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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 5**

20 **APPELLANTS' COUNSEL:**

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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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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL
JOHNSTON PC, and that on this date I caused to be served a true copy of the
JOINT APPENDIX VOLUME 5 on all parties to this action by the method(s)
indicated below:

X by using the Supreme Court Electronic Filing System:

C. Nicholas Pereos
Attorney for West Taylor Street, LLC

DATED: This 29 day of June, 2020.



JODI ALHASAN

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA,
INC.,

Appellant,

vs.

WEST TAYLOR STREET, LLC, A
LIMITED LIABILITY COMPANY,
Respondent.

No. 74876

FILED

SEP 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTION

Republic Silver State Disposal, Inc. has filed a motion for leave to file a brief of amicus curiae in support of appellant. Having considered the motion, opposition, and reply, as well as the proposed brief, it appears that the amicus brief may assist this court in the resolution of this appeal. Accordingly, we grant the motion. NRAP 29. The clerk shall detach the brief of amicus curiae from the motion filed on August 1, 2018; and file it separately. Respondent shall have 11 days from the date of this order to file and serve either (1) a supplemental answering brief addressing the amicus brief or (2) a notice that no supplemental brief will be filed. Any supplemental answering brief shall not exceed 5 pages or 2,333 words. Appellant shall have 30 days from service of the supplemental answering brief or the notice that no brief will be filed to file and serve the reply brief. Failure to comply with this order may result in the imposition of sanctions.

It is so ORDERED.

Dryden, C.J.

cc: Simons Law PC
C. Nicholas Pereos, Ltd.
Peterson Baker, PLLC

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

WEST TAYLOR STREET, LLC,
a limited liability company,

Case No. CV12 02995
Dept. No. 4

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,
INC., and DOES I THROUGH X,

Defendants.

RESPONSE TO MOTION TO VACATE ORDERS,
OPPOSITION TO MOTION FOR JUDGMENT IN FAVOR OF WASTE MANAGEMENT,
CROSS MOTION TO SUMMARY JUDGMENT ON LIENS

Defendant moves this Court for Order to enter a Judgment in favor of Waste Management arguing that the Supreme Court decision is definitive with regard to its right to seek a claim for judgment in its favor. As discussed herein Plaintiff concedes that the earlier decision and order of this Court for Partial Summary Judgment has been impacted by the Supreme Court decision but it does not give rise to the Judgment in favor of Waste Management in these proceedings. On the contrary, Plaintiff is entitled to Summary Judgment with regard to the liens by reason of the failure of Waste Management to file a mandatory counter-claim for collection. Plaintiff has no debt to the Defendant which has been placed at issue by the Second Amended Complaint by virtue of the fact that

1 Defendant failed to pursue collection of said debt referenced in the liens in Paragraph 4
2 of the Second Amended Complaint by the filing of a mandatory counter-claim.

3 This motion is made and based upon the Points and Authorities submitted herewith:
4

5 **POINTS AND AUTHORITIES**

6 **1. STATEMENT OF PROCEDURAL FACTS**

7 This action was commenced with the filing of a Complaint on December 3, 2012
8 arising from the recording of liens by Waste Management against property owned by
9 Plaintiff. An Answer to the Complaint was filed on September 16, 2013. A review of the
10 initial Complaint addresses the methodology followed by Waste Management in connection
11 with the placement of a lien and the legitimacy of the lien. Eventually, the Complaint
12 evolved to a Second Amended Complaint filed on February 14, 2014 as Waste
13 Management amended its liens. The Answer to the Second Amended Complaint was filed
14 on July 14, 2014. A review of the Second Amended Complaint will demonstrate that it
15 argues that the liens were improper and questions the methodology of pursuing the liens
16 requesting a Declaratory Judgment from the Court and its impact on the Plaintiff's property.
17 In other words, the Complaint addresses the legitimacy as to the amount of the liens and
18 the methodology in connection with pursuing recovery under the debt. The Third Claim for
19 Relief requested relief for slander of title. At no time did Waste Management ever file a
20 counter-claim to foreclose the liens. At no time did Waste Management ever file a
21 counter-claim to collect monies under the liens even though the three liens were of record
22 and monies owed to Waste Management as they claim!

23 Waste Management recorded a lien on February 23, 2012. Waste Management
24 recorded a second lien on February 26, 2012. Waste Management recorded a third lien
25 on March 14, 2014. (Exhibit 1) The Second Amended Complaint addresses each of these
26 liens. After discovery, Plaintiff filed a Motion for Summary Judgment. On May 7, 2014 this
27 Court conducted arguments in connection with the Partial Motion for Summary Judgment.

1 At this time all the liens have been recorded. On July 28, 2014, this Court entered a
2 decision in connection with the Motion for Partial Summary Judgment. Plaintiff then moved
3 for Summary Judgment on all of the liens recorded against the property by Waste
4 Management. In this time frame, Waste Management released all three garbage liens
5 (Exhibit 2). In reviewing the release of the garbage liens, the Court will observe that none
6 of the releases of liens is a conditional release. None of the releases of liens reference
7 the decision of this Court for Partial Summary Judgment. Eventually this Court grants a
8 Motion for Partial Summary Judgment relating to the liens that were recorded.

9 The case then proceeds on the Third Claim for Relief for the slander of title claim.
10 Waste Management files a motion to dismiss the slander of title claim. The motion is
11 denied. Thereinafter, Plaintiff agrees to a Stipulation to Dismiss with prejudice the Slander
12 of Title claim. After all, the liens are no longer of record. Waste Management files an
13 appeal. The Appellate Court issues a decision with a reversal and a remand. A review of
14 the decision will reflect that the Supreme Court made a distinction in connection with
15 impact of the mechanic lien laws (Chapter 108 of Nevada Revised Statutes) as they pertain
16 to perfecting a lien as opposed to pursuing a foreclosure of a lien (an issue never briefed
17 to this Court or to the Supreme Court). In other words, the Supreme Court observed that
18 NRS 444.520 did not incorporated the mechanic lien statutes as they pertain to perfecting
19 a lien but only as it relates to foreclosing a lien, thereby giving rise to the reversal and
20 remand. The Supreme Court bifurcated the issue of "perfection of lien" and "foreclosure
21 of lien" (never briefed by any counsel). Consistent with the reversal and remand from the
22 Supreme Court, Waste Management now files its Motion seeking a final judgment in
23 connection with the remand of the case. We have no problem with the entry of a final
24 judgment provided it includes a finding that there was no counter-claim filed by Waste
25 Management to collect the lien either by virtue of a judicial foreclosure required by the
26 Supreme Court or by any other means. Accordingly, any final judgment should address
27 the removal of the debt of the liens.

1 Meanwhile, the following facts will be demonstrated by review of the record:

2 First, the Second Amended Complaint is the last surviving complaint of
3 record. An answer was filed but no counter-claim.

4 Second, paragraph 4 of the Second Amended Complaint addresses the
5 legitimacy of the three liens.

6 Third, the release of the liens was not conditional.

7 Fourth, Plaintiffs proceeded to dismiss with prejudice the slander of title claim
8 rather than proceed to trial given the removal of recorded liens.

9 Fifth, the liens represented debts to Waste Management.
10

11 **2. STATEMENT OF FACTS**

12 The lawsuit arose by reason of debts claimed by Waste Management and the
13 recording of liens by Waste Management. At no time did Waste Management seek to
14 foreclose the liens. At no time did Waste Management seek to collect monies under the
15 liens in these proceedings as the liens/debt were at issue!
16

17 **3. ARGUMENT**

18 With the Supreme Court's reversal of this Court's ruling that Defendant Waste
19 Management's liens on Plaintiff West Taylor's property had not been properly perfected,
20 defendant now seeks an entry of judgment, claiming that the Supreme Court "affirmed that
21 Waste Management's activities were at all times legally correct and valid," and that
22 Defendant is thus entitled to an order dismissing all of Plaintiff's claims. This is not correct
23 as to both this Court's earlier Order and of the Supreme Court's decision concerning
24 Plaintiff's claims.

25 The judgment filed by this Court on December 29, 2017, held that Defendant's liens
26 were barred by the statute of limitations under NRS 11.090, and did not comply with the
27 recording of liens required by NRS 108.226 as incorporated in NRS 444.520. An amended

1 judgment filed March 3, 2018, noted that Plaintiff had voluntarily withdrawn its claim for
2 slander of title, although it failed to note that the claim had been withdrawn only following
3 Defendant's voluntary release of the liens at issue. Neither the judgment nor the amended
4 judgment addressed the validity of Defendant's liens, the amount of the liens, or any of the
5 factual issues concerning the liens. Those issues are now moot given the failure to file a
6 compulsory counter-claim!

7 The Supreme Court ruled that liens filed under NRS 444.520 are not subject to
8 either the statute of limitations under NRS 11.090 nor the requirements for perfecting a lien
9 under NRS 108.222. The Supreme Court did not rule on the validity of Defendant's liens
10 or any other issues in the case, although it specifically noted that the remedy of foreclosure
11 should not be separated from the underlying debt:

12 Nevada, like other states, has moved toward eliminating this separation
13 under the "one action rule," which states that "[t]here may be but one action
14 for the recovery of any debt, or for the enforcement of any right secured by
15 a mortgage or other lien upon real estate." NRS 40.430(1); see also
16 McDonald v. D.P. Alexander & Las Vegas Blvd., LLC, 121 Nev. 812, 816,
17 123 P.3d 748, 751 (2005).

18 *Waste Management of Nevada, Inc. v. West Taylor Street, LLC*, 135 Nev.
19 Adv. Op. 21 at page 8 (June 27, 2019)

20 The dismissal of this case without adjudicating the lien violates the one action rule
21 for the recovery of a debt as the Supreme Court has ruled that Waste Management has
22 to follow foreclosure procedures in connection with foreclosing a lien which means the filing
23 of a lawsuit. The Supreme Court did not change that law. In other words, there had to be
24 a Complaint to foreclose the liens! Clearly, Waste Management has not filed a compulsory
25 counter-claim or any lawsuit to foreclose the lien.

26 At this point in time, the only issue addressed either by the Trial Court or the
27 Supreme Court is the issue of whether the underlying liens were timely perfected. There
has been no determination about the validity of the liens, the amount of the liens, whether
plaintiff properly or timely made payments and/or defendant properly assessed and

1 charged correct fees under the terms of the parties' contract. Defendant never filed for
2 foreclosure of the liens, instead voluntarily withdrawing them prior to the entry of this
3 Court's judgment. It is clear that Defendant is seeking a ruling on the merits of Plaintiff's
4 claims, when in fact there has yet to be any determination by this Court concerning the
5 merits of such claims. The Supreme Court's decision reversed this Court's earlier
6 judgment and has remanded the case back to this Court "for further consideration
7 consistent with this opinion." This language clearly indicates that Plaintiff's claims require
8 further action by this Court. Defendant cites no legal authority to support its position that
9 the Supreme Court's remand entitles it to have a judgment entered in its favor; nor did the
10 Supreme Court intend such a remedy. Otherwise, it would have stated so, rather than
11 remanding "for further consideration." Accordingly, Defendant's motion for judgment in its
12 favor should be denied.

13 The decision of the Supreme Court is a reversal and a remand. It means the case
14 now returns to this Court under the Second Amended Complaint. The Second Amended
15 Complaint addresses the legitimacy of the liens and the debt in favor of Waste
16 Management. The Court never reached a decision on this issue as to the quantitative
17 amount of the lien and its legitimacy given the procedural deficiencies by Waste
18 Management in pursuing the perfection of the lien as reflected by the Court's early decision
19 (which is now reversed). Meanwhile, the Slander of Title action was dismissed as the liens
20 were then non-existent.

21 As noted above, the Supreme Court's opinion in *Waste Management of Nevada,*
22 *Inc. v. West Taylor Street, LLC*, 135 Nev. Adv. Op. 21 at page 8 (June 27, 2019), strongly
23 emphasized the importance of the "one action rule" under 40.430(1). In the present case,
24 Defendant never filed any counterclaims to foreclose its liens, and is now attempting to
25 obtain the entry of a judgment confirming the validity of such liens. Because Defendant
26 should have filed counterclaims for foreclosure of its liens in this action, and especially
27 before it voluntarily released its liens against Plaintiff, Defendant is now precluded from

1 pursuing its liens against Plaintiff pursuant to NRCP 13(a) and the doctrine of claim
2 preclusion. Otherwise, the Court will be opening the door for multiple lawsuits and a
3 violation of the one-action rule!

4 Plaintiff's Second Amended Complaint clearly addressed the legitimacy of the liens,
5 as well as the contractual and factual issues concerning the liens. NRCP 13(a) (amended
6 February 5, 2018), defines a compulsory counterclaim as follows:

7
8 (a) Compulsory Counterclaim.

9 (1) In General. A pleading must state as a counterclaim any claim
10 that — at the time of its service — the pleader has against an
11 opposing party if the claim:

- 12 (A) arises out of the transaction or occurrence that is the
13 subject matter of the opposing party's claim; and
14 (B) does not require adding another party over whom the
15 court cannot acquire jurisdiction.

16 In *Executive Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465, 477-78 (1998), the
17 Court addressed the issue of claim preclusion for failure to file compulsory counterclaims.

18 Related to the common law doctrines of issue and claim preclusion is the law
19 of compulsory counterclaims, labeled by one commentator as "preclusion by
20 rule." Allan D. Vestal, *Res Judicata/Preclusion* 158 (1969).

21 We conclude that all of Executive's claims, with the exception of that for
22 abuse of process, were compulsory counterclaims. "The purpose of NRCP
23 13(a) is to make an 'actor' of the defendant so that circuity of action is
24 discouraged and the speedy settlement of all controversies between the
25 parties can be accomplished in one action." *Great W. Land & Cattle v. Sixth*
26 *Judicial District Ct.*, 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). We
27 conclude that Executive should have attempted to resolve its various
negligence, slander of title, and tortious contractual interference claims
against the Marks in case 1. These claims arose out of the same
transaction or occurrence litigated in case 1—namely, who owned lot 2.

(Emphasis added.)

The Court went on to analyze the purpose of claim preclusion.

1 Pursuant to the rule of claim preclusion, "[a] valid and final judgment on a
2 claim precludes a second action on that claim or any part of it." Tarkanian,
3 110 Nev. at 599, 879 P.2d at 1191. "Claim preclusion applies when a second
4 suit is brought against the same party on the same claim." In *re Medomak*
5 *Canning*, 111 B.R. 371, 373 n. 1 (Bankr.D.Me.1990). If, as in the instant
6 case, "the prior judgment is in favor of defendant, plaintiff is 'barred' from
7 bringing another claim based on the same cause of action." Id. We have
8 further stated that "[t]he modern view is that claim preclusion embraces all
9 grounds of recovery that were asserted in a suit, as well as those that could
10 have been asserted, and thus has a broader reach than [issue preclusion]."
11 *Tarkanian*, 110 Nev. at 600, 879 P.2d at 1191.

12 Id. at 473 (emphasis added).

13 In Nevada, there are three elements that must be shown to assert claim preclusion:
14 "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the
15 subsequent action is based on the same claims or any part of them that were or could
16 have been brought in the first case." *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713
17 (Nev. 2008), holding modified by *Weddell v. Sharp*, 350 P.3d 80 (Nev. 2015) (modifying
18 only the privity requirement for nonmutual claim preclusion). "The test for determining
19 whether the claims, or any part of them, are barred in a subsequent action is if they are
20 'based on the same set of facts and circumstances as the [initial action].'" *Mendenhall v.*
21 *Tassinari*, 403 P.3d 364, 370 (Nev. 2017) (alteration in original).

22 In *Five Star*, supra, a Plaintiff attempted to refile a case following its dismissal on
23 procedural grounds. The Court noted:

24 First, *Five Star* challenges the preclusive effect of the dismissal in the first
25 suit by arguing that it was not a decision on the merits and nothing in the
26 court order or the rule on which the dismissal in the first suit was based
27 indicate that the dismissal was with prejudice. NRCP 41(b) resolves the
question of whether the dismissal in the first case holds preclusive effect.
NRCP 41(b) states, in relevant part, that "[u]nless the court in its order for
dismissal otherwise specifies, a dismissal under this subdivision and any
dismissal not provided for in this rule, other than a dismissal for lack of

1 jurisdiction, for improper venue, or for failure to join a party under Rule 19,
2 operates as an adjudication upon the merits."

3 As the dismissal in the first suit was based on a rule other than NRCP
4 41 and was not based on the lack of jurisdiction, improper venue, or failure
5 to join a party exceptions, it falls under the "any dismissal not provided for in
6 this rule" language and, thus, "operates as an adjudication upon the
7 merits."⁴² While the United States Supreme Court has held that the
8 "adjudication upon the merits" portion of FRCP 41(b), which is nearly
9 identical to NRCP 41(b), does not automatically provide a basis for claim
10 preclusion,⁴³ such is the recognized result in cases involving dismissal for
11 failure to comply with court orders.⁴⁴ Furthermore, even under the Supreme
12 Court's decision interpreting the "adjudication upon the merits" phrase,
13 preclusion would apply in this case, as the Supreme Court ruled that the
14 phrase is meant to preclude the refiling of the same claim in the same court
15 in which the dismissal occurred.⁴⁵ As both lawsuits involved here were filed
16 in Nevada state courts, it is clearly proper to give preclusive effect to the
17 dismissal of the first suit.⁴⁶

18 Such a result supports the policy reasons behind claim preclusion. As
19 stated in Restatement (Second) of Judgments section 19, comment a, the
20 purposes of claim preclusion are "based largely on the ground that fairness
21 to the defendant, and sound judicial administration, require that at some
22 point litigation over the particular controversy come to an end" and that such
23 reasoning may apply "even though the substantive issues have not been
24 tried, especially if the plaintiff has failed to avail himself of opportunities to
25 pursue his remedies in the first proceeding. . . ." Consequently, the dismissal
26 in the first suit is properly considered a final judgment for claim preclusion
27 purposes.

Id. at 715 (emphasis added).

19 The analysis in Five Star concerning the need for sound judicial administration and
20 fairness to the defendant applies to all parties in a case. In this case, the issues of the
21 enforcement and validity of defendant's liens are the same issues that would have to be
22 raised in an action for foreclosure of the liens, and defendant forego its right to now attempt
23 to foreclose on the liens.

25 Furthermore, Defendant is now estopped from re-filing any claims on the liens.
26 There are several illustrative Nevada cases in which promissory estoppel has prevented
27

1 parties from repudiating their obligations. In *Terrible v. Terrible*, 91 Nev. 279, 534 P.2d 919
2 (1973), the court terminated the joint tenancy of a parcel of land pursuant to a divorce
3 decree and ruled that the parties held the property as tenants in common. The husband
4 also consented that the wife could manage, retain the income, and live on the property until
5 it was sold. A year later, husband received an offer for the entire parcel. When his wife
6 refused to agree to the sale, husband sued for partition. The court invoked the doctrine
7 of promissory estoppel and stated: "A party (will not be permitted) to repudiate acts done
8 or positions taken or assumed by him when there has been reliance thereon and prejudice
9 would result to the other party." *Id.* at 283. The Court observed that the husband, by his
10 unilateral concession, "waived any right to partition and he (was) estopped from proceeding
11 to partition." *Id.* at 283. In *Federal M & C Co. v. Pollak*, 59 Nev. 145, 82 P.2d 1008 (1939),
12 a mining corporation was estopped from asserting the invalidity of a promissory note and
13 a mortgage executed by the corporation to a director at a special meeting where improper
14 notice to the meeting had been given. The Court found that the note and mortgage were
15 executed in good faith to secure the director's loans without which the corporation could
16 not have continued in business. The Court stated: "A corporation cannot avail itself of the
17 benefits of monies loaned to it for corporate purposes and disavow a mortgage given
18 without authority by its agents to secure the loan." *Id.* at 157. The Court further noted that
19 "the rule is analogous to that which governs a case where a party avails himself of the
20 benefits flowing from a part of an instrument and would repudiate that part bearing a
21 burden. *Id.* at 157.
22
23
24

25 Accordingly, any order issued by this Court should not only address a correction of
26 the decision/order of this Court with regard to procedures perfecting the lien but also the
27

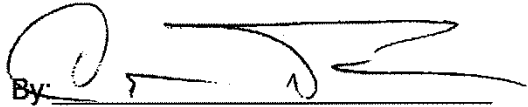
1 legitimacy of the lien as it relates to this property given the failure to file the compulsory
2 counter-claim and the voluntary release of the lien that led to the dismissal of the action
3 for Slander of Title.

4
5 **AFFIRMATION**

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

8 DATED this 26th day of July, 2019

C. NICHOLAS PEREOS, LTD.

9
10 By: 

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SCHEDULE OF EXHIBITS

Exhibit "1" Defendant's Recorded Liens
Exhibit "2" Defendant's Lien Releases

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CERTIFICATE OF SERVICE

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

ROBISON, SIMONS, SHARP & BRUST
Mark G. Simons, Esq.
ATTORNEY FOR DEFENDANTS

DATED this 26th day of July, 2019

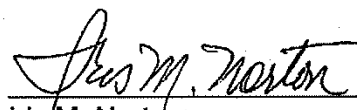

Iris M. Norton

EXHIBIT "1"

FILED
Electronically
CV12-02995
2019-07-26 12:32:19 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7396685 : yvitoria

EXHIBIT "1"



APN #011-268-17
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: \$8.00
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#011-268-17

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 21 day of November 2012

Waste Management of Nevada Inc.

By Karen Gonzales
KAREN GONZALES

STATE OF NEVADA

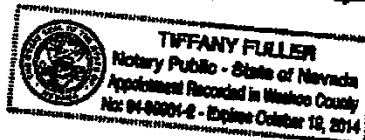
COUNTY OF WASHOE)

SS.

On the 21 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_0995



RECEIVED
FEB 27 1997

To whom it may concern,

Please see attached the 2nd lien placed on your property. Please email me to discuss paying your balance and having the both lien's removed from your property.

Thank you,

Kelly Scott
kscott13@wm.com
775.326.2302
Waste Management
100 Vassar St
Reno NV 89502

WTS 0212

JA_0996



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



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

RECEIVED
 3-27-14

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, 346 TAYLOR ST W, RENO, NV more particularly described as follows:

Washoe County Assessor's #011-266-17

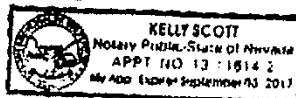
1. The owner(s) or reputed owner(s) of the described real property is/are WEST TAYLOR STREET LLC.
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County 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)
) SS.
 COUNTY OF WASHOE)

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

WTS 0213

JA_0997



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 #011-268-17
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 342 TAYLOR ST W, RENO, NV more particularly described as follows:

Washoe County Assessor's Parcel #011-268-17

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 \$488.47, no part of which has been paid.

DATED: This 22 day of February 2012

Waste Management of Nevada Inc.

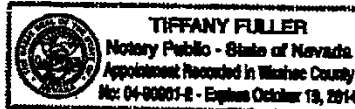
By 
KAREN GONZALES

STATE OF NEVADA)
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.

WHEN RECORDED MAIL TO:

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




NOTARY PUBLIC

JA_0998

EXHIBIT "2"

FILED
Electronically
CV12-02995
2019-07-26 12:32:19 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7396685 : yvilorla

EXHIBIT "2"



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 # 4301444
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 evidenced 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 # 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 evidenced 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 # 4381723
08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence 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

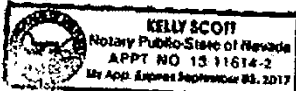
WASTE MANAGEMENT OF NEVADA, INC.

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#010-74134

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

DOC # 4381723

08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burtness - Recorder
Fee: \$17.00 RPTT: \$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 # 4381724

08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burnett - Recorder
Fee: \$17.00 RPTT: \$8.00
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

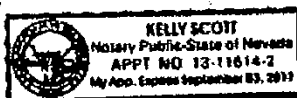
WASTE MANAGEMENT OF NEVADA, INC.

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

1 2200

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

7 WEST TAYLOR STREET, LLC, a limited
8 liability company,

CASE NO.: CV12-02995

9 Plaintiffs,

DEPT. NO.: 4

10 vs.

ORDER DISMISSING ACTION

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

13 Defendants.

14
15 Waste Management of Nevada, Inc.'s Motion to Vacate Orders and Judgments
16 and Enter Judgment in favor of Waste Management (the "Motion") having been heard by
17 the Court on December 6, 2019, Mark G. Simons of SIMONS HALL JOHNSTON, PC
18 representing Waste Management of Nevada, Inc. ("Waste Management") and C. Nicholas
19 Pereos representing West Taylor Street, LLC ("WTS"), and the Court having heard
20 arguments of counsel, and for good cause appearing, does hereby find as follow:
21

22 1. On June 27, 2019, the Nevada Supreme Court rendered its decision in
23 *Waste Management v. West Taylor Street, LLC*, 135 Nev. Ad. Op. 21 (June 27, 2019)
24 (hereinafter the "Decision").

25 2. Based upon the grounds stated in the Decision, the Court hereby vacates
26 the following Orders and Judgments: the Court's July 28, 2014, Order granting summary
27 judgment in favor of WTS; the Court's October 1, 2015, Order granting summary
28

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 judgment in favor of WTS; the Court's December 29, 2017, Judgment; and the Court's
2 March 22, 2018, Judgment.

3 3. On March 28, 2017, this Court entered its Order on Defendants' Motion for
4 Summary Judgment dismissing Karen Gonzales as a party to these proceedings.
5

6 4. On November 10, 2017, WTS's voluntarily withdrew its claim for slander of
7 title.

8 5. WTS's first and second declaratory relief claims were resolved by the
9 Nevada Supreme Court in its Decision and WTS's third claim for relief asserting slander
10 of title was withdrawn by WTS.

11 6. There remains no case or controversy for the Court to resolve, therefore,
12 the Motion is granted and this action is hereby dismissed.
13

14 **ITS IS SO ORDERED** this 18 day of December, 2019.

15
16 Connie J. Steinheimer
DISTRICT COURT JUDGE
17

18
19 Submitted by:

20 SIMONS HALL JOHNSTON PC

21 By: [Signature]
22 Mark G. Simons, Esq.
6490 South McCarran Blvd., #F-46
Reno, NV 89509
23 Attorneys for Plaintiff Nanyah Vegas, LLC

24 Approved as to form and content:

25 By: _____
26 C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
27 Attorney for West Taylor Street, LLC
28

1 **2540**
2 MARK G. SIMONS, ESQ.
3 Nevada Bar No. 5132
4 MSimons@SHJNevada.com
5 SIMONS HALL JOHNSTON PC
6 6490 S. McCarran Blvd., Ste. F-46
7 Reno, Nevada 89509
8 Telephone: (775) 785-0088
9 Facsimile: (775) 785-0087

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

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

WEST TAYLOR STREET, LLC, a limited
liability company,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

MEMORANDUM OF COSTS

Court Clerk filing fees [18.005(1)] ¹	\$1,818.00
Reporter Fees - Depositions [18.005(2)] ²	\$1,637.00
Witness Fees [18.005(4)] ³	\$427.00

¹See **Exhibit 1**, spreadsheet detailing all costs incurred in this matter. In addition, see **Exhibit 2**, specific back-up documentation for court costs incurred.

²See Exh. 1, and **Exhibit 3**, specific back-up information for reporter fees for depositions incurred.

³See Exh. 1, and **Exhibit 4**, specific back-up information for witness fees incurred.

Process Server fees [18.005(7)] ⁴	\$142.00
Reporter Fees - Court [18.005(8)] ⁵	\$84.00
Copy Charges [18.05(12)]	\$54.20
Postage [18.005(14)]	<u>\$3.62</u>
TOTAL	\$4,165.82

I. Copy Charges.

While supporting documentation for in-house photocopy charges are unavailable since they are not maintained by this office once they have been billed, the following is a summary of what copies were made in this matter:

1. All pleadings and motions filed in this matter.
2. Discovery requests and responses.
3. Document productions.
4. Deposition exhibits.
5. Hearing exhibits.

STATE OF NEVADA)
 :SS
COUNTY OF WASHOE)

MARK G. SIMONS being duly sworn, deposes and says that the items contained in the above memorandum are correct, to the best of my knowledge and belief, and the said costs have been necessarily incurred in said action or proceeding against Defendants.

⁴ See Exh. 1, and **Exhibit 5**, specific back-up information for process server fees incurred.

⁵ See Exh. 1, and **Exhibit 6**, specific back-up information for reporter fees for court incurred.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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

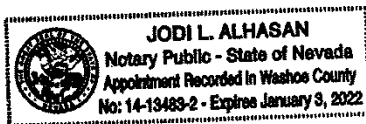
3 DATED this 23rd day of December, 2019.

4
5
6 

MARK G. SIMONS

7
8 Subscribed and sworn before me
9 this 23 day of December, 2019
by Mark G. Simons in Reno, Nevada.

10 
11 NOTARY PUBLIC



SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **MEMORANDUM OF COSTS** on all parties to this action by the method(s) indicated below:


- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

C. Nicholas Pereos, Esq.
Attorneys for West Taylor Street, LLC

DATED this 23 day of December, 2019.


Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Spreadsheet	1
2	Filing Fees	7
3	Court Reporter (Depos)	2
4	Witness Fees	2
5	Process Server	3
6	Court Reporter – Court	1

EXHIBIT 1

EXHIBIT 1

**WM adv. WTS
CV12-02995**

Date	Filing Fee	Process Server	Postage	Copy Charges	Reporter (Depos)	Reporter (Court)	Witness Fee	Expert Fees	Travel/ Lodging	Jury Fees	Misc. Charges
12/1/2015	\$34.00										
12/2/2015	\$250.00										
12/2/2015	\$500.00										
1/21/2016			\$3.62								
6/10/2016	\$250.00										
6/24/2016				\$54.20							
5/5/2017							\$35.00				
6/20/2017		\$40.00									
6/20/2017							\$364.00				
8/27/2017					\$556.50						
9/1/2017					\$1,080.50						
11/2/2017							\$28.00				
12/18/2017		\$77.00									
1/11/2018	\$500.00										
1/11/2018	\$250.00										
2/6/2018	\$34.00										
2/21/2018						\$84.00					
3/21/2018		\$25.00									
<hr/>											
	\$1,818.00	\$142.00	\$3.62	\$54.20	\$1,637.00	\$84.00	\$427.00	\$0.00	\$0.00	\$0.00	\$0.00

GRAND TOTAL: \$4,165.82

EXHIBIT 2

EXHIBIT 2

15

12/01/15

Washoe County Clerk

Invoice # 30538.002

Date 12/01/15

Amount \$34.00

Balance

Payment to Washoe County Clerk

Check # 81433

Check Date

12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

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Amount \$34.00

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Amount \$34.00

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12/01/15

Amount \$34.00

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Amount \$34.00

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Amount \$34.00

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12/01/15

Amount \$34.00

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12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

Balance

12/01/15

Amount \$34.00

Balance

District

ROBISON, BELAUSTEGUI, SHARP & LOW Reno, Nevada 89503

81433

DATE	DESCRIPTION	INVOICE #	CHECK		NET AMOUNT
			AMOUNT	DEDUCTION	
12/01/15	30538.002 Notice of Appeal.	WO	34.00		34.00

CHECK DATE	CONTROL NUMBER	TOTALS	Gross:	Ded:	Net:
12/01/15	81433		34.00	0.00	34.00

JA_1016

THE SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY
 75 COURT ST., RENO, NEVADA 89501

#597

Received from Robbie Belandier 12-2-15

For Two hundred fifty.00 Court Filing

Case 104 West Main Street

Check # 81437 Cash Mail

JUD 115 (REV. 5/13)

Clerk of the Court
 By: [Signature]
 DEPUTY CLERK

81437

RORISON, BELAUSTEGUI, SHARP & LOW Reno, Nevada 89503

DATE	DESCRIPTION	INVOICE #	CHECK AMOUNT	DEDUCTION	NET AMOUNT
12/02/15	Clerk of the Supreme Court 30538.002 NRS 19.013 -Supreme Court Filing.	WO	250.00		250.00

0012-02995

CHECK DATE	CONTROL NUMBER	TOTALS	Gross:	Ded:	Net:
12/02/15	81437	▲	250.00	0.00	250.00

ROBISON, BELAUSTEGUI, SHARP & LOW Reno, Nevada 89503

81436

DATE	DESCRIPTION	INVOICE #	AMOUNT	CHECK DEDUCTION	NET AMOUNT
12/02/15	Washoe County Clerk 30538.002 Deposit for Costs on Appeal Bond - NRAP 7(b).		WO	500.00	500.00

CUI2-02995

CHECK DATE	CONTROL NUMBER	TOTALS	Gross:	Ded:	Net:
12/02/15	81436		500.00	0.00	500.00

XX

DUPLICATE
RECEIPT

Second Judicial District Court

Receipt Number: D000522932
Date: 02-DEC-2015
Cashier: LBARPAGA
Comment:

Payor: Mark G. Simons, Esq.
Address: Robison, Belaustegui, Sharp
& Low
71 Washington St.
Reno, NV 89503

Description	Amount
Case: CUI2-02995	
BEST TAYLOR STREET VS WASTE M ANAGEMENT, ET AL (04)	
Party: SITE DEFINED TRUST DEPOSIT	
Supreme Court App	-500.00
Total Fees:	0.00
Total Payment:	500.00
Amt. Tendered:	0.00
Change:	0.00

Receipt

Nevada Supreme Court

Payment Receipt

PRINT

Merchant Location Code: 00001

Payment Status: Success

Payment Date: 06/10/2016

Posting Date: 06/10/2016

Confirmation Number: 16061035757433

Billing Address: Mark Simons
71 Washington St.
Reno, NV 89503
(775) 329-3151

E-Mail Address: jalhasan@rbsllaw.com

Total Amount: 250.00 USD

Card Type: VISA

Account #: x1140

Authorization Code: 08582G

Efiling Rules

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ROBISON, SIMONS, SHARP & BRUST Reno, Nevada 89503

85916

DATE	DESCRIPTION	INVOICE #	CHECK	
			AMOUNT	DEDUCTION
01/11/18	1065 Second Judicial District Court			
01/11/18	30538.002 Appeal bond.			
			MMV	
			500.00	
				500.00

CHECK DATE	CONTROL NUMBER	TOTALS	Gross:	500.00	Ded:	0.00	Net:	500.00
01/11/18	85916							

1065 Second Judicial District Court
 30538.002 Appeal bond.
 MMV
 500.00
 0.00
 500.00

ROBISON, SIMONS, SHARP & BRUST Reno, Nevada 89503

85915

DATE	DESCRIPTION	INVOICE #	CHECK AMOUNT	DEDUCTION	NET AMOUNT
01/11/18	1044 Nevada Supreme Court 30538.002 Filing fee.	MW	250.00		250.00

CHECK DATE	CONTROL NUMBER	TOTALS	Gross	Ded	Net
01/11/18	85915		250.00	0.00	250.00

THE SECOND JUDICIAL DISTRICT COURT WASHOE COUNTY 75 COURT ST., RENO, NEVADA 89501		#1293
Received from <u>Robison, Simons, Sharp & Brust</u> <u>Two hundred fifty + 00/100 +</u> \$ <u>250.00</u>	Date <u>Jan 11, 2018</u>	
For <u>NOA Waste Management</u>	Clerk of the Court	
Case <u>CV12-02995</u>	By: <u>[Signature]</u>	DEPUTY CLERK
Check # <u>85915</u> Cash <input checked="" type="checkbox"/> Mail <input type="checkbox"/>		
JUD 115 (REV. 5/13)		



Second Judicial District Court
State of Nevada
Washoe County

Home | About | Cases | New Profile | User Guide

Electronic Filing

user: Mark G. Simons

Filing Charges

Filing Charges

Report Month

January ▼

January 2018 Charges for Mark G. Simons

Case Title	Client #	Court Case #	Court Division	Description	▲ Date	Account Authorization Code	Receipt	Fee
LAKESIDE SPECIALIZED VS. DIVERSIFIED CONCRETE(D	30341.010	CV18-00047	Civil	Contract Case: Collection of Accounts - CT	01-05-2018:04:36	XE2E3	59647117	DCDC596761 \$260.00
WEST TAYLOR STREET VS WASTE MANAGEMENT, ET AL (D4)		CV12-02995	Civil	Title to Property: Specific Performance - SP	01-08-2018:03:49	XE2E3	59750313	DCDC596888 \$34.00
Total Charges:								\$294.00

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Electronically
CV12-02995
2019-12-23 01:22:08 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7652684

EXHIBIT 3

EXHIBIT 3



Mark G. Simons
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

INVOICE

Invoice No.	Invoice Date	Job No.
19150	8/17/2017	16255
Job Date	Case No.	
7/28/2017	CV12-02995	
Case Name		
West Taylor Street, LLC vs Waste Management of NV, Inc. et al		
Payment Terms		
Due upon receipt		

Original & Electronic Transcript of the Deposition of:
C. Nicholas Pereos

556.50

TOTAL DUE >>>

\$556.50

Balance is due upon receipt and not contingent upon client or insurance carrier reimbursement. MasterCard and VISA are accepted. We appreciate your business!

FOR QUESTIONS, PLEASE CONTACT US AT (775) 327-4460.

*Submitted
8/23/17*

Tax ID: 47-2228808

Please detach bottom portion and return with payment.

Mark G. Simons
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

Invoice No. : 19150
Invoice Date : 8/17/2017
Total Due : \$ 556.50

Remit To: **Hoogs Reporting Group**
435 Marsh Avenue
Reno, NV 89509

Job No. : 16255
BU ID : CR-1
Case No. : CV12-02995
Case Name : West Taylor Street, LLC vs Waste
Management of NV, Inc. et al

JA_1024



Mark G. Simons
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

INVOICE

Invoice No.	Invoice Date	Job No.
19164	8/22/2017	16247
Job Date	Case No.	
7/27/2017	CV12-02995	
Case Name		
***West Taylor Street, LLC vs Waste Management of NV, Inc. et al		
Payment Terms		
Due upon receipt		

Original & Electronic Transcript of the Deposition of:	
Willis Powell	348.75
Full Day Per Diem	200.00
Original & Electronic Transcript of the Deposition of:	
Teri Morrison	531.75
TOTAL DUE >>>	\$1,080.50

Balance is due upon receipt and not contingent upon client or insurance carrier reimbursement. MasterCard and VISA are accepted. We appreciate your business!

FOR QUESTIONS, PLEASE CONTACT US AT (775) 327-4460.

*Submitted
8/25/17*

Tax ID: 47-2228808

Please detach bottom portion and return with payment.

Mark G. Simons
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

Invoice No. : 19164
Invoice Date : 8/22/2017
Total Due : \$ 1,080.50

Remit To: **Hoogs Reporting Group**
435 Marsh Avenue
Reno, NV 89509

Job No. : 16247
BU ID : CR-1
Case No. : CV12-02995
Case Name : ***West Taylor Street, LLC vs Waste Management of NV, Inc. et al

EXHIBIT 4

EXHIBIT 4



June 7, 2017

To: Mark G. Simons, Esq.
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, NV 89503

Re: *West Taylor Street, LLC vs. Waste Management of Nevada, et al.*
Subpoena to Produce Documents

STATEMENT OF CHARGES

Number of Copies	West Taylor Street, LLC Documents for the Period of January 18, 2007 through the present (all tenants, all units) 345 W Taylor Street & 347 W Taylor Street, Reno, NV	@.20 per copy
1995		\$399.00

Received Check #84324 (served with Subpoena) (-) \$ 35.00

TOTAL AMOUNT DUE FOR SUBPOENA PROCESSING **\$ 364.00**

PLEASE MAKE YOUR CHECK PAYABLE TO:

**Sierra Pacific Power Company
Subpoena Processing
6226 West Sahara Ave., MS 03A
Las Vegas, NV 89146**

*Submitted
6/15/17*

Payment is due at the time of document pickup

ROBISON, SIMONS, SHARP & BRUST Reno, Nevada 89503

85651

DATE	DESCRIPTION	INVOICE #	CHECK		NET AMOUNT
			AMOUNT	DEDUCTION	
11/02/17	446 Willis Powell 30538.002 Witness fee.	JA	28.00		28.00

CHECK DATE	CONTROL NUMBER	TOTALS ▶	Gross:	28.00	Ded:	0.00	Net:	28.00
11/02/17	85651							

ROBISON, SIMONS, SHARP & BRUST
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
71 WASHINGTON STREET
RENO, NEVADA 89503
(775) 329-3151

HERITAGE BANK OF NEVADA
2330 S VIRGINIA ST
RENO, NV 89502
94-181/1212

85651

DATE 11/02/17 AMOUNT *****\$28.00

PAY

*** TWENTY-EIGHT & 00/100 DOLLARS

TO THE ORDER OF Willis Powell

ROBISON, SIMONS, SHARP & BRUST

[Handwritten Signature]

[Redacted]

[Redacted]

JA_1028

FILED
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CV12-02995
2019-12-23 01:22:08 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7652684

EXHIBIT 5

EXHIBIT 5



Reno Carson Messenger Service, Inc
185 Martin St. Reno, NV 89509
Phone: (775) 322-2424 Fax: (775) 322-3408
License: 322

BILL To:
ROBISON, BELAUSTEGUI, SHARP and LOW
ATTN: JODI
71 WASHINGTON STREET
RENO, NV 89503

File No: 30538.002
Served: NV ENERGY
Case No: CV12-02995
Court: SECOND JUDICIAL DISTRICT COURT
Plaintiff: WEST TAYLOR STREET, LLC, A LIMITED LIABILITY
Defendant: WASTE MANAGEMENT OF NEVADA, INC., ET AL

TAX ID: 88-0306306

ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
283	May 09, 2017	R10396

Documents: SUBPOENA DUCES TECUM; CERTIFICATE OF AUTHENTICITY; WITNESS FEE CHECK \$35.00;

DESCRIPTION OF SERVICES RENDERED	QUANTITY	UNIT PRICE	AMOUNT
Service of Process <i>Submitted 5/12/17</i>			40.00
SUMMARY: 5/8/2017 at 3:55 PM Server: KRISTIN SCHARFENBERG Reg: R-083180 Served: NV ENERGY Left With: Yvonne Enos - Supervisor of Billing and Credit Operations Address: 6100 Neil Rd, # Reno, NV 89511-1132 Result: Corporate Service		PREPAID	.00
		TOTAL DUE	\$ 40.00

Thank you for choosing Reno Carson Messenger Service, Inc!



For proper credit please detach this section and return with your payment. **Remittance Copy**

ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
283	May 09, 2017	R10396

Remit To:

Reno Carson Messenger Service, Inc
185 Martin St.
Reno, NV 89509

TOTAL DUE:

\$ 40.00

- PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.
- MAKE CHECKS PAYABLE TO
Reno Carson Messenger Service, Inc

Order#:R10396/INVOICEP

JA_1030



Reno Carson Messenger Service, Inc
185 Martin St. Reno, NV 89509
Phone: (775) 322-2424 Fax: (775) 322-3408
License: 322

Bill To:

ROBISON, BELAUSTEGUI, SHARP and LOW
ATTN: JODI
71 WASHINGTON STREET
RENO, NV 89503

TAX ID: 88-0306306

ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
283	November 05, 2017	R20331

File No: 30538.002
Servee: WILLIS E. POWELL
Case No: CV12-02995
Court: SECOND JUDICIAL DISTRICT COURT
Plaintiff: WEST TAYLOR STREET, LLC., A LIMITED LIAB
Defendant: WASTE MANAGEMENT OF NEVADA, INC; ET. AL.

Documents: WITNESS CHECK \$28.00; SUBPOENA-CIVIL;;

DESCRIPTION OF SERVICES RENDERED	QUANTITY	UNIT PRICE	AMOUNT
RUSH RUSH mileage	20.00	.85	60.00 17.00
SUMMARY: 11/4/2017 at 7:27 PM Server: JENLEE KNIGHT PARKER R -067702 Reg: R-067702 Servee: WILLIS E. POWELL Address: 2375 Kinney Ln, # Reno, NV 89511-6544 Result: Personally Served		PREPAID	.00
		TOTAL DUE	\$ 77.00

Thank you for choosing Reno Carson Messenger Service, Inc!

For proper credit please detach this section and return with your payment. **Remittance Copy**



ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
283	November 05, 2017	R20331

Remit To:

Reno Carson Messenger Service, Inc
185 Martin St.
Reno, NV 89509

TOTAL DUE: \$ 77.00

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.
2. MAKE CHECKS PAYABLE TO
Reno Carson Messenger Service, Inc

Order#:R20331/INVOICEP

JA_1031



Reno Carson Messenger Service, Inc

185 Martin St. Reno, NV 89509
Phone: (775) 322-2424 Fax: (775) 322-3408
License: 322

MESSENGER INVOICE

TAX ID 88-0306306

ACCOUNT NO.	INVOICE DATE	INVOICE NO.
004239	3/21/2018	R29303

Caller: Jodi Alhasan
Reference: 30538.002
Delivered

Bill To:

Simons Law, PC
6490 S McCarran Blvd Ste 20
Reno, NV 895096165
Ordered By: Jodi Alhasan

WM v. WTS

DESCRIPTION OF SERVICES RENDERED	QUANTITY	UNIT PRICE	AMOUNT
SPECIAL MESSENGER			25.00
Description: Delivered from 6490 S McCarran Blvd Ste 20 Reno, NV, 89509-6165 to Barry @ 75 Court Street Reno, NV, 89501 Delivery Date/Time: 3/9/2018 12:52 PM Delivery Address: Honorable Connie J. Stein 75 Court Street Suite: Dept. 4 Reno, NV 89501 (775) 328-3183			
		TOTAL DUE	\$ 25.00

Thank you for choosing Reno Carson Messenger Service, Inc!



ACCOUNT NO.	INVOICE DATE	INVOICE NO.
004239	3/21/2018	R29303

Remit To:

Reno Carson Messenger Service, Inc
185 Martin St.
Reno, NV 89509

TOTAL DUE: \$ 25.00

- PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.
- MAKE CHECKS PAYABLE TO

Order# R29303 INVOICE#

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CV12-02995
2019-12-23 01:22:08 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7652684

EXHIBIT 6

EXHIBIT 6

INVOICE

Date: 2/21/18
INVOICE # 102

MARK SIMONS, ESQ.
SIMONS LAW, PC
6490 S. McCARRAN BLVD.
SUITE 20
RENO, NEVADA 89509
(775) 785-0088
Customer ID

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

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

9 *****

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

Case No. CV12 02995
Dept. No. 4

11 Plaintiff,

12 vs.

13 WASTE MANAGEMENT OF NEVADA, INC., and DOES I THROUGH X,

14 Defendants.
15 _____ /

16 **MOTION TO RETAX COSTS**

17 Plaintiff moves this Court for its Order retaxing costs in connection with the above
18 as follows:
19

20 1. **COURT CLERK FILING FEES**

21 A review of the schedule of court clerk filing fees will demonstrate a \$500.00 Bond
22 fee on December 2, 2015 and a \$500.00 Bond fee on November 1, 2018. Waste
23 Management first sought to appeal the decision of this Court as it relates to perfection of
24 liens by seeking a review through an appeal and then later a Writ of Mandamus to the
25 Supreme Court. This first Appeal occurred in late 2015 and early 2016 with the December
26 2015 giving rise to the filing fee of \$34.00, a Supreme Court fee of \$250.00 and the Bond
27 of \$500.00. The Supreme Court rejected the Appeal and later the Writ of Mandamus. The

1 parties agreed to dismiss the appeal with each party bearing its own costs and fees.
2 (Exhibit 1) The Supreme Court then dismissed the Writ of Mandamus. (Exhibit 2). In other
3 words, Waste Management was not successful in its first attempted Appeal or the Writ of
4 Mandamus. Meanwhile, it seeks to assess those fees to this petitioner which are now
5 duplicated again during the second appeal process. Given the fact that respondent was
6 not successful in its first appeal with a dismissal that each party pay its own fees and costs,
7 these fees should be retaxed. Similarly, the additional fee of \$250.00 on June 10, 2016
8 is for the Writ of Mandamus that was also rejected. We now have two filing fees of
9 \$250.00 each to the Supreme Court for two earlier appeals dismissed. Furthermore, each
10 of the \$500.00 Bonds scheduled on December 2, 2015 and January 11, 2018 are Bonds
11 which are clearly refundable after dismissal of the Appeal and of the Writ of Mandamus in
12 2015/2016 and the success of the appeal in 2018. No claim has ever been made on those
13 Bonds. Accordingly, these amounts should be retaxed.

14 15 2. PROCESS SERVICE FEES

16 There is no explanation for the fee for a special messenger in the amount of \$25.00
17 that is one of the components of the process service fee of \$142.00. There is no
18 explanation or justification for the alleged "rush" relating to the service of Willis Powell
19 where arrangements had been made with my office for his appearance voluntarily at the
20 deposition.

21 Plaintiff requests an adjustment as follows:

- 22 1. The reduction to clerk fees by \$1,000.00 for the Bonds that are refundable.
- 23 2. The reduction of \$250.00 paid on June 10, 2015 for Supreme Court clerk
24 fees and of the \$250.00 fee of December 2, 2015.
- 25 3. The reduction of \$284.00 for the fees paid for the Appeal which was
26 dismissed per Stipulation.
- 27 4. Retaxing of the process service fees for the service of Willis Powell when

there was a voluntary agreement to produce him, much less through an expedited service for the amount of \$77.00.

5. Retaxing of the \$25.00 service fee without an explanation.

Berosini, Ltd. v PETA, 114 Nev 1348, 971 P.2d 383 (1998)

AFFIRMATION

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

DATED this 24 day of December 2019 C. NICHOLAS PEREOS, LTD.

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

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SCHEDULE OF EXHIBITS

Exhibit "1" Supreme Court Order dated March 1, 2016

Exhibit "2" Supreme Court Order dated July 13, 2016

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SIMONS HALL JOHNSTON PC
Mark G. Simons, Esq.
Msimons@SHJNevada.com
ATTORNEY FOR DEFENDANTS

Iris M. Norton
Iris M. Norton

EXHIBIT "1"

FILED
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CV12-02995
2019-12-24 01:40:05 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7655078

EXHIBIT "1"

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA;
AND KAREN GONZALEZ,

Appellants,

vs.

WEST TAYLOR STREET, LLC, A
LIMITED LIABILITY COMPANY,
Respondent.

No. 69307

FILED

MAR 01 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Matthew R. Linde*
DEPUTY CLERK

ORDER DISMISSING APPEAL

Pursuant to the stipulation of the parties, and cause appearing, this appeal is dismissed.¹ The parties shall bear their own costs and attorney fees. NRAP 42(b).

It is so ORDERED.

CLERK OF THE SUPREME COURT
TRACIE K. LINDEMAN

BY: *Matthew R. Linde*

cc: Hon. Connie J. Steinheimer, District Judge
Robert L. Eisenberg, Settlement Judge
Robison Belaustegui Sharp & Low
C. Nicholas Pereos, Ltd.
Washoe District Court Clerk

¹Given this order, we take no action on appellants' response to our January 26, 2016, order to show cause.

SUPREME COURT
OF
NEVADA

CLERK'S ORDER

(0)-1947

JA_1041

EXHIBIT "2"

FILED
Electronically
CV12-02995
2019-12-24 01:40:05 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7655078

EXHIBIT "2"

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA;
AND KAREN GONZALEZ,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE;
AND THE HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,
Respondents,

and

WEST TAYLOR STREET, LLC,
Real Party in Interest.

No. 70540

CV12-02995

FILED

JUL 13 2016

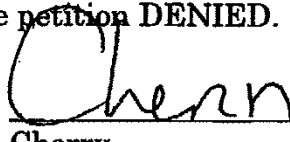
TRACIE K. LINDEMAN
CLERK OF THE SUPREME COURT
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This original petition for a writ of mandamus challenges a district court order granting a motion for partial summary judgment in a declaratory relief and slander of title action.

Having considered the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). In particular, we are not persuaded by petitioners' explanation as to why an appeal from a final judgment would not afford them an adequate remedy. *Pan*, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.


Cherry J.


Douglas J.


Gibbons J.

16-21814

cc: Hon. Connie J. Steinheimer, District Judge
Robison Belaustegui Sharp & Low
C. Nicholas Pereos, Ltd.
Washoe District Court Clerk /



1 **2010**
2 **MARK G. SIMONS, ESQ.**
3 Nevada Bar No. 5132
4 MSimons@SHJNevada.com
5 **SIMONS HALL JOHNSTON PC**
6 6490 S. McCarran Blvd., Ste. F-46
7 Reno, Nevada 89509
8 Telephone: (775) 785-0088
9 Facsimile: (775) 785-0087

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

11
12
13
14
15 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
16
17 **IN AND FOR THE COUNTY OF WASHOE**

18 **WEST TAYLOR STREET, LLC, a limited**
19 liability company,

20 Plaintiffs,

21 vs.

22 **WASTE MANAGEMENT OF NEVADA,**
23 **INC., KAREN GONZALEZ, and DOES 1**
24 **THROUGH 10,**

25 Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

**MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

26 Defendant Waste Management of Nevada, Inc., ("Waste Management") by and
27 through its attorneys Simons Hall Johnston PC, moves this Court for an order awarding
28 Waste Management its attorneys' fees and costs. This Motion is based upon the
following Memorandum of Points and Authorities, the exhibits attached hereto, the papers
on file herein and anything further the Court wishes to consider.

///

///

///

1 DATED this 26th day of December, 2019.

2 SIMONS HALL JOHNSTON PC
3 6490 S. McCarran Blvd., Ste. F-46
4 Reno, NV 89509

5 By: 

6 MARK G. SIMONS
7 *Attorneys for Waste Management of Nevada,*
8 *Inc.*

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. BASIS OF MOTION.**

11 West Taylor Street, LLC ("WTS") brought this action for declaratory relief and for
12 slander of title against Waste Management claiming that Waste Management failed to
13 comply with the proper procedural requirements in noticing, perfecting, recording and
14 moving forward to enforce three (3) garbage liens under NRS 444.520. During the
15 pendency of the case, WTS voluntarily withdrew its claim for slander of title. While this
16 Court initially granted summary judgment in favor of WTS, the Nevada Supreme Court
17 reversed this Court's decision in total and affirmed that Waste Management's activities
18 were at all times legally correct and valid.

19 **II. WASTE MANAGERMENTS' OFFER OF JUDGMENT.**

20 On July 27, 2017, Waste Management served its Offer of Judgment upon WTS
21 offering to allow judgment in favor of WTS and against Waste Management in the amount
22 of \$10,000 ("Offer"). See **Exhibit 1**, Offer. The Offer was personally served on WTS by
23 Waste Management's counsel. **Exhibit 2**, Affidavit of Mark G. Simons ("Simons Aff."), ¶15.
24 WTS did not accept the Offer. As a consequence, WTS is liable for all of Waste
25
26
27
28

1 Management's legal fees and costs from July 27, 2017, to the present which amounts
2 total \$69,115.25 in fees and \$4,165.82 in costs.¹

3 **III. THE NEVADA SUPREME COURT'S FINDINGS AND CONCLUSIONS.**

4 WTS asserted a variety of claims contending that NRS 444.520 incorporated the
5 entirety of the mechanic's lien statutes and not just the foreclosure statute specifically
6 referenced in NRS 444.520. Further, WTS asserted that Waste Management's "perpetual"
7 lien had a statute of limitations. Both such contentions were legally erroneous. This Court
8 granted summary judgment in WTS's favor and Waste Management appealed.

9
10 On June 27, 2019, the Nevada Supreme Court entered its decision in Waste
11 Management v. West Taylor Street, LLC, 135 Nev. Ad. OP. 21 (June 27, 2019)
12 (hereinafter the "Decision"). **Exhibit 3.** The Nevada Supreme Court's Decision is
13 straightforward and succinct. The Nevada Supreme Court found that WTS's arguments
14 were baseless and that this Court erroneously granted summary judgment in favor of WTS
15 based upon an incorrect interpretation of NRS 444.520. The Nevada Supreme Court then
16 found that NRS 444.520(3)'s provisions were "clear on its face" and then applied the
17 statute according to its "plain meaning." Id., p.4

18
19 In finding that WTS's arguments were baseless and premised upon an incorrect
20 interpretation of NRS 444.520, the Nevada Supreme Court held:

21
22 [T]he district court erred in incorporating into NRS 444.520 the perfections
23 requirements under the mechanics' lien statute as outlined in NRS 108.226, which
24 is separate from NRS 108.239's foreclosure procedure. . . . under the plain
25 language of the garbage lien statute, the perfection requirements of the mechanics'
26 lien statute, or any other requirements that do not involve the foreclosure of a
mechanics' lien, are not incorporated. The district court erred when it incorporated
anything beyond NRS 108.239 into the garbage lien statute. Accordingly, we hold

27 ¹ Waste Management filed a separate Memorandum of Costs in compliance with NRS
28 18.110.

1 that the district court erred in concluding that Waste Management needed to record
2 its lien within 90 days of completing the work in accordance with NRS 108.226,
and we reverse the district court's order on this ground.

3 Id., p. 5. In addition, the Nevada Supreme Court found that WTS's argument seeking to
4 apply a statute of limitations to the foreclosure of the garbage lien was entirely improper
5 because: "a garbage lien is perpetual, it is not subject to a statute of limitations." Id., p. 8.
6 The Nevada Supreme Court then reversed and remanded for further proceedings in this
7 Court "consistent with [the Decision.]" Id., p. 9.

9 **IV. NRCP 68.**

10 The purpose of Rule 68 is to encourage the settlement of lawsuits before trial.
11 Morgan v. Demille, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990) ("the purpose of NRCP
12 68 is to encourage the settlement of lawsuits before trial." (superseded on other grounds
13 RTTC Commc'ns, LLC v. Saratoga Flier, Inc., 121 Nev. 34, 110 P.3d 24 (2005)). These
14 procedures are intended to put the risk of loss on the non-accepting party, with no risk to
15 the offeror, thus, encouraging both offers and acceptance of offers. Matthews v. Collman,
16 110 Nev. 940, 950, 878 P.2d 971, 978 (1974).

18 **A. THE OFFER.**

19 The Offer was properly served on WTS. WTS did not accept the Offer and as a
20 matter of law it was rejected. NRCP 68(e). When a plaintiff rejects an offer of judgment
21 and fails to obtain a more favorable judgment, the plaintiff "shall" pay the defendants post-
22 offer costs, applicable interest and reasonable attorneys' fees, if any be allowed, actually
23 incurred from the time of the offer. NRCP 68(f)(2).

25 NRCP 68(a) provides:

26 **The Offer.** At any time more than 21 days before trial, any party may
27 serve an offer in writing to allow judgment to be taken in accordance
28 with its terms and conditions. Unless otherwise specified, an offer

made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

See NRCP 68(a). NRCP 68(e) provides that if the offer is not accepted within 14 days after service, it is deemed rejected and withdrawn. See NRCP 68(e). NRCP 68(f)(1)(B) provides the penalties for rejecting an offer as follows:

The offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer.

NRCP 68(f)(1)(B).

When considering whether to award attorney's fees pursuant to NRCP 68, the court considers four factors:

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588–89, 668 P.2d 268, 274 (1983). Importantly, the court is to balance the factors as no single factor is determinative. Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998).

B. The Beattie Factors.

i. WTS's Claims Were Not Made In Good Faith.

Since the onset of the undersigned's involvement in this litigation, there have been grave concerns regarding WTS's claims. WTS's claims contradicted the express terms of NRS 444.520, contradicted the "plain meaning" of the statute and sought to incorporate a

1 statute of limitations to a "perpetual" lien. The Nevada Supreme Court's Decision found
2 that WTS's claims were baseless because they contradicted the clear and unambiguous
3 terms of 444.520(3)'s provision. Further, the Nevada Supreme Court held that a
4 perpetual lien "is not subject to a statute of limitations." Id., p. 8.

5
6 In addition, WTS admitted that while it did owe certain monies to Waste
7 Management, it claimed it did not owe the amounts asserted in Waste Management's
8 liens.² And, of significance, the liens at issue totaled the minor amount of \$1,754.12. Id.,
9 p. 4:18. Further, Waste Management promptly removed the liens after this Court entered
10 its July 28, 2014, Order. Accordingly, WTS pursued specious claims, initiated extensive
11 litigation over minor amounts in controversy, and continued to pursue extensive litigation
12 even after the allegedly offending liens were removed from WTS's property.

13
14 It is in this setting that WTS's conduct becomes even more egregious. WTS
15 sought to proceed to trial asserting it could recover attorneys' fees as special damages
16 even though (1) WTS did not formally retain C. Nicholas Pereos as its attorney because
17 Mr. Pereos was acting at all times as WTS's manager; (2) WTS has never paid Pereos for
18 his services; (3) WTS never actually incurred any attorney fees; and (4) the liens, and any
19 cloud upon title, were removed in August 2014, thereby terminating WTS's special
20 damages as of August 8, 2014. See Waste Management Trial Statement filed October
21 20, 2017, p. 4:13-27.

22
23 Accordingly, a review of the circumstances of this case demonstrate that WTS's
24 claims were not asserted in good faith. Instead, Mr. Pereos pursued his personal
25

26
27 ² WTS's Trial Statement filed October 30, 2017, p. 4:21-23 ("The issue before the Court
28 and Jury is not whether the Plaintiff owed any money to Waste Management, but whether
the lien accurately reflected a correct statement when it was recorded.").

1 vendetta against Waste Management solely to force Waste Management to incur
2 extensive legal fees and costs defending against WTS's baseless assertions. WTS and
3 Mr. Pereos understood the consequences of this type of conduct, which conduct exposed
4 WTS to an award of attorneys' fees and costs against it. As such, this prong is fully
5 satisfied.
6

7 **ii. Waste Management's Offer Was Reasonable And Made In Good**
8 **Faith In Terms Of Both Timing And Amount.**

9 The Offer was made over five (5) years after this litigation was initiated and over
10 three (3) years after the liens at issue had been released from WTS's property. The Offer
11 was made after the close of discovery, and dispositive motions were decided by the
12 Court. The parties had ample opportunity to assess the strengths and weaknesses of this
13 case. In addition, the Offer complied with NRCP 68(a) in that it was made at least 21
14 days before trial. Looking at the totality of the circumstances, the Offer was made on July
15 27, 2017, approximately five (5) months before trial was to commence. Thus, the timing
16 of the offer was clearly reasonable and made in good faith.
17

18 Similarly, the amount of the Offer was also reasonable and made in good faith.
19 The Offer was for \$10,000. The liens that had been removed from WTS's property
20 totaled \$1,754.12. This factor alone demonstrates the reasonableness of the Offer in that
21 it was over 5 times the amount of the liens that were at issue in the case. Not only was
22 the offer for \$10,000, pursuant to the terms of the Offer, the charges of \$1,754.12 would
23 have been forgiven netting WTS almost \$12,000 in recovery. The Offer was also
24 extremely reasonable since WTS had not incurred any legal fees in this action since Mr.
25 Pereos was acting as the manager of WTS in asserting the claims in this action and WTS
26 had not incurred any legal fees at all.
27
28

1 WTS pursued this litigation knowing that its contentions contradicted the express
2 terms of NRS 444.520. Further, WTS knew that it sought to impose a statute of
3 limitations on a "perpetual" lien with such a statute antithetical to a "perpetual" lien. As
4 the Nevada Supreme Court found, WTS's arguments were baseless and contradicted the
5 clear and unambiguous language contained NRS 444.520. Accordingly, it is clear that
6 Waste Management's Offer was reasonable and made in good faith and this prong is
7 satisfied.

8
9 **iii. WTS Was Grossly Unreasonable In Rejecting The Offer.**

10 Discovery was complete, and only the remaining fact issues were set for trial. Both
11 parties intimately knew the strengths and weaknesses of their case and both parties
12 understood the risks in moving forward. WTS knew that Waste Management was going
13 to call Mr. Pereos as a percipient witness at trial. Mr. Pereos was deposed and the
14 testimony was clear that he made all decisions relating to the operations of WTS and that
15 WTS did not incur any special damages resulting from the recordation of Waste
16 Management's liens.³ In this situation, WTS should have happily accepted the Offer.
17 However, WTS's and Mr. Pereos' objective was to force Waste Management to incur as
18 much in attorneys' fees as possible.

19
20
21 It is in this setting that WTS withdrew its slander of title claims rather than proceed
22 to trial. By withdrawing its slander of title claims, WTS voluntarily agreed and conceded
23 that it was not pursuing any claim of damages against Waste Management. By
24

25
26 ³ See Waste Management Trial Statement filed October 20, 2017, p. 7:1-3 ("30. Pereos
27 made all decisions relating to the property and this litigation. 31. WTS has not paid any
28 money for any legal services purportedly rendered on its behalf by Pereos.").

1 withdrawing its claim for damages, WTS demonstrated that its refusal to accept the Offer
2 for payment for \$10,000 and forgiveness of another \$1,754 in outstanding amounts was
3 grossly unreasonable. Again, this prong is clearly satisfied.

4 **iv. Waste Management's Attorneys' Fees Are Reasonable.**

5 In Brunzell, the Nevada Supreme Court identified four factors district courts are to
6 consider when determining whether attorney's fees are reasonable:
7

8 (1) the qualities of the advocate: his ability, his training, education,
9 experience, professional standing and skill; (2) the character of the
10 work to be done: its difficulty, its intricacy, its importance, time and skill
11 required, the responsibility imposed and the prominence and character
12 of the parties where they affect the importance of the litigation; (3) the
work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful
and what benefits were derived.

13 Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

14 **1. SKILL OF THE ADVOCATES.**

15 This Court is in the best position to consider and determine the abilities of the
16 advocates before this Court. Mark G. Simons, Esq., has practiced law for twenty (26)
17 years with the majority of his practice in business and commercial litigation. Mr. Simons
18 received his juris doctorate from the University of Utah in 1993, and passed the Nevada
19 bar in 1993 and the Utah Bar in 1994. Mr. Simons has been admitted as litigation
20 counsel in California state courts, the Federal Bankruptcy Court for the Northern and
21 Southern District of Nevada, the Federal Bankruptcy Court for the District of Arizona as
22 well as the Nevada, Utah, Western District of Pennsylvania and Central District of
23 California Federal courts. In addition, Mr. Simons is admitted to practice in the Ninth
24 Circuit Court of Appeals as well as before the Ninth Circuit Bankruptcy Appellate Panel.
25
26
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28

1 Mr. Simons is also a member of the Washoe County Bar and the Nevada and Utah Trial
2 Lawyers Associations. See Exh. 2, Simons' Aff. at ¶6.

3 In addition, Mr. Simons has also tried numerous bench and jury trials to successful
4 conclusions, in both state and federal courts, and has received extensive local and
5 national merit awards. Id.

7 2. CHARACTER OF THE WORK DONE

8 Mr. Simons' representation of Waste Management required knowledge and
9 application of procedural and substantive aspects of defending against WTS's claims.
10 Further, the work required a broad knowledge of complex issues such as standing,
11 franchise agreements, franchise authority, Nevada lien law, Nevada tax law, Nevada
12 statutory analysis, interpretation and application.

13 3. WORK ACTUALLY PERFORMED

14 The work actually performed by Mr. Simons is set forth with specificity in the billing
15 records attached hereto as **Exhibit 4**.⁴ The work performed was instrumental in defining
16 the legal and factual issues in this case. Further, all work was necessary and required to
17 protect Waste Management's interests. Simons' Aff. at ¶8. Mr. Simons performed 151.7
18 hours of work for total fees in the amount of \$56,887.50. Mr. Simons' charged a reduced
19 hourly rate of \$375.00 which is substantially less than his customary rate of \$450.00 per
20 hour. Therese Shanks, an associate at my former firm, performed 29.3 hours of work at
21 the rate of \$250.00 per hour for total fees in the amount of \$7,325.00. In addition,
22 Lindsay Liddel, an associate at my former firm, performed 21.79 hours of work at the rate
23 of \$225.00 per hour for total fees in the amount of \$4,902.75. The total attorneys' fees
24 sought in this matter is \$69,115.25.

25
26
27 ⁴ See also Exh. 2, Simons' Aff., at ¶7.
28

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SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS** on all parties to this action by the method(s) indicated below:

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

- ☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

C. Nicholas Pereos, Esq.
Attorneys for West Taylor Street, LLC

DATED this 26 day of December, 2019.


Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Offer	3
2	Simons' Aff.	3
3	Supreme Court Decision	10
4	Billing Records	21

EXHIBIT 1

EXHIBIT 1

1 **2635**

2 Mark G. Simons, Esq. (SBN 5132)
3 Therese M. Shanks, Esq. (SBN 12890)
4 **ROBISON, BELAUSTEGUI, SHARP & LOW**
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503
8 Telephone: (775) 329-3151
9 Facsimile: (775) 329-7941
10 Email: msimons@rbsllaw.com
11 and tshanks@rbsllaw.com

12 *Attorneys for Waste Management of*
13 *Nevada, Inc.*

14
15 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF WASHOE**
17

18 WEST TAYLOR STREET, LLC, a limited
19 liability company,

CASE NO.: CV12-02995

DEPT. NO.: 4

20 Plaintiff,

21 v.

22 WASTE MANAGEMENT OF NEVADA,
23 INC., KAREN GONZALEZ, and DOES 1
24 THROUGH 10,

25 Defendants.
26 _____/

27 **OFFER OF JUDGMENT**

28 WASTE MANAGEMENT OF NEVADA, INC. ("WM"), by and through its attorney
Mark G. Simons of Robison, Belaustegui, Sharp & Low, Pursuant to Rule 68 of the
Nevada Rules of Civil Procedure, hereby offers to allow judgment to be entered against
it and in favor of Plaintiff WEST TAYLOR STREET, LLC ("WTS") in this action in the
sum of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00), and no more,
which sum includes all interest, costs, attorneys' fees, or otherwise which have accrued
to date.

If you accept this offer and give written notice thereof within ten (10) days after
service of same, you may file the offer and notice of acceptance, together with proof of
service thereof, and thereupon the clerk is authorized to enter judgment in accordance

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 with the provisions of this Offer. If accepted, all of WTS's claims that are alleged and/or
2 could have been alleged are extinguished.

3 In accordance with the provisions of Rule 68 of the Nevada Rules of Civil
4 Procedure, if this offer is not accepted within ten (10) days from the date of service of
5 same, it shall be deemed withdrawn.

6 This offer of judgment is made for the purposes specified in Rule 68 of the
7 Nevada Rules of Civil Procedure and is not to be construed as an admission of liability.

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

10 DATED this 27th day of July, 2017.

11 ROBISON, BELAUSTEGUI, SHARP & LOW
12 A Professional Corporation
13 71 Washington Street
14 Reno, Nevada 89503

15 By: 

16 MARK G. SIMONS, ESQ.
17 Attorneys for Waste Management of Nevada,
18 Inc.
19
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the **OFFER OF JUDGMENT** on all parties to this action by the method(s)
5 indicated below:
6

- 7 ☐ by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:
- 10 ☐ I hereby certify that on the date below, I electronically filed the foregoing
11 with the Clerk of the Court by using the CM/ECF system which served
12 the following parties electronically:

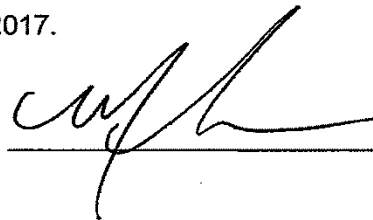
- 13 ☐ by personal delivery/hand delivery addressed to:

14 C. Nicholas Pereos, Esq.
15 1610 Meadow Wood Lane, Ste. 202
16 Reno, NV 89502
17 *Attorney for West Taylor Street, LLC*

- 18 ☐ by facsimile (fax) and/or electronic mail addressed to:

- 19 ☐ by Federal Express/UPS or other overnight delivery addressed to:

20 DATED: This 27th day of July, 2017.

21 
22 _____
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[\\wpdata\\mgs130538.002 (wm v west taylor street)\\p-offer.docx]

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF MARK G. SIMONS, ESQ. IN SUPPORT OF WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

STATE OF NEVADA }
COUNTY OF WASHOE }:ss

I, MARK G. SIMONS, under penalty of perjury, hereby state:

1. I am a licensed attorney in the State of Nevada, and am a partner at SIMONS HALL JOHNSTON PC.

2. I am counsel for Defendant Waste Management of Nevada, Inc., in this matter.

3. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set herein.

4. I submit this affidavit in support of Defendant's Motion for Award of Attorney's Fees ("Motion"), to which this affidavit is attached as Exhibit 2.

5. Exhibit 1 to the Motion is a true and correct copy of the July 27, 2017, Offer of Judgment which I personally served upon Plaintiff's counsel.

6. I have practiced law for over twenty-six (26) years with a majority of my practice in business and commercial litigation. I received my juris doctorate from the University of Utah in 1993, and passed the Nevada Bar in 1993 and the Utah Bar in 1994. I have been admitted as litigation counsel in California state courts, the Federal Bankruptcy Court for the Northern District of Nevada and Southern District of Nevada, the Federal Bankruptcy Court for the District of Arizona as well as the Nevada, Utah, Western District of Pennsylvania and Central District of California Federal Courts. In addition, I have been admitted to practice in the 9th Circuit Court of Appeals as well as the Bankruptcy Appellate Panel. I am also a member of the Washoe County Bar and the Nevada and Utah Trial Lawyers Associations.

1 7. Exhibit 4 to the Motion are true and correct billing records for attorneys' fees
2 incurred since July 27, 2017.

3 8. I have personally reviewed the billing records as they pertain to the efforts in
4 representing Defendant in this litigation. The work performed was instrumental in defining
5 the legal and factual issues in the case. Further, all work was necessary and required to
6 protect Defendant's interest, to address and rebut the contentions asserted by the Plaintiff
7 and to successfully obtain dismissal of the action.

8 9. My fees incurred in this matter were fair, reasonable, and necessary, and
9 comprised 151.7 hours totaling \$56,887.50 in fees, at my reduced hourly rate of \$375.00.
10

11 10. In addition, Therese Shanks, an associate at my former firm of Robison,
12 Sharp, Sullivan & Brust, participated in some aspects of the litigation process. Ms.
13 Shanks is a graduate of the University of the Pacific, McGeorge School of Law and has
14 assisted me in several other cases in the Eighth and Second Judicial District Courts. Ms.
15 Shanks' competence, training, loyalty, dedication, skill and ability are also excellent. Ms.
16 Shanks performed 29.3 hours of work at the rate of \$250.00 per hour for total fees in the
17 amount of \$7,325.00.

18 11. In addition, Lindsay Liddel, a former associate at my former firm of Robison,
19 Sharp, Sullivan & Brust, participated in some aspects of the litigation process. Ms. Liddel
20 is a graduate of the William S. Boyd School of Law and has assisted me in other cases in
21 the Second Judicial District Court. Ms. Liddel's competence, training, loyalty, dedication,
22 skill and ability are also excellent. Ms. Liddel performed 21.79 hours of work at the rate of
23 \$225.00 per hour for total fees in the amount of \$4,902.75.

24 12. It is anticipated that additional attorney's fees and costs may be incurred in
25 responding to any objection to this motion.
26
27
28

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 13. Defendant reserves its right to petition the Court for an additional award of
2 attorney's fees that may be incurred subsequent to those included in the present
3 application.

4 FURTHER AFFIANT SAYETH NAUGHT.

5 DATED this 26th day of December, 2019.

6
7 
8 MARK G. SIMONS

9 STATE OF NEVADA }
10 COUNTY OF WASHOE } :ss

11 Subscribed and sworn to
12 before me this 26 day of
13 December, 2019, by Mark G.
14 Simons at Reno, Nevada.

15 
16 NOTARY PUBLIC

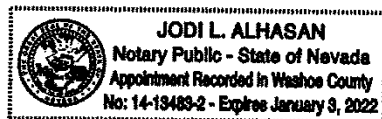


EXHIBIT 3

EXHIBIT 3

135 Nev., Advance Opinion 21
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
Electronically
CV12-02995
19-07-23 03:34:01 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7389364

**WASTE MANAGEMENT OF NEVADA,
INC.,
Appellant,
vs.
WEST TAYLOR STREET, LLC, A
LIMITED LIABILITY COMPANY,
Respondent.**

No. 74876
CV12-02995
D4
FILED

JUN 27 2019

ELIZABETH A. DROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CLERK OF SUPREME COURT

Appeal from a final judgment in a declaratory relief action.
Second Judicial District Court, Washoe County; Connie J. Steinheimer,
Judge.

Reversed and remanded.

Simons Law, PC, and Mark G. Simons, Reno,
for Appellant.

C. Nicholas Pereos, Ltd., and C. Nicholas Pereos, Reno,
for Respondent.

Peterson Baker, PLLC, and Tamara Beatty Peterson and Nikki L. Baker,
Las Vegas,
for Amicus Curiae.

BEFORE THE COURT EN BANC.

OPINION

By the Court, GIBBONS, C.J.:

In 2005, the Nevada Legislature enacted the garbage lien statute to give waste collection companies a method for collecting delinquent payments for their services. *See* NRS 444.520. For the first time, we are asked to interpret this statute and the procedures required to perfect and foreclose on a garbage lien. This dispute focuses on whether NRS 444.520(3)'s reference to the mechanics' lien statute incorporates only the mechanics' lien statute's procedural requirements for foreclosure, as set forth in NRS 108.239. Or, rather, if that reference to the mechanics' lien statute also incorporates the requirements for perfecting a lien, as set forth in NRS 108.226. Additionally, we are asked to determine if the perpetual nature of the garbage lien means that the foreclosure of a garbage lien is not subject to a statute of limitations. We hold that the reference to the mechanics' lien statute in NRS 444.520(3) incorporates only the mechanics' lien statute's procedural requirements for foreclosure. We also hold that no limitations period applies to the foreclosure of a garbage lien.

FACTS AND PROCEDURAL HISTORY

Respondent West Taylor Street, LLC, is the owner of a duplex in Reno. This duplex has two addresses, and each address has a waste service account with appellant Waste Management of Nevada, Inc. At some point, both of these waste services accounts became delinquent. As a result, Waste Management filed three notices of liens against the property. West Taylor filed a complaint with the district court asking, among other things, for declaratory relief. West Taylor alleged that Waste Management did not properly follow the lien perfection requirements under NRS 108.226, which West Taylor argued the Legislature incorporated by reference into the garbage lien statute. West Taylor filed a motion for partial summary

judgment as to this issue. The district court granted West Taylor's motion for summary judgment, holding that the lien perfection requirements outlined in NRS 108.226 applied to the garbage lien statute. Therefore, the district court held that Waste Management did not properly record the lien because it failed to record it within 90 days of the completion of the work. The district court also held, in the alternative, that Waste Management could no longer foreclose on its liens because a two-year limitations period applied to the foreclosing on garbage liens. As a result of this ruling, Waste Management voluntarily released all three of its liens against the property. The parties proceeded to litigate other claims, until West Taylor voluntarily dismissed those claims. Waste Management now challenges the grant of summary judgment in West Taylor's favor as to the recordation of the liens.

DISCUSSION

This case is not moot

As an initial matter, we address West Taylor's argument that this matter is moot because Waste Management released the three liens. As a general rule, this court will decline to hear any case in which there is no actual controversy. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) ("[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." (internal quotation marks omitted)). Therefore, if a case comes before this court when there is no actual controversy, even if the case had a live controversy at the outset, then we will dismiss the case as moot. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that a case has to have an actual controversy during "all stages of the proceeding" or it would be dismissed as moot). Because the

district court's order granting summary judgment prevents Waste Management from refileing its garbage liens against West Taylor, we conclude that there is still a live controversy, and the case is not moot.

The plain language of NRS 444.520(3) incorporates only the foreclosure procedures from the mechanics' lien statutes

We review questions of statutory construction de novo. *Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 799, 358 P.3d 234, 240 (2015). "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004) (internal quotation marks omitted) (alterations in original). When a statute is clear on its face, this court gives the statute's plain language its "ordinary meaning." *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union/SEIU Local 1107*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008). If a statute is ambiguous, meaning that it is susceptible to multiple "natural or honest interpretation[s]," then this court will look beyond that statute to determine its meaning. *Tam*, 131 Nev. at 799, 358 P.3d at 240.

The plain meaning of NRS 444.520(3) is clear on its face. NRS 444.520(3) states:

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.

Based on the definition of foreclosure, the statute's meaning is clear on its face as to which provision of the mechanics' lien statutes is incorporated into the garbage lien statute. "Foreclosure" is defined as "[a] legal proceeding to terminate a mortgagor's interest in a property instituted . . . either to gain title or to force a sale to satisfy the unpaid debt secured by the property." *Foreclosure, Black's Law Dictionary* (8th ed. 2004) (emphasis added). Under this definition, the ordinary meaning of the word "foreclosure" involves the actual legal proceeding itself and not the prerequisites of establishing the garbage lien and perfecting it. Therefore, to foreclose on a garbage lien, the lien holder must follow the foreclosure procedure established in the mechanics' lien statutes, which is outlined in NRS 108.239. Based on the statute's plain meaning, the only provision of the mechanics' lien statutes incorporated into NRS 444.520 is NRS 108.239.

Therefore, the district court erred in incorporating into NRS 444.520 the perfection requirements under the mechanics' lien statute as outlined in NRS 108.226, which is separate from NRS 108.239's foreclosure procedures. NRS 444.520(3) references mechanics' liens in the foreclosure context, not in the context of recording or perfecting a garbage lien. Further, NRS 444.520(4) already provides a method of perfecting a garbage lien. Thus, under the plain language of the garbage lien statute, the perfection requirements of the mechanics' lien statute, or any other requirements that do not involve the foreclosure of a mechanics' lien, are not incorporated. The district court erred when it incorporated anything beyond NRS 108.239 into the garbage lien statute. Accordingly, we hold that the district court erred in concluding that Waste Management needed to record its lien within 90 days of completing the work in accordance with NRS 108.226, and we reverse the district court's order on this ground.

The district court erred by concluding that there is a two-year statute of limitations to foreclose on garbage liens

Next, we address whether a statute of limitations applies to garbage liens, as the district court concluded that even if Waste Management had properly perfected its liens, it would be required to foreclose on those liens within two years. To determine whether there is an applicable limitations period for the foreclosure of a garbage lien, we again turn to the text of the statute.

NRS 444.520(3) provides that “[u]ntil 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.” (Emphasis added.) “Perpetual” is defined as “lasting for eternity; never ending.” *Perpetual, Webster’s II New College Dictionary* (2011). Under a plain reading of the statute, the lien against the property should last until the debt is paid. Perpetual liens, while unusual, are not uncommon in the context of tax or assessment law. See 85 C.J.S. Taxation § 970 (“The duration of a tax lien is generally governed by statute and, ordinarily, a tax lien continues until the tax is paid or the property is sold for the tax.”). States that have enacted perpetual liens have generally held that the liens last forever, and the ability to foreclose upon these liens is not limited by a general statute of limitations. See, e.g., *James v. Strange*, 407 U.S. 128, 132 (1972) (“Florida’s recoupment law has no statute of limitations and the State is deemed to have a perpetual lien against the defendant’s real and personal property and estate.”); *Forman Realty Corp. v. Brenza*, 144 N.E.2d 623, 628 (Ill. 1957) (“The purpose of this statute is to make taxes a lien superior to all other liens without regard to priority in point of time and to continue such liens without limitation of time until taxes are paid. . . .”); *Swingley v. Riechoff*,

112 P.2d 1075, 1079 (Mont. 1941) ("The government's lien for taxes is based upon express statutory provision, and is a perpetual lien against which no statute of limitations can successfully be interposed.").

While the district court agreed that the garbage lien was perpetual, and that therefore the six-month statute of limitations in the mechanics' lien statute did not apply, it went on to conclude that the two-year statute of limitations under NRS 11.190(4)(b) applied.¹ To support this proposition, the district court relied on an early case from this court, *State v. Yellow Jacket Silver Mining Co.*, 14 Nev. 220 (1879). In that case, this court held that a tax lien could be perpetual, but the remedy of foreclosure was subject to a statute of limitations. *Id.* at 232.

However, the reasoning underlying this conclusion in *Yellow Jacket* is outdated, and therefore we decline to apply it here. See Bryan A. Garner et al., *The Law of Judicial Precedent* 178 (2016) ("[P]recedents become obsolete if the conditions or facts that existed when they were rendered are different or no longer exist, or if the underlying rationale is no longer sound."). In *Yellow Jacket*, this court, following California law, reasoned that the remedy of foreclosure could expire under the statute of limitations, but the obligation of the debt could remain. See *id.* at 232. ("A mortgage debt is not destroyed or extinguished by the statute of limitations. The remedy only is taken away." (citing *McCormick v. Brown*, 36 Cal. 180, 185 (1868))). However, separating the foreclosure remedy from its underlying debt is paradoxical, and as such, many states have rejected the


¹NRS 11.190(4)(b) provides two years for bringing actions "upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation."

notion that the debt may be separated from the foreclosure remedy. Nancy Saint-Paul, *Distinction Between Mortgage Lien and Mortgage Debt*, Clearing Land Titles § 6:2 (3d ed. 2018); *see also* Cal. Civ. Code § 2911(1) (eliminating the separation of the underlying debt from the foreclosure remedy). Nevada, like other states, has moved toward eliminating this separation under the “one action rule,” which states that “[t]here may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate.” NRS 40.430(1); *see also McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 751 (2005). Therefore, given that the underlying rationale for separating the remedy from the lien is outdated, we decline to follow the rule outlined in *Yellow Jacket*.

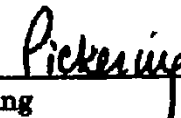
The plain language of NRS 444.520(3) indicates that the lien is perpetual, and therefore the remedy of foreclosure must also be perpetual. As another court has held regarding perpetual liens, “it is impossible to believe that the legislature meant to subject this lien, and the right to enforce it, to any limitation law; for then we would witness the anomalous condition, presented by a perpetual lien . . . without any power in the public to make such lien available.” *Wells Cty. v. McHenry*, 74 N.W. 241, 248 (N.D. 1898). As that court aptly observed, “[a] lien that cannot be enforced is no lien at all.” *Id.*


Accordingly, we hold that the district court properly concluded that garbage liens are perpetual but erred in applying both the lien perfection requirements set forth in NRS 108.226 and the two-year statute of limitations set forth in NRS 11.190(4)(b) to the foreclosure of those liens under NRS 444.520. Since a garbage lien is perpetual, it is not subject to a statute of limitations. Therefore, a municipal waste management company


may foreclose upon such a lien at any time so long as it properly perfects the lien under NRS 444.520(4). Therefore, we reverse the judgment of the district court and remand this case to the district court for further consideration consistent with this opinion.



Gibbons C.J.


We concur:


Pickering J.


Hardesty J.


Parraguirre J.


Stiglich J.


Cadish J.


Silver J.

Supreme Court State of Nevada
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: JUN 11 2019
Supreme Court Clerk, State of Nevada
By [Signature] Deputy
CLERK JUSTITIA

EXHIBIT 4

EXHIBIT 4

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Timekeeper 30 MARK G. SIMONS								
30538.002	07/27/2017	30	A	L120 A109	375.00	2.70	1,012.50 Prepare for and attend w. Powell deposition. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	07/27/2017	30	A	L120 A109	375.00	4.10	1,537.50 Prepare for and attend T. Morrison deposition. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	07/28/2017	30	A	L120 A109	375.00	4.00	1,500.00 Prepare for and depose Nick Pereos. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/02/2017	30	A	L120 A104	375.00	0.40	150.00 Review recent production from WTS. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/03/2017	30	A	L120 A104	375.00	0.20	75.00 Review/analyze Offer of Judgment and circulate to client for consideration. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/14/2017	30	A	L120 A103	375.00	1.50	562.50 Draft/revise MIL to disqualify Pereos. Draft MIL re: destruction of evidence. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/29/2017	30	A	L120 A103	375.00	1.30	487.50 Draft/revise MILs. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/30/2017	30	A	L120 A103	375.00	1.20	450.00 Draft/revise Opp to MIL. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/31/2017	30	A	L120 A103	375.00	1.30	487.50 Draft/revise and finalize Opp to MIL. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	09/01/2017	30	A	L120 A106	375.00	0.20	75.00 Update client on status. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	09/12/2017	30	A	L120 A103	375.00	0.20	75.00 Draft/revise email to assist-to-sell counsel. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	09/12/2017	30	A	L120 A106	375.00	0.20	75.00 Communicate with Jason Bohn re: status. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	09/19/2017	30	A	L120 A103	375.00	1.80	675.00 Draft/revise reply on MIL excluding Pereos. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/13/2017	30	A	L120 A103	375.00	1.30	487.50 Draft/revise and finalize pretrial disclosures. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/19/2017	30	A	L120 A103	375.00	1.80	675.00 Draft/revise Trial Statement. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/24/2017	30	A	L120 A106	375.00	0.40	150.00 Conference call with J. Bohn re: strategy and options. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/26/2017	30	A	L120 A103	375.00	1.00	375.00 Draft/revise jury instructions. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/26/2017	30	A	L120 A106	375.00	0.20	75.00 Communicate with client re: trial issues. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/30/2017	30	A	L120 A104	375.00	0.80	300.00 Review/analyze opposing counsel's jury instructions and trial statement. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	11/02/2017	30	A	L120 A107	375.00	0.90	337.50 Various communications with Court and N. Pereos re: exhibits.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Timekeeper 30 MARK G. SIMONS								
30538.002	11/03/2017	30	A	L120 A107	375.00	0.50	187.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Communicate with opposing counsel re: trial exhibits.	
30538.002	11/03/2017	30	A	L120 A101	375.00	3.30	1,237.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Trial prep on trial exhibits.	
30538.002	11/03/2017	30	A	L120 A103	375.00	1.00	375.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Draft/revise outline of Terri Morrison deposition.	
30538.002	11/03/2017	30	A	L120 A108	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Telephone call with court re: exhibits.	
30538.002	11/03/2017	30	A	L120 A107	375.00	0.50	187.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Communicate with opposing counsel re: trial issues.	
30538.002	11/03/2017	30	A	L120 A103	375.00	1.20	450.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Draft/revise trial prep. re: W. Powell deposition.	
30538.002	11/06/2017	30	A	L120 A104	375.00	1.40	525.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Review/analyze M. Davis deposition and outline for trial.	
30538.002	11/06/2017	30	A	L120 A101	375.00	0.80	300.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Plan and prepare trial exhibit outline on Plaintiffs exhibits.	
30538.002	11/07/2017	30	A	L120 A107	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Communicate with N. Pereos re: trial.	
30538.002	11/07/2017	30	A	L120 A108	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Communicate with D. Stratton re: status and trial.	
30538.002	11/07/2017	30	A	L120 A104	375.00	2.00	750.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Review/analyze W. Powell deposition.	
30538.002	11/07/2017	30	A	L120 A104	375.00	1.50	562.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Review/analyze N. Pereos deposition and outline for trial.	
30538.002	11/07/2017	30	A	L120 A108	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Conference call with court re: vacating trial.	
30538.002	11/08/2017	30	A	L120 A107	375.00	0.30	112.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Communicate with N. Pereos re: dismissal and judgment.	
30538.002	11/08/2017	30	A	L120 A103	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Draft/revise stipulation and judgment.	
30538.002	01/19/2018	30	A	L120 A103	375.00	0.40	150.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Draft/revise and finalize docketing statement.	
30538.002	01/19/2018	30	A	L120 A104	375.00	0.30	112.50	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Review/analyze record.	
30538.002	01/31/2018	30	A	L120 A103	375.00	1.00	375.00	ARCH
							Waste Management of Nevada, Inc. adv. West Taylor Street, LLC Draft/revise request for transcript. Review transcript.	

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Timekeeper 30 MARK G. SIMONS								
30538.002	03/31/2018	30	A	L120 A104	375.00		Waste Management of Nevada, Inc. adv. West Taylor Street, LLC -293.83 Write up for prior write off. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
Total for Timekeeper 30					Billable	41.70	15,931.15 15,637.50	MARK G. SIMONS
Timekeeper 44 THERESE M SHANKS								
30538.002	09/18/2017	44	A	L120 A103	250.00	3.00	750.00 Review opposition to motion in limine (0.5); research re "necessary witness" (0.5); draft reply (2) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/03/2017	44	A	L120 A104	250.00	0.50	125.00 Review/analyze what we need to prepare for upcoming pre-trial filing requirements Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/06/2017	44	A	L120 A103	250.00	2.80	700.00 Draft pretrial disclosures (0.8); begin draft of trial exhibits (2) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/09/2017	44	A	L120 A103	250.00	2.30	575.00 Finished drafting trial exhibits list Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/18/2017	44	A	L120 A104	250.00	6.60	1,650.00 Draft trial statement (4); research re substantial truth for falsity, attorney fees as special damages and malice for jury instructions and trial statement (2); edit trial statement for MGS review (0.6) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/19/2017	44	A	L120 A104	250.00	4.20	1,050.00 Review MGS edits to trial statement (1.2); begin compiling jury instructions (3) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/20/2017	44	A	L120 A104	250.00	0.80	200.00 Finalize jury instructions for MGS review (0.4); draft special verdict form (0.4) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/25/2017	44	A	L120 A106	250.00	0.10	25.00 Email witnesses re trial Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/26/2017	44	A	L120 A104	250.00	4.50	1,125.00 Finish trial statement and jury instructions (2); research re whether slander of title arises under defamation law (2.5) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	10/30/2017	44	A	L120 A104	250.00	1.80	450.00 Review plaintiffs' proposed jury instructions and email re same (1); review objections to proposed jury instructions (0.3); begin research re argument for jury instructions (0.5) Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	11/03/2017	44	A	L120 A109	250.00	0.60	150.00 Participate in conference re: joint exhibits with opposing counsel. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	11/08/2017	44	A	L120 A104	250.00	0.20	50.00 Review/analyze court orders. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	11/08/2017	44	A	L120 A103	250.00	0.20	50.00 Draft/revise stipulation to dismiss. Waste Management of Nevada, Inc.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Timekeeper 44 THERESE M SHANKS								
30538.002	11/08/2017	44	A	L120 A103	250.00	0.20	50.00 adv. West Taylor Street, LLC Draft/revise judgment. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	11/11/2017	44	A	L120 A107	250.00	0.10	25.00 Call with court re: final documents. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	01/18/2018	44	A	L120 A103	250.00	0.40	100.00 Draft transcript request form Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	01/19/2018	44	A	L120 A103	250.00	1.00	250.00 finish draft docketing statement Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
Total for Timekeeper 44					Billable	29.30	7,325.00 THERESE M SHANKS	
Timekeeper 49 LINDSAY L LIDDELL								
30538.002	08/16/2017	49	A	L120 A104	225.00	0.33	74.25 Meeting with Mark Simons regarding Waste Management cases. Reviewed corresponding documents. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/21/2017	49	A	L350 A104	225.00	2.91	654.75 Preparing for the Opposition to Motion in Limine, become familiar with case, review Plaintiff's Motion in Limine regarding other property holdings, review Pereos deposition. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/22/2017	49	A	L350 A103	225.00	2.66	598.50 Preparing Opposition to Motion in Limine #1, review Morrison Deposition, Complaint, Answer, draft law in argument sections of Motion in Limine. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/23/2017	49	A	L350 A103	225.00	3.05	686.25 Opposition to Motion in Limine #1: finalize law in draft, begin fact section based on information from discovery, create persuasive headings. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/24/2017	49	A	L350 A103	225.00	2.06	463.50 Draft/revise Opposition to Motion in Limine #1: draft fact section, edit for spelling, begin draft of conclusion. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/25/2017	49	A	L350 A103	225.00	6.10	1,372.50 Draft/revise Opposition to Motion in Limine #1: complete first full draft with facts, argument, and conclusion. Edit for spelling, structure, and overall persuasiveness. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/29/2017	49	A	L350 A103	225.00	1.60	360.00 Edit and finalize Objection to Motion in Limine #1. Review and edit Motion in Limine to Disqualify Pereos. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH
30538.002	08/30/2017	49	A	L350 A103	225.00	3.08	693.00 Opposition to Motion in Limine #1: implement edits from MGS and add exhibits from depositions supporting our position. Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	ARCH

Date: 12/26/2019

Detail Fee Transaction File List
Robison, Sharp, Sullivan & Brust

Page: 5

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Total for Timekeeper 49					Billable	21.79	4,902.75	LINDSAY L LIDDELL

GRAND TOTALS

Billable 92.79 28,158.88

- 293.63

\$ 27,865.25

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

March 01, 2018 - March 31, 2018

Invoice Date May 03, 2018
Invoice Number 59
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$84.00
Payments Received	\$0.00
Outstanding Balance	\$84.00
Current Invoice	\$487.50

Total Due	\$571.50
------------------	-----------------

Payment Transactions

Date	Type	Invoice #	Description	Amount
<i>No payments have been made on this account.</i>				

Fee Detail

Date	Type	Description	Hours	Rate	Total
3/1/2018	MGS	Review Supreme Court order. A104 - Review/analyze L100 - Case Assessment, Development and Administration	0.20	\$375.00/hr	\$75.00
3/1/2018	MGS	Telephone call with N. Pereos. A107 - Communicate (other outside counsel) L100 - Case Assessment, Development and Administration	0.30	\$375.00/hr	\$112.50

Date		Description	Hours	Rate	Total
3/5/2018	MGS	Review NV Supreme court order. A104 - Review/analyze L100 - Case Assessment, Development and Administration	0.20	\$375.00/hr	\$75.00
3/5/2018	MGS	Prepare amended judgment. A103 - Draft/revise L100 - Case Assessment, Development and Administration	0.40	\$375.00/hr	\$150.00
3/5/2018	MGS	T/c N. Pereos' office re: amended judgment and execution. A107 - Communicate (other outside counsel) L100 - Case Assessment, Development and Administration	0.20	\$375.00/hr	\$75.00
			Hours Total	1.30	Fee Total
					\$487.50

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				
				Expenses Total
				\$0.00

Fees	\$487.50
Expense	\$0.00
Current Due	\$487.50
Outstanding Balance	\$84.00
Total Due	\$571.50

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

June 01, 2018 - June 30, 2018

Invoice Date July 13, 2018
Invoice Number 132
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$571.50
Payments Received	\$0.00
Outstanding Balance	\$571.50
Current Invoice	\$450.00

Total Due	\$1,021.50
------------------	-------------------

Payment Transactions

Date	Type	Invoice #	Description	Amount
<i>No payments have been made on this account.</i>				

Fee Detail

Date		Description	Hours	Rate	Total
6/21/2018	MGS	Review rules and assemble appendix on appeal. Review L100 - Case Assessment, Development and Administration	1.20	\$375.00/hr	\$450.00
Hours Total			1.20	Fee Total	\$450.00

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				

Expenses Total	\$0.00
----------------	---------------

Fees	\$450.00
Expense	\$0.00
Current Due	\$450.00
Outstanding Balance	\$571.50
Total Due	\$1,021.50

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

March 09, 2018 - July 31, 2018

Invoice Date August 09, 2018
Invoice Number 171
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$1,021.50
Payments Received	(\$571.50)
Outstanding Balance	\$450.00
Current Invoice	\$13,275.00

Total Due	\$13,725.00
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Payment Transactions

Date	Type	Invoice #	Description	Amount
7/16/2018	Check	59	Waste Management - Check No. 0013640994	\$487.50
7/16/2018	Check	58	Waste Management - Check No. 0013640994	\$84.00

Fee Detail

Date		Description	Hours	Rate	Total
7/3/2018	MGS	Prepare overview of appeal analysis and outline brief/issues. A103 - Draft/revise L100 - Case Assessment, Development and Administration	1.50	\$375.00/hr	\$562.50
7/10/2018	MGS	Draft opening appellate brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	2.80	\$375.00/hr	\$1,050.00

Date		Description	Hours	Rate	Total
7/11/2018	MGS	Draft and research appeal brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	7.40	\$375.00/hr	\$2,775.00
7/12/2018	MGS	Draft, research, edit appeal brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	7.60	\$375.00/hr	\$2,850.00
7/13/2018	MGS	Edit appeal brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	2.40	\$375.00/hr	\$900.00
7/18/2018	MGS	Edit opening brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	6.30	\$375.00/hr	\$2,362.50
7/19/2018	MGS	Finalize and edit appeal brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	3.30	\$375.00/hr	\$1,237.50
7/19/2018	MGS	Conference call re: amicus and Republic. A107 - Communicate (other outside counsel) L100 - Case Assessment, Development and Administration	0.50	\$375.00/hr	\$187.50
7/20/2018	MGS	Finalize and file opening brief and appendixes. A103 - Draft/revise L100 - Case Assessment, Development and Administration	1.80	\$375.00/hr	\$675.00
7/31/2018	MGS	Review Republic's amicus brief. A104 - Review/analyze L100 - Case Assessment, Development and Administration	1.00	\$375.00/hr	\$375.00
7/31/2018	MGS	Communicate with client and opposing party re: brief issues. A106 - Communicate (with client) L100 - Case Assessment, Development and Administration	0.80	\$375.00/hr	\$300.00
			Hours Total	35.40	
				Fee Total	\$13,275.00

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				

Expenses Total	\$0.00
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Fees	\$13,275.00
Expense	\$0.00
Current Due	\$13,275.00
Outstanding Balance	\$450.00
Total Due	\$13,725.00

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

August 01, 2018 - August 31, 2018

Invoice Date September 13, 2018
Invoice Number 211
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$13,725.00
Payments Received	(\$13,725.00)
Outstanding Balance	\$0.00
Current Invoice	\$150.00

Total Due	\$150.00
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Payment Transactions

Date	Type	Invoice #	Description	Amount
9/13/2018	Check	171	Waste Management - Check No. 0013725706	\$13,275.00
8/31/2018	Check	132	Waste Management - Check No. 0013706277	\$450.00

Fee Detail

Date		Description	Hours	Rate	Total	
8/14/2018	MGS	Review amicus reply brief. A104 - Review/analyze L100 - Case Assessment, Development and Administration	0.40	\$375.00/hr	\$150.00	
			Hours Total	0.40	Fee Total	\$150.00

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				

Expenses Total	\$0.00
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Fees	\$150.00
Expense	\$0.00
Current Due	\$150.00
Outstanding Balance	\$0.00
Total Due	\$150.00

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

September 01, 2018 - September 30, 2018

Invoice Date October 03, 2018
Invoice Number 218
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$150.00
Payments Received	\$0.00
Outstanding Balance	\$150.00
Current Invoice	\$5,212.50

Total Due	\$5,362.50
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Payment Transactions

Date	Type	Invoice #	Description	Amount
<i>No payments have been made on this account.</i>				

Fee Detail

Date		Description	Hours	Rate	Total
9/2/2018	MGS	Review response brief and outline. A104 - Review/analyze L100 - Case Assessment, Development and Administration	2.00	\$375.00/hr	\$750.00
9/3/2018	MGS	Draft reply brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	5.80	\$375.00/hr	\$2,175.00

Date		Description	Hours	Rate	Total
9/5/2018	MGS	Draft, revise and finalize reply brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	3.80	\$375.00/hr	\$1,425.00
9/6/2018	MGS	Review supreme court briefing and additional research on statutory lien enforcement. A104 - Review/analyze L100 - Case Assessment, Development and Administration	1.30	\$375.00/hr	\$487.50
9/13/2018	MGS	Edit reply brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	0.80	\$375.00/hr	\$300.00
9/13/2018	MGS	Review Supreme Court order and update client. A104 - Review/analyze L100 - Case Assessment, Development and Administration	0.20	\$375.00/hr	\$75.00
			Hours Total	13.90	Fee Total
					\$5,212.50

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				
				Expenses Total
				\$0.00

Fees	\$5,212.50
Expense	\$0.00
Current Due	\$5,212.50
Outstanding Balance	\$150.00
Total Due	\$5,362.50

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

October 01, 2018 - October 31, 2018

Invoice Date November 08, 2018
Invoice Number 258
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$5,362.50
Payments Received	(\$150.00)
Outstanding Balance	\$5,212.50
Current Invoice	\$2,775.00

Total Due	\$7,987.50
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Payment Transactions

Date	Type	Invoice #	Description	Amount
10/29/2018	Check	211	Waste Management - Check No. 0013798134	\$150.00

Fee Detail

Date		Description	Hours	Rate	Total
10/5/2018	MGS	Review opposition to amicus brief and outline arguments. A104 - Review/analyze L100 - Case Assessment, Development and Administration	1.30	\$375.00/hr	\$487.50
10/7/2018	MGS	Review and analyze brief in response to Amicus Brief. A104 - Review/analyze L100 - Case Assessment, Development and Administration	1.00	\$375.00/hr	\$375.00

Date		Description	Hours	Rate	Total
10/7/2018	MGS	Edit and revise reply brief and also incorporate reply to response to amicus brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	3.80	\$375.00/hr	\$1,425.00
10/11/2018	MGS	Edit and finalize reply brief. A103 - Draft/revise L100 - Case Assessment, Development and Administration	1.30	\$375.00/hr	\$487.50
			Hours Total	7.40	
				Fee Total	\$2,775.00

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				
				Expenses Total
				\$0.00

Fees	\$2,775.00
Expense	\$0.00
Current Due	\$2,775.00
Outstanding Balance	\$5,212.50
Total Due	\$7,987.50

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509
Office: (775) 785-0088
Fax: (775) 785-0087

Bill to:

Waste Management of Nevada, Inc.
222 South Mill Ave., Ste. 333
Tempe, AZ 85281

INVOICE

January 01, 2019 - January 31, 2019

Invoice Date February 07, 2019
Invoice Number 394
Due Date Due Upon Receipt

adv. West Taylor Street, LLC .002

Account Summary

Previous Balance	\$7,987.50
Payments Received	(\$7,987.50)
Outstanding Balance	\$0.00
Current Invoice	\$562.50

Total Due	\$562.50
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Payment Transactions

Date	Type	Invoice #	Description	Amount
12/27/2018	Check	258	Waste Management - Check No. 0013875231	\$2,775.00
11/15/2018	Check	218	Waste Management - Check No. 0013828006	\$5,212.50

Fee Detail

Date		Description	Hours	Rate	Total
1/24/2019	MGS	Conference with D. Stratton re: litigation strategy. A106 - Communicate (with client) L100 - Case Assessment, Development and Administration	1.50	\$375.00/hr	\$562.50
Hours Total			1.50	Fee Total	\$562.50

Expense Detail

Date	Description	Quantity	Rate	Total
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No expenses have been charged for this invoice.

Expenses Total	\$0.00
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Fees	\$562.50
Expense	\$0.00
Current Due	\$562.50
Outstanding Balance	\$0.00
Total Due	\$562.50

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 30538.002 Waste Management of Nevada, Inc.								
30538.002	02/04/2019	1	A	L100 A104	375.00	0.70	262.50 Review/analyze residential franchise and RMC for provisions mandating service.	ARCH
30538.002	02/04/2019	1	A	L100 A103	375.00	1.00	375.00 Draft/revise letter to Pereos.	ARCH
30538.002	02/05/2019	1	A	L100 A103	375.00	0.50	187.50 Edit and finalize letter to Pereos.	ARCH
30538.002	02/27/2019	1	A	L100 A106	375.00	0.50	187.50 Various communications with client regarding appeal.	ARCH
30538.002	02/28/2019	1	A	L100 A106	375.00	0.40	150.00 Various communications with client and R. Eisenberg regarding consultation.	ARCH
30538.002	03/05/2019	1	A	L100 A103	375.00	1.00	375.00 Draft/revise opposition to motion to continue oral argument.	ARCH
30538.002	03/05/2019	1	A	L100 A106	375.00	0.40	150.00 Communicate with J. Bohn and R. Eisenberg regarding status.	ARCH
30538.002	03/14/2019	1	A	L100 A106	375.00	0.20	75.00 Communicate with G. Martinelli regarding WTS.	ARCH
30538.002	04/30/2019	1	A	L100 A104	375.00	2.70	1,012.50 Review/analyze and outline briefing and topic points for appeal.	ARCH
30538.002	05/01/2019	1	A	L100 A101	375.00	3.30	1,237.50 Plan and prepare for appeal (written).	ARCH
30538.002	05/01/2019	1	A	L100 A101	375.00	2.50	937.50 Plan and prepare for appeal with Eisenberg and Martinelli (Moot).	ARCH
30538.002	05/02/2019	1	A	L100 A101	375.00	2.20	825.00 Plan and prepare for appeal (written).	ARCH
30538.002	05/03/2019	1	A	L100 A101	375.00	5.40	2,025.00 Outline oral argument and plan and prepare for moot argument.	ARCH
30538.002	05/05/2019	1	A	L100 A101	375.00	3.80	1,425.00 Plan and prepare for oral argument.	ARCH
30538.002	05/06/2019	1	A	L100 A109	375.00	5.50	2,062.50 Prepare for, travel to and attend oral argument.	ARCH
30538.002	05/09/2019	1	A	L100 A106	375.00	0.40	150.00 Conference call with WM regarding oral argument.	ARCH
30538.002	07/16/2019	1	A	L100 A103	375.00	2.10	787.50 Draft/revise motion to vacate orders and judgment.	ARCH
30538.002	07/16/2019	1	A	L100 A103	375.00	2.50	937.50 Draft/revise motion for fees and costs.	ARCH
30538.002	10/15/2019	1	A	L100 A106	375.00	0.40	150.00 Update G. Martinelli on accounts and various balances if any regarding conclusion of matter.	ARCH
30538.002	12/06/2019	1	P	L100 A101	375.00	3.50	1,312.50 Plan and prepare for and attend hearing on motion for judgment and vacate prior orders and judgments.	52
30538.002	12/11/2019	1	P	L100 A107	375.00	0.40	150.00 Communicate with N. Pereos' office regarding order.	53
30538.002	12/13/2019	1	P	L100 A107	375.00	1.00	375.00 Follow up with Pereos' office regarding order; submit order with cover letter to court.	54
30538.002	12/16/2019	1	P	L100 A106	375.00	0.40	150.00 Update client on status and strategy.	55
30538.002	12/23/2019	1	P	L100 A103	375.00	1.40	525.00 Draft/revise and file memorandum of costs.	56
30538.002	12/23/2019	1	P	L100 A103	375.00	3.30	1,237.50 Draft/revise motion for attorney's fees pursuant to NRCF 68.	57
30538.002	12/26/2019	1	P	L100 A103	375.00	1.80	675.00 Calculate all fees incurred at 3 firms; edit and finalize motion for fees.	58
30538.002	12/26/2019	1	P	L100 A103	375.00	1.60	600.00 Review motion to retax; research issues raised; draft and finalize opposition.	59
Total for Client ID 30538.002					Billable	48.90	18,337.50 Waste Management of Nevada, Inc. adv. West Taylor Street, LLC	

GRAND TOTALS

Billable	48.90	18,337.50
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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

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

9 * * * * *

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., and DOES 1 THROUGH 10,

16 Defendants.

17 **DECLARATION OF C. NICHOLAS PEREOS IN SUPPORT OF**
18 **OPPOSITION TO MOTION FOR ATTORNEY FEES**

19 Declarant, C. Nicholas Pereos, does hereby swear under penalty of perjury that the
20 assertions of this Declaration are true and to the best of my knowledge and belief:

21 1. I am over the age of 18 years and a resident of Washoe County, Nevada.
22 I am making this declaration based upon my personal knowledge, except as those matters
23 wherein I state that they are based upon information and belief, and as to those matters
24 and information and belief, I believe them to be true. If I am called as a witness to testify
25 as to matters set forth in this declaration, I am and would be legally competent to testify as
26 to those matters in a Court of law.

27 2. I am making this declaration in support of the Opposition to Motion for
Attorney Fees.

1 3. Declarant is an attorney licensed to practice law since 1970 and has been
2 licensed in Nevada since 1971.

3 4. After the Court disqualified the undersigned as trial counsel, I communicated
4 with Waste Management and offered to dismiss the Slander of Title with each party
5 bearing its own costs and fees. The offer was accepted.

6 5. Consistent with that offer, the undersigned received a copy of Exhibit 13
7 which the undersigned found acceptable given the fact the undersigned did not dispute its
8 content.

9 6. At no time did the undersigned question the issue on a go forward basis. The
10 undersigned's information and belief that the undersigned's office contacted the clerks
11 office notifying them the Slander of Title was resolved and the matter was to be vacated.

12 7. At no time did the undersigned question or have thought in its mind this would
13 be an issue in the future.

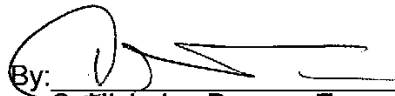
14 8. The undersigned approved Exhibit 13 and notified the Court.

15 **AFFIRMATION**

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

18
19 DATED this 3rd day of January, 2020

C. NICHOLAS PEREOS, LTD.

20
21
22 By: 
23 C. Nicholas Pereos, Esq.
24 1610 Meadow Wood Lane, Suite 202
25 Reno, NV 89502
26 Attorney for Plaintiff
27

1 **CERTIFICATE OF SERVICE**

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 the date listed below, I caused
4 to be served a true copy of the foregoing pleading on all parties to this action by
5 electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system
6 which served the following parties electronically:

7
8 SIMONS HALL JOHNSTON PC
9 Mark G. Simons, Esq.
10 Msimons@SHJNevada.com
11 ATTORNEY FOR DEFENDANTS

12 DATED this 3rd day of January, 2020

13
14 
15 Iris M. Norton

1 CODE: 3980
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 ATTORNEY FOR PLAINTIFF

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

WEST TAYLOR STREET, LLC,
a limited liability company,

Case No. CV12 02995

Plaintiff,

Dept. No. 4

vs.

WASTE MANAGEMENT OF NEVADA,
INC., and DOES I THROUGH X,

Defendants.

OPPOSITION TO MOTION FOR ATTORNEY FEES

A. STATEMENT OF FACTS

Prior to filing the subject lawsuit, Plaintiff sought to resolve the issues with Waste Management of Nevada, Inc., thereafter referred to as WM, without success without the need of a litigation. Initially, Plaintiff realized that it was not receiving its bills for garbage services. Staff contacted WM whereupon they recognized and learned that they were not being sent to Plaintiff and being mailed to another address. The account was then settled with WM. (Exhibit 1) This resolution/settlement made no difference to WM as they still later liened the property for amounts they allege were part of this settlement. (Deposition of Teri Morrison, Page 66-70, Exhibit 2) Despite resolution of the account WM still sought to collect fees for the time frame that was covered by the resolution. (Exhibit 3) Without any forewarning, WM proceeds to record its first lien for \$488.47 two years later. (Notice of Lien 2/23/12, Exhibit 4) After receipt of the lien, Plaintiff sought to secure an

1 explanation as to the basis of the lien. (Exhibit 5) No explanation was provided which
2 precipitates the letter of October 12, 2012. (Exhibit 6) Eventually, WM, nine months after
3 the recording of the first lien provides some explanation regarding the amount of the lien
4 which then precipitated the letter of November 1, 2012 providing an explanation,
5 accounting and checks showing payment on the account. (Exhibit 7) In response to its
6 letters, WM records another lien. (Notice of Lien 11/28/12, Exhibit 8)

7 Initially, Plaintiff assumed the account was cleared and resolved. Notwithstanding
8 that state of mind, WM continued to carry the account delinquent that precipitated the letter
9 of May 24, 2010. (Exhibit 3) Thereinafter, Plaintiff again assumed the matter was
10 resolved. Notwithstanding, a lien was recorded resulting in the letter of September 13,
11 2012. (Exhibit 5) Eventually, a statement of account was provided nine months after the
12 recording of the lien. Instead of correcting its records and removing the liens, WM records
13 another lien. (Exhibit 8) We now have two liens against the property. The first lien was for
14 \$488.47. The second lien was for \$859.78. While the lawsuit is pending, WM corrects one
15 of its liens. Now there are three liens against the property. The amount due on the liens
16 date back to 2007. It turns out that WM is billing for disposal services even when they
17 have been paid and when the property is vacant contrary to the terms of the franchise
18 agreement. Given the fact the amount due WM was never adjudicated the Court never
19 had an opportunity to adjudicate the language in the franchise agreement that provided the
20 residential garbage service would not accrue when the property was vacant. (Franchise
21 Agreement, Pages 13-14, Exhibit 9)

22 The issue as to the amount of the debt was never adjudicated as WM abandoned
23 its claim and reported to the Court in the last oral arguments that it was not going to file any
24 more liens or pursue collections. They acknowledged it was not seeking a judgment in its
25 favor on any affirmative relief. (See Reply in Support of Motion to Vacate Orders and
26 Judgment...filed by WM on July 29, 2019, Page 4 Line 14) Despite this language, WM is
27 now seeking affirmative relief where it previously indicated to this Court that it would not

1 seek affirmative relief thereby eliminating the necessity of this Court to adjudicate the
2 legitimacy of the lien. When the Slander of Title case was resolved, WM again failed to
3 disclose it was seeking relief when there was an understanding that each party pay their
4 own fees.

5 **B. STATEMENT OF PROCEDURAL FACTS**

6 In October 2015, the Court enters its Order concerning a deficiency in the perfection
7 of the liens by WM. In December 2015, WM sought to appeal that Order. The appeal was
8 dismissed by the Supreme Court with an Order that each party was to bear its own costs
9 and attorney fees. (Exhibit 10) Despite this Order, WM still sought to collect its costs.
10 (See Motion to Retax Costs filed December 24, 2019) Not being happy with that decision,
11 WM then pursued a Writ of Mandamus to address the decision of the Court. The Writ of
12 Mandamus was dismissed by the Court. (Exhibit 11) Despite that dismissal, WM sought
13 to collect its costs for pursuing the Writ of Mandamus. It should be noted that it served
14 Plaintiff's agenda to have the Supreme Court resolve these issues of first impression
15 before proceeding any further with the Slander of Title case. A reversal by the Supreme
16 Court would have impacted any positive findings of a jury for Slander of Title. A review of
17 the file will show there was no activity on this case while these appeals were pending. The
18 case goes forward on the Slander of Title claim as everything else had now been resolved
19 in a judgment form. Meanwhile, the liens were released but the release was amended
20 eliminating the language that the debt was discharged. (Exhibit 12) In other words, WM
21 releases the lien but does not acknowledge the debt is discharged until it filed its most
22 recent pleading with the Court. (Reply in Support of Motion to Vacate Orders filed July 29,
23 2019) During the pendency of the action, WM serves an Offer of Judgment on July 27,
24 2017. Meanwhile, WM had already sought on two occasions to appeal the decisions of
25 this Court on perfection. The Offer of Judgement fails to address the decision of the Court
26 relating to the perfection of the lien and could only be read to address the Slander of Title
27 claim. The Slander of Title was voluntarily dismissed on November 10, 2017 after counsel

1 was disqualified as trial counsel and after there was an understanding that each party
2 would bear its own costs and fees. (Exhibit 13)

3 **C. ARGUMENT**

4 1. Rewarding the Activities of Overreaching by WM

5 It is obvious from the facts that gave rise to the filing of this lawsuit, that WM
6 is not responsive to its customer's complaints about billing which probably arises from a
7 corporate attitude by WM that it can get away with their billing practices given the legal
8 expense that customers would otherwise incur to challenge them. Before the filing of this
9 lawsuit, the Plaintiff sought a resolution of this dispute without any success. Instead of
10 resolving the problem, WM kept on refiling new liens. This attitude of indifference is
11 exemplified by WM when it files a Cost Memorandum on December 23, 2019 requiring a
12 response in two days (NRS 18.110) which included costs for monies that WM knew the
13 Supreme Court ordered that each party was to absorb its own costs and fees. It is also
14 exemplified when WM files this Motion for Attorneys Fees on December 26, 2019 asking
15 for fees beyond the recovery window date of November 10, 2017 and there was an
16 agreement to absorb its fees. (Exhibit 13) Filing of these papers during the short week of
17 the holidays coupled with violating the understanding between the parties speaks volumes
18 to the business practices of WM. Not only is the timing of these motions indicative of the
19 overreaching attitude of WM but the totals asked for are excessive and outside the window
20 time frame from the date that the offer was served to the date of the dismissal of the claim.
21 In other words, the claim for Slander of Title was voluntarily dismissed so WM secured
22 what it wanted at the time of the dismissal. Meanwhile, Attorney Simons indicates he
23 performed 151.7 hours of work on this matter but his billing from July 27 to the voluntary
24 dismissal is 41.7 hours which is substantially less than 151.7 hours referenced in his
25 Affidavit. According to Lindsey Liddell, all of her time with the exception of the first entry
26 of .33 was on the Motion in Limine to disqualify Pereos. The argument by WM that Plaintiff
27 should have engaged outside counsel to pursue the case is indicative of its attitude that

1 it knows that "customers" will not engage counsel to contest their billing practices by reason
2 of the expense.

3 Another example of the overreaching activities of WM, is the billing for the
4 appeal work which was done after November 10, 2017 (when WM already secured a
5 dismissal of the slander of title claim) and is duplicative of Writ of Mandamus. A
6 comparison of the topic areas of the argument of the Appeal brief (Exhibit 14) is closely
7 identical with the argument of the Writ of Mandamus (Exhibit 15) The only difference in the
8 Appeal from the Writ of Mandamus was that Republic Disposal from Clark County was able
9 to file an Amicus Curiae brief in support of appellant. A review of the table of authorities
10 with regard to both claims will demonstrate its identical nature. In fact, a review of Mark
11 Simons billings will confirm his interaction with counsel for Republic. A review of his billings
12 also shows he spent 33.4 hours on the Appeal brief which tracked the Writ of Mandamus
13 brief. In other words, the work on the Appeal brief had already been done before the Offer
14 on the Writ of Mandamus which was rejected by the Court. A review of the Supreme Court
15 files will show the identical nature of the two appeals.

16 After this lead counsel was disqualified as trial attorney, he agreed to dismiss
17 the Slander of Title claims. At no time did defense counsel claim that he would be
18 reserving his claims for attorney fees under the Offer of Judgment at the time of the
19 discussions leading up to the dismissal of the claims. In fact, he prepared a Stipulation
20 confirming the agreement to dismiss the Slander of Title claim with each party to pay its
21 own costs and fees. (Exhibit 13)

22 2. Substantial Benefit Exception to An Attorneys Fees Award

23 This lawsuit involve liens that initially amounted to \$1,348.25. Ignoring the
24 amount of attorneys fees by the Plaintiff, the amount of attorney fees being sought by WM
25 is indicative of the amount of work invested in this case. How many customers can afford
26 to hire an attorney to pursue a case of this nature and hold WM accountable? It would be
27 cost prohibitive! Waste Management is banking on that concept! The only reason case

1 is being pursued is because Plaintiff was represented by C. Nicholas Pereos an attorney
2 who could (at this stage of his career) absorb time investment to hold WM accountable.
3 A review of the file will demonstrate scorched earth tactics pursued by WM on this case
4 as an exemplification in the manner it would translate to the legal fees. It is hard to
5 imagine how any private party could afford to fight this fight which addressed practices of
6 WM! The fact that there was an agreement by WM in its briefing and its statement in open
7 Court that it is not going to pursue the lien amounts and voluntarily withdrew the liens is
8 indicative of the positive effect that occurred by the filing of the lawsuit. One can only
9 imagine how many customers have "caved in" to the practices of WM beforehand. One
10 can only imagine the number of "customers" that paid garbage fees for vacant homes
11 during the recession! Finally, there is ample literature about the expensive nature of the
12 housing environment in Washoe County based on supply and demand. These practices
13 of WM simply add to that nature! The actions by Plaintiff in this lawsuit were a result of the
14 activities of WM who has now been notified that those activities will not be unchecked!

15 WM withdrew its liens against West Taylor Street, LLC as emphasized in this
16 Court when it issued its Order dismissing this case. Therefore, there was a substantial
17 benefit to the Plaintiffs and the tenants of West Taylor Street being the class of
18 beneficiaries in question. It also results in WM changing its practices of improperly
19 imposing fees, late fees and fines even when the property is vacant which extends the
20 benefit to all property owners and renters in the WM service areas.

21 In *Thomas v. The City of North Las Vegas*, 127 P.3d 1057, 1063-65 (2006),
22 two police officers sued the city for issues arising from collective bargaining agreements.
23 After winning their lawsuit, the plaintiffs sought attorney fees from the city, rather than the
24 union. The court agreed that the doctrine of substantial benefit was applicable, but that
25 the city was the wrong party from whom benefits should be sought.

26 *Substantial benefit doctrine*

27 Nevada follows the American rule that attorney fees may not be
awarded absent a statute, rule, or contract authorizing such award.¹⁰ A

1 judicially created exception to the American rule is the substantial benefit
2 doctrine.¹¹ This doctrine allows recovery of attorney fees when a successful
3 party confers "a substantial benefit on the members of an ascertainable
4 class, and where the court's jurisdiction over the subject matter of the suit
5 makes possible an award that will operate to spread the costs
6 proportionately among them."¹²

7 Typically, the substantial benefit exception is applied in cases involving
8 shareholders or unions.¹³ In those actions, the successful plaintiff confers a
9 benefit on all shareholders or union members, and thus, attorney fees
10 assessed against the corporation or union are easily and equitably spread
11 among the shareholders or members who are the beneficiaries of the
12 litigation.¹⁴ What is important in those instances is that "the class of
13 beneficiaries is before the court in fact or in some representative form."¹⁵

14 To recover fees under the substantial benefit doctrine, a successful
15 party must demonstrate that: "(1) the class of beneficiaries [is] 'small in
16 number and easily identifiable'; (2) 'the benefit [can] be traced with some
17 accuracy'; and (3) 'the costs [can]... be shifted with some exactitude to those
18 benefiting.'"¹⁶

19 Regarding the first factor, we conclude that the class of beneficiaries, the
20 City of North Las Vegas taxpayers, is sufficiently small in number and easily
21 identifiable for purposes of the substantial benefit exception.¹⁷ As to the
22 second factor, the substantial benefit of Thomas and Armstrong's litigation
23 is that their case brought about changes in how the City and the NLVPOA
24 authorize grievances to be arbitrated.¹⁸ The NLVPOA position statement,
25 issued after Thomas and Armstrong won their suit to compel arbitration,
26 stated that the NLVPOA's position prior to their suit was erroneous. And,
27 because of Thomas's and Armstrong's lawsuits, the NLVPOA changed the
way that it authorizes grievances to be arbitrated. However, although
Thomas and Armstrong have met the first two factors, they have not met the
third factor required for relief because they have not demonstrated that the
costs will be shifted to those benefiting. This is determinative, and we
therefore conclude that the substantial benefit exception is inapplicable.

Whether the substantial benefit exception applies to a municipality is an
issue of first impression for this court. Generally, in actions against
municipalities, states, and the United States, courts conclude that all citizen
taxpayers of the municipality, state, or United States usually cannot share
the benefit conferred, and therefore, the costs cannot be shifted with some
exactitude to those benefiting. Thus, the substantial benefit doctrine does not
apply.²⁰

However, there have been instances where courts have held that the
substantial benefit exception applies to a municipality, and Thomas and
Armstrong rely on this line of authority. In *Ex parte Horn*,²¹ the plaintiffs
successfully prevented the operation of a garbage transfer station in their
neighborhood. As a result of the large public interest caused by the plaintiffs'

1 efforts, the City of Birmingham passed a new ordinance regulating and
2 licensing all solid waste facilities in Birmingham. Therefore, the plaintiffs'
3 efforts resulted in a benefit to all residents of the City of Birmingham, and the
4 costs of litigation could be spread accordingly.²²

5 (Emphasis added.)

6 Although Plaintiff is not seeking attorney fees, he submits that the pursuit of this case
7 resulted in a substantial benefit to "customers" of WM in checking their practices.

8 WM claims it has prevailed in the present case. The reality is, however, that
9 it withdrew its liens; pursued a Writ of Mandamus of appeal that was dismissed; agreed to
10 dismiss the action of Slander of Title without fees; sought a premature appeal which was
11 dismissed. Albeit, WM elected not to file the signed dismissal with the Court dismissing
12 the Slander of Title action with each party to bear its own fees. At no time did WM notify
13 Plaintiff that it was going to pursue recovery of fees pursuant to an Offer of Judgment
14 despite communications to the contrary. Even if the Court concludes that WM prevailed
15 using these questionable methods, it would have to refile its liens against the Plaintiff to
16 collect not only the lien amount but also the attorney fees that trail the lien amount. This
17 is precisely the type of punitive claim by which the substantial benefit doctrine and similar
18 equitable analysis is to prevent which relates to a class of Plaintiffs in which Plaintiffs is a
19 part against the deep pockets of WM's using the "scorched earth" tactics.

20 3. The Offer of Judgment is Deficient and Does Not Support an Award of
21 Attorneys Fees Under NRCP 68

22 The purpose of an Offer of Judgement is to resolve litigation. In reviewing
23 the subject Offer of Judgement, there is no indication that it would constitute final
24 settlement of all claims in this case. There is nothing in this document that prevents WM
25 from pursuing an appeal to the judgements heretofore entered. In fact, the historical
26 evidence shows that WM did make two unsuccessful attempts of appeal. Meanwhile, the
27 Stipulation drafted by WM confirmed the agreement with Plaintiff's counsel that the matter
would be dismissed with each party to bear its own costs and fees. Plaintiff does not argue
with the proposition that it was not filed with the Court but then the Court will observe no

1 other document was filed indicating dismissal of the Slander of Title claims.
2 Notwithstanding, the Plaintiff acknowledged there was an agreement to dismiss the
3 Slander of Title claims!

4 NRCP 68 allows the award of attorney fees when a party obtains a judgement
5 greater than that which was set forth in the offer of judgement. The rule does not mandate
6 there be an award of attorney fees. An issue not answered either in the language of NRCP
7 68 or in the circumstances of the present case, was if and how a final judgement has been
8 reached upon which to base the award. In this case, WM was successful on its appeal
9 reversing the Trial Court. However, WM has not actually won an award or obtained a final
10 judgement against Plaintiff. WM released the liens. Therefore, Plaintiff was successful
11 securing relief. The fact the Offer failed to address the forward activity of WM as it related
12 to appeal of the decisions of the Trial Court regarding perfection of the lien supports the
13 argument that Plaintiff did not act unreasonably in refusing to accept the offer. The
14 Nevada Supreme Court has consistently held that NRCP 68 is not to be used as a weapon
15 against Plaintiffs to discourage them from pursuing valid legal action.

16
17 In *Frazier v. Drake*, 357 P.3d 365, 372-73, 131 Nev. Adv. Op. 64 (Nev. App.
18 2015), the court concluded that a plaintiff who did not achieve a final judgment greater than
19 a prior settlement offer was not liable for attorney fees under NRCP 68.

20 Under NRCP 68 and NRS 17.115,6 either party may make an offer of
21 judgment and serve it on another party to the case at least ten days before
22 trial. If the party to whom the offer is made rejects it and then fails to obtain
23 a more favorable judgment at trial, the district court may order that party to
24 pay the offeror "reasonable attorney fees." NRCP 68(f)(2); NRS
25 17.115(4)(d)(3). Although the decision to award such fees lies within the
26 district court's discretion, the Nevada Supreme Court has emphasized that,
27 while Nevada's offer of judgment provisions are designed to encourage
28 settlement, they should not be used as a mechanism to unfairly force
plaintiffs to forego legitimate claims.

Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

To that end, in Beattie, the Nevada Supreme Court held that, when
determining whether to award attorney fees based on a rejected offer of
judgment, the district court is to evaluate

1 (1) whether the plaintiffs claim was brought in good faith; (2) whether the
2 defendants' offer of judgment was reasonable and in good faith in both its
3 timing and amount; (3) whether the plaintiffs decision to reject the offer and
4 proceed to trial was grossly unreasonable or in bad faith; and (4) whether the
5 fees sought by the offeror are reasonable and justified in amount.

6 Id. Notably, the first three factors all relate to the parties' motives in making
7 or rejecting the offer and continuing the litigation, whereas the fourth factor
8 relates to the amount of fees requested. See id. None of these factors are
9 outcome determinative, however, and thus, each should be given
10 appropriate consideration. Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev.
11 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998)...

12 Because offers of judgment are designed to encourage settlement and are
13 not intended to unfairly force plaintiffs to forego legitimate claims, three of the
14 four Beattie factors require an assessment of whether the parties' actions
15 were undertaken in good faith. Specifically, the district court must determine
16 whether the plaintiffs' claims were brought in good faith, whether the
17 defendant's offer was reasonable and in good faith in both timing and
18 amount, and whether the plaintiffs' decision to reject the offer and proceed
19 to trial was grossly unreasonable or in bad faith. Id. The connection between
20 the emphases that these three factors place on the parties' good-faith
21 participation in this process and the underlying purposes of NRCP 68 and
22 NRS 17.115 is clear. As the Nevada Supreme Court recognized, "[i]f the
23 good faith of either party in litigating liability and/or damage issues is not
24 taken into account, offers would have the effect of unfairly forcing litigants to
25 forego legitimate claims." Yamaha Motor Co., 114 Nev. at 252, 955 P.2d at
26 673. In contrast, the fourth Beattie factor—the reasonableness of the amount
27 of fees requested—does not have any direct connection with the questions
of whether a good-faith attempt at settlement has been made or whether the
offer is an attempt to force a plaintiff to forego legitimate claims.

As Frazier points out, the district court found that Frazier's and Keys' claims
were brought in good faith, that Drake's offers of judgment were not
reasonable or made in good faith in either timing or amount, and that
Frazier's and Keys' decisions to reject Drake's offers were not grossly
unreasonable or in bad faith. Despite finding that each of the three good-
faith-participation factors favored Frazier and Keys, and that only the
reasonableness of the amount of attorney fees requested favored Drake, the
district court nonetheless awarded Drake the entirety of his requested
attorney fees. In reaching this conclusion, the district court penalized Frazier
and Keys for rejecting offers of judgment the court deemed unreasonable
and not made in good faith and opting to pursue claims the court found to
have been brought in good faith, while simultaneously determining that
Frazier's and Keys' decisions to reject Drake's offers were neither
unreasonable nor made in bad faith.

The district court's award of attorney fees to Drake under these
circumstances effectively deemed the respective good faith of the parties to
be of no import. Such an approach elevates the reasonableness of the
attorney fees sought to a position of higher importance than the other Beattie

1 factors in direct contravention of well-established Nevada authority. See
2 Yamaha Motor Co., 114 Nev. at 252 n. 16, 955 P.2d at 673 n. 16 (cautioning
3 the district courts that no one Beattie factor is outcome determinative).
4 Further, this approach transforms offers of judgment into a vehicle to
5 pressure offerees into foregoing legitimate claims in exchange for
6 unreasonably low offers of judgment, which is the exact result that the
7 Nevada Supreme Court sought to avoid by requiring that the parties' good
8 faith be considered when awarding attorney fees under Nevada's offer of
9 judgment provisions. Id. at 252, 955 P.2d at 673 (emphasizing that the
10 parties' good faith must be taken into account, lest offers "have the effect of
11 unfairly forcing litigants to forego legitimate claims").

12 We conclude that where, as here, the district court determines that the three
13 good-faith Beattie factors weigh in favor of the party that rejected the offer
14 of judgment, the reasonableness of the fees requested by the offeror
15 becomes irrelevant, and cannot, by itself, support a decision to award
16 attorney fees to the offeror. Thus, because the district court found that the
17 fees' reasonableness alone supported an award of attorney fees, we
18 conclude that the district court's weighing of the Beattie factors was arbitrary
19 and capricious, id. at 251, 955 P.2d at 672, and constituted legal error,
20 rendering its decision to award attorney fees to Drake a clear abuse of
21 discretion. See LaForge, 116 Nev. at 423, 997 P.2d at 136 ; see also AA
22 Primo Builders, LLC v. Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197
23 (2010) ("While review for abuse of discretion is ordinarily deferential,
24 deference is not owed to legal error."). Accordingly, we reverse the district
25 court's award of attorney fees. Frazier v. Drake, 357 P.3d 365, 131 Nev. Adv.
26 Op. 64 (Nev. App. 2015)

27 (Emphasis added.)

The fact that Plaintiff was successful at the trial level on the issue regarding the valid liens substantiates the argument that the Plaintiff had a legitimate claim.

Three recent unpublished orders from the Nevada District Court and the Nevada Court of Appeals also hold that awarding attorney fees under NRCP 68 is improper absent evidence of good faith or unreasonableness.

In *Assurance Co. of America v. Ironshore Specialty Ins. Co.*, U.S. Dist. Ct (D. Nev. August 26, 2019) Case No.: 2:13-cv-2191-GMN-CWH, the court noted:

When deciding whether to award penalties under the offer of judgment rule, the court's discretion is governed by the Beattie factors: "(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer . . . was grossly

1 unreasonable or in bad faith; and (4) whether the fees sought by the offeror
2 are reasonable and justified in amount." Beattie v. Thomas, 668 P.2d 268,
3 247 (Nev. 1983). No one Beattie factor is dispositive, and the court need not
4 necessarily make explicit findings as to all of the factors. Nat'l Union Fire Ins.
5 v. Pratt and Whitney, 815 P.2d 601, 606 (Nev. 1991); Certified Fire Prot. Inc.
6 v. Precision Constr., 283 P.3d 250, 258 (Nev. 2012). In cases where the
7 defendant is the offeree, courts look to whether the defenses were litigated
8 in good faith. Yamaha Motor Co., U.S.A. v. Arnoult, 955 P.2d 661, 673 (Nev.
9 1998).

10 Upon review of the above factors, the Court declines to award attorney's
11 fees in this case. Although Plaintiffs' offer of judgment was reasonable and
12 brought in good faith, the court cannot conclude that Defendant's decision
13 to reject the offer of judgment was "grossly unreasonable." Beattie, 668 P.2d
14 at 247. This case presented difficult legal issues, which the parties were
15 simultaneously litigating in two other parallel actions. See American Zurich
16 Insurance Company, et al. v. Ironshore Specialty Insurance Company, 2:14-
17 cv-00060-TLN-DB; Assurance Company of America, et. al. v. Ironshore
18 Specialty Insurance Company, 2:15-cv-00460-JAD-PAL. At the time of
19 Plaintiffs' offer of judgment, Defendant had obtained a favorable ruling in its
20 California action and later obtained a similar ruling from a different judge in
21 this district. Am. Zurich Ins. Co. v. Ironshore Specialty Ins. Co., No. 2:14-CV-
22 00060-TLN-KJ, 2014 WL 3687727 (E.D. Cal. July 23, 2014); Assurance Co.
23 of Am. v. Ironshore Specialty Ins. Co., No. 2:15-CV-00460-JAD-PAL, 2017
24 WL 3666298, at *2 (D. Nev. Aug. 24, 2017). Although this Court found early
25 in the instant case that Defendant had a duty to defend in at least one of its
26 underlying actions, the Court did not issue its more expansive summary
27 judgment ruling until July 29, 2015, which was after Plaintiffs' offer of
judgment. Assurance Co. of Am. v. Ironshore Specialty Ins. Co., No. 2:13-
CV-2191-GMN-CWH, 2015 WL 4579983 (D. Nev. July 29, 2015). The legal
landscape between the parties' cases at the time Plaintiffs made their offer
was far from settled. The Court therefore finds that Defendant litigated in
good faith.

The analysis of this Court heeds true here!

In their Reply, Plaintiffs do little to counter these points. Instead, Plaintiffs rest on the Court's discretion and the reasonableness of Plaintiffs' requested fees. (Reply 1:26-2:12, ECF No. 157). Although Plaintiffs' requested fees do not appear unreasonable, the Court finds that the Beattie factors on balance weigh against an award in this case. See Gallagher v. Crystal Bay Casino, LLC, No. 3:08-CV-00055-ECR, 2012 WL 1409244, at *5 (D. Nev. Apr. 20, 2012) (stating that when the factors weigh both for and against attorney's fees, "the Court is loath to award attorneys' fees in the absence of bad faith or unreasonableness . . ."). Accordingly, the Court denies Plaintiffs' request.

(Emphasis added.)

Here, as in Assurance Co., the "legal landscape" was clearly "far from settled" at the time the Offer of Judgment was made, and WM has presented no evidence that Plaintiff acted

1 unreasonably or in bad faith in refusing to accept it. Indeed, the fact that four months later
2 WM offered a resolution to dismiss the slander of title claim (the main source of Plaintiff's
3 monetary claims against WM), with each party to bear its own attorney fees and costs,
4 indicates that Plaintiffs actually made a good choice in rejecting the Offer of Judgment at
5 the time it was made. Had WM actually acted in good faith by following through with the
6 Stipulation and Order as it had promised to do, this case would not be once again before
7 this court at this time. Had WM lived up to its remarks in its most recent pleading, we
8 would not be here. (Reply in Support of Motion to Vacate Orders filed July 29, 2019)

9
10 In *Green v. Buchanan*, Nev. Ct. App. December 11, 2017 (NV. Ct. App.
11 2017), the court stated:

12 Here, Buchanan made an offer of judgment of \$35,000 to Green roughly
13 six months prior to trial. Green did not accept the offer, and the jury awarded
14 her only \$5,000. The district court reviewed the Beattie factors, finding the
15 first and third factors favored Green while the second and fourth factors
16 favored Buchanan. Buchanan argues the court abused its discretion by
17 finding that Green brought her claim in good faith and that Green was not
18 grossly unreasonable in rejecting the offer. We disagree.

19 The record reflects that the district court did not abuse its discretion in
20 determining that Green brought her claim in good faith. The parties stipulated
21 that Buchanan was 100 percent at fault and the jury awarded Green \$5,000,
22 demonstrating that she suffered at least some damage; therefore, Green
23 brought her claim in good faith. See *Scott-Hopp v. Bassek*, Docket No.
24 60501 (Order of Affirmance, Feb. 28, 2014) ("[B]ecause [the plaintiff]
25 suffered an injury which she reasonably believed [the defendant] was
26 responsible for, she filed her lawsuit in good faith."). Moreover, resolving this
27 factor in favor of Buchanan may deter future plaintiffs from pursuing
28 legitimate claims—exactly what the supreme court sought to prevent when
29 interpreting offer of judgment statutes. See *Frazier*, 131 Nev. at ___, 357
30 P.3d at 371 (providing that Nevada's offer of judgment provisions "should not
31 be used as a mechanism to unfairly force plaintiffs to forego legitimate
32 claims"). Additionally, because Green was not at fault and had incurred
33 roughly \$70,000 in past medical expenses, it was not grossly unreasonable
34 to reject Buchanan's \$35,000 offer and to choose to pursue additional
35 damages claim before a jury.

36 Therefore, because Green brought her claim in good faith and it was
37 not grossly unreasonable for her to deny Buchanan's offer of judgment, we
38 conclude that the district court did not abuse its discretion in denying
39 Buchanan's motion for attorneys' fees.

40 (Emphasis added.)

1 In a decision/order by the Court of Appeals only a few weeks ago, the Court
2 addressed a case where attorney fees were denied in a case where the party claiming fees
3 had filed multiple unnecessary and contradictory notices, motions and other documents
4 that greatly delayed and extended the course of the legal action. In *Berberich ex rel. 4499*
5 *Weitzman Place Tr. v. S. Highlands Cmty. Ass'n.*, Order Denying Petitions for Writ Relief
6 No. 77640-COA, No. 78064-COA, No. 78069-COA, No. 78523-COA and No. 78541-COA
7 (Nev. App. December 10, 2019), the court noted:

8 We first consider whether the district court erred when it concluded that
9 *Berberich* was not a prevailing party under NRS 18.010(2)(a). A party
10 prevails for purposes of that statute "if it succeeds on any significant issue
11 in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec.*, 121 Nev. at 10, 106 P.3d at 1200 (internal quotation marks
12 omitted). Here, despite *Berberich's* procedural victory in his prior appeal
13 before this court, he voluntarily dismissed his underlying district court claims
14 without prejudice. Thus, it is axiomatic that *Berberich* did not succeed on any
15 of the issues presented in his district court claims and that he achieved none
16 of the benefit he sought in bringing suit. Accordingly, the district court
17 properly denied his request for attorney fees under NRS 18.010(2)(a).

18 We next consider whether the district court erred in concluding that
19 *Berberich* was not entitled to attorney fees under NRCP 68. Under that rule,
20 if an offeree rejects an offer of judgment and fails to obtain a more favorable
21 judgment, the district court may award the offeror reasonable attorney fees
22 incurred from the time of the offer. NRCP 68(f)(2). *Berberich* contends that
23 because the district court awarded him \$479.10 in costs for the prior appeal,
24 respondents failed to obtain a more favorable judgment than his January 7,
25 2017, offer to pay each of them \$10.00 to settle all claims. However, as we
26 held in the prior appeal, the underlying case was dismissed without prejudice
27 on December 22, 2016, and *Berberich* fails to present any authority in
support of the notion that an offer of judgment has any effect when it is made
after a district court has lost jurisdiction over a case because of a voluntary
dismissal. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38,
130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider
claims that are not cogently argued or supported by relevant authority). Our
own research similarly failed to reveal any authority in support of *Berberich's*
argument, and we therefore reject it.³

28 Finally, we consider whether the district court abused its discretion in
ordering *Berberich* and *Brauer* to pay SHCA and *Olympia* their attorney fees
under NRS 7.085, NRS 18.010(s)(b), and EDCR 7.60, which collectively
allow district courts to award fees as sanctions against parties and their
attorneys when they conduct litigation unreasonably and vexatiously.⁴
Because our review of the record reveals that the district court did not abuse
its discretion in awarding fees against *Berberich* and *Brauer* under EDCR
7.60, we consider the district court's findings in light of that rule alone. Under

1 the rule, a court may sanction both a party and his or her attorney by
2 ordering them to pay an opposing party's reasonable attorney fees if the
3 party or the attorney "[s]o multiplies the proceedings in a case as to increase
4 costs unreasonably and vexatiously." EDCR 7.60(b)(3).

4 Having reviewed the protracted history of the litigation below, we cannot
5 conclude that no reasonable judge would have reached a similar decision to
6 that of the district court under the circumstances of this case. See Leavitt,
7 130 Nev. at 509, 330 P.3d at 5. Multiple actions taken by Berberich and
8 Brauer during the litigation evince an unreasonable and vexatious intent to
9 multiply the proceedings from the outset of the case. Examples of such
10 include their refusal to accept SHCA's counsel's offer to allow them to
11 substitute a trustee as plaintiff in place of the original plaintiff trust without
12 filing a motion to dismiss the complaint, see Causey v. Carpenters S. Nev.
13 Vacation Tr., 95 Nev. 609, 610, 600 P.2d 244, 245 (1979) ("A party to
14 litigation is either a natural or an artificial person. [Trusts are] neither. It is the
15 trustee, or trustees, rather than the trust itself that is entitled to bring suit."),
16 and their failure to appear at multiple hearings below. But perhaps the
17 clearest example of Berberich and Brauer's multiplication of the proceedings
18 is their repeated, stubborn attempts to enforce the first voluntary dismissal
19 even though they had not complied with all of the requirements of NRCP
20 41(a)(1)(i) at the time it was filed, and even though the district court had
21 stricken the dismissal on grounds that it contained a provision precluding all
22 defendants from seeking their attorney fees, despite the fact that the
23 defendants had not agreed to such a waiver and Berberich and Brauer had
24 not filed and served any motion affirmatively seeking such relief. And most
25 egregious of all was Berberich and Brauer's filing of a "Notice of Entry of
26 Order Granting All Parties Relief from Attorney Fees," in which they
27 represented—in direct contravention of the district court's ruling just one day
prior—that the district court intended to give effect to the fee-waiving
provision, when in fact it struck the entire dismissal because of that very
provision. In light of these events and others, we cannot say that the district
court manifestly abused its discretion in determining that Berberich and
Brauer unreasonably and vexatiously extended the proceedings from the
outset of the case. See EDCR 7.60(b)(3); Thomas, 122 Nev. at 90, 127 P.3d
at 1063.

20 Id. at pp. 4-7

21 In the case before this Court, the Court will observe WM is seeking to collect
22 fees despite the Order of the Supreme Court indicating that the parties were to absorb their
23 own costs and fees. The Court will observe that WM is seeking to collect the refundable
24 bond as Court fees. The Court will observe that WM sought to appeal on several
25 occasions the decisions of this Court. The Court will observe that WM released the liens
26 and represented to the Court that it would not be pursuing any further collection activities
27 in order to secure an order for dismissal on this case. Clearly, WM is not entitled to

1 attorneys fees under NRCP 68 and has failed to demonstrate the lack of good faith by
2 Plaintiff.

3 4. No Judgement Issued in Favor of WM

4 The Court expressly stated in open court it was not issuing a judgement
5 dismissing the action. The Supreme Court has defined a prevailing party in NRS 18.010
6 as being a party who secured a judgement in its favor. *Sun Realty v District Court*, 91 Nev
7 774, 542 P.2d 1072 (1975), *County of Clark v Blanchard Construction Co.*, 98 Nev 488,
8 653 P.2d 1217 (1982)

9 "A party to an action can not be considered a prevailant party within the
10 contemplation of NRS 18.010 while an action has not proceeded to
11 judgement." *N. Nev. Homes, LLC v GL Construction, Inc.*, 422 P.3d 1234
(Nevada 2018)

12 Although the case does not involve NRS 18.010, these cases are demonstrative of the
13 Supreme Court's thinking regarding a prevailing party.

14 5. The Amount of Attorney Fees Claimed is Unreasonable and Duplicative

15 In the case of *O'Connell v. Wynn Las Vegas, LLC*, 429 P.3d 664 (Nev. App.
16 2018), the court applied both the Beattie factors and the Brunzell factors (*Brunzell v.*
17 *Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), concerning the
18 reasonableness of the award of fees), after a final judgment was entered in an amount less
19 than a previous offer of judgment.
20

21 When considering the amount of attorney fees to award, the analysis turns
22 on the factors set forth in *Brunzell*. Of particular significance to this case,
23 *Brunzell* provides that "[w]hile hourly time schedules are helpful in
24 establishing the value of counsel services, other factors may be equally
significant." 85 Nev. at 349, 455 P.2d at 33. *Brunzell* directs lower courts to
consider the following when determining a reasonable amount of attorney
fees to award:

25 (1) *the qualities of the advocate*: his ability, his training, education,
26 experience, professional standing and skill; (2) *the character of the work to*
27 *be done*: its difficulty, its intricacy, its importance, time and skill required, the
responsibility imposed and the prominence and character of the parties
where they affect the importance of the litigation; (3) *the work actually*
performed by the lawyer: the skill, time and attention given to the work; (4)

1 the result: whether the attorney was successful and what benefits were
2 derived.

3 Id. at 668 (internal quotation marks omitted).

4 While the case discussed the difficulties of determining the reasonableness of attorney fee
5 awards in a contingency fee case, it is instructive in that it notes that there are multiple
6 means of determining the reasonableness of fees, not limited to billing hours submitted.

7 [D]istrict courts may take almost any sensible approach or apply any logical
8 method to calculate "a reasonable fee" to award as long as the court weighs
9 the *Brunzell* factors. See *Shuette*, 121 Nev. at 864-65, 124 P.3d at 548-49
10 (internal quotation marks omitted).

11 ...
12 We note that the cases and methods used within this opinion to determine
13 the amount of an attorney fees award are instructive and not exhaustive.
14 Trial courts should also keep in mind that their awards of attorney fees
15 should be made on a case-by-case basis by applying the considerations
16 described herein to the evidence provided, and that an adequate record will
17 be critical to facilitate appellate review. Cf. *Logan v. Abe*, 131 Nev. 260, 266,
18 350 P.3d 1139, 1143 (2015) (noting that while the district court has
19 discretion, "the award must be supported by substantial evidence").

20 ...
21 On remand, if O'Connell cannot provide substantial evidence of the time
22 reasonably spent on this case, the district court can exercise its discretion to
23 adjust the fee accordingly, while also being mindful of all applicable
24 considerations. See *Hsu*, 123 Nev. at 637, 173 P.3d at 733 ; see also
25 *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40
26 (1983) (explaining, in using the lodestar method, that the district court may
27 reduce an attorney fees award if the documentation of the hours reasonably
28 expended on the litigation is inadequate). Counsel must show how their work
29 helped accomplish the result achieved. Additionally, O'Connell's claim for
30 attorney fees is limited to those fees earned post-offer.⁸ See NRCP 68(f)(2).

31 Id. at 671, 673.

32 In summary, the request for fees under NRCP 68 should be denied for the following
33 reasons:

- 34 1. The pursuit of the case to include the appeal defense resulting in a
35 substantial benefit to the customers as it checked the action of WM.
- 36 2. The lawsuit was filed given the attitude of indifference by WM
- 37 3. There has been no showing of lack of good faith by Plaintiff.

- 1 4. The Plaintiff's claims were legitimate.
- 2 5. The Plaintiff was partly successful as the liens were released and the debt
- 3 abandoned.
- 4 6. There is duplication in the attorney fees between pre-Rule 68 offer and post
- 5 Rule 68 offer.
- 6 7. The dismissal was to be without fees.
- 7

8 **AFFIRMATION**

9 The undersigned affirms that the foregoing pleading does not contain a social

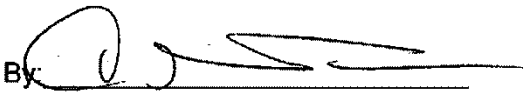
10 security number.

11 DATED this 3 day of January, 2020 C. NICHOLAS PEREOS, LTD.

12

13

14

15 By: 
16 C. NICHOLAS PEREOS, ESQ.
17 1610 MEADOW WOOD LANE
18 RENO, NV 89502
19 ATTORNEY FOR PLAINTIFF
20
21
22
23
24
25
26
27

SCHEDULE OF EXHIBITS

Exhibit "1"	Letter of 7/13/2007
Exhibit "2"	Deposition of Teri Morrison
Exhibit "3"	Letter of 5/24/2010
Exhibit "4"	First Recorded Lien
Exhibit "5"	Letter of 9/13/2012
Exhibit "6"	Letter of 10/12/2012
Exhibit "7"	Letter of 11/1/2012
Exhibit "8"	Second Recorded Lien
Exhibit "9"	Franchise Agreement
Exhibit "10"	Supreme Court Order 3/1/16
Exhibit "11"	Supreme Court Order 7/12/16
Exhibit "12"	Release of Liens
Exhibit "13"	Stipulation and Order 11/2017
Exhibit "14"	Appellant's Opening Appeal Table of Contents
Exhibit "15"	Petition for Writ of Mandamus Table of Contents

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CERTIFICATE OF SERVICE

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

SIMONS HALL JOHNSTON PC
Mark G. Simons, Esq.
Msimons@SHJNevada.com
ATTORNEY FOR DEFENDANTS

DATED this 3rd day of JANUARY, 2020

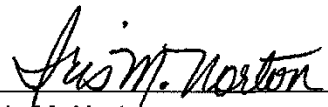

Iris M. Norton

EXHIBIT "1"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "1"

NINA PROPERTIES II, INC.
1610 MEADOW WOOD LANE, SUITE 202
RENO, NV 89502
(775) 329-0678

July 13, 2007

Waste Management - Reno Disposal
100 Vassar Street
Reno, NV 89502

Re: Account No. 010-0074135-1149-9
Account No. 010-0074134-1149-2

Gentlemen:

Confirming conversation with Jenny on June 22nd and we got the account charges set for account no. 010-0074135-1149-9 to be \$10.22 monthly and for account no. 010-0074134-1149-2 to be \$12.67 monthly. We owe for 8 months on account 0074134-1149-2 totaling \$101.36 plus we owe 2 months for account 010-0074135-1149-9 totaling \$20.44 since there has been a tenant for only 2 months of service. Enclosed is a check for the amount of \$121.80 to bring these 2 accounts current. The reason the account has not been paid is because we were never receiving the invoices, you were sending it to the wrong address, therefore the invoice wasn't paid, but you sent the lien to the right address! The correct address to send these invoices for these accounts is: 1610 Meadow Wood Lane Suite #202, Reno, NV 89502. This will clear all accounts for 345 & 347 W. Taylor until July 31st, 2007.

Very truly yours,

Teri Morrison
Assistant Property Manager

tm
Encl.

H

EXHIBIT "2"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "2"

Case No. CV12-02995

Dept. No. 4

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

--o0o--

WEST TAYLOR STREET, LLC, a limited
liability company,

Plaintiff,

vs.

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

Defendants.

=====

DEPOSITION OF TERI MORRISON

Thursday, July 27, 2017

Reno, Nevada

ORIGINAL

Reported by:

LORI URMSTON, CCR #51, RPR, RMR
CALIF. CCR #3217

HOOGS REPORTING GROUP
775-327-4460

1 see the rent roll and see --

2 BY MR. SIMONS:

3 Q We don't have to, because this is what we've
4 got in this case, and it's right in front of you, a
5 signed under oath statement that 347 was rented January
6 of 2007 to September 2007. Do you see that?

7 A Yes, but I didn't do that.

8 Q It doesn't matter. That's what West Taylor
9 Street properties has admitted in this case. And your
10 letter that you wrote contemporaneously in 2007,
11 July 13th, said that there's only been a tenant in
12 there for two months; correct?

13 A That's what's in the letter.

14 Q Okay. Do you know why you're saying there's
15 only been a tenant in there for two months at that
16 location when, in fact, it's been rented since January
17 of 2007 which would have made it rented for six months
18 when you sent your letter?

19 A I don't know.

20 Q Then you go on and you say, "The reason the
21 account has not been paid is because we were never
22 receiving the invoices. You were sending it to the
23 wrong address. Therefore, the invoice wasn't paid, but
24 you sent the lien to the right address."

25 Now, let's walk through this. Where were the bills

1 being sent?

2 A I don't know. Not to the office.

3 Q Well, did you say, "Where are the bills being
4 sent"?

5 A I don't recall.

6 Q Do you understand that the bills would be sent
7 to the address of whatever the property owner was of
8 record with Washoe County?

9 A I don't deal with that. I don't know.

10 Q You have no idea?

11 A No.

12 Q Okay. So what is -- you're referencing a lien.
13 It says, "You sent the lien to the right address."
14 What lien is that?

15 A I believe it was a letter that we received at
16 the office, but I don't recall back in 2007 exactly
17 what you're asking me.

18 Q Well, I'm using the words you picked. You used
19 the word "the lien to the right address." And in the
20 legal profession the word "lien" means something, but
21 maybe in your usage it was the letter you sent. So is
22 there a difference between use of the word "lien" and
23 the letter for you?

24 A I don't know. I don't know.

25 Q Okay. Then it says, "This will clear all

1 accounts for 345 and 347 West Taylor until July 31st,
2 2007." Do you see that?

3 A Yes. That's our conversation, my conversation
4 with Jenny.

5 Q Okay. So you also think -- up above you say,
6 "We owe for eight months on account 1149-2 for
7 \$101.36." Do you see that?

8 A Yes. This is what Jenny told me and I
9 confirmed out conversation.

10 Q I understand.

11 A I know, but you're --

12 Q I understand what you're saying, but there's a
13 discrepancy between what you're saying and what was
14 actually transpiring underneath. I'm trying to explore
15 that. Why do you say, "We owe for eight months on
16 account 1149-2"?

17 MR. PEREOS: Objection. Asked and answered.

18 MR. SIMONS: I haven't asked that one.

19 THE WITNESS: I don't recall exactly. This was
20 confirming our conversation is all I know. I don't
21 exactly remember.

22 BY MR. SIMONS:

23 Q But you agreed by sending in \$101.36 that you
24 had to pay that money for 1149-2 which was unit 345
25 West Taylor; is that fair?

1 A Again, I'll say this was confirming our
2 conversation and what she had told me would clear up
3 the accounts.

4 Q Okay. Well, remember we talked about earlier
5 you said, "Why would we pay for something if the
6 property is vacant because there would be no garbage
7 being made"? Remember we talked about that concept?

8 A Yes, of my --

9 Q Then look at Exhibit 2, Response No. 16. It
10 says that the property was vacant -- 345 was vacant
11 until June 2007. Do you see that?

12 A I see the form that you've put in front me,
13 yes.

14 Q Well, this is a form that says you gave this
15 information and it's been signed by a representative
16 for the plaintiff, so I'm treating this as being pretty
17 important, what's being said in this document, Exhibit
18 2. Okay?

19 So in your letter we know that the property was
20 vacant allegedly up and through June 2007, but in your
21 letter you say, "We're paying for the eight months for
22 345 totaling \$101.36." Do you see that?

23 A No.

24 Q Right there. "We owe for eight months on
25 account 1149-2 totaling \$101.36." Do you see that?

1 A Yes. And, again --

2 Q And you --

3 A -- I'm telling you --

4 Q And you sent the money in for \$101 36; right?

5 A I possibly mailed it. I didn't -- I'm going
6 off what Jenny told me is what this letter is about.

7 Q I understand. But in your -- in Exhibit 2 it
8 says you're paying for a period of time that the owner
9 says the property was vacant; right?

10 A I didn't prepare this and I only confirmed
11 Jenny and my conversation. That's what this is.

12 Q Okay. So your contention -- okay.

13 (Exhibit 24 was marked.)

14 BY MR. SIMONS:

15 Q I'm going to give you Exhibit 24. Okay.
16 Exhibit 24 is called a Customer Profile Sheet. And
17 this is what kept track of internally by Waste
18 Management of all the communications with regard to 345
19 West Taylor Street. So if you look down right here,
20 you'll see 6/1/2007. Do you see that?

21 A Yes.

22 Q And it says, "RMC friendly reminder letter
23 sent." Do you see that?

24 A Yes, I see that on here.

25 Q Okay. And you remember earlier you told me you.

EXHIBIT "3"

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2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "3"

LAW OFFICES OF
C. NICHOLAS PEREOS, LTD.
A PROFESSIONAL CORPORATION

SUITE 202
1610 MEADOW WOOD LANE
RENO, NEVADA 89502

TELEPHONE
AREA CODE 775
329-0678

May 24, 2010

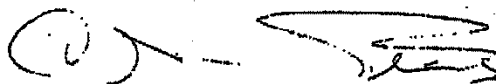
Waste Management - Reno Disposal
100 Vassar Street
Reno, NV 89502

Re: Notice Of Intent To Lien

Gentlemen:

Please be advised that this office represents the interest of West Taylor Street LLC. In this regard, we are receipt of your notice of intent to lien for unpaid garbage fees. Please be advised that you are not owed \$482.97 and that all of your garbage fees had been paid current while the property was occupied. Accordingly, any placement of a lien against the property will be reciprocated with a lawsuit for slander of Title. Meanwhile, I am enclosing a check for usage prior to canceling on 347 West Taylor.

Very truly yours,



C. Nicholas Pereos

CNP/tm

EXHIBIT "4"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "4"



DOC # 4086834

02/23/2012 10:10:37 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$14.00 RPT: \$0.00
Page 1 of 1



APN #011-286-17
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 444.620 and Washoe County Garbage Franchise Agreement section 6.8, 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#011-286-17

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 \$488.47, no part of which has been paid.

DATED: This 22nd day of February 2012

Waste Management of Nevada Inc.

By 
KAREN GONZALES

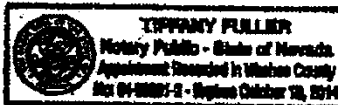
STATE OF NEVADA

COUNTY OF WASHOE

On the 20th 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




NOTARY PUBLIC

JA_1134

EXHIBIT "5"

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Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yviloria

EXHIBIT "5"

LAW OFFICES OF
C. NICHOLAS PEREOS, LTD.
A PROFESSIONAL CORPORATION

SUITE 202
1610 MEADOW WOOD LANE
RENO, NEVADA 89502

TELEPHONE
AREA CODE 775
329-0678

September 13, 2012

Waste Management
of Nevada
Attn: Karen Gonzalez
100 Vasser Street
Reno, NV 89502

Re: Notice of Recorded Lien
Document No. 4086834

Dear Ms. Gonzalez:

Please be advised that this office represents the interests of West Taylor Street, LLC that is in receipt of your Notice of Recorded Lien in connection with unpaid garbage fees. In this regard, I must work on the premise that you are familiar with the substance and basis for the recording of the notice of lien. Otherwise, you would not have affixed your signature to the same. Therefore, please provide the undersigned with the following information which constitutes the composition of the claim of lien:

1. The months that you have not been paid for garbage fees that are the basis for the lien.
2. The amounts that you have not been paid each month that are the basis for the lien.
3. The amounts that you have not been paid each month that represents disposal services to be distinguished from interest that represents the basis for the lien.

Should you fail to provide the information requested herein, you are affirming that you are leaving my client no other alternatives.

Sincerely,


C. Nicholas Pereos

CNP/sjm

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JA_1136

EXHIBIT "6"

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Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "6"

LAW OFFICES OF
C. NICHOLAS PEREOS, LTD.
A PROFESSIONAL CORPORATION

SUITE 202
1610 MEADOW WOOD LANE
RENO, NEVADA 89502

TELEPHONE
AREA CODE 775
329-0678

October 12, 2012

Waste Management
of Nevada
100 Vasser Street
Reno, NV 89502

Re: 345 W. Taylor Street; Acct # 010-0074134-1149-2
347 W. Taylor Street; Acct # 010-0074135-1149-9

Gentlemen:

We continue to receive delinquency notices and collection notices for amounts that you allege to be due for garbage pick up but you do not provide an accounting even though we have requested the same. You obviously are going to require that I file a lawsuit to secure such an accounting.

Sincerely,



C. Nicholas Pereos

CNP/sjm

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EXHIBIT "7"

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CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvitoria

EXHIBIT "7"

LAW OFFICES OF
C. NICHOLAS PEREOS, LTD.
A PROFESSIONAL CORPORATION

SUITE 202
1610 MEADOW WOOD LANE
RENO, NEVADA 89502

TELEPHONE
AREA CODE 775
329-0678

November 1, 2012

VIA CERTIFIED MAIL

Waste Management
of Nevada
Attn: Karen Gonzales
100 Vasser Street
Reno, NV 89502

Re: 347 W. Taylor Street; Acct # 010-0074135-1149-9

Dear Ms. Gonzales:

This letter will acknowledge receipt of your certified mail containing the statement of account in response to my inquiry concerning the delinquency and the liens that you have recorded against the above-referenced property.

In connection with the property at 347 W. Taylor Street, your statement of account indicates no payments commencing on October 1, 2010 through October 1, 2012.

In connection with the 2010 year, you received check number 3891 for \$36.06 on October 2010.

In connection with the 2011 year, you received check number 3950 for \$72.12 (one-half of which was for 345 W. Taylor); 4004 for \$36.06. You were notified of a vacancy of the property effective July. The last quarter bill was paid after occupancy of the property by Check Number 4120 for \$36.06.

In connection with the 2012 year, you received check number 4180 for \$48.08; 4227 for \$36.06; and 4322 for \$36.06.

Accordingly, please correct your records and remove any lien that has been recorded the subject property.

B

Waste Management
November 1, 2012
Page 2

Thank you for your anticipated cooperation.

Sincerely,



C. Nicholas Pereos

CNP/sjm

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LAW OFFICES OF
C. NICHOLAS PEREOS, LTD.
A PROFESSIONAL CORPORATION

SUITE 202
1610 MEADOW WOOD LANE
RENO, NEVADA 89502

TELEPHONE
AREA CODE 775
329-0678

November 1, 2012

VIA CERTIFIED MAIL

Waste Management
of Nevada
Attn: Karen Gonzales
100 Vasser Street
Reno, NV 89502

Re: 345 W. Taylor Street; Acct # 010-0074134-1149-2

Dear Ms. Gonzales:

This letter will acknowledge receipt of your certified mail containing the statement of account in response to my inquiry concerning the delinquency and the liens that you have recorded against the above-referenced property.

In connection with the property at 345 W. Taylor Street, your statement of account indicates no payments commencing on January 1, 2010 through October 1, 2012. The subject property was vacant from January 1, 2010 through April 2010. Thereinafter you received check number 3828 for \$24.04; 3827 for \$36.06; 3882 for \$36.06 in the 2010 year.

In connection with the 2011 year, you received check number 3950 for \$36.06; 4003 for \$36.06; 4066 for \$36.06; 4121 for \$36.06.

In connection with the 2012 year, you received check number 4182 for \$36.06 and then notified the property became vacant February 1, 2012 which means your overpaid for two (2) months. The property remained vacant until July 1, 2012 at which time you received check number 4267 in the amount of \$36.06; and check number 4321 for \$36.06.

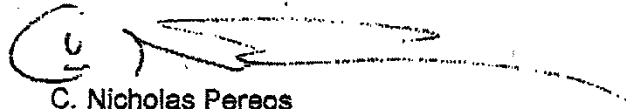
Accordingly, please correct your records and remove any lien that has been recorded the subject property.



Waste Management
November 1, 2012
Page 2

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nicholas Perea", with a long horizontal flourish extending to the right.

C. Nicholas Perea

CNP/sjm

C:\Shared\CLIENTS\Perea Gen Corr CC - Waste management.7.12.wpd

C. Nicholas Perros, Ltd.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

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Certified Fee	\$ 2.95
Return Receipt Fee (Endorsement Required)	—
Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 3.40

Postmark Here: 11/11/12

ATTN: Karen

Street No. 100 Vasser Street
Street, Apt. No. or PO Box No. 100 Vasser Street
City, State, ZIP+4 Reno NV 89502

9525 5940 1000 DECE 9002

See 307 Taylor for original

Attn: Karen Gonzales
Waste Management
of Nevada
100 Vasser Street
Reno, NV 89502

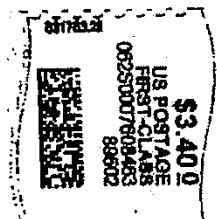
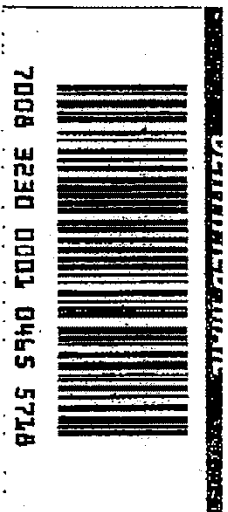


EXHIBIT "8"

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2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvitoria

EXHIBIT "8"



RECEIVED
FEB 24 2014

To whom it may concern,

Please see attached the 2nd lien placed on your property. Please email me to discuss paying your balance and having the both lien's removed from your property.

Thank you,

Kelly Scott

kscott13@wm.com

775.326.2302

Waste Management

100 Yassar St

Reno NV 89502

WTS 0212

JA_1146



DOC # 4177148

11/28/2012 02:44:57 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$17.00 (PTT: \$0.00)
Page 1 of 1

APN #011-288-17
ACCT #010-74134



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 444.620 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#011-288-17

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 \$869.76, no part of which has been paid.

DATED: This 24 day of November 2012

Waste Management of Nevada Inc.

By

KAREN GONZALES

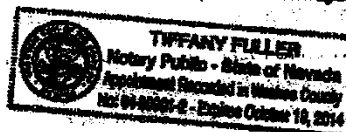
STATE OF NEVADA

COUNTY OF WASHOE)

On the 24 day of November, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledged 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_1147

EXHIBIT "9"

FILED
Electronically
CV12-02995
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Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvitoria

EXHIBIT "9"

B-237

8-9-94
ISA

FIRST AMENDED
CITY OF RENO GARBAGE FRANCHISE AGREEMENT

August This Agreement, made and entered into this *9th* day of 1994, by and between THE CITY OF RENO, a political subdivision of the State of Nevada, hereinafter referred to as "City of Reno", and RENO DISPOSAL CO., a Nevada corporation, hereinafter referred to as "Reno Disposal".

W I T N E S S E T H :

WHEREAS, City of Reno awarded to Reno Disposal an exclusive franchise for the operation of a garbage collection and disposal service for all the incorporated areas of the City of Reno;

WHEREAS, the terms and conditions of said exclusive franchise were incorporated into a written agreement dated March 14, 1983;

WHEREAS, Reno Disposal has exercised an option to extend the term of the franchise and the parties have agreed to redefine the primary term of this franchise agreement;

WHEREAS, the parties have agreed that Reno Disposal should have an option to extend the primary term of the franchise agreement;

WHEREAS, certain terms and conditions of the original franchise agreement no longer apply and the laws relating to the regulation of solid waste have changed since the adoption of the original franchise agreement; and

WHEREAS, the parties desire to restate the franchise agreement, incorporate an option to extend, and incorporate changes which have occurred since the effective date of the Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, and for other valuable consideration the receipt of which is hereby specifically

1.

8-8-94 10:30

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JA 0628

(vii) All multiple dwelling buildings, including but not limited to, duplexes, apartments, condominiums, cooperatives, mobile homes and trailer parks, and any other building or businesses containing multiple dwelling units which buildings are not a single family dwelling unit, and an additional charge for each dwelling unit requesting additional containers or services; provided, however, an owner of a multiple dwelling building or business, by using dumpsters or equivalent containers, may make application to the franchise holder to be charged in accordance with the rates for business establishments.

(viii) Commercial rates shall apply to each business establishment, public building or place, and also buildings of a commercial nature containing dwelling units or living accommodations of a temporary or transient nature, including but not limited to motels, hotels, boarding houses and rooming houses.

(ix) The District Health Officer, upon application of either the franchise holder or any owner requesting service, shall have the power and authority to determine whether the service requested by an individual or business establishment is adequate to prevent the unlawful accumulation of garbage or to prevent a health hazard or nuisance.

5.6 Billing Procedures. Reno Disposal shall be entitled to adopt and enforce the following billing procedures:

(i) The application of residential rates as provided by Reno Municipal Ordinance shall be collected by Reno Disposal whenever there is an accumulation of garbage on the premises as defined by City of Reno Ordinances, regardless

13.

8-8-94 10:30

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JA_0640

of the amount of such accumulation. Reno Disposal may establish procedures for discounting billings to those premises which may be vacant or unused. Such procedures shall be reviewed and approved by the City.

(ii) Billing for residential service shall be in advance for the charges allowed by City Ordinance on a quarterly basis, and such charges shall be due and payable on the first day of each billing period. The bill or charge for residential service shall be delinquent if not fully paid on the last day of each quarterly period.

(iii) The franchise holder shall bill for commercial service in advance on a monthly basis, and such charges shall be due and payable on the first day of each billing period. The bill or charge for commercial service shall be delinquent if not fully paid on the last day of each monthly period.

(iv) In case any person shall fail to pay the charges for residential or commercial service, within 15 days after the same become delinquent, the franchise holder shall be entitled to charge interest on such delinquent accounts at the same rate charged for delinquent sewer fees.

(v) All charges and penalties provided for in the franchise shall constitute a debt and obligation of the owner or reputed owner of the real property upon which is located any single family dwelling, multiple dwelling building, or business establishment as shown on the records of the Washoe County Assessor's Office.

Any owner of real property as shown on the

14.

8-8-94 10:30

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JA_0641

EXHIBIT "10"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "10"

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA;
AND KAREN GONZALEZ,

Appellants,

vs.

WEST TAYLOR STREET, LLC, A
LIMITED LIABILITY COMPANY,

Respondent.

No. 69307

FILED

MAR 01 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

Pursuant to the stipulation of the parties, and cause appearing, this appeal is dismissed.¹ The parties shall bear their own costs and attorney fees. NRAP 42(b).

It is so ORDERED.

CLERK OF THE SUPREME COURT
TRACIE K. LINDEMAN

BY: *[Signature]*

cc: Hon. Connie J. Steinheimer, District Judge
Robert L. Eisenberg, Settlement Judge
Robison Belaustegui Sharp & Low
C. Nicholas Pereos, Ltd.
Washoe District Court Clerk

¹Given this order, we take no action on appellants' response to our January 26, 2016, order to show cause.

SUPREME COURT
OF
NEVADA

CLERK'S .R

(0)-1947-

EXHIBIT "11"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "11"

FILED
Electronically
CV12-02995
2016-07-14 03:47:18 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5609573

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA;
AND KAREN GONZALEZ,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE;
AND THE HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,
Respondents,

and

WEST TAYLOR STREET, LLC,
Real Party in Interest.

No. 70540

CV12-02995

FILED

JUL 13 2016

TRACIE K. LINDEMAN
CLERK OF THE SUPREME COURT
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting a motion for partial summary judgment in a declaratory relief and slander of title action.

Having considered the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). In particular, we are not persuaded by petitioners' explanation as to why an appeal from a final judgment would not afford them an adequate remedy. *Pan*, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.

Cherry

J.

Douglas

J.

Gibbons

J.

SUPREME COURT
OF
NEVADA

(C) 1947A

16-21814

cc: Hon. Connie J. Steinheimer, District Judge
Robison Belaustegui Sharp & Low
C. Nicholas Pereos, Ltd.
Washoe District Court Clerk /

EXHIBIT "12"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "12"



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

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
ksco013@wm.com

DOC # 4381444

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



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

On November 28, 2012, Waste Management of Nevada, Inc., or its affiliates (WMI 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 evidenced 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
LORI VANLANINGHAM

STATE OF NEVADA)

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#011-286-17
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 08:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burrows - 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#011-286-17

On August 8, 2014, the indebtedness evidenced 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

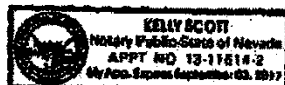
WASTE MANAGEMENT OF NEVADA, INC.

By

Lori VanLaningham
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



DOC # 4381446

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

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

**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. 4068034, 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 evidenced 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 04:12:00 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence 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 # 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.

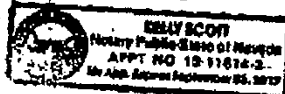
DATED: This 8th day of August 2014

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#011-286-17
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
Lawrence R. Burtness - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



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

Amending Doc # 4381444

On November 28, 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#011-286-17

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

DATE: 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

013065 1171427 0000000 052753 105506 01/05



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 04:12:08 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtress - Recorder
Fee: \$17.00 RPTT: 08.00
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. 4334436, 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

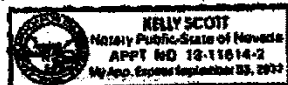
WASTE MANAGEMENT OF NEVADA, INC.

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



DOC # 4334435

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



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

APN#011-286-17
ACCT#010-74134

RECEIVED
3-27-14

**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 #011-286-17

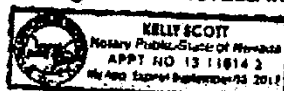
1. The owner(s) or reputed owner(s) of the described real property is/are WEST TAYLOR STREET LLC.
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County 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

WTS 0213

JA_1164

EXHIBIT "13"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvitoria

EXHIBIT "13"

1 **CODE**

2 Mark G. Simons, Esq., NSB No. 5132
3 Therese M. Shanks, Esq. (SBN 12890)
4 **ROBISON, SIMONS, SHARP & BRUST**
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503
8 Telephone: (775) 329-3151
9 Facsimile: (775) 329-7169
10 E: msimons@rssblaw.com
11 and tshanks@rssblaw.com

12 *Attorneys for Waste Management of*
13 *Nevada, Inc.*

14 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

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

16 **WEST TAYLOR STREET, LLC, a limited**
17 **liability company,**

18 **Plaintiff,**

19 **CASE NO.: CV12-02995**

20 **DEPT. NO.: 4**

21 **v.**

22 **STIPULATION AND ORDER**

23 **WASTE MANAGEMENT OF NEVADA,**
24 **INC., KAREN GONZALEZ, and DOES 1**
25 **THROUGH 10,**

26 **Defendants.**

27 **Plaintiff WEST TAYLOR STREET, LLC, ("West Taylor Street") and defendant**
28 **WASTE MANAGEMENT OF NEVADA, INC., by and through its counsel of Robison,**
Simons, Sharp & Brust, hereby stipulate and agree as follows:

1. **West Taylor shall dismiss its second claim for relief for slander of title**
against Waste Management of Nevada, Inc., with prejudice;
2. **Each party shall bear their own fees and costs;**
3. **Judgment shall be entered on this Court's order dated July 28, 2014**
granting in part and denying in part West Taylor's Motion for Partial Summary

1 Judgment;

2 4. Judgment shall be entered on this Court's order dated October 1, 2015,
3 granting in part and denying in part West Taylor's motion for partial summary judgment;
4 and

5 5. Judgment shall be entered on this Court's order dated March 28, 2017,
6 granting in part and denying in part Defendants' motion for partial summary judgment.

7 **AFFIRMATION** (Pursuant to NRS 239B.030). The undersigned does hereby
8 affirm that this document does not contain the social security number of any person.

9 DATED this ____ day of November, 2017.

10
11 ROBISON, SIMONS, SHARP & BRUST
12 A Professional Corporation
13 71 Washington Street
14 Reno, Nevada 89503

15 By: _____
16 MARK G. SIMONS, ESQ.
17 THERESE M. SHANKS, ESQ.
18 Attorneys for Waste Management of Nevada,
19 Inc.

20 IT IS SO ORDERED this ____ day of _____, 2017.

21
22
23
24
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27
28
DISTRICT COURT JUDGE _____

EXHIBIT "14"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "14"

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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Electronically Filed
Jul 20 2018 03:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

WASTE MANAGEMENT OF
NEVADA, INC.

Supreme Court
Case No.: 74876

Appellant,

vs.

WEST TAYLOR STREET, LLC,
Respondent.

Second Judicial District Court
Case No. CV12-02995

APPELLANT'S
OPENING BRIEF

MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
SIMONS LAW, PC
6490 S. McCarran Blvd., #C-20
Reno, Nevada 89509
T: (775) 785-0088
F: (775) 785-0089
Email: mark@mgsimonslaw.com
Attorneys for Appellant

SIMONS LAW, PC
6490 S. McCarran
Blvd., #C-20
Reno, NV 89509
(775) 785-0088

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EXHIBIT "15"

FILED
Electronically
CV12-02995
2020-01-03 02:01:58 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7666856 : yvilorla

EXHIBIT "15"

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA;
AND KAREN GONZALEZ,
Petitioners,

Supreme Court
Case No.: _____

vs.

THE SECOND JUDICIAL DISTRICT
COURT IN AND FOR THE COUNTY OF
WASHOE, and THE HONORABLE
CONNIE STEINHEIMER, DISTRICT
JUDGE,
Respondents,

Second Judicial District Court
Case No. CV12-02995

PETITION FOR WRIT OF
MANDAMUS

and

WEST TAYLOR STREET, LLC,
Real Party in Interest.

MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
THERESE M. SHANKS, ESQ.
Nevada Bar No. 12890
ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
T: (775) 329-3151
F: (775) 329-7941
E: msimons@rbsllaw.com
and tshanks@rbsllaw.com
Attorneys for Petitioners

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

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

13 **WEST TAYLOR STREET, LLC, a limited**
14 **liability company,**

15 **Plaintiffs,**

16 **vs.**

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

20 **Defendants.**

CASE NO.: CV12-02995

DEPT. NO.: 4

**REPLY IN SUPPORT OF MOTION
FOR AWARD OF ATTORNEYS'
FEES AND COSTS**

21 Defendant Waste Management of Nevada, Inc., ("Waste Management") by and
22 through its attorneys Simons Hall Johnston PC, submits the following reply in support of
23 its motion seeking an award of its attorneys' fees and costs.

24 **I. AN AWARD OF ATTORNEY'S FEES AND COSTS IS PROPER.**

25 West Taylor Street, LLC ("WTS") asserted a variety of claims against Waste
26 Management. WTS's premise of its lawsuit is that Waste Management was an uncaring
27 corporation that actively and intentionally sought to harm customers. WTS's lawsuit was
28 nothing more than a personal vendetta by its manager C. Nicholas Pereos. Mr. Pereos

1 claims that WTS was in a unique position to bring this lawsuit because WTS was able to
2 hold Waste Management "accountable." Opp., p. 5:26. WTS points out that Mr. Pereos
3 could "absorb" the time and expense for WTS to invest in holding Waste Management
4 "accountable." Id., p. 6:1-2.

5
6 **A. WTS INVESTED OVER \$100,000 INTO THIS LAWSUIT.**

7 As WTS points out, this lawsuit involved liens totaling \$1,348.25. Opp., p. 5:23.
8 This case was not about resolution of garbage liens, instead this case was about Mr.
9 Pereos' personal vendetta seeking to force Waste Management to engage in costly and
10 time-consuming litigation. For instance, WTS has represented to this Court that Mr.
11 Pereos invested over \$100,000 in attorneys' fees and costs. **Exhibit 5**, WTS's Opposition
12 to Defendant's Motion in Limine, p. 2:22-23.

13
14 WTS's contention that expending over \$100,000 "investing" in a lawsuit where
15 \$1,348.25 was at issue, demonstrates that WTS's motivation for this lawsuit was Mr.
16 Pereos' personal vendetta—not the resolution of a meritorious dispute. Mr. Pereos'
17 vendetta is most aptly described in Mr. Pereos' own words:

18 **[T]his matter was pursued by reason of the willingness of Plaintiff's attorney**
19 **to "call out" Waste Management in its practices.**

20 Id. at p. 5:1-3. This dispute was not about a meritorious claim, instead this dispute was
21 nothing more than a personal vendetta, for which an award of attorney's fees in favor of
22 Waste Management is appropriate and warranted.¹ As demonstrated by the Nevada
23

24
25 ¹ The liens were placed against WTS's property because Mr. Pereos and WTS unilaterally
26 refused to pay for service provided to WTS's duplex claiming the units were vacant at
27 various points in time. The evidence that would have been present at trial demonstrated
28 that WTS's and Mr. Pereos' contentions were baseless and all they were doing was trying
to get free garbage removal service without payment.

1 Supreme Court's Decision, WTS's contentions were baseless, without merit and directly
2 contradicted the express terms of Nevada's garbage lien statutes. See Mot. Exh. 3,
3 Decision.²

4 **B. WASTE MANAGEMENT IS NOT SEEKING "AFFIRMATIVE RELIEF"—IT**
5 **IS SEEKING RECOVERY OF LITIGATION COSTS FORCED UPON IT BY**
6 **WTS.**

7 WTS argues that Waste Management is trying to seek "affirmative relief". Opp., p.
8 2:22-25. WTS's argument fails because Waste Management is not seeking "affirmative
9 relief." Waste Management is seeking to recover its litigation expenses incurred by reason
10 of WTS's baseless claims. An award of attorney's fees in this case is governed by NRCP
11 68, not as a result of any damages sustained by Waste Management for which it seeks
12 "affirmative relief." The Nevada Supreme Court held in Sandy Valley Assocs. v. Sky
13 Ranch Estates Owners Assoc., 117 Nev. 948, 956, 35 P.3d 964, 969 (2001) as follows:
14

15 Procedurally, when parties seek attorney fees as a cost of litigation,
16 documentary evidence of the fees is presented to the trial court, generally in a
17 post-trial motion. . . . Thus, when a court is requested to award attorney fees as a
18 cost of litigation, the matter is decided based upon pleadings, affidavits and
19 exhibits.

18 Id. Accordingly, Waste Management is not seeking "affirmative relief" on any claim,
19 instead, Waste Management is entitled to an award of its attorney's fees and costs
20 incurred in defending against WTS's baseless and vindictive contentions.
21

22 ///

23 ///

24 ///

25 _____
26 ² WTS's counsel also accuses Waste Management of acting improperly in filing the
27 motion around the holidays. WTS's counsel ignores that NRCP 54 mandates specific
28 timelines in which a motion must be filed. Waste Management merely complied with
NRCP 54's timelines when filing the instant motion.

1 **C. THE DOTRINE OF SUBSTANTIAL BENEFIT IS INAPPLICABLE TO THIS**
2 **CASE.**

3 WTS next erroneously argues that the doctrine of "substantial benefit" bars an
4 award of attorney's fees. Opp., pp. 5-6. First, the concept of substantial benefit only
5 applies to a party seeking fees. WTS did not seek fees, therefore the substantial benefit
6 concept does not apply. Second, this concept is inapplicable because no substantial
7 benefit was obtained.

8 With regard to the first contention, WTS wrongfully asserts that the doctrine of
9 "substantial benefit" it not an "exception" to an award of attorney's fees. It is instead an
10 exception to the American rule that attorneys' fees are only recoverable if authorized by
11 contract, rule or statute. Accordingly, the substantial benefit doctrine provides an
12 additionally judicially created basis for an award of attorney's fees to a successful party.
13 This doctrine, and its limited application, was discussed in Thomas v. City of N. Las
14 Vegas, 122 Nev. 82, 90-91, 127 P.3d 1057, 1063-64 (2006) wherein the Nevada
15 Supreme Court held:
16 Supreme Court held:

17 Nevada follows the American rule that attorney fees may not be awarded
18 absent a statute, rule, or contract authorizing such award.¹⁰ A judicially created
19 exception to the American rule is the substantial *91 benefit doctrine.¹¹ This
20 doctrine allows recovery of attorney fees when a successful party confers " "a
 substantial benefit on the members of an ascertainable class

21 Id. Waste Management is not seeking an award of attorney's fees under the substantial
22 benefit doctrine. Waste Management is seeking an award of its attorney's fees under
23 NRCP 68's provision.

24 With regard to WTS's second contention, even if the doctrine of substantial benefit
25 applied (which it doesn't) WTS did not achieve a substantial benefit for an "ascertainable
26 class." As WTS points out, this lawsuit involved liens totaling \$1,348.25. WTS's claims
27 class." As WTS points out, this lawsuit involved liens totaling \$1,348.25. WTS's claims
28

1 all failed and were rejected by the Nevada Supreme Court in its Decision. Accordingly, a
2 dispute over the amount of \$1,348 that fails does not achieve a substantial benefit.

3 **D. WASTE MANAGEMENT IS NOT OVERREACHING.**

4 WTS argues that Waste Management is overreaching because it submitted a
5 request for fees prior to November 10, 2017. Opp., p. 4:15. This statement is not true.
6 Waste Management's request for fees are all based upon fees incurred after the date the
7 Offer was served. See Mot., Exh. 4.
8

9 Waste Management agrees that the parties agreed to bear their own fees and
10 costs associated with the initial appeal, however, that process concluded on March 1,
11 2016. See **Exhibit 6**, Stipulation for Dismissal of Appeal. This stipulation was expressly
12 limited to the initial appeal and did not address the merits of the underlying action. Id., p.1
13 (*citing* NRCP 42(b) which requires express statement as to handling of the costs and
14 attorney's fees on the appeal only).³
15

16 Waste Management's Offer was subsequently served on July 27, 2017, and
17 related to the ongoing action in the district court. No subsequent stipulations were ever
18 entered and/or agreed upon. While WTS attaches an unsigned proposed stipulation
19 relating solely to the slander of title claim, this stipulation was never agreed upon or
20 signed by the parties, therefore it cannot be considered by this Court.⁴ As such, it is
21

22
23 ³ NRAP 42(b) states: "**Dismissal in the Supreme Court or Court of Appeals.** The
24 clerk may dismiss an appeal or other proceeding if the parties file a signed dismissal
agreement specifying how costs are to be paid and pay any fees that are due."

25 ⁴ See District Court Rule 16 ("**Stipulations to be in writing or to be entered in court**
26 **minutes.** No agreement or stipulation between the parties in a cause or their attorneys,
27 in respect to proceedings therein, will be regarded unless the same shall . . . be in writing
subscribed by the party against whom the same shall be alleged, or by his attorney."
28 (emphasis added)).

1 inapplicable to the Offer and Waste Management's entitlement to an award of fees
2 pursuant to NRCP 68.

3 **E. THE OFFER IS NOT DEFICIENT.**

4 WTS next argues that the Offer is deficient because the rule only applies when a
5 party obtains a "judgment". WTS then argues that because Waste Management did not
6 obtain a "judgment" it cannot recover attorney's fees. WTS's argument is again wrong.
7 The rule states that because WTS itself did not obtain a more favorable judgment then
8 the one offered by Waste Management, WTS is therefore liable for Waste Management's
9 attorney's fees and costs. Whether or not Waste Management obtained a judgment or a
10 dismissal or was successful on appeal are all irrelevant. The only consideration is did
11 WTS do better than the Offer? It did not, therefore, it is liable for Waste Management's
12 fees and costs.
13

14 While WTS refers to the case of Frazier v. Drake, 131 Nev. 632, 641, 357 P.3d
15 365, 371 (Nev. Ct. App. 2015), WTS misconstrues the holding of this case. An
16 understanding of Frazier again mandates the granting of Waste Management's motion
17 because the Frazier Court explained:
18

19 If the party to whom the offer is made rejects it and then fails to obtain a more
20 favorable judgment at trial, the district court may order that party to pay the offeror
21 "reasonable attorney fees."

22 Id. The Offer was made to WTS. WTS failed to "obtain a more favorable judgment."
23 Therefore, WTS is liable for Waste Management's attorney's fees and costs.

24 ///

25 ///

26 ///

27 ///

1 WTS also cites to two unpublished decisions by the Nevada Court of Appeals in
2 support of its erroneous argument.⁵ However, WTS is not ethically allowed to cite to
3 these unpublished decisions for controlling or even persuasive value. See NRAP 36(c)(3)
4 (only allowed to cite to unpublished decisions of the Nevada Supreme Court on or after
5 January 1, 2016). Accordingly, Waste Management will not address the contentions
6 asserted by WTS.

8 **E. THE REQUESTED FEES ARE NOT DUPLICATIVE.**

9 Lastly, WTS argues that the requested fees are duplicative. However, other than a
10 generalized statement, WTS does not show in any way how the fees were duplicative
11 and/or which alleged fees were duplicative. WTS merely claims that because there is a
12 similarity in the “topic areas” of Waste Management’s Opening Brief and its Writ of
13 Mandamus, this means that there was duplicate billing. Opp., p. 5:5-7. Waste
14 Management agrees that there were similarities in the topic areas, however, similarities in
15 the topic area does not equate to duplicative billing practices. Demonstrating the fallacy
16 of WTS’s argument, Waste Management’s Opening Brief was almost twenty (20) pages
17 longer than its Writ Petition and included more arguments and more analysis—which
18 research and drafting obviously required more time to be expended by Waste
19 Management’s counsel.

22 **II. THIS COURT IS BOUND BY THE NEVADA SUPREME COURT’S DECISION
23 WHEN CONSIDERING THE AWARD OF ATTORNEY’S AND COSTS UNDER
NRCP 68.**

24 The Nevada Supreme Court reversed and remanded this Court’s interpretation of
25

26
27 ⁵ Green v. Buchanan, Nev. Ct. App., December 11, 2017 and Berberich v. S. Highlands,
28 Nev. Ct. App., December 10, 2016).

1 NRS 444.520 and found that WTS's arguments were baseless and that this Court
2 erroneously granted summary judgment in favor of WTS based upon an incorrect
3 interpretation of NRS 444.520. Mot., Exh. 3. The Nevada Supreme Court then found that
4 NRS 444.520(3)'s provisions were "clear on its face" and then applied the statute
5 according to its "plain meaning." Id., p. 4.

6
7 In finding that WTS's arguments were baseless and premised upon an incorrect
8 interpretation of NRS 444.520, the Nevada Supreme Court held:

9 [T]he district court erred in incorporating into NRS 444.520 the perfections
10 requirements under the mechanics' lien statute as outlined in NRS 108.226, which
11 is separate from NRS 108.239's foreclosure procedure. . . . under the plain
12 language of the garbage lien statute, the perfection requirements of the mechanics'
13 lien statute, or any other requirements that do not involve the foreclosure of a
14 mechanics' lien, are not incorporated. The district court erred when it incorporated
15 anything beyond NRS 108.239 into the garbage lien statute. Accordingly, we hold
16 that the district court erred in concluding that Waste Management needed to record
17 its lien within 90 days of completing the work in accordance with NRS 108.226,
18 and we reverse the district court's order on this ground.

19 Id., p. 5. In addition, the Nevada Supreme Court found that WTS's argument seeking to
20 apply a statute of limitations to the foreclosure of the garbage lien was entirely improper
21 because: "a garbage lien is perpetual, it is not subject to a statute of limitations." Id., p. 8.
22 The Nevada Supreme Court then reversed and remanded for further proceedings in this
23 Court "consistent with [the Decision]." Id., p. 9.

24 This Court's determination of the baseless and meritless nature of WTS's claims
25 are governed and controlled by the Decision. WTS desperately seeks to claim that its
26 claims were brought in good faith because this Court initially ruled in its favor. Opp., p.
27 11:17-18. However, that is not the standard for review of Waste Management's Motion.
28 The Motion must be considered in context of the Decision, since the case was reversed
and remanded with instructions that all "further proceedings" must be "consistent with" the

1 Decision. Accordingly, the basis of WTS's contentions must be viewed on context of the
2 Nevada Supreme Court finding that WTS's arguments contradicted the "plain language"
3 of the statute, which statute was "clear on its face." Further, WTS's arguments that a
4 statute of limitations applied to garbage liens was legally baseless since the garbage liens
5 were perpetual.
6

7 WTS's claims were all premised on the "legal" contention that the statute was
8 ambiguous. See Order dated July 28, 2014, granting summary judgment in WTS's favor,
9 p. 3:5 (no questions of fact and statutory interpretation solely an issue of law). Merely
10 because this Court incorrectly determined that WTS's argument that NRS 444.520 was
11 ambiguous, does not equate to WTS's arguments being pursued in good faith. The
12 Decision details that WTS's arguments were baseless, legally unsupportable and
13 contradicted the "plain meaning" of the statutes. The Decision rejected in total each and
14 every argument presented by WTS finding that the claims had no legal support.
15 Consequently, in this setting, it is clear that WTS's claims were not pursued in good faith
16 but instead to pursue a vendetta against Waste Management seeking to force Waste
17 Management to incur substantial attorney's fees and costs over \$1,348 in dispute.
18

19 **III. CONCLUSION.**
20

21 Waste Management is entitled to an award of \$69,115.25 for attorneys' fees
22 incurred after it served its Offer on WTS. WTS failed to obtain a better judgment against
23 Waste Management, therefore, Waste Management's motion must be granted as
24 requested. Waste Management's requested fees and costs are obviously reasonable
25 given that the requested amounts are substantially less than the \$100,000 "invested" by
26 Mr. Pereos into this litigation.
27
28

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1 **AFFIRMATION:** This document does not contain the social security number of any
2 person.

3 DATED this 6th day of January, 2020.

4 SIMONS HALL JOHNSTON PC
5 6490 S. McCarran Blvd., Ste. F-46
6 Reno, NV 89509

7 By: 
8

9 MARK G. SIMONS
10 Attorneys for Waste Management of Nevada, Inc.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS** on all parties to this action by the method(s) indicated below:


☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

C. Nicholas Pereos, Esq.
Attorneys for West Taylor Street, LLC

DATED this 6 day of Jan, 2020
~~December, 2019.~~


Employee of Simons Hall Johnston PC

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
5	Opposition to Defendant's Motion in Limine	16
6	Stipulation for Dismissal of Appeal	3

EXHIBIT 5

EXHIBIT 5

1 CODE: 2645
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7 ATTORNEYS FOR PLAINTIFF

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 *****

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

Case No. CV12 02995

15 Plaintiff,

Dept. No. 4

16 vs.

Trial Date: October 16, 2017

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

20 Defendants.
21 _____/

22 OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

23 **A. STATEMENT OF FACTS**

24 This case arises by reason of the recording of three liens against the property
25 owned by the Plaintiff. Two liens were recorded against the property at 345 W. Taylor and
26 one lien was recorded against the property at 347 W. Taylor. The first lien was recorded
27 on February 23, 2012 as document #4086834 and affected 347 W. Taylor for unpaid
garbage fee in the amount of \$489.47. The second lien was recorded on November 21,
2012 as document #474177148 and affected 345 W. Taylor in the amount of \$859.78 for
unpaid garbage fee. The third lien was recorded on March 14, 2014 as document
#43343635 in the amount of \$404.88. After Defendant refused to release the liens, this
lawsuit was commenced seeking relief from the Court in connection with the recording of

1 these liens. One of the claims in this lawsuit was that the liens were improperly filed and
2 that Plaintiff through its counsel requested the removal of the liens which did not happen.
3 Another claim was that Defendant had abused its authority given the monopoly that it had
4 in connection with collection of garbage and the right to record liens with no remedy
5 afforded to the Plaintiff or any other property owner.

6 The property is a rental duplex. There are times the property is vacant and Waste
7 Management was notified of the same without a need for disposal services. Despite
8 acknowledging these notices, Waste Management continued to bill and send invoices to
9 the Plaintiff as if it was still occupied and then demands collection of the monies. The
10 request for correction fell on deaf ears. Meanwhile, Waste Management does nothing in
11 connection with addressing this issues necessitating the filing of the lawsuit.

12 After the filing of this lawsuit, the Plaintiff filed it's first motion for Partial Summary
13 Judgement on March 11, 2014. After extensive briefing, oral arguments and a Motion to
14 Reconsider, the court entered its order for Partial Summary Judgement on July 28, 2014
15 and proceeded to deny the Motion to Reconsider. Defendant acknowledges that there
16 were three liens recorded against the subject property and then proceeded to release
17 those liens against the property several years after filing the lawsuit.

18 By the time the Defendant elected to remove the two liens the Plaintiff had already
19 invested approximately \$65,000 in attorneys fees and costs. The claim now remaining is
20 Slander of Title and the damages beings sought in the Slander of Title claim are attorney
21 fees and costs. There has been no meaningful discussion in connection with this claim.
22 The claim has now swelled with costs and attorney fees to the approximate amount of
23 \$100,000. The billing rate of Plaintiff's counsel in this claim has been at \$400 per hour
24 which is substantially below market value given the degree of experience and the years of
25 practice by counsel. A review of the file will provide an explanation and justification of that
26 claim which does not include the petition before the Supreme Court pursued by Defendant,
27 and discovery.

1 **B. ARGUMENT**

2 The facts will demonstrate that Pereos had no direct verbal communications with
3 Waste Management. The extent of its communications with Waste Management in these
4 proceedings were letters acting in a representative capacity for the Plaintiff. At no time did
5 Pereos have any verbal communications with Waste Management. The evidence will
6 reflect that Teri Morrison, named witness working for the Plaintiff for Pereos for 15+ years,
7 communicated with Waste Management. Teri Morrison notified Waste Management of
8 vacancies and occupancies. She created the accounts with Waste Management in
9 connection with this property and other properties held by the two Trusts. Pereos is the
10 Grantor of the 1980 Pereos Trust and the 2004 Pereos Trust which Trusts are property
11 holding trusts. The 2004 Pereos Trust own the Plaintiff. Teri Morrison exclusively deals
12 with Waste Management when there are issues regarding servicing the accounts of this
13 property and any other property. She prepares the rent rolls which identifies when a
14 property is occupied and vacant. She files and posts the paid bills on the property to
15 include Waste Management. She prepares a check register for the checks showing
16 payment of the bills. Albeit, Pereos writes the checks for the payment of the bills and
17 confirms payment but they are then processed by Teri Morrison. She notifies Waste
18 Management of any disputes on payment of the bill and resolves the issues regarding
19 those disputes. Pereos does not perform any of these functions. Furthermore, Pereos has
20 no financial interest in the Plaintiff. Pereos is not a party to this litigation. Pereos has no
21 verbal communication with Waste Management on this property or any other properties.
22 In other words, Pereos does not open or close accounts with Waste Management. Pereos
23 does not notify Waste Management of vacancies or occupancies. Pereos is not a property
24 manager. Pereos has no verbal interactive experiences with Waste Management. Pereos
25 never created accounts with Waste Management. Pereos has never resolve a dispute with
26 Waste Management other than letter writing. The one with the experience with Waste
27 Management is Teri Morrison.

1 This case involves the justification, if any, in connection with the recording of the
2 liens. It is not a comparative negligence case. It has nothing to do with the personal
3 actions of Pereos in connection with representing his client or performing any functions
4 with other properties. Any attempt to go into that territory by Defense counsel would be
5 to create a smoke screen to confuse the jury regarding the issues to be decided in this
6 case.

7 Pereos has lived with this case from its beginning. He knows the theories of the
8 lawsuit. He has pursued discovery and depositions. He has the same wealth of
9 knowledge regarding this case as does the Trial Judge who has also been living with this
10 case from its inception. That factor coupled with the extensive commercial litigation
11 experience of Plaintiff's attorney (admitted to the bars of Colorado, Nevada and California
12 starting in 1970 and practicing as a real estate and commercial litigation lawyer since 1975
13 after departure from the District Attorney's office and personal injury defense firms)
14 coupled with his knowledge of the case can not be duplicated by attorney Douglas
15 Fermoile who will be assisting in the presentation of the case once Plaintiff's attorney
16 testifies as to attorney fees and costs.

17 Although Plaintiff's counsel recognizes that there are many abuses by trial lawyers
18 in our legal system, the mature trial lawyers recognize that the law has a therapeutic effect
19 and this case is typical exemplification of that application! Some of us older lawyers
20 remember the Pinto car manufactured by Ford and the Corvair car manufactured by
21 Chevrolet. Both of those cars are no longer on the market as they were deemed to be
22 "death traps" by their design and handling. They were removed from the market by the
23 concerted activities of trial lawyers and a consumer advocate known as Ralph Nader.
24 Pinto cars were exploding upon rear impact by reason of the placement of the gas tank in
25 the back of the car and the Corvairs were highly unstable on the road at high speed.
26 Another recent exemplification of the therapeutic effect of lawsuits is the metal shrapnel
27 upon exploding air bags manufactured by Takata after accidents resulting in the massive

1 recall that has now occurred by reason of the same. In this case, this matter was pursued
2 by reason of the willingness of Plaintiff's attorney to "call out" Waste Management in its
3 practices. As a result, Waste Management has changed their franchise agreement with
4 the City of Reno and does not pursue liens. Now the time has come to determine if Waste
5 Management is to be held accountable for its actions and it now seeks through this motion
6 to excuse its wrongful activity which has been demonstrated by the voluntary removable
7 of the lien two years later.

8 The one dealing with Waste Management is Teri Morrison. She is the one that
9 prepares the rent rolls for the month for rent being collected. She is the one who has
10 knowledge the accuracy of the vacancy schedule. She is the one that contacts Waste
11 Management regarding garbage services when the property is occupied or rented. She
12 is the one that posts checks for payments to Waste Management. She is the one who
13 speaks to the representative of Waste Management. In fact, there is no evidence that
14 Plaintiff's counsel spoke to anyone from Waste Management.

15 Teri Morrison will testify regarding the letters that were prepared and mailed to
16 Waste Management after signed by Plaintiff's counsel. Plaintiff acknowledges that he
17 must testify if the jury is to decide damages, to wit, the attorneys fees incurred in the
18 Slander of Title action as opposed to the Judge deciding the quantitative amount of those
19 attorneys fees although Plaintiff is prepared to submit the matter to the Trial Judge.

20 The trial will proceed in the following manner: Voire Dire, Opening Statements,
21 Plaintiff's direct case, Defendant's direct case, Closing Arguments, Deliberation. The
22 testimony of the Plaintiff's attorney will be in their direct case. Thereinafter, Douglas
23 Fermoile will act as lead counsel and argue the case in closing. By then, he would have
24 been educated to the same degree as the Trial Judge on the case. Should Plaintiff's
25 counsel be removed to all aspects and all stages of this case, the legal fees will swell
26 tremendously given the need to educate attorney Douglas Fermoile as to the theme of the
27 case coupled with the deposition testimony of the witnesses and its legal theories. The

1 only justification for the removal of Plaintiff's counsel is to create another roadblock to
2 Plaintiff in the pursuit of this case and to punish Plaintiff. In other words, this case will flow
3 smoothly without the removal of Plaintiff's counsel given the role of attorney Fermoile. In
4 connection with the claim of attorneys fees this Court can oversee the quantitative amount
5 of the attorneys fees as being reasonable even with the jury to determine the right to
6 recover attorneys fees. In fact, Plaintiff's counsel is prepared to waive the jury to avoid any
7 issues of confusion and/or submit the issue of attorney fees to the Court for a quantified
8 determination.

9 The vacancy schedule delivered to Defense counsel is a calendar summation of the
10 rent rolls which is its source material. Similarly, Teri Morrison will testify concerning the
11 payments to Waste Management. Once again, foundation comes from Teri Morrison and
12 a Bank Representative in connection with the payments. It is not unusual for attorneys to
13 prepare summations and compilations to ease understanding of information for the jury as
14 long as a foundation is made by a witness. In connection with the Court procedures, Voire
15 Dire is not advocacy it is designed to secure an impartial jury. The Opening Statement is
16 not advocacy it is designed to alert the jury of the evidence to be introduced. The
17 testimony of the witnesses in Plaintiff's Case in Chief presents the facts to the jury.
18 Thereinafter, Douglas Fermoile will act as lead counsel advancing the case in Closing
19 Arguments. Merely because Defendant alleges that Pereos is a "prime witness" does not
20 create a basis to exclude Pereos as the attorney for the Plaintiff. As referenced in the case
21 of *Dimartino v Eight Judicial District Court*, 119 Nev. 119, 66 P.3d 945 (2003), Defendant
22 should not be allowed to disqualify Plaintiff's counsel simply by stating that they will
23 examine him as a witness. In *Warrilow v Norrell*, 791 S.W.2d 515 (Tex. App. 1989) the
24 Court observed that the disqualification of attorney sought to be called as a witness by the
25 opposing party is subject to a more stringent standard because a litigant may call his or her
26 opponent attorney as a trial tactic seeking to disqualify the attorney from the case. *Id.* at
27 Page 521.

1 Rule 3.7 of RPC derives from SCR 178. The rule provides that an attorney can act
2 as a trial advocate in connection with testimony relating to the nature and value of legal
3 services rendered in the case or should the disqualification of the lawyer render substantial
4 hardship on the client. In other words, testimony regarding legal services does not prevent
5 the attorney from acting as an advocate. Furthermore, if the disqualification of the lawyer
6 results as substantial hardship to the client, it too does not act as a basis to disqualify the
7 lawyer. Notwithstanding these two exceptions to Rule 3.7, Pereos engaged Douglas
8 Fermoile so as to assist. In *Dimartino v Eighth Judicial District Court*, 119 Nev. 119, 66
9 P.3d 945 (2003) our Supreme Court observed that the potential for abuse is obvious.
10 Interpreting SCR 178 to permit total disqualification would invite the rules misuse as a
11 tactical ploy. *Id.* at Page 121. Pereos has no financial interest in Plaintiff's corporation. In
12 discovery, Pereos has acknowledged that the only claim for damages arises from this
13 lawsuit is the attorney fees. In other words, there is no claim for damages by the Plaintiff
14 other than to reimburse attorney fees which clearly falls within the purpose of Rule 3.7
15 exception.

16 In *Estate of Bowlds v. American Cancer Society*, 102 P.3d 593 (2004), the court
17 noted that an attorney may continue to act as an advocate in a lawsuit even though he is
18 going to testify regarding his or her fees.

19 Other Nevada cases, while not addressing conflicts under RPC 3.7 or former
20 SCR 178, provide guidance concerning the disqualification of counsel as trial advocates
21 for their clients. In *Brown v. Eighth Judicial Dist. Court ex. rel. Cty. Of Clark*, 116 Nev.
22 1200, 14 P.3d 1266 1269-70 (2000), a case discussing the disqualification of counsel
23 under former SCR 160, the court stated:

24 District courts are responsible for controlling the conduct of attorneys
25 practicing before them, and have broad discretion in determining whether
26 disqualification is required in a particular case. See *Robbins v.*
27 *Gillock*, 109 Nev. 1015 1018, 862 P.2d 1195, 1197 (1993); *Cronin v.*
District Court, 105 Nev. 635, 640, 781 P.2d 1150, 1153 (1989).
Courts deciding attorney disqualification motions are faced with the
delicate and sometimes difficult task of balancing competing interests: the
individual right to be represented by counsel of one's choice, parties

1 should not be allowed to misuse motions for disqualification as
2 instruments of harassment or delay. See *Flo-Con Systems, Inc. v.*
3 *Servsteel, Inc.*, 759 F.Supp. 456, 458 (N.D.Ind.1990).

4 When considering whether to disqualify counsel, the district court
5 must balance the prejudices that will inure to the parties as a result of its
6 decision. *Cronin*, 105 Nev. at 640, 781 P.2d at 1153. To prevail on a
7 motion to disqualify opposing counsel, the moving party must first
8 establish "at least a reasonable possibility that some specifically
9 identifiable impropriety did in fact occur," and then must also establish that
10 "the likelihood of public suspicion or obloquy outweighs the social
11 interests which will be served by a lawyer's continued participation in a
12 particular case." *Id.* at 641, 781 P.2d at 1153 (quoting *Shelton v.*
13 *Hess*, 599 F.Supp. 905, 909 (S.D.Tex.1984)).

14 It is interesting to observe the balancing test suggested hereinabove. Defense
15 counsel must show a reasonable possibility that some specifically identifiable
16 impropriety has occurred! This concept was reinforced in the case of *Hernandez v*
17 *Guigliemo*, 796 F.Supp.2d 1285 (D. Nev. 2011) wherein the Court observed that
18 Defense counsel bears the burden of establishing an ethical violation or other factual
19 predicate upon which the motion depends. Disqualification is a drastic measure which
20 Court should hesitate when posed except when absolutely necessary!

21 Similarly, in *Robbins v. Gillock*, 109 Nev. 1015, 1018, 862 P.2d 1195, 1197 (1993),
22 addressing SCR 159, the court held:

23 The burden of proving whether [the rule applies] falls on the party moving
24 for disqualification and that party must have evidence to buttress the claim
25 that a conflict exists. *Commonwealth Ins. Co. v. Graphix Hot Line, Inc.*,
26 808 F.Supp. 1200, 1204 (E.D.Pa.1992); *Satellite Fin. Planning v. 1st Nat.*
27 *Bk. Wilmington*, 652 F.Supp. 1281, 1283 [109 Nev. 1018] (D.Del.1987).

Other jurisdictions also set strong limitations on the disqualification of counsel. In *Nuri*
v. PRC, Inc., 5 F.Supp. 2d 1299, 1303-4 (D. Ala. 1998) the court examined case law
from multiple jurisdictions:

Disqualification is always a drastic measure, which courts should hesitate
to impose except when absolutely necessary. See, e.g., *Owen v.*
Wangerin, 985 F.2d 312, 317 (7th Cir.1993); *Metrahealth Ins. Co. v.*
Anclote Psychiatric Hosp., 961 F. Supp. 1580, 1582 (M.D.Fla.1997) ("The
disqualification of one's chosen counsel is an extraordinary measure that

1 should be resorted to sparingly."). Because of the impact a motion to
2 disqualify has on the party losing her counsel, the moving party is held to
3 a high standard of establishing the basis of the motion, and the need for
4 disqualification. See, e.g., *Plant Genetic Sys.*, 933 F. Supp. at 517
5 ("Disqualification is a serious matter which cannot be based on imagined
6 scenarios of conflict, and the moving party has a high standard of proof to
7 meet in order to prove that counsel should be disqualified."); *English*
8 *Feedlot, Inc. v. Norden Laboratories, Inc.*, 833 F. Supp. 1498, 1506
9 (D.Colo.1993) ("The moving party has the burden of showing sufficient
10 grounds for disqualification.... Specific facts must be alleged and counsel
11 cannot be disqualified on the basis of speculation or
12 conjecture...."); *Tessier*, 731 F. Supp. at 729 (E.D.Va.1990) ("The Court is
13 also aware that the disqualification of a party's chosen counsel is a
14 serious matter which cannot be based on imagined scenarios of
15 conflict."). Other means of addressing a violation short of disqualification
16 are available to the court like exclusion of ill-gotten evidence and should
17 be used when appropriate. See, e.g., *University Patents, Inc. v.*
18 *Kligman*, 737 F. Supp. 325, 329 (E.D.Pa.1990) ("the court is satisfied that
19 the circumstances warrant precluding the defendants from introducing any
20 information obtained through Mr. Morrison's *ex parte* contacts with
21 persons whose statements could bind the University.").

22 Finally, because a motion for disqualification is such a "potent weapon"
23 and "can be misused as a technique of harassment," the court must
24 exercise extreme caution in considering it to be sure it is not being used to
25 harass the attorney sought to be disqualified, or the party he
26 represents. See, e.g., *Kitchen v. Aristech Chem.*, 769 F. Supp. 254, 256-
27 57 (S.D. Ohio 1991); see also *Developments in the Law: Conflict of*
28 *Interest in the Legal Profession*, 94 Harv.L.Rev. 1244, 1285 (1981)
29 ("Lawyers have discovered that disqualifying counsel is a successful trial
30 strategy, capable of creating delay, harassment, additional expense, and
31 perhaps even resulting in the withdrawal of a dangerously competent
32 counsel.").

33 In *Zurich Ins. Co. v. Knotts*, 52 S.W.3d. 555,559-60 (S.Ct. Kentucky 2001), a case
34 addressing the disqualification of counsel under of RPC 3.7, the court ruled:

35 Disqualification is a drastic measure which courts should be hesitant to
36 impose except when absolutely necessary. See *University of Louisville v.*
37 *Shake, Ky.*, 5 S.W.3d 107 (1999). Disqualification separates a party from
38 the counsel of its choice with immediate and measurable effect. Here,
39 attorney Franklin has lived through the previous litigation from its inception
40 and has in his memory, or at his fingertips, knowledge of the case no one
41 else could duplicate. Moreover, regardless of the level of competency of a
42 successor attorney, the degree of confidence and trust that has
43 developed between the Knottses and Franklin cannot be replaced.

44 In *Warillow v Norrell*, 791 S.W.2d 515 (Tex. App. 1989), the Court addressed the
45 issue of disqualification of counsel and observed that a skilled cross-examining attorney

1 could sufficiently test the credibility of any lawyer who is a witness observing that a
2 lawyer that is a witness is readily impeachable because of his interest in the outcome of
3 the litigation. As stated above, Pereos has no financial interest in Plaintiff's corporation.
4 The Warrilow Court noted that disqualification of an attorney sought to be called as a
5 witness for the opposing party is subject to a more stringent standard because "a
6 litigant may call his or her opponent's attorney as a trial tactic, seeking to disqualify the
7 attorney from the case." *Id.* at 521, n.7^[3] (citing *Jones v. City of Chicago*, *supra*); see
8 also *General Mill Supply Co. v. SCA Services, Inc.*, 697 F.2d 704 (6th Cir.1982).
9 Similarly, in *Gilbert McClure Enterprises v. Burnett*, 735 S.W.2d 309 (Tex.App.1987), the
10 Texas Court of Appeals again held that the mere announcement by an adversary of his
11 intention to call opposing counsel as a witness is insufficient to warrant counsel's
12 disqualification. "There must be a genuine need for the attorney's testimony, which
13 should be material to the movant's case as well as prejudicial to the interests of the
14 attorney's client" *Id.* at 311. (internal citations omitted); see also *Sargent County*
15 *Bank v. Wentworth*, 500 N.W.2d 862 (N.D.1993); *Cottonwood Estates, Inc. v. Paradise*
16 *Builders, Inc.*, 128 Ariz. 99, 624 P.2d 296 (1981)

17 Notwithstanding, disqualification is a drastic measure which courts should be
18 hesitant to impose except when absolutely necessary. See *University of Louisville v.*
19 *Shake*, Ky., 5 S.W.3d 107 (1999). Disqualification separates a party from the counsel of
20 its choice with immediate and measurable effect. Here, attorney Franklin has lived
21 through the previous litigation from its inception and has in his memory, or at his
22 fingertips, knowledge of the case no one else could duplicate. Moreover, regardless of
23 the level of competency of a successor attorney, the degree of confidence and trust that
24 has developed between the Knottses and Franklin cannot be replaced. Warrilow (*Id.*)

25 However, the showing of prejudice needed to disqualify opposing counsel must
26 be more stringent than when the attorney is testifying on behalf of his own client,
27 because adverse parties may attempt to call opposing lawyers as witnesses simply to

1 disqualify them. Consequently, Zurich has failed to demonstrate that: (a) Franklin's
2 testimony is important to its proof at trial; (b) there is any probability that Franklin's
3 testimony will conflict with that of other witnesses; and (c) the information contained in
4 Franklin's affidavit is unattainable from other sources. It is Zurich who seeks to call him
5 as a witness. While such is permissible, it does not, and should not, result in Franklin's
6 disqualification. Warrilow (*Id.*)

7 This analysis clearly applies to the present case. Pereos has dealt with this case
8 "from its inception and has in his memory, or at his fingertips, knowledge of the case no
9 one else could duplicate." Further, Defendant is unquestionably attempting to use RPC
10 3.7 "as a tactical weapon for expense, delay [and] inconvenience. . ." by trying to bar
11 Pereos from acting as trial advocate this close to trial. Defendant's Motion is based
12 solely on its claim that "Pereos is the Plaintiff's primary witness in this action."
13 (Defendant's Motion in Limine p.3, line 2.) This claim is false. Plaintiff's main witness
14 will be its employee, Teri Morrison, who was the person who communicated with
15 Defendant, will testify concerning her contacts with Defendant, the rent rolls and
16 vacancy schedule for the property in question, and the cancelled checks showing all
17 payments made to Defendant during the dates cited by Defendant as the lien periods.
18 Pereos, who never spoke to any employee or representative of Defendant.

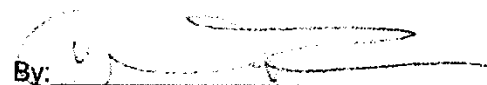
19 In truth, Pereos is going out of his way to avoid confusing a jury or causing
20 prejudice to Defendant's case by having attorney Fermoile advocate the case in the
21 Closing Arguments after Pereos's testimony. RPC 3.7 does not require either
22 disqualification or substitution of counsel after counsel has testified concerning his or
23 her fees in a case. To require Pereos to entirely withdraw as counsel at this point in the
24 case would clearly work a substantial hardship on Plaintiff by requiring the expenditure
25 of even more attorney's fees and costs going into trial. In its Motion, Defendant does
26 not even attempt to show a balance of interests between the parties or identify any
27 "confusion and prejudice" that would result from Pereos acting as trial advocate in this

1 case. DiMartino, supra. Accordingly, Defendant has failed to meet the burden of proof
2 required to disqualify Pereos from acting as trial advocate under RPC 3.7.

3
4 **AFFIRMATION**

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

7
8 DATED this 13 day of September, 2017 C. NICHOLAS PEREOS, LTD.

9
10
11 By: 
12 C. NICHOLAS PEREOS, ESQ.
13 1610 MEADOW WOOD LANE, STE. 202
14 RENO, NV 89502
15 ATTORNEY FOR PLAINTIFF
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1 CERTIFICATE OF SERVICE

2
3 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I
4 am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I
5 caused to be served a true copy of the foregoing pleading on all parties to this action by
6 the methods indicated below:

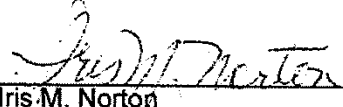
7 I deposited for mailing at Reno, Nevada, a true copy of the foregoing document
8 addressed to:

9 Douglas K. Fermoile, Esq.
427 Ridge Street, Suite B
10 Reno, NV 89501
Attorney for West Taylor Street, LLC

11
12 I electronically filed the foregoing with the Clerk of the Court by using the
CM/ECF system which served the following parties electronically:

13 ROBISON, SIMONS, SHARP & BRUST
14 Mark G. Simons, Esq.
Attorneys for Waste Management
15 *and Karen Gonzalez*

16 DATED: 9/13/17

17 
18 Iris M. Norton

SCHEDULE OF EXHIBITS

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Exhibit "1" Sample Rent Roll

Exhibit 1

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2017-09-13 01:43:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6297499 : pmsewell

Exhibit 1

BROWNSTONE RENT COLLECTION ROLL FOR JANUARY 2007

345 W. Taylor	VACANT	2 BR					
347 W. Taylor	Jeremy Hampton Cell 813-4323	2BR	Current Lease 9-15-06	\$650.00 \$650.00			Currently pays rent on the 15th of the month.

BROWNSTONE RENT COLLECTION ROLL FOR FEBRUARY 2007

345 W. Taylor	VACANT	2 BR					
347 W. Taylor	Jeremy Hampton Cell 813-4323	2BR	Current Lease 9-15-06	\$650.00 \$650.00			Currently pays rent on the 15th of the month.

BROWNSTONE RENT COLLECTION ROLL FOR MARCH 2007

345 W. Taylor	VACANT	2 BR					
347 W. Taylor	Jeremy Hampton Cell 813-4323	2BR	Current Lease 9-15-06	\$650.00 \$650.00	\$150.00 3-15-07	NT 2/10	Currently pays rent on the 15th of the month.

WTS0279

EXHIBIT 6

EXHIBIT 6

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 WASTE MANAGEMENT OF
4 NEVADA; AND KAREN
5 GONZALEZ,

Case No.: 69307

Electronically Filed
Feb 19 2016 10:23 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6 Appellants,

7 vs.

8 WEST TAYLOR STREET, LLC, A
9 LIMITED LIABILITY COMPANY,

Respondent.
10 _____/

11 **STIPULATION FOR DISMISSAL OF APPEAL**

12
13 Appellants WASTE MANAGEMENT OF NEVADA, and KAREN
14 GONZALEZ, and Respondent WEST TAYLOR STREET, LLC, hereby stipulate
15 to move this Court for an order dismissing this current appeal, without prejudice,
16 pursuant to NRAP 42(b). NRAP 42(b) provides that the "Clerk may dismiss an
17 appeal or other proceeding if the parties file a signed dismissal agreement
18 specifying how costs are to be paid and pay any fees that are due." Therefore, the
19 parties hereby stipulate as follows:
20
21

22 1. Appellants request a dismissal of their appeal without prejudice,
23 because the District Court has not yet entered an appealable final judgment under
24 NRAP 3A; and
25

26 2. The parties will each bear their own respective costs and fees.
27

28 ///

///

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 DATED this 19th day of February, 2016.

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

7 By: 

8 MARK G. SIMONS, ESQ.
9 Nevada Bar No. 5132
10 THERESE M. SHANKS, ESQ.
11 Nevada Bar No. 12890
12 Attorneys for Appellants

13 C. Nicholas Pereos, Esq.
14 1610 Meadow Wood Lane, Ste. 202
15 Reno, Nevada 89502

16 By: 

17 C. Nicholas Pereos, Esq.
18 Attorney for Respondents

19 j:\wp\data\mgs\00538.002 (wm v west taylor street)\appeal pleadings\p- stipulation for dismissal of appeal.docx

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Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-5151

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a
4 true copy of the **STIPULATION FOR DISMISSAL OF APPEAL** on all parties
5 to this action by the method(s) indicated below:

- 6 ☒ by placing an original or true copy thereof in a sealed envelope,
7 with sufficient postage affixed thereto, in the United States mail
8 at Reno, Nevada, addressed to:

9 C. Nicholas Pereos, Esq.
10 1610 Meadow Wood Lane, Ste. 202
11 Reno, NV 89502
12
13
14
15

16 DATED: This 19th day of February, 2016.
17

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19 JODI ALHASAN
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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,

Case No. CV12-02995

Plaintiff,

Dept. No. 4

vs.

WASTE MANAGEMENT OF NEVADA,
INC., and DOES I through X,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART WEST TAYLOR STREET,
LLC'S MOTION TO RETAX COSTS**

On July 27, 2017, WASTE MANAGEMENT OF NEVADA, INC., (hereinafter "Waste Management"), by and through its attorney, Mark G. Simons, Esq., served an Offer of Judgment upon WEST TAYLOR, STREET, LLC (hereinafter "WTS") offering to allow judgment in favor of WTS and against Waste Management in the amount of \$10,000.00. WTS, by and through its attorney, C. Nicholas Pereos, Esq., did not accept the Offer.

On June 27, 2019, a *Decision* was entered in Waste Management v. West Taylor Street, LLC, 135 Nev. Ad. Op. 21, wherein the Nevada Supreme Court found that this Court erroneously granted summary judgment in favor of West Taylor Street, LLC (hereinafter "WTS") based upon an incorrect interpretation of NRS 444.520, and that application of a statute of limitations to the foreclosure of a garbage lien was improper. As a result, the Nevada Supreme Court reversed and remanded for further proceedings consistent with the Decision.

On December 23, 2019, Waste Management filed a *Memorandum of Costs*. On December 24, 2019, WTS filed a *Motion to Retax Costs*. On January 2, 2020, Waste

1 Management filed an *Opposition to Motion to Retax Costs*. On January 7, 2020, WTS filed a
2 *Reply Argument in Support of Motion to Retax Costs*, and submitted the matter for the Court's
3 consideration.

4 Pursuant to NRCp 68(f)(2) when a plaintiff rejects an offer of judgment and fails to
5 obtain a more favorable judgment, the plaintiff "shall" pay the defendants post-offer costs,
6 applicable interest and reasonable attorneys' fees, if any be allowed, actually incurred from the
7 time of the offer. NRS 18.110(1), a prevailing party seeking to recover costs must, within five
8 days after the entry of judgment—or within a further time granted by the court—file a sworn,
9 itemized memorandum of costs with the clerk and serve a copy upon the adverse party. NRS
10 18.110(1). The prevailing party is also entitled to clerk's fees; a prevailing party need not
11 embody such fees in its memorandum as NRS 18.110(3) directs the clerk to add them as fixed by
12 statute. NRS 18.110(3). The non-prevailing party may move the court to retax and settle costs
13 within three days after service of the prevailing party's memorandum. NRS 18.110(4). Upon
14 hearing of a properly filed motion to retax and settle costs, the court will settle the costs. *Id.* It is
15 within the court's discretion to reach an untimely motion for costs. Village Builders 96, L.P. v.
16 U.S. Laboratories, Inc., 121 Nev. 261, 277 (2005).

17 Costs pursuant to NRS 18.110 refer not to a "reasonable estimate or calculation" but
18 rather to "actual costs that are also reasonable." *Id.* Through supporting documentation, the
19 prevailing party must "demonstrate" to the court that its costs are justified, meaning "reasonable,
20 necessary, and actually incurred." Cadle Co. v. Woods & Erickson, LLP, 131 Nev 114 (2015).

21 In its Motion to Retax, WTS requests the adjustment to Waste Management's costs as
22 follows:

- 23 1. Reduction of clerk fees by \$1,000.00 for the bonds that are refundable.
- 24 2. Reduction of \$250.00 paid on June 10, 2015 and \$250.00 paid on December 2,
25 2015 to the Supreme Court Clerk.
- 26 3. Reduction of \$284.00 for fees paid for the Appeal dismissed by Stipulation.
- 27 4. Reduction of \$77.00 expedited process server fees for the service of Willis
28 Powell.

1 5. Reduction of a \$25.00 service fee without an explanation.

2 In its opposition, Waste Mangement withdrew the requested costs as follows:

3 A. Clerk Filing Fees totaling \$784.00

- 4 i. 12/1/15 \$34.00 District Court.
- 5 ii. 12/2/15 \$250.00 Nevada Supreme Court.
- 6 iii. 12/2/15 \$500.00 Cost Bond for Appeal.¹

7 However, Waste Management argues that the June 10, 2015 Nevada Supreme Court filing fee of
8 \$250.00 concerning the writ filed in pursuit of an available legal remedy is an allowable cost.
9 Finally, Waste Management argues that the challenge to the process server costs of \$142.00 are
10 without merit. The \$77.00 charge for service costs concerning Willis Powell were incurred and
11 are appropriate because WTS only agreed to produce Mr. Powell for his deposition after service
12 costs were incurred. The other \$25.00 fee objected to by WTS was incurred having documents
13 delivered to the Court for filing. Waste Management requests updated costs in the amount of
14 \$3,387.82, corrected to \$3,381.82.²

15 In its Reply, WTS argues that NRS 18.005 does not define refundable bonds as a cost to
16 collect, and that no explanation for the expedited service resulting in an additional charge of
17 \$60.00 on a \$77.00 billing is provided. WTS states in summary that Waste Management is
18 entitled to the following costs:

19 1. Filing Fees	\$ 534.00
20 2. Service Fees	\$ 82.00
21 3. Postage	\$ 3.62 ³
22 4. Copy Charges	\$ 54.20
23 5. Depositions	\$1,637.00

24

25 ¹ In its opposition to the motion to retax, Waste Management states that it concedes \$778.00 of the
26 requested fees as stated herein; however, this was an addition error and the actual amount of the costs conceded is
27 \$784.00.

28 ² See footnote 1 concerning addition error

³ WTS incorrectly states the amount of postage in its reply as \$362.00 which skews its final total. The
above total is the correct total of costs that WTS argues Waste Management is entitled.

1 6. Court Reporter Fee \$ 84.00
2 7. Witness Fee \$ 427.00

3 **TOTAL: \$2,821.82**

4 WTS does not object to the sufficiency of Waste Management's documentation in
5 support of its costs for postage, copy charges, depositions, court reporter fee and witness fees.
6 Thus, the Court will award those costs as requested.

7 Next, the Court turns its attention to the sufficiency of Waste Management's
8 documentation in support of its filing fees and service fees charges.

9 "The determination of allowable costs is within the sound discretion of the trial court.
10 However, statutes permitting the recovery of costs are to be strictly construed because they are in
11 derogation of the common law." Bobby Berosini Ltd., 114 Nev. at 1352. While costs sought by
12 a prevailing party are available as a matter of right, the trial court must determine whether they
13 are reasonable, necessary, and actually incurred. Cadle Co., 131 Nev. Adv. Op. 15, p. 10;
14 Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1050-51 (1994). The party seeking costs must
15 sufficiently itemize the items for which it seeks to recover. Waddell v. L.V.R.V., Inc., 122 Nev.
16 15 (2006). Additionally, the party seeking costs must show the reason for the cost;
17 documentation reflecting only dates and totals for the costs claimed is insufficient. Village
18 Builders 96, L.P., 121 Nev. at 277-78 (itemization of costs insufficient where party failed to
19 provide reason for them).

20 As stated above, Waste Management has conceded \$784.00 of requested Court Clerk
21 fees. Waste Management's Exhibit 1 in conjunction with its Memorandum of Costs is sufficient
22 for the Court to find that it actually incurred the \$1,034.00 cost asserted. However, while the
23 Court does not question that the cost bond for the Nevada Supreme Court Appeal was incurred, it
24 is a refundable costs.

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Thus, the Court awards Waste Management its costs as follows:

1.	Filing Fees	\$ 534.00
2.	Service Fees	\$ 142.00
3.	Postage	\$ 3.62
4.	Copy Charges	\$ 54.20
5.	Depositions	\$1,637.00
6.	Court Reporter Fee	\$ 84.00
7.	Witness Fee	<u>\$ 427.00</u>

TOTAL: \$2,881.82

Based on the forgoing, and good cause appearing,

IT IS HEREBY ORDERED that West Taylor Street, LLC's Motion to Retax Costs is GRANTED in part and DENIED in part. As such, the Court awards costs in the amount of Two Thousand Eight Hundred Eighty-One Dollars and Eighty-Two Cents (\$2,881.82) to Defendant Waste Management of Nevada, Inc.

DATED this 9 day of March, 2020.

Connie J. Steinheimer
DISTRICT JUDGE

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 9 day of March, 2020, I filed the **ORDER GRANTING IN PART AND DENYING IN PART WEST TAYLOR STREET, LLC'S MOTION TO RETAX COSTS** 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 **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC

THERESE SHANKS, ESQ.

DOUGLAS FERMOILE, ESQ. for WEST TAYLOR STREET LLC

C. PEREOS, ESQ. for WEST TAYLOR STREET LLC

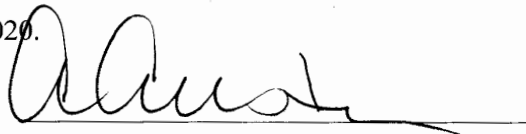
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 9 day of March, 2020.



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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

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

Case No. CV12-02995

10 Plaintiff,

Dept. No. 4

11 vs.

12 WASTE MANAGEMENT OF NEVADA,
13 INC., and DOES I through X,

Defendants.

14 **ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S**
15 **MOTION FOR AWARD OF ATTORNEYS' FEES**

16 On July 27, 2017, WASTE MANAGEMENT OF NEVADA, INC., (hereinafter "Waste
17 Management"), by and through its attorney, Mark G. Simons, Esq., served an Offer of Judgment
18 upon WEST TAYLOR, STREET, LLC (hereinafter "WTS") offering to allow judgment in favor
19 of WTS and against Waste Management in the amount of \$10,000.00. WTS, by and through its
20 attorney, C. Nicholas Pereos, Esq., did not accept the Offer.

21 On June 27, 2019, a *Decision* was entered in Waste Management v. West Taylor Street,
22 LLC, 135 Nev. Ad. Op. 21, wherein the Nevada Supreme Court found that this Court erroneously
23 granted summary judgment in favor of West Taylor Street, LLC (hereinafter "WTS") based upon
24 an incorrect interpretation of NRS 444.520, and that application of a statute of limitations to the
25 foreclosure of a garbage lien was improper. As a result, the Nevada Supreme Court reversed and
26 remanded for further proceedings consistent with the Decision.

27 On December 23, 2019, Waste Management filed a *Memorandum of Costs*. On December
28 24, 2019, WTS filed a *Motion to Retax Costs*. On December 26, 2019, Waste Management filed

1 a *Motion for Award of Attorneys' Fees and Costs*. On January 2, 2020, Waste Management filed
2 an *Opposition to Motion to Retax Costs*. On January 3, 2020, WTS filed an *Opposition to Motion*
3 *for Attorney Fees*, as well as a *Declaration of C. Nicholas Pereos in Support of Opposition to*
4 *Motion for Attorney Fees*. On January 6, 2020, Waste Management filed *Reply in Support of*
5 *Motion for Award of Attorneys' Fees and Costs*, and submitted the matter for the Court's
6 consideration. On January 7, 2020, WTS filed a *Reply Argument in Support of Motion to Retax*
7 *Costs*, and submitted the matter for the Court's consideration. On March 9, 2020, the Court entered
8 its Order Granting in Part and Denying in Part West Taylor Street, LLC's Motion to Retax Costs
9 in this matter.

10 The "purpose of NRCP 68 is to encourage the settlement of lawsuits before trial." Morgan
11 v. Demille, 106 Nev. 671, 674 (1990). Pursuant to NRCP 68(f)(1)(a) when a plaintiff rejects an
12 offer of judgment and fails to obtain a more favorable judgment, the plaintiff cannot recover any
13 costs, expenses, or attorney fees and may not recover interest for the period after the service of the
14 offer and before the judgment. Furthermore, the plaintiff must pay the defendants post-offer costs,
15 and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each
16 expert witness whose services were reasonably necessary to prepare for and conduct the trial of
17 the case, applicable interest on the judgment from the time of the offer to the time of entry of the
18 judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the
19 time of the offer." NRCP 68(f)(1)(b).

20 NCRP 68(g) states:

21 To invoke the penalties of this rule, the court must determine if the offeree failed
22 to obtain a more favorable judgment. If the offer provided that costs, expenses,
23 interest, and if attorney fees are permitted by law or contract, attorney fees, would
24 be added by the court, the court must compare the amount of the offer with the
25 principal amount of the judgment, without inclusion of costs, expenses, interest,
26 and if attorney fees are permitted by law or contract, attorney fees. If a party made
27 an offer in a set amount that precluded a separate award of costs, expenses, interest,
28 and if attorney fees are permitted by law or contract, attorney fees, the court must
compare the amount of the offer, together with the offeree's pre-offer taxable costs,
expenses, interest, and if attorney fees are permitted by law or contract, attorney
fees, with the principal amount of the judgment.

26 NCRP 68(g).

27 "[T]he trial court must carefully evaluate the following factors [in determining to award
28 attorney's fees pursuant to NRCP 68]: (1) whether the plaintiff's claim was brought in good faith;

1 (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing
2 and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly
3 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and
4 justified in amount. After weighing the foregoing factors, the district judge may, where warranted,
5 award up to the full amount of fees requested." Beattie v. Thomas, 99 Nev. 579, 588–89 (1983).
6 Under Beattie, no one factor is determinative, and the district court has broad discretion to grant
7 the request for attorney's fees, so long as all appropriate factors are considered. Yamaha Motor
8 Co., U.S.A. v. Arnoult, 114 Nev. 233, 252, fn.16 (1998).

9 In determining the reasonable value of an attorney's services, the Court must consider four
10 factors: "(1) the qualities of the advocate: his ability, his training, education, experience,
11 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
12 its importance, time and skill required, the responsibility imposed and the prominence and
13 character of the parties where they affect the importance of the litigation; (3) the work actually
14 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
15 attorney was successful and what benefits were derived." Brunzell v. Golden Gate Nat. Bank, 85
16 Nev. 345, 349 (1969).

17 First, the Court will consider the first Beattie factor in determining an award of attorney's
18 fees pursuant to NRCF 68: whether Plaintiff's claim was brought in good faith. The plaintiff,
19 WTS, initially contacted Waste Management regarding not receiving its bills which had been sent
20 to the wrong address. WTS worked with Waste Management and believed the account had been
21 settled. Unbeknownst to the WTS, Waste Management continued to carry the account delinquent.
22 Two years later, without any warning, Waste Management issued its first lien against WTS. When
23 the Complaint in this case was filed, there were three liens against WTS's property which totaled
24 \$1,754.12. Waste Management removed the liens on the property in August 2014, following the
25 Court's July 28, 2014 Order. Under the November 17, 2015, *Stipulation and Order for Rule*
26 *54(b) Certification and to Stay Proceedings*, the outstanding claim for Slander of Title was stayed
27 while the Defendant, Waste Management, actively pursued an appeal of the October 1, 2015 Partial
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1 Summary Judgment. Waste Management filed two appeals with the Nevada Supreme Court, as
2 well as a Petition for Writ of Mandamus.

3 Waste Management claims that WTS initiated extensive litigation over minor amounts in
4 controversy and continued to pursue extensive litigation even after the liens were removed from
5 WTS's property. WTS argues that it initiated litigation only after attempts at resolution of this
6 dispute outside of Court were unsuccessful. WTS further alleges that Waste Management's
7 practices of improperly imposing fees, late fees, fines, and liens on property would customarily be
8 cost prohibitive to private parties wishing to fight them. Also, the lawsuit served to benefit the
9 community who uses Waste Management's services under the Doctrine of Substantial Benefit.

10 Unlike most private parties, WTS was able to afford litigation and successfully fought to
11 have the liens removed. As such, the Court finds that WTS's claim was brought in good faith.

12 Second, the Court will consider the second Beattie factor; whether Defendants' offer of
13 judgment was reasonable and in good faith in both its timing and amount. NRCP 68(a) states that
14 "[a]t any time more than 21 days before trial, any party may serve an offer in writing to allow
15 judgment to be taken in accordance with its terms and conditions." NRCP 68(a). Failure to
16 Accept Offer, "within 14 days after service . . . will be considered rejected by the offeree and
17 deemed withdrawn by the offeror." NRCP(e).

18 Waste Management made an offer under NRCP 68, on July 27, 2017. The offer was made
19 three years after the liens had been released from WTS's property and was made approximately
20 five months before trial was to commence. The only outstanding claim before the Court for
21 consideration was WTS's Slander of Title claim. Waste Management's offer was to pay WTS
22 \$10,000.00. In addition, Waste Management promised to forgive the charges of \$1,754.12 that
23 had been incurred in relation to the three liens that had been released. While the amount offered
24 would not have covered costs, or attorney's fees, had C. Nicholas Pereos, Esq. charged WTS for
25 his time, the offer was reasonable in relation to the gravamen of the case. Therefore, Waste
26 Management, made the offer in good faith, in both its timing and amount. Third, the Court will
27 consider the third factor in Beattie; whether Plaintiff's decision to reject the offer and proceed to
28 trial was grossly unreasonable or in bad faith. As stated above, Waste Management's offer was

1 reasonable in relation to the gravamen of the initial claims brought. While Waste Management
2 contends that WTS did not incur any special damages resulting from the recordation of Waste
3 Management's liens and that WTS pursued extensive litigation even after the liens were removed
4 from WTS's property, WTS did not have to accept the offer, as settlement is voluntary. WTS's
5 decision to reject the offered amount, after years of ongoing litigation does not appear to be
6 unreasonable or made in bad faith. Therefore, the Court finds WTS's decision to reject the offer
7 and proceed to trial was not grossly unreasonable, nor was it made in bad faith.

8 The final Beattie factor the Court must consider is whether the fees sought by Waste
9 Management, the offeror, are reasonable and justified in amount. In determining the reasonable
10 value of an attorney's services, the Court must consider the four Brunzell factors. The Court finds
11 that Mark G. Simons, Esq., who represented Waste Management, is a skilled and professional
12 advocate, as evidenced by his training, ability, and education. The case brought by Waste
13 Management, was the first to ask the Nevada Supreme Court to interpret issues regarding NRS
14 444.520. The character of the work to be done in this case required Mr. Simons to expend much
15 time and skill. Furthermore, it is difficult to litigate statutes that have not yet been interpreted by
16 higher courts.

17 Moreover, the Court finds the work actually performed by the lawyer required skill, time,
18 and attention. Mr. Simons has adequately recorded the time he committed to the representation he
19 provided to Waste Management. The Supreme Court in this case interpreted NRS 444.520 to
20 apply mechanics lien statutes only to foreclosure proceedings, not to the recording and perfecting
21 requirements of garbage liens, which the current statute appears to be silent on. This result allowed
22 the attorney to successfully represent Waste Management in defeating WTS's claims. Therefore,
23 under the Brunzell factors, the Court finds that Mr. Simons was effective counsel whose fees were
24 reasonable and justified in amount.

25 Weighing the four Beattie factors, no one factor is determinative. The Court finds that
26 while Waste Management's offer was reasonable and the attorneys effectively represented their
27 client, an award of attorneys' fees is not justified in this case. WTS's claims were brought in good
28 faith, and WTS's decision to reject the offer to proceed to trial was not grossly unreasonable or

1 made in bad faith. The plaintiff, while not successful at the Nevada Supreme Court, did
2 successfully have liens removed by Waste Management, and was reasonable in pursuing the
3 litigation against Waste Management. The Court, therefore, denies Waste Management's Motion
4 for award of attorneys' fees.

5 IT IS HEREBY ORDERED that Waste Management of Nevada, Inc.'s Motion for Award
6 of Attorneys' Fees is DENIED.

7 DATED this 10 day of March, 2020.

8 Connie J. Steinheimer
9 DISTRICT JUDGE
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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 10 day of March, 2020, I filed the **ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR AWARD OF ATTORNEYS' FEES** 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:

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MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC

THERESE SHANKS, ESQ.

DOUGLAS FERMOILE, ESQ. for WEST TAYLOR STREET LLC

C. PEREOS, ESQ. for WEST TAYLOR STREET LLC

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DATED this 10 day of March, 2020.

