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01-CV-2021-903302.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

**CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
TENTH JUDICIAL CIRCUIT**

NEW MERKLE INVESTORS, LLC; WOODY'S PIZZERIA, INC.; A+ AUTO SERVICE, LLC; BUDGET INNS OF PENSACOLA, INC. D/B/A PALM COURT INN; THE ALBANY CONDO. ASSOC.; JD FELDMAN PROPERTIES; HERMITAGE OF RAVENSWOOD CONDOMINIUM ASSOCIATION; GARIBIAN & ASSOC. ACCOUNTANCY. CO; PEEL HOLDINGS LLC DBA PEEL PIZZA CO.; COASTAL COMMUNITY FOUNDATION OF SOUTH CAROLINA, INC.; MICHIGAN VISION INST., PLLC; YSH AMELIA LLC DBA AMELIA PLAZA APTS.; MS AUJLA LLC DBA MARATHON GAS STATION; RED BARN CONSULTING, INC.; BRYCE BREWER LAW FIRM, LLC; LAMARK, LLC; BUFFALO SEAFOOD HOUSE, LLC; SVO LAWN & GARDEN LLC; GF RESTAURANTS GROUP, INC. DBA CRYING THAIGER; AND ANDREW B. WADE D.D.S., M.S. LLC DBA WADE ORTHODONTICS,

Case No.: 01-CV-2021-903302.00

Plaintiffs,

v.

BFI WASTE SERVICES LLC; REPUBLIC SERVICES OF SOUTH CAROLINA, LLC; ALLIED WASTE SERVICES OF NORTH AMERICA, LLC; ALLIED WASTE TRANSPORTATION, INC.; ALLIED WASTE SYSTEMS, INC.; BFI WASTE SERVICES OF TEXAS, LP; BFI WASTE SERVICES LLC; TRI-COUNTY REFUSE SERVICES, INC.; REPUBLIC SERVICES OF OHIO HAULING, LLC; BFI WASTE SERVICES OF INDIANA, LP; REPUBLIC SERVICES OF PENNSYLVANIA, LLC; ALLIED WASTE SERVICES OF MASSACHUSETTS, LLC; AND CONSOLIDATED DISPOSAL SERVICES, LLC,

Defendants.

SECOND CONSOLIDATED CLASS ACTION COMPLAINT

New Merkle Investors, LLC; Woody's Pizzeria, Inc.; A+ Auto Service, LLC; Budget Inns of Pensacola, Inc. d/b/a Palm Court Inn; The Albany Condo. Assoc.; JD Feldman Properties,

Hermitage of Ravenswood Condominium Association, Garibian & Assoc. Accountancy. Co; Peel Holdings LLC dba Peel Pizza Co.; Coastal Community Foundation of South Carolina, Inc., Michigan Vision Inst., PLLC; YSH Amelia LLC dba Amelia Plaza Apts.; MS Aujla LLC dba Marathon Gas Station; Red Barn Consulting, Inc.; Bryce Brewer Law Firm, LLC; Lamark, LLC; Buffalo Seafood House, LLC; SVO Lawn & Garden LLC; GF Restaurants Group, Inc. dba Crying Thaiger; and Andrew B. Wade D.D.S., M.S. LLC dba Wade Orthodontics (collectively, “Plaintiffs”) file this Consolidated Class Action Complaint against Defendants Republic Services of South Carolina, LLC; Allied Waste Services of North America, LLC; Allied Waste Transportation, Inc.; Allied Waste Systems, Inc.; BFI Waste Services of Texas, LP; BFI Waste Services LLC; Tri-County Refuse Services, Inc.; Republic Services of Ohio Hauling, LLC; BFI Waste Services of Indiana, LP; Republic Services of Pennsylvania, LLC; Allied Waste Services of Massachusetts, LLC; and Consolidated Disposal Services, LLC, (collectively “Republic” or “Defendants”) on behalf of themselves and others similarly situated as set out below. In support thereof, Plaintiffs state the following:

I. NATURE OF THE CASE

1. Republic has engaged in a widespread and systematic practice of overcharging its customers by implementing unlawful rate increases.
2. Republic Services, Inc. through its wholly-owned subsidiaries, including Defendants is one of the largest solid waste disposal family of companies in the United States, generating some \$950 million in annual revenue. Like other small businesses, Plaintiffs paid Republic for waste disposal and/or recycling services pursuant to a standard, preprinted contract. Notably, this contract is uniform among putative class members in all relevant aspects. The primary purpose of the form contract is to establish rates a given customer will pay Republic for

waste or recycling pickup.

3. In violation of the form contract, and of state statutory and common law, Republic has carried out an unlawful scheme to charge its customers more than the agreed amounts.

4. Republic enters into the agreements knowing that it will increase the promised rates without justification. The contracts specifically restrict Republic's ability to increase rates to specific circumstances. In violation of this contractual limitation, Republic has deliberately and repeatedly overcharged customers through rate increases that far outstrip any contractually allowed increases. These rate increases are imposed frequently and are significant in amount.

5. Further, this case presents a prototypical situation for class treatment. Republic's conduct—including all relevant practices, conduct, and documents—is uniform among all class members. The application of common law to an identical course of conduct will determine liability for the classes as a whole, ensuring that the rights of thousands of small businesses are vindicated through the efficiency of a single trial.

II. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Republic because certain Defendants are authorized to do business and in fact do business in Jefferson County, Alabama. Some of the conduct at issue in this case in part originated and took place in Jefferson County, Alabama, and Defendants could reasonably anticipate litigation in this County under traditional notions of fair play and substantial justice.

7. Venue is proper in this Court under Alabama Code § 6-3-7. Plaintiff New Merkle Investors, LLC's principal office is located in Jefferson County, Alabama, and the conduct giving rise to Plaintiff's claims occurred in substantial part in this County.

III. PARTIES

8. New Merkle Investors, LLC is an Alabama entity with its principal place of business in Jefferson County, Alabama. Each additional Plaintiff is a current or former customer of Republic which entered into contracts with Republic and paid rate increases during the putative class period. Plaintiffs' experiences with Republic are typical of the classes in all relevant aspects.

9. Each Defendant is a Delaware entity with its principal address in Phoenix, Arizona. For purposes of jurisdiction, Plaintiffs allege that Defendants, and their related entities, operate as a single organization with regard to the conduct at issue in this lawsuit and that the contacts of any Defendant or related entity may be imputed to the others.

IV. FACTUAL ALLEGATIONS

10. Republic is one of the largest waste disposal companies in the United States.

11. Plaintiffs require solid waste disposal and/or recycling services and, like others similarly situated, entered into standardized agreements with Republic to provide these services. These agreements primarily establish a set rate for disposal services and contain standardized language that governs them. The agreements also provide how Republic may be able to increase rates to pass through specific cost increases it incurs during the pendency and renewal terms of that contact. And, like other customers, after locking them into these contracts, Republic systematically increased Plaintiffs' rates with no contractual justification.

12. First, Republic's systematic, automated rate increases do not—in intent or effect—adjust for increases as allowed by the form contract. Rather, Republic carries out a deliberate scheme to repeatedly increase rates without contractual justification by amounts that far exceed any increases in CPI or other allowable costs that purportedly justify them or amounts needed to adjust for such increases. It does so through a consistent, centralized automated rate increase

process that was intended to glean unearned profit from its customers. This conduct breaches the form contract, is fraudulent, and has resulted in Republic's unjust enrichment.

A. The Standardized, Uniform Language At Issue.

13. Republic used effectively standardized "customer service agreements" to contract with customers regardless of location. Each time Republic seeks to secure a customer for its services, it presents an effectively identical form contract. Every putative class member entered into such an effectively identical form contract. All relevant terms are pre-printed by Republic, including the uniform "Rate Adjustments" provision that governs the rate increases at issue in this litigation. Several categories of customer-specific information—including the billing and service addresses, names and contact information, rates, and other information needed for Republic to input the new customer into its information systems—is typed or written in for each specific customer. This must be completed before Republic will serve a new customer with dumpster solid waste disposal or recycling service.

14. This Rate Adjustments provision allows for Republic to pass through specific, discrete increases in costs it may incur in providing services to customers. Specifically, it states Republic:

may, from time to time by notice to Customer, increase the rates provided in this Agreement to adjust for any increase in: (a) disposal costs; (b) transportation costs due to a change in location of Customer or the disposal facility used by Company; (c) the Consumer Price Index for all Urban Consumers; (d) the average weight per cubic yard of Customer's Waste Materials above the number of pounds per cubic yard upon which the rates provided in this Agreement are based as indicated on the cover page of this Agreement; or (e) Company's costs due to changes in Applicable Laws. Company may increase rates for reasons other than those set forth above with Customer's consent, which may be evidenced verbally, on writing or by the parties' actions and practices.¹

¹ This contractual language varies slightly among Plaintiffs and putative class members and the allegations and proposed classes herein expressly include all such contracts, and those involving similar language.

15. Thus, under the express terms of this provision, Republic may implement rate increases only to adjust for “increases” to the specific identified areas of discrete costs. Notably, Republic imposes other rate increases (not at issue in this case) purportedly to pass through those costs specified in the Rate Adjustments provision. However, Republic also imposes yearly, automatic rate increases which form the basis of the price increase claims in this litigation. As discussed below, these Rate Increases do not—in intent or effect—pass through any allowable increased cost and far outstrip any such costs Republic may incur.

B. Republic’s Unlawful, Unilateral Rate Increase Practice.

16. Republic violates the form contract and engages in deceptive and unfair conduct by systematically increasing rates by more than that allowed by the form contractual provision at issue.

17. Republic has carried out a systematic and deliberate practice of repeatedly increasing rates in excess of any adjustment necessary for increases in the any allowable cost, including increases in the Consumer Price Index or in any disposal costs. Republic induces customers into entering into form contracts with fixed rates while knowing, but not disclosing, that it has an internal corporate practice and strategy of continually and unlawfully increasing rates by more than allowed by contract.

18. Republic unilaterally imposes automated increases at least annually, and often more frequently. These rate increases are created and implemented by Republic as part of a broad strategy to increase profit. They are carried out using Republic’s centralized customer management system and are imposed without notice.

19. The amount of the rate increases varies, but is significant, and can result in customers paying more than twice as much as agreed by the end of an agreement term. Each

increase Republic imposed on class members exceeds increases, if any, in the increases in the Consumer Price Index or disposal costs (particularly per customer disposal costs) Republic may incur. Indeed, Plaintiffs understand that Republic has no per customer increased disposal costs and that it implements the rate increases even when such costs and CPI decrease.

20. Republic imposes these rate increases using a secret process which it does not share with customers and which applies equally to all putative class members. The purpose of this process is simply to ensure that Defendants reach their profit goals by continually increasing rates for the subset of customers who are class members in this case. Indeed, Republic recognizes no contractual limitations on its ability to increase their rates, despite what the contract actually says.

21. This stands in stark contrast to other, larger customers who are not class members. For these customers, Republic does not apply the same price increase process, but rather only increases rates by the actual CPI amount. Republic discriminates against the small business customers who Plaintiffs seek to represent because it knows that it can do so with impunity. Indeed, it regularly sues such customers to enforce contracts and has implemented a corporate strategy to use sham subsidiaries to hide its conduct and protect against liability.

22. Republic's unilateral automated rate increases violate the form contractual language that is present in every contact at issue, because they exceed any CPI increase or costs that could justify them and far exceed such costs. Rather, the rate increases at issue are simply mechanisms by which Republic increases its profits. There is no legal justification for Republic's practice of unilateral, systematic rate increases. Republic knows when it presents contracts for fixed rates, that it will inflate these rates precipitously and continually. Republic's practices breach the form contractual language it entered into with Plaintiffs and other small businesses across the United States (including in South Carolina), violates the duty of good faith and fair dealing that

underpins that contract, and has resulted in it being unjustly enriched at its customers' expense. As a direct result of its unlawful rate increase conduct, Republic has wrongfully taken millions of dollars from its customers over the statutory period.

23. Additionally, Republic lacks consent for these rate increases as a matter of law. Republic never sought consent before imposing the rate increases at issue and the nature of the rate increases and Republic's lack of disclosure regarding the calculation and true purpose of the rate increases makes such consent legally impossible to obtain.

24. Republic also has omitted material facts regarding the rate increases. For example, Republic does not disclose that the increases are not related to any increase in CPI or any allowable cost, that the increases far outstrip increases in CPI or any allowable cost, that a confidential process is used to determine them which solely is designed to create profit, or that the increases are recognized as profit. Republic knows when it enters into an agreement with a customer that the customer will pay substantially more than the agreed upon service rate through unlawful rate increases. Republic does not disclose this fact to its customers.

D. Neither Plaintiffs, Nor Any Putative Class Member, Had Full Knowledge Of The Facts Relating To The Rate Increases.

25. No putative class member, including Plaintiffs had full knowledge of the facts pertaining to the rate increases such that would allow them to realize or act on their legal claims.

26. Republic ensures that no customer—including Plaintiffs—can discover the true nature and illegality of the rate increases. Republic does not disclose cost metrics—including which, if any, CPI measures—it purportedly is using or the amounts, frequency, and timing of the rate increases.² Nor does Republic disclose the methodology—or lack thereof—that purportedly

² The increases at issue here were purportedly increases to adjust for increases in CPI because Republic did not experience any increases in the other identified cost areas that could justify an increase and were theoretically

justifies the increase or the amount of the increases. Further, Republic represents—including by failing to seek consent for any increases—that these are mandatory increases for specific allowable increases and not increases to which customers may consent. Plaintiffs could not have discovered the basis of their claims without either candor from Republic or access to Republic’s financial information that it does not make public. Republic made these representations and omissions every time it implemented an increase, including when it implemented rate increases applicable to Plaintiffs. Plaintiffs reasonably relied on these representations and omissions as evidenced by the payment of the fees and charges. Without such information, no customer could—and Plaintiffs did not—determine the illegality of a given rate increase imposed by Republic. For these reasons, Plaintiffs and other class members were unaware of the basis of their claims due to the omissions and representations that Republic employed to obscure the facts and calculations of the increases. Plaintiffs did not and could not learn of the facts surrounding the increases—including that they bore no relation to CPI or any other allowable costs and that they exceeded amounts needed to adjust for costs—until recently through privileged consultation with counsel.

V. CLASS ACTION ALLEGATIONS

27. Plaintiffs bring this action pursuant to Alabama Rules of Civil Procedure 23(a) and (b)(3) and proposes the following Class:

“All open-market commercial and industrial customers who reside in South Carolina, Florida, California, Pennsylvania, Massachusetts, Michigan, Illinois, Texas, Ohio, Indiana, Arkansas, Oklahoma, and Jefferson County, Alabama, who entered into an automatically renewing written contract for waste hauling services and/or recycling services with direct or indirect subsidiaries and affiliates of RSI during the Class Period and whose contract contained a rate adjustment provision that allowed for unilateral increases to adjust for increases in various enumerated costs and CPI as well as an optional cost increases based upon the customers’ consent and who paid rate increases in excess of the combined total for cost increases plus the applicable increase in CPI at the relevant time period.”

applicable to multiple customers at the same time. To the extent Republic maintains that these increases were intended to recover increased “disposal costs”, they far outstrip such increased costs as well.

28. Excluded from the Class are any customer receiving services under the terms of a franchise agreement, whose agreement expired and therefore the customer was operating without a written contract, whose contract was not fully executed, who signed a contract form originally drafted by the customer, who signed a contract on or after April 4, 2021 (or whose contract otherwise contained a class action waiver or arbitration provision), or who negotiated material changes (which include any restrictions to payment of price increases or a term of one year or less) to the form contract presented by the waste hauling or recycling provider.

29. The Class Period for the foregoing class is January 1, 2017, through September 30, 2025, inclusive of both the start and end dates for customers in Florida, California, Illinois and South Carolina; for customers located in Michigan, Ohio, and Indiana, the Class Period shall be June 1, 2019 through September 30, 2025; for customers located in Pennsylvania the Class Period shall be August 1, 2021 through September 30, 2025; for customers located in Massachusetts the Class Period shall be June 1, 2021 through September 30, 2025; for customers located in Texas the Class Period shall be September 30, 2021 through September 30, 2025; for customers located in Alabama the Class Period shall be January 1, 2017 through September 30, 2025; for customers located in Arkansas the Class Period shall be January 1, 2017 through December 31, 2018; for customers located in Oklahoma the Class Period shall be January 1, 2020 through June 30, 2021.

30. As used in these class definitions, “RSI” means Republic Services, Inc.

A. Existence And Predominance Of Common Questions Of Law And Fact.

31. Republic engaged in a common course of conduct which gives rise to common questions of law and fact which predominate in this litigation. This common course of conduct—imposing rate increases that were unlawful and excessive—affected class members in the exact same manner. The amount of damages may differ among class members, but the fact and type of

damages is uniform among all class members and flows directly from Republic's common conduct. A single, uniform, pre-printed contract will govern all class members' contractual claims. Extraneous contractual evidence is prohibited by a form integration clause.

32. This shared nucleus of facts and law gives rise to numerous questions of law and fact which overwhelm any individual issues which might exist. Such common questions include, but are not limited to, the following:

- a. Whether Republic used standard form contracts with customers;
- b. Whether Republic imposed rate increases on putative class members;
- c. Whether the standard contract only allowed Republic to increase rates to adjust for certain factors and increases;
- d. Whether Republic's rate increases exceeded any allowable contractual increase;
- e. Whether the rate increases Republic enacted were not in good faith;
- f. Whether the rate increases Republic enacted resulted in it being unjustly enriched;
- g. Whether Republic acted fraudulently, deceptively, or unfairly with regard to its rate increase practices.

B. Numerosity.

33. The total number of members of each putative class is so numerous that individual joinder is impracticable. More than 100 putative class members exist.

C. Typicality.

34. The claims of the named Plaintiffs are typical of the claims of the classes and subclasses. Plaintiffs, like other class members, entered into the form contract and paid rate increases that were not legally justified. Plaintiffs were subject to, and harmed by, the exact same common policies and practices which affected all class members.

D. Adequacy.

35. Plaintiffs will fairly and adequately protect the interests of the members of the class and have no interest antagonistic to those of other class members. Plaintiffs share the same interests and were harmed by the same conduct as each other class member. Resolution of this case will inherently vindicate and redress the interests of Plaintiffs equally with class members. Plaintiffs have retained class counsel competent and experienced in prosecuting class actions and such class counsel is financially able to represent the classes.

E. Superiority And Manageability.

36. The class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all members of the class is impracticable. While the total amount at issue in this litigation is considerable, individual damages for a given plaintiff are comparatively small and class members have little incentive to pursue individual claims. The interests of judicial economy favor adjudicating the claims for the classes in a single forum rather than on an individual basis, thus also ensuring consistent adjudications and a uniformity of decision. The proposed class definitions are objective and class membership is easily determined using customer information and financial records maintained by Republic. Calculation of damages can be accomplished using systematic means and objective criteria. The class action mechanism is administratively feasible and provides the benefit of unitary adjudication, economies of scale and comprehensive supervision by a single court.

VI. CAUSES OF ACTION**COUNT I
BREACH OF CONTRACT**

37. All allegations and paragraphs in this complaint, aside from other counts, are incorporated by reference.

38. Plaintiffs and each member of the Class entered into standardized agreements with Republic.

39. Defendants are liable for breach of these contracts.

40. Plaintiffs and each member of the class performed on their agreements, including by paying Republic for services.

41. As set out herein, through its practice of unilaterally increasing rates by more than allowed under the contract Republic breached the agreements.

42. Plaintiffs and each member of the Rate Increase Class have been directly and proximately harmed by Republic's breach of contract in that each paid more than allowed by contract.

COUNT II
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

43. All allegations and paragraphs in this complaint, aside from other counts, are incorporated by reference.

44. To the extent necessary, this count is pled in the alternative.

45. Plaintiffs and each member of the Class entered into standardized agreements with Republic.

46. Defendants are liable for breach of these contracts.

47. Plaintiffs and each member of the class performed on their agreements, including by paying Republic for services.

48. Republic failed to perform on the agreements in good faith. Republic acted arbitrarily and capriciously. It failed to fulfill any discretionary duties it might have under the contract to adjust rates reasonably and in good faith. Republic's uniform course of conduct in raising rates lacks honesty in fact and is inconsistent with the justified expectation that Republic

would increase rates reasonably and only in accordance with the terms of the uniform contract. Through its wrongful conduct, Republic unfairly prevented Plaintiffs and each member of the class from receiving the full benefits of their agreements.

49. Plaintiffs and each member of the Class has been directly and proximately harmed by Republic's breach of the covenant of good faith and fair dealing in that each paid an unlawfully increased rate.

COUNT III
UNJUST ENRICHMENT

50. All allegations and paragraphs in this complaint, aside from other counts, are incorporated by reference.

51. To the extent necessary, this count is pleaded in the alternative.

52. Through its rate increase practices, Republic received money from the putative class which in equity and justice it should not be permitted to keep. By imposing rate increases which it knew to be not justified by any related increase and which do not adjust for changes in the Consumer Price Index or any allowable increased cost, by suppressing and omitting material facts (including that it would charge far more than agreed or represented), and by engaging in other wrongful and unlawful conduct as set out herein, Republic obtained money which properly belongs to the putative class. The benefit conferred by the putative class was non-gratuitous and Republic realized value from this benefit. It would be inequitable for Republic to retain this benefit.

53. Plaintiffs and each member of the Class have been directly and proximately harmed by Republic's conduct in that each paid more for products and services than they rightfully owed.

COUNT IV
FRAUDULENT, DECEPTIVE and UNFAIR CONDUCT

54. All allegations and paragraphs in this complaint, aside from other counts, are

incorporated by reference.

55. To the extent necessary, this count is pled in the alternative.

56. The conduct of Republic related to the rate increases constitutes fraudulent, deceptive, and unfair conduct. As set out above, Republic made material representations about the nature of the rate increases that it would charge in the contract, invoices, and language on Republic's website incorporated into the invoices. Republic further withheld and suppressed material facts regarding the rate increases, including facts regarding the purpose, intent and methodology of the rate increases.

57. Plaintiffs reasonably relied upon these representations in entering the contract, renewing the contract, and paying the extra amounts in rate increases. These representations were false. The rate increases implemented during the time period at issue were not intended, and did not, adjust for increases identified in the contract. Republic knew them to be false at the time it made them, never intended to act as promised, and they were made with the intent to deceive Plaintiffs into believing that the rate increases would be made as set out in the contract.

58. Plaintiffs and each member of the Class was damaged in that they paid the rate increases as a result of its reliance on Republic's intention, material misrepresentations”

PRAYER FOR RELIEF

59. Plaintiffs, on behalf of themselves and each member of the putative Class, demand all remedies and damages available to them, including all unlawful rate increases paid, injunctive relief, restitution, interest, punitive damages, and the attorneys' fees and costs incurred in bringing this action.

Respectfully submitted,

/s/ Oscar M. Price, IV

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following:

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