing a complaint to perfect a
mechanic's lien, he necessarily implies full compliance with the
statutory prerequisites giving rise to the cause of action." Id.
at Page 67.

13 In Hardy Companies, Inc. v. SNMARK, Inc., 126 Nev.Adv.Op. 49, 240 P.3d 1149
14 (2010), the court noted:

15 "Failure to either fully or substantially comply with the
16 mechanic's lien statute will render a mechanic's lien invalid as
a matter of law." Id. at Page 155.

17 There is additional case law from other jurisdictions that indicate that failure to
18 comply with a mechanic's lien statute's procedural provisions will preclude the lien's validity
19 and enforcement. In Rollar Construction and Demolition, Inc. v. Granite Rock Assoc's,
20 LLC, 891 A.2d 133, 135-36, (Conn.Ct.App. 2006), the court stated:

21 Although the mechanic's lien statute creates a statutory right in derogation
22 of the common law . . . its provisions should be liberally construed in order
23 to implement its remedial purpose of furnishing security for one who provides
services or materials. . . . Our interpretation, however, may not depart from
24 reasonable compliance with the specific terms of the statute under the guise
of a liberal construction.

25 (Citations omitted.) The court further noted:

26 General Statutes Sec. 49-34 includes five requirements to filing a valid
mechanic's lien. If any of those requirements fail, the lien is invalid.

27 Id. at FN 7. Similarly, in Westcon/Dillingham Microtunnelling v. Walsh Constr. Co. of
28 Illinois, 747 N.E.2d 410 (Ill.Ct.App. 2001), the court stated:

1 The purpose of the Act is to protect those who, in good faith, have furnished
2 materials and labor for the construction of buildings or public improvements.
3 Section 39 of this Act states that "[t]his act is and shall be liberally construed
4 as a remedial act." 770 ILCS 60/39 (West 1998). Nevertheless, because
5 the rights created are statutory and in derogation of common law, the
6 technical and procedural requirements necessary for a party to invoke the
7 protection of the Act must be strictly construed. . . . Once a plaintiff has
8 complied with the procedural requirements upon which a right to a lien is
9 based, the Act should be liberally construed to accomplish its remedial
10 purpose.

11 Id. at 416 (citations omitted). Further,

12 It is well established that the creation of a mechanic's lien is entirely
13 governed by the Act, and the rules of equity jurisprudence are irrelevant at
14 this stage.

15 Id. See also Crawford Supply Co. v. Schwartz, 919 N.E.2d 5, 12:

16 Because the rights under the Act are in derogation of the common law, the
17 steps necessary to invoke those rights must be strictly construed.

18 (Citing Westcon/Dillingham, *supra*.)

19 In National Lumber Co. v. Inman, 933 N.E.2d 675 (Mass.Ct.App. 2010), the court
20 noted that the purposes of the mechanic's lien statute "include the protection of the owners'
21 real estate," and that "the statute contains filing and notice requirements to protect the
22 owner and others with an interest in the property."

23 In In Re Trilogy Development Co., 468 B.R. 854 (W.D. Mo. 2011), the court noted
24 that while "mechanic's liens in Missouri are remedial in nature and should be liberally
25 construed for the benefit of the lien claimants," it further stated that "this liberal policy is not
26 open-ended and does not relieve a lien claimant of reasonable and substantial compliance
27 with statutory requirements." Id. at 862 (citations omitted).

28 Finally, in Southern Management Co. v. Kevin Willes Constr. Co., Inc., 856 A.2d
626, 637, (Md.Ct.App. 2004), the court held:

Mechanic's liens, as they exist in this State, are creatures of
statute, and, thus, to be entitled to a mechanic's lien against
property in Maryland, a claimant must satisfy the procedural
criteria set forth in the statute.

See also Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 179 A.2d. 683, 685
(Md.S.Ct. 1962)(stating that "a mechanic's lien is a claim created by statute and is

1 obtainable only if the requirements of the statute are complied with.")

2 Defendant disputes the necessity to perfect the garbage lien as required by the
3 mechanic's lien law statutes. Instead, Defendant argues that NRS 444.520 provides its
4 own methodology for perfecting the lien by mailing and recording which would inherently
5 include delivering and indexing. Let us assume that this Court accepts that proposition,
6 to wit, NRS 444.520 provides its own methodology for perfection. It still does not address
7 the issue of dispute resolution after the lien has been perfected? It does not address the
8 issue as to the time periods of placement of a garbage lien? At least the Defendant
9 acknowledges that it has a requirement to perfect the lien!

10 **4. Time for Recording of Lien:** Defendant submits that it can perfect its lien
11 through compliance of NRS 444.540(4). However, this statute does not address the issue
12 of timing in connection with the recording of the lien. NRS 108.226 mandates that a lien
13 be recorded within ninety (90) days after the date of completion of work. According to the
14 franchise agreement, Defendant is entitled to payment by the end of each quarter in which
15 the billing has occurred. In other words, the account becomes delinquent after the
16 calendar quarter when there has not been a payment. Defendant is entitled to his payment
17 on a quarterly basis because he has completed services for that quarter. Defendant
18 ignores the franchise agreement which clearly defines when the payment is due. The
19 legislative intent nor the statute support the interpretation advanced by Defendant that they
20 have an indefinite period of time after the account goes delinquent by which to record the
21 lien. Under that interpretation, NRS 11.190 would have no bearing on this case! The
22 county government does not even have this unlimited right. As it relates to real property
23 taxes, the Attorney General has concluded that there is a time limitation on the property
24 taxes for three years under NRS 11.190. See AGO Opinion 91 (August 10, 1951). This
25 ruling by the Attorney General was made notwithstanding the language set forth in the real
26 property statutes of NRS 361.450 which provides that real property taxes are a perpetual
27 lien against the property. More importantly, Defendant's argument ignores the Nevada
28 case law that clearly holds that if you are going to foreclose a mechanic's lien pursuant to

1 the mechanic's lien law statutes, you must comply with the enabling statutes that permit
2 you to create a mechanic's lien so that you can record one. Furthermore, the legislative
3 intent does not support the interpretation advanced by Defendant, to wit, Defendant has
4 an indefinite period of time after the account goes delinquent by which to record the lien.
5 There is nothing contained in NRS 444.520 that exempts it from NRS 11.190. On the
6 contrary, the incorporation of foreclosing a garbage lien in accordance with the mechanic's
7 lien laws would by definition incorporate NRS 108.226 after the debt became due.
8 Similarly, Defendant's argument with regard to timing of the recording of a garbage lien
9 smacks of the language set forth in the franchise agreement.

10 **5. Duration of the Recorded Lien:** Defendant's argument is that NRS 108.233
11 is not controlling as the legislative intent was to only incorporate NRS 108.239 and submits
12 that the arguments made earlier in its brief support this proposition. In reviewing the
13 minutes of the legislative hearings, there is nothing indicating that the garbage lien after
14 recorded was designed to last in perpetuity. There is nothing to indicate that the garbage
15 lien was intended to last beyond the limitations of NRS 11.080(3), to wit, the Statute of
16 Limitations. There is nothing to indicate that the legislature intent was that only a portion
17 of the mechanic's lien law statutes apply when they incorporated the language in the
18 statute that the "lien may be foreclosed in the same manner as provided for the foreclosure
19 of mechanic's liens." Its simply not in the minutes anywhere! More importantly, the
20 argument ignores the fact that in order to implement the foreclosure of the mechanic's lien
21 under NRS 108.239, you must comply with the earlier provisions set forth in Chapter 108
22 of Nevada Revised Statutes to include the filing of a lawsuit within the six month window
23 after the recording of the lien. (See, Pages 5 through 7 of this brief.)

24 Defendant goes on to argue that the language of the statute provides that the
25 garbage lien is to exist in perpetuity. If the Court accepts this argument, here lies one of
26 the problems with this case. A lien against property is an encumbrance. A lien is a charge
27 or encumbrance against property, binds the property to a debt. See Black's Law
28 Dictionary, Rev. 4th Ed., Page 1072. The statute provides no mechanism for dispute

1 resolution with regard to that encumbrance. (The Constitution issues will not be briefed at
2 this time so as not to impose an unfair advantage on other counsel.) Meanwhile,
3 Defendant's argument ignores the fact that the enabling statute discusses a foreclosure
4 of a mechanic's lien as being the methodology for enforcement of the lien and does not
5 isolate only part of Chapter 108 as a means of that enforcement. According to the
6 Defendant's argument, there would be no limitations as set forth under NRS 11.190.
7 According to the Defendant's argument, even NRS 11.190 did not provide a time limitation
8 on the life of the garbage lien, ergo, you would have an interpretation of NRS 444.520
9 which would be inconsistent with NRS 11.090. Defendant relies upon the case cited in
10 Colorado of N. Washington Water and Sanitary District v. Majestic Sav. and Loan Ass'n,
11 594 P.2d 599 (Colo.App., 1979), to support its proposition that this garbage lien equates
12 to a tax. However, there are some major differences with regard to that case. First, the
13 water district secured a judgment after filing a lawsuit several months after the account
14 became delinquent. The Court did not address with the issue of the time life of the
15 garbage lien. After securing the judgment, the water district then filed a lawsuit for
16 foreclosure recording a lis pendens against the property within one year after providing
17 subject services. In this case, Defendant wants this Court to believe that the garbage lien
18 exists in perpetuity. Majestic did not record its mortgage until after the filing of the lis
19 pendens and second lawsuit. Clearly, Majestic was on notice of the earlier claims from the
20 lis pendens being earlier in time. Third, Majestic was a mortgage lien holder to be
21 distinguished from an owner of the property. As a lien holder, Majestic did not stand in the
22 shoes of an owner. Fourth, we do not know the intent of the legislature in Colorado when
23 it passed the statute or its legislative intent. It is not discussed in the Colorado case.
24 Meanwhile, we do know that the legislative intent in this case and it never discussed or
25 consider this lien as a tax against the property.

26 Defendant has another major problem with its argument that this garbage lien is to
27 exist in perpetuity. Defendant would like this Court to equate the lien as a tax. Meanwhile,
28 the tax statutes of Nevada mandate the filing of a lawsuit to collect delinquent tax. See

1 NRS 361.635. If you look at the tax statutes, the property taxes are classified as being a
2 perpetual lien, NRS 361.450(1), but these liens have a limitation of life according to the
3 Attorney General's opinion. See AGO 91 (August, 10, 1951). In other words, the unlimited
4 life argument of the garbage lien is not supported by the other statutes of Nevada, the
5 other laws of Nevada, and the Attorney General's opinion.

6 **6. Conclusion:** The Court is facing the following issues for resolution:

7 1. What is the significance of the incorporation of the mechanic's lien law
8 statutes in connection with the garbage lien?

9 2. How far back in time can the Defendant go when it records a garbage
10 lien? Is there a time limitation?


11 3. After recording of the lien, does the lien exist in perpetuity or is there
12 a time limitation with regard to its enforcement? What is the time limitation?

13 These issues are not factually intensive and are ripe for a decision and a partial
14 motion for summary judgment.

15
16 The undersigned affirms that the foregoing pleading does not contain a social
17 security number.

18 DATED this 11th day of April, 2014

C. NICHOLAS PEREOS, LTD.

19
20 
21 By: C. NICHOLAS PEREOS, ESQ.
22 1610 MEADOW WOOD LANE
23 RENO, NV 89502
24 ATTORNEY FOR PLAINTIFF

25 C:\Share\CLIENTS\Waste Management\Pleading\Reply.SJM.wpd

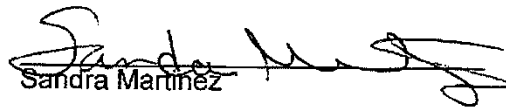
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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

DATED: 4-11-14


Sandra Martinez

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SCHEDULE OF EXHIBITS

Exhibit "1" Some Reflections on the Reading of Statutes

CV12-02396
DC-09900055303-087
WEST TAYLOR STREET VS WASTE 2 Pages
District Court 04/11/2014 03:44 PM
Washee County 3795
MTABEE

EXHIBIT

EXHIBIT

men. The area for judicial construction may be contracted. A large area is bound to remain.

The difficulties are inherent not only in the nature of words, of composition, and of legislation generally. They are often intensified by the subject matter of an enactment. The imagination which can draw an income tax statute to cover the myriad transactions of a society like ours, capable of producing the necessary revenue without producing a flood of litigation, has not yet revealed itself. (See 1 Report of Income Tax Codification Committee, Cmd. 5131, (1936) pp. 16 to 19.) Moreover, government sometimes solves problems by shelving them temporarily. The legislative process reflects that attitude. Statutes as well as constitutional provisions at times embody purposeful ambiguity or are expressed with a generality for future unfolding. "The prohibition contained in the Fifth Amendment refers to infamous crimes—a term obviously inviting interpretation in harmony with conditions and opinions prevailing from time to time." Mr. Justice Brandeis in *United States v. Moreland*, 258 U. S. 433, 451. And Mr. Justice Cardozo once remarked, "a great principle of constitutional law is not susceptible of comprehensive statement in an adjective." *Carter v. Carter Coal Co.*, 298 U. S. 238, 327.

The intrinsic difficulties of language and the emergence after enactment of situations not anticipated by the most gifted legislative imagination, reveal doubts and ambiguities in statutes that compel judicial construction. The process of construction, therefore, is not an exercise in logic or dialectic: The aids of formal reasoning are not irrelevant; they may simply be inadequate. The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone. To speak of it as a practical problem is not to indulge a fashion in words. It must be that, not something else. Not, for instance, an opportunity for a judge to use words as "empty vessels into which he can pour anything he will"—his caprices, fixed notions, even statesmanlike beliefs in a particular policy. Nor, on the other

1 IN THE SECOND JUDICIAL DISTRICT COURT
2 STATE OF NEVADA, COUNTY OF WASHOE
3 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE
4
5 WEST TAYLOR STREET, LLC,
6 Plaintiff,
7 vs. Case No. CV12-02995
8 WASTE MANAGEMENT OF Dept. No. 4
9 NEVADA, INC.,
10 Defendant.
11 _____ /

12 TRANSCRIPT OF PROCEEDINGS
13 STATUS CONFERENCE
14 MAY 7, 2014

15
16 APPEARANCES:

17 For the Plaintiff: C. NICHOLAS PEREOS, ESQ.
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25 Reported by: ROMONA MCGINNIS, CCR #269
26 MOLEZZO REPORTERS
27 (775) 322-3334

1 RENO, NEVADA, WEDNESDAY, MAY 7, 2014, 9:00 A.M.

2 --o0o--

3
4 THE COURT: The next matter is West Taylor
5 Street versus Waste Management of Nevada.

6 MR. PEREOS: Nick Pereos on behalf of the
7 plaintiff, your Honor.

8 MR. WRIGHT: Good morning, your Honor.
9 Bryan Wright on behalf of the defendant.

10 THE COURT: Good morning. This is an
11 interesting date and time for you all. As I was
12 preparing for today's hearing, it became clear to
13 me that you all have actually agreed to allow West
14 Taylor to amend the pleadings, as long as you can
15 continue to move forward and do some other things.
16 Is that correct?

17 MR. PEREOS: I would say that's a fair
18 characterization, but I'll let the defendant
19 respond.

20 MR. WRIGHT: With the caveat that it's
21 amend to add the Attorney General's Office as a
22 party if this hearing doesn't go the way Mr. Pereos
23 was hoping for. So we've allowed them to amend.
24 They had filed recently to address a new lien that

1 my client filed in March of this year. I don't
2 know if the amended complaint's already on file for
3 that.

4 MR. PEREOS: No, not yet.

5 MR. WRIGHT: So that might be what you're
6 talking about, and I apologize.

7 THE COURT: No. I was talking about the
8 agreement to bring in a party of the Attorney
9 General's Office, and then I perhaps misunderstood.
10 I thought the agreement was that you were going to
11 do that, but you were all in agreement that it made
12 sense to do that before a ruling was entered on the
13 summary judgment.

14 MR. PEREOS: Let me clarify, if I may,
15 your Honor. I think where the confusion is this:
16 Since the last amendment to the complaint and since
17 the last time I petitioned the Court to extend the
18 time frame in which to bring the Attorney General
19 along, there was another lien recorded. So then I
20 made a motion to amend my complaint, the purpose of
21 which was to include all liens and whatever liens
22 would be recorded. That's what's now pending. I
23 believe counsel and I stipulated that I can go
24 ahead and file that amended complaint. In that

1 same stipulation, we both agreed on another issue,
2 that the case shouldn't go forward yet to the trial
3 until you've made some preliminary rulings from the
4 bench, because it's going to impact the outcome of
5 the case. Now, I hadn't filed that amended
6 complaint pending the order, and I'm still
7 waiting -- we're kind of still waiting on the order
8 vacating the trial date, because that hasn't been
9 issued yet.

10 If I may, one more thing. In that same
11 stip, we also agreed to continue certain aspects of
12 discovery, because the discovery cutoff had expired
13 and counsel wanted leave to pursue some discovery
14 issues with regard to the new lien that
15 precipitated the new amended complaint.

16 THE COURT: Okay, that hasn't been filed.

17 MR. PEREOS: That has not been filed yet.

18 THE COURT: Do you foresee needing a
19 ruling from me prior to bringing in the Attorney
20 General's Office and having them weigh in on the
21 issue that's before me?

22 MR. PEREOS: I don't see the Attorney
23 General having to weigh in on the issues that are
24 before you now. Depending upon your ruling, it

1 will have an impact -- the way I see it is this.
2 If this court rules that these liens exist
3 in perpetuity, as argued by the defendant in their
4 brief, then there's the issue of due process
5 because then there's no cutoff with regard to the
6 life of the lien. That's the way I see it. Under
7 that set of circumstances, the issue of
8 constitutionality may be raised, but then counsel
9 may in turn say, "Well, no, it's not really
10 unconstitutional to allow you due process." The
11 Attorney General does not have to come into the
12 case.

13 MR. WRIGHT: It's my understanding, your
14 Honor, is that I had always looked at this as a
15 two-step process, with today being step one and the
16 first issue being, How does the mechanic's lien
17 statute impact the garbage lien statute? If your
18 Honor, the way I had interpreted it, follows Mr.
19 Pereos's interpretation of the mechanic lien
20 statute and the garbage lien statute, then we move
21 forward and there's no need for the Attorney
22 General's Office to be a party or to weigh in on
23 anything. My understanding is that if you agree
24 with our position, then Mr. Pereos's next argument

1 is going to be, well, if that interpretation is
2 correct, then the statute is unconstitutional, at
3 which time the Attorney General's Office would need
4 to be added before we could go any further with the
5 rest of the trial, as far as the slander of title
6 and is the lien good in the first place monetarily.
7 So that's how I understood it. I'm hopeful that's
8 correct.

9 MR. PEREOS: I would affirm that --

10 THE COURT: All right. So let's start
11 with the things that we need to do either way,
12 which is to continue the trial date. Correct?

13 MR. PEREOS: That's correct.

14 THE COURT: So based upon that stipulation
15 and the request, the Court is going to grant that
16 request. Then the request to extend discovery --
17 there is no opposition with regard to the limited
18 amount of extension that you're requesting, and
19 depending on whether or not the Attorney General
20 gets involved, we're going to have to deal with a
21 new scheduling order anyway, if that were to come
22 to pass. So --

23 MR. PEREOS: If I may, your Honor -- and I
24 never mean to be rude by cutting the Court off, but

1 I believe that in the stip, counsel put in 90 days
2 to extend that discovery versus an unlimited amount
3 of time, which is okay with me, the unlimited
4 amount of time versus the 90 days, whatever the
5 Court wants to do.

6 THE COURT: Well, 90 days -- when were you
7 counting it?

8 MR. WRIGHT: So -- and this creates a bit
9 of an issue -- what happens if the Attorney
10 General's Office comes in? And my thoughts as far
11 as setting a new trial date and all those things, I
12 don't know if they're premature today, because if
13 your Honor rules in a way that has Mr. Pereos
14 deciding he wants to bring the AG's office in -- if
15 I'm the AG, my first response is I want a new trial
16 date, I want discovery, I want to start anew, and I
17 don't want the Court to have to set a third, fourth
18 trial date because we're in that position. So I
19 don't know if we're premature in trying to set
20 something today. Going to your original question,
21 the 90 days, I had asked for 90 days off of the
22 existing discovery close date, because what I'm
23 asking for in terms of additional discovery, for me
24 personally, is limited to this new March 2014

1 garbage lien and anything that relates to that. So
2 I don't need more than 90 days, but the Attorney
3 General might.

4 THE COURT: All right. What I think makes
5 sense today is I'm going to vacate the jury trial,
6 and at some point today, we'll set a status hearing
7 to decide what we're going to do after that, and at
8 that status hearing, we can see where we're at.

9 With regard to discovery, I don't see any reason
10 why I can't lift the discovery cutoff now, knowing
11 that I may impose a short end to it sometime in the
12 future at our status conference. So, for now, you
13 can conduct your discovery while we're waiting.

14 I'm going to hear your oral arguments today and
15 then I'm going to anticipate ruling at the status
16 conference, if not before. So I may rule in
17 writing before, but it's possible that I won't
18 enter a ruling until I see you at the status
19 conference we're going to set today, which we'll
20 try to set it within 30 days, 45 days, whatever the
21 calendar shows, and then I may give you an oral
22 decision, at which point we can decide where we're
23 going to go from there. Is that the housekeeping
24 issue that you --

1 MR. PEREOS: Yes, I believe that takes
2 care of all the housekeeping issues.

3 THE COURT: So the clerk is looking now
4 for a possible status hearing and then we can go
5 forward with the argument.

6 THE CLERK: July 30th at 9 o'clock.
7 That's on a fast calendar.

8 THE COURT: And now let's proceed with
9 argument on the motion. Mr. Pereos? And if you
10 want to use the lectern, you can.

11 MR. PEREOS: No, I'm okay. I don't think
12 I'm going to be more than 15 minutes anyway, given
13 the briefing that's occurred. What I've proposed
14 to the Court is asked the Court several questions
15 that I think the Court has to address, that I think
16 the Court may consider addressing. That is, how
17 long can the defendant wait before filing a lien
18 when the account goes delinquent? And I'll discuss
19 delinquency in my argument. The next question I
20 have for the Court is, how long can the defendant
21 wait after the filing of the lien to foreclose on
22 the lien? And the last question I have is, in
23 responding to these questions, does the mechanic's
24 lien law affect the Court's decisions on that?

1 Now, having said that, I would like to
2 submit to the Court that the defendant, in their
3 reply brief to the motion, advances the argument
4 that they have an unlimited amount of time after
5 the account goes delinquent before it has to record
6 its lien. It also advances the argument that it
7 has an unlimited amount of time after the reporting
8 of the lien to pursue a foreclosure of the lien.
9 In effect, it's basically saying, "We can put a
10 lien against the property, no matter when we
11 desire, based upon the delinquency that's occurred,
12 and we don't have any time constraints as to when
13 we have to pursue a foreclosure of that particular
14 lien." These are the issues that I think the Court
15 will have to address. In connection with the
16 delinquency, when does the garbage bill become
17 delinquent? Under the franchise agreement, it
18 specifically states -- and I cited the authority
19 and the page number in the franchise agreement --
20 it says the delinquency is defined as occurring or
21 having occurred if the bill is not paid at the end
22 of the quarter. What the evidence will show, which
23 I believe is undisputed, is that the residential
24 garbage bills are billed quarterly. Let's keep it

1 simple for now; let's say the quarter starts in
2 January. For the service period of January,
3 February and March, the bill goes out in January.
4 Under the franchise agreement, if the bill is not
5 paid at the end of March, it's delinquent. In
6 fact, the franchise agreement goes a step further
7 and says if the bill is not paid within 15 days of
8 the end of the quarter, interest may then accrue on
9 the bill. So I submit to the Court that under the
10 franchise agreement, the franchise agreement
11 defined delinquency and when it occurs.

12 Now, the defendants take the position that
13 after that bill becomes delinquent, I still have an
14 unlimited amount of time in which to record my lien
15 for that delinquent bill. So if the bill were
16 delinquent for six years, seven years, they can
17 still record the lien. We submit that at a
18 minimum, if you apply the contractor statutes, that
19 they cannot go any later than 90 days. Now, if the
20 Court says, "No, I don't believe that the entire
21 scheme of Chapter 108 was intended to be
22 incorporated in the statute of 444.520, in terms of
23 the foreclosure of the lien," we would then submit
24 that under NRS 11.190, the statute of limitations

1 statute, the bill would become delinquent or the
2 delinquency would have to be pursued within three
3 years. Either way, defendants argue that they have
4 in-perpetuity. Now, one of the arguments that they
5 raised in their reply brief was -- plaintiff was
6 advancing the position that the mechanic's lien
7 statutes apply in the total scheme of the
8 mechanic's lien statutes; that is, after it becomes
9 delinquent within 90 days, you have to pursue your
10 mechanic's lien, and defendants argued saying,
11 "No, no, no. If we apply the entire scheme of the
12 mechanic's lien statutes, our argument is we don't
13 have to pursue the mechanic's lien for a delinquent
14 bill as long as we're providing services, because
15 the mechanic's lien statute says that the lien is
16 to be recorded within 90 days after the last
17 provision of services." Now, I don't dispute that
18 interpretation of the mechanic's lien statutes, but
19 here's where defendant has an inconsistent argument
20 and the argument's inconsistency is as follows:
21 The thrust of defendant's argument is that they are
22 only confined to enforcing their garbage lien
23 through 108.239, not the total scheme of the
24 mechanic's lien statutes, only that isolated

1 statute was what was intended. That's their
2 argument. Well, if that's the case, then you're
3 not entitled to the benefit of the statutes earlier
4 on that advance your argument that you could record
5 the lien any time within 90 days after you stop
6 providing services. There's an inconsistency in
7 position on that.

8 It is our advanced position that if the
9 Court adopts the mechanic lien global statutes --
10 which the Supreme Court has indicated is applicable
11 when it comes to foreclosing under NRS 108.239 --
12 that the defendant has to record its lien within
13 90 days after the debt becomes delinquent. In
14 addition to the issue, the argument as to how long
15 the defendant has to pursue an action to foreclose
16 the lien after the recording of the lien, defendant
17 advances the position that they have in-perpetuity
18 to do so. We submit that if you want to foreclose
19 under NRS 108.239, you're bound by the case law of
20 the Supreme Court that says not only do you perfect
21 the lien according to Chapter 108, but you've got
22 to foreclose within the six months.

23 Now, defendant advances an argument of
24 statutory interpretation, and one of the things we

1 acknowledge with defendant is, yes, the statutes
2 have to be harmoniously interpreted together. So
3 what was the legislative intent when they said the
4 lien may be foreclosed in the same manner as
5 provided by the foreclosure mechanic's lien? Did
6 they mean that means you only have to follow NRS
7 108.239, or does that mean that if you're going to
8 foreclose the mechanic's lien, you incorporate all
9 of the laws that discuss the foreclosure of a
10 mechanic's lien? Now, I read the hearing minutes
11 that were advanced and my opinion is you're not
12 going to find much information, because in those
13 hearing minutes, the argument that was advanced by
14 Republic Disposal was that they wanted the owner
15 liable for the lien versus the tenant, and that's
16 not an issue. We're not arguing on that here. The
17 only thing that I found informative when I read the
18 minutes was the remarks by one of the
19 representatives, who commented that in giving the
20 lien right to the disposal company that, in turn,
21 will impact the property owner is pretty drastic,
22 and we cited that conversation that occurred in the
23 legislative hearing as giving rise to the passage
24 of this statute. Where this ties into the Attorney

1 General is that, concededly, if there is some time
2 limitation placed on defendant disposal company, it
3 will, in turn, negate the position or the claim of
4 constitutionality issues with regard to the
5 statute. On the other hand, if that lien can exist
6 in perpetuity without any accountability for the
7 placement of that lien, then it's going to impact
8 whether or not there's a due process issue here. I
9 once heard Pete Echeverria say in a statement many
10 years ago when he was giving a statement to the
11 bar, he said lawyers have a tremendous amount of
12 power by virtue of the fact that we can issue
13 subpoenas that can compel anybody, except the
14 president of the United States, to show up at a
15 place. That is a pretty high-wielding set of
16 powers for a lawyer, and I kind of agree with that
17 observation. Think about the power and the
18 authority that has now been given to Waste
19 Management with regard to liening a piece of
20 property. That lien is an encumbrance. Now,
21 putting aside the issues of legitimacy of the lien,
22 because I don't think we're here to argue those at
23 this time, how about the accountability? How about
24 whether that lien is going to exist indefinitely

1 and continue encumbering the property. Even if the
2 Court were to contemplate that position, you would
3 be giving Waste Management more authority than you
4 would be giving to the county governments, because
5 the Attorney General issued an opinion that said
6 that the counties did not have an indefinite period
7 of time with regard to property tax liens, that
8 they had to pursue the enforcement of that property
9 tax lien within the three-year window defined by
10 NRS 11.190, and that AG opinion alone goes to the
11 heart of the argument advanced by the defendant
12 that they have in-perpetuity. I'm not going to
13 start citing the cases, because I believe the
14 briefs are before the Court. And I do compliment
15 my counsel on the other side; he did an excellent
16 job on his briefing and he made me read the
17 legislative hearing minutes after he cited them.

18 That's all I have at this point, your
19 Honor.

20 THE COURT: Okay, thank you.

21 Mr. Wright?

22 MR. WRIGHT: The first thing is I'll
23 apologize to Mr. Pereos for making him read
24 legislative history.

1 THE COURT: You better apologize to the
2 law clerk too.

3 MR. WRIGHT: And I apologize to the Court
4 and to your law clerk as well.

5 I'll go through a couple of things here,
6 and I want to start with where this started and how
7 the argument has changed, because I think there are
8 some statements that were made about what positions
9 defendant is taking that are not correct as to what
10 we're actually saying. So I want to clarify that.
11 I'm going to start with what the motion for summary
12 judgment originally stated. The motion for summary
13 judgment said the mechanic's lien statute has to
14 apply to the garbage lien statute in a couple
15 different ways. One, you have to file a notice of
16 intent to lien; two, you have to file your lien
17 within 90 days of the delinquency; and three, after
18 you've recorded your lien, you have to start a
19 lawsuit within six months, and our opposition goes
20 through and it explains why we disagree with that.
21 We haven't taken the position that we have forever
22 to file a lawsuit. That's not the position that
23 we're taking, and I think, without jumping ahead,
24 plaintiff's own authority supports what I'm going

1 to go through and explain as to how we understand
2 these statutes work in the context of the statute
3 of limitations, which wasn't an issue that was
4 raised until the reply brief. So I haven't had a
5 chance to respond to it until now.

6 I'm going to start first with the original
7 issue, and I notice plaintiff hasn't taken an issue
8 with it today on the requirement to file a notice
9 of intent to lien. The first thing I want to point
10 out on that is, there's actually no dispute here
11 that Waste Management did serve notices of intent
12 to lien before each of these liens. Mr. Pereos has
13 produced them in his production. It's not
14 something that was raised in briefing, because from
15 a fundamental perspective, the statute doesn't
16 require a notice of intent to lien. NRS 444.520
17 only incorporates the manner of foreclosure of a
18 mechanic's lien statute, and it's permissive. It
19 says you may foreclose in the same manner as
20 provided for the foreclosure of a mechanic's lien.
21 It doesn't say that you have to perfect the garbage
22 lien in the same manner that you perfect a
23 mechanic's lien. So where we get into our dispute
24 with plaintiff's position is the manner for

1 foreclosure of a mechanic's lien, which is provided
2 in one spot and one spot only, NRS 108.239. All of
3 the requirements that plaintiff is trying to
4 enforce upon Waste Management -- be it a notice of
5 intent, the 90-day deadline or the six-month
6 deadline -- all of those come from other places,
7 the first two coming from what is required
8 statutorily to perfect a mechanic's lien. And by
9 the plain language of NRS 444.520, the Nevada
10 legislature didn't incorporate the requirements for
11 perfecting a mechanic's lien into the requirements
12 for perfecting a garbage lien. So our argument is
13 that the notice of intent and the 90-day deadline
14 simply don't apply at all.

15 Now, we're not arguing that there's no
16 deadline to file a mechanic's lien -- or, I'm
17 sorry, to record the garbage lien. We've never
18 raised that. That's not the point we were trying
19 to make in our opposition. The point we were
20 trying to make in the opposition is that the 90-day
21 deadline under the mechanic's lien statutes doesn't
22 apply, and I think there are a number of good
23 reasons. One is, obviously, you have the plain
24 language, which I've already talked about, but then

1 you get into the issue of plaintiff's
2 interpretation of when does that 90-day deadline
3 start. Well, plaintiff wants to say it starts once
4 the bill becomes delinquent. So going back to what
5 Mr. Pereos said -- and defendant is billing on a
6 quarterly basis. So if we accept plaintiff's
7 interpretation and say that you have to file a
8 mechanic's lien within 90 days of a delinquency, by
9 the time you get your January bill, it becomes 90
10 days past due and that's when you're finally
11 getting your next quarterly invoice. So what Mr.
12 Pereos's interpretation would say is that at the
13 time that you've missed your first payment -- and
14 sometimes people miss payments. You go on vacation
15 and you don't see the bill, since you're only
16 getting it once every 90 days; you may not notice
17 that you haven't paid it yet. So by the time you
18 get your notice of delinquency, your next invoice
19 that says, by the way, you never paid us for the
20 last quarter, Mr. Pereos's interpretation would say
21 we also have to serve you with a lien and we have
22 to rush to record that lien, which only serves to
23 increase the burden both on the customer and on
24 Waste Management. And so from a public policy

1 perspective, I don't think that's what the
2 legislature intended and I don't think there's
3 anything in the legislative history with plain
4 language saying that that's what the legislature
5 wanted.

6 Now, aside from the 90-day deadline, we
7 then get into this concept of the six-month
8 deadline to foreclose upon a lien once it's filed.
9 A few things on that. First, I'll go to the
10 fall-back argument that there's nothing within
11 444.520 that says you have to foreclose the lien
12 within the same time period that you would
13 foreclose the mechanic's lien. Again, you go back
14 to the language and it says it may be foreclosed,
15 it doesn't say it must be foreclosed. It only says
16 that it may be foreclosed in the same manner, not
17 that it must be foreclosed within the same time
18 frame. And this is an important distinction,
19 because if you look at the mechanic lien statute
20 that imposes this six-month deadline -- that's at
21 NRS 108.233 -- you see something that you don't see
22 with other types of liens. The legislature
23 specifically put language in NRS 108.233 that says
24 that a mechanic's lien cannot bind property for

1 more than six months, unless a foreclosure action
2 has been initiated or the owner agrees to extend
3 the time frame. That same statute, 108.233, says
4 that the lien shall be deemed to have expired as a
5 lien against the property after the lapse of that
6 six-month period. That language is very unique to
7 a mechanic's lien. You don't see that with other
8 types of liens, whether it be a special tax lien or
9 an improvement district lien, a sewer fee lien.
10 You'll never find the same type of language in
11 those statutory schemes. The plaintiff is
12 attempting to apply it here to a garbage lien
13 because of that one reference to the manner of
14 foreclosure in NRS 444.520. We submit to you and
15 it's argued in our briefs that that's not what the
16 legislature intended, and you can tell that that's
17 not what the legislature intended because it's not
18 the language they used. They said that unlike a
19 mechanic's lien, which eventually expires after six
20 months if there hasn't been a foreclosure, the
21 garbage lien exists until paid as a perpetual lien.
22 The plaintiff says that my argument here means that
23 I'm saying we have forever to foreclose and that's
24 not what I'm saying. I'm saying from a very

1 straightforward look at the statute, the lien
2 itself exists in perpetuity until it's paid.

3 Now we get to the next question, which was
4 raised in the reply. Well, okay, let's assume the
5 lien does exist in perpetuity. Does that mean you
6 can foreclose and that you have the right to
7 enforce that in perpetuity? And the answer is no,
8 we don't have the right to foreclose in perpetuity,
9 and that's not what we're arguing. If you look at
10 that Attorney General opinion that Mr. Pereos cites
11 from 1951 -- it's Attorney General Opinion 91, and
12 if the Court would like, I do have copies for your
13 convenience.

14 THE COURT: That would be okay.

15 MR. WRIGHT: May I approach?

16 THE COURT: Approach the law clerk.

17 MR. WRIGHT: It's a very short opinion,
18 and really in sum and substance, all it says, in
19 one paragraph, is that the county must institute an
20 action to enforce its tax lien within the time
21 frame set in the statute of limitations. That's
22 now NRS 11.190, and for that proposition, it cites
23 one case, State versus Yellow Jacket Silver Mining
24 Company, and that's at 14 Nevada 220. It's an old

1 case, but it's still good law. And if the Court
2 would like, I do have courtesy copies of that as
3 well.

4 THE COURT: I already have it.

5 MR. WRIGHT: Okay. And in Yellow Jacket,
6 the Court was given the almost identical issue that
7 Mr. Pereos raised in his reply of how you reconcile
8 the language of a statute that says that the lien
9 exists in perpetuity with a statute of limitation.
10 So, there, the Court was dealing with liens on a
11 mine and mining claims, the proceeds that are
12 generated from a mine and mining claims. And the
13 statute that existed at that time stated that the
14 lien shall not be satisfied or removed until the
15 taxes are paid. So in that case, the taxing
16 authority weighed in -- and I apologize because I
17 don't remember the answer, but it was more than
18 three years to institute the foreclosure action.
19 And the defendant came in and said, wait a second,
20 the three-year statute of limitations are used in
21 enforcing this tax lien, and the taxing authority's
22 response was, well, the statute says the lien
23 exists until paid. And here's where you get the
24 answer to that reconciliation. The Nevada Supreme

1 Court essentially said, "Both of you are right to a
2 certain extent." The way the Nevada Supreme Court
3 looked at that statute -- which, again, is very
4 similar to the statute we have here, where it says
5 the lien exists until satisfied or paid. And
6 starting on page seven of the Westlaw version --
7 and I apologize if you have a different version,
8 because mine did not give the Nevada Reporter page
9 numbers; so I'm just going off of page seven of the
10 Westlaw version. The Nevada Supreme Court points
11 out that all that can be claimed under the statute
12 quoted, which is the lien statute that I just
13 mentioned, is that the lien created continues
14 indefinitely until the tax is paid or the property
15 is sold under a tax sale. So the Supreme Court
16 recognized that the taxing authority was correct,
17 that the lien itself does exist in perpetuity, but
18 the Supreme Court pointed out that the lien cannot
19 be enforced and the property cannot be sold without
20 the aid of the remedy provided, which is a suit to
21 foreclose, and if the suit to foreclose is barred,
22 the remedy is lost, although the lien may remain.
23 So what the Supreme Court -- and there's other good
24 language in here, but the holding of the Yellow

1 Jacket case is that the lien itself, which was the
2 original issue raised in plaintiff's motion, does
3 continue in perpetuity, but the ability to
4 foreclose or to actually do something with it, like
5 force the sale of the customer's property, is
6 subject to the statute of limitations. And so we
7 recognize that that is what Nevada law says.

8 Each of the garbage liens that are at
9 issue in this case were filed in February of 2012.
10 So we would argue, unlike plaintiff's argument that
11 you have six months, because the mechanic lien
12 statute says it's six months, to initiate a
13 foreclosure action or the lien expires, we would
14 argue that the correct interpretation is that we
15 have -- depending on which statute of limitation
16 applies, it's either three or four -- and I can
17 explain why I think there's some room for argument
18 on both, but you have either three or four years
19 from the date of the recording of the garbage lien
20 to initiate your foreclosure action. Now,
21 according to the Yellow Jacket Mining case, if you
22 don't file within the statute of limitations
23 period, the lien doesn't just disappear, it still
24 remains. It will remain indefinitely until the tax

1 is paid or the statute is -- one of the things that
2 they say in there is, or the statute creating the
3 tax lien is abolished by the legislature. And so
4 that's what we have here. The lien will continue
5 to exist against plaintiff's property, but we can't
6 do anything to enforce it if we don't enforce it
7 within the statute of limitations period. That is
8 how Nevada law currently sits.

9 THE COURT: When you say "enforce it,"
10 you're talking about selling it.

11 MR. WRIGHT: Actually filing a lawsuit to
12 sell plaintiff's property.

13 THE COURT: But you do enforce it if the
14 plaintiff wants to sell his property. You have a
15 cloud on the title.

16 MR. WRIGHT: And that is an interesting
17 issue, because if you look to page eight of the
18 Yellow Jacket case, the Court -- here's a quote
19 from it, talking about the statute of limitations.
20 It says, "The statute does not destroy the right,
21 but only bars the remedy. Hence, if the plaintiff
22 has any means of enforcing his claim, other than by
23 action or suit, the statute of limitations cannot
24 be set up to prevent his recovery by such means."

1 So according to the Yellow Jacket decision, in a
2 situation where -- let's assume there's a three or
3 four-year statute of limitation and it has passed,
4 Waste Management would not be able to do anything
5 to initiate a lawsuit to force the sale of
6 plaintiff's property, but the lien continues, and
7 if there are other means beyond filing a lawsuit to
8 force payment, there is nothing within the statute
9 of limitations that prevents that or that can bar
10 that. The lien continues. And I understand that
11 may create issues from the plaintiff's perspective,
12 and those issues -- we're going to get into the due
13 process constitutionality and so I won't get into
14 that today, but what we would submit to you is that
15 other courts have looked at the same issue and have
16 held that that is acceptable. It may be an oddity,
17 but that is the way the statutes are read.

18 THE COURT: Which cases are you talking
19 about where they determined that it's acceptable?

20 MR. PEREOS: That it's constitutionally
21 acceptable? Because we agreed that that wouldn't
22 be raised now, I'm just foreshadowing it, if we get
23 to that point.

24 THE COURT: But none on a garbage lien.

1 We're talking about taxes.

2 MR. WRIGHT: So in those cases, they were
3 assessments for -- and I believe one of the cases
4 we cite in our brief is one of those same cases --
5 they were assessments for water and sewer.

6 THE COURT: Right, public utilities.

7 MR. WRIGHT: Public utilities. And I
8 think there's an argument that --

9 THE COURT: But were they public utility
10 companies or was it the governmental agency?

11 MR. WRIGHT: I don't recall the answer
12 specifically. My recollection, for full candor, is
13 that they were special assessment districts. So I
14 would call that a quasi-governmental agency. You
15 could think of something along the lines of -- and
16 I apologize, but I'm thinking of all kinds of Clark
17 County agencies and I can't think of one in Washoe,
18 but you have something along the lines of the
19 Southern Nevada Health District or the Regional
20 Transportation Commission, that would be a good
21 example. It's a quasi-governmental agency that's
22 performing a function that is somewhat like a
23 governmental agency.

24 THE COURT: But it's not for profit.

1 MR. WRIGHT: But it's not for profit. And
2 I apologize, because I wasn't trying to go down
3 that road and I was the one that said I wanted to
4 make sure we didn't go down there, so I apologize.
5 But we come back to the next question that
6 plaintiff raised as far as how does the statute of
7 limitations actually work. When does it start,
8 when does it stop? I've already explained to you
9 what our position is as to what happens if we don't
10 enforce within the statute of limitations.

11 I do want to provide the Court with an
12 authority. It's State Tax Commission versus E.L.
13 Cord. It's 81 Nevada 403 and that's a 1965 case,
14 and in that, the Supreme Court was looking at the
15 issue of whether or not an action to enforce -- and
16 again, we're going back to taxes, but whether an
17 action to enforce delinquent taxes was timely under
18 the statute of limitations. And if you start on
19 page -- I believe it's 410 of the Nevada version --
20 the Supreme Court goes through an analysis of
21 determining whether or not that particular action
22 to enforce a tax lien was timely, and they did it
23 by -- I will submit to you, they did it by a
24 two-step process. Now, in that situation, the

1 three-year statute of limitation applies. It was a
2 right created under statute, which in Nevada under
3 NRS 11.190 is subject to a three-year statute of
4 limitation. The Supreme Court said -- and I'm
5 going to try and make sure I get the dates right.
6 And I'll back up a little, I apologize. The
7 defendant filed a tax return in 1959 for tax year
8 1958. The taxing authority didn't file their
9 assessment or their lien for delinquent taxes until
10 1961, June of 1961, and then didn't initiate the
11 lawsuit until April of 1964. So when the Supreme
12 Court looked at whether or not the lawsuit was
13 timely as far as the delinquency from 1958, the
14 Court essentially applied the three-year statute of
15 limitation twice. They first determined if the tax
16 assessment was made within three years of the
17 delinquency, and the Court answered yes, it was,
18 and then was the lawsuit to foreclose on the tax
19 lien brought within three years, and the Court
20 answered yes. And so based upon that, the Court
21 found that the action was timely. So we would
22 submit that a similar situation would apply here,
23 that what you have to look at first is, was the
24 garbage lien timely within the date of the

1 delinquency -- and I think we had a dispute as to
2 how you determine that -- and then was the action
3 to foreclose on that garbage lien brought in with
4 the applicable statute of limitation as well. So
5 it's kind of a two-step process to determine
6 whether or not a foreclosure action on these types
7 of liens is timely.

8 Now, where we get into what I would call
9 some murkiness here is, how do you determine that
10 first statute of limitation? Mr. Pereos has
11 pointed out that the delinquency in this case
12 started in April of 2007, give or take. I think
13 that was when the first charge was. It wouldn't
14 have technically been due until July of 2007, or it
15 wouldn't have been delinquent until July of 2007.
16 Every three months, Waste Management is still
17 providing more services, and you will see through
18 these account histories -- there's one attached to
19 plaintiff's motion as Exhibit 2 and I believe we
20 attached the other account history to our --
21 actually, no, we did not. So you do have an
22 example of one of the account histories as
23 Exhibit 2 to plaintiff's motion, and you will see
24 in that account history that the balance continued

1 to grow. Every three months, there's a new charge
2 to that account, one for the continuing services
3 but also a new charge on what's already owed. The
4 testimony -- and I don't want to delve too much
5 into the factual issues, but the undisputed
6 testimony from our corporate representative is that
7 Waste Management, where they can, attempts to apply
8 a payment to the oldest outstanding invoice. So if
9 plaintiff missed an invoice payment in April of
10 2007 and then they miss it again in July of 2007
11 and again in October -- and this is hypothetical,
12 let's assume that happened -- and they finally make
13 the payment in December of 2007, Waste Management
14 will, in most situations but not all, apply that to
15 the oldest outstanding invoice. So I think we have
16 clearly a factual question when it comes to these
17 liens in particular, as to whether or not they
18 would be timely under the statute of limitations,
19 because you have to go through the account history
20 and see what payments were attached to which
21 invoices.

22 So from a purely legal situation, I think
23 the Court is in a position to say how does the
24 statute of limitations work and provide the parties

1 with the guidance that we're asking for on that,
2 but I don't think you can make that determination
3 at this time as to whether or not the statute of
4 limitations has been satisfied as it relates to
5 filing the lien.

6 THE COURT: If Waste Management has
7 complete authority to apply the payment to whatever
8 deficiency it was, then wouldn't that be a
9 methodology for Waste Management to never be
10 subject to a statute of limitation?

11 MR. WRIGHT: That may be one way to look
12 at it. Now, it's not complete discretion. The way
13 the testimony came out is, they apply it to
14 whichever account or invoice the client asks them
15 to and they consider -- let's say when you get a
16 bill and you detach the remittance portion and send
17 that back with your check, they interpret that as
18 meaning the customer has instructed them to apply
19 that payment to that invoice only and so that's
20 what they will do, but if a check comes in without
21 a remittance, they apply it to the oldest invoice
22 for the benefit of the customer, because that pays
23 it off without it incurring more interest. Because
24 you have to remember, throughout this period, this

1 invoice is incurring more and more interest. So if
2 we applied it only to the newest invoice, that old
3 invoice never gets paid down and the interest keeps
4 going up. So that was their testimony, and Mr.
5 Pereos can indicate if he disagrees, but that's how
6 they would look at it.

7 So to answer your question, I think you
8 could see a situation where the statute of
9 limitations -- I'm not going to say never is
10 triggered, but although there was initially a
11 delinquency in 2007, the statute of limitations
12 itself may not trigger far after that time frame,
13 because they may have eventually applied a payment,
14 whether it be in 2007, '8 or '9, to that old 2007
15 invoice. So I think you get into a lot of factual
16 issues, and if the Court is looking at this and
17 going to make an advisory opinion, I think you have
18 everything that you need to do that, to say here's
19 the statute of limitations, here's when it runs,
20 here's how it works. I don't think you can apply
21 that to the facts and say specifically this lien is
22 or is not timely.

23 So with that extremely long-winded
24 explanation, I will sit down, your Honor.

1 THE COURT: Okay. Mr. Pereos?

2 MR. PEREOS: Thank you, your Honor. On
3 that later observation, my motions were intended to
4 be generic versus fact-intensive, because I think
5 there are certain threshold decisions that the
6 Court has to make, which will then be applied to
7 the facts of this particular case. Having said
8 that, the Court might want to think about whether
9 or not a certification under Rule 54 might be in
10 order in connection with those rulings. Now,
11 counsel submits that NRS 444.520 only gives an
12 option to Waste Management to foreclose when it
13 says this lien may be foreclosed. We don't dispute
14 that Waste Management does not have to foreclose
15 the lien, but then how do you reconcile the
16 decisions of the Nevada Supreme Court that say if
17 you're going to pursue a remedy under NRS 108.239,
18 the focus foreclosure statute of the mechanic's
19 lien, you've got to comply with certain
20 prerequisites.

21 Now, counsel will argue and has argued
22 that when the statute says that the lien may be
23 foreclosed by the mechanic's lien laws, it only
24 intended to incorporate this one statute, NRS

1 108.239, and nothing else. Well, I would submit
2 that there's nothing either in the legislative
3 hearings or the statute that says that this lien
4 may be foreclosed pursuant to NRS 108.239 -- or
5 there's nothing contained in the statute of the
6 legislative hearings that say this lien may be
7 foreclosed pursuant to the mechanic's lien
8 statutes, except for the requirements to comply
9 with NRS 108.239. One of the issues this Court's
10 going to have to reconcile is, if Waste Management
11 wants to afford itself the benefit of NRS 108.239,
12 is it exempt from the Supreme Court's rulings that
13 say before you can do NRS 108.239, you have to do
14 certain things to get there, to foreclose, because
15 it's a statutory remedy and must be strictly
16 construed. And that is in the case law we cited.

17 Now, counsel tries to make a distinction
18 between the argument of perfection of a lien,
19 saying that all the other statutes leading up to
20 NRS 108.239 and the mechanic's lien statutes are
21 statutes that discuss perfecting the lien, but NRS
22 444.520 has its own mechanism for perfection. I
23 will say it's a legitimate argument and it's a well
24 thought-out argument, but I would ask the Court to

1 think about the argument of perfection as
2 distinguished from the argument of timing in the
3 limitations period, how long do you have. And that
4 leads to the next argument, which counsel says,
5 "We're not saying that we have in perpetuity to
6 foreclose the lien, because we're acknowledging
7 that our remedy might be cut off after a certain
8 period of time, but the lien still exists against
9 the property." So let's look at the burden if we
10 accept counsel's proposition. The Court makes a
11 ruling and says, "Okay, I agree with counsel. The
12 lien exists against the property, but the remedy to
13 foreclose the lien has a time limitation." That's
14 what it basically boils down to. So now the
15 Court's going to invite lawsuits to be filed to
16 remove the lien where the remedy's expired, because
17 how else are you going to get the lien off the
18 property until that occurs. I submit that if you
19 want to accept counsel's proposition that the
20 remedy's been expired, it would seem to me
21 logically that the lien has expired, because they
22 can't do anything with it. If the lien is going to
23 exist even though the remedy doesn't exist, that
24 alone constitutes an involuntary encumbrance

1 against the property, and, in effect, they're still
2 keeping an interest in real estate without any
3 mechanism or vehicle to resolve a dispute with
4 regard to the amount of the lien. It goes back now
5 to the constitutionality issue of due process. It
6 doesn't happen too often in our careers that we get
7 to argue issues that literally is a first
8 impression.

9 THE COURT: It never seems to happen to
10 me.

11 MR. PEREOS: Because a lot of times as
12 lawyers, we just simply get to be mechanics at
13 times.

14 These issues are going to have to be
15 resolved in order for us to go to the next stage of
16 this particular claim, and that's the legitimacy of
17 these liens and whether or not there's legitimacy
18 to the slander of title claim. I'll be the first
19 to acknowledge that depending upon the ruling of
20 this court may impact the outcome of this lawsuit.
21 Having said that, I don't share Waste Management's
22 position that they have unchecked authority with
23 regard to the recording of the lien, which appears
24 to be the case, but they want it to be totally

1 unchecked and that the lien can exist in
2 perpetuity. Literally, they're saying "Well, our
3 remedy is gone, but the lien can still exist."

4 If I argue anymore, I'm just going to be
5 repeating issues that the Court's already heard.
6 So I'm going to sit down at this point.

7 THE COURT: All right. Well, your
8 briefing was very good and I'm not positive your
9 oral arguments made too much difference, but I did
10 appreciate hearing your words to consider this
11 issue, because it is an issue of first impression.
12 It is clearly one that is going to have to be
13 sorted out carefully. I am going to consider it
14 and probably not rule on it until the status
15 hearing that we have scheduled. I would anticipate
16 that I will be giving a decision then. The
17 invitation to certify my decision under Rule 54 is
18 something you all should talk about and think about
19 that, because Mr. Pereos just provided it. I don't
20 know your position, Mr. Wright. So you may want to
21 think about that in the next 30 days while you are
22 still able to conduct some discovery, so you can
23 keep moving forward.

24 MR. WRIGHT: Your Honor, if I can ask a

1 quick clarification. You had indicated earlier
2 that your ruling at the status conference may be
3 oral.

4 THE COURT: Yes, it may be. It just
5 depends on how our trial schedule goes between now
6 and then and whether or not we can get a written
7 opinion out. If it is oral, then whoever wins will
8 be directed to prepare the written decision.

9 Okay. Thank you, counsel.

10 Court's in recess.

11 (End of proceedings.)

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7 ATTORNEYS FOR PLAINTIFF

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 *****

11 WEST TAYLOR STREET, LLC,
12 a limited liability company,
13 Plaintiff,

Case No. CV12-02995
Dept. No. 4

14 vs.

15 WASTE MANAGEMENT OF NEVADA,
16 INC., KAREN GONZALEZ, and
17 DOES 1 THROUGH 10,
18 Defendants.

19 **SECOND AMENDED COMPLAINT**

20 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas
21 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as
22 follows:

23 **FIRST CLAIM FOR RELIEF**

24 I

25 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because
26 their true names and capacities of said Defendants are not now known by Plaintiff and
27 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

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II

At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

III

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 345 and 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel Number 011-266-17.

IV

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Recorders Office, Reno, Nevada. On or about November 26, 2012, Defendant did cause to record a notice of lien for garbage fees under Document No. 4177148 at the Washoe County Recorders Office, Reno, Nevada. On or about March 14, 2014, Defendant did cause to record a notice of lien for garbage fees under Document No. 4334435 at the Washoe County Recorders Office, Reno, Nevada. Plaintiff is informed and believes and thereon alleges that Defendant will continue to cause to record liens with regard to the properties at 345 and 347 West Taylor Street and that said liens will be the subject of claims set forth herein.

V

Subsequent to the recording of these early liens, Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

VI

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for

1 the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of
2 the lien given its incorrect filing and Defendants refuses to release the subject lien.

3 VII

4 On or about November 15, 2012, Defendants caused to send to Plaintiff a notice
5 of intent to lien for a different amount on the subject property notwithstanding the earlier
6 lien.

7 VIII

8 Plaintiff is informed and believes and thereon alleges that the basis for any lien
9 against the subject property is by reason of Nevada Revised Statute 444.520.

10 IX

11 Pursuant to NRS 444.520, any lien against the subject property was to be
12 foreclosed consistent with foreclosure of mechanic's lien.

13 X

14 At all times herein mentioned, the recording of the subject liens referenced
15 hereinabove was improper and Defendant continued to record liens for purposes of
16 recognizing the improper nature of its liens previously filed.

17 XI

18 At no time has Defendant undertaken a foreclosure of any lien pursuant to the
19 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court
20 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's
21 property.

22 XII

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to an allowance of attorneys fees as special damages
25 by reason thereof.

26 ///

27 ///

28 ///

1 II

2 At all times herein mentioned, Defendants knew or should have known that the
3 recording of the subject lien was without basis or merit and that the recording would impact
4 and impair Plaintiff's ownership of the property. Defendant continues to record liens
5 against the subject property by reason of the impropriety of the recording of earlier liens.
6 Plaintiff is informed and believes that Defendant will continue to record liens against the
7 subject property.

8 III

9 At all time herein mentioned, Defendants have caused to slander Plaintiff's title to
10 said property and each recording of the lien constitutes a separate act of slander
11 proximately causing the damages mentioned herein. Plaintiff submits that all future
12 recordings of liens against the subject property constitute a separate act of slander and
13 Plaintiff will ask leave to amend this complaint at the time of trial to show each separate
14 act of slander.

15 IV

16 As a proximate result of the foregoing, Plaintiff has sustained special damages
17 consisting of attorney's fees for purposes of removing the slanderous document from
18 Plaintiff's title ownership for an amount in excess of \$40,000.

19 V

20 As a proximate result of the foregoing, Plaintiff has sustained general damages in
21 a sum in excess of \$40,000.

22 VI

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to special damages by reason of the same.

25 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them,
26 as follows:


- 27 1. For general damages in a sum in excess of Forty Thousand Dollars
28 (\$40,000.00).

- 1 2. For special damages consisting of attorney's fees for a sum in excess of
2 Forty Thousand Dollars (\$40,000.00).
3 3. For costs of suit herein.
4 4. For reasonable attorneys fees herein.
5 5. For such other and further relief as may be just and proper.
6 6. For a declaration from this Court that Plaintiff was required to comply with
7 mechanic lien laws in connection with the recording of the subject lien referenced herein.
8 7. Alternatively, for a ruling from this Court that the subject statute is
9 unconstitutional.

10 The undersigned affirms that the foregoing pleading does not contain a social
11 security number.

12 DATED this 26 day of ^{June}~~April~~, 2014.

C. NICHOLAS PEREOS, LTD.

13
14 By: 
15 C. NICHOLAS PEREOS, ESQ.
16 1610 MEADOW WOOD LANE
17 RENO, NV 89502
18 ATTORNEY FOR PLAINTIFF

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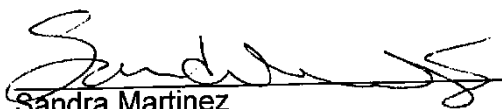
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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

DATED: 6-26-14


Sandra Martinez

1 **ANAC**
Gregory S. Gilbert (6310)
2 Bryan L. Wright (10804)
HOLLAND & HART LLP
3 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
4 Tel: (702) 669-4600
Fax: (702) 669-4650
5 gsgilbert@hollandhart.com
blwright@hollandhart.com

6 - and -

7 Matthew B. Hippler (7015)
8 HOLLAND & HART LLP
5441 Keitzke Lane, 2nd Floor
9 Reno, Nevada 89511
Tel: (775) 327-3000
10 Fax: (775) 786-6179
mhippler@hollandhart.com

11 *Attorneys for Defendants Waste Management*
12 *of Nevada, Inc. and Karen Gonzales*

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

15 WEST TAYLOR STREET, LLC, a limited
16 liability company,

17 **Plaintiff,**

18 **vs.**

19 **WASTE MANAGEMENT OF NEVADA,**
20 **INC., KAREN GONZALEZ, and DOES 1**
THROUGH 10,

21 **Defendants.**

CASE NO.: CV12-02995
DEPT. NO.: 4

DEFENDANTS' ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT

22
23 Defendants Waste Management of Nevada, Inc. ("Waste Management") and Karen
24 Gonzales, erroneously sued as "Karen Gonzalez," (collectively, "Defendants"), by and through their
25 counsel of record, Holland & Hart LLP, for their Answer to Plaintiff West Taylor Street, LLC's
26 ("Plaintiff") Second Amended Complaint ("SAC"), admit, deny, and state as follows:

27 1. Defendants deny all allegations in the SAC not expressly admitted, denied, or
28 otherwise responded to herein.

FIRST CLAIM FOR RELIEF

2. Paragraph I of the First Claim for Relief does not contain any allegations to which a response from Defendants is necessary. To the extent such paragraph could be construed to contain allegations against Defendants, Defendants deny said allegations.

3. Answering the allegations contained in Paragraphs II, X and XI of the First Claim for Relief, Defendants deny each and every allegation contained therein.

4. Answering the allegations contained in Paragraph III of the First Claim for Relief, upon information and belief, Defendants admit only that Plaintiff currently owns certain real property located in Reno, Nevada, bearing Washoe County Assessor's Parcel Number 011-266-17, upon which is situated a duplex with service addresses of 345 Taylor St. W, and 347 Taylor St. W.

5. Answering the allegations contained in Paragraph IV of the First Claim for Relief, Defendants admit only that Defendant Waste Management of Nevada, Inc. ("Waste Management") recorded a Notice of Lien for Garbage Fees – Residential User, on or about February 23, 2012, as Document No. 4086834, for unpaid balance due for garbage services supplied to 347 Taylor St. W., Reno, Nevada; Waste Management recorded a Notice of Lien for Garbage Fees – Residential User, on or about November 26, 2012, as Document No. 4177148, for unpaid balance due for garbage services supplied to 345 Taylor St. W., Reno, Nevada; and that Waste Management recorded a Notice of Lien for Garbage Fees – Residential User, on or about March 14, 2014, as Document No. 4334435, for unpaid balance due for garbage services supplied to 345 Taylor St. W., Reno, Nevada. Defendants deny the remaining contentions therein.

6. Answering Paragraph V of the First Claim for Relief, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

7. Answering the allegations contained in Paragraph VI of the First Claim for Relief, Defendants admit only that Waste Management has provided Plaintiff with corroborative information supporting the liens, and that Waste Management has not expressly released those liens since they were recorded. Defendants deny the remaining contentions therein.

8. Answering the allegations contained in Paragraph VII of the First Claim for Relief,

1 Defendants admit only that they sent a Notice of Intent to Lien to Plaintiff related to unpaid balance
2 due for garbage services provided at 345 Taylor St. W., Reno, Nevada. Defendants deny the
3 remaining contentions therein.

4 9. Paragraphs VIII and IX of the First Claim for Relief call for a legal conclusion to
5 which no response is required. If said paragraphs are construed to contain allegations against
6 Defendants, Defendants deny said allegations.

7 **SECOND CLAIM FOR RELIEF**

8 10. Answering Paragraph I of the Second Claim for Relief, Defendants repeat and
9 reallege each of the above responses to every Paragraphs within the First Claim for Relief as if fully
10 set forth herein.

11 11. Paragraphs II, III and IV of the Second Claim for Relief call for a legal conclusion,
12 therefore no response is required. If said paragraphs are construed to contain allegations against
13 Defendants, Defendants deny said allegations.

14 **THIRD CLAIM FOR RELIEF**

15 12. Answering Paragraph I of the Third Claim for Relief, Defendants repeat and reallege
16 each of the above responses to every Paragraphs within the First Claim for Relief as if fully set
17 forth herein.

18 13. Answering the allegations contained in Paragraphs II, III, IV, V and VI of the Third
19 Claim for Relief, Defendants deny each and every allegation contained therein.

20 **AFFIRMATIVE DEFENSES**

21 As their separate affirmative defenses to Plaintiff's SAC, Defendants asserts the following:

- 22 1. The SAC fails to state a claim against Defendants upon which relief can be granted.
- 23 2. Plaintiff has failed to comply with obligations set forth in Chapter 30.130 of the
- 24 Nevada Revised Statutes.
- 25 3. Plaintiff's claims against Defendants fail for insufficient process.
- 26 4. Plaintiff's claims against Defendants fail for insufficient service of process.
- 27 5. Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.
- 28 6. Plaintiff's claims are barred by Plaintiff's unclean hands.

1 7. Plaintiff has failed to mitigate any damages and losses claimed to have been
2 suffered, if any, by Plaintiff.

3 8. Defendants are entitled to a setoff.

4 9. Plaintiff has asserted its claims in bad faith, without reasonable investigation and for
5 an improper purpose, thereby constituting an abuse of process.

6 10. There is no basis for recovery of costs or attorneys' fees by Plaintiff from
7 Defendants.

8 11. Defendants have been required to retain the services of Holland & Hart LLP to
9 defend against these claims and are entitled to an award of their reasonable attorneys' fees and
10 costs.

11 12. At the time of the filing of Defendants' Answer, all possible affirmative defenses
12 may not have alleged inasmuch as insufficient facts and other relevant information may not have
13 been available after reasonable inquiry, and therefore, Defendants reserve the right to amend this
14 Answer to allege affirmative defenses if subsequent investigations warrants the same.

15 WHEREFORE, Defendants pray for Judgment as follows:

16 1. That Plaintiff take nothing by virtue of its SAC on file herein, and that the same be
17 dismissed with prejudice;

18 2. For an award of reasonable attorneys' fees and costs of suit incurred in this action;

19 3. For such other and further relief as the Court may deem just and proper.

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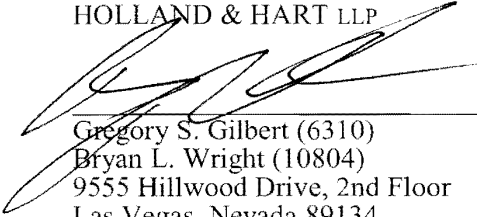
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

1 The undersigned affirms under NRS 239B.030 that the preceding does not contain the social
2 security number of any person.

3 DATED this 14th day of July, 2014.

4 HOLLAND & HART LLP

5 
6 Gregory S. Gilbert (6310)
7 Bryan L. Wright (10804)
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, Nevada 89134

- and -

10 Matthew B. Hippler (7015)
11 5441 Keitzke Lane, 2nd Floor
12 Reno, Nevada 89511

*Attorneys for Defendants Waste Management
of Nevada, Inc. and Karen Gonzales*

13 **CERTIFICATE OF SERVICE**

14 Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 14th day of July, 2014, I served a true
15 and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND**
16 **AMENDED COMPLAINT** by depositing same in the United States mail, first class postage fully
17 prepaid to the persons and addresses listed below:

18 C. Nicholas Pereos
19 C. NICHOLAS PEREOS, LTD.
20 1610 Meadow Wood Lane, Ste. 202
21 Reno, NV 89502
22 Telephone: (775) 329-0678
23 Facsimile: (775) 329-0678
24 cpereos@att.net

Attorneys for Plaintiff, WEST TAYLOR
STREET, LLC

25 
26 An Employee of HOLLAND & HART LLP
27
28

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

9 WEST TAYLOR STREET, LLC, a limited
10 liability company,

11 Plaintiff,

12 v.

13 WASTE MANAGEMENT OF NEVADA,
14 INC., KAREN GONZALEZ, and DOES 1
through 10,

15 Defendants.

Case No. CV12-02995

Department No.: 4

16 **ORDER**

17 On March 11, 2014, Plaintiff West Taylor Street, LLC (hereinafter, "West Taylor"), by
18 and through its attorney, C. Nicholas Pereos, Esq. filed *Motion for Partial Summary Judgment*,
19 and two affidavits in support of the Motion for Partial Summary Judgment: *Affidavit of C.*
20 *Nicholas Pereos* and *Affidavit of Teri Morrison*. On March 28, 2014, Defendants Waste
21 Management of Nevada, Inc. and Karen Gonzalez (hereinafter collectively, "Waste
22 Management"), by and through their attorney, Gregory S. Gilbert, Esq., Bryan L. Wright, Esq.,
23 and Matthew B. Hippler, Esq. of Holland & Hart LLP, filed their *Opposition to Plaintiff's*
24 *Motion for Partial Summary Judgment*. On April 11, 2014, West Taylor filed its *Reply*
25 *Argument in Support of Motion for Partial Summary Judgment*, and submitted the matter to the
26 Court.

27 On May 7, 2014, Nicholas Pereos, Esq. appeared on behalf of West Taylor, and Bryan
28 Wright, Esq. appeared on behalf of Waste Management. The Court heard arguments concerning

1 the *Motion for Partial Summary Judgment*. At the conclusion of the oral arguments the Court
2 took the motion under consideration.

3 NRCP 56(c) provides, that summary judgment “shall be rendered forthwith if the
4 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
5 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
6 party is entitled to a judgment as a matter of law.” The District Court is to exercise great caution
7 in granting summary judgment. Posadas v. City of Reno, 109 Nev. 448, 452 (1993). “The party
8 moving for summary judgment bears the initial burden of production to show the absence of a
9 genuine issue of material fact.” Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602
10 (2007). “If such a showing is made, then the party opposing summary judgment assumes a
11 burden of production to show the existence of a genuine issue of material fact.” Id.

12 West Taylor moves for partial summary judgment or in the alternative it moves for the
13 Court to dismiss Defendant’s answer to the complaint and enter judgment on liability from lack
14 of standing to record the garbage lien. West Taylor advances four arguments: 1) Waste
15 Management does not have standing to record a garbage lien; 2) the statutory formalities
16 required for mechanic’s liens apply to garbage liens because NRS 444.520 incorporates the
17 entire mechanic’s lien statutory scheme; 3) a statute of limitations applies to this case; and 4) that
18 the lien should not exist in perpetuity after it has been recorded.

19 Waste Management argues that it has standing to record a garbage lien because Waste
20 Management acquired Reno Disposal Co., which is the waste management company that
21 contracted with the city of Reno.¹ Waste Management also argues that NRS 444.520, expressly
22

23 ¹ As a preliminary matter, the Court finds that Waste Management has standing to record
24 a garbage lien. NRS 444.520 provides that the governing body of any municipality which has an
25 approved plan for the management of solid waste may, by ordinance, provide for the levy and
26 collection of fees, and until paid, any fee or charge levied constitutes a perpetual lien. In the
27 instant matter, Waste Management provided a copy of the *1994 First Amended City of Reno
28 Garbage Franchise Agreement* which was entered into by the City of Reno and Reno Disposal
Co.. Additionally, an affidavit by David Stratton, Vice President and Assistant Secretary for
Waste Management of Nevada, Inc., was filed, stating that around June 1, 2008, Waste
Management acquired Reno Disposal Co.. Waste Management also provided a letter from
Waste Management to the City of Reno, which extended the 1994 contract for an additional 15
years. Finally, Waste Management filed a copy of the *Exclusive Franchise Agreement
Residential Solid Waste and Recyclable Materials* that was signed in 2012 by the City of Reno

1 states that garbage liens *may* be foreclosed in the same manner as a mechanic's lien, but that the
2 language is permissive and not required; therefore, Waste Management followed proper
3 procedure when filing the garbage lien. Furthermore, it argues that the language of NRS. 444.520
4 specifically creates a garbage lien that exists in perpetuity if the amount in arrears is not paid.

5 Neither party argues that there is a question of material fact, therefore the Court will
6 decide the pending questions as a matter of law. The Court will first summarize briefly the
7 history of the solid waste management system and NRS 444.520, and consider the development
8 of the mechanic's lien statutes before addressing the substantive issues in this case.

9 *I. History of NRS 444.520 and the Solid Waste Management System*

10 The legislature initially became concerned with public health in 1893. On March 6, 1893,
11 the Nevada Legislature enacted a statute that required the establishment of a State Board of
12 Health, and instructed the Board to work for the life and health of the inhabitants of the State.
13 Laws 1893, p. 117 c. 112. Specifically, the Board was required to conduct sanitary
14 investigations and inquiries regarding the causes of diseases and methods of prevention. This
15 included research to determine how habitats and circumstances of life impact public health. *Id.*
16 The Board was given the authority to make regulations for the "better preservation of the public
17 health in contagious and epidemic diseases" and if someone was in violation of these regulations
18 they were notified in writing. If the violator failed to comply within five days of receiving
19 notice, the individual was deemed guilty of a misdemeanor and fined between \$100-\$500 or
20 imprisoned in the county jail for 50 -250 days. *Id.* In 1911, the Legislature enacted a second bill
21 that created a State Board of Health focused primarily on identifying and recording the cause of
22 death and the requirements for birth certificates. 1911 Nev. Stat. 392.

23 In 1971, Senate Bill 490 (hereinafter, "S.B. 490") was proposed to establish a solid waste
24 management system. It provided the governing body of a municipality, in conjunction with the
25 District Board of Health, with the authority to make rules and regulations regarding the
26

27 and Reno Disposal Co., which expires in 2029. Based on these undisputed contracts, the Court
28 finds that Waste Management had standing to record a lien under NRS 444.520 if West Taylor
was delinquent on its garbage bills.

1 management of solid waste. Assembly Committee on Environmental and Public Resources
2 (March 31, 1971). After the first read in the Senate, S.B. 490 was amended to include the
3 following environmental goals: 1) protect public health and welfare; 2) prevent water or air
4 pollution; 3) prevent the spread of disease and the creation of nuisances; 4) conserve natural
5 resources; and, 5) enhance the beauty and quality of the environment. Journal of the Senate, at
6 bate stamp 7 (March 22, 1971).

7 In the development of S.B. 490, the legislative history reveals that the intent behind this
8 bill was to force the Nevada Department of Health to exercise its preexisting power to regulate
9 the disposal of solid waste. Assembly Committee on Environmental and Public Resources
10 (March 31, 1971). On April 1, 1971, there was a second discussion stating, in part, that S.B. 490
11 was intended to clean up the dumps, and that it did not apply to private property or agricultural
12 waste disposed on private land, unless a nuisance is being created. Assembly Committee on
13 Environmental and Public Resources (April 1, 1971). The goal was to create a statewide scheme
14 so that Nevada could qualify for federal funding. Id.

15 On February 8, 1991, Assembly Bill 320 (hereinafter, "A.B. 320") was proposed as an
16 effort to create a basic recycling program and to reduce the disposal of certain kinds of solid
17 waste. The first version of A.B. 320, Sec. 19 (NRS 444.520) imposed a fee for the disposal of
18 solid waste, stating: "there is hereby levied upon the operator of each disposal site a fee of \$2.50
19 per ton of solid waste accepted for disposal or transfer at the site...All claims against the account
20 must be paid as other claims against the state are paid." A.B. 320 (Feb. 8, 1991). Assembly
21 Member Vivian Freeman, who introduced the bill, indicated that the intended effects of this fee
22 were threefold: 1) revenues would help fund recycling programs, 2) the charges would be more
23 reflective of the cost of running a landfill and would assist in funding landfill operations, and 3)
24 the higher disposal rates could have provided a cost incentive that promotes recycling because
25 residents paying for the quantity of garbage being disposed would be more likely to remove
26 recyclable materials. *Assembly Bill Omnibus Recycling*, Assemblywoman Vivian L. Freeman,
27 Assembly Committee on Natural Resources, Agriculture and Mining (March 4, 1991). During a
28 committee meeting it was agreed that the \$2.50 fee was excessive, and needed to be eliminated

1 and re-evaluated after two years. Assembly Committee on Natural Resources, Committee
2 Analysis of A.B. 320, at 11 (April 6, 1991). After two amendments, A.B. 320 read as follows:

3 “The governing body of any municipality which has an approved plan for
4 the management of solid waste may, by ordinance, provide for the levy and
5 collection of other or additional fees and charges and require such licenses
6 as may be appropriate and necessary to meet the requirements of NRS
7 444.460, inclusive. The fees authorized by this section are not subject to
8 the limit on the maximum allowable revenue from fees established
9 pursuant to NRS 354.5989.”

10 A.B. 320 Reprint with Adopted Amendments, at 6 (May 24,
11 1991)(emphasis added).

12 It had been determined that NRS 354.5989² would be the only statute to place a fee limitation on
13 the proposed garbage fees. Therefore, the legislature specifically made A.B. 320 exempt from
14 NRS 354.5989 through this amendment. These 1991 amendments are still reflected in the statute
15 today.

16 In 2005, NRS 444.520 was amended again to create a method of recourse for the garbage
17 company once a customer became delinquent on a bill by allowing the garbage company to place
18 a lien on the property. Senate Committee on Health and Human Resources, Committee Analysis
19 of S.B. 354, at 10-11 (April 6, 2005).

20 This amendment added the following language in bold:

21 1. The governing body of any municipality which has an approved
22 plan for the management of solid waste may, by ordinance, provide for the
23 levy and collection of other or additional fees and charges and require such
24 licenses as may be appropriate and necessary to meet the requirements of
25 NRS 444.460 to 444.610, inclusive.

26 2. The fees authorized by this section are not subject to the limit on
27 the maximum allowable revenue from fees established pursuant to NRS
28 354.5989.

3. **Until paid, any fee or charge levied pursuant to subsection 1
constitutes a perpetual lien against the property served, superior to all
liens, claims and titles other than liens for general taxes and special
assessments. The lien is not extinguished by the sale of any property on
account of nonpayment of any other lien, claim or title, except liens for
general taxes and special assessments. The lien may be foreclosed in the
same manner as provided for the foreclosure of mechanics' liens.**

² NRS 354.5989 regulates local government imposed fees for business licenses.

1 4. As a remedy established for the collection of any fee or charge
2 levied pursuant to subsection 1, an action may be brought in the name
3 of the governing body of the municipality in any court of competent
4 jurisdiction against any person who occupied the property when the
5 service was rendered or against any person guaranteeing payment of
6 the fee or charge, or against all persons, for the collection of any such
7 fee or charge that is delinquent.

8 5. A lien against the property served is not effective until a
9 notice of the lien, separately prepared for each lot affected, is:

10 (a) Mailed to the last known owner at the owner's last known
11 address according to the records of the county in which the property is
12 located;

13 (b) Delivered to the office of the county recorder of the county in
14 which the property is located;

15 (c) Recorded by the county recorder in a book kept for the
16 purpose of recording instruments encumbering land; and

17 (d) Indexed in the real estate index as deeds and other
18 conveyances are required by law to be indexed.

19 Senate Bill 354 (March 25, 2005).

20 The Senate Committee discussed that because of public health concerns the garbage company
21 is required to pick up all garbage, even if a customer's account is in arrears. Id. The proposed
22 amendments would require the homeowner to address the garbage lien, even if a tenant was
23 living on the premises. Id. Ultimately, the Senate Committee decided to omit the following
24 language from S.B. 354:

25 "As a remedy established for the collection of any fee or charge levied
26 pursuant to subsection 1, an action may be brought in the name of the
27 governing body of the municipality in any court of competent jurisdiction
28 against any person who occupied the property when the service was
rendered or against any person guaranteeing payment of the fee or charge,
or against all persons, for the collection of any such fee or charge that is
delinquent."

 The only explanation for this deletion was that the purposed amendment added "some
unnecessary language." Id.

 When the Assembly Committee discussed A.B. 354, it recognized that the bill allowed
the garbage company to create a lien that could ultimately lead to the foreclosure of residential
homes. Assembly Committee on Health and Human Resources, Committee Analysis of A.B.

1 354, at 12-13 (May 20, 2005). Jennifer Lazovich (hereinafter, “Lazovich”), Legislative Advocate
2 representing the garbage company, Republic Services, Inc., indicated that the garbage lien
3 process had two steps: first, it requires that a notice of an intent to lien be issued. Id. The second
4 step, if the garbage bill remains unpaid, is to record the lien with the county. This lien will be
5 removed off the county’s record once it has been paid. Lazovich also indicated that the lien
6 “operates in the same way as a mechanic’s lien” which could ultimately end in a foreclosure.
7 However she followed this remark by stating that Republic Services, Inc. had never taken this
8 extreme step and never would. Id. The legislative history did not discuss the applicability of the
9 mechanic’s lien statutes any further.

10 Finally, the Senate Committee discussed that if renters live in a home, the homeowner
11 must take precautionary steps and have the garbage bill sent to the homeowner’s residence
12 instead of the rental. Id. This will allow the homeowner to pay the garbage bill and ensure that a
13 lien is not placed on the property, then the homeowner can recover the money by incorporating
14 the garbage bill into the price of the rent. Id.

15 *II. Procedural History of NRS 108 Mechanic’s Liens*

16 Of importance to the Court is the legislative intent surrounding the inception and
17 development of NRS Chapter 108, the mechanic’s lien statutes. NRS Chapter 108 contains sixty-
18 two individual statutes, many of which provide definitions. The Court has considered the
19 implementation and development of those statutes pertaining to the requirements for perfecting a
20 mechanic’s lien, providing notice of the lien, the duration of the lien, and avenues available to
21 refute a lien.³

22 On February 2, 1965, Assembly Bill 236 (hereinafter, “A.B. 236”) was proposed in order
23 to add mechanic’s liens to the statutory liens found in NRS Chapter 108. After reviewing the bill
24 the Assembly Committee sought to expand the breadth of the mechanic’s lien to sufficiently
25 cover the entire construction industry. Assembly Committee on Judiciary, Committee Analysis

26
27 ³ Specifically, the Court has analyzed the legislative history for NRS 108.226, NRS
28 108.227, NRS 108.2275, NRS 108.233, and NRS 108.245. Amendments were made to these
statutes in the following years: 1967, 1969, 1971, 1979, 1987, 1995, 1997, 2003, 2005, and 2007.
The Court considers all of these amendments and their legislative history.

1 of A.B. 236 at 1-4 (Feb. 16, 1965). The Assembly Committee was also concerned with the
2 fairness of the lien process, focusing on the timing in which a lien could be obtained, the
3 explanatory details that should be contained in the lien to allow the lien party to refute the lien,
4 the time needed to properly notice a lien, and how a lien would apply to multiple properties like
5 tract homes. Id. The Assembly Committee also discussed the importance of creating a bill that
6 protects both the homeowner and the contractor. Id.

7 The Assembly Committee discussed amendments to A.B. 236, and adopted Oregon law
8 which stated that a lien is not established unless there is proper notice of the lien, and then it
9 specified the lien requirements. Assembly Committee on Judiciary, Committee Analysis of A.B.
10 236 at 90-92 (March 2, 1965). Discussion also ensued regarding whether notice of a lien should
11 be provided without recording the lien, and the Assembly Committee decided to call Oregon
12 officials to inquire as to the procedures implemented there. Assembly Committee on Judiciary,
13 Committee Analysis of A.B. 236 at 147-49 (March 15, 1965). The Assembly Committee
14 ultimately gave A.B. 236 to the Senate with the intent to add language constructed from Oregon
15 law in the future. This language would require that notice be sent to the owner by material
16 suppliers, but did not require the notice to be recorded. Assembly Committee on Judiciary,
17 Committee Analysis of A.B. 236 at 151 (March 16, 1965). The Senate Committee subsequently
18 reviewed and amended A.B. 236, but no minutes are available from this committee. The
19 amendments made by the Senate Committee added language governing the assignment of a lien
20 and instituted a 20 day timeline for laborers to provide the owner of the property with notice of
21 materials supplied, work performed, or services rendered. *Journal of the Senate* (March 3,
22 1965).

23 In 1987, Assembly Bill 220 (hereinafter, "A.B. 220") was introduced in response to a
24 1982 Supreme Court ruling which found that the mechanic's lien statutes denied the contractor
25 or subcontractor the recovery of profits and overhead. Senate Committee on Judiciary,
26 Committee Analysis of A.B. 343 at 901-03 (March 19, 1979). The mechanic's lien statutes were
27 amended to allow the contractor or subcontractor to recover the terms of the contract and in the
28 absence of a contract to recover for materials, labor, and the fair market value of profits and

1 overhead. Id. The legislature discussed that this amendment prevent the homeowner for
2 receiving a windfall by only having to pay for materials and labor in the absence of a contract.
3 Id.

4 In 1995, the legislature proposed a major amendment to the mechanic's lien with Senate
5 Bill 401 (hereinafter, "S.B. 401"). S.B. 401, in part, added an amendment that allowed a party
6 with interest in the premises in which a lien has been filed to appear before the court to assert
7 that the lien was frivolous or excessive. Senate Committee on Judiciary, Committee Analysis of
8 A.B. 343 at 2-10, bate stamp 2613-21 (May 23, 1995). During the Senate hearing it was
9 discussed that the amendments were intended to be good for all parties. Id. The legislature
10 acknowledge that there was a need to speed up the mechanic's lien process, but it also did not
11 want to do so to the detriment of any due process rights.⁴

12
13 **III. Procedural requirements found in the mechanic's lien statutes may be**
14 **applied to a garbage lien when NRS 444.520 is silent on an issue.**

15 The extent to which the mechanic's lien statutes are incorporated into NRS 444.520 is a
16 matter of first impression. To determine the interplay between NRS Chapter 108 and NRS
17 444.520 the Court must interpret NRS 444.520. Words of "a statute should be given their plain
18 meaning." McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986). "Where a statute is clear on
19 its face, a court may not go beyond the language of the statute in determining the legislature's
20 intent." Id. "When the statutory language lends itself to two or more reasonable interpretations,
21 the statute is ambiguous." State v. Lucero, 127 Nev. Adv. Op. 7 (2011). When a statute is

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24 ⁴ As originally purposed, S.B. 401, stated that if an owner wanted to contest a lien, she could do
25 so by motion to the district court, accompanied by an affidavit. If the Court issues an order for a
26 hearing then the hearing was required to take place no sooner than 6 days and no later than 15
27 days after the Court issued an order. During the Senate hearing, there was testimony that this
28 short window would impact the Defendant's due process rights because it was an insufficient
amount of time to answer and gather evidence. SENATE COMMITTEE ON JUDICIARY, COMMITTEE
ANALYSIS OF A.B. 343 at 901-03 (May 25, 1995). In response to this testimony, the timeframe
was changed to "no less than 10 days or more than 20 days." Id.

1 ambiguous the Court “will look to legislative history and rules of statutory construction in
2 determining the statute's meaning.” Silver State Elec. Supply Co. v. State ex rel. Dep't of
3 Taxation, 123 Nev. 80, 84-85 (2007). “[I]t is not the business of this court to fill in alleged
4 legislative omissions based on conjecture as to what the legislature would or should have done.”
5 McKay, 103 Nev. 490, 492 (1987). “When the language of the statute is ambiguous or silent on
6 a particular issue, it should be construed in accordance with what ‘reason and public policy
7 would indicate the legislature intended.’” Mineral Cnty. v. State, Bd. of Equalization, 121 Nev.
8 533, 540 (2005).

10 Equal weight should be given to each sentence, phrase, and word in the statute to render
11 them meaningful within the context of the purpose of the legislation. Harris Assocs. v. Clark
12 County Sch. Dist., 119 Nev. 638, 642 (2003) (internal citations omitted). “Statutes within a
13 scheme and provisions within a statute must be interpreted harmoniously with one another in
14 accordance with the general purpose of those statutes and should not be read to produce
15 unreasonable or absurd results.” Washington v. State, 117 Nev. 735, 739 (2001). Nevada law
16 requires that a statute, if reasonably possible, should be construed so as to function in harmony
17 with the Constitution. State v. Glusman, 98 Nev. 412, 419-20 (1982).

18 West Taylor asserts that in order to foreclose under NRS 444.520, Waste Management
19 must first perfect a proper lien by adhering to the procedural requirements of NRS Chapter 108,⁵
20 which govern mechanic’s liens. When applying NRS Chapter 108, West Taylor asserts that
21 Waste Management has failed to properly notice intent to lien prior to recording and failed to
22 follow the necessary timing requirements. West Taylor argues that the garbage lien is an
23 encumbrance on real property so the mechanic’s lien statutory structure must be applied as a
24 whole, because independently NRS 444.520 does not provide the constitutionally necessary
25 avenue to dispute the lien.

27 _____
28 ⁵ West Taylor specifically argues the applicability of: NRS 108.239, NRS 108.233 and
NRS 108.226

1 Waste Management argues that the legislative history supports a finding that the garbage
2 company has the power to collect fees for services rendered, in an effort to meet the legislature's
3 environmental and health related goals. Waste Management also argues that NRS 444.520 only
4 incorporates the manner for foreclosing a mechanic's lien (NRS 108.239) and not the manner for
5 perfecting a lien. Additionally, it argues that the language of NRS 444.520 specifically outlines
6 the proper channels and content required to give notice of intent to lien and allows the garbage
7 company to create a perpetual lien against the property. It states that NRS 444.520 contains its
8 own requirements for perfecting a garbage lien when it states that a lien upon the property is not
9 effective until it is mailed to the last known owner, delivered to the county recorder, recorded,
10 and indexed.

11 Of great significance in this case, is whether only NRS 108.239, relating to mechanic's lien
12 foreclosures, may be applied to the garbage lien or whether the garbage lien can be governed by
13 the entire statutory structure of the mechanic's lien. The Court first considers the plain language
14 of NRS 444.520 which states,

15 "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a
16 perpetual lien against the property served, superior to all liens, claims and
17 titles other than liens for general taxes and special assessments. The lien is
18 not extinguished by the sale of any property on account of nonpayment of
19 any other lien, claim or title, except liens for general taxes and special
20 assessments. The lien may be foreclosed in the same manner as provided for
21 the foreclosure of mechanics' liens." NRS 444.520.

22 In applying the principles of statutory interpretation the Court gives equal weight to each
23 word and phrase within the statute. The Court has previously found that the word "may" is to be
24 construed as permissive, unless the clear intent of the legislature is to the contrary. Sengbusch v.
25 Fuller, 103 Nev. 580, 582 (1987). In this case the language permitting the application of the
26 mechanic's lien foreclosure process is clear; however, there is an ambiguity as to which portions
27 of the mechanic's lien statutes may be applied since the specific sections are not listed in the
28 language of the statute. When an ambiguity exists, "a court should consult other sources such as
legislative history, legislative intent, and analogous statutory provisions." Madera v. State Indus.
Ins. Sys., 114 Nev. 253, 257 (1998).

1 In this case, the legislative history surrounding the amendments to NRS 444.520 is sparse. A
2 review of the brief legislative history discussed above reveals that the Legislature failed to
3 expressly state to what extent the mechanic's lien statutes should be incorporated; as a result, the
4 Court finds that standing alone the legislative history of NRS 444.520 provides little guidance as
5 to the application of the mechanic's lien statutes. Therefore, the Court will also consider the
6 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, to
7 determine whether NRS 444.520 permits the incorporation of just one or all of the mechanic's
8 liens statutes. Based on the rules of statutory interpretation, the Court applies the following
9 factors to determine which interpretation of the statute is more reasonable: 1) the legislature's
10 specific interest in drafting the statute; 2) whether any part of the statute would be rendered
11 superfluous by an interpretation; 3) whether a specific interpretation would violate due process
12 rights; and 4) if the result of an interpretation would be absurd. Great Basin Water Network v.
13 State Eng'r, 126 Nev. Adv. Op. 20 (2010).

14 The Court considers whether the legislature was addressing a specific interest when drafting
15 NRS 444.520. As discussed above, NRS 444.520 was developed as a means for the garbage
16 company to recover money from customers who are delinquent on their garbage bill. The
17 legislature determined that NRS 444.520 created a necessary remedy for the garbage company to
18 collect missing payments because the garbage company was required to pick up the garbage
19 whether or not the homeowner paid the garbage bill. The policy mandating garbage removal was
20 the product of a long history of public health concerns, starting with the prevention of disease
21 epidemics in the late 1800s.

22 The legislative history demonstrates that NRS 444.520 is rooted in an issue of fairness.
23 While it provides the garbage company with the ability to lien a property, it is important to note
24 that in the development of NRS 444.520, the legislature also considered the interest of the
25 homeowner, focusing at length on the significance of placing a lien on real property.

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1 Additionally, testimony during the legislative hearings stated that:

2 "[C]ustomers are billed approximately \$33 per quarter, on a quarterly basis.
3 If they are two quarters in arrears, the lien would be in the amount of \$66.
4 Over 75 percent of the people actually pay the bill once they receive a
5 notice of intent to lien. This is a long process. Customers receive about six
6 requests for payment before they receive an intent to lien notice." Senate
7 Committee on Government Affairs, Committee Analysis of A.B. 354, at 11
8 (April 6, 2005).

9 This language indicates that the legislature was trying to create a real incentive for homeowners
10 to address outstanding charges when they are notified by the garbage company that they are
11 delinquent on the garbage bill, but also implement a process that allows an opportunity for the
12 deficiency to be cured before foreclosure occurs. The Court finds that an interpretation that the
13 legislature's intent in drafting the statutes was grounded in creating a fair system of payment for
14 garbage services comports with reason and policy.

15 The Court also finds that incorporating the mechanic's lien statutes beyond NRS Chapter
16 108.239, furthers the legislature's specific interest in establishing a fair system. The legislative
17 history of NRS Chapter 108 is also grounded in creating an equitable system for placing a
18 mechanic's lien on real property when there has not been payment for construction services
19 rendered. In the development and amendments to the mechanic's lien statutes the legislature
20 routinely considered the impacts that the changes would have to all parties involved and tried to
21 maintain a fair system by fine tuning notice requirements, timing rules, and establishing clear
22 content requirements for the lien. Therefore, the application of any statutory requirements from
23 the mechanic's lien statutes to the garbage lien statutes, where the garbage liens statute is silent,
24 would enhance the legislative intent to create a fair system.

25 The Court next considers whether either of the statutory interpretations supplied by the
26 parties would render any language in NRS 444.520 superfluous. Adopting West Taylor's
27 argument that the mechanic's lien statutes must be incorporated in their entirety would render the
28 word "may" in NRS 444.520 superfluous. Additionally, notice requirements have been written
into the language of NRS 444.520, which would be rendered superfluous if compliance with the

1 notice statute for the mechanic's lien were required. In contrast, Waste Management's
2 interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage
3 lien gives proper consideration to each word and phrase in NRS 444.520.

4 Alternatively, no portion of NRS 444.520 is rendered superfluous if the statute is interpreted
5 to state that the garbage lien **may** apply the mechanic's liens statutes that addresses procedural
6 requirements not already governed by NRS 444.520. This interpretation is in harmony with
7 Nevada law which states that "where a general and a special statute, each relating to the same
8 subject, are in conflict and they cannot be read together, the special statute controls." Laird v.
9 State Pub. Emp. Ret. Bd., 98 Nev. 42, 45 (1982). This interpretation would render the specific
10 requirements in the garbage statutes on topics, such as notice, as controlling while allowing the
11 more generally incorporated mechanic's lien procedural statutes to apply when NRS 444.520 is
12 silent on the issue. To offer a specific example, NRS 444.520 does not address the procedures
13 for a hearing or dispute should the customer assert that her account is not delinquent; therefore,
14 the customer may apply NRS 108.2275 to request a hearing to dispute the lien.⁶ But, by that
15 same token, the garbage lien will not automatically fail due to a lien period that runs longer than
16 6 months⁷, because NRS 444.520 specifically creates a perpetual lien.⁸

17 Next the Court considers whether interpreting NRS 444.520 to only permit the incorporation
18 of NRS 108.245, violates due process rights. NRS 444.520 creates a lien on real property with
19 the ability to foreclose if the delinquent bills are not paid. Under the Nevada Constitution, the
20 due process clause requires notice and an opportunity to be heard before the government
21 deprives a person of his or her property. Nev. Const. art. I, § 8. If possible Nevada statutes
22 should be construed as constitutional, and "[i]n the face of attack, every favorable presumption
23

24 ⁶ NRS 108.2275, states in relevant part: "The debtor of the lien claimant or a party in
25 interest in the property subject to the notice of lien who believes the notice of lien is frivolous
26 and was made without reasonable cause, or that the amount of the notice of lien is excessive,
27 may apply by motion to the district court for the county where the property or some part thereof
28 is located for an order directing the lien claimant to appear before the court to show cause why
the relief requested should not be granted."

⁷ This is mandated by NRS 108.233.

⁸ The Court will provide additional analysis on this issue below.

1 and intendment will be brought to bear in support of constitutionality.” State v. Glusman, 98
2 Nev. at 419-20. Therefore, since NRS 444.520 does not provide an opportunity to be heard if the
3 property owner disputes the lien, but it does incorporate the mechanic’s lien statutes, a
4 constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter
5 108 than just NRS 108.245. Furthermore, the legislative history pertaining to NRS 108.2275
6 specifically states that the legislature designed the procedures for contesting a mechanic’s lien
7 with the preservation of due process rights in mind.

8 Finally, the Court will consider whether permitting the incorporation of multiple
9 provision of NRS Chapter 108 into NRS 444.520 is absurd. The Court does not find the
10 permissive application of multiple mechanic’s lien statutes to be absurd, as it is the only manner
11 of interpretation that preserves the customer’s ability to dispute a lien. After considering the
12 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, the
13 Court finds the NRS 444.520 incorporates the mechanic’s lien statutes to the extent that NRS
14 444.520 is silent on a procedure.

15 **IV. NRS 108.226 creates a statute of limitations to notice a lien.**

16 West Taylor argues that Waste Management has failed to follow the statute of limitations
17 outlined in NRS 108.226, which requires the notice of lien to be filed 90 days after the quarterly
18 billing went delinquent in 2007 or alternatively fifteen days after the billing went delinquent per
19 the *1994 Franchise Agreement*. Additionally, West Taylor argues that if Waste Management has
20 an indefinite amount of time after an account becomes delinquent to file the lien, then the general
21 statute of limitations provision in Nevada, NRS 11.190, would have no bearing on the case.

22 Waste Management contends that the NRS 108.226’s statute of limitations does not
23 apply. Alternatively, if the Court finds that NRS 108.226 does apply, Waste Management argues
24 that the 90 day period is not triggered by the date that that payment became delinquent, instead it
25 is triggered by the last date that services were rendered, which essentially resets every billing
26 cycle.

1 NRS 108.226 states:

2 “[t]o perfect a lien, a lien claimant must record a notice of lien in the office
3 of the county recorder of the county where the property or some part thereof
4 is located in the form provided in subsection 5: (a) Within 90 days after the
5 date on which the latest of the following occurs: (1) The completion of the
6 work of improvement; (2) The last delivery of material or furnishing of
equipment by the lien claimant for the work of improvement; or (3) The last
performance of work by the lien claimant for the work of improvement.”

7 The clear language of NRS 108.226 provides Waste Management with the opportunity to supply
8 notice to its customers within 90 days after each billing cycle that becomes delinquent. Currently
9 Waste Management operates on a quarterly billing cycle, this means that a contract starting in
10 January would be billed at the end of March. Failure to pay the March garbage bill would cause
11 the account to fall in arrears at that time. Under the present system the customer would not be
12 notified of the missed payment until the next billing cycle in June; however, imposing the 90 day
13 requirement may encourage the garbage company to send out a “notice of lien” sooner or to
14 impose a shorter billing cycle. Generally speaking, bills are sent out prior to their due date,
15 which would also provide customers with a small window to cure the deficiency before the
16 notice period runs if the notice to lien had not already arrived. NRS 108.226 applies to the
17 garbage lien statutes because it was incorporated in NRS 444.520, and it does not conflict with
18 existing statutory language in the garbage lien enacting statute. Therefore, NRS 108.226 governs
19 how far back in time Waste Management is able to notice and record a garbage lien.

20 **V. After the lien is recorded it exists in perpetuity, but the statute of limitations**
21 **places a cap on the timeframe that the home may be foreclosed upon under**
22 **the lien.**

23 West Taylor argues that Waste Management failed to commence an action within six months
24 to foreclose the lien after notice of the lien is sent, therefore under NRS 108.233 the lien has
25 expired. Waste Management asserts that the language of NRS 444.520 can only be interpreted in
26 one reasonable manner, to mean that a garbage lien encumbers a property forever, or until it is
27 paid. Waste Management cites State v. Yellow Jacket Silver Min. Co. to argue that the lien
28 operates like a tax and remains attached to the land, but that the remedy of foreclosure may

1 expire with the statute of limitations. State v. Yellow Jacket Silver Min. Co., 14 Nev. 220, 232
2 (1879).⁹

3 NRS 108.233 states that a mechanic's lien shall not bind a property and shall expire after six
4 months. This language directly conflicts with the plain language of NRS 444.520 which states
5 that the filing of a garbage lien "constitutes a perpetual lien against the property served". Since
6 NRS 108.233 and NRS 444.520 both pertain to the same subject, how long a recorded lien will
7 exist, NRS 444.520 is controlling as the statute that is specific to garbage liens. The language of
8 NRS 444.520 is clear and unambiguous, and allows the lien to exist in perpetuity. In Wasson v.
9 Hogenson, the Court considered the language of a similar statute that provided that "until paid"
10 all charges will constitute a "perpetual lien" against the property served. Wasson v. Hogenson,
11 196 Colo. 183, 191 (1978). It found that "[u]ntil" is a functional word to indicate continuance
12 (as of an action, condition or state) up to a particular time. 'Perpetual' means continuing forever;
13 everlasting; eternal." Id. This Court adopts the definitions used in Wasson v. Hogenson and finds
14 that once a garbage lien is recorded it is perpetual.¹⁰

15 However, in Yellow Jacket, the Court also finds that even if a tax exists in perpetuity that the
16 remedy to enforce the collection of the tax may be barred by the statute of limitations. Id.
17 Nevada's "statute of limitations embraces all characters of actions, legal and equitable." White v.
18 Sheldon, 4 Nev. 280, 288-89 (1868). Statutes of limitations are generally adopted to serve the
19 individual and not for public policy, and they "[prevent] surprises through the revival of claims
20 that have been allowed to slumber until evidence has been lost, memories have faded, and
21 witnesses have disappeared." Petersen v. Bruen, 106 Nev. 271, 273 (1990). Accordingly, under
22 NRS 11.190, an "[a]n action upon a statute for a penalty or forfeiture, where the action is given
23

24 ⁹ West Taylor rejects Waste Management's contention that the garbage lien can be
25 equated to a tax and argues that lien is essentially an encumbrance on real property that requires
a forum for dispute resolution. But, West Taylor has elected not to completely brief the
constitutional arguments at this time.

26 ¹⁰ See also, N. Washington Water & Sanitation Dist. v. Majestic Sav. & Loan Ass'n, 42
27 Colo. App. 158, 160 (1979)(holding that a tap lien, which could be foreclosed in the same
28 manner as a mechanics' lien, did not have to abide by the six-month time limit required in the
mechanics' lien because it was inconsistent with the statutory language that "(u)ntil paid all . . .
charges shall constitute a perpetual lien on and against the property serve.")

1 to a person” must be brought within two years, except when the statute imposing it prescribes a
2 different limitation. In this case, the language of NRS 444.520 does not create a new statute of
3 limitations for foreclosing on a garbage lien nor does it specifically exempt the garbage lien from
4 the standard statutes of limitations found in NRS 11.190. Therefore, the two year statute of
5 limitations applies to Waste Management’s ability to foreclose, which protects the homeowner
6 from the revival of a lien several years after it was imposed.

7 In practice this means that if Waste Management properly notices a lien within the 90 days
8 required by NRS 108.226, it then has two years under NRS 11.190 to pursue the remedy of
9 foreclosure. Should Waste Management fail to foreclose upon the property within two years, the
10 lien will still exist but the remedy to recover the property through foreclosure will have expired.
11 Unless another remedy is available Waste Management will have to either wait for the customer
12 to pay or wait for the property to be sold to collect on its lien. Moreover, the legislative history
13 supports this interpretation of the applicable statute of limitations, because during the Assembly
14 hearing the Assembly Committee discussed at length the importance of providing a significant
15 opportunity for the homeowner to cure the garbage lien and ways to avoid unexpected
16 foreclosures. Accordingly, the Court finds that once a lien is recorded it lasts in perpetuity, but
17 that the ability to foreclose upon that lien expires after a two year statute of limitations.

18 ***VI. Conclusion***

19 The Court finds that there is no issue of material fact presented for consideration in the
20 motion for summary judgment, and that the questions before the Court must be determined as a
21 matter of law. Text, context, and history support the constitutionally sound reading of NRS
22 444.520 that permits the incorporation of NRS Chapter 108 mechanic’s lien statutes to the extent
23 that they govern lien foreclosure procedures not addressed by the language in NRS 444.520.
24 Furthermore, the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to
25 garbage liens. After a lien is noticed Waste Management has two years to foreclose upon the

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1 property, and after that time has lapsed the lien will last in perpetuity but leave Waste
2 Management without the recourse of foreclosure.

3 Based on the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED that WEST TAYLOR'S Motion for Partial Summary
5 Judgment is DENIED in part and GRANTED in part. WEST TAYLOR's Motion for Summary
6 Judgment is GRANTED as to any claims for delinquent bills that WASTE MANAGEMENT
7 failed to notice within the 90 day window, but it is DENIED with regard to properly noticed
8 claims.

9 DATED this 28 day of July, 2014.

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11 Connie J. Steinheimer
12 DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV12-02995

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 18th day of
5 July, 2014, I electronically filed the **ORDER** with the Clerk of the Court by
6 using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by
8 the method(s) noted below:

9 **Personal delivery to the following: [NONE]**

10
11 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
12 **notice of electronic filing to the following:**

13 MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al

14 BRYAN WRIGHT, ESQ for KAREN GONZALEZ et al

15 **Deposited in the Washoe County mailing system for postage and mailing with the United**
16 **States Postal Service in Reno, Nevada:**

17 C. Nicholas Pereos, Esq.
18 1610 Meadow Wood Lane, Ste. 202
19 Reno, NV 89502

20 
21 Marci Stone

ORIGINAL

FILED

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JENNIFER HASTINGS
CLERK OF THE COURT
J. Hastings

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District Court 09/03/2014 03:58 PM
Washoe County
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1 CODE: 2200
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7 ATTORNEYS FOR PLAINTIFF

8 IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 *****

11 WEST TAYLOR STREET, LLC,
12 a limited liability company,

Case No. CV12 02995
Dept. No. 4

13 Plaintiff,

14 vs.

15 WASTE MANAGEMENT OF NEVADA,
16 INC., KAREN GONZALEZ, and
17 DOES 1 THROUGH 10,

18 Defendants.

19 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

20 Plaintiff moves this Court for its order for a partial summary judgment in connection
21 with the claims for relief that have been addressed in the first and second claim for relief
22 of the second amended complaint.

23 This motion is made and based upon the points and authorities submitted herewith.

24 **POINTS AND AUTHORITIES**

25 **A. STATEMENT OF PROCEDURAL FACTS.**

26 A second amended complaint ("SAC") was filed on June 27, 2014. The first claim
27 for relief seeks a ruling from this Court as to the recording of certain liens by Defendant as
28 improper and that the liens have no effect and no longer encumber Plaintiff's property. The
second claim for relief asked for the Court to make certain determinations and declarations
regarding the impact of NRS 444.520. In answering the SAC, Defendant has denied the

1 charging allegations and plead affirmative defenses consisting of but not limited to the fact
2 that the SAC fails to state a claim; fails to comply with Chapter 30.130; amongst others.
3 A motion for partial summary judgment was filed on March 11, 2014. A decision was
4 rendered by this Court in response to the motion for partial summary judgment. Since that
5 time, Defendant has released the liens.

6 **B. STATEMENT OF FACTS.**

7 There were three (3) liens filed against the properties referenced in the SAC. There
8 are two (2) liens recorded against the property at 345 W. Taylor and one (1) lien against
9 the property at 347 W. Taylor. The first lien was recorded on February 23, 2012, it is
10 Document No. 4086834 and encumbers 347 W. Taylor for an unpaid garbage fee in the
11 amount of \$489.47 dated February 22, 2012. (Exhibit "1".) The second lien was
12 recorded on November 21, 2012, it is Document No. 4177148 and encumbers 345 W.
13 Taylor. (Exhibit "1".) It has been replaced by the lien dated March 14, 2014 as Document
14 No. 4334435 for an unpaid amount of \$404.88 at of March 14, 2014. (Exhibit "1".)
15 Although these liens have since been removed by Defendant, there is still the outstanding
16 claim set forth in the SAC for which Plaintiff asks a ruling from this Court in connection with
17 the same. Should such a ruling be issued by the Court, the only remaining issue in the
18 SAC is the slander of title claim.

19 **C. ARGUMENT.**

20 In a researched decision issued by this Court in response to the first motion for
21 partial summary judgment, the Court made the findings in the body of its decision that NRS
22 444.520 incorporates certain aspects of the mechanic lien statutes to the extent that NRS
23 444.520 is silent on a procedure. (Order, P.15, L.13.)

24 The order goes on to state: "Therefore, NRS 108.226 governs how far back in time
25 Waste Management is able to notice and record a garbage lien." (Order, P.16, L.18.)

26 The order goes on to state: "Therefore, the two year statute of limitation applies to
27 Waste Management's ability to foreclosure, which protects the homeowner from the revival
28 of a lien several years after it was imposed." (Order, P.18, L.4.)

1 The order goes on to state: "In practice this means that if Waste Management
2 properly notices a lien within the 90 days required by NRS 108.226, it then has two years
3 under NRS 11.190 to pursue the remedy of foreclosure." (Order, P.18, L.7.)

4 The order goes on to state: "Furthermore, the 90 day notice of lien statute of
5 limitations found in NRS 108.226 does apply to garbage liens." (Order, P.18, L.24.)

6 This Court in making its findings and decision adopted the statutory scheme of
7 Chapter 108 in connection with garbage liens. Contained in that Chapter are the remedial
8 provisions in connection with enforcement of the lien. In its order, the Court set forth
9 certain time periods relating to the foreclosure of the lien.

10 This entire action started by reason of the lien on the property by Waste
11 Management without an opportunity to be heard by the Plaintiff and the allegations of due
12 process rights. As a result of the finding of the Court in response to the first motion for
13 partial summary judgment, the order issued by this Court on July 28, 2014 disposes of the
14 first and second claims for relief set forth in the SAC. In other words, the matter is ripe for
15 a partial summary judgment as it relates to the claims identified in the first and second
16 claim for relief and Plaintiff requests a judgment as follows:

- 17 1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520 has a time
18 limitation of two (2) years pursuant to NRS 11.190 by which the purveyor of
19 the lien is to pursue proceeding of foreclosure;
- 20 2. Any lien for unpaid garbage fees pursuant to NRS 444.520 shall be for a
21 delinquent amount within a limitations period of ninety (90) days as found in
22 NRS 108.226 from the date that the lien amount became delinquent.
- 23 3. The pursuit of a remedy to foreclosure a garbage lien under NRS 444.520
24 will provide the lien property owner its opportunity to be heard and to contest
25 the legitimacy of the lien as required by Chapter 108 of Nevada Revised
26 Statutes.

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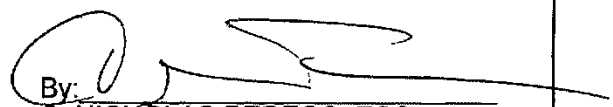
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The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 28 day of August, 2014

C. NICHOLAS PEREOS, LTD.

By: 

C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

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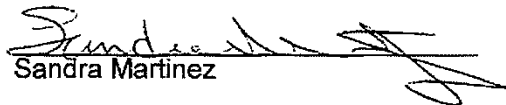
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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales

DATED: 8-29-14


Sandra Martinez

SCHEDULE OF EXHIBITS

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Exhibit 1 Liens

CV12-02995
WEST TAYLOR STREET VS WASTE
District Court
Nashoe County
08/03/2014 03:58 PM
\$2260
MTNRFFC

EXHIBIT

EXHIBIT



DOC # 4086834

02/23/2012 10:10:37 AM

Requested By

WASTE MANAGEMENT

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$14.00 RPTT: \$0.00

Page 1 of 1



APN #011-266-17
ACCT #010-74135

NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statutes Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as 347 TAYLOR ST W, RENO, NV more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

1. The owner(s) or reputed owner(s) of the described real property is/are **WEST TAYLOR STREET LLC**.
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **\$489.47**, no part of which has been paid.

DATED: This 22 day of February 2012

Waste Management of Nevada Inc.

By

KAREN GONZALES

STATE OF NEVADA)

: SS.

COUNTY OF WASHOE)

On the 22 day of February, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledges that she executed this instrument.

WHEN RECORDED MAIL TO:

Waste Management of Nevada Inc.
Attn: Karen Gonzales
100 Vassar St.
Reno, NV 89502



TIFFANY FULLER

Notary Public - State of Nevada

Appointment Recorded in Washoe County

No: 04-90901-2 - Expires October 19, 2014

NOTARY PUBLIC

JA_0157



APN #011-266-17
ACCT #010-74134

DOC # 4177148

11/28/2012 02:44:57 PM

Requested By

WASTE MANAGEMENT

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$17.00 RPTT: \$0.00

Page 1 of 1



NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statutes Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as **345 TAYLOR ST W, RENO, NV** more particularly described as follows:

Washoe County Assessor's Parcel #011-266-17

1. The owner(s) or reputed owner(s) of the described real property is/are .
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **\$859.78**, no part of which has been paid.

DATED: This 21st day of November 2012

Waste Management of Nevada Inc.

By

KAREN GONZALES

STATE OF NEVADA

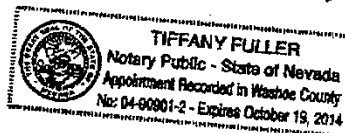
COUNTY OF WASHOE)

SS.

On the 21st day of November, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledges that she executed this instrument.

WHEN RECORDED MAIL TO:

Waste Management of Nevada Inc.
Attn: Karen Gonzales
100 Vassar St.
Reno, NV 89502



NOTARY PUBLIC

JA_0158



When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

APN#011-266-17
ACCT#010-74134

DOC # 4334435

03/14/2014 10:12:28 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statutes Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as, **345 TAYLOR ST W, RENO, NV** more particularly described as follows:

Washoe County Assessor's #011-266-17

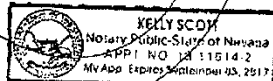
1. The owner(s) or reputed owner(s) of the described real property is/are **WEST TAYLOR STREET LLC**.
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **\$404.88** no part of which has been paid.

DATED: This 14th day of Mar 2014
Waste Management of Nevada Inc.

By Lori Vanlaningham
LORI VANLANINGHAM

STATE OF NEVADA)
COUNTY OF WASHOE) SS.

On the 14th day of March, 2014, personally appeared before me, a notary public Lori Vanlaningham, for Waste Management of Nevada Inc. who acknowledges that she executed this instrument.



Kelly Scott
NOTARY
Kelly Scott

1 **2645**
2 Gregory S. Gilbert (6310)
3 Bryan L. Wright (10804)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 gsgilbert@hollandhart.com
10 blwright@hollandhart.com

11 - and -

12 Matthew B. Hippler (7015)
13 HOLLAND & HART LLP
14 5441 Keitzke Lane, 2nd Floor
15 Reno, Nevada 89511
16 Tel: (775) 327-3000
17 Fax: (775) 786-6179
18 mhippler@hollandhart.com

19 *Attorneys for Defendants Waste Management*
20 *of Nevada, Inc. and Karen Gonzales*

21 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

23 WEST TAYLOR STREET, LLC, a limited
24 liability company,

25 Plaintiff,

26 vs.

27 WASTE MANAGEMENT OF NEVADA,
28 INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

Defendants.

CASE NO.: CV12-02995
DEPT. NO.: 4

**WASTE MANAGEMENT OF
NEVADA, INC.'S OPPOSITION TO
PLAINTIFF'S SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendant Waste Management of Nevada, Inc. ("Waste Management"), by and through its counsel of record, Holland & Hart LLP, hereby files its Opposition to the second Motion for Partial Summary Judgment ("Second Motion for Partial Summary Judgment") filed by Plaintiff West Taylor Street, LLC ("Plaintiff").

1 This Opposition is made and based upon the attached Memorandum of Points and
2 Authorities, the concurrently filed Motion for Partial Reconsideration of the Court's July 28, 2014
3 Order, the pleadings and papers on file, and such oral and documentary evidence as may be
4 presented at any hearing on this matter.

5 DATED this 25th day of September, 2014.

6 HOLLAND & HART LLP

7
8 /s/ Bryan L. Wright
9 Gregory S. Gilbert (6310)
10 Bryan L. Wright (10804)
11 9555 Hillwood Drive, 2nd Floor
12 Las Vegas, Nevada 89134

13 - and -

14 Matthew B. Hippler (7015)
15 5441 Keitzke Lane, 2nd Floor
16 Reno, Nevada 89511

17 *Attorneys for Defendants Waste Management of*
18 *Nevada, Inc. and Karen Gonzales*

19
20
21
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25
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27
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MEMORANDUM OF POINTS AND AUTHORITIES

**I. PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
SHOULD BE DENIED AS PROCEDURALLY UNNECESSARY**

On July 28, 2014, the Court issued a detailed Order denying in part, and granting in part,
Plaintiff's first Motion for Partial Summary Judgment. *See* Order (7/28/14). Thereafter, on
September 3, 2014, Plaintiff filed the subject Second Motion for Partial Summary Judgment.

Confusingly, Plaintiff's Second Motion for Partial Summary Judgment requests the Court to
find in its favor on the first and second claims for relief contained in the Second Amended
Complaint, despite acknowledging that those claims were already resolved in the Court's July 28,
2014 Order on the first Motion for Partial Summary Judgment. *See* Second Motion for Partial
Summary Judgment (9/3/2014) at 3:13-14 ("the order issued by this Court on July 28, 2014 disposes
of the first and second claims for relief set forth in the SAC."). Further, as indicated in the
Plaintiff's Second Motion for Partial Summary Judgment, the three (3) separate liens Waste

1 Management filed against Plaintiff's Property under NRS 444.520 have each already been released.
2 *See id.* at 2:5; *see also* Amended Releases of Lien Claims, attached hereto as **Exhibit 1**. Thus,
3 Plaintiff is not requesting the Court to apply the July 28, 2014 Order to those liens (as such a request
4 would be moot), but instead appears to request that the Court reaffirm the conclusions already
5 reached in the July 28, 2014 Order. *Id.* at 3. Plaintiff's request is procedurally unnecessary and
6 duplicative, and should be denied accordingly.

7 **II. PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**
8 **SHOULD BE DENIED FOR THE REASONS STATED IN THE CONCURRENTLY**
9 **FILED MOTION FOR PARTIAL RECONSIDERATION**

10 Further, for the reasons set forth in the Waste Management's concurrently filed Motion for
11 Partial Reconsideration of the Court's July 28, 2014 Order, which is incorporated herein by
12 reference, Waste Management requests the Court deny Plaintiff's Second Motion for Partial
13 Summary Judgment, and further reconsider certain portions of the Court's July 28, 2014 Order.
14 Specifically, as detailed more fully in the Motion for Partial Reconsideration, Waste Management
15 respectfully requests the Court to reconsider the following conclusions contained in the July 28,
16 2014 Order:

17 First, the Court determined that NRS 444.520 is ambiguous as to which portion(s) of
18 Nevada's statutory scheme relating to mechanic's liens should be applied to garbage liens. *See*
19 Order (7/28/14) at 11. The Court's conclusion in this regard appears to have been primarily based
20 upon the lack of a citation within NRS 444.520 to *specific* sections of NRS Chapter 108. *See id.*
21 Waste Management respectfully submits that notwithstanding this lack of specific citation, the clear
22 and unambiguous language of NRS 444.520—which is similar if not identical to numerous other
23 Nevada statutes stating how a statutory lien should be foreclosed—permissively incorporates only
24 the “manner . . . provided for the foreclosure of mechanic's liens.” The Nevada Supreme Court has
25 recognized that NRS 108.239 governs (i.e., “provide[s]”) the procedure (i.e., “manner”) for
26 foreclosing a mechanic's lien. *See Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev.
27 Adv. Op. 6, 247 P.3d 1107, 1109 (2011) (“NRS 108.239 governs actions to enforce a notice of
28 mechanic's lien”); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d
730, 735 (2008) (same); NRS 108.239 (entitled “Action to enforce notice of lien”) (“A notice of lien

1 may be enforced by . . .”). Thus, NRS 444.520’s permissive incorporation of the “manner . . .
2 provided for the foreclosure of mechanic’s liens” clearly and unambiguously incorporates only NRS
3 108.239 and the procedures thereunder.

4 Second, the Court determined that given the above mentioned ambiguity, the Court could
5 incorporate and impose upon garbage lien claimants any and all provisions of NRS Chapter 108
6 governing mechanic’s liens, unless the provision is expressly contradicted by NRS 444.520. *See*
7 Order (7/28/14) at 9-15. Waste Management respectfully submits that such an interpretation,
8 however, impermissibly renders the Legislature’s chosen language meaningless. For example,
9 mandating that a garbage lien claimant record its lien within the 90 day deadline set forth in NRS
10 108.226 (or otherwise lose its lien rights), renders the Legislature’s use of “may” in NRS 444.520
11 superfluous and illusory. The Legislature did not use “must”, “shall”, or any other language
12 mandating the incorporation or application of any portion of the mechanic’s lien statutory scheme to
13 garbage liens. Thus, interpreting NRS 444.520 to “require” compliance with the mechanic’s lien
14 statutes impermissibly contradicts and renders meaningless the language employed in that statute.
15 *See Karcher Firestopping v. Meadow Valley Constr.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263
16 (2009).

17 Third, the Court determined that because NRS 444.520 does not expressly provide a specific
18 procedure for customers or property owners to “dispute” the legitimacy of a garbage lien, due
19 process requires provisions other than NRS 108.239 (specifically NRS 108.2275) to be incorporated
20 into NRS 444.520. *See* Order (7/28/14) at 15. Based upon Plaintiff’s prior representations both at
21 the time of and in the briefing on the Motion for Partial Summary Judgment that it was not raising
22 due process issues at that time, Waste Management reserved its right but did not address the same in
23 its Opposition. *See* Opposition to Motion for Partial Summary Judgment (3/28/14) at 3 n.2.
24 Because the Court thus did not have the benefit of either party’s briefing on that issue, Waste
25 Management respectfully requests the Court to consider its arguments that due process does not
26 require provisions other than NRS 108.239 be incorporated into NRS 444.520.

27 As discussed in the Motion for Partial Reconsideration, property owners are never
28 dispossessed of their property under NRS 444.520 without notice and an opportunity to be heard.

1 Further, property owners wishing to challenge the lien prior to foreclosure can do so in the exact
2 same manner as Plaintiff has done here (i.e., by pursuing declaratory relief and/or slander of title
3 claims). Both of these available procedures provide the owner a meaningful opportunity to contest
4 the validity of the liens, and thus both satisfy basic due process requirements. *See J.D. Constr. v.*
5 *IBEX Int'l Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1040 (2010) (“Due process is satisfied by
6 giving both parties ‘a meaningful opportunity to present their case.’”). Indeed, Nevada’s
7 mechanic’s lien statutory scheme existed for over 100 years prior to the enactment in 1995 of the
8 expedited review procedure created by NRS 108.2275. Prior to that time, owners were able to
9 challenge mechanic’s liens through declaratory relief and/or slander of title claims. There is simply
10 no reason to suggest that due process requires anything different here with regard to garbage liens.

11 Fourth, the Court determined that the requirement in NRS 108.226(1)(a) that a mechanic’s
12 lien be recorded within 90 days of certain specified events applies to NRS 444.520, and requires a
13 garbage lien claimant to record its lien within 90 days of a customer’s first “delinquency” in
14 payment for services rendered. *See* Order (7/28/14) at 16. Waste Management respectfully submits
15 that the word “delinquency” does not appear anywhere in NRS 108.226(1)(a), nor does the statute
16 reference any act or omission by a property owner/customer as being a triggering event for that 90
17 day deadline. Further, Waste Management submits that imposing a requirement that a garbage lien
18 be recorded within 90 days of a customer’s first delinquency in payment will only serve to increase
19 the costs to all parties, while at the same time decreasing the opportunity for the parties to resolve
20 legitimate disputes without the necessity of recording the lien. Such an inflexible and unworkable
21 result is contrary to public policy and the testimony before the Legislature when NRS 444.520 was
22 enacted.

23 Finally, the Court determined that once a garbage lien under NRS 444.520 is recorded,
24 pursuant to NRS 11.190(4)(b), the lien claimant must institute foreclosure proceedings within two
25 years of the date of recording. *See* Order (7/28/14) at 17-18. Plaintiff did not raise the issue of
26 which limitation period under NRS 11.190 would apply to a garbage lien foreclosure action until its
27 reply brief [*see* Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 9], and thus
28 Waste Management did not have an opportunity to address the same in its Opposition. As detailed

1 in the Motion for Partial Reconsideration, Waste Management submits that the correct limitation
2 period is three years under NRS 11.190(3)(a), because a statutory lien foreclosure action is one
3 based “upon a liability created by statute, other than a penalty or forfeiture.”

4 **III. CONCLUSION**

5 Based upon the foregoing, and as more fully detailed in the concurrently filed Motion for
6 Partial Reconsideration of the Court’s July 28, 2014 Order, Waste Management respectfully
7 requests the Court to deny Plaintiff’s Second Motion for Partial Summary Judgment, and further to
8 reconsider the above discussed portions of its July 27, 2014 Order denying in part, and granting in
9 part, Plaintiff’s first Motion for Partial Summary Judgment.

10 The undersigned does hereby affirm that the preceding document does not contain the social
11 security number of any person.

12 DATED this 25th day of September, 2014.

13 HOLLAND & HART LLP

14
15 /s/ Bryan L. Wright
16 Gregory S. Gilbert (6310)
17 Bryan L. Wright (10804)
18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, Nevada 89134

20 - and -

21 Matthew B. Hippler (7015)
22 5441 Keitzke Lane, 2nd Floor
23 Reno, Nevada 89511

24 *Attorneys for Defendants Waste Management*
25 *of Nevada, Inc. and Karen Gonzales*
26
27
28

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 25th day of September, 2014, I served a true and correct copy of the foregoing **WASTE MANAGEMENT OF NEVADA, INC.'S OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

C. Nicholas Pereos
C. NICHOLAS PEREOS, LTD.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-0678
cpereos@att.net

Attorneys for Plaintiff, WEST TAYLOR
STREET, LLC

/s/
An Employee of HOLLAND & HART LLP

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

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APPENDIX OF EXHIBITS

EXHIBIT 1	Amended Releases of Lien Claims
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FILED
Electronically
2014-09-25 02:21:58 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4624288 : mfernand

EXHIBIT 1



APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381723

08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: \$17.00 RPT: \$0.00
Page 1 of 1



Amended
RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

Amending Doc # 4381444

On November 26, 2012, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4177148, Official Records of Washoe County, Nevada, upon the real property of, WEST TAYLOR STREET LLC, Acct#010-74134, commonly known as, 345 TAYLOR ST W, RENO, NV and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

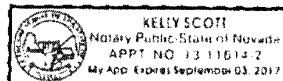
WASTE MANAGEMENT OF NEVADA, INC.

By

Lori VanLaningham
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8th day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.



Kelly Scott
NOTARY PUBLIC
KELLY SCOTT



APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381444

08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtress - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

On November 26, 2012, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4177148, Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134**, commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

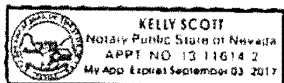
WASTE MANAGEMENT OF NEVADA, INC.

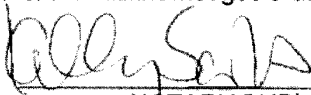
By


LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.




NOTARY PUBLIC
KELLY SCOTT



APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381724

08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burdness - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



Amended
**RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES**

Amending Doc # 4381445

On March 14, 2014, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4334435, Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134**, commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

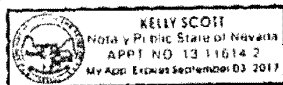
DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By *Lori VanLaningham*
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8th day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.



Kelly Scott

NOTARY PUBLIC
KELLY SCOTT



APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381445

08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtress - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



**RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES**

On March 14, 2014, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4334435, Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134**, commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

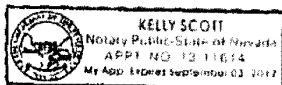
WASTE MANAGEMENT OF NEVADA, INC.

By


LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8th day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.




NOTARY PUBLIC
KELLY SCOTT



APN#011-266-17
ACCT#010-74135

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381725

08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burtress - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



Amended
**RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES**

Amending Doc # 4381446

On February 23, 2012, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4086834, Official Records of Washoe County, Nevada, upon the real property of, WEST TAYLOR STREET LLC, Acct#010-74135, commonly known as, 347 TAYLOR ST W, RENO, NV and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

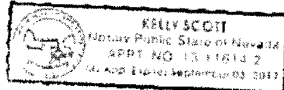
WASTE MANAGEMENT OF NEVADA, INC.

By

Lori Vanlaningham
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8th day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.



Kelly Scott
NOTARY PUBLIC
KELLY SCOTT



APN#011-266-17
ACCT#010-74135

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

DOC # 4381446

08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burtress - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

On February 23, 2012, Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. 4086834, Official Records of Washoe County, Nevada, upon the real property of, WEST TAYLOR STREET LLC, Acct#010-74135, commonly known as, 347 TAYLOR ST W, RENO, NV and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

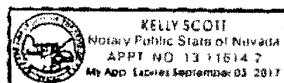
WASTE MANAGEMENT OF NEVADA, INC.

By

LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8th day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.



NOTARY PUBLIC
KELLY SCOTT

1 **2645**
Gregory S. Gilbert (6310)
2 Bryan L. Wright (10804)
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11 *Attorneys for Defendants Waste Management*
12 *of Nevada, Inc. and Karen Gonzales*

13
14 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

16 WEST TAYLOR STREET, LLC, a limited
liability company,

17 Plaintiff,

18 vs.

19 WASTE MANAGEMENT OF NEVADA,
20 INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

21 Defendants.
22

CASE NO.: CV12-02995
DEPT. NO.: 4

**WASTE MANAGEMENT OF
NEVADA, INC.'S MOTION FOR PARTIAL
RECONSIDERATION OF THE COURT'S
JULY 28, 2014 ORDER**

23
24 Defendant Waste Management of Nevada, Inc. ("Waste Management"), by and through its
25 counsel of record, Holland & Hart LLP, hereby files this Motion for Partial Reconsideration of the
26 Court's July 28, 2014 Order (the "Order").

27 This Motion for Partial Reconsideration is made and based upon WDCR 12(8), DCR 13(7),
28 the attached Memorandum of Points and Authorities, the concurrently filed Motion for Leave to File

1 Motion for Partial Reconsideration, the pleadings and papers on file, the Declaration of Bryan L.
2 Wright, Esq. attached hereto as **Exhibit 1**, and such oral and documentary evidence as may be
3 presented at any hearing on this matter.

4 DATED this 25th day of September, 2014.

5 HOLLAND & HART LLP

6
7 /s/ Bryan L. Wright
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

8
9 - and -

10
11 Matthew B. Hippler (7015)
5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

12
13 *Attorneys for Defendants Waste Management of*
14 *Nevada, Inc. and Karen Gonzales*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 On July 28, 2014, the Court issued a detailed Order denying in part, and granting in part,
18 Plaintiff's Motion for Partial Summary Judgment. Waste Management requests the Court to
19 reconsider the following specific rulings made in that Order.

20 First, the Court determined that NRS 444.520 is ambiguous as to which portion(s) of
21 Nevada's statutory scheme relating to mechanic's liens should be applied to statutory garbage liens.
22 *See* Order (7/28/14) at 11.

23 Second, the Court determined that given the above mentioned ambiguity, the Court could
24 incorporate and impose upon garbage lien claimants any and all provisions of NRS Chapter 108
25 governing mechanic's liens, unless the provision is expressly contradicted by NRS 444.520. *Id.* at
26 9-15.

27 Third, the Court determined that because NRS 444.520 does not expressly provide a specific
28 procedure for customers/property owners to "dispute" the legitimacy of a garbage lien, due process

1 requires provisions other than NRS 108.239 to be incorporated into NRS 444.520. *Id.* at 15.

2 Fourth, the Court determined that the requirement in NRS 108.226(1)(a) that a mechanic's
3 lien be recorded within 90 days of certain specified events applies to NRS 444.520, and requires a
4 garbage lien claimant to record its lien within 90 days of a customer's first "delinquency" in
5 payment for services rendered. *Id.* at 16.

6 Fifth, the Court determined that once a garbage lien under NRS 444.520 is recorded,
7 pursuant to NRS 11.190(4)(b), the lien claimant must institute foreclosure proceedings within two
8 years of the date of recording. *See id.* at 17-18.

9 As discussed further below, Waste Management respectfully submits that the Court may
10 have overlooked or misapprehended certain material issues or may have otherwise erroneously
11 reached the above conclusions. Therefore, Waste Management requests the Court to reconsider
12 those determinations as provided for herein.

13 **II. BRIEF PROCEDURAL HISTORY**

14 On March 11, 2014, Plaintiff moved for a declaration from the Court that Waste
15 Management "must comply with the mechanic's lien laws in connection with the recording of a lien
16 for delinquency of garbage services and the collection of that lien." *See* Plaintiff's Motion for
17 Partial Summary Judgment (3/11/14). Waste Management filed its Opposition to Plaintiff's Motion
18 for Partial Summary Judgment on March 28, 2014, to which Plaintiff filed a Reply on April 11,
19 2014.

20 Following oral arguments held on May 7, 2014, the Court issued its Order on July 28, 2014.
21 Relevant hereto, the Court made the following findings:

- 22 • "[T]he language [in NRS 444.520] permitting the application of the mechanic's lien
23 foreclosure process is clear; however, there is ambiguity as to which portions of the
24 mechanic's lien statutes may be applied since the specific sections are not listed in
25 the language of the statute." *See* Order (7/28/14) at 11:22-25;
- 26 • "[N]o portion of NRS 444.520 is rendered superfluous if the statute is interpreted to
27 state that the garbage lien **may** apply the mechanic's liens statutes that addresses
28 procedural requirements not already governed by NRS 444.520." *Id.* at 14:4-6
(emphasis in original);
- "[S]ince NRS 444.520 does not provide an opportunity to be heard if the property
owner disputes the lien, but it does incorporate the mechanic's lien statutes, a
constitutional interpretation of NRS 444.520 would incorporate more provisions of
NRS Chapter 108 than just NRS 108.245 [sic]." *Id.* at 15:2-5;

- 1 • “The Court does not find the permissive application of multiple mechanic’s lien
- 2 statutes to be absurd, as it is the only manner of interpretation that preserves the
- 3 customer’s ability to dispute a lien.” *Id.* at 15:9-11;
- 4 • “After considering the legislative history, legislative intent, and analogous statutory
- 5 provisions of NRS Chapter 108, the Court finds the [sic] NRS 444.520 incorporates
- 6 the mechanic’s lien statutes to the extent that NRS 444.520 is silent on a procedure.”
- 7 *Id.* at 15:11-14;
- 8 • “The clear language of NRS 108.226 provides Waste Management with the
- 9 opportunity to supply notice to its customers within 90 days after each billing cycle
- 10 becomes delinquent.” *Id.* at 16:7-8;
- 11 • “[I]mposing the 90 day requirement may encourage the garbage company to send
- 12 out a ‘notice of lien’ sooner or to impose a shorter billing cycle.” *Id.* at 16:12-14;
- 13 • “NRS 108.226 applies to the garbage lien statutes because it was incorporated in
- 14 NRS 444.520, and it does not conflict with existing statutory language in the garbage
- 15 lien enacting statute.” *Id.* at 16:16-18;
- 16 • “[U]nder NRS 11.190, an [sic] ‘[a]n action upon a statute for a penalty or forfeiture
- 17 where the action is given to a person’ must be brought within two years except when
- 18 the statute imposing it prescribes a different limitation.” *Id.* at 17:21-18:2; and
- 19 • “[T]he two year statute of limitations applies to Waste Management’s ability to
- 20 foreclose [its garbage lien], which protects the homeowner from the revival of a lien
- 21 several years after it was imposed.” *Id.* at 18:4-6.

22 **III. LEGAL STANDARD**

23 Nevada law permits a party to seek reconsideration of a court’s decision. *See* WDCR 12(8);
24 DCR 13(7); *see also* *Masonry & Tile Contractors Ass’n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*,
25 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551
26 P.2d 244, 246 (1976). Indeed, a court has the inherent authority to reconsider, amend, modify, or
27 vacate its prior orders. *See* *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975); *see also*
28 *Harvey’s Wagon Wheel v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095 (1980) (“Reconsideration
of motions is proper if the district judge to whom the first motion was made consents to a
rehearing.”); *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980) (“[u]nless and until an
order is appealed the district court retains jurisdiction to reconsider the matter.”). Among other
grounds, reconsideration of a previously decided issue is appropriate where: (a) “the decision is
clearly erroneous” [*Masonry and Tile Contractors*, 113 Nev. at 741, 941 P.2d at 489]; (b)
“substantially different evidence is subsequently introduced” [*id.*]; (c) “the court has overlooked or
misapprehended a material matter” [*In the matter of Dunleavy*, 104 Nev. 784, 786, 769 P.2d 1271,
1272 (1989) (applying NRAP 40(c)(2)]; or (d) “in such other circumstances as will promote

substantial justice.” *Id.*

IV. LEGAL ARGUMENT

A. THE CLEAR AND UNAMBIGUOUS LANGUAGE OF NRS 444.520 PERMISSIVELY INCORPORATES ONLY THE “MANNER . . . FOR THE FORECLOSURE OF MECHANIC’S LIENS”

In its Opposition to Plaintiff’s Motion for Partial Summary Judgment, Waste Management argued that pursuant to the express language of NRS 444.520, only the “manner . . . provided for the foreclosure of mechanic’s liens” is permissively incorporated into that statute. *See* NRS 444.520(3) (emphasis added). The “manner . . . provided for the foreclosure of mechanic’s liens” is contained in NRS 108.239. *See Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. Adv. Op. 6, 247 P.3d 1107, 1109 (2011) (“NRS 108.239 governs actions to enforce a notice of mechanic’s lien”); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 735 (2008) (same); NRS 108.239 (entitled “Action to enforce notice of lien”) (“A notice of lien may be enforced by . . .”); *see also Coast Hotels and Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835, 841-42, 34 P.3d 546, 551 (2001) (“The title of a statute may be considered in determining legislative intent.”). Accordingly, given the plain language of NRS 444.520, Waste Management argued only NRS 108.239, and no other provision of Nevada’s statutory scheme relating to mechanic’s liens, “may” be applied to garbage liens.

In at least two statements in the Order, the Court seemingly agreed with the propriety of Waste Management’s interpretation. *See e.g.*, Order (7/28/14) at 11:22-23 (“the language [in NRS 444.520] permitting the application of the mechanic’s lien foreclosure process is clear”); *id.* at 14:1-3 (“Waste Management’s interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage lien gives proper consideration for each word and phrase in NRS 444.520”). Notwithstanding, the Court found that “there is ambiguity [in NRS 444.520] as to which portions of the mechanic’s lien statutes may be applied *since the specific sections are not listed in the language of the statute.*” *See id.* at 11:23-25 (emphasis added). Waste Management respectfully disagrees.

The Court is correct that that “the specific sections [of NRS Chapter 108 providing for the foreclosure of mechanic’s liens] are not listed in the language of [NRS 444.520].” Nonetheless, as noted above, the Nevada Supreme Court has confirmed that NRS 108.239 governs (i.e.,

1 “provide[s]”) the procedure (i.e., “manner”) for foreclosing a mechanic’s lien. *See Simmons Self-*
2 *Storage*, 127 Nev. Adv. Op. 6, 247 P.3d at 1109; *Barney*, 124 Nev. at 827, 192 P.3d at 735; *see also*
3 NRS 108.239. Conversely, the Court has also confirmed that NRS 108.226—which includes the 90
4 day deadline to record a mechanic’s lien—contains procedural requirements for perfecting a
5 mechanic’s lien. *See Schofield v. Copeland Lumber Yards, Inc.*, 101 Nev. 83, 84, 692 P.2d 519,
6 519-20 (1985) (discussing the fact that “[t]he statutory directives for perfection of a materialman’s
7 lien” contained in NRS 108.226 “were followed in all particulars except” those required under NRS
8 108.226(4)(d)); *see also* NRS 108.226 (entitled “Perfection of lien”) (“To perfect a lien, a lien
9 claimant must . . .”). Thus, irrespective of the failure of NRS 444.520 to specifically cite “NRS
10 108.239” (i.e., the failure to state that “[t]he [garbage] lien may be foreclosed in the same manner as
11 provided for the foreclosure of mechanics’ liens under NRS 108.239”), the Legislature’s intent can
12 easily be derived from the plain language actually used. *See State v. Lucero*, 127 Nev. Adv. Op. 7,
13 249 P.3d 1226, 1228 (2011) (legislative intent is first ascertained from the statute’s plain language
14 and meaning).

15 Moreover, the lack of a specific citation to “NRS 108.239” within the text of NRS 444.520
16 should not be considered surprising, nor should it be used to cast doubt upon or call into question
17 the Legislature’s intent. In this regard, the relevant language used in NRS 444.520, enacted in 2005,
18 is taken directly from prior Nevada statutes. For example, NRS 318.197, enacted in 1959, currently
19 provides in relevant part:

20 Upon compliance with subsection 9 and until paid, all rates, tolls or charges [of a
21 general improvement district] constitute a perpetual lien on and against the property
22 served. A perpetual lien is prior and superior to all liens, claims and titles other than
23 liens of general taxes and special assessments and is not subject to extinguishment by
24 the sale of any property on account of nonpayment of any liens, claims and titles
25 including the liens of general taxes and special assessments. A perpetual lien must be
26 foreclosed in the same manner as provided by the laws of the State of Nevada for
the foreclosure of mechanics’ liens. Before any lien is foreclosed, the board shall
hold a hearing thereon after providing notice thereof by publication and by registered
or certified first-class mail, postage prepaid, addressed to the last known owner at his
or her last known address according to the records of the district and the real property
assessment roll in the county in which the property is located.

27 NRS 318.197(2) (emphasis added); *see also* NRS 318.197(9) (providing identical perfection
28 requirements as expressly required to perfect a garbage lien under NRS 444.520). Similarly, NRS

244A.549, enacted in 1977, currently provides as follows:

1. Until paid, all [waste water or sewage] service charges of the county or the State charged to any person owning or occupying real property in the county constitute a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. This lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, including liens for general taxes and special assessments.

2. A lien for unpaid service charges may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens. Before any such lien is foreclosed the board shall hold a hearing on the lien after notice thereof by registered or certified first-class mail, postage prepaid, addressed to the last known owner at his or her last known address according to the records of the county in which the property is located. (Emphasis added)

In fact, it is apparently common for the Nevada Legislature to provide, without reference to any specific statute, that other statutory liens “may be foreclosed in the same manner as provided for the foreclosure” for different types of liens.¹ It does not appear that any of these similar examples have been declared ambiguous, or interpreted to incorporate anything more than the “manner . . . provided for the foreclosure” of the other specified types of liens. Moreover, other jurisdictions that have interpreted similar statutes have expressly refused to adopt portions of the mechanic’s lien statutes other than the “manner provided for the foreclosure” of such liens. *See e.g., Skyland Metro. Dist. v. Mountain W. Enter., LLC*, 184 P.3d 106 (Colo.App. 2007) (determining that similarly

¹ *See e.g.*, NRS 104.4504 (following the “dishonor of a documentary draft . . . the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller’s lien.”) (emphasis added); NRS 108.665(1) (“A lien for charges owed to a hospital may be foreclosed by a suit in the district court in the same manner as an action for foreclosure of any other lien.”) (emphasis added); NRS 108.870 (providing for the “foreclosure upon a lien for money owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid by action in the district court in the same manner as for foreclosure of any other lien.”) (emphasis added); NRS 244.335(7) (“Any license tax levied . . . constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. . . . The lien must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien.”) (emphasis added); NRS 268.095(7) (“Any license tax levied under . . . this section constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. . . . The lien must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien.”) (emphasis added); NRS 612.680(4) (“The lien hereby created may be foreclosed by a suit in the district court in the manner provided by law for the foreclosure of other liens on real or personal property.”) (emphasis added); *see also* NRS 562.050 (“All liens provided for in this chapter must be foreclosed in the manner provided by chapter 104 of NRS”) (emphasis added).

1 worded Colorado statute,² which allowed liens for water and sanitation user fees to be foreclosed in
2 the same manner as mechanics' liens, did not also adopt notice of intent to lien required to perfect a
3 statutory lien).

4 Based upon the plain language of NRS 108.239 and NRS 108.226, the titles the Legislature
5 has given each of them, and Nevada precedent interpreting those statutes, the only reasonable
6 interpretation of NRS 444.520's statement that "[t]he [garbage] lien may be foreclosed in the same
7 manner as provided for the foreclosure of mechanics' liens," is that NRS 108.239, and only NRS
8 108.239, "may" apply to such garbage liens. *See Building & Constr. Trades Council of N. Nev. v.*
9 *State Pub. Works Bd.*, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992) ("When a statute is susceptible
10 to [only] one natural or honest construction, that alone is the construction that can be given.").
11 Accordingly, Waste Management respectfully requests the Court to reconsider its determination that
12 NRS 444.520 is ambiguous, as well as its conclusion based thereon on that "NRS 108.226 applies to
13 the garbage lien statutes because it was incorporated in NRS 444.520." *See Order (7/28/14)* at
14 16:16-17.

15 **B. INTERPRETING NRS 444.520 TO INCORPORATE MORE THAN NRS 108.239**
16 **RENDERS THE LEGISLATURE'S CHOSEN LANGUAGE MEANINGLESS**

17 In reaching the conclusion that provisions of the mechanic's lien statutory scheme beyond
18 NRS 108.239 were intended to be incorporated into NRS 444.520, the Court determined that "no
19 portion of NRS 444.520 is rendered superfluous if the statute [NRS 444.520] is interpreted to state
20 that the garbage lien may apply the mechanic's liens statutes that addresses procedural requirements
21 not already governed by NRS 444.520." *Id.* at 14:4-6 (emphasis omitted). As set forth above, the
22 clear language of NRS 444.520 incorporates only the "manner . . . provided for the foreclosure of
23 mechanic's liens," rather than the "procedural requirements" for the same. Thus, incorporation of
24 those "procedural requirements," such as the 90 day deadline set forth in NRS 108.226(1)(a), would
25 be contrary to the legislative intent in enacting NRS 444.520, as elucidated by the plain language of

26 ² *Id.* at 116 ("Under the Act, until paid, a special district's fees 'constitute a perpetual lien on and
27 against the property served, and any such lien may be foreclosed in the same manner as provided by
28 the laws of this state for the foreclosure of mechanics' liens.") (quoting Section 32-1-1001(1)(j)(I),
C.R.S.2006) (emphasis added).

1 the statute. *See Lucero*, 127 Nev. Adv. Op. 7, 249 P.3d at 1228 (legislative intent is first ascertained
2 from the statute’s plain language and meaning).

3 Additionally, as detailed below, interpreting NRS 444.520 to incorporate more than the
4 manner for foreclosing a mechanic’s lien under NRS 108.239 would impermissibly render the
5 Legislature’s chosen language superfluous. *Paramount Ins. v. Rayson & Smitley*, 86 Nev. 644, 649,
6 472 P.2d 530, 533 (1970) (“no part of a statute should be rendered nugatory, nor any language
7 turned to mere surplusage, if such consequences can be properly avoided.”) (internal quotation
8 marks and citation omitted); *Karcher Firestopping v. Meadow Valley Constr.*, 125 Nev. 111, 113,
9 204 P.3d 1262, 1263 (2009) (“This court generally avoids statutory interpretation that renders
10 language meaningless or superfluous.”).

11 **1. “Imposing” the “Requirements” of NRS 108.226 Renders the**
12 **Legislature’s Use of “May” Superfluous and Illusory**

13 The only reference contained in NRS 444.520 to the mechanic’s lien statutes provides that
14 garbage liens recorded under that statute “*may* be foreclosed in the same manner as provided for the
15 foreclosure of mechanics’ liens.” (Emphasis added). As stated by this Court, “‘may’ is to be
16 construed as permissive, unless the clear intent of the legislature is to the contrary.” *See* Order at
17 11:20-22 (citing *Sengbusch v. Fuller*, 103 Nev. 580, 582 (1987)); *see also id.* at 12:3-5 (“the Court
18 finds that standing alone the legislative history of NRS 444.520 provides little guidance as to the
19 application of the mechanic’s lien statutes.”). Nonetheless, the Court’s Order “impos[es] the 90 day
20 requirement” [*id.* at 16:12-13] found in NRS 108.226(1)(a), when it held that “NRS 108.226
21 governs how far back in time Waste Management is able to notice and record a garbage lien.” *Id.* at
22 16:18-19.

23 However, “*imposing* the 90 day *requirement*” found in NRS 108.226 would ignore the
24 permissive, rather than mandatory, language used by the Legislature in NRS 444.520. *See* NRS
25 0.025 (“‘May’ confers a right, privilege or power . . . ‘Must’ expresses a requirement . . . ‘Shall’
26 imposes a duty to act.”). The Legislature did not use “must”, “shall”, or any other language
27 mandating the incorporation or application of any portion of the mechanic’s lien statutory scheme
28 (NRS 108.226 or otherwise) with reference to garbage liens. Instead, NRS 444.520 simply provides

1 that the manner provided for foreclosing a mechanic's lien "may" be used to foreclose upon a
2 garbage lien. Had the Legislature intended to "require" garbage lien claimants to perfect or
3 foreclose upon their liens in a specific manner it could have, as it has done in other similar statutes,³
4 so provided. *See* Order at 10:3-5 ("[I]t is not the business of this court to fill in alleged legislative
5 omissions based on conjecture as to what the legislature would or should have done.") (quoting
6 *McKay*, 103 Nev. 490, 492 (1987)). Thus, interpreting NRS 444.520 to "require" compliance with
7 the mechanic's lien statutes impermissibly contradicts and renders meaningless the language
8 employed in that statute. *Karcher Firestopping*, 125 Nev. at 113, 204 P.3d at 1263. Therefore,
9 such an interpretation should be rejected. *Id.*

10 **2. Imposing the Requirements of NRS 108.226 Negates NRS 444.520(2)'s**
11 **Provision that a Perpetual Lien is "Constitute[d]" when the Fee or**
12 **Charge is "Levied"**

13 Interpreting NRS 444.520 to require compliance with NRS 108.226 in order to establish a
14 garbage lien contradicts additional express language of NRS 444.520(2), which provides that
15 "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against
16 the property served[.]" (Emphasis added). The plain meaning of this language provides that once
17 an authorized fee or charge is "levied", such fee or charge immediately "constitutes a perpetual
18 lien" "until paid." As discussed further below, a garbage lien claimant looking at NRS 444.520 has
19 no notice that failure to act within 90 days of a customer's "delinquency in payment" destroys that
20 perpetual lien. In fact, imposing such a requirement negates the plain language of NRS 444.520 that
21 the perpetual lien is "constitute[d]" at the time the fee or charge was "levied". Because statutes
22 should be interpreted so as to avoid negating language used therein [*see Paramount Ins.*, 86 Nev. at
23 649, 472 P.2d at 533], such an interpretation should be avoided here.

24 ³ *Cf.* NRS 318.197(2) (A perpetual lien [of a general improvement district] must be foreclosed in
25 the same manner as provided by the laws of the State of Nevada for the foreclosure of mechanics'
26 liens) (emphasis added); NRS 244.335(7) ("The lien [for license tax levies] must be enforced . . .
27 [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of
28 any other lien.") (emphasis added); NRS 268.095(7) ("The lien [for license tax levies] must be
enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for
foreclosure of any other lien.") (emphasis added); NRS 562.050 ("All liens provided for in this
chapter must be foreclosed in the manner provided by chapter 104 of NRS") (emphasis added).

1 **C. DUE PROCESS DOES NOT REQUIRE PROVISIONS OTHER THAN NRS 108.239 BE**
2 **INCORPORATED INTO NRS 444.520**

3 In the Order, the Court noted that “NRS 444.520 does not address the procedures for a
4 hearing or dispute should the customer assert that her account is not delinquent[.]” *Id.* at 14:12-14.
5 According to the Court, the failure of NRS 444.520 to expressly address such a situation makes
6 NRS 444.520 constitutionally invalid, *unless* the statute is interpreted to incorporate NRS 108.2275,
7 which provides a procedure for challenging frivolous or excessive mechanic’s liens. *See id.* at 15:2-
8 5 (“since NRS 444.520 does not provide an opportunity to be heard if the property owner disputes
9 the lien, but it does incorporate the mechanic’s lien statutes, a constitutional interpretation of NRS
10 444.520 would incorporate more provisions of NRS Chapter 108 than just NRS 108.245 [sic]⁴.”);
11 *see also id.* at 15:9-11 (“The Court does not find the permissive application of multiple mechanic’s
12 lien statutes to be absurd, as it is the only manner of interpretation that preserves the customer’s
13 ability to dispute a lien.”) (emphasis added). Waste Management requests the Court to reconsider
14 this determination, because, as set forth below, NRS 444.520, as drafted, does not violate a property
15 owner’s due process rights.

16 **1. Owners are Never Dispossessed of the Property Without Notice and an**
17 **Opportunity to be Heard**

18 “Due process is satisfied by giving both parties ‘a meaningful opportunity to present their
19 case.’” *See J.D. Constr. v. IBEX Int’l Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1040 (2010)
20 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, 96 S.Ct. 893 (1976)). Further, in determining
21 whether a particular procedure satisfies due process, the Court should consider:

22 [f]irst, the private interest that will be affected by the official action; second, the risk
23 of an erroneous deprivation of such interest through the procedures used, and the
24 probable value, if any, of additional or substitute procedural safeguards; and finally,
25 the Government’s interest, including the function involved and the fiscal and
administrative burdens that the additional or substitute procedural requirement would
entail.

26 *Id.* (quoting *Mathews*, 424 U.S. at 335).

27 _____
28 ⁴ This appears to have been a typographical error, and should instead cite NRS 108.239.

1 With regard to foreclosure, as detailed above, NRS 444.520 expressly provides that garbage
2 liens established thereunder “may be foreclosed in the same manner as provided for the foreclosure
3 of mechanic’s liens.” NRS 444.520(3). The “manner . . . provided for the foreclosure of
4 mechanic’s liens,” contained in NRS 108.239, expressly requires:

- 5 • A judicial foreclosure process [NRS 108.239(1)];
- 6 • Detailed notices, including the recording of a *lis pendens* [NRS 108.239(2)];
- 7 • The opportunity for all persons holding conflicting interests to join or intervene in
8 the action [NRS 108.239(3) & (4)];
- 9 • The judicial declaration of the parties’ respective rights after an opportunity to be
10 heard [NRS 108.239(7)];
- 11 • Preferential trial settings where requested [NRS 108.239(8)];
- 12 • Sale of the property if the lien(s) is/are validated [NRS 108.239(10)];
- 13 • The proceeds of the sale must be used to satisfy the lien(s) (and costs of the sale),
14 with all excess proceeds to go to the property owner [NRS 108.239(11)].

15 The foregoing safeguards clearly provide the property owner a “meaningful opportunity” to
16 dispute and question the legitimacy of a garbage lien. Moreover, until such a foreclosure action is
17 actually conducted, the owner is never dispossessed of, or prohibited from using, its property.
18 Given the foregoing, it is apparent that NRS 444.520 satisfies due process without interpreting the
19 statute to incorporate more than the manner provided for the foreclosure of a mechanic’s lien under
20 NRS 108.239.

21 **2. Owners Can Dispute the Validity of the Garbage Lien Prior to Foreclosure in**
22 **the Exact Same Manner as Plaintiff Has Done Here**

23 The Nevada Supreme Court has recognized that the recoding of a mechanic’s lien constitutes
24 a “taking” to which constitutional due process protections apply. *See J.D. Constr.*, 126 Nev. Adv.
25 Op. 36, 240 P.3d at 1040 (“A mechanic’s lien is a ‘taking’ in that the property owner is deprived of
26 a significant property interest[.]”). Importantly, however, the Court has also recognized that such a
27 taking “is nonetheless of relatively minor effect [because] [t]he mechanics’ lien . . . does not
28 deprive the owner of the interim possession or use of the lien property[.]” *Id.* at 1041 (quoting

1 with approval *Connolly Dev., Inc. v. Sp. Ct. of Merced Cty.*, 553 P.2d 637, 652-53 (Cal. 1976)).

2 In the Order, this Court correctly pointed out that NRS 444.520 does not expressly “address
3 the procedures for a hearing or dispute should the customer assert that her account is not
4 delinquent[.]” See Order (7/28/14) at 14:12-14. Notwithstanding this lack of an express pre-
5 foreclosure dispute resolution mechanism, applying the process set forth in NRS 108.2275 for
6 permissible *expedited review* of a disputed mechanic’s lien [see discussion *infra*] to garbage liens is
7 not “the only manner of interpretation [of NRS 444.520] that preserves the customer’s ability to
8 dispute a lien.” See Order at 15:9-11. In this regard, a property owner always has the opportunity
9 to dispute the legitimacy of a garbage lien through a judicial proceeding similar to what Plaintiff has
10 implemented here; an action for declaratory relief and/or slander of title challenging the basis for
11 and validity of the existing garbage lien. See e.g., *Rowland v. Lepire*, 99 Nev. 308, 662 P.2d 1332
12 (1983) (homeowner filed slander of title action against contractor following recordation of
13 mechanic’s lien); *Caughlin Ranch Homeowners Ass’n v. Caughlin Club*, 109 Nev. 264, 849 P.2d
14 310 (1993) (property owner brought declaratory relief and slander of title claims challenging
15 propriety of common interest community assessment and resulting lien). Alternatively, the property
16 owner can satisfy the lien and institute an action (likely in small claims court given the relatively
17 nominal amount of such liens)⁵ to recoup such payment if the lien was indeed wrongful. Any of
18 those actions would provide the customer the “meaningful opportunity to present their case” as they
19 would have in a foreclosure action under NRS 108.239, thus also satisfying due process. *Mathews*,
20 424 U.S. at 349; see also *Burleigh v. State Bar of Nev.*, 98 Nev. 140, 145, 643 P.2d 1201, 1204
21 (1982) (“due process is flexible and calls for such procedural protections as the particular situation
22 demands.”) (internal quotations omitted). Consequently, NRS 444.520 is constitutionally valid
23 without imposing the expedited review procedure created for mechanic’s liens under NRS
24 108.2275. Therefore, NRS 444.520 should be interpreted and applied pursuant to its plain language,

25
26 ⁵ The Court will recall that, for instance, Plaintiff initiated this action challenging Waste
27 Management’s February 23, 2012 lien in the amount of \$489.47. See Complaint (12/3/12); see also
28 Waste Management’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (3/28/14), Ex.
6 (the February 23, 2012 Notice of Lien for Garbage Fees – Residential User).

1 without resort to incorporating more than the “manner . . . provided for the foreclosure of
2 mechanic’s liens” under NRS 108.239.

3 **3. Nevada’s Mechanic’s Lien Statutory Scheme Existed for Over 100 Years**
4 **Without the Expedited Review Procedure Created by NRS 108.2275; There is**
5 **No Constitutional Reason to Require Such Expedited Procedure Apply to**
6 **Garbage Liens Where the Legislature Did Not Expressly Provide for the Same**

7 NRS 108.2275 permits “[t]he debtor of the lien claimant or a party in interest in the property
8 subject to” a mechanic’s lien to bring a motion seeking an order to show cause why a mechanic’s
9 lien should not be expunged as frivolous or excessive. *See* NRS 108.2275(1). If the Court
10 determines a hearing is warranted on such motion, the hearing must be commenced “within not less
11 than 15 days or more than 30 days after the court issues the order for a hearing.” NRS 108.2275(3);
12 *see also J.D. Constr.*, 126 Nev. Adv. Op. 36, 240 P.3d at 1042 (“While any hearing must be
13 initiated within that time frame, the statute [NRS 108.2275] does not require the district court to
14 resolve the matter within that time frame.”). Following such a hearing, the Court must determine
15 whether the lien is (i) frivolous and made without reasonable cause, (ii) excessive, or (iii) neither
16 frivolous nor excessive. NRS 108.2275(6). The procedure outlined in NRS 108.2275 is permissive,
17 rather than mandatory. *See* NRS 108.2275(1) (“The debtor of the lien claimant or a party in interest
18 in the property subject to the notice of lien . . . may apply . . .”). Further, any proceedings
19 conducted under NRS 108.2275 “do not affect any other rights and remedies otherwise available to
20 the parties.” NRS 108.2275(7).

21 To be clear, statutory mechanic’s liens have been recognized in Nevada since at least 1875.
22 *See e.g., Hunter v. Truckee Lodge No. 14, I.O.O.F.*, 14 Nev. 24, 1879 WL 3454, *2 (1879) (“This is
23 an action under the mechanics’ lien law of 1875 (Stat. 1875, p. 122)”). NRS 108.2275 and the
24 expedited review procedures provided therein, however, were not added to Nevada law until 1995.
25 *See* 1995 Senate Bill 434, as enrolled in Chapter 471 of the 1995 Statutes of Nevada, at page 1505-
26 10, attached hereto as **Exhibit 2**; *see also* Order (7/28/14) at 9 (noting this procedure was first added
in 1995).⁶ Prior to that time, property owners s disputing the validity of a mechanic’s lien raised

27 ⁶ The Court’s Order references both “Senate Bill 401” and “A.B. 343” as the enacting bill for NRS
28 108.2275. These references appear to be in error, as 1995 Senate Bill 401 revised portions of
...(cont’d)

1 such claims through declaratory relief and/or slander of title causes of action. *See e.g., Rowland*, 99
2 Nev. 308, 662 P.2d 1332. Indeed, the testimony before the Legislature in 1995 expressly
3 recognized that already existing avenue of relief.⁷ Nonetheless, proponents of the Bill testified that
4 the addition of what would later become NRS 108.2275 was warranted “because it provides a
5 means to get liens off houses *in an expeditious fashion*.” Minutes of the Senate Committee on
6 Judiciary on June 6, 1995, attached hereto as **Exhibit 6**, at 12 (Senator Adler) (emphasis added); *see*
7 *also* Minutes of the Senate Committee on Judiciary on May 30, 1995, attached hereto as **Exhibit 7**,
8 at 15 (“Senator Adler voiced approval of the provision to remove frivolous liens because that will
9 enable the close of escrow in a timely manner.”).

10 Given the above, it is apparent that NRS 108.2275 was not added in 1995 to remedy 100
11 years of perceived inability for an owner to otherwise challenge a mechanic’s lien; it was added to
12 expedite resolution of such liens where possible.⁸ Notably, however, despite the many forms of
13 statutory liens existing under our laws [*see e.g., Footnote 1 supra*] it does not appear that the
14 Legislature has ever deemed it appropriate to enact similar statutes permitting other liens to be
15 addressed on an expedited basis. Neither Plaintiff’s due process arguments nor the text or history of

16 _____
17 (cont'd)

18 Nevada’s gaming regulations, whereas 1995 Assembly Bill 343 amended the law relating to the sale
19 of subdivided lands. *See* Legislative Counsel Bureau’s Summary of Legislation for the 1995
20 Legislative Session at pp. 155 and 180-81, excerpts of which are attached hereto as **Exhibit 3**.

21 ⁷ *See e.g.,* Minutes of the Senate Committee on Judiciary on May 23, 1995, attached hereto as
22 **Exhibit 4**, at 8 (Harold Jacobsen, “There already exists a remedy to this problem [for frivolous or
23 excessive liens], he told, the ability to sue for wrongful clouding of title.”); Minutes of the Senate
24 Subcommittee on Judiciary on May 25, 1995, attached hereto as **Exhibit 5**, at 5 (“Mr. Bennett
25 asserted the goal is to find another device to address conflicts between the contractor and the
26 subcontractors, rather than involving ‘innocent third parties’ (the home buyers) The discussion of
27 concerns continued, with Mr. [Sid] Perzy pointing out the device exists, and Mr. [Harold] Jacobsen
28 explaining that invalid liens can be addressed through a lawsuit for clouding title.”).

⁸ The Court correctly noted in the Order that “the legislative history pertaining to NRS 108.2275
specifically states that the legislature designed the procedures for contesting a mechanic’s lien with
the preservation of due process rights in mind.” *See* Order at 15:5-7. To be clear, however, that
discussion centered around “the defendant’s due process rights” and whether the expedited review
violated such rights by providing insufficient “time to answer or gather witnesses or evidence.” *See*
Exhibit 5 at 9. As a result of the concerns for the due process rights of lien claimants, rather than
property owners, the timeframe within which the court was required to hold its hearing was
enlarged to be “not less than 10 days, or more than 20 days.” *Id.* That period was subsequently
enlarged again to the current period of “not less than 15 days, or more than 30 days.” *See* NRS
108.2275(3).

1 NRS 444.520 support applying such expedited proceedings with respect to garbage liens.

2 **D. THE 90 DAY DEADLINE TO RECORD A MECHANIC'S LIEN UNDER NRS 108.226 IS**
3 **NOT TRIGGERED BY A "DELINQUENCY" IN PAYMENT**

4 In the event the Court concludes that a garbage lien under NRS 444.520 must be perfected
5 within the 90 day period provided under NRS 108.226, Waste Management respectfully requests the
6 Court to reconsider its determination as to the triggering event for such deadline. Specifically, in the
7 Order the Court held that "[t]he clear language of NRS 108.226 provides Waste Management with
8 the opportunity to supply notice to its customers within 90 days after each billing cycle becomes
9 delinquent." Order (7/28/14) at 16:7-8. The exact language of NRS 108.226(1)(a), which contains
10 the 90 day deadline, however, provides that a mechanic's lien claimant must record the notice of
11 lien,

12 [w]ithin 90 days after the date on which *the latest of the following occurs*: (1) The
13 completion of the work of improvement; (2) The last delivery of material or
14 furnishing of equipment by the lien claimant for the work of improvement; or (3)
The last performance of work by the lien claimant for the work of improvement.

15 NRS 108.226(1)(a) (emphasis added). The word "delinquency" does not appear anywhere in NRS
16 108.226(1)(a), nor does the statute reference any act or omission by a property owner/customer as
17 being a triggering event. *See id.* Instead, each of the triggering events relates to the date
18 work/materials/equipment were last provided to the construction project (by the lien claimant or
19 otherwise). Thus, respectfully, utilization of the date of the "delinquency" is neither supported by
20 the language of NRS 108.226(1)(a), nor any reasonable inferences drawn therefrom.

21 In the Order, the Court suggested that "imposing" the 90 day requirement in NRS
22 108.226(1)(a) based upon the first delinquency in payment "may encourage the garbage company to
23 send out a 'notice of lien' sooner or to impose a shorter billing cycle." *See* Order at 16:12-14.
24 Respectfully, however, imposing such a requirement would only serve to increase the costs to all
25 parties, while at the same time decreasing the opportunity for the parties to resolve legitimate
26 disputes without the necessity of recording the lien. For example, in the case of Waste
27 Management, in 2012, if it was required to go forward with recording a lien following non-payment,
28 Waste Management assessed service charges to the account in the amount of \$64.00. *See e.g.,*

1 Waste Management’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (3/28/14), Ex.
2 3 (Invoices for Account 010-74135) at WM000263; *see also id.*, Ex. 6 (Lien for Account No. 010-
3 74135) (reflecting recording fee). Thus, if a customer missed a single \$36.06 quarterly charge—the
4 rate applicable to Plaintiff’s Account No. 010-74135 at the time of the February 2012 lien—and the
5 service provider was required to race to the County Recorder’s office to comply with the above 90
6 day deadline, the amount of the customer’s “delinquency” would nearly triple as a matter of course.

7 Further, because of the extremely short duration, the service provider would be penalized if
8 it attempted to work with the customer prior to recording the garbage lien. As the Court noted, the
9 testimony before the Legislature when it enacted NRS 444.520 was that “[c]ustomers receive about
10 six requests for payment before they receive an intent to lien notice.” *See* Order at 13:4-5 (quoting
11 Senate Committee on Government Affairs, Committee Analysis of A.B. 354, at 11 (April 6, 2005)).
12 Requiring the garbage lien to be recorded within 90 days of the first delinquency in payment would
13 all but eviscerate any opportunity for the service provider to issue the customer even one-third of
14 the same number of requests for payment before it was required to record the lien (or be forever
15 barred from doing so). Neither the express language of NRS 444.520 nor NRS 108.226(1)(a)
16 expressly call for the imposition of such an inflexible and unworkable system. Waste Management
17 therefore requests that in the event the Court concludes NRS 108.226(1)(a) must be complied with
18 in the context of garbage liens, that the Court—consistent with the express language of NRS
19 108.226(1)(a)—tie the 90 day deadline to the date on which the service provider last provides
20 garbage removal services to the property.

21 **E. THE COURT SHOULD APPLY A THREE YEAR LIMITATIONS PERIOD TO STATUTORY**
22 **GARBAGE LIENS**

23 As set forth above, the Court also concluded that a “two year statute of limitations applies to
24 Waste Management’s ability to foreclose [its garbage lien.]” *See* Order at 18:4-5. In reaching this
25 conclusion, the Court relied upon NRS 11.190(4)(b), which provides as follows:

26 Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other
27 than those for the recovery of real property, unless further limited by specific statute,
28 may only be commenced as follows:

...

1 4. Within 2 years:

2 . . .

3 (b) An action upon a statute for a **penalty** or **forfeiture**, where the action is given to
4 a person or the State, or both, except when the statute imposing it prescribes a
different limitation. (Emphasis added).

5 Waste Management respectfully submits that the statutory garbage lien created under NRS 444.520
6 is neither a “penalty” nor a “forfeiture” as those terms have been interpreted in Nevada, and
7 therefore an action to foreclose upon such a lien does not fall within the ambit of NRS 11.190(4)(b).

8 First, according to the Nevada Supreme Court, “[f]or statute-of-limitations purposes,” a
9 “penalty” under NRS 11.190(4)(b) is “a ‘punishment for an offence against the public . . . not
10 incident to the redress of a private wrong.’ In other words, the term ‘penalty’ generally is construed
11 to mean something other than damages or pecuniary loss.” *Torrealba v. Kesmetis*, 124 Nev. 95,
12 104, 178 P.3d 716, 723 (2008) (concluding that negligence per se claim brought under NRS 240.150
13 was an “action upon a liability created by statute, other than a penalty or forfeiture”— subject to a
14 three year limitations period under NRS 11.90(3)(a)—because the liability “would not exist but for
15 the statute”, but the action sought redress of a private wrong and thus did not qualify as an action
16 “for a penalty”). Because the foreclosure of a garbage lien does not seek to “punish” a public
17 offense, but instead seeks “redress of a private wrong” (i.e., non-payment for services rendered),
18 such an action cannot be deemed “[a]n action upon a statute for a penalty” under NRS 11.190(4)(b).

19 Similarly, an action to foreclose upon a statutory lien does not result in a “forfeiture.” To
20 the contrary, in *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982), the Nevada Supreme Court
21 expressly held that lien foreclosure sales conducted in compliance with applicable statutory
22 procedures are not forfeitures. *Id.* at 14, 639 P.2d at 530. There, the plaintiffs filed suit seeking to
23 set aside a non-judicial foreclosure sale, conducted under NRS 107.080, foreclosing upon a lien for
24 delinquent common-interest community assessments. Among other arguments raised on appeal, the
25 plaintiffs claimed the foreclosure sale constituted a forfeiture. The Court, however, rejected the
26 argument, noting that:

27 the lien foreclosure sale was conducted under authority of the CC&Rs and in
28 compliance with NRS 107.080. The [Plaintiffs] had actual notice of the sale and
received the excess of the sale price over the amount of the Association’s lien and

1 costs. There simply was no forfeiture in this case.

2 *Id.*; *see also id.* (“this court [has previously] implied that a lien foreclosure sale conducted in
3 accordance with NRS 107.080 is an equitable alternative to forfeiture”) (citation omitted).

4 The rationale for holding that statutory lien foreclosure sales under NRS 107.080 are not
5 forfeitures applies with equal force to those conducted under NRS 108.239—which provides the
6 manner for the foreclosure of mechanic’s liens. Specifically, like foreclosure actions under NRS
7 107.080, NRS 108.239 dictates that any portion of the foreclosure proceeds exceeding the amount
8 of the lien and the applicable costs of conducting the sale, “must be paid over to the owner of the
9 property.” *See* NRS 108.239(11). As quoted above, *Long* concluded that the remuneration of such
10 excess proceeds to the property owner was sufficient to distinguish a statutory foreclosure sale from
11 a forfeiture action. *Long*, 98 Nev. at 14, 639 P.2d at 530; *see also* BLACK’S LAW DICTIONARY 722
12 (9th ed.2009) (defining “forfeiture” as the “divestiture of property without compensation”)
13 (emphasis added). Therefore, actions seeking to foreclose garbage liens under NRS 444.520 are not
14 properly characterized as actions upon a statute for a forfeiture, and the two year limitation period
15 under NRS 11.190(4)(b) should not be applied.

16 Instead, such actions are subject to the three year limitation period under NRS 11.190(3)(a),
17 which applies to “action[s] upon a liability created by statute, other than a penalty or forfeiture.” In
18 this regard, both the Nevada Supreme Court and the Office of the Attorney General—in an opinion
19 relied upon by Plaintiff in its Reply brief⁹—have recognized that actions to enforce statutory tax
20 liens are subject to three year limitation periods. *See e.g., State Tax Comm’n v. Cord*, 81 Nev. 403,
21 410 n.1, 404 P.2d 422, 426 n.1 (1965) (“We are satisfied that NRS 11.190(3) applies to tax
22 liabilities.”); Attorney General Opinion No. 91 (August 10, 1951) (stating predecessor statute to
23 NRS 11.190(3) “was held to establish a limitation period beyond which delinquent taxes could not
24 be collected.”). Moreover, when Plaintiff first raised the issue of the what limitation period would
25 be applicable under NRS 11.190, Plaintiff seemingly agreed that NRS 11.190(3), as opposed to

26
27 ⁹ *See* Plaintiff’s Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 8:22-24
28 (“the Attorney General has concluded that there is a time limitation on the property taxes for three
years under NRS 11.190. *See* AGO Opinion 91 (August 10, 1951).”).

1 NRS 11.190(4), would be the applicable limitation period if NRS 108.233 did not apply (which this
2 Court has already ruled does not). *See* Plaintiff's Reply in Support of Motion for Partial Summary
3 Judgment (4/11/14) at 9:14-16 ("There is nothing to indicate that the garbage lien was intended to
4 last beyond the limitations of NRS 11.080(3) [sic], to wit, the Statute of Limitations.").

5 Because an action to foreclose upon a statutory garbage lien is neither an action for a
6 "penalty," nor an action for a "forfeiture," Waste Management respectfully requests the Court
7 reconsider the portion of its Order concluding that the two year limitation period under NRS
8 11.190(4)(b) applies to such actions, and instead confirm that NRS 11.190(3)(a)'s three year
9 limitation period is applicable.

10 **V. CONCLUSION**

11 Based upon the foregoing, Waste Management respectfully requests the Court to reconsider
12 the above discussed portions of its July 28, 2014 Order denying in part, and granting in part,
13 Plaintiff's Motion for Partial Summary Judgment.

14 The undersigned does hereby affirm that the preceding document does not contain the social
15 security number of any person.

16 DATED this 25th day of September, 2014.

17 HOLLAND & HART LLP

18
19 /s/ Bryan L. Wright
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 25th day of September, 2014, I served a true and correct copy of the foregoing **WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 28, 2014 ORDER** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Attorneys for Plaintiff, WEST TAYLOR
STREET, LLC

/s/ 
An Employee of HOLLAND & HART LLP

APPENDIX OF EXHIBITS

EXHIBIT 1	Declaration of Bryan L. Wright, Esq.
EXHIBIT 2	1995 Senate Bill 434, as Enrolled in Chapter 471 of the 1995 Statutes of Nevada, at Page 1505-10
EXHIBIT 3	Legislative Counsel Bureau's Summary of Legislation for the 1995 Legislative Session at Pp. 155 and 180-81
EXHIBIT 4	Excerpts from the Minutes of the Senate Committee on Judiciary on May 23, 1995
EXHIBIT 5	Minutes of the Senate Subcommittee on Judiciary on May 25, 1995
EXHIBIT 6	Excerpts from the Minutes of the Senate Committee on Judiciary on June 6, 1995
EXHIBIT 7	Excerpts from the Minutes of the Senate Committee on Judiciary on May 30, 1995

FILED
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Joey Orduna Hastings
Clerk of the Court
Transaction # 4625134 : melwood

EXHIBIT 1

1 **1520**

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21 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

23 WEST TAYLOR STREET, LLC, a limited
24 liability company,

25 Plaintiff,

26 vs.

27 WASTE MANAGEMENT OF NEVADA,
28 INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

Defendants.

CASE NO.: CV12-02995
DEPT. NO.: 4

**DECLARATION OF BRYAN L. WRIGHT,
ESQ. IN SUPPORT OF WASTE
MANAGEMENT OF NEVADA, INC.'S
MOTION FOR PARTIAL
RECONSIDERATION OF THE COURT'S
JULY 27, 2014 ORDER**

I, Bryan L. Wright, Esq., declare as follow:

1. I am over the age of eighteen years, and have personal knowledge of the matters stated herein, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I would be competent to testify as to the matters stated in this Declaration.

2. I am an attorney with the law firm of Holland & Hart LLP, counsel of record for Defendant Waste Management of Nevada, Inc. ("Waste Management") in the above matter. I make this Declaration in support of Waste Management's Motion for Partial Reconsideration of the Court's July 27, 2014 Order (the "Motion for Partial Reconsideration").

3. A true and correct copy of 1995 Senate Bill 434, as enrolled in Chapter 471 of the 1995 Statutes of Nevada, at page 1505-10, as obtained from the Nevada Legislative Counsel Bureau, is attached to the Motion for Partial Reconsideration as **Exhibit 2**.

4. True and correct copies of pages 155 and 180-81 of the Legislative Counsel Bureau's Summary of Legislation for the 1995 Legislative Session, are attached to the Motion for Partial Reconsideration as **Exhibit 3**.

5. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on May 23, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 4**.

6. A true and correct copy of the Minutes of the Senate Subcommittee on Judiciary on May 25, 1995, as obtained from the Nevada Legislative Counsel Bureau, is attached to the Motion for Partial Reconsideration as **Exhibit 5**.

7. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on June 6, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 6**.

8. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on May 30, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 7**.

I declare under penalty of perjury under the law of the State of Nevada, that the foregoing is true and correct.

DATED this 25th day of September, 2014.


Bryan L. Wright, Esq.

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4625134 : melwood

EXHIBIT 2

9. *The Nevada gaming commission, by the affirmative vote of a majority of its members, may remove from its records the name of a debtor and the amount of tax, penalty and interest, or any of them, owed by him, if after 5 years it remains impossible or impracticable to collect such amounts. The commission shall establish a master file containing the information removed from its official records by this section.*

Sec. 25. 1. This section and sections 1 to 11, inclusive, and 13 to 24, inclusive, of this act become effective upon passage and approval.

2. Section 12 of this act becomes effective on July 1, 1995.

Senate Bill No. 434—Committee on Judiciary

CHAPTER 471

AN ACT relating to statutory liens; establishing a procedure for releasing or reducing the amount of a lien that is excessive or made without reasonable cause; revising the provisions relating to the priority of certain mechanics' and materialmen's liens; requiring a lienor to record a discharge or release of a lien; and providing other matters properly relating thereto.

[Approved July 1, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 108 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The debtor of the lien claimant or a party in interest in the premises subject to the lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is situated for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted. The motion must set forth the grounds upon which relief is requested and must be supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts upon which the motion is based. If the court issues an order for a hearing, the applicant shall serve notice of the application and order of the court on the lien claimant within 3 days after the court issues the order. The court shall conduct the hearing within not less than 10 days or more than 20 days after the court issues the order.*

2. *The order for a hearing must include a statement that if the lien claimant fails to appear at the time and place noted, the lien will be released with prejudice and the lien claimant will be ordered to pay the costs requested by the applicant, including reasonable attorney's fees.*

3. *If, at the time the application is filed, an action to foreclose the lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of \$85. If an action has been filed to foreclose the lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the lien.*

4. If, after a hearing on the matter, the court determines that:

(a) The lien is frivolous and was made without reasonable cause, the court may issue an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant.

(b) The amount of the lien is excessive, the court may issue an order reducing the lien to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant.

(c) The lien is not frivolous and was made with reasonable cause and that the amount of the lien is not excessive, the court may issue an order awarding costs and reasonable attorney's fees to the lien claimant.

5. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.

Sec. 2. NRS 108.221 is hereby amended to read as follows:

108.221 [The phrase "work of improvement" and the word "improvement" as] As used in NRS 108.221 to 108.246, inclusive, [are defined to mean] and section 1 of this act, unless the context otherwise requires, "work of improvement" or "improvement" means the entire structure or scheme of improvement as a whole.

Sec. 3. NRS 108.225 is hereby amended to read as follows:

108.225 1. The liens provided for in NRS 108.221 to 108.246, inclusive, are preferred to:

(a) Any lien, mortgage or other encumbrance which may have attached [subsequent to] after the time when the building, improvement or structure was commenced, work done, or materials were commenced to be furnished.

(b) Any lien, mortgage or other encumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.

For the purposes of this subsection, "work done" does not include any work commenced before on-site construction has started.

2. [Every] Except as otherwise provided in subsection 3, every mortgage or encumbrance imposed upon, or conveyance made of, property affected by the liens provided for in NRS 108.221 to 108.246, inclusive, between the time when the building, improvement, structure or work thereon was commenced, or the materials thereof were commenced to be furnished, and the expiration of the time fixed in NRS 108.221 to 108.246, inclusive, in which liens therefor may be recorded, whatever the terms of payment may be, are subordinate and subject to the liens in full authorized in NRS 108.221 to 108.246, inclusive, regardless of the date of recording [of] the liens.

3. If any improvement at the site is provided for in a contract that is separate from any contract for the construction of a building or other structure, the improvement at the site shall be deemed a separate work of improvement and the commencement thereof does not constitute the commencement of the construction of the building or other structure. As used in this subsection, "improvement at the site" means:

(a) The demolition or removal of improvements, trees or other vegetation from;

(b) The drilling of test holes in;

(c) Grading, filling or otherwise improving; or

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(d) *Constructing or installing sewers or other public utilities on, any lot or tract of land or the street, highway or sidewalk in front of or adjoining any lot or tract of land. The term includes the construction of any vaults, cellars or rooms under the sidewalks or making improvements to the sidewalks in front of or adjoining any tract of land.*

Sec. 4. NRS 108.226 is hereby amended to read as follows:

108.226 1. Every person claiming the benefit of NRS 108.221 to 108.246, inclusive, [shall] *must* record his notice of lien in the form provided in subsection [4, and shall do so:

(a) Before the lapse of] 5:

(a) *Within 90 days after the completion of the work of improvement;*

(b) [Before the lapse of] *Within 90 days after the last delivery of material by the lien claimant; or*

(c) [Before the lapse of] *Within 90 days after the last performance of labor by the lien claimant, whichever [of the time periods provided in this subsection is the last to expire.] is later.*

2. The time within which to perfect the lien by recording [of] the notice of lien is shortened if [the provisions of NRS 108.228 are complied with and] a notice of completion is [timely recorded,] *recorded in a timely manner pursuant to NRS 108.228, in which event [such] the notice of lien must be recorded within 40 days [immediately following] after the recording of the notice of completion.*

3. Any one of the following acts or events is equivalent to "completion of the work of improvement" for all purposes of NRS 108.221 to 108.246, inclusive:

(a) The occupation or use of a building, improvement or structure by the owner, his agent or his representative and accompanied by cessation of labor thereon.

(b) The acceptance by the owner, his agent or his representative of the building, improvement or structure.

(c) The cessation from labor for 30 days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

(d) The recording of the notice of completion provided in NRS 108.228.

4. *For the purposes of this section, if a work of improvement consists of the construction of more than one separate building and each building is constructed pursuant to:*

(a) *A separate contract, each building shall be deemed a separate work of improvement. The time within which to perfect the lien by recording the notice of lien pursuant to subsection 1 commences to run upon the completion of each separate building; or*

(b) *A single contract, the time within which to perfect the lien by recording the notice of lien pursuant to subsection 1 commences to run upon the completion of all the buildings constructed pursuant to that contract.*

As used in this subsection, "separate building" means one structure of a work of improvement and any garages or other outbuildings appurtenant thereto.

5. The notice of mechanic's lien [shall] *must* be recorded in the office of the county recorder of the county where the property or some part thereof is situated and [shall] *must* contain:

- (a) A statement of his demand after deducting all just credits and offsets.
- (b) The name of the owner or reputed owner if known.
- (c) The name of the person by whom he was employed or to whom he furnished the material.
- (d) A statement of the terms, time given and conditions of his contract.
- (e) A description of the property to be charged with the lien sufficient for identification.

[5.] 6. The claim must be verified by the oath of the claimant or some other person. The claim need not be acknowledged to be recorded.

Sec. 5. NRS 108.228 is hereby amended to read as follows:

108.228 1. The owner may record a notice of completion [as follows:

- (a) Within 15 days after the] *after*:
- (a) *The* completion of any work of improvement; or
- (b) [Within 15 days after there] *There* has been a cessation from labor thereon for a period of 30 days.

2. The notice of completion must be recorded in the office of the county recorder of the county where the property is situated and must set forth:

- (a) The date when the work of improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.
- (b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.
- (c) A description of the property sufficient for identification.
- (d) The name of the contractor, if any.

3. The notice must be verified by the owner [himself] or by some other person on his behalf. The notice need not be acknowledged to be recorded.

4. Upon recording the notice pursuant to this section, the owner shall [immediately] , *within 10 days after the notice is recorded*, deliver a copy of the notice [:

- (a) Either in person or] by certified mail, to [any] :
- (a) *Any* general contractor with whom the owner contracted for the work of improvement.
- (b) [By certified mail, to any] *Any* person who, before the notice was recorded pursuant to this section, submitted a request to the owner to receive the notice.

Sec. 6. NRS 108.2421 is hereby amended to read as follows:

108.2421 1. The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. *A judgment for the claimant on the bond may not be made against the property.* The rights of the lien claimant include and the court may award to him in that action:

- (a) The amount found due to the lien claimant by the court;
- (b) The cost of preparing and filing the lien claim, including attorney's fees, if any;
- (c) The costs of the proceedings;
- (d) Attorney's fees for representation of the lien claimant in the proceedings; and

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(e) Interest at [the rate of 7 percent per annum on the amount found due to the lien claimant and] *a rate established pursuant to NRS 99.040* from the date found by the court that the sum was due . [and payable.]

2. Proceedings [under] *pursuant to* subsection 1 are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for 30-day setting," in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before [Friday next,] *the Friday after the demand is filed*, vacate a case or cases in a department of the court and set the lien claimant's case for hearing, on a day or days certain, to be heard within 30 days [of] *after* the filing of the "demand for 30-day setting." Only one such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing, a new preferential setting must be given.

Sec. 7. NRS 108.2437 is hereby amended to read as follows:

108.2437 [Within 21 calendar days after a lien of record upon real property provided for in NRS 108.221 to 108.246, inclusive, secured on or after October 1, 1991, is satisfied or discharged, and a written request is received by the lienor for a discharge or release, the lienor shall cause to be recorded a discharge or release of the lien pursuant to NRS 108.2433.]

1. *As soon as practicable, but not later than 10 days after a lien of record upon real property pursuant to NRS 108.221 to 108.246, inclusive, is satisfied or discharged, the lienor shall cause to be recorded a discharge or release of the lien in substantially the following form:*

DISCHARGE OR RELEASE OF LIEN

NOTICE IS HEREBY GIVEN THAT:

The undersigned did, on the day of, 19....., record in Book, as Document No., in the office of the county recorder of County, Nevada, its Notice of Lien, or has otherwise given notice of his intention to hold and claim a lien upon the following described property, owned or purportedly owned by, situated in the County of, State of Nevada, to wit:

(Legal Description or Address of the Property)

NOW, THEREFORE, for valuable consideration the undersigned does release, satisfy and discharge the claim or lien on the property described above by reason of such Notice of Lien, or by reason of the work and labor on, or materials furnished for, that property.

.....
(Signature of Lienor)

2. If the lienor fails to [do so,] *comply with the provisions of subsection 1*, he is liable in a civil action to the owner of the real property, his heirs or assigns [in the sum of \$100,] *for any actual damages caused by his failure to*

comply with [the provisions of this section,] *those provisions or \$100, whichever is greater*, and for a reasonable attorney's fee and the costs of bringing the action.

Senate Bill No. 443—Committee on Transportation

CHAPTER 472

AN ACT relating to motor vehicles; regulating their towing and storage; and providing other matters properly relating thereto.

[Approved July 1, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 706 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *The provisions of NRS 706.151 to 706.168, inclusive, 706.311 to 706.453, inclusive, 706.471, 706.473, 706.475, 706.6411 to 706.753, inclusive, and 706.881 to 706.885, inclusive, do not apply to an operator of a tow car.*

Sec. 3. 1. *In addition to the other requirements of this chapter, each operator of a tow car shall, to protect the health, safety and welfare of the public:*

(a) Obtain a certificate of operation from the commission before he provides any services other than those services which he provides as a private motor carrier of property pursuant to the provisions of this chapter;

(b) Use a tow car of sufficient size and weight which is appropriately equipped to transport safely the vehicle which is being towed; and

(c) Comply with the other requirements of sections 2 to 10, inclusive, of this act.

2. *The commission shall issue a certificate of operation to an operator of a tow car if it determines that the applicant:*

(a) Complies with the requirements of subsection 1;

(b) Complies with the requirements of the regulations adopted by the commission pursuant to the provisions of this chapter; and

(c) Has provided evidence that he has filed with the commission a liability insurance policy, a certificate of insurance or a bond of a surety and bonding company or other surety required for every common and contract motor carrier pursuant to the provisions of NRS 706.291.

Sec. 4. *The operator shall maintain a dispatcher's log which shows for each vehicle towed:*

1. The date and time the call to provide towing was received.

2. The name of the person requesting that the vehicle be towed.

3. The date and time a tow car was dispatched to provide the towing.

4. The date and time the tow car arrived at the location of the vehicle to be towed.

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EXHIBIT 3

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION



PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

INTRODUCTION

The 1995 Nevada Legislature considered 1547 legislative measures. Of this total, 730 bills were enacted, and 173 resolutions were adopted. Six bills were vetoed by the Governor: two vetoes were sustained by the 1995 Legislature, and the remaining four will be considered during the 1997 Session.

The *Summary of Legislation* reviews each bill, concurrent resolution, and joint resolution (including the vetoed bills) passed by the 1995 Legislature. These summaries do not constitute legal analyses and are not intended for use by the legal community in place of the actual statutes. Further, each bill contains many provisions that cannot be included in a brief summary; those interested in a particular measure should consult the *Statutes of Nevada 1995* for the entire text. Detailed descriptions of appropriations acts are available in the *Nevada Legislative Appropriations Report*, prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau.

Unless otherwise noted, the measures passed during the 1995 Legislative Session become effective on October 1, 1995.

Occasionally, descriptions of "current" or "existing" law are used to illustrate the changes resulting from a bill. These descriptions refer to the law existing prior to the effective date of new legislation. In many cases, the "current" law so referenced will already have been changed at the time of this document's publication.

Research Division
Legislative Counsel Bureau
August 1995

GAMING

S.B. 399 (Chapter 281)

Senate Bill 399 clarifies the meaning of gross revenue under the gaming statutes. Under this measure, gross revenue does not include the value of a chip won by a casino from a patron for which the casino has not received cash.

Casinos offer various promotional packages, which include "free" gaming chips and tokens to entice patrons into Nevada. Because no cash is received by the casino for these chips, their value should not be included in the calculation of the casino's gross revenue.

This measure is effective on June 19, 1995.

S.B. 401 (Chapter 470)

Senate Bill 401 revises certain provisions relating to the regulation of cashless wagering systems. In addition to defining key terms, this measure clarifies that a cashless wagering system includes computerized systems that facilitate the electronic transfer of money to or from a gaming device. Senate Bill 401 authorizes the State Gaming Control Board to inspect cashless wagering systems and to investigate disputes between a patron and a licensee that are not resolved to the patron's satisfaction.

Finally, the measure raises the annual salary of the chairman of the Nevada Gaming Commission from \$42,000 to \$55,000. The salary of each member is raised from \$30,000 to \$40,000.

The bill is effective on July 1, 1995.

S.B. 497 (Chapter 534)

Senate Bill 497 clarifies that the kinds of entertainment not subject to the casino entertainment tax include charitable benefits, museum exhibitions, sporting events, trade shows, films, outdoor concerts, certain other concerts, interactive entertainment, and certain types of music. Also exempt from the tax is entertainment that is provided at private meetings, around a swimming pool or beach, or without the requirement of an admission charge or the purchase of certain items.

Senate Bill 497 requires a gaming licensee to pay the casino entertainment tax on the price for admission to a cabaret, nightclub, cocktail lounge, or casino showroom unless the ticket for admission states whether this tax is included in the ticket price.

HOUSING (continued)

more than 1 percent of the purchase price of the real property, whichever is greater, and certain money deposited in the escrow.

S.B. 543 (Chapter 687)

Senate Bill 543 provides that local government purchasing and public works laws do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension project for which reimbursement will be received. If the developer pays the entire cost of the project, the provisions concerning competitive bidding and prevailing wages do not apply.

This bill is effective on July 6, 1995.

A.B. 47 (Chapter 695)

Assembly Bill 47 amends state law concerning impact fees for new development. The bill deletes a provision requiring local governments to pay impact fees that would otherwise have been collected from a school district. The bill also stipulates that a local government shall, if requested, reimburse a school district for certain costs associated with the construction or dedication of off-site facilities.

A.B. 138 (Chapter 13)

Assembly Bill 138 revises provisions concerning certain arrangements between general improvement districts and private developers. The measure exempts a private developer's contract for a sewer extension or water facility for the development from the provisions of *Nevada Revised Statutes* Chapters 332 and 339, which concern local government purchasing and contractors' bonds for public works. In addition, the provisions of Chapter 338, which concern employment on public works projects, do not apply to a contract for which the developer pays all of the initial construction costs of the sewer extension or water facility. If the developer does not pay all of those costs, then the prevailing wage sections of Chapter 338 are applicable to the contract.

The bill is effective on April 6, 1995.

A.B. 343 (Chapter 228)

Assembly Bill 343 amends the law governing the sale of subdivided land. The bill authorizes the Administrator of the Real Estate Division to impose a fine or to revoke or suspend the property report, permit, partial registration, exemption, or license of a developer who obtains those documents by fraud or misrepresentation or who violates the conditions under which they were granted. The bill also expands the

disciplinary options the administrator may use against a developer who violates the law. The administrator is authorized to impose an administrative fine of up to \$5,000 or to require the developer to enter into an agreement to discontinue unlawful activities, pay the costs of the investigation and hearing of a complaint, or return money obtained by unlawful means in lieu of issuing an order to cease and desist.

The bill is effective on July 1, 1995.

A.B. 440 (Chapter 403)

Assembly Bill 440 amends the law regarding escrow agents and agencies. The bill increases the amount of the bond which these licensees must deposit with the Commissioner of Financial Institutions from \$25,000 to \$50,000 and allows this bond to be held in a form other than a surety bond, such as a certificate of deposit, a United States Treasury obligation, or a municipal bond.

The bill also provides that, when an escrow officer licensed by the Commissioner of Insurance applies to the Commissioner of Financial Institutions for licensure as an escrow agent, the background investigation may be waived. Escrow agents may, however, be licensed as escrow officers without again taking a licensing examination and meeting certain experience requirements.

According to testimony concerning the bill, the increase in the amount of the bond affords greater protection to the customers of escrow agents and agencies. Allowing these licensees to hold the bond in the form of an interest bearing security rather than posting a surety bond reduces the financial burden of providing this security.

At the present time, escrow agents and agencies are licensed and regulated by the Division of Financial Institutions, while escrow officers, who are employed by title insurers or title agents, are licensed by the Commissioner of Insurance. Both types of licensees perform the same functions and meet the same licensing requirements. This bill is intended to simplify the process of changing from one type of license to another.

A.B. 476 (Chapter 334)

Assembly Bill 476 requires sellers of residential property to disclose in writing the condition of the property to buyers or their agents. The Real Estate Division of the Department of Business and Industry is directed to adopt regulations prescribing the format of the disclosure form. The form must provide for the disclosure of the condition of the major mechanical systems of the property, any known defects, and other aspects of the property that may affect its use or value.

The measure requires the seller to complete the disclosure form and deliver it to the purchaser at least 10 days before residential property is conveyed to the purchaser. If a defect comes to light or becomes more serious after the disclosure form has been

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EXHIBIT 4

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
May 23, 1995**

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 9:00 a.m., on Tuesday, May 23, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Pat Coward, Lobbyist, Nevada Land Title Association
Charles T. Cook, General Counsel, Nevada Title Company, Legislative Chairman,
Land Title Association
Mickey Johnson, Lobbyist, Southern Nevada Home Builders Association
Harold Jacobsen, Accounting Manager, Western Nevada Supply Company,
Chairman, Credit Managers Association of Southern California, Las Vegas
Chapter, Member, Associated General Contractors
Nancy Johnson, Owner, Accurate Lien and Contractors Assistance
Chuck Burr, Credit Manager, Western Nevada Supply Company
James Wadhams, Lobbyist, American Insurance Association
Stan Olsen, Lobbyist, Las Vegas Metropolitan Police Department (METRO)
Joe Evers, Executive Director, Support Operations, Las Vegas Metropolitan Police
Department (METRO) Detention Services
Laurel Stadler, Lobbyist, Mothers Against Drunk Driving, Lyon County Chapter

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

The chairman opened the hearing on Senate Bill (S.B.) 434. Pat Coward, Lobbyist, Nevada Land Title Association, introduced the bill, noting it deals with the mechanics lien law. He noted it is a comprehensive bill which will be explained to the committee by Charles T. Cook, General Counsel, Nevada Title Company, Legislative Chairman, Land Title Association, and Mickey Johnson, Lobbyist, Southern Nevada Home Builders Association.

Mr. Cook told the committee the bill attempts to revamp Nevada Revised Statutes (NRS) chapter 108 in order to bring certainty into the statute and to avoid the need for litigation in every instance where liens are placed against property. In formulating the proposed changes, the witness explained, the proponents looked at statutes from other states in the region. These include Arizona, California, Oregon, and Washington, he noted. Nevada's original mechanics lien law was drafted in 1965. Mr. Cook offered to go over the bill by section.

Ms. Johnson explained she also represents the National Association of Industrial and Office Properties, a commercial developers group. She noted the groups she represents have been involved in the drafting of the bill and they approve of the changes that are proposed. She also reminded the committee the issue of mechanics liens is an emotional one, because the real subject is getting the bills paid. She emphasized the home builders do not wish or intend to "obviate" the responsibility of paying for work or materials that are supplied to a project. In fact, she opined, the changes are good for all parties, the builder and the contractor, along with the home buyer.

Mr. Cook proceeded with his overview of the bill, section by section. Noting section 1 is simply an introduction for the bill, he moved to sections 2 and 3 which bring a provision to "bond around" liens without filing a petition with the court requesting an order authorizing the bond. This will provide a second prong to the mechanism for bonding a project. The current procedure will remain in place and the new procedure will allow the recording of a surety bond. By recording the surety bond the lien claimant will have security couched in the recorded bond. Mr. Cook told the statutes already require that the surety bond must be provided through a company that is licensed in Nevada, as well as providing the form the bond must take.

Senator Adler questioned the mechanics of the procedure. He summarized his understanding, offering the example of a lien which is put against a piece of

property that is in escrow. The party attempting to close the sales transaction can acquire a surety bond to cover the amount of the mechanics lien, and the sale can go through?, he asked. Mr. Cook corrected the senator to the extent that the bond must actually be in excess of the lien amount (two times the amount of the lien if it is less than \$10,000 or less and one and one-half times the amount if the lien is in excess of \$10,000). The senator asked if it would still be necessary to go to court. Mr. Cook replied in the negative.

Ms. Johnson observed, from the home builder's perspective, the goal is to assure the contractors and subcontractors get paid, and the surety bond will facilitate that goal. The bond will release the real property from the effects of the lien, she said, so the home buyer can go forward. In many cases it is the home buyer who suffers when liens are filed because their financial arrangements may be jeopardized, she stated. Senator Adler noted this will keep the closing date intact in the home purchase. She agreed.

Once the purchase closes, Senator Adler asked, the builder will pay the lien, or does the bond pay. Ms. Johnson reported the bond would "kick in." That is, the sale would go through and the lien claimant would execute against the surety bond for payment. If, at this point, the court finds the lien to be legitimate the bond is cashed and the claimant is paid.

Mr. Cook pointed out there is a provision for notice to be served on the lien claimant that a bond has been recorded. This is important because people should know a bond is in place. He stated the mechanism to enforce a lien is the same as is currently in place (i.e., there is a 6 month period in which to bring an action to enforce a lien). The advantage offered by the change is the lien holder would not have to worry about a developer filing bankruptcy because the bond would be in place as security.

In section 4, Mr. Cook continued, there is a provision designed to address liens that are believed to be frivolous. He explained this provision. This provision should offer a method of recourse to deal with claims the parties do not agree about, and to provide the assessment of attorneys fees and costs to the losing party. The hope, according to Mr. Cook, is this will reduce the number of liens filed by contractors against large tracts of developments for claims that are rightly only against single homes or job sites.

Senator McGinness asked the witness what involvement the home owner has in the proceedings, if any. Mr. Cook informed him the home owner could be the one that brings the proceeding. The senator clarified his question, explaining he meant

at the time the home sale is pending and the escrow accounts are hanging in the balance; if the builder claims the lien is frivolous, does it drag out the sale. Mr. Cook replied it could "a little bit," but it is designed to follow a fast track through the court hearing.

Senator Adler asked how the filing fee was set. The witness replied it was taken from another state's statute. He admitted it might need to be more. The senator suggested Mr. Cook contact the court administrator to ascertain a fee level.

Ms. Johnson, addressing Senator McGinness' question, stated frivolous liens are a big problem for the home building industry. Oftentimes the contractors will have a disagreement with the builder and the liens are filed as a tool to delay the sale of the homes. This delay is one the builder wants to avoid and the lien is dealt with in a more expeditious manner, she explained. She offered an illustration of how the liens are used to hinder the builders. This section of the bill is, therefore, of particular interest to the home builders, Ms. Johnson stated. She opined the posting of a surety bond, along with the hearing to address claims of frivolous liens should "obviate that being a problem."

Senator McGinness asked if the surety bond would be posted even if the builder felt the lien was frivolous. Ms. Johnson's response was that posting the bond is an option, should the builder wish to ensure the closing of the sale.

Mr. Cook resumed his overview of the bill with section 5, noting it is a housekeeping measure to unify the proposals throughout statute. Section 6 amends lien priorities, he told, noting priority over any other mortgage, lien or encumbrance attaches once work is commenced. This prioritizing focuses on site improvements, and lien rights accrue from the beginning of the improvement. Mr. Cook said:

The last work of improvement, the guy who puts the shine on the brass door knocker, has lien rights that go all the way back to the first work of improvement, being the grading of the master planned community. [Other states' statutes] have implemented segregation of different works of improvement. Limiting the initial work, or the infrastructure, or the off-site improvement...where there is a separate contract for them, will be accorded a separate lien time period. They will be classified as a separate work of improvement and their lien rights will begin upon the completion of that work of improvement.

The concept is controversial, he admitted, but the consequence of this provision is to bring statutes in tune with developments as they are currently being worked.

Ms. Johnson agreed with Mr. Cook's assessment that today's developments are much different from those of 40 years ago. If an off-site contractor comes in and grades the entire development, then a building contractor attempts to get a construction loan for the first five production houses and the off-site contractor has put a lien on the entire project, the building contractor is precluded from securing his construction loan, and the entire project is jeopardized. The provision separates the off-site and on-site improvements, she stated.

Senator Porter wondered about insolvency of the general contractor. How can a subcontractor collect from a general contractor who is facing insolvency. He speculated as a subcontractor he would wish to put a lien on the entire property. Mr. Cook pointed out the current statute requires the lien holders to allocate liens to property they have actually made the improvements on. Thus, there is no change proposed in that regard. Senator Porter noted the language specifies property. Mr. Cook noted the thing that is avoided is the "back end loading" of liens. The senator agreed there is a double-edged sword playing in this instance because there are legitimate contractors and there are those contractors who are always walking the fine line between solvency and insolvency and the subcontractors are greatly impacted.

Ms. Johnson asserted that current statute requires the owner of the property to pay the lien. The lien carries with the property even through the sale from one party to another. Mr. Cook opined the subcontractor and the lien claimants would know at an earlier date if the developer is bound to go bankrupt. Currently, the developer is able to "string the subs [subcontractors] along with hopes and expectations of being paid." This provision would shorten the period of time for the off-site contractors to file their liens, and this would alert others to the situation sooner, he observed.

Senator Porter told the complaints he usually hears have to do with the owner-contractor or home owner who hires a contractor themselves. He asked how this would impact this type of situation. Ms. Johnson opined the provision would not impact these kinds of situations at all. Mechanics lien law is a singularly American law, unlike any other law people might be familiar with. She explained a house painter who contracts to paint a house and then is not paid cannot repossess the paint, thus he is afforded a means whereby he holds an interest in the property up to the value of his work or the amount of the contract that remains outstanding.

Thus, when the property is sold, the painter is able to collect his pay from the proceeds of the sale. With this explanation, Ms. Johnson said the persons the senator is concerned about will not be impacted by this on-site/off-site differentiation. The senator offered an aside that the recourse available to his constituents seem rather weak, but that can be addressed at another time.

Section 7, Mr. Cook said, refers to works of improvement consisting of one separate building. He stated it has been suggested subsection 4 of that section be removed from the bill. It seems unworkable, he opined, and moved on.

Section 8 of the bill, Mr. Cook reported, removes the 15-day requirement for a notice of completion. He stated it does not make sense to have a cutoff for filing the notice. The second change couched in this section is eliminating the option of personally delivering the notice of completion. Thus, it must be sent by certified mail, which provides a receipt as to when the notice was sent and received, he explained.

Subsection 4 of section 8 should be changed to read, "Any person who, before the notice was recorded pursuant to this section, submitted a written request to the owner to receive the notice." Mr. Cook explained the change is necessary because the provision in section 15, which calls for the pre-lien notice to be recorded, has been removed.

Section 9 works with sections 2 and 3, addressing bonds, the witness continued. It calls for the release of the real property as security, substituting the bond as security in its place, he explained. Section 10 provides for the revision to the amounts required for the bonds. At this point, Senator Adler made the observation that anyone who has dealt with a bonding company will realize they are nearly impossible to collect from. He asked if there is any provision which requires the bonding company to pay when they should. The senator told of a personal experience he had with a bonding company in his law practice.

Ms. Johnson noted a contractor's bond is different from a surety bond. When a builder buys a surety bond, they usually have to pay 10 percent of the bond amount, and this is a nonrefundable payment. The senator opined the bonding company will fight "like a son-of-a-gun" not to pay. He suggested a provision which states if a surety company does not pay the bond in good faith, they will be subject to double damages. He voiced great concern with this issue. Ms. Johnson could not argue, noting she is unfamiliar with the law governing bonding companies.

Mr. Cook drew attention to section 12, subsection 3, line 29, where the word "bond" needs to be replaced with "order." Section 14, subsection 1, the time frame should be more flexible than the 10 day requirement. There is no guarantee the check made as payment of the lien will clear the bank in time to meet the 10-day deadline. The statute shows the form the discharge should take, Mr. Cook explained, and it has been requested that the discharge should include the name of the owner of the property.

Finally, in section 15 of the bill, deleting subsection 2 of that section removes the requirement for the pre-lien notice to be recorded, Mr. Cook stated. Additionally, the language marked for deletion in subsection 4 of section 15 should be retained, he noted. It was concluded by interested parties that recording the pre-lien notice would be overburdensome for the parties, as well as for the recorder, the witness testified. This concluded the presentation of the bill's provisions and the witnesses stepped down.

Harold Jacobsen, Accounting Manager, Western Nevada Supply Company, Chairman, Credit Managers Association of Southern California, Las Vegas Chapter, Member, Associated General Contractors, spoke next. The chairman noted he had received a letter from Mr. Jacobsen which outlines in detail his opposition to the bill. Senator James explained it is his intention to appoint a subcommittee to work on changes to the bill. He appointed Senator Adler, as chair, Senator McGinness and Senator Lee to the subcommittee.

Senator James asked Mr. Jacobsen to be brief in his comments and to present his in-depth concerns to the subcommittee. Mr. Jacobsen voiced appreciation for the senator's attention to his correspondence. He agreed to omit from his comments those areas that have been deleted from the bill. He then turned to issues he felt deserved comments.

The area of preliminary notices has been deleted, he noted, and this prefilng would eliminate a large portion of potential lien claimants in a manner detrimental to the small contractor.

The witness moved to the bonding requirements which, he opined, is another onerous provision of the bill. Mr. Jacobsen said the provision to allow the real property to be released for sale under the posting of a surety bond is not in the best interest of the subcontractor. This is because the county clerk in the recorder's office has no expertise as to the real value or validity of a bond which is presented for recording. Current law requires judicial supervision of the bonding process and the recording of the bond. The judge has the necessary expertise to

determine if the bond is sufficient, the witness told. Additionally, Mr. Jacobsen said, he has personal experience with bonding companies, licensed in the state, that failed to pay the bond as required. This ability to bond around a lien is currently available in the statutes, except that it is supervised by the courts, he noted.

In the proposal, the only opportunity for a subcontractor to receive payment on a lien comes after the subcontractor files a claim against the bond. The subcontractor does the work, pays payroll and supplies, waits 90 days, has the lien bonded around, and then he must hire an attorney to make a claim against the bond or to file suit, he illustrated for the committee. The ability to bond around a lien further removes the financial burden from the builder to the subcontractor, Mr. Jacobsen opined. Further, not until long into the process does anyone ensure the bond premium has been paid, he noted. At this late date, the real property is well out of reach of the subcontractor. The real property is the only real protection the subcontractor has, he emphasized.

Looking next to the section on frivolous or excessive liens, Mr. Jacobsen stated his agreement that such liens should not be placed. There should be fairness on all sides, to the owner, the general contractor, the subcontractors, and the suppliers. He opined the mere existence of a lien indicates there is a problem between the lien claimant and the property owner or the general contractor. There already exists a remedy to this problem, he told, the ability to sue for wrongful clouding of a title.

The segregation of property issue is also a concern, Mr. Jacobsen noted, especially to companies such as his who do "site work" which encompasses the entire development without any direct tie to any particular single building. Companies that lay curb and gutter, that do grading for entire projects, that build roads, are jeopardized by this segregation provision, he said.

Delivery of notices of completion by certified mail is a good requirement, Mr. Jacobsen stated. He noted the notice of completion shortens the time to file liens from 90 days to 40 days. When the builder does not deliver the notice until the end of the 40 day window provided for such delivery, the subcontractors are being unjustly limited in their lien rights.

On the issue of delivery of discharge of the lien, the witness objected to any shortening of the time from 10 days. He opined the amount of time to clear a check varies, and there are many bad checks or insufficient funds checks written which require longer time to clear.

Generally, Mr. Jacobsen said he feels the bill is a "travesty of the concept, 'honest payment for honest work,'" and it appears to have been drafted to serve a special interest group that has little understanding of the subcontractors' needs or problems. He opined it takes unfair advantage of the small businessman. There are many aspects of the bill which come together to hurt the small businessman, he stated. He suggested the best course of action is to pay the bill when honest work has been done; and if a problem arises, it should be addressed directly. This concluded Mr. Jacobsen's remarks and he stepped down.

Nancy Johnson, Owner, Accurate Lien and Contractors Assistance, and Chuck Burr, Credit Manager, Western Nevada Supply Company, came to the stand. While they moved into place, Senator Porter spoke to Mr. Jacobsen, noting his family's history in the construction business and voicing his sympathetic views.

Ms. Johnson addressed the notice of completion issue. She asked a deadline be imposed for the delivery of the notice of completion to the subcontractors or those who request it. Also, referring to section 14 of the bill, which requires release of the lien within 10 days of payment, Ms. Johnson agreed it is difficult to get checks cleared in that amount of time. She suggested a requirement that all claim amounts must be paid with certified funds, by cashiers check or certified check. Finally, she referred to the section on frivolous liens. She stated liens are filed because they have not been paid.

Mr. Burr spoke next to the issue of the 10 day discharge deadline versus payment with a certified or cashiers check. He opined that many individuals will not have a certified check when they come to pay a claim, and the option to meet the 10 day deadline should be retained.

Mr. Burr stated his major concern lies in the bonding issue. Many of Nevada's bonding companies, while they may be licensed, are not fiscally strong, he observed. Having some judicial oversight is a benefit to the lien claimant, he asserted, and removing this oversight can result in major problems. The witness expressed appreciation that the pre-lien recordings will be reconsidered, noting the removal of that provision is critical.

Mr. Burr voiced support for the provision to segregate the piece of property or buildings in a development and the restriction proposed for lien against an entire development for work done on only a part. It is important to identify the separate houses or buildings that should be included in a lien and brings a higher level of professionalism to the construction business. He observed the difference of off-

site improvements which requires a lien against the entire project, because the improvements are to the entire project.

James Wadhams, Lobbyist, American Insurance Association, stated he had not intended to testify, but some of the prior testimony on bonding companies leads him to comment. NRS chapter 680A is the section of statutes which regulate insurance and outlines the regulations for licensure of bonding and insurance companies, he reported. There are instances throughout the state where unlicensed companies are putting up bonds, Mr. Wadhams stated, and strengthening the licensing requirements will help to alleviate these concerns.

There was no further testimony on S.B. 434 and the chairman closed the hearing.

SENATE BILL 455: Makes various changes to provisions governing real property.

S.B. 455 was the next bill to be heard and the chairman called the proponents to the table. Mr. Coward again spoke to the committee, noting the bill is a housekeeping attempt. Mr. Cook outlined the bill's contents. He stated chapter 106 of NRS governs mortgages and 107 governs deeds of trust. Sections 1-30 of the bill are designed to require the holders of the mortgages or deeds of trust to issue statements relating to the status of the loans, based on requests from specific groups or individuals.

Mr. Cook observed currently it is difficult to obtain reconveyances or any information from the lenders. While they are happy to receive their payments, lenders are not so cooperative when it comes to giving information about loans or clearing the public record of their deeds of trust, Mr. Cook explained.

The witness explained sections 1-14, except section 2, deal with mortgages; sections 16-30 deals with deeds of trust. After conversations with the bill drafters, Mr. Cook reported, there is a correction needed. Section 2 only applies to sections 14 and 30. Moving on, Mr. Cook referred to section 15, in which is codified the common law principle that the purchase money deed of trust is entitled to priority over judgement liens that may be of record against an individual who is purchasing the property. Courts-in-equity have held this principle to be true, but in Nevada it requires further court action to confirm it, he noted.

Ms. Johnson offered the committee an example of how this provision works. In some cases a person will have a judgement against them, as individuals, but will

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EXHIBIT 5

**MINUTES OF THE
SUBCOMMITTEE OF THE
SENATE COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
May 25, 1995**

The Senate Subcommittee on Judiciary was called to order by Chairman Ernest E. Adler, at 4:00 p.m., on Thursday, May 25, 1995, in Room 227 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Ernest E. Adler, Chairman
Senator Mike McGinness
Senator Jon C. Porter

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Charles Cook, Lobbyist, Nevada Land Title Association
Sid Perzy, Credit Manager, Las Vegas Paving Corporation
Harold Jacobsen, Credit Manager, Steward and Sundell Concrete; Member, Credit Managers of California, Las Vegas Chapter; Member, Associated General Contractors; Member, National Electrical Contractors Association
James Bennett, Executive Vice President, United Title of Nevada; Nevada Land Title Association

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

Senator Adler opened the hearing on Senate Bill (S.B.) 434. He stated the subcommittee's goal was to attempt to address the problems and conflicts raised by various parties about the bill. He asked Senator McGinness if he had a question for the proponents of the bill.

Senator McGinness admitted his lack of familiarity with the process, and asked if there are liens filed at every stage of the construction process. Charles Cook, Lobbyist, Nevada Land Title Association, responded to the senator's question, but first he asked the question be clarified. Senator McGinness restated his question, wondering if the foundation worker, the subfloor installer, the framers, etc., were all able to put liens on projects. Mr. Cook replied that each of those parties have lien rights, including the material suppliers and the laborers. The senator asked if everyone files liens automatically. Mr. Cook replied they do not usually do this, but they have the right.

Senator McGinness continued his questioning, attempting to ascertain the usual process that leads to the placing of a lien against a property. He offered an example of a curb and gutter installer who does the job, but gets paid only two-thirds of the entire contract amount. Does the contractor file the lien right away or does he wait a while in order to allow the builder time to pay? Mr. Cook explained it happens both ways, but a contractor who files liens right away might do so because he has a bad relationship with the builder or owner of the property.

Sometimes, Mr. Cook explained, the subcontractors will attempt to lien for the full amount of the contract when they have received payment for part of it. Another scenario could be a subcontractor puts in all the sidewalks, is not paid, and liens for the full amount of his contract, including the cost of the materials supplier's concrete. If the materials supplier also places a lien, the result is higher than the total amount of the contract.

Senator Adler moved to questions posed by other sources. He referred to a question raised by the Clark County Clerk's Office, who feared the law would double their filings in just 1 year. Mr. Cook noted this increase would be due to the bill's provision that pre-lien notices be recorded. He noted he had also been contacted about the negative impact of this particular provision. Thus, Mr. Cook concluded, the provision should be deleted from the bill.

Moving ahead, Mr. Cook noted he has a list of items that have been agreed upon as best deleted from the bill. He offered to provide the list to the subcommittee and thus avoid unnecessary discussion on those points. The chairman asked Mr. Cook to provide the list to him, noting he would share the list with the other members of the subcommittee.

Senator Adler brought up a point that he considers "fundamental to the whole bill." Subcontractors have reported to him, he told, that bonding around does not work as a means of collecting money owed. Bond companies do not pay, they reported to the senator, and many of them have been unable to collect on projects that have

been bonded around. Mr. Cook explained the statute would create a "different bond" for the specific purpose of securing the lien. Currently, there is a performance bond or payment bond, which is often required by the municipality. This statute creates a mechanism where the bond is the security for the lien, thus, he speculated, there will not be the same problem, because it becomes the absolute security for the lien.

Sid Perzy, Credit Manager, Las Vegas Paving Corporation, asserted his only real problem in the past is the actual collection on the bond. It has been necessary, he explained, to hire an attorney in order to collect from the bond company. He speculated that this situation is not unique to his company, but would be prevalent throughout the state. Senator Adler asked how much an attorney would cost to collect the bonds. Harold Jacobsen, Credit Manager, Steward and Sundell Concrete; Director, Credit Managers of California, Las Vegas Chapter; Member, Associated General Contractors; Member, National Electrical Contractors Association, stated it is generally a per hour fee that is charged for such service.

The chairman asked Mr. Jacobsen if he had ever had an occasion when the bond was simply paid, without extraordinary efforts to collect. Mr. Jacobsen replied, "never." The senator noted this seems to be the case in all instances. The witness told he has attempted in the past to process a claim against a bond, as an individual. The bond company would not even respond to him, he stated, and it is necessary to file some court action to claim the bond.

Mr. Jacobsen wished to point out the current law already contains provisions that allow bonding around a lien. The difference here, he stated, is the current law requires the petition to bond around a lien be filed with the court. Under the proposal, there is no need to file a petition with the court, and therefore, there is no oversight of the process or assurance the bonding company is reputable and able to pay. Additionally, the new proposal will release the real property to be sold, which leaves the subcontractor with no recourse.

Mr. Perzy explained to the subcommittee that bonding companies vary and some are not financially sound. By having the courts oversee the process there is some assurance that the bonding companies used will be reputable companies, known in the industry as "T" companies, Mr. Perzy added. Mr. Cook declared the remedy currently available is not very different from that being proposed by the bill. He added the statutes currently require that the bonds are issued by bonding companies that are currently licensed within the state.

Senator Adler opined there would be a different situation created by the bill because currently, in order to close escrow on the sale of the property, the lien

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must be cleared by paying the subcontractor. Mr. Jacobsen interjected if the lien is bonded around there is no need to pay the subcontractor before closing the sale, but there would be a need for the subcontractor to hire an attorney. He reiterated that not all bonds are good, and the county recorder has no means of determining this.

Mr. Cook reminded the subcommittee that currently liens expire after 6 months and cannot be enforced after that time. He emphasized the change will only shorten the process because it removes the need to file a petition with the court so a lien can be bonded around. Mr. Jacobsen agreed with Mr. Cook, but opined the change would be to the detriment of the subcontractor. Senator Adler asked if the court would award attorney's fees to the prevailing party if judicial intervention is necessary. Mr. Jacobsen replied the court will award attorney's fees, but it is the subcontractor who must "front the money" to pay the attorney.

James Bennett, Executive Vice President, United Title of Nevada; Nevada Land Title Association, offered the committee examples of situations where the lien cannot be released because there is no lawsuit brought. As a result the title cannot be cleared, which is to the detriment of the property buyer. Mr. Cook suggested a change in the amount of the bond, perhaps raising the amount of the bond. This would provide a bond for a greater amount than what the lien claims is due.

Senator Adler asked what happens if the process is followed and the bonding company refuses to pay or the company goes defunct and the bond is no good. Is it possible to sue the contractor at this point, he asked. Mr. Jacobsen replied if there is a contract there is always the possibility of suing due to breach of contract. The problem arises when the only possession of value belonging to the contractor is the real property, which he may have sold. Thus, it is very important to have the real property to fall back on. Mr. Jacobsen stressed once again, the importance of having judicial oversight. If the bond is no good, it does not matter what the amount of the bond is.

Mr. Perzy asked to comment that the judicial process is a very slow thing. It is very difficult for the subcontractors to wait the year or 2 that the processes of a lawsuit require. Mr. Bennett responded that perfecting the mechanics lien is also a court proceeding with slow progress.

Mr. Cook stated the lien remains for 6 months, but if no action is taken it expires. However, the debt remains until it is paid or is discharged by bankruptcy, he added. He emphasized the builders wish to avoid litigation. Senator Adler noted he heard this wish to decrease the litigation and this bill should accomplish that

goal, for the builders. The problem he sees, he said, is there will be the same number of lawsuits, only different ones. Mr. Jacobsen agreed with Senator Adler. The senator also noted he has discussed the bill with several attorneys that handle construction cases and none of them believe it is a good idea. Mr. Cook told there was a lot of discussion about this process at a recent continuing legal education seminar. The attorneys attending this seminar, he reported, seemed to think the bonding change is a positive step. Senator Adler noted he would agree if there were good bonding companies to rely on.

Mr. Perzy stated there was an across-the-board agreement there is a need to speed up the process. The real issue is the need for judicial control of the process, he stated. Senator Adler offered an anecdote of his experiences with bonding companies. There is a lot of stalling before a bonding company is ready to pay the bond, he stated.

Mr. Cook and Mr. Bennett responded, noting there is no real defense for such actions, but the same thing can happen with the developer. Mr. Bennett also offered an anecdote about a developer and the difficulties faced when liens are inappropriately filed against a property. Mr. Bennett asserted the goal is to find another device to address conflicts between the contractor and the subcontractors, rather than involving "innocent third parties" (the home buyers). The discussion of concerns continued, with Mr. Perzy pointing out the device exists, and Mr. Jacobsen explaining that invalid liens can be addressed through a lawsuit for clouding title.

Finally, upon the request of Senator Porter, Mr. Cook went over the sections of the bill that the parties have agreed to remove. Mr. Cook reported the majority of the bill does not rely on the bonding issue, and if it is going to cause a real hindrance those sections dealing with the alternative bonding provision can be removed. These sections will be 2, 3, 9, 10, and 11, generally, along with modifications to section 5 (where it references sections 2 and 3), and section 12, subsection 3.

Senator Porter next asked to review the proposed changes to the bill which are outlined in Exhibit C. Mr. Cook explained that section 8 deals with notices of completion. Subsection 4 of section 8 calls for a deletion of the option to deliver these notices in person, retaining the requirement to deliver by certified mail. It also requires a notice be delivered to any person who submitted a written request for such notice, before the notice of completion was recorded....

Mr. Jacobsen voiced no opposition to this proposal as certified mail seems to be a reliable means of delivery. He did voice a concern that the notices were not being mailed in a timely manner. He proposed an amendment to allow the lien

period to start upon the signature of the certified mail delivery receipt. Mr. Jacobsen also noted some contractors have been known to file a notice of completion while the subcontractors are still on the job.

Mr. Bennett wondered how the public would receive notice of completion. Mr. Cook stated the public would receive notice because it is a recorded document. However, this system would cause a real problem for title companies which would have to examine each individual green certified mail receipt to determine the deadline. Mr. Jacobsen agreed this might be somewhat of a hardship, but noted it would not be greater than that suffered by the subcontractors who are receiving inadequate notice.

Senator McGinness asked how it is possible for the contractor to file a premature notice of completion. Mr. Bennett replied there are statutory rules for a "good" notice of completion. If the rules are not followed, the notice of completion is not "good." Then the statutes allow an additional 90-day extension to the lien rights of the subcontractors, the witness stated. Mr. Jacobsen agreed this is the current statute, which the subcontractors like. The senator asked if the homes can be sold prior to the notice of completion. Mr. Jacobsen opined filing the notices of completion is a means of "summing up a project" which allows the title company to calendar the lien deadline and to begin issuing clear title to the properties.

Mr. Cook moved to the second page of Exhibit C, which modifies section 12 of the bill. This page covers the previously discussed change to the section. Senator Adler voiced some confusion and took the opportunity to clarify the record. He referred to section 12, lines 29-30, the word "order" is substituted for "bond." Again, Mr. Jacobsen offered no objection to this proposed change. There was some discussion about the meaning of the section, with the senator suggesting the wording should be added which would clearly indicate where the order should be recorded. Ultimately the group decided to eliminate section 12 of the bill, along with the proposed change on the second page of Exhibit C.

The discussion moved to the next proposal on Exhibit C which deals with section 15 of the bill. Mr. Jacobsen voiced his desire to retain the current 31 day time period of notice of supplied materials or work performed, which the bill proposes to change to 20 days (section 15, subsection 1, line 4, on page 9 of the bill). He opined the time period is essential to the small businessmen who sometimes must do their own paperwork during nonworking hours. Mr. Perzy agreed with Mr. Jacobsen's assessment of the issue. Senator Adler read from a letter sent by Western Nevada Supply Co. (Exhibit D), which voiced a neutral position. He agreed this particular supplier is a very large enterprise with no concerns about bookkeeping or paperwork deadlines.

Senator McGinness opined it would be best to leave the section at 31 days. The question was raised whether this should be a "floating 31-day period" or a "fixed" period. "If notice is filed 32 days out, some people would argue you have eliminated or lost your lien rights, others will argue you have only lost 1 day," Mr. Cook explained, "because it floats." He opined the statute really does not say, but it might be read as fixed, where it really should be floating. Mr. Jacobsen opined the statute is upheld as a floating period, but felt it might be best to clarify the statute.

Senator Adler referred to the certified mail requirement, asking if this means it must be mailed within 31 days or received within the time period. Mr. Jacobsen stated in practice the requirement has been to mail the notice within the 31-day period. Discussion resulted in a consensus that the word "delivery" would mean receipt. Mr. Cook suggested there might be case law defining the statute, but agreed the paragraph needs some work. Senator Adler opined most other statutory deadlines are floating, and because of this, this statute would be floating too.

Mr. Cook opined that section 15 should also be deleted from the bill. Discussion led to the conclusion that section 15 should remain, leave the notice time at 31 days, rather than the proposed 20; and remove "in person" on lines 5 and 6 of the bill. Senator Adler suggested additional language to the effect that "notice is deposited by certified mail..." or something along that line. It was concluded the 31 days would run from the last day to deposit the notice in the mail.

Mr. Cook pointed out this change would require the retention of subsection 4 of section 15 which says "the notice need not be verified, sworn to or acknowledged," on line 41 of the bill, page 9.

Senator Adler referred to page 4, subsection 4, noting this portion was deleted at the original hearing of the bill. He asked if this was still the desire. Mr. Cook stated "the quick answer is 'no.'" Senator Adler stated there has been correspondence which favors both positions (retention and removal). Mr. Perzy asked that the definition of an improvement should remain the same, because it refers to the scheme of improvement as a whole. He explained if pre-lien notice is required on a house-by-house basis, there is also a need to do a house-by-house release of lien. He opined this piecemeal approach will cause a lot of confusion for lien rights deadlines.

Senator Adler stated it was his preference to break down the lien process; to target more closely the houses in the development. He admitted he cannot figure out how best to do this. Mr. Jacobsen opined it comes down to what improvement or building is impacted or improved by the work done by the subcontractor. In

paving or curbs and gutter, all the lots are improved by the process; in cabinet installation, it is easy to determine which houses have received the benefit of that labor and material.

Additionally, Mr. Jacobsen pointed out, there is the fact that a paving subcontractor will complete his work and his 90-day lien period starts to run, the public governmental entities which are responsible for accepting the roads will fail to accept those roads within the lien period. The fact that retention funds are held from the subcontractor until the work is accepted by the county causes financial hardship. The problem, Mr. Jacobsen opined, is that lien laws do not follow the same logic as the retention policies. He suggested the law should be to allow 90 days from the time the county accepts the road to perfect liens against the improvements.

Senator Adler observed that page 4, subsection 4 of the bill addresses the construction of buildings. He asked if it really does mean a building. Mr. Cook explained the bill is drafted after Arizona, California, and Washington laws which refer to buildings. He pointed out there is a separate section in the bill that addresses off-site improvements. The senator wondered if the language works if it does only apply to buildings. Mr. Cook said it does work in the other states.

Senator Adler stated the intent is to allow the liens to be "wrapped up" on each building so the home owners will not have a lien against their building when the work covered by the lien was really on another building. Mr. Cook suggested the answer might be to amend subsection 4 of section 7 to require a separate contract. This will give everyone notice, because they will know what they are contracting for in each case, and the developer will have to set up separate contracts if he wishes to take advantage of this provision. Mr. Jacobsen agreed this suggestion follows "a certain logic," and if the contract is for one house, the lien is for one house, while if the contract is for 10 houses, the lien would be for 10 houses.

Discussion followed which concluded the suggestion is a good one and should be implemented in the section. Mr. Cook proposed language be inserted on page 4, line 20 after "one separate building," which would say something to the effect "where there is one separate contract" or "which is covered by a single contract," or "lien rights fall within the confines of each separate contract." The conclusion of the subcommittee was to allow contracts to be drafted to suit the parties, but they would also hold lien rights only within the contracts, whether they contract for separate buildings or for multiple buildings. Additionally, Senator Adler noted wording needs to be added at the end of the sentence, "...completion of each separate building *or contract.*"

Mr. Cook opined the commercial developer could derive benefit from this proposal because they would be able to make renovations or additions to the large hotels without gaining lien rights on the other portions outside the contract.

Discussion returned to the question of bonding, and Senator Adler voiced the opinion the Legislature may want to revisit the issue in a future session. He speculated the bonding around would work if there was some guarantee the bonding companies being used were reputable and willing to pay a rightful claim.

The question of the court filing fee in section 4 of the bill arose and Senator Adler opined that \$35 was not a sufficient amount. According to local courts, he reported, the lowest fee charged is \$85 and the regular rate for filing a lawsuit is \$165. The committee agreed that \$85 is a reasonable fee.

Mr. Jacobsen moved to other issues involving the hearing on frivolous liens. He noted this section removes, according to an attorney he discussed the matter with, the defendant's due process rights, because it does not allow sufficient time to answer or gather witnesses or evidence. He speculated the time frame in this section is insufficient. Senator Adler agreed with the witness. There was discussion of the section; what it really means, and how it would be impacted by the reality of the court calendar.

A question was raised as to whether the 6 days allowed before a hearing is set would include the 3 days allowed to give the defendant notice of the challenge. This reduces the time for the defendant to answer to 3 days. The senator stated the time should be at least 10 days to allow the defendant 1 week to respond. Upon further discussion of other statutes that address hearings and preferential settings, the committee agreed the time frame for hearing should be not less than 10 days, or more than 20 days. Looking to the level of proof required to show the claim is frivolous, Senator Adler pointed out the burden is such that the plaintiff must show there is absolutely no basis for a claim. If there is any showing of good faith, the court will not dismiss the lien, he explained.

Mr. Cook directed attention to section 8 of the bill. He speculated there is no need for the 15-day period within which to file the notice of completion and the bill proposes to eliminate that deadline. Senator Adler opined there should be some limit on the filing. Mr. Cook explained the shortest the lien period can be is 40 days, and this would result from someone filing a notice of completion after 50 days.

Mr. Jacobsen opined removing the 15-day limit for filing would not result in a negative consequence, as long as the notice is sent by certified mail, as required

Senate Subcommittee on Judiciary
May 25, 1995
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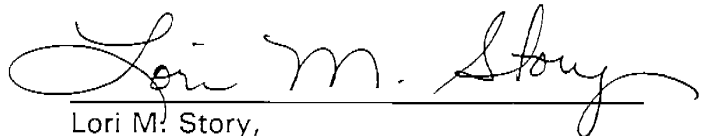
in subsection 4 of section 8. The problem, he stated, is dealing with the retentions, which was mentioned earlier in the hearing. The longer it takes to get notice of completion, the longer the retentions are held.

Mr. Perzy opined the notices need to be filed and mailed as soon as possible because the notices impact when he can bill or expect return of the retention monies. The senator agreed, but noted some of these issues may not be successfully addressed during the short time left in the current legislative session. Mr. Bennett pointed out that to his knowledge there is no law that actually requires the filing of notices of completion. He speculated losing the 15-day deadline might entice some of the builders to file the notices, when they might not if they miss the deadline.

Senator Adler asked for confirmation that law does not require the filing of the notice of completion. This was confirmed. Mr. Jacobsen stated it becomes a matter of contract; the senator agreed. This seemed to clear up the issue and the decision was to amend section 8 as outlined on Exhibit C.

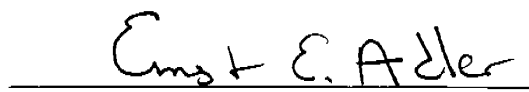
There seemed to be no further conflict and Allison Combs, Senior Research Analyst, Legislative Counsel Bureau, gave an overview of the proposed amendments. This concluded the hearing and it was adjourned at 5:45 p.m.

RESPECTFULLY SUBMITTED:



Lori M. Story,
Committee Secretary

APPROVED BY:


Senator Ernest E. Adler, Chairman

DATE: 6-29-95

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EXHIBIT 6

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
June 6, 1995**

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Tuesday, June 6, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Robert D. Faiss, Attorney, Lobbyist, Nevada Resort Association
Jack Godfrey, Attorney, Cocounsel, Nevada Resort Association
William A. Bible, Chairman, State Gaming Control Board
C. Brian Harris, Member, State Gaming Control Board
A. Scott Bodeau, Chief Deputy Attorney General, Gaming Division, Office of the Attorney General
Howard Barrett, Lobbyist, Nevada Taxpayers Association
Fred Hillerby, Lobbyist, Nevada Society of CPAs.
Pat Coward, Lobbyist, Nevada Land Title Association

The chairman called witnesses for the matter to be heard.

SENATE BILL 497: Clarifies provisions governing nature and circumstances
of entertainment subject to casino entertainment tax.

Senate Committee on Judiciary
June 6, 1995
Page 12

Hillerby stated the fee is consistent with the fee charged for a limited-liability company and the limited-liability partnership. This has been the amount proposed in the bill, since its original drafting.

The chairman noted the committee has already voted on the bill and thanked Mr. Hillerby for bringing the amendment back for the committee's review.

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

Pat Coward, Lobbyist, Nevada Land Title Association, came forward to explain the changes made to S.B. 434. He told the committee of the subcommittee's efforts to resolve the conflict between parties interested in the bill. At the hearing, chaired by Senator Adler, the witness said, the entire bill was reviewed, item by item. There were extensive changes made to the bill, he reported. Primarily, the pre-lien notification was removed, as was the bonding aspect of the bill. Mr. Coward said it was his opinion there is a resolution to all other problems with the bill and the various parties are satisfied.

Senator Adler also reported to the whole committee on the results of the subcommittee hearing. He stated sections 2, 3, 9, and 12 were deleted from the bill entirely. There were other minor changes made, including line 19, page 2 of the bill, which changed "15" to "20 days after the court..." and the filing fee on line 26 was changed from \$35 to \$85 dollars. The chairman asked if there was a change made in subsection 4 of section 4 from "shall" to "may." This would give the court discretion to award fees in a frivolous lien hearing, but not requiring it, he said. This is consistent under the rules of civil procedure, he stated.

Senator Adler opined that section 4, the frivolous lien section, is one of the most important provisions of the bill, because it provides a means to get liens off houses in an expeditious fashion. He continued his report noting that section 7, lines 18-22 (page 4) was reworded. He read the change to the committee:

For the purpose of this section, if a work or improvement consists of the construction of more than one separate building, and each of these buildings is constructed pursuant to a separate contract, [that is the important language, he interjected], each building shall be deemed to be a separate work or improvement....

Senator Adler explained the attempt is to address big developments where one contractor or subcontractor may only work on a single building in that

development, under a single contract. The contractor or subcontractor cannot lien the entire development, but can only lien the building for which he has the separate contract. If, however, the contract is to put in roofs on 10 buildings, he can lien all 10 buildings, the senator explained. The attempt is to remove some of the ambiguity in the law about when it is possible to put a lien against an entire development or project.

Senator Washington wondered if the project would have to be completed before the lien could be placed. Senator Adler replied it could be an ongoing project. Mr. Coward interjected the contract would identify where the lien rights would fall.

Senator Porter asked what happens when a subcontractor places a lien and then leaves town. If the property owner is willing to pay the amount of the lien, how are they to release the lien if they cannot find the lienholder to sign-off. Senator Adler speculated it would be possible to file a frivolous lien action to clear it, but that would be more expensive. Senator Porter continued to explain the situation was even more complicated because the lien impacted the home owners credit rating. Senator Adler opined it would be possible to pay the lien amount into an escrow account. Unfortunately, this was a cash transaction, Senator Porter explained.

Senator Porter asked to be able to review the amendments to the bill before a vote is taken because he has a number of constituents who are very concerned about the bill. Senator Adler concurred with the request. Mr. Coward reported there is another housekeeping bill coming to the committee which might be a vehicle to address Senator Porter's concerns. Senator Adler offered to insert language into S.B. 434 which might say "once the lien amount is paid in full, the title must be cleared."

The chairman reminded the committee members it is important to get these changes drafted "expeditiously" or the bill will not get out of committee in time to pass out of the Legislature. Senator Adler asked to make a motion to amend and do pass, but the chairman declined to accept the motion, based on Senator Porter's request to see the amendment prior to a vote. He then moved to the next bill.

SENATE BILL 155: Revises certain provisions governing unclaimed property.

S.B. 155 was explained by Ms. Combs. The Assembly amended this bill to require the administrator, once the property from a safe deposit box is delivered, to hold it for 1 year; to hold wills or other like documents for 10 years. The second

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EXHIBIT 7

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
May 30, 1995**

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:25 a.m., on Tuesday, May 30, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph E. Dini, Jr., Assembly District No. 38
Assemblywoman Genie Ohrenschall, Clark County Assembly District No. 12

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Judy Jacobs, Committee Secretary

OTHERS PRESENT:

Gordon DePaoli, Attorney for Walker River Irrigation District
Stan Warren, Lobbyist, Sierra Pacific Resources
Doug Busselman, Executive Vice President, Nevada Farm Bureau
William A. Bible, Chairman, State Gaming Control Board
Patsy S. Redmond, Executive Vice President, Nevada Association of Realtors
Ben Graham, Clark County District Attorney's Office

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Senator James announced his intention to delay further discussion of A.B. 393 until after Senator Adler has an opportunity to consider it. Senator Adler requested committee members to inform him of proposed amendments.

The committee held a brief discussion of S.B. 434.

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

The consensus was that the bill is not well thought out and will need substantial review and revision. Citing conversations with many lawyers around the state, Senator James surmised it could create many problems which the committee may not be able to anticipate.

Senator Adler said it has been proposed to remove many of the bonding requirements. He declared the insurance division has so little control over bonding companies that the measure may be unworkable. He stated he has heard testimony many never pay on the bonds.

Senator James stated, "Litigation over statutory liens is one of the most arcane areas." Senator Adler voiced approval of the provision to remove frivolous liens because that will enable the close of escrow in a timely manner.

Senator James proposed more work be done on the matter in an attempt to glean the best parts of the bill. He indicated further discussion should be held on S.B. 434 at the next meeting of the committee.

Senator Porter expressed concern regarding a measure including a so-called bill of rights for home owners, S.B. 395.

SENATE BILL 395: Regulates recovery for defects in residential construction.

Senator James responded the bill is being reviewed and a substantial amendment is being drafted.