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MONTANA FOURTH JUDICIAL DISTRICT COURT—MISSOULA COUNTY

LH RESIDENTIAL LLC; and OTIS
STREET LLC, BOTH DBA MONTANA
CRESTVIEW,

Plaintiffs,

v.

ALLIED WASTE SERVICES OF NORTH
AMERICA, LLC, DBA REPUBLIC
SERVICES OF MONTANA,

Defendant.

DV-22-1172

**FIRST AMENDED CLASS
ACTION COMPLAINT**

The Plaintiffs file this amended complaint with the Defendant's consent pursuant to Montana Rule of Civil Procedure 15(a)(2).

Parties, Jurisdiction, and Venue

1. Plaintiff LH Residential LLC is a Montana limited liability company that owns and operates the Crestview Apartments in Missoula.
2. Plaintiff Otis Street LLC is a Montana limited liability company¹ that owns and operates the River Rock Apartments in Missoula.
3. The Plaintiffs generally operate under the assumed business name Montana Crestview, and the remainder of this Complaint will refer to the Plaintiffs collectively as “Crestview.”
4. Defendant Allied Waste Services of North America, LLC is a Delaware limited liability company with its principal place of business in Arizona. In Montana, it currently operates under the assumed business name of Republic Services of Montana, though at certain times relevant to this case, it appears to have operated simply as Allied Waste Services. The remainder of this Complaint will refer to the Defendant as “Republic.”
5. This matter involves acts and omissions in Missoula County, and therefore this Court has jurisdiction over the parties and venue is proper in the Fourth Judicial District.

¹ The members of each of the Plaintiff LLCs are all residents of Montana or California.

Facts Common to All Claims

A. Republic was a pure monopoly in Missoula County and had a contractual relationship with Crestview.

6. Republic is one of the largest, if not the largest, solid waste and recycling companies operating in Montana.

7. Republic provides residential and commercial garbage collection and disposal in many Montana communities, including Missoula.

8. Until mid-2022, Republic was the only garbage collection company authorized by the Montana Public Service Commission to operate in Missoula County.

9. Republic has resisted the entry of other garbage disposal companies into the Missoula market.

10. Indeed, in 2021, when Grizzly Disposal—a potential competitor—was seeking PSC authorization to operate in Missoula, Republic represented that “Republic’s operation in Missoula differs from its operation in other counties, because it is the only hauler in Missoula and because it controls all of the components that influence the operation (i.e. the landfill and the MRF).”²

11. Thus, according to Republic, because of its vertically integrated services and its standing as a pure monopoly before mid-2022, “Republic’s

² The “MRF” is the Material Recovery Facility where Republic sorts recycling before sending those materials on to entities that recycle certain materials.

position in this market allows it to provide benefits to Missoula County that it is not able to provide to other communities where it operates.”

12. Crestview owns and operates apartment complexes and long used Republic to pick up garbage produced by its tenants and itself at those properties, because it did not have any other choice.

13. Republic has 3-year service agreements with some customers but does not require active service agreements to actually provide garbage collection services.

14. Whether or not a customer has a written service agreement in place, Republic sends regular invoices to its customers, which it expects them to pay in exchange for Republic’s services.

15. At times relevant to this Complaint, Crestview has had service agreements³ with Republic, and at other times it did not.

³ Republic’s service agreements initially last three years, at which point they purport to automatically renew for successive three-year periods unless either party provides written notice at least 60 days prior to the expiration of each three-year period. Crestview has identified executed service agreements from as recently as February of 2012. That service agreement would have been in place for at least three years, and Crestview assumes it was extended for successive three-year periods until Crestview stopped using Republic in 2022. But Crestview is aware of communications from Republic suggesting the parties did not have active service agreements in place at specific times.

16. For years, Republic has provided Crestview with garbage collection services regardless of whether Crestview's individual properties had active service agreements in place with Republic.

17. The primary garbage collection method at each of the Crestview properties is via dumpsters that Republic identifies as "3 YD," which Crestview reasonably understood to mean that those dumpsters held three cubic yards' worth of garbage.

18. The purported size of these dumpsters is nearly always referenced on both service agreements and on the regular invoices Republic sends to its customers, including Crestview, as "3 YD."

19. The agreements between Republic and Crestview, regardless of whether premised on invoices or service agreements, generally provide that Republic will provide a specific number of three-yard dumpsters and empty them on a specified number of days at each location.

20. The number of dumpsters times the number of times they were emptied each week would calculate the number of "lifts per week" that Republic would collect at each of Crestview's properties.

21. At times relevant to this Complaint, Crestview and Republic regularly communicated about the level of service that Crestview needed, and the parties

would adjust the number of lifts per week to optimize how much Crestview spent on garbage collection services.

22. So, for example, Republic would pick up garbage three days a week at one of Crestview's properties but would pick up garbage five days a week at one of Crestview's other properties.

23. In both cases, the fundamental agreement was that Republic would collect up to a specific volume of garbage at each property each week for a fixed price, except for variable fuel fees, which are a separate line item on Republic's invoices.

B. Around 2018, Republic changed how it handled “overages” and enacted a “flat-lid” policy.

24. When Crestview first started using Republic, Republic would not always charge extra if the dumpsters were loaded in such a way that the garbage was taller than the top plane of the dumpster, and where the dumpster lid would not fully seat.

25. In 2017 or 2018, however, Republic changed course and implemented a new policy, where it began consistently charging Crestview and other customers in Missoula County for so-called “overages” whenever the dumpsters had enough garbage that the lid would not sit flat.

26. Republic represented to the Public Service Commission in 2021 that Republic had a “national policy” that, before it would charge a customer for an

overage, it was required to “document the overage on a customer account and then take a picture of the overage to upload to the customer’s account.”

27. Despite repeated requests, prior to the filing of this action, Republic was unable to document the vast majority of Crestview’s purported overages with the photographic evidence it has claimed is part of Republic’s “national policy,” despite Crestview’s repeated requests for that documentation. In response to discovery requests early in this case, however, Republic produced a substantial number of photos of overages, some of which appear to be legitimate, and some of which do not.

28. As of the filing of this amended complaint, Republic has apparently been unable to provide any photographic evidence of overages at Crestview’s River Rock apartments.

C. The vast majority of Republic’s “three-yard” dumpsters in Missoula County are substantially undersized and Republic has long known it.

29. Crestview has now learned that Republic’s so-called “three-yard” dumpsters are not actually three yards but are substantially less—closer to two-and-a-half yards than three.

30. Indeed, the Public Service Commission found that Grizzly Disposal presented “uncontroverted” evidence that Republic’s “three-yard” dumpsters in the Missoula service area were undersized.

31. Upon information and belief, Republic has now begun admitting to its customers that it is aware that at least some of its “three-yard” dumpsters in Missoula County are undersized.

32. Upon information and belief, Republic will not release those customers from existing service agreements without requiring them to pay oppressive liquidated damages.

33. Upon information and belief, instead of releasing them from contracts, Republic will sometimes offer a small credit for base services—but only to customers who affirmatively complain about the size of the dumpsters—and will sometimes offer to exchange the undersized dumpster with one that measures a full three yards.

34. Since this action was filed, Republic has substantially modified its service agreements with some customers, which now purport to require arbitration, and which purport to prohibit customers from participating in a class action.

35. Those new customer service agreements also purport to require customers to let Republic price match alternative garbage service before they can terminate their services with Republic.

36. Upon information and belief, Republic is not providing any new consideration to customers when it renews service agreements with these new

oppressive terms, especially in exchange for them to purportedly waive existing rights or existing claims.

37. Republic has long known that its “three-yard” dumpsters in the greater Missoula market are substantially less than three yards.

38. Upon information and belief, in late 2022 or early 2023, Republic contacted a dumpster fabricator, Capital Industries, and ordered several hundred “three-yard” dumpsters that measure a true three cubic yards.

39. Upon information and belief, Capital Industries has long had a “stock” three-yard, rear-load dumpster, but prior to 2022, the “three-yard” dumpsters Republic was ordering from Capital for Republic’s operations in Missoula County were not Capital’s stock three-yard dumpsters, and were instead a custom design that both Capital and Republic knew were smaller than Capital’s stock three-yard, rear-load dumpsters.

40. Upon information and belief, prior to the time Republic ordered the “true” three-yard dumpsters in late 2022 or late 2023, essentially all of its “three-yard” dumpsters in Missoula County were undersized.

41. Upon information and belief, the undersized dumpsters referenced in the preceding paragraph were fabricated based on Republic’s request, and with Republic’s knowledge that they were undersized.

42. Upon information and belief, over time, Republic has slightly modified the design of the “three-yard” dumpsters it orders from Capital Industries and uses in Missoula County, but until at least 2022, essentially all of the “three-yard” dumpsters Republic ordered for Capital for use in the Missoula market were undersized.

43. Upon information and belief, prior to ordering the true three-yard dumpsters mentioned in ¶ 40, if Republic had differing sizes of “three-yard” dumpsters in Missoula County, it did not track the specific location of those differently sized dumpsters.

44. Upon information and belief, Republic cannot identify, by serial number or otherwise, the specific dumpsters Crestview had at its apartment complexes at the time Crestview stopped using Republic in 2022, or the current location of those specific dumpsters.

45. Upon information and belief, the “three-yard” dumpsters Republic used in Missoula County—at least before it ordered “true” three-yard dumpsters within the last 12 months—were different than the three-yard dumpsters Republic used in other Montana markets.

46. Upon information and belief, the primary difference between the dumpsters used in Missoula County versus the rest of Montana was that the dumpsters in Missoula County were smaller.

47. Upon information and belief, besides in Missoula County, Republic therefore uses dumpsters that measure a “true” three-yards in every other market where it operates in Montana.

48. Upon information and belief, despite the differently sized dumpsters Republic uses in different Montana markets, it applies the same overage policy statewide.

49. The practical effect of the under-sized dumpsters in Missoula County is that many of the overages that Republic charges for are not truly overages at all, and the amount of garbage in the dumpsters would fit without creating an overage, if only the dumpsters were the three cubic yards that Republic represents them to be.

50. Additionally, if the dumpsters truly held three yards’ worth of garbage, Crestview would have needed fewer dumpsters, or required fewer collection days for the same number of dumpsters.

51. As a result of Republic’s actions and misrepresentations, Crestview has overpaid for garbage collection services in general.

52. As a result of Republic’s actions and misrepresentations, Crestview has been overcharged for overages, at least some of which were unjustified.

Count 1—Breach of Contract

53. Crestview incorporates the preceding allegations.

54. Crestview had an express contractual relationship with Republic, both because of its service agreements, and as a result of the parties' exchange of services for money, as shown by the hundreds of invoices that Republic sent, and that Crestview paid.

55. Alternatively, Crestview had an implied contractual relationship with Republic during the times its properties did not have service agreements with Republic.

56. The basis of the parties' overall bargain was that Republic would provide three-yard dumpsters, and Crestview would pay Republic for collecting up to three yards' worth of garbage in each of those dumpsters on each visit.

57. Crestview also understood that the basis of the parties' bargain was based on overall volume. So, for example, if Crestview had 5 dumpsters at one apartment complex and two of them were slightly overfull and three of them were half empty, that Republic should not have charged for any overages, regardless of the true size of the dumpsters. But, upon information and belief, Republic would still charge for two overages in those situations, even though the total volume it collected was well under 15 yards that day.

58. By misrepresenting the actual size of the three-yard dumpsters and providing nonconforming services, Republic repeatedly and materially breached its contractual obligations with Crestview.

59. Further, by misrepresenting the actual size of the three-yard dumpsters, Republic violated the implied covenant of good faith and fair dealing, which is a part of every contract in Montana.

60. The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

61. Republic's representation and associated billing of its "three-yard" dumpsters was dishonest in fact.

62. Republic's representation and associated billing of its undersized "three-yard" dumpsters violated of reasonable commercial standards of fair dealing.

63. Republic's billing for overages when neighboring dumpsters on the same property on the same day were well below "full" was also a breach of contract and a breach of the covenant of good faith and fair dealing.

64. As a result of Republic's actions, Crestview has been damaged in an amount to be determined at trial but, at minimum, its damages include the difference between what it pays for a three-yard dumpster and what it receives in service from Republic. In other words, if the dumpsters average 15% smaller than Republic indicates, Crestview is entitled to a 15% refund of its regular invoices during the eight years preceding the filing of this action.

65. Additionally, Crestview has been damaged because if the dumpsters were truly three yards, at least some of the overages it has been assessed would not have been true overages at all.

Count 2—Negligent Misrepresentation

66. Crestview incorporates the preceding allegations.

67. Republic made affirmative representations about the size of the dumpsters it was providing to Crestview, and the size of the dumpster was material to the parties' understanding of their respective obligations.

68. Republic's representations about the size of its "three-yard" dumpsters were untrue.

69. Regardless of Republic's actual belief, it made those representations about the volume of its "three-yard" dumpsters without any reasonable ground for believing they were true.

70. The representations about the size of Republic's "three-yard" dumpsters were made with the intent to induce Crestview to rely on those representations.

71. Crestview was unaware of the falsity of Republic's representations about the actual size of its "three-yard" dumpsters, and—especially because it had no other option—it was justified in relying on those representations.

72. As a result of its reliance on Republic's misrepresentations, Crestview suffered damages in an amount to be determined at trial.

73. Republic is guilty of actual malice because it has long had knowledge of facts or intentionally disregarded facts that created a high probability of injury to its customers in the Missoula service area, and deliberately proceeded to act with conscious or intentional disregard, or indifference, to the high probability of injury to Crestview and other customers.

74. Republic is guilty of actual fraud because it made representations about the size of its "three-yard" dumpsters with actual knowledge of the falsity of those representations, or concealed material fact with the purpose of causing legal injury, and Republic was entitled to—and indeed *compelled* to—rely on those representations, and incurred damages as a result of its compelled reliance.

75. Crestview is therefore entitled to actual and punitive damages, in an amount to be determined at trial.

Count 3—Class Certification

76. Crestview incorporates the preceding allegations, on behalf of itself and on behalf of all potential class members.

77. Crestview requests that it be designated as class representative and lead plaintiff in a class certified under Rule 23(b)(3) of the Montana Rules of Civil Procedure. Crestview, and all other members of the putative class—which includes

all Republic customers within Montana⁴ who have paid for “three-yard” dumpster service where Republic has provided dumpsters that are substantially smaller than three yards—are similarly situated for the purposes of Rule 23, and have all suffered similar harm due to Republic’s actions.

78. The proposed class meets the requirements of Rule 23(a) because:

- a. An action joining every prospective class member would involve so many individuals and entities that joinder of all of them would be impractical, if not impossible, because Republic has had well over a thousand separate customers with “three-yard” dumpsters in Missoula County during the relevant class timeframe.
- b. The legality and propriety of the Defendant’s actions involves questions of law and fact common to all class members.
- c. Crestview’s claims are typical of the class claims, and the legal and factual questions posed by this case concern the same issues for Crestview and for every member of the class.
- d. Crestview will fairly and adequately represent and protect the interests of the class. Resolution in favor of Crestview and the

⁴ At this time, Crestview believes the class claims are limited to Missoula County, but discovery is still underway.

class will fairly and adequately inure to the benefit of the entire class.

- e. Crestview's attorneys are skilled in litigating the types of issues presented and have litigated complex cases and class actions in both state and federal trial and appellate courts in Montana and the Ninth Circuit.
- f. Many of the individual claims are likely too small to justify the costs of individual lawsuits, and therefore it is unlikely these claims will ever be prosecuted, if not on behalf of a class.

79. A class action is maintainable under the requirements of Rule 23(b)(3)

because:

- a. Prosecution of separate actions creates the danger of inconsistent or varying adjudication of each class member's individual case if litigated in separate actions spread across different forums, which would create a substantial likelihood of inconsistent results.
- b. Common questions of law and fact predominate over of any question affecting Crestview or any other individual class member, and so a class action is a superior method for the fair and efficient adjudication of the controversy.

c. The remedy requested is not onerous or impractical, and the precise amount of most categories of contract damages owed to the class is calculable to a sum certain based on the Defendant's own records.

80. Crestview therefore requests that the Court certify a class and authorize notice under Rule 23. Crestview also requests that Republic be directed to provide and pay for notice to all qualifying class members, because Republic is in exclusive control of the information needed to contact the class members.

Prayer for Relief

Crestview and the class it seeks to represent request the following relief:

- A. For an order certifying the class under Montana Rule of Civil Procedure 23(b)(3), and appointing the Crestview entities as class representatives and lead plaintiffs, and their attorneys as lead class counsel;
- B. For a judgment that Republic's actions have breached the contract and/or the implied covenant of good faith and fair dealing between itself and Crestview, along with all class members similarly situated;
- C. For a judgment that Republic's actions are tortious as they relate to Crestview, and to all class members similarly situated;
- D. For money damages for Crestview and the class;
- E. For punitive damages for Crestview and the class;

- F. For costs and attorney fees as allowed by statute, contract, law, or equity;
- G. For pre- and post-judgment interest;
- H. For an order directing that class attorney fees, costs, and associated expenses be paid out of the common fund resulting from any successful recovery;
- I. For an order directing that the class representatives and lead plaintiffs be awarded a reasonable incentive award from the common fund; and
- J. For any other appropriate relief.

March 15, 2023.

PARSONS BEHLE & LATIMER
Attorneys for the Plaintiffs

/s/ Jesse Kodadek
Jesse Kodadek

CERTIFICATE OF SERVICE

I, Jesse C. Kodadek, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 03-15-2023:

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Electronically Signed By: Jesse C. Kodadek
Dated: 03-15-2023