

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

DALIA MIRANDA, on behalf of herself and all others similarly situated, Civil Action No. _____

Plaintiff,

vs.

WASTE MANAGEMENT, INC. OF FLORIDA,

Defendant.

DEFENDANT’S NOTICE OF REMOVAL

Defendant Waste Management Inc. of Florida (“Waste Management”), pursuant to 28 U.S.C. §§ 1441, 1446 and the Class Action Fairness Act of 2005 (“CAFA”), as codified in 28 U.S.C. §§ 1332(d) and 1453, and with full reservation of all rights and defenses, removes the action styled *Dalia Miranda vs. Waste Management, Inc. of Florida*, Case No. 2020-006580-CA-01, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (“State Court Action”) to the United States District Court for the Southern District of Florida. In support of its Notice of Removal, Waste Management states as follows:

I. BACKGROUND

1. Plaintiff Dalia Miranda (“Plaintiff”) filed a purported Class Representation Complaint and Demand for Jury Trial (“Complaint”) in the State Court Action on March 19, 2020.

2. On July 16, 2020, Plaintiff served Waste Management with a copy of the Complaint and summons in the State Court Action.

3. In accordance with 28 U.S.C. § 1446(a), a copy of “all process, pleadings, and

orders served upon” Waste Management in the State Court Action are attached hereto as **Composite Exhibit A.**

4. Pursuant to 28 U.S.C. §§ 1446(a) and (d), undersigned counsel certifies that a Notice of Filing Notice of Removal, along with a copy of this Notice of Removal and all attachments hereto, will be promptly filed with the Clerk of the Circuit Court of Miami-Dade County, Florida and the same will be promptly served on counsel of record.

5. Plaintiff’s claims rest principally on the allegation that Waste Management “negligently, knowingly, intentionally, grossly, and recklessly failed to properly construct, maintain and/or operate the [Medley] Landfill, and caused the invasion of Plaintiff’s property by noxious odors on frequent, intermittent and reoccurring occasions.” Compl. ¶ 39.

6. Plaintiff asserts claims against Waste Management for (1) nuisance; (2) negligence; and (3) gross negligence. Compl. ¶¶ 51-76. In particular, Plaintiff alleges that “Defendant has wrongfully, negligently, and knowingly created a foreseeable harm by causing an unreasonable invasion of Plaintiff’s property by noxious odors, gases and/or particulates” and that “[a]s a foreseeable, direct and proximate result of the foregoing conduct and omissions of Defendant, Plaintiff suffered damages to property,” including “harm related to the use and enjoyment of land and property, and decreased property values.” Compl. ¶¶ 56-58; *see also id.* ¶¶ 74-76 (same). Plaintiff also alleges that the “claims of Plaintiff and the other Class Members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendant to properly construct, maintain and/or operate the Landfill.” *Id.* ¶ 44; *see also id.* ¶ 45 (“All Class Members have suffered injury in fact as a result of the invasion of their property by Defendant’s release of noxious odors.”).

7. Plaintiff seeks to litigate her claims individually and on behalf of a proposed class

defined as:

All owner/occupants and renters of residential property within the area enclosed by a geographic boundary consisting of:

Beginning at the interchange from the Ronald Reagan Turnpike (a/k/a Homestead Extension of Florida's Turnpike, SR 821) to Beacon Station Boulevard; **East** on Beacon Station Boulevard to the intersection of Beacon Street Boulevard and N. Okeechobee Road (a/k/a US 27); **Straight** traveling Northeast on Hialeah Gardens Boulevard to W 68th Street; **East** on W 68th Street to the Palmetto Expressway (a/k/a SR 826); **South** on Palmetto Expressway to 58th Street; **West** on 58th Street to the Ronald Reagan Turnpike; **North** on Ronald Reagan Turnpike to starting point at intersection/interchange of the Ronald Reagan Turnpike and Beacon Street Boulevard. . . . (Class Boundary Map).

Compl. ¶ 39.

8. Plaintiff seeks (a) certification of the proposed class; (b) designation of Plaintiff and her counsel as representatives of the proposed class; (c) judgment in favor of Plaintiff and the proposed class; (d) an award to Plaintiff and the proposed class of compensatory and punitive damages, and all such further relief to which they may be entitled; and (e) injunctive relief. *See id.* Prayer for Relief.

9. “To remove a case from a state court to a federal court, a defendant must file in the federal forum a notice of removal ‘containing a short and plain statement of the grounds for removal.’” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014) (quoting 28 U.S.C. § 1446(a)). “A statement ‘short and plain’ need not contain evidentiary submissions.” *Id.*

10. As demonstrated below, this Court has diversity jurisdiction under CAFA over Plaintiff's claims and the Complaint is properly removed to this Court.

II. WASTE MANAGEMENT HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

11. Plaintiff served Waste Management with a copy of the summons and Complaint

on July 16, 2020.

12. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within 30 days after Waste Management was served with a copy of the Complaint. *See* U.S.C. §1446(b)(1).

13. As of the date of this Notice of Removal, Waste Management has not filed a responsive pleading in the State Court Action. Waste Management hereby reserves all legal rights and defenses to the Complaint. By removing the action to this Court, Waste Management does not waive any rights or defenses available under federal or state law. Waste Management further reserves the right to amend or supplement this Notice of Removal.

14. The United States District Court for the Southern District of Florida is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the place where the State Court Action was filed and is pending. Plaintiff also alleges in the Complaint that venue is proper in Miami-Dade County, Florida. Compl. ¶ 10.

III. REMOVAL IS PROPER UNDER THE CLASS ACTION FAIRNESS ACT

15. The State Court Action is removable to this Court because this Court has federal diversity jurisdiction over the Plaintiff's claims under the Class Action Fairness Act ("CAFA"), codified in Title 28 of the United States Code in provisions including 28 U.S.C. §§ 1332(d), 1441(b), and 1453(b).

16. Congress enacted CAFA to expand federal court jurisdiction over proposed class actions. *See Dart Cherokee*, 135 S. Ct. at 554 (citing S. Rep. No. 109-14, at *43, *as reprinted in* 2005 U.S.C.C.A.N. 3, *41, 109 S. Rpt. 14). CAFA's provisions "should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Id.* The Supreme Court in *Dart Cherokee* made clear that, unlike

other statutes of removal, “no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Id.*

17. CAFA provides that a class action may be removed to federal court if “(1) any member of the plaintiff class is a citizen of a state different from the state of citizenship of any defendant, (2) the aggregate amount in controversy exceeds \$5 million; and (3) the proposed plaintiff class contains at least 100 members.” *S. Fla. Wellness v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014) (citing 28 U.S.C. §§ 1332(d)(2), (5)-(6)). “[T]he claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds” the \$5 million requirement. 28 U.S.C. § 1332(d)(6).

18. This Court may “make reasonable deductions, reasonable inferences, or other reasonable extrapolations” to determine if the jurisdictional requirements for removal are met. *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010); *Heretick v. Publix Super Markets, Inc.*, 841 F. Supp. 2d 1247, 1250 (M.D. Fla. 2012) (using “common sense” to determine that “at least, some non-citizen of Florida” would be a member of the potential class).

19. As set forth below, all the requirements for removal under CAFA are satisfied here.

A. The Proposed Class Consists of More Than 100 Members

20. Plaintiff seeks to represent a class consisting of “[a]ll owner/occupants and renters of residential property within the area enclosed by” the Class Boundary Map and alleges the “Class consists of thousands of members.” Compl. ¶¶ 39, 41.

21. Accordingly, the Complaint itself alleges that the aggregate number of putative class members is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

22. Further, the public records of the Miami-Dade County Property Appraiser’s

Office show there are over 1,600 units in the Islands at Doral sub-divisions where Plaintiff resides. *See* Declaration of Lizbeth Smalley (“Smalley Decl.”), ¶ 6, attached as **Exhibit B**.

23. Thus, although the Complaint does not specifically allege the exact number of proposed class members, based on the facts in this Notice of Removal and on the Complaint’s allegations, the number of proposed class members is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B)

B. The Parties Are Minimally Diverse Under § 1332(d)(2)

24. Plaintiff alleges that she is a resident of the State of Florida. Compl. ¶ 2.

25. Plaintiff alleges that Waste Management “is a Florida Profit Corporation with its principal place of business located” in Texas.” *Id.* ¶ 4. Thus, Waste Management is a citizen of Florida and Texas.

26. Nevertheless, there is still jurisdiction under CAFA, which provides that an action may be removed where “any member of a class of plaintiffs is a citizen of a State different from any defendant” or where “any member of a class of plaintiffs is a . . . subject of a foreign state and any defendant is a citizen of a State.” 28 U.S.C. § 1332(d)(2)(A) & (B).

27. The proposed class includes citizens of California, Georgia, Illinois, Michigan, New York, Texas, Washington, and Wisconsin as well as other states and foreign nations. *See* Smalley Decl., ¶ 7.

28. Thus, the parties to this action are minimally diverse under 28 U.S.C. § 1332(d)(2).

C. The Amount in Controversy Exceeds \$5 Million

29. As the Supreme Court explained in *Dart Cherokee*, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the

jurisdictional threshold.” *Id.* at 554. A “removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010). Indeed, the “law does not demand perfect knowledge or depend any less on reasonable inferences and deductions than we all do in everyday life.” *Id.*

30. In determining the amount in controversy, the Court “can look to the notice of removal and other evidence relevant to the amount in controversy at the time the case was removed, including evidence submitted in response to a motion to remand.” *Thomas v. Family Dollar Stores of Fla., Inc.*, No. 8:17-cv-583-T-30AEP, 2017 U.S. Dist. LEXIS 65963, at *4 (M.D. Fla. May 1, 2017) (citing *Pretka.*, 608 F.3d at 754) (internal quotations omitted).

31. Here, although Waste Management disputes liability and damages, it is evident that Plaintiff purports to allege claims for monetary damages for herself and the proposed class members that put into controversy more than CAFA’s \$5 million jurisdictional minimum.

32. As shown above, Plaintiff alleges she and the proposed class members “have suffered injury in fact as a result of the invasion of their property by Defendant’s release of noxious odors” including “harm related to the use and enjoyment of land and property, and decreased property values” and they seek an award of compensatory and punitive damages. Compl. ¶¶ 44-45, 56-58.

33. Plaintiff estimates she alone suffered \$30,000 in damages. *See* Civil Cover Sheet, Section II (listing amount of Plaintiff’s claim).

34. Plaintiff purports to represent a class that “consists of thousands of members.” Compl. ¶¶ 39, 41. Moreover, the public records of the Miami-Dade County Property Appraiser’s Office show there are over 1,600 units in the Islands at Doral sub-divisions where Plaintiff

resides. *See Smalley Decl.*, ¶ 6.

35. Taking the amount of Plaintiff's claimed damages (\$30,000) and multiplying that amount by just the amount of units in Plaintiff's community (1,600), the amount put in controversy by the allegations in the Complaint is \$48 million, which easily exceeds CAFA's \$5 million jurisdictional threshold.

36. Accordingly, based on the facts in this Notice of Removal and on the Complaint's allegations, the amount in controversy in this case exceeds the sum of \$5 million, exclusive of interest and costs. *See S. Fla. Wellness*, 745 F.3d at 1315 (reversing order that remanded case to state court and holding that in determining whether CAFA's amount in controversy requirement is satisfied, a "court may rely on evidence put forward by the removing defendant, as well as reasonable inferences and deductions drawn from that evidence") (citing *Pretka*, 608 F.3d at 753-54) (in determining the amount in controversy on removal, "the court may consider facts alleged in the notice of removal, judicial admissions made by the plaintiffs, non-sworn letters submitted to the court, or other summary judgment type evidence that may reveal that the amount in controversy is satisfied").

CONCLUSION

For the foregoing reasons, this action is properly removed to this Court pursuant to CAFA.

Dated: August 5, 2020

Respectfully submitted,

WHITE & CASE LLP
Southeast Financial Center
200 S. Biscayne Blvd., #4900
Miami, FL 33131
Tel: (305) 371-2700
Fax: (305) 358-5744

Counsel for Defendant

s/ Jaime A. Bianchi

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Email: Doug@dmhpa.com

Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2020, a true and correct copy of the foregoing was filed with the Clerk of the Court using CM/ECF and was served by e-mail to:

Spencer M. Aronfeld, Esq.
Abby H. Ivey, Esq.
ARONFELD TRIAL LAWYERS
1 Alhambra Plaza, Penthouse
Coral Gables, FL 33134
Tel: (305) 441-0440
Fax: (305) 441-0198
aronfeld@aronfeld.com
aivey@aronfeld.com

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Attorneys for Plaintiff

s/ Jaime A. Bianchi

Jaime A. Bianchi

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS DALIA MIRANDA, on behalf of herself and all others similarly situated DEFENDANTS WASTE MANAGEMENT INC. OF FLORIDA

(b) County of Residence of First Listed Plaintiff MIAMI-DADE (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Spencer M. Aronfeld; Abby H. Ivey, ARONFELD TRIAL LAWYERS, 1 Alhambra Plaza, PH, Coral Gables, FL 33134 Tel: (305) 441-0440

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Jaime A. Bianchi; Sheldon A. Philp, WHITE & CASE LLP, 200 S. Biscayne Blvd. #4900, Miami, FL 33131 Tel: (305) 371-2700

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Removal pursuant to Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD

DATE August 5, 2020 s/ Jaime A. Bianchi

COMPOSITE EXHIBIT A



**Service of Process
Transmittal**

07/16/2020
CT Log Number 537947235

TO: Ashley Harper
WASTE MANAGEMENT
1001 Fannin St
Houston, TX 77002-6717

RE: Process Served in Florida

FOR: Waste Management Inc. of Florida (Domestic State: FL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: DALIA MIRANDA, oh behalf of herself and all others similarly situated, Pltf. vs. WASTE MANAGEMENT INC. OF FLORIDA, Dft.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 2020006580CA01

NATURE OF ACTION: Environmental Litigation - Property Damage

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 07/16/2020 at 10:10

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 07/16/2020, Expected Purge Date: 07/26/2020

Image SOP

Email Notification, Nancy Shoebotam nshoebot@wm.com

Email Notification, LILLIAN DRAKE ldrake@wm.com

Email Notification, CHRISTY LOFTIN cloftin@wm.com

SIGNED: C T Corporation System
ADDRESS: 1999 Bryan St Ste 900
Dallas, TX 75201-3140

For Questions: 877-564-7529
MajorAccountTeam2@wolterskluwer.com

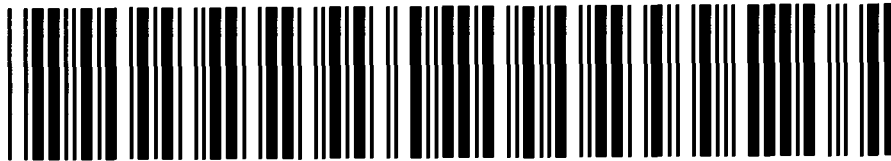
Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



PROCESS SERVER DELIVERY DETAILS

Date: Thu, Jul 16, 2020
Server Name: Kimberly Urtnowski
Location: Hollywood , FL

Entity Served : Waste Management Inc., Of Florida
Agent Name
Case Number : 2020-006580-CA-01
Jurisdiction : FL



Filing # 107699625 E-Filed 05/19/2020 04:19:46 PM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER 2020-006580-CA-01
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PLAINTIFF(S) DALIA MIRANDA, on behalf of herself and all others similarly situated	VS. DEFENDANT(S) WASTE MANAGEMENT INC. OF FLORIDA	SERVICE 7-16-2020 @ 9:45 AM KUSPS1493
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THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): WASTE MANAGEMENT INC. OF FLORIDA
c/o CT Corporation System; 1200 South Pine Island Road
Plantation, Florida 33324

Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: Spencer Aronfeld, Esq.

whose address is: 1 Alhambra Plaza, Penthouse, Coral Gables, FL 33134

Handwritten notes:
 7-16-2020 @ 9:45 AM
 KUSPS1493
 (Signature)

CLOCK IN

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days.**" after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

HARVEY RUVIN CLERK of COURTS	 DEPUTY CLERK	DATE 5/26/2020
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**AMERICANS WITH DISABILITIES ACT OF 1990
 ADA NOTICE**

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email ADA@jud11.flcourts.org; or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No.: _____
Judge: _____

Dalia Miranda
Plaintiff

vs.

WASTE MANAGEMENT INC. OF FLORIDA
Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim rounded to the nearest dollar \$30,000

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical

- Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation
- County Civil
 - Small Claims up to \$8,000
 - Civil
 - Replevins
 - Evictions
 - Other civil (non-monetary)

**IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.

DALIA MIRANDA, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

WASTE MANAGEMENT INC. OF FLORIDA,

Defendant.

CLASS REPRESENTATION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, DALIA MIRANDA, by and through the undersigned counsel,
on behalf of herself and all others similarly situated, and for cause of action against the Defendants,
respectfully alleges and states as follows:

INTRODUCTION

1. Plaintiff brings this class action against Defendant WASTE MANAGEMENT INC. OF FLORIDA ("Defendant,,"). Defendant operates the Medley Landfill, which is located at 9350 NW 89th Avenue, Town of Medley, County of Miami-Dade, State of Florida (the "Landfill,,"). Defendant, through its operation and maintenance of the Landfill, wrongfully and tortiously releases substantial and unreasonable noxious odors, which have invaded and continue to invade Plaintiff's property causing damages through nuisance, negligence and gross negligence.

[SPACE INTENTIONALLY LEFT BLANK]

**IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.

DALIA MIRANDA, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

WASTE MANAGEMENT INC. OF FLORIDA,

Defendant.

CLASS REPRESENTATION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, DALIA MIRANDA, by and through the undersigned counsel,
on behalf of herself and all others similarly situated, and for cause of action against the Defendants,
respectfully alleges and states as follows:

INTRODUCTION

1. Plaintiff brings this class action against Defendant WASTE MANAGEMENT INC. OF FLORIDA ("Defendant,,"). Defendant operates the Medley Landfill, which is located at 9350 NW 89th Avenue, Town of Medley, County of Miami-Dade, State of Florida (the "Landfill,,"). Defendant, through its operation and maintenance of the Landfill, wrongfully and tortiously releases substantial and unreasonable noxious odors, which have invaded and continue to invade Plaintiff's property causing damages through nuisance, negligence and gross negligence.

[SPACE INTENTIONALLY LEFT BLANK]

PARTIES

2. At all times relevant hereto, Plaintiff Dalia Miranda is an adult resident who resides at 10907 NW 87th Lane, Doral, Florida and brings this action to recover all damages permitted by law.

3. Defendant and its agents, have at all time relevant hereto, constructed, owned, operated and maintained the Landfill, located at 9350 NW 89th Avenue, in the Town of Medley, County of Miami-Dade, State of Florida.

4. Defendant is a Florida Profit Corporation with its principal place of business located at 1001 Fannin Street, City of Houston, County of Harris, State of Texas. Defendant may be served with process through its registered agent, CT Corporation System, at 1200 South Pine Island Road, Plantation, Florida 33324.

JURISDICTION AND VENUE

5. This cause of action seeks recovery for injuries to Plaintiff's real property resulting from Defendant's wrongful and tortious actions and omissions, which occurred at and around the Landfill in Miami-Dade County, Florida and caused damages to Plaintiff in Miami-Dade County.

6. Both Plaintiff and Defendant reside in Miami-Dade County, Florida.

7. Defendant engaged in discrete wrongful and tortious actions and omissions that occurred within the last four years.

8. The amount in controversy is well in excess of \$15,000.

9. This Court has personal jurisdiction over this action pursuant to Fla. Stat. Ann. § 48.193.

10. Venue is proper in Miami-Dade County pursuant to Fla. Stat. Ann. § 47.011.

11. Defendant's tortious actions and omissions, and the resulting damages to Plaintiff's property, are ongoing.

12. This cause of action is brought within the applicable four-year statute of limitations. See Fla. Stat. Ann. § 95.11.

FACTUAL ALLEGATIONS

The Medley Landfill

13. Defendant exercises exclusive management, control, and operation of the Landfill, which produces and emits substantial noxious odors that physically invade Plaintiff's property.

14. The Landfill is located on a more than 170-acre plot surrounded by residential properties.

15. The Landfill accepts an average of thousands of tons of waste per day.

16. Because of the noxious odors it emits into surrounding neighborhoods, the Landfill is popularly referred to by neighboring residents as "Mount Trashmore.,,

17. Defendant accepts, processes, and stores substantial quantities of waste including, but not limited to, biosolids, municipal solid waste, and construction and demolition debris at the Landfill.

18. Among the materials deposited into the Landfill is gypsum board from construction and demolition debris.

19. The materials deposited into Defendant's landfill decompose and generate byproducts, including leachate and landfill gas, an odorous and offensive byproduct of decomposition which generally consists of hydrogen sulfide, methane, carbon dioxide, and various other compounds.

20. Landfill gas from landfills that contain construction and demolition debris can be especially odiferous given the high content of hydrogen sulfide, which is known to have a characteristic “rotten-egg,, smell.

21. A properly constructed, operated, maintained, and managed landfill will collect, capture and destroy leachate and landfill gas from the landfill in order to prevent it from escaping into the ambient air as fugitive emissions.

22. Defendant has failed to adequately collect, capture, and destroy landfill gas generated at the Landfill to prevent fugitive emissions and to otherwise prevent noxious odors, gases, and/or particulates from the Landfill from invading the homes and property of Plaintiff and the Class.

23. Defendant has failed to sufficiently collect, capture, and destroy leachate generated at the Landfill to prevent landfill gas collection wells from becoming “watered in,, including by utilizing adequate drainage systems.

24. Plaintiff’s property has been and continues to be physically invaded by noxious odors which originated from the Landfill.

25. Objectionable odors and emissions from the Landfill have been the subject of frequent complaints from residents in the nearby residential area.

26. Local media reports have documented that the odors from the Landfill interfere with public and private activities, in both public and private spaces, in the areas surrounding the Landfill including jogging, biking, sports, hiking, taking children to the park, maintaining residential property, landscaping, and grilling.

27. More than 60 households have contacted Plaintiff’s counsel documenting the odors they attribute to the Landfill.

28. Plaintiff Dalia Miranda, who owns a residence in Doral, Florida, reported that her

household suffers from “disgusting,, “methane and old rotten garbage,, odors because of Defendant’s Landfill.

29. Plaintiff further reported that “[w]e are not able to sit outside our terrace. We are not able to enjoy cookouts with family and friends. We refrain from cooking on the grill.,,

30. Below is a small sampling of the factual allegations made by members of the putative class to Plaintiff’s counsel:

- a. Putative class member Carlos Cepeda from Doral, Florida reported that “the air has a very unpleasant smell it is strong and pungent like something sour or spoiled/rotten.,,
- b. Putative class member Maria S. Diaz from Doral, Florida described the odor as “rotten egg, sour milk, fumes, etc.,,
- c. Putative class member Claudia Guevara from Doral, Florida reported that because of the odors “we have a pool that we can not enjoy, as the smells comes and goes throughout the day, especially early in the mornings, at sunset, and during the weekend.,,
- d. Putative class member Enrique Avila from Doral, Florida reported that the “extremely unpleasant odors,, from the Landfill “doesn’t allow us to entertain our family and visitors in the back yard or patio, nor can we open our house’s windows. Sometimes if we are cooking a BBQ outside we have to run inside when the odors come.,,
- e. Putative class member Leonardo Zoccoli from Doral, Florida reported that “we cannot go outdoors and enjoy our patio and invite guests for a BBQ. We cannot take our kids to play in the patio either. It is unbearable.,,

31. Defendant’s well documented pattern of failing to control its emissions is demonstrated by the following:

- a. Between 2016 and August 1, 2019, the City of Doral received more than 2,500 odor complaints because of the Landfill. A small sample of these complaints include:
 - i. On September 5, 2018, Doral resident Francisco Eraso reported to the city that “Medley Landfill smell is overwhelming our neighborhood of Doral.,,

- ii. On September 11, 2018, Doral resident Roberto Lacambra reported to the city that “[o]nce again strong odors coming from Landfill in Medley.,,
 - iii. On April 23, 2019, Doral resident Jairo Cruz reported to the city that there was a “[b]ad odor from the landfill in Medley.,,
 - iv. On July 2, 2018, Doral resident Maria Lacayo reported to the city that “[g]ases emitting from Medley landfill are very strong and overwhelming.,,
- b. In excess of 2,300 people have signed a Change.org petition demanding that Defendant close the Landfill because of the unbearable odors it releases into the community;
 - c. More than 100 people have liked or followed a Facebook page entitled ‘End Medley Trash Operations., The Facebook Page includes a tag entitled @StopTheMedleyDump. This page was started to organize citizen action and raise awareness about the harmful effects of the Landfill’s odors to the neighboring communities;
 - d. In December 2017, the Miami-Dade County Department of Environmental Resources Management (DERM) confirmed off-site odors emitted from the Landfill and required Defendant to submit an Odor Remediation Plan. Defendant acknowledged that it was the cause of off-site odors in its plan, submitted in January 2018. The Miami-Dade County DERM determined that Defendant’s plan “[did] not provide adequate remedial actions to respond to the odor events., and required Defendant’s to submit an amended Odor Remediation Plan. The off-site odors continued.
 - e. In December 2017, the City of Doral passed a resolution establishing the Doral Environmental Advisory Task Force to evaluate the odor concerns in the City.
 - f. Following Defendant’s submission of the mandated Odor Remediation Plan to Miami-Dade County, on September 10, 2018, the City of Doral reported to the Florida State Department of Environmental Protection that “the number of odor complaints continues to increase as time passes., and that “the City believes that all primary and secondary odor controls are not really working., In August 2018 alone, the City of Doral received 117 odor complaints about the Landfill, more than 5 times the number from the same month in 2017 (21).

32. Defendant is required to control its odorous emissions by, among other things, following proper landfilling practices, utilizing adequate landfill cover, and installing, operating,

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and maintaining an adequate landfill gas collection system to capture and destroy landfill gas.

33. Defendant has failed to adequately control its odorous emissions in ways including, but not limited to, an inadequate landfill gas collection system; inadequate wellhead vacuum; inadequate monitoring; inadequate and/or improper cover and covering practices; inadequate and/or improper lining and lining practices; inadequate collection, management, and disposal of leachate; excessive intake of odor-causing wastes; improper and/or excessive processing of construction and demolition waste; inadequate treatment and disposal of biosolids and other odiferous wastes; inadequate use of odor neutralizing systems and products; and other odor mitigation or control techniques available to Defendant.

Plaintiff's Damages

34. The foul odors emitted from Defendant's Landfill are offensive to Plaintiff and the Class, would be offensive to reasonable people of ordinary health and sensibilities, and have caused property damage, including by substantially interfering with the ability of Plaintiff and the Class to freely use and enjoy their homes and property.

35. The odors have dispersed across all public and private land in the Class Area.

36. The invasion of Plaintiff's property and that of the Class by noxious odors has unreasonably interfered with Plaintiff's use and enjoyment of their property and, in addition, reduced the value of that property.

37. Members the public, including but not limited to businesses, employees, commuters, tourists, visitors, customers, clients, students, and patients, have experienced and been harmed by the fugitive noxious odors emitted from the Landfill into public spaces; however, unlike Plaintiff and the Class, members of the public who are outside of the Class Definition have not suffered damages in the form of diminished property values and/or loss of use and enjoyment of their

private property.

38. Defendant knew about the substantial, noxious fugitive odor emissions that they were creating for neighboring residents through numerous complaints, administrative actions, significant media attention, and forums held by public bodies throughout Miami-Dade County; yet Defendant has sought only to evade responsibility and has refused to take reasonable and sufficient measures to mitigate the harm.

39. Defendant negligently, knowingly, intentionally, grossly, and recklessly failed to properly construct, maintain and/or operate the Landfill and caused the invasion of Plaintiff's property by noxious odors on frequent, intermittent and reoccurring occasions.

CLASS REPRESENTATION ALLEGATIONS

Plaintiff incorporates by reference as if fully set forth herein each and every allegation in the Complaint.

A. Definition of the Class

39. Plaintiff brings this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Fla. R. Civ. P. 1.220. Plaintiff seeks to represent a Class of persons preliminarily defined as:

All owner/occupants and renters of residential property within the area enclosed by a geographic boundary consisting of:

Beginning at the interchange from the Ronald Reagan Turnpike (a/k/a Homestead Extension of Florida's Turnpike, SR 821) to Beacon Station Boulevard; **East** on Beacon Station Boulevard to the intersection of Beacon Street Boulevard and N. Okeechobee Road (a/k/a US 27); **Straight** traveling Northeast on Hialeah Gardens Boulevard to W 68th Street; **East** on W 68th Street to the Palmetto Expressway (a/k/a SR 826); **South** on Palmetto Expressway to 58th Street; **West** on 58th Street to the Ronald Reagan Turnpike; **North** on Ronald Reagan Turnpike to starting point at intersection/interchange of the Ronald Reagan Turnpike and Beacon Street Boulevard. (Ex. 1, Class Boundary Map).

The definitional boundary is subject to modification as discovery will disclose the location of all persons properly included in the Class ("Class Members,,"). Plaintiff reserves the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

40. This case is properly maintainable as a class action pursuant to and in accordance with Fla. R. Civ. P. 1.220 in that:

- a. The class, which includes thousands of members, is so numerous that joinder of all members is impracticable;
- b. There are substantial questions of law and fact common to the class including those set forth in greater particularity herein;
- c. The claims of the representative parties are typical of the claims of the class;
- d. Questions of law and fact such as those enumerated herein, which are all common to the class, predominate over any questions of law or fact affecting only individual members of the class;
- e. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- f. The relief sought in this class action will effectively and efficiently provide relief to all members of the class;
- g. There are no unusual difficulties foreseen in the management of this class action; and
- h. Plaintiff, whose claims are typical of those of the Class, through her experienced counsel, will zealously and adequately represent the Class.

B. Numerosity

41. The Class consists of thousands of members and therefore is so numerous that joinder is impracticable.

C. Commonality

42. Numerous common questions of law and fact predominate over any individual questions affecting Class Members, including, but not limited to the following:

- a. whether and how Defendant wrongfully, negligently, knowingly, intentionally, recklessly, and grossly failed to construct, maintain and operate the Landfill, causing noxious odors to invade Plaintiff's property;
- b. whether Defendant owed any duties to Plaintiff;
- c. which duties Defendant owed to Plaintiff;
- d. which steps Defendant has and has not taken in order to control the emission of noxious odors through the maintenance and operation of the Landfill;
- e. whether and to what extent the Landfill's noxious odors were dispersed over the class area;
- f. whether it was reasonably foreseeable that Defendant's failure to properly construct, maintain and operate the Landfill would result in an invasion of Plaintiff's property interests;
- g. whether the degree of harm suffered by Plaintiff and the class constitutes a substantial annoyance or interference with their use and enjoyment of their property; and
- h. the proper measure of damages incurred by Plaintiff and the Class.

D. Typicality

43. Plaintiff has the same interests in this matter as all other members of the Class and her claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class Member would require proof of substantially the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories and seek the same type of relief.

44. The claims of Plaintiff and the other Class Members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendant to properly construct, maintain and operate the Landfill.

45. All Class Members have suffered injury in fact as a result of the invasion of their property by Defendant's release of noxious odors.

E. Adequacy of Representation

46. Plaintiff's claims are sufficiently aligned with the interests of the absent Class Members to ensure that the Class' claims will be prosecuted with diligence and care by Plaintiff as representative of the Class. Plaintiff will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

47. Plaintiff has retained the services of counsel who are experienced in complex class action litigation and in particular class actions involving neighborhood environmental concerns, including the emission of noxious odors. Plaintiff's counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiff and all absent Class Members.

F. Class Treatment Is the Superior Method of Adjudication

48. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

- a. Individual claims by the Class Members would be impracticable as the costs of pursuit would far exceed what any one Class Member has at stake;
- b. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class Members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. The concentration of litigation of these claims in one action will achieve efficiency and promote judicial economy; and
- d. The proposed class action is manageable.

49. The prosecution of separate actions by or against individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for the party opposing the Class; and (ii) adjudications with respect to individual members of the Class

which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

50. Notice can be provided to members of the Class by U.S. Mail and/or publication.

LIABILITY

CAUSE OF ACTION I

NUISANCE

Plaintiff incorporates by reference as if fully set forth herein each and every allegation in the Complaint.

51. The noxious odors, which entered Plaintiff's property originated from the Landfill constructed, maintained and operated by Defendant.

52. The noxious odors have impacted, and been disbursed across, all public and private property in the Class Area.

53. The noxious odors invading Plaintiff's property are indecent and offensive to people with ordinary health and sensibilities and obstruct the free use of their property so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property, including in but not limited to the following ways:

- a. Causing Plaintiff to remain indoors and forego use of outdoor areas, including her patio;
- b. Causing Plaintiff to keep doors and windows closed when weather conditions otherwise would not so require; and
- c. Causing Plaintiff annoyance, discomfort, inconvenience, embarrassment, and reluctance, including by being unable to invite guests to their homes and/or play outside with children.

54. Defendant owed and continues to owe a duty to Plaintiff and the putative class to prevent and abate the unreasonable interference with the invasion of their private property.

55. Defendant owed and continues to owe a duty to the public to prevent and abate unreasonable fugitive emissions of noxious odors and gases into public property.

56. By constructing and then failing to reasonably construct, operate, repair, and maintain its landfill, Defendant has wrongfully, negligently, and knowingly created a foreseeable harm by causing an unreasonable invasion of Plaintiff's property by noxious odors, gases and/or particulates.

57. As a foreseeable, direct and proximate result of the foregoing conduct and omissions of Defendant, Plaintiff suffered damages to property as alleged herein.

58. Plaintiff suffered harm relating to the use and enjoyment of land and property, and decreased property values.

59. Defendant's noxious emissions have invaded public spaces and caused harm to the public.

60. The injuries to Plaintiff's property, and Plaintiff's rights therein, are separate, different in kind, and in addition to the harm caused by Defendant to the public at-large and/or other private individuals not within the class description.

61. The nuisance is recurring and ongoing.

62. The nuisance is abatable.

63. Plaintiff did not consent to the invasion of their property by noxious odors.

64. By causing noxious odors produced and controlled by Defendant to physically invade Plaintiff's land and property, Defendant negligently, knowingly, intentionally, and recklessly created a nuisance which substantially and unreasonably interfered with Plaintiff's use and enjoyment of property.

65. Any social utility that is provided by the Landfill is clearly outweighed by the harm suffered by the Plaintiff and the putative class, who have on frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

66. Defendant's substantial and unreasonable interference with Plaintiff's use and enjoyment of their property constitutes a nuisance for which Defendants are liable to Plaintiff and the putative class for all damages arising from such nuisance, including compensatory and injunctive relief.

CAUSES OF ACTION II AND III

NEGLIGENCE

Plaintiff incorporates by reference as if fully set forth herein each and every allegation in the Complaint.

67. Defendant owed, and continues to owe, a duty to Plaintiff to construct, operate and maintain the Landfill in a reasonable manner and to take reasonable steps to prevent and abate the fugitive emission of noxious gases and odors from the Landfill.

68. Defendant breached its duty by negligently and improperly maintaining and operating the Landfill, such that it has caused the invasion of noxious odors into Plaintiff's homes, land, and property on occasions too numerous to mention.

69. As a direct and proximate result of Defendant's negligence and gross negligence in maintaining and operating the Landfill, Plaintiff's property, on occasions too numerous to mention, has been invaded by noxious odors.

70. As a further direct and proximate result of the foregoing conduct of the Defendant, Plaintiff suffered damages to property as alleged herein.

71. The invasion and subsequent damages suffered by Plaintiff were reasonably foreseeable by the Defendants.

72. By failing to properly construct, maintain and operate the Landfill, Defendant failed to exercise the duty of ordinary care and diligence, which they owe to Plaintiff and the putative class, so noxious odors would not invade their property.

73. A properly constructed, operated and maintained landfill will not emit noxious odors into neighboring residential areas.

74. By failing to construct, maintain and operate the Landfill, Defendant negligently, knowingly, intentionally, and recklessly caused the invasion of Plaintiff's property by noxious odors.

75. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly constructed, maintained and operated the Landfill and knew, or should have known, upon reasonable inspection that such actions would cause Plaintiff's property to be invaded by noxious odors.

76. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiff's residence was invaded by noxious odors causing and constituting damage to property, including by interfering with use and enjoyment of property and causing diminution of value.

PRAYERS FOR RELIEF

Plaintiff incorporates by reference as if fully set forth herein each and every allegation in the Complaint.

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, pray for judgment as follows:

- A. Certification of the proposed Class pursuant to Fla. R. Civ. P. 1.220;
- B. Designation of Plaintiff as representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiff and the Class members and against Defendants;
- D. Award Plaintiff and the Class members all compensatory and punitive damages in an amount considered fair and reasonable by a jury and for all such further relief, both general and specific to which they may be entitled;
- E. Award Plaintiff and the Class members injunctive relief not inconsistent with Defendants' state and federal regulatory obligations;
- F. Such further relief both general and specific to which Plaintiff may be entitled.

[SPACE INTENTIONALLY LEFT BLANK]

DEMAND FOR JURY TRIAL

Plaintiff, Dalia Miranda, on behalf of herself and all others similarly situated, demands trial by jury on all issues so triable.

DATED this 19th day of March 2020.

Respectfully Submitted:

/s/ Spencer Aronfeld

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Mount Trashmore’: Waste Management of Florida Hit with Class Action Over’ Noxious Odors’ from Medley Landfill](#)
