

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VISION CONSTRUCTION ENT., INC.

Plaintiff,

v.

WASTE PRO USA, INC. and
WASTE PRO OF FLORIDA, INC.,

CASE #: _____

DIVISION: _____

Defendants.

_____ /

CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, Vision Construction Ent., Inc., individually and on behalf of a class of all Florida persons or entities who are similarly situated, and files this Class Action Complaint against the Defendants, Waste Pro USA, Inc. and Waste Pro of Florida, Inc. (hereinafter collectively referred to as “Waste Pro” or “Defendants”).

NATURE OF THE CASE

1. Waste Pro is a waste disposal company based in Florida. It provides waste services to companies, such as Vision Construction, in exchange for a set rate. However, in addition to this rate, Waste Pro also charges its Florida customers two types of fees it calls “Fuel Surcharges”¹ and “Environmental Fees.” Waste Pro purportedly charges the Fuel Surcharge to recover the increased fuel costs it incurs in providing waste disposal services to its customers. Similarly, Waste Pro purportedly charges the Environmental Fee to recover the increased environmental costs it incurs. Waste Pro represents that these Fees vary in accordance with Waste Pro’s related increased costs and that the revenue from these Fees is used to offset those increased

¹ “Fuel Surcharges” as used herein also includes “Fuel Recovery” and other similarly named fees.

costs.

2. Waste Pro's representations, omissions, and practices in charging the Fuel Surcharge and Environmental Fee are deceptive and unfair. The Fuel Surcharge bears absolutely no relation to Waste Pro's increased fuel costs (or its actual fuel costs) and Waste Pro does not use the proceeds from the Fuel Surcharge to offset its increased fuel costs (or its actual fuel costs). Further, Waste Pro already includes any fuel costs it might incur in providing its services in the service rates it charges customers. Waste Pro uses the Fuel Surcharge simply to generate extra profit at its customers' expense, all the while deceiving customers into believing that the fee is a legitimate charge directly related to the increased fuel costs it incurs, which it falsely claims it cannot control.

3. The Environmental Fee is equally deceptive and unfair. The Environmental Fee bears no relation to Waste Pro's increased environmental costs (or its actual environmental costs) it might incur and the proceeds it receives are not used to offset such increased costs. In fact, Waste Pro incurs no discrete, identifiable "environmental" or "environmental compliance" costs at all. Like the Fuel Surcharge, the Environmental Fee is simply a hidden rate increase Waste Pro misrepresents to deceive its customers.

4. Waste Pro's conduct constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. Further, this case presents a prototypical situation for class treatment. Waste Pro's conduct—including all relevant practices, deception, representations, and omissions—is uniform among all customers. The application of Florida law to a shared course of conduct will determine liability for the class as a whole, ensuring that the rights of thousands of small businesses and individuals are vindicated

through the efficiency of a single trial.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action and venue is proper in this Court. Waste Pro USA, Inc. and Waste Pro of Florida, Inc. are both Florida corporations which do business in Escambia County, Florida. Waste Pro USA, Inc. and Waste Pro of Florida, Inc. have received and continue to receive substantial revenue and profits from the improper Fuel Surcharges and Environmental Fees in Escambia County, Florida. Waste Pro USA, Inc. and Waste Pro of Florida, Inc. have an office and location in Escambia County, Florida for transaction of their customary business. Plaintiff's principal place of business is in Escambia County, Florida. The conduct giving rise to Plaintiff's claims and to the claims of each putative class member occurred in Florida and emanated solely from the State of Florida. Plaintiff's claims arise solely under Florida law and Plaintiff makes no claims under Federal law.

PARTIES

6. Plaintiff Vision Construction Ent., Inc. is a Florida corporation with its principal place of business in Pensacola, Escambia County, Florida.

7. Vision Construction paid a "Fuel Surcharge" and "Environmental Fee" to Defendants in Escambia County, Florida for invoices dated October 31, 2012 and September 30, 2012.

8. Vision Construction paid a "Fuel Recovery" fee and "Environmental Fee" to Defendants in Escambia County, Florida for invoices dated December 31, 2011 and August 31, 2012.

9. Defendant Waste Pro USA, Inc. is a Florida corporation whose principal place of business is in Longwood, Florida. Upon information and belief, Waste Pro

USA, Inc. created and set the amount of the fees charged to Plaintiff and members of the putative classes. It also devised and made many of the misrepresentations which form the basis of the conduct alleged. Further, Waste Pro USA, Inc. receives all, or a share of, the revenue from the unlawful fees.

10. Defendant Waste Pro of Florida, Inc. is a Florida corporation whose principal place of business is in Longwood, Florida. Upon information and belief, Waste Pro of Florida, Inc. participated in the setting and misrepresenting of the fees at issue. Further, it charges and collects the fees from Plaintiff and members of the putative classes. Waste Pro of Florida, Inc. also receives all or a share of the revenue from the unlawful fees.

11. As Defendants each participated equally in the conduct which forms the basis of this lawsuit, Plaintiff's allegations throughout refer to Defendants collectively as "Waste Pro."

12. Defendants' appointed agent for service of process is Christopher Ciaccio, 2101 W SR 434, Suite 315, Longwood, Florida 32779. Defendant Waste Pro USA, Inc. received all or a portion of the fees at issues in this matter and is responsible, either directly or indirectly, for the conduct at issue in this matter.

13. Neither Plaintiff, Defendants, nor any putative class member is a citizen or resident of any state other than Florida.

CLASS REPRESENTATION ALLEGATIONS

14. Plaintiff brings this action as a class action under Florida law and proposes the following two classes, the "Fuel Surcharge Class" and the "Environmental Fee Class":

15. The Fuel Surcharge Class is defined as:

All persons and entities who reside in Florida who paid Waste Pro USA, Inc. and/or Waste Pro of Florida, Inc. a “Fuel Surcharge” and/or “Fuel Recovery” fee (or other similarly named fees) from four years before the filing of this action to the date of class notice.

16. The Environmental Fee Class is defined as:

All persons and entities who reside in Florida who paid, directly or indirectly, Waste Pro USA, Inc. and/or Waste Pro of Florida, Inc. an “Environmental Fee” (or other similarly named fees) from four years before the filing of this action to the date of class notice.

17. Excluded from the proposed class are members of the judiciary, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the class are those customers who executed a valid, binding arbitration agreement, but such customers are only excluded for the time period that such arbitration agreement was in effect.

18. Plaintiff maintains the right to create additional subclasses or classes, if necessary, and to revise these definitions to maintain a cohesive class which does not require individual inquiry to determine liability.

19. The exact number of class members is unknown to Plaintiff at this time, but such information can be ascertained through appropriate discovery, specifically from records maintained by Waste Pro and its agents. Upon information and belief, the number of putative members of each class exceeds 60 persons and entities.

**EXISTENCE AND PREDOMINANCE OF
COMMON QUESTIONS OF LAW AND FACT**

20. There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions affecting only individual members of the class. Such common questions include, but are not limited to, the following:

- a. Whether Waste Pro charges excessive amounts for its Fuel Surcharge.
- b. Whether the Fuel Surcharge is directly related to Waste Pro's increased cost of fuel or actual cost of fuel.
- c. Whether Waste Pro uses the Fuel Surcharge to offset its increased fuel costs.
- d. Whether the Fuel Surcharge fluctuates as Waste Pro's actual fuel costs fluctuate.
- e. Whether Waste Pro's use of the term "Fuel Surcharge" is deceptive.
- f. Whether Waste Pro has misrepresented facts about the Fuel Surcharge.
- g. Whether Waste Pro has omitted material facts about the Fuel Surcharge.
- h. Whether the Fuel Surcharge bears any relation to Defendants' increased costs of fuel or its actual cost of fuel.
- i. Whether Waste Pro actually pays less for fuel than the price per gallon on the DOE index.
- j. Whether Waste Pro's representations and omissions regarding the Fuel Surcharge constitute a deceptive trade practice.
- k. Whether Waste Pro has been unjustly enriched by charging the Fuel Surcharge.
- l. Whether the term "Fuel Surcharge" is likely to mislead a reasonable person.
- m. Whether Waste Pro charges excessive amounts for its Environmental Fee.
- n. Whether the Environmental Fee is directly related to Waste Pro's increased environmental costs or actual environmental costs.

- o. Whether Waste Pro uses the Environmental Fee to offset its increased environmental costs.
- p. Whether the Environmental Fee fluctuates as Waste Pro's environmental costs fluctuate.
- q. Whether Waste Pro's use of the term "Environmental Fee" is deceptive.
- r. Whether Waste Pro has misrepresented facts about the Environmental Fee.
- s. Whether Waste Pro has omitted material facts about the Environmental Fee.
- t. Whether Waste Pro's representations and omissions regarding the Environmental Fee constitutes a deceptive trade practice.
- u. Whether the term "Environmental Fee" is likely to mislead a reasonable person.
- v. Whether the Environmental Fee bears any relation to Defendants' increased environmental costs or actual environmental costs.
- w. Whether the Environmental Fee bears any relation to costs imposed by external governmental regulatory agencies.
- x. Whether the same law applies to all class members' claims.
- y. Whether Plaintiff and class members are entitled to class relief as requested herein.
- z. Whether Waste Pro is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual surcharge or fee.
- aa. Whether amounts of such fees charged to Waste Pro customers are "unfair" under FDUTPA.

TYPICALITY AND NUMEROSITY

21. The claims of the named Plaintiff are typical of the claims of the class. Upon information and belief, the total number of members of each putative class exceeds 60 members and is so numerous that separate joinder of each member is impracticable.

ADEQUATE REPRESENTATION

22. Plaintiff will fairly and adequately protect the interests of the members of the class and has no interest antagonistic to those of other class members. Plaintiff has retained class counsel competent to prosecute class actions and such class counsel is financially able to represent the classes.

SUPERIORITY

23. The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the classes is impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiff's classes rather than on an individual basis. The class action mechanism provides the benefit of unitary adjudication, economies of scale and comprehensive supervision by a single court.

24. Questions of law and fact predominate over any questions affecting only individual members.

FACTUAL ALLEGATIONS

25. Vision Construction is a general contractor based in Pensacola. Waste Pro is one of the largest waste disposal companies in Florida. On occasion, Waste Pro provides a dumpster and disposes of waste for Vision Construction. As with all its customers, Waste Pro charged Vision Construction a certain rate for disposing of Vision

Construction's waste. But in addition to this amount, Waste Pro also charged Vision Construction at least two fees which are the subject of this lawsuit.

26. The first is a fee which Waste Pro calls a "Fuel Surcharge." Waste Pro charges this fee purportedly to recover the increased fuel costs it incurs in providing disposal service to its customers. Waste Pro represents that the Fuel Surcharge is directly related to its increased cost of fuel, that this fee fluctuates as Waste Pro's fuel cost fluctuates, and that this fee is used to offset those increased fuel costs.

27. By using the term "Fuel Surcharge"—a term which Waste Pro has uniformly used on every invoice received by every Class Member charged this fee—Waste Pro represents that this fee is directly related to its increased fuel costs and that this fee will be used to defray such costs. Waste Pro has created a façade based upon the Department of Energy tracked diesel prices, which it uses to further the impression that the Fuel Surcharge is a legitimate fee based upon Waste Pro's actual cost of fuel. However, Waste Pro pays substantially less for its fuel than the DOE index price per gallon.

28. In actuality, the "Fuel Surcharge" is unrelated to Waste Pro's actual or increased fuel costs, and certainly not charged to defray those increased costs. The Fuel Surcharge does not vary or fluctuate in accordance with Waste Pro's actual increased fuel costs and the method by which Waste Pro determines the fuel surcharge has no relation to its increased fuel costs or any changes in those costs. Waste Pro has done no legitimate analysis to determine the proper amount of the Fuel Surcharge in connection to its increased fuel costs. Waste Pro does not apply the money received from the Fuel Surcharge to offset its increased fuel costs; rather, it is recognized as revenue and contributes directly to Waste Pro's profit. Additionally, the increased fuel

costs Waste Pro purportedly recovers through the Fuel Surcharge are already recovered in whole or in part, through the rates it charges for waste disposal. This rate includes the individual component costs of Waste Pro's business, including—specifically—the costs of fuel and other overhead.

29. Waste Pro also has omitted material facts regarding the Fuel Surcharge. For example, Waste Pro does not disclose that the Fuel Surcharge is not related to Waste Pro's increased fuel or actual fuel costs, that the Fuel Surcharge is not applied to Waste Pro's fuel costs, that Waste Pro's actual cost of fuel is not a factor in Waste Pro's Fuel Index Chart, and that the Fuel Surcharge is recognized as profit. Waste Pro does not disclose its actual fuel costs to customers nor does it disclose the actual methodology used to calculate the Fuel Surcharge. In truth, Waste Pro devised, implemented, and set the amount of the "Fuel Surcharge" simply to increase their profits without any intent of recovering the increased fuel costs they incur in servicing customers.

30. The second fee at issue in this lawsuit is what Waste Pro calls an "Environmental Fee." Similar to the "Fuel Surcharge," Waste Pro represents to its customers that the Environmental Fee is related to its increased environmental costs—particularly its "environmental compliance" costs—and that this fee is used to offset those costs. Waste Pro claims that some of its environmental costs are imposed by external government regulatory agencies and that such costs have increased over time. It uses the term "Environmental Fee" to create the impression that this fee is a legitimate charge which is intended to, and does in fact, defray its costs of environmental compliance. However, Waste Pro performs no analysis to determine its environmental costs.

31. Waste Pro's Environmental Fee is as unfair and deceptive as its Fuel Surcharge. The Environmental Fee bears absolutely no relationship to any environmental costs Waste Pro might incur. In fact, Waste Pro does not have any identifiable "environmental compliance costs" which it, itself, actually incurs. And regardless, such costs have not increased. Instead, as with the Fuel Surcharge, Waste Pro recognizes the Environmental Fee as revenue which contributes directly to its profit margin. Waste Pro also has omitted material facts regarding the Environmental Fee, including that the Environmental Fee is not related to Waste Pro's environmental or environmental compliance in any way, that it is not applied to such costs, that the amount of the fee bears no relations to charges by external government regulatory agencies, and that Waste Pro has not identified increased environmental costs at all.

32. Waste Pro, at some time in the past, did not charge Fuel Surcharges or Environmental Fees to its customers. Any purported environmental costs or fuel costs were recovered in the service rate, the same as other overhead costs. Waste Pro, however, figured out that it could substantially increase revenue by charging these deceptive fees as set out herein. Waste pro recovers the same alleged costs twice from its customers. Such practice constitutes "double-dipping."

33. Waste Pro knows when it enters into an agreement with a customer that the customer will pay substantially more than the agreed upon service rate. Waste Pro does not adequately disclose this fact to its customers. Waste Pro never discloses that the amount of fees charged to customers substantially exceeds its actual costs, if any.

34. Waste Pro has consistently and continually misrepresented the nature and purpose of the Fuel Surcharge and Environmental Fee. It does so to mislead its customers into believing that these are legitimate fees which are directly related to

increased fuel and environmental compliance costs Waste Pro incurs in providing waste disposal services. This practice was designed by Waste Pro to deceive its customers, and is likely to deceive those customers acting reasonably under the circumstances. Waste Pro's misrepresentations, omissions, and deceptive practices did in fact deceive Plaintiff and Waste Pro's other Florida customers to their detriment, in that each paid a Fuel Surcharge or Environmental Fee.

COUNT I
DEFENDANT WASTE PRO USA, INC.

**VIOLATION OF FLORIDA'S DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT: FUEL SURCHARGE**

35. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

36. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

37. The stated purpose of FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

38. Plaintiff and each member of the putative class, as "consumers" under FDUTPA (Fla. Stat. § 501.203(7)), have been harmed by Waste Pro USA, Inc.'s unconscionable, deceptive, and unfair acts and practices in the charging of the Fuel Surcharge. Waste Pro USA Inc. characterizes the Fuel Surcharge as a legitimate charge which is designed to recover the increased fuel costs it incurs in providing waste

disposal services to its customers, and which is used to offset such costs. In truth, this fee bears no relation to any increased costs nor any actual costs incurred by Waste Pro USA, Inc. and the fees are not used to offset any actual or increased costs. Further, Waste Pro USA, Inc. already recovers any fuel costs it might incur through the service rate Waste Pro USA, Inc. charges for waste disposal services (“double-dipping”).

39. Waste Pro USA, Inc. characterizes the Fuel Surcharge as a legitimate charge, but such fees are nothing more than a profit enhancer for Waste Pro USA, Inc. and is otherwise improper. Waste Pro USA, Inc. has deceived and misled Plaintiff and putative class members in that the Fuel Surcharge serves no purpose other than to increase Waste Pro USA, Inc.’s profits and because the Fuel Surcharge is excessive and bears no relation to any actual cost incurred by Waste Pro USA, Inc. Waste Pro USA, Inc. has performed no cost analysis to determine whether the Fuel Surcharge actually charged bears any relation to the costs incurred by Waste Pro USA, Inc. Waste Pro USA, Inc.’s misrepresentations, omissions, and deceptive practices as set out in this Class Action Complaint are likely to mislead reasonable customers under the circumstances.

40. Specifically, Waste Pro USA, Inc.’s deceptive practices directed toward Plaintiff and putative class members include:

- a. The failure to disclose the excessive amount it charges for its Fuel Surcharge;
- b. The representation that the Fuel Surcharge is directly related to its increased cost of fuel or actual cost of fuel;
- c. The representation that the Fuel Surcharge is used to offset its increased fuel costs;

- d. The failure to disclose that the Fuel Surcharge does not fluctuate as its actual fuel costs fluctuate;
- e. The representation that the Fuel Surcharge is actually a fuel surcharge;
- f. The failure to disclose that the Fuel Surcharge has nothing to do with its actual cost of fuel;
- g. The representation that the Fuel Surcharge is related to its increased costs of fuel or its actual cost of fuel;
- h. The failure to disclose that it actually pays less for fuel than the price per gallon on the DOE index;
- i. The failure to disclose that its actual cost of fuel is not a factor in Waste Pro's Fuel Surcharge calculation;
- j. The failure to disclose to its customers that it is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual surcharge or fee;
- k. Additional deceptive practices as set out in this Class Action Complaint.

41. Waste Pro USA, Inc.'s misrepresentations, omissions, and deceptive practices as set out herein are likely to mislead reasonable consumers under the circumstances.

42. Also, Waste Pro USA, Inc. knows when it enters into an agreement with its customers that it will charge a substantially higher amount on the monthly invoices than the service rate. Waste Pro USA, Inc. misrepresents the amount Plaintiff and putative class members will be required to pay under the terms of the form agreements.

43. Waste Pro USA, Inc.'s actions or inactions directed toward Plaintiff and putative class members are also unfair. Such actions or inactions include:

- a. Charging Plaintiff and putative class members for the same alleged costs twice, i.e. "double dipping";
- b. Charging excessive amounts for Fuel Surcharges;
- c. Charging for Fuel Surcharges which bear no relation to its actual or increased costs;
- d. Charging for Fuel Surcharges which do not include its actual costs in the calculation of such fees;
- e. Charging Plaintiff and putative class members Fuel Surcharges when its actual costs decrease.
- f. Charging Plaintiff and putative class members such fees when the fees are waived for other Florida customers.

44. As a result of the deceptive and unfair practices described above, Plaintiff and each putative member of the Fuel Surcharge Class paid the improper Fuel Surcharges to their detriment.

45. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Fuel Surcharges, a declaration that Waste Pro USA, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

COUNT II
DEFENDANT WASTE PRO OF FLORIDA, INC.

**VIOLATION OF FLORIDA'S DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT: FUEL SURCHARGE**

46. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

47. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

48. The stated purpose of FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

49. Plaintiff and each member of the putative class, as "consumers" under FDUTPA (Fla. Stat. § 501.203(7)), have been harmed by Waste Pro of Florida, Inc.'s unconscionable, deceptive, and unfair acts and practices in the charging of the Fuel Surcharge. Waste Pro of Florida, Inc. characterizes the Fuel Surcharge as a legitimate charge which is designed to recover the increased fuel costs it incurs in providing waste disposal services to its customers, and which is used to offset such costs. In truth, this fee bears no relation to any increased costs nor any actual costs incurred by Waste Pro of Florida, Inc. and the fees are not used to offset any actual or increased costs. Further, Waste Pro of Florida, Inc. already recovers any fuel costs it might incur through the service rate Waste Pro of Florida, Inc. charges for waste disposal services ("double-dipping").

50. Waste Pro of Florida, Inc. characterizes the Fuel Surcharge as a legitimate charge, but such fees are nothing more than a profit enhancer for Waste Pro of Florida, Inc. and is otherwise improper. Waste Pro of Florida, Inc. has deceived and misled Plaintiff and putative class members in that the Fuel Surcharge serves no purpose other than to increase Waste Pro of Florida, Inc.'s profits and because the Fuel Surcharge is excessive and bears no relation to any actual cost incurred by Waste Pro of Florida, Inc. Waste Pro of Florida, Inc. has performed no cost analysis to determine whether the Fuel Surcharge actually charged bears any relation to the costs incurred by Waste Pro of Florida, Inc. Waste Pro of Florida, Inc.'s misrepresentations, omissions, and deceptive practices as set out in this Class Action Complaint are likely to mislead reasonable customers under the circumstances.

51. Specifically, Waste Pro of Florida, Inc.'s deceptive practices directed toward Plaintiff and putative class members include:

- a. The failure to disclose the excessive amount it charges for its Fuel Surcharge;
- b. The representation that the Fuel Surcharge is directly related to its increased cost of fuel or actual cost of fuel;
- c. The representation that the Fuel Surcharge is used to offset its increased fuel costs;
- d. The failure to disclose that the Fuel Surcharge does not fluctuate as its actual fuel costs fluctuate;
- e. The representation that the Fuel Surcharge is actually a fuel surcharge;
- f. The failure to disclose that the Fuel Surcharge has nothing to do

with its actual cost of fuel;

- g. The representation that the Fuel Surcharge is related to its increased costs of fuel or its actual cost of fuel;
- h. The failure to disclose that it actually pays less for fuel than the price per gallon on the DOE index;
- i. The failure to disclose that its actual cost of fuel is not a factor in Waste Pro's Fuel Surcharge calculation;
- j. The failure to disclose to its customers that it is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual surcharge or fee;
- k. Additional deceptive practices as set out in this Class Action Complaint.

52. Waste Pro of Florida, Inc.'s misrepresentations, omissions, and deceptive practices as set out herein are likely to mislead reasonable consumers under the circumstances.

53. Also, Waste Pro of Florida, Inc. knows when it enters into an agreement with its customers that it will charge a substantially higher amount on the monthly invoices than the service rate. Waste Pro of Florida, Inc. misrepresents the amount Plaintiff and putative class members will be required to pay under the terms of the form agreements.

54. Waste Pro of Florida, Inc.'s actions or inactions directed toward Plaintiff and putative class members are also unfair. Such actions or inactions include:

- a. Charging Plaintiff and putative class members for the same alleged costs twice, i.e. "double dipping";

- b. Charging excessive amounts for Fuel Surcharges;
- c. Charging for Fuel Surcharges which bear no relation to its actual or increased costs;
- d. Charging for Fuel Surcharges which do not include its actual costs in the calculation of such fees;
- e. Charging Plaintiff and putative class members Fuel Surcharges when its actual costs decrease.
- f. Charging Plaintiff and putative class members such fees when the fees are waived for other Florida customers.

55. As a result of the deceptive and unfair practices described above, Plaintiff and each putative member of the Fuel Surcharge Class paid the improper Fuel Surcharges to their detriment.

56. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Fuel Surcharges, a declaration that Waste Pro of Florida, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

COUNT III
DEFENDANT WASTE PRO USA, INC.

**VIOLATION OF FLORIDA'S DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT: ENVIRONMENTAL FEE**

57. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

58. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

59. The stated purpose of FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

60. Plaintiff and each member of the putative class, as "consumers" under FDUTPA (Fla. Stat. § 501.203(7)), have been harmed by Waste Pro USA, Inc.'s unconscionable, deceptive, and unfair acts and practices in the charging of the Environmental Fee. Waste Pro USA Inc. characterizes the Environmental Fee as a legitimate charge which is designed to recover the increased environmental costs it incurs in providing waste disposal services to its customers, and which is used to offset such costs. In truth, this fee bears no relation to any increased costs nor any actual costs incurred by Waste Pro USA, Inc. and the fees are not used to offset any actual or increased costs. Further, Waste Pro USA, Inc. already recovers any environmental costs it might incur through the service rate Waste Pro USA, Inc. charges for waste disposal services ("double-dipping").

61. Waste Pro USA, Inc. characterizes the Environmental Fee as a legitimate charge, but such fees are nothing more than a profit enhancer for Waste Pro USA, Inc. and is otherwise improper. Waste Pro USA, Inc. has deceived and misled Plaintiff and putative class members in that the Environmental Fee serves no purpose other than to increase Waste Pro USA, Inc.'s profits and because the Environmental Fee is excessive

and bears no relation to any actual cost incurred by Waste Pro USA, Inc. Waste Pro USA, Inc. has performed no cost analysis to determine whether the Environmental Fee actually charged bears any relation to the costs incurred by Waste Pro USA, Inc. Waste Pro USA, Inc.'s misrepresentations, omissions, and deceptive practices as set out in this Class Action Complaint are likely to mislead reasonable customers under the circumstances.

62. Specifically, Waste Pro USA, Inc.'s deceptive practices directed toward Plaintiff and putative class members include:

- a. The failure to disclose the excessive amount it charges for its Environmental Fee;
- b. The representation that the Environmental Fee is directly related to its increased environmental costs or actual environmental cost;
- c. The representation that it uses the Environmental Fee to offset its increased environmental costs;
- d. The representation that the Environmental Fee fluctuates as Waste Pro's environmental costs fluctuate;
- e. The representation that the Environmental Fee is actually an environmental fee;
- f. The representation that the Environmental Fee is related to its increased environmental costs or actual environmental costs;
- g. The failure to disclose that the Environmental Fee has nothing to do with its purported environmental costs;
- h. The failure to disclose to its customers that it is recovering for the same alleged cost twice, i.e. once in the actual rate and then again

in the actual surcharge or fee;

- i. Additional deceptive practices as set out in this Class Action Complaint.

63. Waste Pro USA, Inc.'s misrepresentations, omissions, and deceptive practices as set out herein are likely to mislead reasonable consumers under the circumstances.

64. Also, Waste Pro USA, Inc. knows when it enters into an agreement with its customers that it will charge a substantially higher amount on the monthly invoices than the service rate. Waste Pro USA, Inc. misrepresents the amount Plaintiff and putative class members will be required to pay under the terms of the form agreements.

65. Waste Pro USA, Inc.'s actions or inactions directed toward Plaintiff and putative class members are also unfair. Such actions or inactions include:

- a. Charging Plaintiff and putative class members for the same alleged costs twice, i.e. "double dipping";
- b. Charging excessive amounts for Environmental Fees;
- c. Charging for Environmental Fees which bear no relation to its actual or increased costs;
- d. Charging for Environmental Fees which do not include its actual costs in the calculation of such fees;
- e. Charging Plaintiff and putative class members Environmental Fees when its actual costs decrease.
- f. Charging Plaintiff and putative class members Environmental Fees when such fees are waived for other Florida customers.

66. As a result of the deceptive and unfair practices described above, Plaintiff

and each putative member of the Environmental Fee Class paid the improper Environmental Fees to their detriment.

67. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Environmental Fees, a declaration that Waste Pro USA, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

COUNT IV
DEFENDANT WASTE PRO OF FLORIDA, INC.

**VIOLATION OF FLORIDA'S DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT: ENVIRONMENTAL FEE**

68. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

69. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

70. The stated purpose of FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

71. Plaintiff and each member of the putative class, as "consumers" under FDUTPA (Fla. Stat. § 501.203(7)), have been harmed by Waste Pro of Florida, Inc.'s

unconscionable, deceptive, and unfair acts and practices in the charging of the Environmental Fee. Waste Pro of Florida, Inc. characterizes the Environmental Fee as a legitimate charge which is designed to recover the increased environmental costs it incurs in providing waste disposal services to its customers, and which is used to offset such costs. In truth, this fee bears no relation to any increased costs nor any actual costs incurred by Waste Pro of Florida, Inc. and the fees are not used to offset any actual or increased costs. Further, Waste Pro of Florida, Inc. already recovers any environmental costs it might incur through the service rate Waste Pro of Florida, Inc. charges for waste disposal services (“double-dipping”).

72. Waste Pro of Florida, Inc. characterizes the Environmental Fee as a legitimate charge, but such fees are nothing more than a profit enhancer for Waste Pro of Florida, Inc. and is otherwise improper. Waste Pro of Florida, Inc. has deceived and misled Plaintiff and putative class members in that the Environmental Fee serves no purpose other than to increase Waste Pro of Florida, Inc.’s profits and because the Environmental Fee is excessive and bears no relation to any actual cost incurred by Waste Pro of Florida, Inc. Waste Pro of Florida, Inc. has performed no cost analysis to determine whether the Environmental Fee actually charged bears any relation to the costs incurred by Waste Pro of Florida, Inc. Waste Pro of Florida, Inc.’s misrepresentations, omissions, and deceptive practices as set out in this Class Action Complaint are likely to mislead reasonable customers under the circumstances.

73. Specifically, Waste Pro of Florida, Inc.’s deceptive practices directed toward Plaintiff and putative class members include:

- a. The failure to disclose the excessive amount it charges for its Environmental Fee;

- b. The representation that the Environmental Fee is directly related to its increased environmental costs or actual environmental cost;
- c. The representation that it uses the Environmental Fee to offset its increased environmental costs;
- d. The representation that the Environmental Fee fluctuates as Waste Pro's environmental costs fluctuate;
- e. The representation that the Environmental Fee is actually an environmental fee;
- f. The representation that the Environmental Fee is related to its increased environmental costs or actual environmental costs;
- g. The failure to disclose that the Environmental Fee has nothing to do with its purported environmental costs;
- h. The failure to disclose to its customers that it is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual surcharge or fee;
- i. Additional deceptive practices as set out in this Class Action Complaint.

74. Waste Pro of Florida, Inc.'s misrepresentations, omissions, and deceptive practices as set out herein are likely to mislead reasonable consumers under the circumstances.

75. Also, Waste Pro of Florida, Inc. knows when it enters into an agreement with its customers that it will charge a substantially higher amount on the monthly invoices than the service rate. Waste Pro of Florida, Inc. misrepresents the amount Plaintiff and putative class members will be required to pay under the terms of the form

agreements.

76. Waste Pro of Florida, Inc.'s actions or inactions directed toward Plaintiff and putative class members are also unfair. Such actions or inactions include:

- a. Charging Plaintiff and putative class members for the same alleged costs twice, i.e. "double dipping";
- b. Charging excessive amounts for Environmental Fees;
- c. Charging for Environmental Fees which bear no relation to its actual or increased costs;
- d. Charging for Environmental Fees which do not include its actual costs in the calculation of such fees;
- e. Charging Plaintiff and putative class members Environmental Fees when its actual costs decrease.
- f. Charging Plaintiff and putative class members Environmental Fees when such fees are waived for other Florida customers.

77. As a result of the deceptive and unfair practices described above, Plaintiff and each putative member of the Environmental Fee Class paid the improper Environmental Fees to their detriment.

78. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Environmental Fees, a declaration that Waste Pro of Florida, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

COUNT V
DEFENDANT WASTE PRO USA, INC.

UNJUST ENRICHMENT

79. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

80. To the extent necessary, this count is pled in the alternative to the previous counts.

81. Waste Pro USA, Inc. received money from Plaintiff and each member of the putative class through the charging of Fuel Surcharges and Environmental Fees that are fraudulent, deceptive, unfair, and unrelated to Waste Pro USA, Inc.'s actual or increased costs. The benefit conferred by Plaintiff and each member of the putative class was non-gratuitous and Waste Pro, USA, Inc. realized value from this benefit. It would be inequitable for Waste Pro USA, Inc. to retain this benefit.

82. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Environmental Fees and Fuel Surcharges, a declaration that Waste Pro USA, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

COUNT VI
DEFENDANT WASTE PRO OF FLORIDA, INC.

UNJUST ENRICHMENT

83. Paragraphs 1-34 of this complaint are incorporated by reference as though fully set forth herein.

84. To the extent necessary, this count is pled in the alternative to the previous counts.

85. Waste Pro of Florida, Inc. received money from Plaintiff and each member of the putative class through the charging of Fuel Surcharges and Environmental Fees that are fraudulent, deceptive, unfair, and unrelated to Waste Pro of Florida, Inc.'s actual or increased costs. The benefit conferred by Plaintiff and each member of the putative class was non-gratuitous and Waste Pro of Florida, Inc. realized value from this benefit. It would be inequitable for Waste Pro of Florida, Inc. to retain this benefit.

86. Wherefore, Plaintiff, on behalf of itself and each member of the putative class, demands trial by jury and all remedies and damages available to it, including repayment of all Environmental Fees and Fuel Surcharges, a declaration that Waste Pro USA, Inc.'s practices described above are deceptive or unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act, restitution, interest, and the attorneys' fees and costs incurred in bringing this action, pursuant to Fla. Stat. § 501.201.

/s J. Phillip Warren

J. Phillip Warren

Florida Bar No.: 0662143

C. Phil Hall

Florida Bar No. 621145

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