

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Cedric C. Chao (SBN 76045), Isabelle Ord (SBN 198224) Chao ADR, PC One Market Street, Spear Tower, 36th Floor, San Francisco, CA 94105 TELEPHONE NO.: (415)293-8088 FAX NO. (Optional): E-MAIL ADDRESS (Optional): cedric.chao@chao-adr.com;isabelle.ord@us.dlapiper.com ATTORNEY FOR (Name): Plaintiff City of Oakland		FILED BY FAX^{LY} ALAMEDA COUNTY September 01, 2020 CLERK OF THE SUPERIOR COURT By Milagros Cortez, Deputy CASE NUMBER: RG17853559
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225FallonStreet MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		
PLAINTIFF/PETITIONER: City of Oakland DEFENDANT/RESPONDENT: California Waste Solutions, Inc.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: RG17853559
A CASEMANAGEMENTCONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: Dept. 517 Div.: Civil Room: _____ Address of court (if different from the address above): 24405 Amador St., Hayward, CA 94544 <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Cedric Chao; Isabelle Ord; Christina Lum; Celso Ortiz		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (answer one):
 - a. This statement is submitted by party (name): Plaintiff/Cross-Defendant City of Oakland
 - b. This statement is submitted **jointly** by parties (names):

2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): FAC filed on 9/11/17
 - b. The cross-complaint, if any, was filed on (date):

3. **Service** (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. **Description of case**
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):
Declaratory relief, reformation of contract, breach of contract (as reformed), breach of implied covenant of good faith and fair dealing, breach of contract (unreformed), promissory estoppel.

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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
See Attachment 4b

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. The trial has been set for *(date)*: 6/15/20datevacated

b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
Please see Attachment 6 and the appended Stipulation.

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. days *(specify number)*: 5-7

b. hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation** (if available).

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

Multiple causes of action, amount in controversy.

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DEFENDANT/RESPONDENT: California Waste Solutions, Inc.	RG17853559

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input checked="" type="checkbox"/> Mediation completed on (<i>date</i>): June 2, 2017
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

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DEFENDANT/RESPONDENT: California Waste Solutions, Inc.	

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
See Attachment 15.

16. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):
The parties have negotiated voluntary discovery limitations, limiting the number of party affiliated and third party depositions, and imposing caps on special interrogatories and requests for admission. Please see Attachment 6 and the appended Stipulation.

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17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
The pleadings are settled, and the parties have met and conferred and have entered into a Stipulation re Trial Continuance, Discovery Limitations and Related Matters. See Attachment 6.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): 10

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: August 31, 2020

CedricChao

(TYPE OR PRINT NAME)

▶ 

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

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Attachment 4(b) to Plaintiff City of Oakland's 9/15/20 CMC Statement

The City seeks to prevent excessive and unauthorized recycling collection charges that defendant CWS has wrongfully imposed on multi-family dwelling recycling customers (the "MFD Cart Customers") for the service of pushing plastic recycling carts to the curbside for collection. The City asserts its claims for itself and on behalf of the MFD Cart Customers, seeking, among other relief, reformation of the July 1, 2015 Residential Recycling Services Contract (the "Recycling Contract") to reflect the mistakenly omitted rate for "premium backyard" service for MFD Cart Customers, to prevent CWS from charging more than the negotiated and agreed upon monthly rate of \$27.85 per cart for MFD Cart Customers, and to recover resulting damages, including attorneys' fees, under the contract.

The City's First Amended Complaint includes six causes of action: (1) Declaratory Relief, (2) Reformation of Contract, (3) Breach of Contract (as Reformed), (4) Breach of the Implied Covenant of Good Faith and Fair Dealing, (5) Breach of Contract (Unreformed); and (6) Promissory Estoppel. These six causes of action are intended to be pled together, to provide the City and its residents complete relief from CWS's outrageous gouging of the City's residents with rates for moving plastic carts to the curbside at multi-family dwellings that are 6 times (and even up to 25 times) the contractually allowed rates. The relief sought includes not only declaratory relief and reformation of the contract, but also recovery of damages for the City and for any MFD customers who have paid the illegal charges.

This dispute arises from CWS's effort to take advantage of the mistaken omission from the Recycling Contract rate tables of the agreed upon "premium backyard" service rate for MFD Cart Customers. The City and CWS agreed that the service of moving recycling carts to the curbside, called "premium backyard service," would be charged at the rate of \$27.85 per cart per month, for both single-family dwelling ("SFD") properties and multi-family dwelling ("MFD") properties. This is the same rate that Waste Management, Inc. (the franchisee for the collection and disposal of waste and organics) charges for moving the waste and organics carts to the curbside, for both SFD and MFD properties. The rates for moving the much larger, heavier, and less maneuverable metal bins to curbside are distance-based and considerably higher (5.5 to 27.9 times higher) than the SFD cart rate (and the intended CWS MFD cart rate), reflecting that it is much easier to move the lightweight, smaller 2-wheeled plastic carts than it is to move the metal bins.

Through a drafting oversight, the residential recycling rate chart attached to the Recycling Contract mistakenly omitted the parties' agreed rate of \$27.85 for "premium backyard" services for MFD properties.

Numerous facts pled in the Complaint establish that \$27.85 is the correct contract rate for moving the recyclables carts at MFD properties, including the following:

1. The history of the parties' negotiations over the Recycling Contract indicates the parties intended and agreed that the "premium backyard" services rate of \$27.85 would apply to carts,

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Attachment 4(b) to Plaintiff City of Oakland's 3/7/19 CMC Statement (Cont'd)

regardless of whether the carts were at SFD or MFD properties. (First Amended Complaint ("FAC") ¶¶ 38-49.)

2. CWS's initial performance under the Recycling Contract for moving carts at MFD was at the \$27.85 rate. (FAC ¶¶ 30-31.)

3. The City, CWS, and Waste Management all collaborated on the drafting of public outreach materials (the "Outreach Materials") that explicitly stated that MFD properties would be charged at the \$27.85 monthly rate for moving carts to curbside. CWS reviewed and approved these Outreach Materials before they were distributed. (FAC ¶¶ 50-63, and Exhs. C-E to Complaint.)

4. On at least one occasion, when City staff mistakenly dropped the line for "premium backyard" services for carts at MFD properties, the CWS representative alerted City staff that a term was missing from the Outreach Materials rate sheet, and as a result, City staff then re-inserted the \$27.85 rate for MFD recycling carts. (FAC ¶ 64.)

5. CWS charges the \$27.85 monthly rate for plastic carts at SFD properties, but charges MFD properties for the *exact same cart* the \$152.68 monthly rate applicable to metal bins (and even reserves the right to charge up to \$776.13 per month for the plastic carts). Thus, whereas CWS's charge for moving plastic carts at SFD properties is \$334.20 per year, CWS charges MFD properties for the exact same cart **\$1,824.16 per year** (and reserves the right to charge up to **\$9,313.56 per year**). (FAC ¶¶ 1-9, 25.)

CWS made a regrettable decision to overcharge MFD ratepayers. CWS has wrongfully taken from the MFD ratepayers between \$5 million to \$6 million in overcharges, which damage amount increases daily. CWS must make the MFD ratepayers whole.

CWS filed a cross-complaint with four cross-claims: (1) breach of contract, (2) interference with an alleged WMAC-CWS contractual relationship, (3) breach of the covenant of good faith and fair dealing, and (4) breach of the superseded 2005-2012 contract. The fourth cross-claim based on the superseded 2005-2012 contract has been dismissed with prejudice.

The City of Oakland filed a Motion for Summary Adjudication of California Waste Solutions, Inc.'s Cross-Claims Alleging Breach of Section 7.08.4 of Its Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing ("Summary Adjudication Motion"), heard on May 14, 2020 before Department 517.

On May 27, 2020, the Court issued an Order denying without prejudice Oakland's Summary Adjudication Motion, on the ground that "a ruling in favor of Cross-Defendant [Oakland] would not result in the dismissal of either the First Cause of Action for Breach of Contract or the Third Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing." However, the Court also held: "As the trial date of June 15, 2020 has been vacated and no new trial date has been set, the Court hereby grants Cross-Defendant leave to file a further motion or motions to obtain the requested ruling concerning the First and Third Causes of Action." The Court

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Attachment 4(b) to Plaintiff City of Oakland's 3/7/19 CMC Statement (Cont'd)

invited the parties to “submit the issues regarding Cross-Defendant's alleged breach of the Residential Recycling Collection Services Contract to the Court pursuant to CCP section 437c(t) (parties may request an opportunity to apply for a ruling by stipulation).”

The City of Oakland firmly believes that the issues raised in its Summary Adjudication Motion can and should be granted as a matter of law. If summary adjudication is granted, the case will be simplified and the odds of a resolution short of trial will be materially increased. It would significantly advance the goal of efficient case management if the Court could address on the merits the summary adjudication issues raised by the City of Oakland.

The City requests the opportunity to discuss this question at the 9/15/20 Case Management Conference.

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**Attachment 6 to Plaintiff City of Oakland's Case Management Statement
[9/15/20 Case Management Conference]**

The parties entered a Stipulation re Trial Continuance, Discovery Limitations, and Related Matters (the "Stipulation"), along with a Joint Ex Parte Application requesting the grant of said Application. The Stipulation is the product of extensive negotiations between the parties. The stipulated limits on discovery are effective, although the stipulations regarding the trial date and the April 9, 2020 case management conference were rendered moot by the COVID-related order vacating the trial date and re-setting the case management conference. Because of the Court's COVID-related order and because the Court did not accept filings at the time the Stipulation was entered into, the Stipulation was not presented to the Court for approval. The Stipulation is appended hereto, because discovery limitations are binding on the parties.

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 18 CALIFORNIA WASTE SOLUTIONS, INC.

19 **SUPERIOR COURT OF CALIFORNIA**
 20 **COUNTY OF ALAMEDA**

21 CITY OF OAKLAND,
 22 Plaintiff,

23 v.

24 CALIFORNIA WASTE SOLUTIONS,
 25 INC., a California corporation, and DOES
 1-20, inclusive,
 26 Defendants.

27 And RELATED CROSS-CLAIMS
 28

CASE NO. RG17853559

**STIPULATION RE TRIAL CONTINUANCE,
 DISCOVERY LIMITATIONS, AND
 RELATED MATTERS; [PROPOSED]
 ORDER**

Date: N/A
 Time: N/A
 Dep't: 517, Hon. Stephen Pulido

Complaint Filed: March 20, 2017

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1 STIPULATION

2 **IT IS HEREBY STIPULATED**, subject to the approval of the Court, by and between
3 plaintiff and cross-defendant City of Oakland and defendant and cross-complainant California
4 Waste Solutions, Inc. as follows:

5 WHEREAS, on March 17, 2019, the Court set a trial date of June 15, 2020 at 8:30 a.m. in
6 this matter and other dates related thereto, including a June 2, 2020 deadline to file Trial Briefs
7 and other Trial Documents, a June 5, 2020 Pre-Trial Conference, a May 11, 2020 Mandatory
8 Settlement Conference, and an April 9, 2020 Further Case Management Conference;

9 WHEREAS, the parties have worked diligently to attempt to resolve their disputes,
10 including two private mediation sessions, and multiple good faith party-to-party settlement
11 discussions;

12 WHEREAS, the parties deferred discovery pending settlement discussions in order to hold
13 down costs;

14 WHEREAS, the parties have reached an impasse in their settlement discussions, and will
15 proceed with discovery and trial preparation;

16 WHEREAS, on February 28, 2020, the City of Oakland filed a Motion for Summary
17 Adjudication of California Waste Solutions, Inc.'s Cross-Claims Alleging Breach of Section
18 7.08.4 of Its Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing, which
19 is scheduled to be heard on May 14, 2020 in Department 517;

20 WHEREAS, the parties have met and conferred and agreed upon the stipulated new dates
21 set forth below for discovery and trial preparation, and that represents a fair compromise resulting
22 from their good faith negotiations;

23 WHEREAS, the parties have mutually agreed to conduct certain limited discovery, which
24 the parties reasonably anticipate will require approximately three to four additional months of
25 time to prepare the case for trial;

26 WHEREAS, as of the date of this stipulation, the World Health Organization has declared
27 a global pandemic arising from the novel Covid-19 virus, the Alameda County Superior Court is
28 presently closed through Tuesday, April 7, 2020, and the County of Alameda

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1 (<http://www.acphd.org/2019-ncov.aspx>) has imposed a three week "shelter in place" order
 2 effective March 17, 2020, which will necessarily delay or prevent the parties from expeditiously
 3 completing discovery under the current trial schedule and could foreseeably continue beyond the
 4 initial three week order, which may delay or prevent the parties from expeditiously completing
 5 discovery under the current case management order;

6 WHEREAS, the City of Oakland desires to have its Motion for Summary Adjudication
 7 heard as scheduled on May 14, 2020, as the City believes a ruling on this Motion could simplify
 8 the case and advance a resolution; and

9 WHEREAS, the parties have not previously requested a continuance of the trial date;

10 **NOW THEREFORE**, subject to Court approval, the parties have negotiated and
 11 mutually agreed to the following provisions:

12 1. The current trial date of June 15, 2020 shall be continued to October 19, 2020, and
 13 all dates arising therefrom shall also be continued to run based on the new trial date;

14 2. The City of Oakland's pending Motion for Summary Adjudication shall remain on
 15 calendar for hearing on May 14, 2020. CWS shall file its opposition papers by April 23, 2020,
 16 and the City of Oakland shall file its reply papers by May 8, 2020;

17 3. The parties will each be limited to five (5) party affiliated depositions and two (2)
 18 third party depositions, and each deposition shall be limited to 6.5 hours of running time with the
 19 deposition "clock" to be maintained by the court reporter;

20 4. The parties will each be limited to twenty (20) special interrogatories and ten (10)
 21 requests for admission. The parties will be entitled to propound form interrogatories per the Code
 22 of Civil Procedure without special limits; and

23
 24 ////
 25 ///
 26 //
 27 /

1 5. The case management conference currently set for April 9, 2020 at 3:00 pm shall
2 remain on calendar.

3
4 **IT IS SO STIPULATED.**¹

5
6 Dated: March 24, 2020

**CHAO ADR, PC
DLA PIPER LLP (US)
OAKLAND CITY ATTORNEY**

7
8 By 
9 _____
CEDRIC C. CHAO

10 Attorneys for Plaintiff and Cross-Defendant
11 CITY OF OAKLAND

12 Dated: March 24, 2020

BUCHALTER

13
14 By */s/ Douglas C. Straus*
15 _____
DOUGLAS C. STRAUS
(by Cedric Chao per DS authorization)

16 Attorneys for Defendant and Cross-
17 Complainant
CALIFORNIA WASTE SOLUTIONS, INC.

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27 _____
28 ¹ The parties understand that these dates may be subject to adjustment by the Court in its on-going efforts to protect the Court and the public from the novel COVID-19 virus.

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[PROPOSED] ORDER

The Court having read and considered the Stipulation re Trial Continuance, Discovery Limitations, and Related Matters, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

- (1) The June 15, 2020 trial date is continued to October 19, 2020 at 8:30 a.m., and all dates arising from the June 15, 2020 trial date are hereby continued to run from the new trial date;
- (2) The June 2, 2020 deadline for trial briefs and other trial documents is continued to _____, 2020;
- (3) The June 5, 2020 pre-trial conference is continued to _____, 2020 at 8:30 a.m.;
- (4) The May 11, 2020 mandatory settlement conference is continued to _____, 2020 at 2:00 p.m.;
- (5) The Motion for Summary Adjudication by the City of Oakland remains set for hearing on May 14, 2020. CWS’s opposition is due April 23, 2020 and the City’s reply is due May 8, 2020;
- (6) The discovery limitations set forth in the parties' stipulation above are hereby approved and incorporated by reference into this Order; and
- (7) The case management conference set for April 9, 2020 at 3:00 p.m. remains on calendar.

IT IS SO ORDERED.

Dated: _____, 2020

HON. STEPHEN PULIDO
ALAMEDA COUNTY SUPERIOR COURT

City of Oakland v. California Waste Solutions
Case No. RG17853559

**Attachment 8 to Plaintiff City of Oakland's Case Management Statement
[9/15/20 Case Management Conference]**

Representation:

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City of Oakland v. California Waste Solutions
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Attachment 15 to Plaintiff City of Oakland's 9/15/20 CMC Statement

Oakland's Motion for Summary Adjudication

On February 29, 2020, the City of Oakland filed a Motion for Summary Adjudication of California Waste Solutions, Inc.'s Cross-Claims Alleging Breach of Section 7.08.4 of Its Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing ("Summary Adjudication Motion"), that was heard on May 14, 2020 before Department 517.

The main claim underlying CWS's First Cause of Action for breach of contract and CWS's Third Cause of Action for breach of the implied covenant of good faith and fair dealing is that after consideration, the City Council in open session declined to adopt an ordinance that would have raised the rates charged to Oakland residents for their recycling services. Yet, as City staff had informed CWS and as is clear under California law, Oakland municipal ordinances, and the Oakland-CWS recycling contract itself, City staff lack authority to bind the City to rate increases, which power is reserved to the legislative body, the City Council. This is a legal question.

On May 27, 2020, the Court issued an Order denying without prejudice the City's Motion for Summary Adjudication, but inviting the parties to take up by stipulation the issues in the City's motion under CCP section 437c(t). See Attachment 4(b)(last three paragraphs) for a fuller discussion of the Court's ruling.

The City of Oakland continues to believe that the Summary Adjudication Motion can and should be granted as a matter of law at this juncture. If the motion is granted, the case will be simplified and the odds of a resolution short of trial will be materially increased.

The City requests the opportunity to discuss this topic at the 9/15/20 Case Management Conference.

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I, Travis Jensen, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is DLA Piper LLP (US), 555 Mission Street, Suite 2400, San Francisco, California 94105-2933. On August 31, 2020 I served a copy of the within document(s):

CASE MANAGEMENT STATEMENT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Douglas C. Straus Tiffany Ng BUCHALTER 55 Second Street, Suite 1700 San Francisco, CA 94105-3493 dstraus@buchalter.com tng@buchalter.com	Attorneys for Defendant CALIFORNIA WASTE SOLUTIONS, INC.
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 31, 2020 at San Francisco, California.



Travis Jensen