

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

SUNSHINE CHILDREN’S LEARNING CENTER,
LLC, on behalf of itself and all others similarly situated,

Plaintiff,

v.

WASTE CONNECTIONS OF FLORIDA, INC.,

Defendant.

CIVIL ACTION NO.:

NOTICE OF REMOVAL

Defendant Waste Connections of Florida, Inc. (“Defendant” or “Waste Connections”) removes this case from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Civil Division, to the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, on the basis of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”). As grounds for removal, Waste Connections states the following:

PROCEDURAL REQUIREMENTS FOR REMOVAL

1. Plaintiff Sunshine Children’s Learning Center, LLC (“Plaintiff” or “Sunshine”) filed the Complaint in this putative class action on September 9, 2021, in the Seventeenth Judicial Circuit in and for Broward County, Florida, Civil Division, Case Number CACE-21-017107.

2. Waste Connections was served with process on September 13, 2021. Waste Connections filed this Notice of Removal within thirty days of receipt of the Complaint through service, and the Notice of Removal is therefore timely under 28 U.S.C. § 1446(b).

3. A true and correct copy of all process, pleadings, and orders served upon Waste Connections is attached as Exhibit A.

4. The removal of this action to this Court is proper under 28 U.S.C. § 1441(a) because the Seventeenth Judicial Circuit in and for Broward County, Florida, where this action was originally filed, is within the federal judicial district for the Southern District of Florida, Fort Lauderdale Division.

SUBJECT MATTER JURISDICTION

5. This Court has subject matter jurisdiction over this civil action under CAFA, which provides that a putative class action may be removed on the basis of diversity jurisdiction where:

- a. The suit is a class action “filed under rule 23 of the Federal Rules of Civil Procedure or a similar State statute,” 28 U.S.C. § 1332(d)(1)(B);
- b. “[A]ny member of a class of plaintiffs is a citizen of a State different from any defendant,” *id.* § 1332(d)(2)(A);
- c. The class members’ claims, in aggregate, exceed the sum or value of \$5,000,000.00 exclusive of interests and costs, *id.* §§ 1332(d)(2) & 1332(d)(6); and
- d. The number of members of the proposed class exceeds 100, *id.* § 1332(d)(5)(B).

This case is a “class action” as defined by CAFA.

6. CAFA defines a “class action” as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

7. Plaintiff brings this action as a putative class action under Fla. R. Civ. P. 1.220. *See* Complaint ¶¶ 47-59. Rule 1.220 is similar to Federal Rule of Civil Procedure 23. *Andrews v. Ocean Reef Club, Inc.*, No. 91-20-575CA18, 1992 WL 205805, at *1 n.1 (Fla. Cir. Ct. 1992)

(stating that Fla. R. Civ. P. 1.220 is “substantially similar” to FED. R. CIV. P. 23). This case is therefore a “class action” as defined by CAFA.

Plaintiff and Defendant are citizens of different states.

8. CAFA requires minimal diversity, which may be established when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

9. Plaintiff Sunshine is a Florida limited liability company that does business in Tampa, Florida. Compl. ¶ 9; Exhibit B, Sunshine Florida Corporate Registration. For the purpose of diversity jurisdiction, “a limited liability company is a citizen of any state of which a member of the company is a citizen.” *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). Sunshine’s registration with the Florida Secretary of State identifies three managing members. Exhibit B, Sunshine Florida Corporate Registration. The registration states that the address for two of the members are in Tampa, and the address of the third member is in Georgia. *Id.* Waste Connections has confirmed with Plaintiff’s counsel that these are Sunshine’s only members. Exhibit C, 9/30/21 email from Plaintiff’s counsel Ed Zebersky (stating that Sunshine has three members, all shown on Sunshine’s Registration). Accordingly, on information and belief, Sunshine’s members are domiciled in Florida and Georgia, and Sunshine is a citizen solely of Florida and Georgia.

10. Under 28 U.S.C. § 1332(c)(1), a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” Waste Connections is incorporated in Delaware, and its principal place of business is The Woodlands, Texas. Exhibit D, Waste Connections’ Florida Corporate Registration; Exhibit E, Waste Connections’ Delaware Secretary of State 2020 Annual

Franchise Tax Report; and *see also* Compl. ¶ 10. Waste Connections is therefore a citizen of Delaware and Texas, and not a citizen of Florida.

11. CAFA’s diversity requirement is satisfied because there is complete diversity of citizenship between Sunshine and Waste Connections.

The amount in controversy exceeds \$5,000,000.00.

12. CAFA provides for original jurisdiction where the amount in controversy “exceeds \$5,000,000.00, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

13. A defendant’s notice of removal “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold” of \$5,000,000.00. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). “Eleventh Circuit precedent permits district courts to make ‘reasonable deductions, reasonable inferences, or other reasonable extrapolations’ from the pleadings to determine whether it is facially apparent that a case is removable.” *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010).

14. Plaintiff alleges that it entered a contract for waste disposal services with a predecessor to Waste Connections in 2013. Compl. ¶¶ 16, 18. Plaintiff alleges that the contract contains a “Rate Adjustments” provision under which Waste Connections could increase the contract rates. *Id.* ¶¶ 26-27. Plaintiff asserts that Waste Connections improperly increased its rates under this provision. *See id.* ¶¶ 32-40. Plaintiff also challenges the rate adjustment provision and other contract terms as “unconscionable and otherwise unenforceable.” *Id.* ¶ 7. Plaintiff, individually and on behalf of the class, asserts claims for Breach of Contract, Breach of Contract – Good Faith and Fair Dealing, Unjust Enrichment, and violation of Florida’s Deceptive and

Unfair Trade Practices Act. Plaintiff additionally requests declaratory and injunctive relief to hold the challenged contractual provisions unenforceable. *Id.* ¶¶ 73-84.

15. Plaintiff seeks to bring this action on behalf of a class consisting of “[a]ll customers of Waste Connections that were assessed rates or fees in excess of the initial contracted-for amounts.” *Id.* ¶ 47. The class period for the putative class action is six years prior to the filing of the Complaint. *Id.* ¶ 50.

16. Plaintiff’s allegations and Prayer for Relief on behalf of each member of the proposed class put all rate increases applied by Waste Connections over the past six years at issue. Plaintiff demands that the Court award Plaintiff and the class “actual, incidental, and consequential damages,” “including any and all compensatory damages.” Plaintiff also requests “restitution.” Plaintiff requests that the Court “[d]eclare the several challenged contractual provisions to be unenforceable and enjoin their enforcement.” Plaintiff requests attorneys’ fees and costs.

17. The proposed class is poorly defined, but according to the Complaint, may include as many as 400,000 customers of Waste Connections. Compl. ¶ 51. Based on the number of potential class members, the amount of damages per contract would only need to be \$12.50 in order to satisfy the jurisdictional amount-in-controversy requirement. Based on the allegations and the relief requested in the Complaint, Plaintiff alleges far more than \$12.50 in damages. Accordingly, based on the allegations in the Complaint, the \$5,000,000.00 jurisdictional amount-in-controversy requirement is satisfied.

The putative class includes at least 100 members.

18. CAFA applies to class actions that are comprise of one hundred (100) or more class members. 28 U.S.C. § 1332(d)(5)(B).

19. The Complaint alleges that the putative class may include as many as 400,000 Florida customers of Waste Connections. Compl. ¶ 51. Based on the allegations in the Complaint, the number of members of the proposed class is well over 100.

Defendant Waste Connections hereby removes the above-captioned case to this Court pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

DATED this 12th day of October, 2021.

/s/ Samuel L. Felker

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*Counsel for Defendant
Waste Connections of Florida, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal was filed electronically and was sent by e-mail to all counsel/parties of record listed below, on October 12, 2021.

ZEBERSKY PAYNE SHAW LEWENZ, LLP

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/s/ Samuel L. Felker

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EXHIBIT A

Case Number: CACE-21-017107 Division: 08

Filing # 134298260 E-Filed 09/09/2021 03:37:54 PM

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE-

SUNSHINE CHILDREN'S LEARNING
CENTER, LLC, on behalf of itself and all
others similarly situated,

SUMMONS

Plaintiff,

v.

WASTE CONNECTIONS OF FLORIDA, INC.,

Defendants.

DATE: 9/13/21

TIME: 10:03AM

INITIALS: JM

ID #: CPS260

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this **Summons** and a copy of the **Complaint**,
in this action on Defendant:

WASTE CONNECTIONS OF FLORIDA, INC.

By Serving Its Registered Agent:

Corporate Service Company

1201 Hays Street

Tallahassee, FL 32301

Each Defendant is hereby required to serve written defenses to the Complaint on Plaintiff's
attorney, whose name and address is:

Edward H. Zebersky, Esq.

ZEBERSKY PAYNE SHAW LEWENZ, LLP

110 S.E. 6th Street, Suite 2900, Fort Lauderdale, Florida 33301

Telephone: (954) 989-6333

ezebersky@zp LLP.com

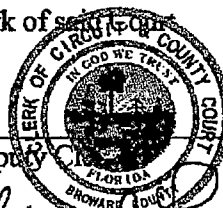
within twenty (20) days after service of this summons on that defendant, exclusive of the day of service,
and to file the original of the defenses with the clerk of this court either before service on plaintiff's
attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that
defendant for the relief demanded in the complaint or petition.

WITNESS my hand and seal of said Court SEP 10 2021

BRENDA D. FORMAN

As Clerk of said Court

By: Deputy Clerk



BRENDA D. FORMAN

[2161708/1]

AMERICANS WITH DISABILITIES ACT OF 1990

"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 Diana Sobel, Room 470, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, 954-831-7721 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

SUNSHINE CHILDREN'S LEARNING
CENTER, LLC, on behalf of itself and all
others similarly situated,

Plaintiff,

CASE NO.

CLASS REPRESENTATION

v.

WASTE CONNECTIONS OF FLORIDA,
INC.,

Defendant.

COMPLAINT – CLASS ACTION

Plaintiff Sunshine Children's Learning Center, LLC ("Sunshine Children's Learning Center"), on behalf of itself and the class of persons and entities preliminarily defined below, files this Class Action Complaint against Waste Connections of Florida, Inc. ("Waste Connections"). Plaintiff's allegations herein are based upon personal knowledge and belief as to its own acts and upon the investigation of counsel and information and belief as to all other matters:

NATURE OF THE CASE

1. This is a civil action seeking monetary damages, restitution, injunctive relief, and declaratory relief in excess of \$30,000.00 exclusive of attorney's fees, interests and costs.
2. Waste hauling and management is a necessary service for most businesses and organizations. Indeed, improperly stored refuse can lead to dangerous health and safety issues, as well as economic problems.
3. Businesses and organizations rely on the companies that provide waste hauling and management services to do so at a fair price and in accordance with fair and prominently disclosed terms.

4. Unfortunately, some waste companies take advantage of their position. They induce potential customers to contract for waste hauling and management services without disclosing the true intended costs of such services. They also bury unconscionable and self-serving contractual provisions in the middle of fine print form contracts, including penalties if the customer terminates the contract before its lengthy term expires. Waste Connections is one such company.

5. After its relationship with a customer begins, Waste Connections crams the customer with fee increases. Over time such increases amount to massive overcharges. The company engages in such tactics because such increases are usually not noticed by customers. Even if a customer does notice the increases, they are put to a Hobson's choice pursuant to the Waste Connections contract: (a) pay the increased fees or (b) terminate the contract and pay costly early termination fees.

6. Defendant is a waste hauling and management service provider that has engaged in such conduct. This case challenges Defendant's fee increases because they breach the parties' contract and the covenant of good faith and fair dealing, which applies to such contracts under Florida law.

7. The case also challenges the fine print terms and conditions set forth within the Waste Connections contract. As explained in detail herein, through these terms and conditions, Defendant seeks to backtrack from the agreed-upon fees and rates that have actually been reviewed and approved by the customer and increase the customer's fees whenever and to whatever amount it desires. Such provisions lack mutuality, are invalid exculpatory clauses, are unconscionable, and are otherwise unenforceable.

8. Finally, in the alternative – and if breach of contract claims are inapplicable because the form contracts are deemed unenforceable – it would constitute unjust enrichment and

conversion for Defendant to retain the improper fees. Thus, even if breach of contract principles do not warrant recovery, Plaintiff (and the Class it seeks to represent) should be made whole.

PARTIES

9. Plaintiff Sunshine Children's Learning Center is a domestic limited liability company with its principal office located at 7113 Mintwood Court, Tampa, Florida. Sunshine Children's Learning Center provides preschool and after-school care for children aged 1-12 years old.

10. Defendant Waste Connections of Florida, Inc. is a Delaware corporation that has been registered to do business in Florida. Waste Connections is a subsidiary of Waste Connections, Inc., a publicly traded company that is the 3rd largest waste management provider in North America (with a market capitalization of nearly \$32 billion).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this case which involves claims for damages in excess of \$30,000 and equitable relief for Plaintiff and a proposed class.

12. Defendant has massive operations in the State of Florida, including the following facility and representatives within Broward County (according to www.wasteconnections.com):

PEMBROKE PARK TS
1899 SW 31ST AVE
PEMBROKE PARK, FL 33009

Thus, personal jurisdiction and venue over Defendant is appropriate in this Court.

FACTUAL ALLEGATIONS

A. The Contract

13. In or about October of 2013, Sunshine Children's Learning Center was in the market for waste services and received a bid from a company known as "Waste Services of Florida, Inc." At that time, Waste Services of Florida, Inc. (also known as "Progressive Waste Solutions

of FL, Inc.”) was a subsidiary of Waste Services, Inc., which was itself a subsidiary of Toronto-based Progressive Waste Solutions, Ltd.

14. In 2016, Progressive Waste Solutions, Ltd. merged with Waste Connections, Inc. to create the third largest waste hauler in North America (behind only Waste Management and Republic Services). As a result of the merger, Waste Services of Florida, Inc./Progressive Waste Solutions of FL, Inc. changed its name to Waste Connections of Florida, Inc.

15. In October of 2013, Sunshine Children’s Learning Center was presented with Defendant’s “Customer Service Agreement” (“contract”) in tiny and blurry font, rendering parts of the contract illegible. A copy this contract is attached hereto as **Exhibit A**.

16. The “Schedule of Service” prominently displayed at the top of the first page of the contract provided for pick-up twice a week of a two-yard container. It indicated that Sunshine Children’s Learning Center would pay a total monthly charge of \$84.00 for this service, broken down as follows:

- a. \$40.32 monthly service; and
- b. \$43.68 disposal charge.

17. Notably, none of these fees were labeled as “initial” charges such that Plaintiff was on notice that they would materially change during the course of the term.

18. Sunshine Children’s Learning Center was satisfied with the nature and amount of these fees and decided to do business with Defendant’s predecessor. On October 17, 2013, Plaintiff executed the first page of the contract.

19. The bottom of the first page and the second page of the contract set forth the “terms and conditions” that apply to the contract (hereinafter, “the Terms”).

20. The Terms are a boilerplate form that is not negotiable. Describing the Terms as “fine print” is an understatement. The Terms consist of dense, single-spaced font that is virtually unreadable to the naked eye.

21. Even if customers could read and understand the Terms, Defendant would not negotiate. They are a take-it-or-leave-it proposition.

22. The Terms represent unilateral, underhanded efforts by Defendant to lock customers into a contract for many years (while imposing massive early termination penalties for those customers that cancel early) and backtrack from the charges prominently set forth on the first page of the contract and agreed to by the parties.

23. For example, the Terms note that the contract would extend for an initial 84-month (7-year) term, subsequently followed by a 60-month (5-year) automatic renewal term unless cancelled 180 to 60 days prior to the end of the initial term. *See* ¶ 2.

24. The Terms also contain a “liquidated damages” provision that forces any customer that terminates early to pay (a) Defendant’s legal fees and (b) hefty early termination penalties that vary in amount. *Id.* at ¶ 13. The penalty is calculated by multiplying the previous monthly charge times six. This provision does not contain any set-off to account for the cost savings associated with no longer picking up a customer’s garbage over the balance of the term.

25. Buried within the Terms are also provisions which describe ways in which the agreed-upon charges (a) can automatically increase without notice and (b) can increase with advance notice.

26. For example, Paragraph 5 of the Terms (which is reproduced below initially in the same manner as it appears in the contract and then in a readable font size) states as follows:

5) Rate Adjustments. (a) Contractor may increase the rates and/or charges set out on the front of this Agreement and Customer agrees to pay the increased charges and/or rates provided that such increased charges and/or rates are based upon increased costs to Contractor including as a result of increases in any one or more of the following: disposal facility costs, landfill costs (including due to recycling costs or otherwise), fuel costs or surcharges, transportation costs, increases in fees or taxes imposed by local, state or federal governments and costs of regulatory compliance. "Landfill costs" means and includes all costs of disposal, however and whenever incurred by Contractor in respect of the disposal of Waste Materials collected from Customer. Without limiting the generality of the foregoing, disposal costs shall include the costs of disposal incurred by Contractor may also increase the rates and/or charges annually to reflect increases in the Consumer Price Index. (b) Adjustments to the rates and/or charges set out on the front of this Agreement other than as provided in Section 5 (a) hereof may be made by the Contractor by giving the Customer thirty (30) days prior written notice. Such rate adjustment will be effective on the date specified in the Contractor's notice unless the Customer gives written notice that it objects to the proposed adjustment within 15 days of receipt of the Contractor's notice. If the Customer gives written notice of objection pursuant to this subsection (b), this Agreement shall continue at the previous rate, but the Contractor may, at any time thereafter, terminate this Agreement by giving the Customer thirty (30) days prior written notice.

5) Rate Adjustments. (a) Contractor may increase the rates and/or charges set out on the front of this Agreement and Customer agrees to pay the increased charges and/or rates provided that such increased charges and/or rates are based [sic] upon increased costs to Contractor including as a result of increases in any one or more of the following: disposal facility costs, landfill costs (including due to recycling costs or otherwise), fuel costs or surcharges, transportation costs, increases in fees or taxes imposed by local, state or federal governments and costs of regulatory compliance. "Landfill costs" means and includes all costs of disposal, however and whenever incurred by Contractor in respect of [sic] the disposal of Waste Materials collected from Customer. Without limiting the generality of the foregoing, disposal costs shall include the costs of disposal incurred by Contractor may [sic] also increase the rates and/or charges annually to reflect increases in the Consumer Price Index. (b) Adjustments to the rates and/or charges set out on the front of this Agreement other than as provided in Section 5 (a) hereof may be made by the Contractor by giving the Customer thirty (30) days prior written notice. Such rate adjustment will be effective on the date specified in the Contractor's notice unless the Customer gives written notice that it objects to the proposed adjustment within 15 days of receipt of the Contractor's notice. If the Customer gives written notice of objection pursuant to this subsection (b), this Agreement shall continue at the previous rate, but the Contractor may, at any time thereafter, terminate this Agreement by giving the Customer thirty (30) days prior written notice.

27. This provision purports to give Defendant discretion to (a) increase the charges set forth on the first page of the contract for six specific reasons without notice and (b) add fees for no specific reason at all with notice. Customers are forced to pay such increased charges for the balance of the term whenever Defendant exercises such discretion.

28. Paragraph 5 of the Terms contains a provision that allows customers to object to the increased rate within 15 days of notice and to continue services at the agreed upon price.

However, this right only extends to increases for which an advance notice is given (which, as indicated below, rarely occurs).

29. To make matters worse, Paragraph 10 of the Terms contains an indemnity provision that requires a customer to:

defend, indemnify and hold harmless the Contractor from and against any and all claims, damages, suits, penalties, fines and liabilities (including lawyers fees) arising out of any actual or alleged (a) breach by the Customer of the terms and conditions of this agreement, (b) deposit of any Excluded Waste in the Contractors equipment, (c) loss or damage to property or injury or death of person or persons, resulting from or arising in any manner out of the Customer's use, operation or possession of any equipment furnished under this agreement, or (d) damage to pavement as described in section 8 above.

30. Defendant uses the liquidated damages and indemnity provisions as tools to discourage customers that have been subjected to massive price hikes from terminating their relationships with Defendant.

31. The foregoing provisions lack mutuality, are invalid exculpatory clauses, are unconscionable, and are otherwise void and unenforceable.

B. The Overcharges

32. From the inception of the contract through the present date, Defendant has charged Plaintiff more than is allowed by the contract. The following examples are provided:

a. The effective date of the contract was October 17, 2013. During the month of February 2014 (i.e., less than four months after the contract began), increased its monthly service and disposal charges from \$40.32 and \$43.68, respectively, to \$47.58 and \$51.54. This near 20 percent price hike did not comport with the contract or its Terms.

b. During the course of the parties' relationship, Defendant repeatedly increased the pricing for the monthly service and disposal charges as follows: September 2014 (to \$57.10 and \$61.85, respectively); August 2015 (to \$68.52 and \$74.22,

respectively); June 2016 (to \$82.22 and \$89.06, respectively); March 2017 (to \$98.66 and \$106.87, respectively); February 2018 (to \$113.46 and \$122.90, respectively); February 2019 (to \$130.00 and \$141.00, respectively); September 2019 (to \$153.40 and \$166.38, respectively); and September 2020 (to \$176.42 and \$191.34, respectively). These colossal increases (which over time amounted to over 400 percent of the agreed-upon charges) did not comport with the contract or its Terms.

33. Defendant generally provided no notice explaining its fee increases or new charges and thus Plaintiff had no opportunity to object to them (without terminating services and paying the costly liquidated damages). Rather, Defendant just changed the amounts or added new charges and demanded that Plaintiff pay them, even threatening to impose a late fee if the charges were not paid in a timely fashion.

34. For a few of the increases, Defendant provided a standardized concurrent statement message purporting to explain the increase. For example, concurrent with its May 2016 increase in the prices of the monthly rate and disposal charge, Defendant provided the following increase message:

Your next invoice will reflect a price adjustment in accordance with the service agreement and conditions with Progressive Waste.

35. This message actually provided no notice whatsoever. It did not explain why Plaintiff's rates were increased and thus gave Plaintiff no way to determine whether the increases were authorized by the Terms, were made in good faith, or were completely unauthorized. The notice also was not provided at least 30 days in advance. Thus, this price increase – like all of the others – violated the contract.

36. The messages that were provided were purposefully worded in a vague fashion to preclude customers from understanding the true basis of the increases, which were primarily to

add pure profit to Defendant's bottom line. Without such information, and without proper advance notice, the increases were not legitimate.

37. Even if the notice had been sufficiently specific and had been sent in a timely manner, the increases are greater than those which Paragraph 5(a) of the Terms purports to authorize. For example, Defendant often imposed *multiple* annual increases with no information about increases in disposal facility costs, landfill costs, fuel costs, transportation costs, fees or taxes imposed by a government entity, or costs for regulatory compliance. No such cost increases justified Defendant's enormous upcharges to Plaintiff.

38. Moreover, there were no changes to Defendant's services or equipment or to the composition or weight of Plaintiff's waste such that an increase was warranted.

39. Paragraph 5(b) is inapplicable to the majority of the increases because Plaintiff received no timely or clear notice of an increase in charges. As such, a reasonable ability to terminate was never triggered as required under Paragraph 5(b).

40. Finally, there were no increases in Defendant's costs so as to warrant Defendant's fee manipulations pursuant to Paragraph 5(a) and the increases did not comport with the Consumer Price Index.

41. Even if Defendant's self-granted ability in Paragraph 5 to mark up rates and create new fees was permissible, Defendant is bound to exercise such contractual discretion in good faith. Defendant's manipulation of Plaintiff's fees and charges was done for no other reason than to increase profits at customer expense and not in response to external factors. This does not comport with good faith and fair dealing.

42. The fact that Plaintiff paid the subject overcharges does not preclude recovery. As previously noted, Defendant intentionally failed to provide Plaintiff with the information it needed to determine the basis of the new fees and increases to existing fees and thus whether they complied

with the contract, whether they were made in good faith, or whether were completely unauthorized. To this day, such information has never been provided. Without such information, Plaintiff had no way to ascertain the legitimacy of the increases.

43. Moreover, Plaintiff could not simply refuse to pay the charges in protest, as doing so would have subjected it to late fees and an interruption in service. *See* Terms, ¶ 4 (“If payment is not made when due the Contractor retains the right to suspend service until the past due balance is paid in full.”). The latter would have occasioned the accumulation of substantial waste and created dangerous health and safety problems for Plaintiff and its customers, namely small children and their parents. It was thus urgent and necessary that Plaintiff keep its account current.

44. Finally, in the event the contract or any of the subject contractual provisions are deemed unenforceable, the voluntary payment doctrine is simply inapplicable.

45. The contract between Plaintiff and Defendant was automatically renewed for a 60-month term in October 2020.

46. Plaintiff’s experiences with Defendant are not isolated, but rather are illustrative of Defendant’s improper business practices towards its customers.

CLASS REPRESENTATION ALLEGATIONS

47. Plaintiff brings this class action on behalf of itself and the following Class pursuant to Florida Rules of Civil Procedure 1.220(b)(1), (2), and/or (3):

All customers of Waste Connections that were assessed rates or fees in excess of the initial contracted-for amounts.

48. Plaintiff reserves the right to modify or amend the definition of the proposed Class, or add other proposed classes or subclasses, before the Court determines whether certification is appropriate and as the Court may otherwise allow.

49. Excluded from the Class are Defendant’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class

are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

50. The time period for the Class is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, which is six years in the State of Florida.

51. Numerosity: The members of the proposed Class are so numerous that individual joinder of all members is impracticable. According to the Waste Connections website the company “serves more than seven million residential, commercial and industrial customers in mostly exclusive and secondary markets across 43 states in the U.S. and six provinces in Canada.” Florida is home to 6.5% of the United States population, and thus 5.8% of the combined U.S. and Canadian population. Therefore, Florida is likely to be home to *over four hundred thousand* customers of Waste Connections. Defendant has dozens of offices and facilities in Florida. Thus, even if each office only had a few customers, numerosity would easily be satisfied. The exact number and identities of the members of the proposed Class are unknown at this time and can be ascertained only through appropriate discovery.

52. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. These common questions include, but are not limited to, the following:

- a. Whether the fees imposed by Defendant comply with Waste Connections’ form contracts;
- b. Whether Defendant’s fee increases comply with the form contracts;
- c. Whether Defendant provided customers with sufficient information to discover whether the fees complied with its form contracts;

- d. How Defendant calculated and assessed increased fees;
- e. Whether Defendant could impose fee increases not authorized by Paragraph 5(a) of the Terms without timely notice;
- f. Whether Defendant's fee increases were commensurate with its increased costs (if any);
- g. Whether Defendant's fee increases comport with the covenant of good faith and fair dealing;
- h. Whether the subject provisions of Defendant's contracts are illusory, unconscionable, violate public policy, or are otherwise unenforceable;
- i. Whether Defendant has been unjustly enriched; and
- j. Whether Defendant is liable for conversion.

53. Other questions of law and fact common to the Class include:

- a. The proper method or methods by which to measure damages, and
- b. The equitable relief to which the Class may be entitled.

54. Typicality: Plaintiff's claims are typical of the claims of other members of the Class in that they arise out of the same or substantially similar wrongful practices of Defendant. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other member of the Class.

55. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex class action litigation. Plaintiff and its counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

56. Superiority of Class Action: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's wrongful conduct. A class action is superior

to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impractical. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Class members.

57. Risk of Inconsistent or Varying Adjudication: Class action treatment is proper and this action should be maintained as a class action because the risks of separate actions by individual members of the Class would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendant as the party opposing the Class; and/or (b) adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

58. Action Generally Applicable to Class as a Whole: Defendant, as the party that may oppose the Class, has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

59. The standards for class certification have been met.

CLAIMS FOR RELIEF

COUNT ONE

DIRECT BREACH OF CONTRACT

60. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

61. Plaintiff and Defendant have contracted for waste hauling and management services.

62. Defendant violated its own form contract by increasing specified fees without proper foundation and failing to provide customers with proper notice of fee increases.

63. Plaintiff and the Class members have performed all conditions, covenants, and promises required of each of them to be performed in accordance with the terms and conditions of the contract, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

64. As a proximate result of Defendant's direct breaches of the contract, Plaintiff and the Class members have been damaged in an amount to be proven at trial.

65. Defendant should be required to reimburse all such improper assessments and, in order to make its victims whole, should pay pre-judgment interest to account for the value of money over time.

COUNT TWO

BREACH OF CONTRACT – GOOD FAITH AND FAIR DEALING

66. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

67. Good faith is an element of every contract in Florida. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties

according to their terms, means preserving the spirit – not merely the letter – of the bargain. Thus, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms are examples of a lack of good faith in the performance of contracts.

68. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty.

69. Plaintiff and the Class members have performed all conditions, covenants, and promises required by each of them to be performed in accordance with the terms and conditions of the contract, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

70. Defendant breached the implied covenant of good faith and fair dealing by using its self-granted discretionary powers under the contract to raise rates and add fees in a manner that violated the parties' understanding and intent as evidenced by the language of the form contract. Discovery will show that such increases were not imposed for permissible reasons, but rather were added to provide Defendant with windfall profits wholly divorced from the charges set forth in the form contract.

71. As a proximate result of Defendant's breaches of the contract via breaches of the covenant of good faith and fair dealings, Plaintiff and the Class members have been damaged in an amount to be proven at trial.

72. Defendant should be required to reimburse all such improper assessments and, in order to make its victims whole, should pay pre-judgment interest to account for the value of money over time.

COUNT THREE
DECLARATORY RELIEF

73. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

74. Class-wide declaratory relief is appropriate where a Defendant has “acted or refused to act on grounds that apply generally to the class.” This Court is authorized to issue declarations under Chapter 86, Florida Statutes. As stated above, Plaintiff, individually and on behalf of all those similarly situated, is an interested party in doubt as to its rights under Defendant’s form contract and has an actual controversy with Defendant over its terms and enforceability. There is a bona fide, actual, present, practical need for the Court to declare whose interpretation of the form contract is correct. Plaintiff has interests adverse to Defendant and the declaration requested deals with a present ascertainable state of facts as presented in the allegations set forth above.

75. Defendant has buried provisions in the fine-print, adhesive Terms that purportedly:
- a. give Defendant unfettered discretion to increase the agreed-upon charges payable by customers;
 - b. give Defendant unfettered discretion to add fees for services that customers have not requested;
 - c. require customers to pay hefty liquidated damages to terminate the contract even after Defendant materially alters the deal by substantially increasing fees; and
 - d. require customers to pay Defendant’s legal fees and costs.

76. Although Plaintiff contends that these subject terms are properly interpreted in a more customer-friendly fashion, Defendant disagrees and has interpreted such provisions in the manner described above. Such provisions should be deemed unenforceable on multiple grounds.

77. The provisions which purport to give Defendant unfettered discretion to increase the applicable charges to any amount and for whatever reason Defendant deem appropriate are illusory and lack mutuality and adequate consideration.

78. The liquidated damages and attorneys' fee provisions are invalid exculpatory clauses because (a) they are designed to severely restrict remedies and insulate Defendant from liability, (b) are not explicit, prominent, and clear and indeed are set forth in a manner that does not distinguish their importance from other contract terms, and (c) violate public policy.

79. Moreover, considering the great business acumen and experience of Defendant in relation to Plaintiff and the members of the Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, the subject provisions are unconscionable and, therefore, unenforceable as a matter of law.

80. Thus, a judicial declaration is necessary and appropriate so the parties may ascertain their rights, duties, and obligations with respect to these provisions.

81. The Court should use its equitable powers and powers under Chapter 86, Florida, Statutes, to declare these provisions to be unenforceable.

COUNT FOUR
INJUNCTIVE RELIEF

82. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

83. Class-wide injunctive relief is appropriate where a Defendant has "acted or refused to act on grounds that apply generally to the class."

84. Defendant should be enjoined from enforcing the invalid contractual provisions described in paragraphs 75 through 79. Absent such an injunction, Defendant will continue to rely on these provisions to increase waste service fees to unconscionable amounts and discourage customers from refusing to pay the increased fees, terminating the contract, or seeking legal relief. There is irreparable injury and no adequate remedy at law if Defendant continues to enforce these provisions because monetary damages cannot cure the dangerous health and safety issues (i.e., the accumulation of waste) that will otherwise result. And an injunction would benefit rather than be contrary to the public interest.

COUNT FIVE
UNJUST ENRICHMENT

85. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

86. This Count is brought only in the alternative to Plaintiff's claims for direct breach of contract and breach of contract via the covenant of good faith and fair dealing. Indeed, if the contract is found to be void or unenforceable in its entirety, Defendant must not be allowed to keep its ill-gotten gains.

87. As alleged herein, Defendant was unjustly enriched at the expense of Plaintiff and the other members of the Class, who were grossly and inequitably overcharged for waste hauling and management services.

88. Plaintiff and the other members of the Class conferred benefits on Defendant as a result of the improper and excessive fees that Defendant charged to and collected from Plaintiff and the other Class members. And Defendant appreciated and has retained these benefits.

89. It would be inequitable and unconscionable for Defendant to retain the profit, benefit, and other compensation obtained from Plaintiff and the other members of the Class as a result of its wrongful conduct alleged in this Complaint.

90. Plaintiff and the other Class members are entitled to seek and do seek restitution from Defendant as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant by virtue of its wrongful conduct.

COUNT SIX
VIOLATION OF FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT ("FDUTPA")

91. Plaintiff incorporates by reference the allegations of Paragraphs 1-59 above as if set forth verbatim herein.

92. The FDUTPA precludes "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce" Such practices are unlawful. § 501.204 (1), Fla. Stat.

93. Defendant is engaged in "trade or commerce," and Defendant is not listed as one of the businesses or industries exempt from coverage of the FDUTPA. *See* §§ 501.203, 501.212, Fla. Stat.

94. The FDUTPA specifically provides for declaratory and injunctive relief as well as the award of actual damages and legal fees and costs when violations have occurred.

95. Defendant has violated the FDUTPA based on the allegations above, including specifically those found in Paragraphs 15-46 which are incorporated herein by this reference.

96. As set forth in those paragraphs, Defendant's conduct and representations are material and are and were likely to mislead consumers acting reasonably under the circumstances; Defendant's conduct is also conduct that offends established public policy, and is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers; or its conduct is or was conduct that is likely to cause consumer injury that was substantial, not outweighed by countervailing benefits of the conduct, and not an injury that consumers could have reasonably avoided. Defendant's conduct was also unconscionable under FDUTPA.

97. Defendant's unfair, unconscionable, or deceptive conduct proximately caused Plaintiff and the Class to be aggrieved and additionally to suffer losses in the form of actual damages. Plaintiff and the Class are entitled to relief pursuant to the FDUTPA, to include declaratory relief, injunctive relief, the award of actual damages, and an award of reasonable legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the proposed Class, requests that this Court:

1. Certify this case as a class action;
2. Find for Plaintiff and the Class as to each count of this Complaint;
3. Declare the several challenged contractual provisions to be unenforceable and enjoin their enforcement;
4. Award Plaintiff and the Class actual, incidental, and consequential damages in an amount to be proven at trial, including any and all compensatory damages, and award any applicable interest;
5. Award Plaintiff and the Class restitution;
6. Compel Defendant to disgorge the ill-gotten gains derived by Defendant from its misconduct;
7. Award all reasonable costs incurred by Plaintiff in connection with this action and reasonable attorneys' fees pursuant to applicable law; and
8. Award such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests a trial by jury on all issues so triable.

DATED this 9th day of September, 2021.

Respectfully submitted,

ZEBERSKY PAYNE SHAW LEWENZ, LLP

Edward H. Zebersky

Edward H. Zebersky, Esq. (FBN: 908370)

Mark S. Fistos, Esq. (FBN: 909191)

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Counsel for Plaintiff

EXHIBIT A

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#896 P.002/003



WASTE SERVICE AGREEMENT
 DISTRICT Tampa FRANCHISE County
 A Progressive Waste Solutions Company

WASTE NO. 211464
 Site No.: 1
 P.O. #

WASTE NO. 80044

New Customer ☐ Increase Service ☐ Increase Rate ☐ Billing Address Change ☐ Landfill ☐ Other ☐ (please specify)
 New Site ☐ Decrease Service ☐ Decrease Rate ☐ Service Address Change ☐ Hauling ☐

LEGAL COMPANY NAME

Sunshine Children's Learning Center

OPERATING NAME & SERVICE ADDRESS

Sunshine Children's Learning Center

BILLING ADDRESS

7113 Mintwood St

4405 Kelly Rd

CITY

Tampa

STATE

FL

ZIP CODE

33615

CITY

Tampa

STATE

FL

ZIP CODE

33615

CONTACT PERSON

Belvin Black

BUSINESS PHONE

813-810-7301

JOB SITE PHONE

BUSINESS FAX

813-884-5126

| NEW SCHEDULE OF SERVICE | | | | | | | | | | SERVICE EFFECTIVE DATE | | | | |
|-------------------------|------|-------|----------------|---------------|-------------------|---------|-------------|----------------|-------------|------------------------|------------|------------------|-----------------|----------------------|
| SERVICE NO. | QTY. | COMP. | CONTAINER SIZE | MATERIAL TYPE | SERVICE FREQUENCY | PO REQ. | TEMP. PERM. | START/END DATE | LIFT CHARGE | MONTHLY SERVICE | EXTRA LIFT | CONTAINER CHARGE | DISPOSAL CHARGE | TOTAL MONTHLY CHARGE |
| 1 | 1 | Y/N | 2YD SC | 2X | - | P | | 10/18 | - | 40.00 | 40 | - | 43.68 | 84 |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |

| OLD SCHEDULE OF SERVICE | | | | | | | | | | | | | | |
|-------------------------|------|-------|----------------|---------------|-------------------|---------|-------------|----------------|-------------|-----------------|------------|------------------|-----------------|----------------------|
| SERVICE NO. | QTY. | COMP. | CONTAINER SIZE | MATERIAL TYPE | SERVICE FREQUENCY | PO REQ. | TEMP. PERM. | START/END DATE | LIFT CHARGE | MONTHLY SERVICE | EXTRA LIFT | CONTAINER CHARGE | DISPOSAL CHARGE | TOTAL MONTHLY CHARGE |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |
| | | Y/N | | | | | | | | | | | | |

* THE CUSTOMER AGREES THAT THE CONTRACTOR SHALL HAVE THE RIGHT TO SURCHARGE THE CUSTOMER AS A RESULT OF INCREASED DISPOSAL COSTS IF THE CUSTOMER'S WASTE MATERIALS EXCEED AN ESTIMATED AVERAGE WEIGHT OF 110 LB. PER CUBIC YARD. SEE ALSO SECTION 5 RE OTHER RATE ADJUSTMENTS. RATES ABOVE MAY BE SUBJECT TO ADDITIONAL FEES RELATING TO GOVERNMENT REGULATIONS AND OTHER INDUSTRY RELATED CHARGES.

ADDITIONAL PROVISIONS

DELIVERY: \$ 0 REMOVAL: \$ 0 RELOCATION: \$ 0 FUEL ENVIRONMENTAL ☐ YES ☒ NO INTEREST ☒ YES ☐ NO

THIS IS A LEGALLY BINDING CONTRACT, AND CONTRACTOR AGREES TO PROVIDE AND CUSTOMER AGREES TO ACCEPT THE ABOVE SERVICES AND EQUIPMENT AT THE CHARGES AND FREQUENCY OF COLLECTION INDICATED ABOVE, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED BELOW AND ON THE REVERSE SIDE.

DATE 10/17 20 13 DATE 10/17/13 20 13

Margaret Jenks
 (Signature of Contractor)

K. D. [Signature] Member Manager
 (Signature of Customer)

Sales
 (Position)

Member Manager
 (Position if partnership or limited company)

| OFFICE USE ONLY | | | | | | | |
|-----------------|----------------|------------|-----------------|-------------------|----------|------------|--------------|
| PROFILE/PRINT | CREDIT LIMIT | ENTERED BY | DATE | CONTRACT APPROVAL | VERIFIED | SCANNED BY | SALES REPORT |
| | <u>163/252</u> | <u>TL</u> | <u>10/17/13</u> | | | | |

This service agreement will take effect on the Service Effective Date noted on the agreement or upon the expiration of any existing contract whichever occurs later.

TERMS AND CONDITIONS

1) Services Rendered. Waste Services of Florida Inc. (the "Contractor") and the Customer named herein (the "Customer") agree that the Contractor shall have the exclusive right to furnish the solid, non-hazardous waste and recyclables collection and disposal services and/or equipment specified herein. The Customer agrees to make the payments provided for herein and abide by the terms and conditions of this agreement. Customer shall pay applicable taxes on amounts payable to Contractor hereunder as well as all fees or other charges imposed by federal, state or local laws and or regulations upon the collection, transportation or disposal of customer's waste.

2) Term. This agreement shall be binding on the parties from the date on which it has been signed by both parties and shall continue for a period of eighty four (84) months ("Initial Term") from the actual start date of service. Thereafter this agreement shall automatically renew for successive sixty (60) month periods ("Renewal Term") without further action by the parties except that either of the parties may terminate this agreement, effective the last day of the Initial Term or Renewal Term, then in force, by giving written notice to the other party in accordance with Section 16 of the agreement no later than sixty (60) days but no more than one hundred and eighty (180) days prior to the expiration of the then current Initial Term or any Renewal Term.

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TERMS AND CONDITIONS (Continued)

3) **Non-Hazardous Waste Only.** The waste materials to be collected and disposed of by the Contractor pursuant to this agreement are all solid waste and recyclable waste generated by the Customer (the "Waste Materials"). The Contractor shall acquire title to the Waste Materials when they are loaded into the Contractor's vehicle. Waste Materials specifically excludes and the Customer agrees not to deposit or permit the deposit in the Contractor's equipment or place for collection by the Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic, or hazardous substance or material (regardless of the amount) as defined by local, state or federal law ("Excluded Waste"). Title and liability for any Excluded Waste shall remain with the Customer.

4) **Payments.** The Customer shall pay the Contractor on a monthly basis for the service and/or equipment furnished by the Contractor in accordance with the charges and rates provided for herein. Payment shall be made by the Customer to the Contractor within ten (10) days of the receipt of an invoice from the Contractor. The Contractor may impose and the Customer agrees to pay a late fee for all past due payments not to exceed the maximum rate for same allowed by the applicable law. Amounts outstanding for more than thirty (30) days shall accrue an immediately payable service charge at the rate of eighteen percent (18%) per annum commencing with the date of receipt of the original invoice until the date of payment in full. If payment is not made when due the Contractor retains the right to suspend service until the past due balance is paid in full. In the event that service is suspended in excess of fifteen (15) days the Contractor may terminate this agreement without notice to the Customer, recover any equipment on the Customer's premises, and recover the liquidated damages described in section 13 below.

5) **Rate Adjustments.** (a) Contractor may increase the rates and/or charges set out on the front of this Agreement and Customer agrees to pay the increased charges and/or rates provided that such increased charges and/or rates are based upon increased costs to Contractor including as a result of increases in any one or more of the following: disposal facility costs, landfill costs (including due to recycling costs or otherwise), fuel costs or surcharges, transportation costs, increases in fees or taxes imposed by local, state or federal governments and costs of regulatory compliance. "Landfill costs" means and includes all costs of disposal, however and whenever incurred by Contractor in respect of the disposal of Waste Materials collected from Customer. Without limiting the generality of the foregoing, disposal costs shall include the costs of disposal incurred by Contractor may also increase the rates and/or charges annually to reflect increases in the Consumer Price Index. (b) Adjustments to the rates and/or charges set out on the front of this Agreement other than as provided in Section 5 (a) hereof, may be made by the Contractor by giving the Customer thirty (30) days prior written notice. Such rate adjustment will be effective on the date specified in the Contractor's notice unless the Customer gives written notice that it objects to the proposed adjustment within 15 days of receipt of the Contractor's notice. If the Customer gives written notice of objection pursuant to this subsection (b), this Agreement shall continue at the previous rate, but the Contractor may, at any time thereafter, terminate this Agreement by giving the Customer thirty (30) days prior written notice.

6) **Equipment.** The equipment furnished by the Contractor for use by the Customer shall remain the property of the Contractor and the Customer shall have no right, title or interest in the equipment; however, the Customer acknowledges that it has the care, custody, and control of the equipment while it is at the Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or, or for loss or damage resulting from the Contractor's handling of the equipment) and its contents. The Customer also agrees to use the equipment only for its intended purposes, shall not remove or alter, nor authorize the removal or alteration of the equipment without the prior written consent of the Contractor shall not overload the equipment (by weight or volume), nor use it for incineration purposes, and shall be liable to the Contractor for any loss or damage to the equipment in excess of reasonable wear and tear.

7) **Customer's Responsibility.** The Customer agrees that on the scheduled collection day(s), the Contractor's vehicle shall have unobstructed access to the equipment. If the equipment is blocked so as to prohibit collection, the Customer shall be promptly notified by the Contractor and afforded a reasonable opportunity to provide the necessary access. The Contractor reserves the right to charge the Customer an "extra pick-up" fee for any additional collection service required due to the Customer's failure to provide such access.

8) **Damage to Pavement.** The Customer agrees that the Contractor shall not be liable and hereby waives and releases all claims against Contractor for any damage to pavement, curbing or driving surface resulting from the Contractor's trucks and equipment.

9) **Assignment.** Neither party shall assign this agreement without the prior written consent of the other party, except that the Contractor, without the Customer's consent may assign this agreement to any corporation affiliated

with the Contractor or to a 3rd party acquiring assets, including this agreement, from Contractor.

10) **Indemnity.** The Customer agrees to defend, indemnify and hold harmless the Contractor from and against any and all claims, damages, suits, penalties, fines and liabilities (including lawyers fees) arising out of any actual or alleged (a) breach by the Customer of the terms and conditions of this agreement, (b) deposit of any Excluded Waste in the Contractor's equipment, (c) loss or damage to property, or injury to or death of person or persons, resulting from or arising in any manner out of the Customer's use, operation or possession of any equipment furnished under this agreement, or (d) damage to pavement as described in section 8 above.

11) **Excused Performance.** Neither party hereto shall be liable for its failure to perform or delays in service hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, fires, and Acts of God.

12) **Binding Effect.** This agreement shall constitute a legally binding agreement on the part of the Contractor and the Customer and their respective heirs, successors, and assigns in accordance with the terms and conditions set forth herein. This agreement shall not be affected by any changes in the Customer's service address. If such service address is located within the Contractor's service area.

13) **Liquidated damages.** If Customer defaults resulting in termination of this Agreement or if Customer attempts to cancel Contractor's services prior to the expiration of the Initial Term or Renewal Term, other than as permitted by the terms of Section 2, the Customer agrees to pay, in addition to all amounts due for services rendered to the date of termination, as liquidated damages and not as a penalty, a sum equal to the Contractor's average monthly charge to the Customer in the six (6) months of full service prior to termination, multiplied by six (6). If the Customer fails to pay Contractor all amounts as due under this agreement, or fails to perform its obligations hereunder and Contractor refers such matter to a collection agency or lawyer, the Customer agrees to pay, in addition to all amounts due hereunder, any and all costs incurred by the Contractor as a result of such action, including reasonable collection and legal fees and expenses. **CUSTOMER ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 13 WILL APPLY IN THE EVENT OF A SALE OF CUSTOMER'S BUSINESS IF THE NEW OWNER DOES NOT, WITH THE CONSENT OF THE CONTRACTOR, ASSUME CUSTOMER'S OBLIGATIONS HEREUNDER FOR THE BALANCE OF THE INITIAL TERM OR RENEWAL TERM, AS THE CASE MAY BE.**

14) **Entire Agreement.** Changes in the rates, the type, size and amount of equipment and the frequency of service may be agreed to orally or in writing by the parties without affecting the validity of this agreement. Consents or oral changes shall be evidenced by the practices and actions of the parties. Subject to the foregoing, this agreement represents the entire understanding and agreement between the parties hereto and supersedes all prior agreements (if any), whether written or oral, between the parties.

15) **Miscellaneous.** Many conflicts exist in this agreement between the terms which are printed and those which are typed or written, the type or written language shall govern. The indemnification and liquidated damages provisions contained herein shall survive the termination of this agreement.

16) **Notice.** Any notice required or permitted to be given by Contractor or Customer to the other under this agreement shall be given by either (i) personal delivery or (ii) by registered mail. Notice to the Customer shall be sent to the billing address noted on the first page of this agreement. Notice to the Contractor shall be sent to the address listed on the Contractor's invoice. Any notice given as provided in this section 16 shall be deemed received by the other party on the date of personal delivery or the business day after the date of mailing, as the case may be. Either Customer or Contractor may change its address for notice, by notice in writing given by registered mail.

17) **Service Guarantee.** If the Contractor fails to perform the services described within ten business days of Contractor's receipt of a written demand from Customer (certified mail, return receipt requested), Customer may terminate this agreement with the payment of all monies due through the termination date with thirty day notice.

18) **Taxes and Fees.** Customer shall pay all taxes, fees and other charges imposed by federal, state or local laws and regulations upon the collection, transportation or disposal of Customer's Waste Materials and any other services performed by Contractor hereunder and Contractor shall have the right to increase its charges accordingly.

Signature

[Handwritten Signature]

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

SUNSHINE CHILDREN'S LEARNING)
CENTER, LLC,)

Plaintiff,)

v.)

WASTE CONNECTIONS OF FLORIDA,)
INC.,)

Defendant.)

Case No. CACE-21-017107

/

**NOTICE OF APPEARANCE AS COUNSEL AND
NOTICE OF DESIGNATION OF E-MAIL ADDRESSES**

The law firm of Baker, Donelson, Bearman, Caldwell and Berkowitz, PC hereby gives notice of the appearance of SAMUEL L. FELKER and DESISLAVA K. DOCHEVA as counsel on behalf of Defendant, WASTE CONNECTIONS OF FLORIDA, INC, and requests that copies of all pleadings, notices, orders, and other papers in this cause be henceforth provided to the undersigned.

The undersigned counsel, pursuant to Florida Rule of Judicial Administration 2.516 (as enacted effective September 1, 2012), hereby designate e-mail addresses for service of all orders, process, pleadings and other documents in this matter:

As to Samuel L. Felker:

Primary: sfelker@bakerdonelson.com
Secondary: krussel@bakerdonelson.com
rmciver@bakerdonelson.com

As to Desislava K. Docheva:

Primary: ddocheva@bakerdonelson.com

Secondary: emcfadden@bakerdonelson.com
flservice@bakerdonelson.com

Submitted on October 1, 2021.

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**
100 S.E. Third Avenue, Suite 1620
Fort Lauderdale, Florida 33394
Telephone: (954) 768-1600
Counsel for Defendant

By: /s/ Samuel L. Felker

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flservice@bakerdonelson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Stipulation was filed electronically and was sent by e-mail from the Florida Courts' E-Filing Portal system, unless otherwise noted below, on all counsel or parties of record listed below, on October 1, 2021.

ZEBERSKY PAYNE SHAW LEWENZ, LLP
Edward H. Zebersky, Esq.
Mark S. Fistos, Esq.
110 Southeast 6th Street
Suite 2900
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ezebersky@zpllp.com
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nesponda@zpllp.com

s/ Samuel L. Felker
Samuel L. Felker

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

SUNSHINE CHILDREN'S LEARNING)
CENTER, LLC,)

Plaintiff,)

v.)

WASTE CONNECTIONS OF FLORIDA,)
INC.,)

Defendant.)

Case No. CACE-21-017107

/

**JOINT STIPULATION FOR EXTENSION OF TIME
TO RESPOND TO COMPLAINT**

Plaintiff, Sunshine Children's Learning Center, LLC, and Defendant, Waste Connections of Florida, Inc., ("Waste Collections"), by and through undersigned counsel, hereby stipulate that Defendant Waste Connections may have an extension of time up to and including November 3, 2021 to respond to Plaintiff's Class Action Complaint. This extension is without prejudice and is not a waiver of any rights of Defendant Waste Connections.

Respectfully submitted on October 1, 2021.

By: /s/ Edward H. Zebersky
Edward H. Zebersky, Esq.
Florida Bar No. 908370
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Counsel for Plaintiff

By: /s/ Samuel L. Felker
Samuel L. Felker, Esq.
Florida Bar No. 123800
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
1 Financial Plaza, Suite 1620
Fort Lauderdale, Florida 33394
Telephone: (954) 768-1600
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Stipulation was filed electronically and was sent by e-mail from the Florida Courts' E-Filing Portal system, unless otherwise noted below, on all counsel or parties of record listed below, on October 1, 2021.

ZEBERSKY PAYNE SHAW LEWENZ, LLP

Edward H. Zebersky, Esq.

Mark S. Fistos, Esq.

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nesponda@zpllp.com

s/ Samuel L. Felker

Samuel L. Felker

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

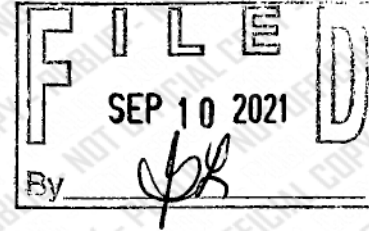
Case No: CACE-21-017107

Sunshine Children's
Plaintiff Learning Centers, LLC

Judge Division: 08

VS

Waste Connections
Defendant Of Florida



CLERK'S CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Administrative Order, No. 2020-73Civ/2020-74-UFC:
"ADMINISTRATIVE ORDER DIRECTING CLERK OF COURTS WITH REGARD TO
DISMISSED CIVIL OR FAMILY CASES",

The Clerk has conducted a search for all previous existing civil cases related to
these two parties.

Listed below are all the aforementioned related cases:

NONE

Brenda D. Forman
Circuit and County Courts

By: _____

[Signature]

Deputy Clerk

RETURN OF SERVICE

State of Florida

County of Broward

Circuit Court

Case Number: CACE-21-017107 (08)



OJF2021015658

Plaintiff:

SUNSHINE CHILDREN'S LEARNING CENTER, LLC

vs.

Defendant:

WASTE CONNECTIONS OF FLORIDA, INC.

For:

Edward Zebersky, Esq.
ZEBERSKY PAYNE, LLP
110 S.E. 6th Street
Suite 2900
Ft. Lauderdale, FL 33301

Received by OJF SERVICES, INC. on the 10th day of September, 2021 at 2:45 pm to be served on WASTE CONNECTIONS OF FLORIDA, INC. C/O CORPORATE SERVICE COMPANY, REGISTERED AGENT, 1201 HAYS STREET, TALLAHASSEE, FL 32301.

I, INA MATHERS, do hereby affirm that on the 13th day of September, 2021 at 10:03 am, I:

Served the within named **CORPORATION** by delivering a true copy of the **SUMMONS AND COMPLAINT** with the date and hour of service endorsed thereon by me to **CORPORATION SERVICE COMPANY** as **REGISTERED AGENT** at the address of **1201 HAYS STREET, TALLAHASSEE, FL 32301**, by serving **SHEENA BLACK** as **ASSOCIATE CUSTOMER SERVICE ASSOCIATE** authorized to accept service for registered agent.

I certify that I am over the age of 18, have no interest in the above action, and that I am a Certified Process Server, in good standing, in the judicial circuit in which the process was served, "under the penalty of perjury", I declare that I have read the foregoing (document) and that the facts stated in it are true, 92.525.

INA MATHERS

Certified Process Server #260

OJF SERVICES, INC.
13727 S.W. 152ND ST.
PMB# 354
MIAMI,, FL 33177
(954) 929-4215

Our Job Serial Number: OJF-2021015658
Ref: 15658

Filing # 134298260 E-Filed 09/09/2021 03:37:54 PM

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE-

SUNSHINE CHILDREN'S LEARNING
CENTER, LLC, on behalf of itself and all
others similarly situated,

SUMMONS

Plaintiff,

v.

WASTE CONNECTIONS OF FLORIDA, INC.,

Defendants.

9/13/2021
IM

10:03am
260

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this **Summons** and a copy of the **Complaint**,
in this action on Defendant:

WASTE CONNECTIONS OF FLORIDA, INC.

By Serving Its Registered Agent:

Corporate Service Company

1201 Hays Street

Tallahassee, FL 32301

Each Defendant is hereby required to serve written defenses to the Complaint on Plaintiff's
attorney, whose name and address is:

Edward H. Zebersky, Esq.

ZEBERSKY PAYNE SHAW LEWENZ, LLP

110 S.E. 6th Street, Suite 2900, Fort Lauderdale, Florida 33301

Telephone: (954) 989-6333

ezebersky@zpllp.com

within twenty (20) 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 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.

WITNESS my hand and seal of said Court. SEP 10 2021

BRENDA D. FORMAN

As Clerk of said Court

By: Deputy Clerk



BRENDA D. FORMAN

[2161708/1]

AMERICANS WITH DISABILITIES ACT OF 1990

"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 Diana Sobel, Room 470, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, 954-831-7721 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Waste Connections of FL 'Crams' Customers with Hidden, Increasing Fees](#)
