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Attorneys for Plaintiffs

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

SIERRA WOODS LLC, a Nevada Limited Liability Company; BELLA LAGO LLC, a Nevada Limited Liability Company; SHERWOOD FOREST APARTMENTS LLC, a Nevada Limited Liability Company; LANSDOWNE LLC, a Nevada Limited Liability Company; and BIGGEST LITTLE INVESTMENTS LP, a Nevada Limited Partnership; on behalf of themselves and all other similarly situated,

Case No.:

Dept. No.:

**CLASS ACTION COMPLAINT**

**Exempt from Arbitration Pursuant to NAR 3(A): Class Action**

Plaintiffs,

vs.

WASTE MANAGEMENT OF NEVADA, INC.; and DOE DEFENDANTS 1-10, inclusive,

Defendants.

**CLASS ACTION COMPLAINT**

Plaintiffs Sierra Woods LLC, Bella Lago LLC, Sherwood Forest Apartments LLC, Lansdowne LLC, and Biggest Little Investments, LP, ("Plaintiffs"), on behalf of themselves and all persons and entities similarly situated, by and through the

undersigned counsel, complain of Defendant Waste Management of Nevada, Inc. (“Defendant”), as follows:

### **NATURE OF THE CASE**

1. Defendant has the exclusive franchise right to provide waste collection services for solid waste in specifically defined areas of the City of Reno, the City of Sparks, and Carson City. Defendant’s exclusive franchise rights are set forth in Franchise Agreements entered into by Defendant and the respective cities. The terms of those Agreements are incorporated by reference into Reno Municipal Code 5.90.090, Sparks Municipal Code 7.12.010, and Carson City Municipal Code 5.10.010, respectively.

2. Pursuant to the applicable ordinances, persons who produce waste are required to honor the exclusivity agreement and are forced to use the Defendant’s services for collection services. In fact, commercial customers can be fined or even sentenced to jail for utilizing a waste disposal company other than Defendant. In 2017, the City of Reno sent several notices with threats of fines and potential jail time for commercial customers who were using disposal companies other than the Defendant. This sparked outrage across the City of Reno and served as the impetus for the Reno City Council to conduct a \$15,000 customer survey into Defendant’s business practices and customer service.

3. The Defendant can charge rates and other fees for “customer noncompliance.” Customer noncompliance includes, among other things, damage to containers, failing to provide unobstructed access to containers, and overloading containers. However, Defendant has a duty to perform the waste collection services using standard industry practice for comparable operations, which includes how they charges customers for services and the method they impose fees for customer noncompliance. Defendant also has a duty to provide quality customer service. Moreover, Defendant has contractual duties under the monthly invoices for services which they send to customers which contain express and implied covenants. Defendant

1 is bound to act in good faith in charging commercial customers.

2 4. Thus, the applicable ordinances impose obligations on both the Defendant  
3 and customers. Defendant penalizes customers for noncompliance by imposing fees in  
4 its invoices for service which are sent to customers each month. Defendant takes  
5 “Snapshot Photos” of the alleged customer noncompliance, which they provide to  
6 customers when customers object to such fees as they appear on their bills.

7 5. This action arises out of the additional fees and penalty charges that  
8 Defendant improperly, unlawfully, and in bad faith charges commercial customers for  
9 allegedly overfilling containers (“Overage Fees”). Because Defendant has a monopoly  
10 for waste collection services and customers have no choice but to utilize Defendant’s  
11 services, Defendant has wrongfully and grossly abused its position as an exclusive  
12 franchisee to take advantage of its commercial customers by charging exorbitant  
13 Overage Fees under the guise of “customer noncompliance” whether the containers are  
14 actually overfilled or not, and further, by making it impossible for commercial customers  
15 to be in compliance with Defendant’s rules.

16 6. For example, Defendant charges Overage Fees even when containers are  
17 overfilled due to the Defendant’s own conduct in missing its scheduled pick up time,  
18 thereby causing the container to overfill. Moreover, Defendant refuses to give  
19 commercial customers a reasonable timeframe in which they will pick up its containers,  
20 making it impossible to ensure the containers are not overfilled. Additionally, Defendant  
21 charges Overage Fees even when its Snapshot Photos show that the containers are not  
22 overfilled.

23 7. As a result of its improper conduct, Defendant has collected thousands of  
24 dollars in inappropriate fees from its commercial services customers.

25 8. Through this action, Plaintiffs seek damages and restitution, on behalf of  
26 themselves and the members of the proposed Class, for the total amount of improper  
27 fees which Defendant unlawfully charged and collected despite objection and protest  
28 from commercial customers.

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10. Venue is proper in Washoe County as the Defendant conducts business in this county and many of the services which gives rise to these claims were provided in Washoe County, Nevada.

11. Sierra Woods LLC (“Sierra”) is a Nevada limited liability company which operates the Sierra Woods Apartments in Sparks, Nevada. Sierra is a commercial customer because it is a multi-family complex. Defendant has consistently charged Sierra Overage Charges for allegedly overfilling its disposal containers. For example, in January 2019, Defendant billed Sierra for 26 Overage Charges in 30 days. Additionally, in February 2019, Defendant billed Sierra for 25 Overage Charges in the amount of \$76.24 - \$80.01 per Overage Fee. Sierra has contacted Defendant, objected and protested to the Overage Fees, and asked what Sierra needs to do to avoid these fees. Defendant directed Sierra to obtain additional disposal containers and add service days to Sierra’s garbage collection schedule, both of which raise Sierra’s monthly charge. Sierra complied with both directives. However, despite Sierra following Defendant’s instruction to ensure compliance, Defendant still bills Sierra for multiple Overage Fees each month. Additionally, Defendant refuses to give Sierra a timeframe in which it will collect Sierra’s waste, which prevents Sierra from controlling the amount of garbage in its containers. Even worse, Defendant often fails to pick up Sierra’s garbage at the scheduled time, which causes the containers to overfill, and then Defendant charges Sierra an Overage Fee. Finally, Defendant’s Overage Fees are unsubstantiated as several of the Snapshot Photos include containers that are not overfilled nor even located on Sierra’s property.

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operates the Bella Lago Apartments in Carson City, Nevada. Bella Lago is a commercial customer because it is a multi-family complex. Defendant has consistently charged Bella Lago Overage Fees for allegedly overfilling their disposal containers. For example, in January 2019, Defendant billed Bella Lago for 11 Overage Fees in 30 days. Additionally, in February 2019, Defendant billed Bella Lago for 10 Overage Fees in the amount of \$10.39 per Overage Fee. Each time Bella Lago is billed for these Overage Fees, Bella Lago has contacted Defendant, objected, and asked what Bella Lago needs to do to avoid these fees. Defendant directed Bella Lago to obtain additional disposal containers and add service days to Bella Lago's garbage collection schedule, both of which raise Bella Lago's monthly charge. Bella Lago complied with both directives. However, despite Bella Lago following Defendant's instruction to ensure compliance, Defendant still bill Bella Lago for multiple Overage Fees each month. Additionally, Defendant refuses to give Bella Lago a timeframe in which it will collect Bella Lago's waste, which prevents Bella Lago from controlling the amount of garbage in its containers. Even worse, Defendant often fails to pick up Bella Lago's garbage at the scheduled time, which causes the containers to overfill, and then Defendant charges Bella Lago an Overage Fee. Finally, Defendant's Overage Fees are unsubstantiated as several of the Snapshot Photos Defendant send as proof of the Overage Fee include containers that are not overfilled nor even located on Bella Lago's property.

13. Sherwood Forest Apartments LLC ("Sherwood") is a Nevada limited liability company which operates the Sherwood Forest Apartments in Reno, Nevada. Sherwood is a commercial customer because it is a multi-family complex. Defendant has consistently charged Sherwood Overage Fees for allegedly overfilling their disposal containers. For example, in January 2019, Defendant billed Sherwood for 21 Overage Fees in 30 days. Additionally, in February 2019, Defendant billed Sherwood for 28 Overage Fees in the amount of \$85.24 per Overage Fee. Sherwood has contacted Defendant, objected and protested to payment of the Overage Fee, and asked what Sherwood needs to do to avoid these fees. Defendant directed Sherwood to obtain

1 additional disposal containers and add service days to Sherwood's garbage collection  
2 schedule, both of which raise Sherwood's monthly charge. Sherwood complied with  
3 both directives. However, despite Sherwood following Defendant's instruction to ensure  
4 compliance, Defendant still bills Sherwood for multiple Overage Fees each month.  
5 Additionally, Defendant refuses to give Sherwood a timeframe in which it will collect  
6 Sherwood's waste, which prevents Sherwood from controlling the amount of garbage in  
7 its containers. Even worse, Defendant often fails to pick up Sherwood's garbage at the  
8 scheduled time, which causes the containers to overfill, and then Defendant charges  
9 Sherwood an Overage Fee. Finally, Defendant's Overage Fees are unsubstantiated as  
10 several of the Snapshot Photos include containers that are not overfilled nor even  
11 located on Sherwood's property.

12 14. Lansdowne LLC ("Lansdowne") is a Nevada limited liability company  
13 which operates the Lansdowne House Apartments in Sparks, Nevada. Lansdowne is a  
14 commercial customer because it is a multi-family complex. Defendant has consistently  
15 charged Lansdowne Overage Fees for allegedly overfilling their disposal containers.  
16 For example, in January 2019, Defendant billed Lansdowne for 23 Overage Fees in 30  
17 days. Additionally, in February 2019, Defendant billed Lansdowne for 24 Overage Fees  
18 in the amount of \$76.24 per Overage Fee. Each time Lansdowne is billed for these  
19 Overage Fees, Lansdowne has contacted Defendant, objected, and asked what  
20 Lansdowne needs to do to avoid these fees. Defendant directed Lansdowne to obtain  
21 additional disposal containers and add service days to Lansdowne's garbage collection  
22 schedule, both of which raise Lansdowne's monthly charge. Lansdowne complied with  
23 both directives. However, despite Lansdowne following Defendant's instruction to  
24 ensure compliance, Defendant still bills Lansdowne multiple Overage Fees each month.  
25 Additionally, Defendant refuses to give Lansdowne a timeframe in which it will collect  
26 Lansdowne's waste, which prevents Lansdowne from controlling the amount of garbage  
27 in its containers. Even worse, Defendant often fails to pick up Lansdowne's garbage at  
28 the scheduled time, which causes the containers to overfill, and then Defendant charges

1 Lansdowne an Overage Fee. Finally, Defendant's Overage Fees are unsubstantiated  
2 as several of the Snapshot Photos include containers that are not overfilled nor even  
3 located on Lansdowne's property.

4 15. Biggest Little Investments, LP, ("BLI") owns Sierra Marketplace. BLI is a  
5 commercial customer because it is a business. Defendant has consistently charged BLI  
6 Overage Fees for allegedly overfilling their disposal containers. In 2018, Defendant  
7 billed BLI for 20 Overage Fees at \$82.46- \$85.24 per Overage Fee. In November 2018,  
8 alone, Defendant billed BLI 4 Overage Fees at 85.24 per Overage Fee. Defendant has  
9 charged BLI Overage Fees consistently since 2016 and through the present. BLI has  
10 consistently contacted Defendant, objected to the Overage Fees, and asked what BLI  
11 needs to do to avoid these fees. Defendant has directed BLI to obtain additional  
12 disposal containers and add service days to BLI's garbage collection schedule, both of  
13 which raise BLI's monthly charge. BLI complied with both directives. However, despite  
14 BLI following Defendant's instruction to ensure compliance, Defendant still bill BLI  
15 multiple Overage Fees each month. Additionally, Defendant refuses to give BLI a  
16 reasonable timeframe in which it will collect BLI's waste, which prevents BLI from  
17 controlling the amount of garbage in its containers. Even worse, Defendant often fails  
18 to pick up BLI's garbage at the scheduled time, which causes the containers to overfill,  
19 and then Defendant still charge BLI an Overage Fee. Finally, Defendant's Overage  
20 Fees are unsubstantiated as several of the Snapshot Photos include containers that are  
21 not overfilled nor even located on BLI's property.

### 22 **CLASS ACTION ALLEGATIONS**

23 16. Plaintiffs assert this action individually and as a class action pursuant to  
24 Nevada Rule of Civil Procedure ("NRCP") 23 on behalf of the proposed class (the  
25 "Class"):

26 All persons and entities that have paid Overage Fees  
27 charged by the Defendant during the time period of January  
28 2014 and continuing until the time at which such unlawful  
conduct alleged herein has ceased.

1           17. Excluded from the Class are the Court and its employees; Defendant; any  
2           parent, subsidiary, or affiliate of Defendant; and all employees and directors who are or  
3           have been employed by Defendant during the relevant time period. Plaintiffs reserve  
4           the right to amend the Class definitions prior to moving for class certification.

5           18. Plaintiffs seek to represent the Class for any damages and equitable relief  
6           and assert their claims on behalf of both themselves and the Class members they seek  
7           to represent.

8           19. The numerosity requirement of NRCP 23(a)(1) is satisfied here because  
9           the members of the proposed Class are so numerous that joinder of all its members is  
10          impracticable. Although the exact number of Class members is unknown at this time,  
11          there are believed to be at least 50 members of the Class.

12          20. The commonality requirement of NRCP 23(a)(2) is satisfied because there  
13          are common questions of law and fact common to Plaintiffs and the other Class  
14          members, including, among other things:

- 15               a. Whether Defendant complied with its obligations and duties as  
16               defined in the applicable city ordinances in imposing fees and  
17               providing services to commercial customers;
- 18               b. Whether Defendant breached its contracts with its commercial  
19               customers by imposing unfair and improper fees under the guise of  
20               “customer noncompliance”;
- 21               c. Whether Defendant acted in bad faith by making it impossible to  
22               reach compliance with its rules and requirements;
- 23               d. Whether Defendant imposed Overage Fees when customers were  
24               actually in compliance with Defendant’s overfill rules;
- 25               e. Whether Defendant’s provided Snapshot Photos as proof of  
26               customer noncompliance when those Snapshot Photos  
27               demonstrated that the containers were actually in compliance or not  
28               located on the customer’s property;



- 1 f. The proper measure and appropriate formula to be applied in  
2 determining damages for the injuries sustained by the Plaintiffs and  
3 Class;  
4 g. Whether the Plaintiffs and the other Class members are entitled to  
5 declaratory or other equitable relief;  
6 h. Whether Defendant is liable for the Plaintiffs' and Class members'  
7 attorney fees and costs.

8 21. The typicality requirement of NRCP 23(a)(3) is satisfied because the  
9 claims arise from the same course of conduct by Defendant and are based on the same  
10 legal theories. Further, Plaintiffs seek the same form of relief for themselves as they  
11 seek for the Class members.

12 22. Plaintiffs' attorneys have identified and thoroughly investigated the claims  
13 set forth herein, and are highly experienced in the management and litigation of  
14 complex matters. Plaintiffs' counsel have knowledge of the applicable law and possess  
15 the resources to commit to the vigorous prosecution of this action on behalf of the  
16 Plaintiffs and the Class members. Accordingly, Plaintiffs satisfy the adequacy of  
17 representation requirement of Rule 23(a)(4).

18 23. This action further satisfies NRCP 23(c) as the prosecution of separate  
19 actions by the individual members would create a risk of inconsistent adjudications with  
20 respect to individual members of the class that would establish incompatible standards  
21 of conduct for Defendant. Defendant's conduct is common to the Plaintiffs and Class  
22 members and inconsistent decisions regarding that conduct would establish  
23 incompatible standards of conduct for Defendant. Moreover, the Defendant has acted  
24 on grounds generally applicable to the Plaintiffs and Class members, thereby making  
25 appropriate final relief appropriate with respect to the class as a whole.

26 24. This action satisfies the predominance, superiority, and manageability  
27 requirements of Rule 23(b)(3). Common questions of law and fact, including those set  
28 forth above, exist as to all Class members' claims. These common questions

1 predominate over questions affecting individual class members. A class action is the  
2 superior method for the fair and efficient adjudication of this controversy. Class  
3 treatment will permit large numbers of injured persons or entities similarly situated to  
4 prosecute their respective claims in a single forum, simultaneously, efficiently, and  
5 without the unnecessary duplication of evidence, effort, and expense that numerous  
6 individual actions would produce. A class action is especially appropriate here, where  
7 some class members' damages may be in an amount that would not be worth the cost  
8 of attorney fees to prosecute individually. This action is manageable as a class action.

9 **FIRST CLAIM FOR RELIEF**

10 (Breach of Contract- Invoices for Services)

11 25. Plaintiffs incorporate by reference the preceding paragraphs as though  
12 fully set forth herein.

13 26. Plaintiffs entered into a valid contract with Defendant by way of each  
14 invoice for services.

15 27. Under the invoice for services, both Plaintiffs and Defendant were required  
16 to perform promises and obligations. Plaintiffs were required to comply with  
17 Defendant's rules for customer compliance, and Defendant were required to perform  
18 services for Plaintiffs. Plaintiffs were also required to pay their monthly service charges.

19 28. Plaintiff fully performed all conditions, covenants, promises required under  
20 the parties' agreement, by paying the monthly invoices for service billed to Plaintiffs by  
21 Defendant.

22 29. Defendant breached the contract by failing to provide the requisite  
23 services and by improperly charging Plaintiffs Overage Fees and penalties pursuant to  
24 the standards set forth in the applicable city ordinances.

25 30. Plaintiffs and the Class have incurred damages in excess of \$15,000  
26 because of Defendant's breaches.

27 31. Plaintiffs and the Class were forced to seek legal services to prosecute  
28 these claims and should be awarded their reasonable attorney fees.

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41. Plaintiffs and the Class members were forced to seek legal services to prosecute these claims and should be awarded their reasonable attorney fees.

### **THIRD CLAIM FOR RELIEF**

(Deceptive Trade Practices)

42. Plaintiffs reallege and incorporate by reference the preceding paragraphs as though fully set forth herein.

43. Defendant conducts a business which provides services to customers.

44. The Defendant must perform services and provide quality customer service to customers, including the Plaintiffs and Class members, pursuant to the applicable city ordinances.

45. Defendant knowingly violated the applicable city ordinances, which apply to the Defendant and relate to the sale of its services, by failing to treat its customers fairly, by imposing Overage Fees without an adequate basis, by acting in bad faith, and by intentionally using methods which make it impossible for customers, including the Plaintiffs and Class members to comply with Defendant's rules for customer compliance.

46. Defendant acted knowingly and with the intent to harm Plaintiffs, the Class members or with conscious disregard of the rights of Plaintiffs the Class members.

47. As a result of Defendant's conduct, Plaintiffs and the Class members have been damaged in excess of \$15,000.

48. Defendant's malicious and oppressive conduct has subjected them to punitive damages.

49. As a result of Defendant's conduct, Plaintiffs and the Class members have had to obtain an attorney and should be compensated for their attorney fees.

#### FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

50. Plaintiffs reallege and incorporate by reference the preceding paragraphs as though fully set forth herein.

1           51. Defendant has received the benefit of Plaintiffs' and the Class members'  
2 payments which were obtained unjustly and without basis by the Defendant.

3           52. Plaintiffs complied with their obligations and performed the conditions,  
4 requirements, and covenants necessary pursuant to the agreement between the  
5 parties.

6           53. Defendant failed to perform its obligations, conditions, requirements, and  
7 promises pursuant to the parties' agreement.

8           54. Defendant has retained Plaintiffs' monies despite Plaintiffs' objections.

9           55. It would be unjust, inequitable, and offensive to fundamental principles of  
10 justice and equity for the Defendant to retain the money paid by the Plaintiffs and Class  
11 members.

12           56. As a result of Defendant's inequitable conduct, Plaintiffs and the Class  
13 members have been damaged in excess of \$15,000.

14           57. As a result of Defendant's conduct, Plaintiffs and the Class members have  
15 had to obtain an attorney and should be compensated for their attorney fees.

16                           **FIFTH CLAIM FOR RELIEF**

17                                   (Declaratory Relief)

18           58. Plaintiffs reallege and incorporate by reference the preceding paragraphs  
19 as though fully set forth herein.

20           59. Pursuant to NRS 30.030, this Court has the power to declare the rights,  
21 status, and other legal relations whether or not further relief is or could be claimed.

22           60. There is an actual, justifiable controversy between Plaintiffs and  
23 Defendant concerning whether Defendant may impose arbitrary, unfair fees for alleged  
24 customer noncompliance when the fines are unsubstantiated, refuted by evidence, and  
25 caused by Defendant's own conduct.

26           61. Despite having statutory obligations to impose fees in a just, reasonable  
27 manner in accordance with custom and standard practice, Defendant continues to  
28 impose unfair, unjust, and harsh penalty and Overage Fees on an inconsistent basis

1 and when the Plaintiffs have been in compliance with Defendant's rules.

2 62. Based on Defendant's conduct, Plaintiffs and the Class members seek a  
3 declaration that the Defendant wrongfully charged and billed Plaintiffs for Overage  
4 Fees.

5 63. The declaratory relief requested herein is ripe for adjudication and will  
6 generate common answers that will settle the controversy related to whether Defendant  
7 may impose such Overage Fees and whether Defendant must return its ill gained profits  
8 to the Plaintiffs and others similarly situated.

9 **PRAYER**

10 WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, pray  
11 for judgment against Defendant as follows:

- 12 1. Certification of this action as a class action on behalf of the proposed  
13 Class;
- 14 2. Designation of Plaintiffs as Class Representatives;
- 15 3. Appointment of undersigned counsel as Class counsel;
- 16 4. Judgment in favor of Plaintiffs on all causes of action;
- 17 5. Declaration that the Defendant's practices complained of herein are  
18 unlawful;
- 19 6. Damages in the amount of all money improperly collected or received by  
20 Defendant;
- 21 7. Punitive damages;
- 22 8. For pre-judgment interest and costs of suit;
- 23 9. For reasonable attorney fees;
- 24 10. For such further relief as this court deems fair and equitable.

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**AFFIRMATION:** The undersigned does hereby affirm that this document does not contain the Social Security Number of any person.

DATED this 9<sup>th</sup> day of April, 2019.

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/s/ Frank C. Gilmore  
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