ACCEPTED
13-19-00500-CV
THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI, TEXAS
7/27/2020 2:55 PM
Kathy S. Mills
CLERK

NO. 13-19-00500-CV

IN THE COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS
7/28/2020 8:00:00 AM
KATHY S. MILLS
Clerk

TEXAS AUTO SALVAGE, INC., GARY HACK AND DANIEL HACK, APPELLANTS

VS.

D D RAMIREZ, INC., DANNY RAMIREZ RECYCLING, INC., SAN ANTONIO AUTO & TRUCK SALVAGE, DANNY'S RECYCLING & PRECIOUS METALS, LLC, DANNY'S RECYCLING, INC., AND DANIEL DELAGARZA RAMIREZ, APPELLEES

ON APPEAL FROM THE 37TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS
CAUSE NO. 2010-CI-02500
THE HONORABLE MICHAEL MERY, PRESIDING

BRIEF OF APPELLANTS (AMENDED)

MS. RENÉE YANTA
State Bar No. 00787483
The Law Firm of Renée Yanta
8000 IH-10 West, Suite 600
San Antonio, TX 78230
Tel: 210.774.4088

MR. JON T. POWELL
State Bar No. 0079726
MR. MICKEY JOHNSON
State Bar No. 24094002
THE POWELL LAW FIRM
1148 E. Commerce Street
San Antonio, TX 78205
Tel: 210.225.9300

Counsel for Appellants, Texas Auto Salvage, Inc., Gary Hack and Daniel Hack

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Appellants:

Texas Auto Salvage, Inc., Gary Hack and Daniel Hack

Counsel for Appellants:

RENÉE YANTA (Lead Appellate Counsel)
State Bar No. 00787483
THE LAW FIRM OF RENEE YANTA PLLC
8000 IH10 West, Suite 600
San Antonio, Texas 78230
Telephone: 210-774-4088
formerjudge@reneeyantalaw.com

MR. JON T. POWELL (Trial and Appellate Counsel)
State Bar No. 0079726
MR. MICKEY JOHNSON (Trial and Appellate Counsel)
State Bar No. 24094002
THE POWELL LAW FIRM
1148 E. Commerce Street
San Antonio, TX 78205
Telephone: 210-225-9300

Appellees:

D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto & Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez

Counsel for Appellees:

SAMUEL V. "SAM" HOUSTON (Lead Appellate Counsel)
Texas State Bar No. 24041135
HOUSTON DUNN, PLLC
4040 Broadway Street, Suite 515
San Antonio, Texas 78209
Telephone: (210) 775-0882
EMAIL: SAM@HDAPPEALS.COM

ROBERT G. GARZA (Trial and Appellate Counsel)
Texas State Bar No. 07737700
THE LAW OFFICE OF ROBERT G. GARZA
7800 Interstate Highway 10 West, Suite 111
San Antonio, Texas 78230
Telephone: (210) 344-5665
Facsimile: (210) 344-4064
Email: robertggarza@cs.com

GREGORY T. VAN CLEAVE (Trial and Appellate Counsel)
Texas State Bar No. 24037881
THE LAW OFFICE OF ALBERT W. VAN CLEAVE, III PLLC
1520 W. Hildebrand
San Antonio, Texas 78201
Telephone: (210) 341-6588
Fax: (210) 341-6589
Email: greg_v@vancleavelegal.com

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vii

STATEMENT OF THE CASE xi

DESIGNATION OF RECORD REFERENCES xii

STATEMENT REGARDING REQUEST FOR ORAL ARGUMENT xii

ISSUES PRESENTED xiv

ISSUE ONE xiv

ISSUE TWO xv

ISSUE THREE xv

ISSUE FOUR xv

ISSUE FIVE xv

STATEMENT OF FACTS 1

I. Both the Appellants and the Appellees Are In The Metal Recycling Business 1

II. TASI Took Seriously Its Obligation As a Metal Recycler To Be An Environmental Steward; Ramirez Did Not 2

ARGUMENT 9

I. Standards of Review 9

II. The Trial Court Erred by Erasing The Jury's Verdict On TASI's Statutory Public Nuisance Claim and Directing A Verdict On TASI's Common Law Public Nuisance Claim (*responsive to Issues One-Four*) 12

A. The Trial Court erred by granting a JNOV, dismissing TASI's statutory public nuisance claim under Chapter 16; the City was derelict in its duty to enforce Chapter 16 against Ramirez, which afforded standing to a private citizen to seek injunctive relief 14

1. Texas law permits recovery for public nuisance..... 14

2. In the exceptional circumstance that a City fails to enforce its laws and protect its citizens, Texas Law recognizes the right of a citizen to seek injunctive relief to compel compliance with the law 15

3. The Jury found the City was derelict in its duty to enforce Chapter 16 and stop Ramirez from polluting 17

B. The Trial Court also erred by granting the JNOV and directed verdict, thereby dismissing both the statutory and common law public nuisance claims. as there is more than a scintilla of evidence TASI suffered special injury 36

1. Special injury is simply some harm different in kind than the harm suffered by the public 36

2. There is more than a scintilla – in fact there is compelling – of evidence of special injury 42

a. Ramirez's misconduct harmed TASI's business interests 42

b. Ramirez's misconduct created a dangerous risk of harm TASI's property rights. 49

C. The Jury question to which Ramirez agreed establishes his liability for acting as a public nuisance under Chapter 16 51

D. TASI's suit is founded on a request for injunctive—not merely declaratory—relief; however, even if TASI sought primarily declarations, the Trial Court had jurisdiction to issue them. 53

III. The Great Weight And Preponderance Of The Evidence Confirms That Ramirez's Operation Was a Private Nuisance For Which Ramirez Is Culpable (*responsive to Issue Five*) 55

CONCLUSION AND PRAYER 57

CERTIFICATE OF COMPLIANCE 60

CERTIFICATE OF SERVICE 61

APPENDIX 62

TABLE OF AUTHORITIES

CASES

American Constr. Co. v. Seelig,
133 S.W. 429 (Tex. 1911) 13, 15-17, 36, 38, 42, 44-46, 48

Bank of Am., N.A. v. Eisenhauer, 474 S.W.3d 264
(Tex. 2015) 10

Boone v. Clark, 214 S.W. 607
(Tex. Civ. App.—Fort Worth 1919, writ ref'd) ... 13, 15-17, 36, 38-39, 42-48

Bowers v. City of Taylor, 24 S.W.2d 816
(Tex. Comm'n App. 1930) 13, 15-17, 37

Burroughs Wellcome Co. v. Crye,
907 S.W.2d 497 (Tex. 1995) 10

Crosstex N. Texas Pipeline, L.P. v. Gardiner,
505 S.W.3d 580 (Tex. 2016) ..... xii, 56-57

Dipp v. Rio Grande Produce, Inc., 330 S.W.2d 700
(Tex. App.—El Paso 1959, writ ref'd n.r.e.) 37

Formosa Plastics Corp., USA v. Kajima Int'l, Inc., 216 S.W.3d 436
(Tex. App.—Corpus Christi/Edinburg 2006, pet. denied) 11

Gharda USA, Inc. v. Control Sols., Inc.,
464 S.W.3d 338 (Tex. 2015) 10, 40

Guetersloh v. Rolling Fork Owners Comm., Inc.,
No. 14-95-01272-CV, 1996 WL 580931
(Tex. App.—Houston [14th Dist.]
Oct. 10, 1996, no writ) (mem. op.)..... 13, 17, 36, 50-51

Heilbron v. St. Louis Sw. Ry. Co. of Tex.,
113 S.W. 979 (Tex. Civ. App.—1908, writ ref'd) 39, 50

Hunt v. Bass, 664 S.W.2d 323 (Tex. 1984) 37, 39, 41, 51

In re N.L.W., 534 S.W.3d 102
(Tex. App.—Texarkana 2017, no pet.)..... 11

In re T.E.R., No. 06-19-00073-CV, 2020 WL 1808869
(Tex. App.—Texarkana Apr. 9, 2020, no pet.) (mem. op.) 11

Jamail v. Stoneledge Condominium Owners Ass'n,
970 S.W.2d 673 (Tex. App.—Austin 1998, no pet.)..... 37

Kjellander v. Smith, 652 S.W.2d 595
(Tex. App.—Tyler 1983, no writ) 39, 50

Lozano v. Patrician Movement, 483 S.W.2d 369
(Tex. Civ. App.—San Antonio 1972, writ ref'd n.r.e.) 54

Mentis v. Barnard, 870 S.W.2d 14 (Tex. 1994) 12

Nabors Well Servs. Ltd v. Romero, 508 S.W.3d 512..... 48-49

Nat'l Audubon Society, Inc. v. Johnson,
317 F. Supp. 1330, (5th Cir. 1970)..... 16

Ort v. Bowden, 148 S.W. 1145
(Tex. Civ. App.—Galveston 1912, n.w.h.) 13, 15-17, 25, 36

Ortiz v. Jones, 917 S.W.2d 770 (Tex. 1996) (per curiam) 12, 57

Painter v. Amerimex Drilling I, Ltd., 561 S.W.3d 125 (Tex. 2018)..... 10

Reliance Steel & Aluminum Co. v. Sevcick, 267 S.W.3d..... 48-49

Schmitz v. Denton Cnty. Cowboy Church, 550 S.W.3d 342
(Tex. App.—Fort Worth 2018, pet. denied)..... 16

Soap Corp. of Am. v. Reynolds, 178 F.2d 503 (5th Cir. 1949) 50

Spicewood Springs Rd. Tunnel Coal. v. Leffingwell, No. 03-11-00260-CV,
2013 WL 2631750 (Tex. App.—Austin
June 6, 2013, pet. dism'd) (mem. op.)..... 50

Stein v. Killough, 53 S.W.3d 36
(Tex. App.—San Antonio 2001, no pet.) 37

Stoughton v. City of Fort Worth, 277 S.W.2d 150
(Tex. Civ. App.—Fort Worth 1955, no writ) 49

Tanner v. Nationwide Mut. Fire Ins. Co.,
289 S.W.3d 828 (Tex. 2009) 10, 51

Texas Ass'n of Bus. v. Tex. Air Control Bd.,
852 S.W.2d 440 (Tex. 1993) 39

Texas Hwy. Comm'n v. Texas Ass'n of Steel Importers,
372 S.W.2d 525–3 (Tex. 1963) 38

Touchy v. Houston Legal Found.,
432 S.W.2d 690 (Tex. 1968) 37-38, 42, 43, 45, 47-48

Tri County Citizens Rights Org. v. Johnson, 498 S.W.2d 227
(Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 39, 41, 51

United Food & Commercial Workers Int'l Union v. Wal-Mart Stores, Inc.,
No. 02-15-00374-CV, 2016 WL 6277370
(Tex. App.—Fort Worth
Oct. 27, 2016, pet. denied) (mem. op.).....14, 17, 25, 37-38, 42, 46-48

Walker v. Texas Elec. Serv., 499 S.W.2d 20
(Tex. App.—Fort Worth 1973, no writ) 14

Woods v. Kiersky, 14 S.W.2d 825
(Tex. Comm'n App. 1929, judgment adopted) 16

STATUTES, RULES, AND ORDINANCES

TEX. CIV. PRAC. & REM. CODE § 37.003 54-55

TEX. CIV. PRAC. & REM. CODE § 37.003(a) 54

TEX. CIV. PRAC. & REM. CODE § 37.003(c) 54

TEX. CIV. PRAC. & REM. CODE § 37.004 54

TEX. CIV. PRAC. & REM. CODE § 37.004(a) 53, 54

TEX. CIV. PRAC. & REM. CODE § 37.005 54

TEX. CIV. PRAC. & REM. CODE § 125.0015 14

TEX. HEALTH & SAFETY CODE § 343.011(c) 14

TEX. R. APP. P. 9.4 60

TEX. R. APP. P. 39.1 xii

SAN ANTONIO, TEX., CODE § 16, Division 2 ..... 6, 14, 26, 31-32, 34-35, 44

STATEMENT OF THE CASE

Nature of the Case: The underlying case seeks injunctive relief against a recycling operator who habitually polluted with hazardous toxins, creating a public nuisance for ten years. CR1:661-91.

Proceedings in the Trial Court The plaintiffs below—Texas Auto Salvage, Inc., Gary Hack and Daniel Hack (together referred to as "TASI")—filed this case in 2008. CR1:16-28. After multiple delays by the defendants below—D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto & Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez ("Ramirez")—the case finally came before Judge Michael Mery, 37th District Court Presiding, for jury trial in October 2018. CR3:2438-43;APP:C. After a nine-day jury trial, the Trial Court dismissed TASI's common law public nuisance claim and submitted private nuisance and statutory public nuisance to the jury, along with several claims asserted by Ramirez. CR3:2383-2401;APP:A. The jury found against Ramirez as to all of their claims. *Id*. The jury also did not find a private nuisance. However, the jury did find: (i) the City of San Antonio was derelict in its duty to stop Ramirez's public nuisance and (ii) Ramirez's conduct is a statutory public nuisance. *Id*.

Trial Court Disposition: Rather than entering judgment on the verdict for injunctive relief remediating and stopping Ramirez's pollution, the Trial Court granted Ramirez's Motion for Judgment Notwithstanding the Verdict. CR3:2444-46;APP:B. The Trial Court then entered a take nothing judgment against TASI. CR3:2438-41;APP:C. The Trial Court permitted TASI's Motion for New Trial to be overruled by operation of law. CR3:2447-62.

DESIGNATION OF RECORD REFERENCES

The record in this appeal consists of the Clerk's Record and Reporter's Record. Appellant references the record as follows:

(1) Clerk's Record—CR[volume]:[page number/s] (ex.: CR1:1-2)

(2) Reporter's Record—RR[volume number]:[page number/s] (ex.: RR1:1-2)

(3) Appendix—APP:[volume number] (ex.: APP:1.)

(4) Court Exhibits—CX___ or CX___:[page number/s:___] (ex.: CX1 or CX1:100.)

(5) Plaintiffs' Exhibits—PX___ or PX_____:[page number/s:___] (ex.: PX1 or PX1:100)

(6) Defendants' Exhibits—DX___ or DX___:[page number/s:___] (ex.: DX1 or DX1:100)

STATEMENT REGARDING REQUEST FOR ORAL ARGUMENT

Appellants, Texas Auto Salvage, Inc., Gary Hack and Daniel Hack ("TASI"), respectfully request oral argument pursuant to Texas Rule of Appellate Procedure 39.1. Oral argument will significantly aid the Court in determining the issues presented in this appeal. The case involves the complex law of nuisance, which the Texas Supreme Court continues to clarify and develop. *See Crosstex N. Texas*

Pipeline, L.P. v. Gardiner, 505 S.W.3d 580, 588 (Tex. 2016) (clarifying legal standard in private nuisance cases).

Moreover, this case addresses the intersection of public nuisance and a private citizen's rights to remedy severe and continuous pollution over a ten-year period. PX1; PX4; PX18; PX22; PX44; RR4:30. The jury found the City of San Antonio (the "City") was derelict in its duty to enforce the City Code against Ramirez—a "repeat offender"—to stop him from continuing to pollute, creating an extreme danger to the public health and safety. CR3:2385;APP:A. By denying Appellees' motion for directed verdict, the Trial Court confirmed that when a City abdicates its duty, a private citizen is afforded standing to then pursue injunctive relief. RR9:152.

However, after the jury found a statutory public nuisance and Appellants submitted a judgment for injunctive relief, the Trial Court reversed the legal conclusion it had steadfastly applied throughout the ten-year history of the case. CR3:2444-46;APP:B. Post-trial and long after the Trial Court released the jury, the Trial Court granted Appellees' Motion for Judgment Notwithstanding the Verdict. *Id*. The Trial Court abandoned its prior legal analysis, applied the wrong legal standard and incorrectly determined Appellants did not have standing.

Appellants respectfully submit that the Trial Court's error reflects the complexity of the applicable law and further confirms that an opportunity for a full discussion of these complexities would greatly benefit this Court's reflective

process. As such, Appellants respectfully submit oral argument will provide this Honorable Court a means to test legal argument and theories that will assist the Court with its analysis of the issues presented.

ISSUES PRESENTED

ISSUE ONE:

After a two-week trial, a jury agreed with TASI, finding Ramirez was operating his recycling yards as a public nuisance and public health risk. The jury also found the City of San Antonio was derelict in its duty to enforce Division 2 "Metal Recycling Entities" of Chapter 16 of the City Code ("Chapter 16")—the provisions that would have stopped Ramirez from polluting the soil, air and water with highly toxic, cancer-causing chemicals, silver and lead. The Trial Court accepted the verdict and discharged the jury. Months later, the Trial Court nullified that verdict and entered a take-nothing judgment against TASI.

Did the Trial Court err by granting a judgment notwithstanding the jury's verdict, concluding TASI—who operates their recycling yard right across the street from Ramirez—cannot obtain injunctive relief to halt and remediate the effects of Ramirez's ten-year history of repeatedly polluting?

ISSUE TWO:

In light of the undisputed evidence Ramirez violated Chapter 16 of the City Code and repeatedly polluted the soil, air and water over a ten-year period, did the Trial Court err by directing a verdict on TASI's claim for common law public nuisance?

ISSUE THREE:

Did the Trial Court commit harmful error by striking the financial expert testimony of Mr. Keith Fairchild?

ISSUE FOUR:

Did the Trial Court commit harmful error by striking the expert testimony of Mr. Jerry Arredondo?

ISSUE FIVE:

After the jury heard and saw undisputed evidence Ramirez (i) pollutes with hazardous chemicals, silver and lead; (ii) violates environmental requirements set by the City Code, SAWS, and TCEQ and (iii) as even his own environmental expert testified, fails to follow the standard of care of a prudent recycling operator, was it against the great weight and preponderance of the evidence for the jury to find Ramirez was not a private nuisance and had not acted negligently or intentionally in polluting the soil, air and water with highly carcinogenic chemicals, silver and lead?

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Appellants Texas Auto Salvage, Inc., Gary Hack and Daniel Hack ("TASI") file this Brief of Appellants, and respectfully show the Court as follows:

STATEMENT OF FACTS

I. Both the Appellants and the Appellees Are In The Metal Recycling Business.

Texas Auto Salvage, Inc. is a family-owned business operating for at least thirty-five years. RR3:91, 99. Gary Hack started the business after marrying his sweetheart, Carmen Saldivar of Mercedes. *Id.* He spent all his life building it. RR3:92. Daniel Hack ("Danny")—Gary's son and business partner—learned the value of hard work from his father:

> He's never given us anything, never. If we wanted it, we had to work for it. So—and it was hard. It was a struggle.

RR3:94.

When Gary's health failed, TASI had to downsize operations and Gary began relying heavily on Danny who had just graduated from high school. RR3:92. Gary bought a car crusher[1] and for fifteen years, Gary and Danny would leave their family and travel from town to town car crushing. RR3:92.

Eventually TASI acquired a permanent property for their car crushing business at 609 Somerset Road in San Antonio. RR3:92. TASI built a facility on

[1] A car crusher is an industrial device that reduces the dimensions of scrapped vehicles. Wikipedia, https://en.wikipedia.org/wiki/Car_crusher.

the property to expand their business and focus on metal recycling. RR3:115-16. In that process, TASI invested over $140,000 in safety measures to build a facility that would operate in a safe manner as a steward of the environment. RR3:115. TASI also complied with all applicable provisions of the Code of the City of San Antonio (the "City"), including obtaining certificates of occupancy.[2] RR3:115-16; RR8:90-92, 98-99.

Danny Ramirez—the defendant below[3]—at one time sold scrap metal and vehicles to Gary Hack. RR3:96. When Ramirez started his own auto salvage businesses, TASI sold Ramirez his first car crusher. RR3:97. Eventually, Ramirez followed TASI into the metal recycling business, developing operations right across the street from TASI at 819, 914 and 925 Somerset. RR3:97.

II. TASI Took Seriously Its Obligation As A Metal Recycler To Be An Environmental Steward; Ramirez Did Not.

The metal recycling process begins in a salvage yard, which buys vehicles from auctions or the public and then strips the vehicles of specific parts to sell.

---

[2] The City strictly oversees metal recyclers (although it abdicated that duty as to Ramirez). For example, the City required TASI to operate under a tent during the year-long process for TASI to obtain a certificate of occupancy. RR3:121. In stark contrast, the City allowed Ramirez to operate without required certificates of occupancy—in direct violation of City Code—for ten years. RR4:30.

[3] Ramirez and his companies, D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto & Truck Salvage, Danny's Recycling & Precious Metals, LLC, and Danny's Recycling, Inc., were the defendants and counter-plaintiffs in the Trial Court. CR1:707-12. In this appeal, they are referred to as "Ramirez."

RR3:122. What remains of the vehicle is scrap metal. *Id.* A "scrapper" then sells the stripped vehicle or other metal items to a metal recycler like TASI. RR3:122, 145.

When the scrap metal arrives at the recycling yard, any batteries, gas tanks, and other fluid-containing parts should have already been removed. RR3:123. The fluids should have been drained. *Id*. But residual fluids remain. *Id*. And many of these fluids are highly toxic, including antifreeze, used oil, gasoline, battery acid, and brake fluid. CX9:1562.

The recycler processes the scrap metal and vehicles using a car crusher.[4] RR3:72. Because residual toxic fluids will exude from these metals, it is crucially important for a recycling operation to adopt and maintain appropriate material handling procedures—called Best Management Practices ("BMPs"). RR3:123; RR8:152-54. In this manner, the recycler must become the frontline steward of the environment. RR8:147. This process is costly, requiring businesses to invest time and money to make sure they comply with BMPs. RR8:117, 148-49.

TASI takes this responsibility seriously. RR3:97. It expended significant funds to maintain as safe and clean a recycling yard as possible, including installing a $100,000 sprinkler system and spending $40,000 to ensure it complied with all

[4] The recycling business sells the recycled metal to companies that shred or smelt the metal to create rebar and other construction supplies. RR3:72.

applicable zoning requirements. RR8:98-99. TASI's yard meets environmental requirements and operates in the correct zone with a proper fire lane and fence. RR8:95-96.

While TASI's operation is not perfect, it follows BMPs.[5] CX7:1541; RR8:98-99. Like a prudent metal recycler, TASI stations "spotters" at the scrap metal drop-off site who inspect the metals for hazardous materials, propane tanks or other dangerous items or pollutants. RR3:127. These "spotters" help (i) avoid spills if possible and (ii) clean those that inevitably occur. RR3:127. To avoid any spilled toxins from invading the air of neighboring properties, TASI waters the ground-cover of the facility yard using a large water truck. RR3:141; RR4:15. TASI has poured more concrete so that the work yard has even less exposed dirt, cutting down on dust. RR4:15.

TASI stores oil, gas, and radiator fluid in closed containers; it does not dump oil and gas and battery acid on the ground. RR4:77. TASI has fire suppression kits and spill kits. RR4:15. And TASI has proper signage. RR8:96.

Ramirez's operation is markedly (and dangerously) different. *See* PX1; PX4; PX53; RR8:102; APP:E. He does not have a staging station to direct vehicles or other items with oils or other pollutants to defined locations on the property to contain leaks. RR8:106, 155. He does not have a decontamination station at his

[5] The City agreed that TASI "run[s] a clean yard." CX7:1541.

exits. RR8:155. As such, trucks transfer Ramirez's dangerous pollution from his yard to the surrounding ecosystem. RR8:155.

Ramirez does not organize solid materials and fluids as he should or contain them as required. RR8:154, 175. He does not have structures or procedures to properly contain water or spills. RR8:155-59. In fact, he pumps oil and water out of his property ***just across the street from TASI***, onto City streets and then into the storm sewer. RR8:159, RR6:129. He does not have necessary signage. RR8:155.

Ramirez does not have enough canopies covering the waste. RR8:175. He allows overgrown grass and weeds on his property, which fosters an invasion of rodents and insects. RR8:171. He does not have a proper SW3P—storm water pollution prevention plan—also called a TPDES—a Texas Pollution Discharge Elimination System. RR8:175.

Even Ramirez's own environmental expert confirmed Ramirez does not follow BMPs. RR7:14-19, 29 (Ramirez's expert testified definitively Ramirez is not using best practices for securing and disposing hazardous liquid waste). This misconduct has created a fire hazard and caused pollution to invade neighboring properties, like TASI's operations just across the street, creating a dangerous health hazard. RR7:18, 20 (testifying that storing tires where oil often pools is a fire hazard); RR5:92-95. Also, the storm water flowing off of Ramirez's property—with high levels of cancer-causing trimethyl benzene, along with silver and lead—flows

into a storm sewer that discharges into Six Mile Creek (a tributary of the San Antonio River). RR8:161-2, 174. And the San Antonio River crosses the entire ecosystem of the City. RR8:174.

Frustrated with Ramirez's dangerous recycling operation, TASI filed suit in 2010 seeking to have Ramirez comply with BMPs. CR1:16-27. The case pended for eight years, frequently delayed at Ramirez's request. RR3:112.

In the meantime, the City decided in 2012 to more heavily regulate the recycling industry and amended Chapter 16 to add Division 2.-Metal Recycling Entities ("Chapter 16"). RR3:121-22; PX30;APP:D. One of the primary purposes of Chapter 16 is to avoid pollution, preventing contamination of the sewer system and protecting San Antonio's drinking water, creeks, rivers, and lakes. CX10:1585-86. As such, City Code Chapter 16-210.7 provides:

> Conditions maintained in violation of this division, which impact public health, safety or welfare, or which deprive neighbors of their safe or peaceful use of nearby properties shall be unlawful and shall be deemed a public nuisance.

SAN ANTONIO, TEX., CODE § 16, Division 2 (PX30:705;APP.D); CX13:1655.

Code enforcement officers began monthly inspections of recycling businesses and issuing citations for violations of City Code.[6] RR3:104-5. And while TASI

[6] The City had the authority to and did refuse or revoke a certificate of occupancy for repeated violations of Chapter 16 or Chapter 10 of the City Code. CX13:1645, 1652.

worked hard (and incurred considerable expense) to comply with the City requirements; Ramirez did not. RR8:165-80. He flouted the requirements of Chapter 16; the City found him in violation over a hundred times during the subsequent years. RR5:100; APP:E. When the City would find a violation, he would fix the problem—sometimes. *E.g.,* RR5:104; CX6:1521. But then he would inevitably again fall into non-compliance. CX6:1521. Over and over, Ramirez refused to adopt or practice BMPs. *E.g.,* RR7:14-19, 29.

Instead of spending the resources to run a clean yard, Ramirez bullied the City. CX1:1480. He fought each and every violation—even when he had no legal basis. RR3:105. He yelled at investigators. CX1:1480; CX9:1573. He threatened to have them fired. CX1:1480; CX9:1573, 1579. He nagged for lower fines. CX13:1661. He refused for years to even obtain required certificates of occupancy. CX13:1662.

The City caved under his pressure. RR5:141. The City reassigned investigators; repeatedly declined to enforce Chapter 16; allowed Ramirez to lie to a Municipal Judge; despite obvious dumping, failed to obtain soil or water samples; treated one building as two so Ramirez would not be required by Code to obtain a sprinkler system; granted Ramirez a recycling license for years despite Ramirez's failure to obtain absolutely required building permits and certificates of occupancy; and stopped inspecting him monthly despite considering him a chronic offender. *E.g.,* CX2:1487; CX13:1673; RR4:30; RR5:44; RR7:19.

As the City backed off from Ramirez, he continued to pollute. RR5:142, 145. He had at least two fires on his property, spreading smoke laced with toxins. CX7:1534. He dumped oil and other carcinogenic fluids. RR4:74; RR7:19. He continued to be a public health risk, and specifically a risk to his neighbors—including TASI. RR4:62; RR7:19.

Ramirez's pollution posed an immediate and dangerous risk to the physical health of TASI's owners and employees. RR3:192; RR4:37; RR5:76; RR6:103. Ramirez's misconduct also harmed TASI's business interests. RR3:152. TASI was initially blamed when Ramirez pumped putrid water sullied with oil and gas into the public street and down the storm sewer. RR3:135. TASI bears the stigma Ramirez created that metal recycling is a "dirty business," disfavored by the City. RR6:162. In light of Ramirez habitually creating an environmental risk, it is no surprise the City stepped up regulation, which increased costs for TASI. RR5:109, 112. But the City declined to make Ramirez comply, allowing him to operate in violation of the law and adversely affect TASI's business. RR5:111.

So TASI had no choice but to pursue its lawsuit, which finally came for trial October 16, 2018. RR2:1. After surviving multiple attacks on its standing to force Ramirez to comply with BMPs and Chapter 16, TASI ultimately proved to the jury that the City was derelict in its duty to enforce Chapter 16 and Ramirez violated Chapter 16 and is a public nuisance. CR3:2383-2401;APP:A. Instead of accepting

the verdict supported by overwhelming evidence, Ramirez misdirected the Trial Court into ignoring the jury, entering a judgment notwithstanding the verdict, and dismissing TASI's statutory public nuisance claim based on Ramirez's violations of Chapter 16.[7] CR3:2444-46;APP:B.

After filing an unsuccessful motion for new trial, TASI appealed. CR3:2463-65. Ramirez has not cross-appealed.

ARGUMENT

I. Standards of Review.

TASI prevailed on its statutory public nuisance claim before the jury. The Trial Court repeatedly found TASI had standing entitling TASI to pursue its claim. RR8:62 (noting existence of standing); RR9:152 (denying directed verdict and finding more than scintilla of evidence of special injury). As such, the parties did not submit any jury question on any underlying fact relevant to standing. CR3:2383-2401;APP:A.

After the jury rendered a verdict for TASI—finding Ramirez violated Chapter 16 and is a statutory public nuisance—the Court reversed its position and decided, as a matter of law, TASI does not have standing. CR3:2438-41, 2444-46;APP:B,C. As such, the Court granted Ramirez's Motion for Judgment Notwithstanding the

[7] After denying Ramirez's request for a directed verdict based on standing, after the close of evidence, the Trial Court *sua sponte* dismissed TASI's common law public nuisance claim, applying an incorrect legal standard. RR12:23; *see* Brief of Appellant at pp. 36-41.

Verdict ("JNOV"), dismissing post-verdict TASI's statutory public nuisance claim. CR3:2444-46;APP:B. This Court reviews the granting of a JNOV under the no-evidence, legal sufficiency standard. *Bank of Am., N.A. v. Eisenhauer*, 474 S.W.3d 264, 265 (Tex. 2015). The Court will "credit evidence favoring the jury verdict if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *Tanner v. Nationwide Mut. Fire Ins. Co*., 289 S.W.3d 828, 830 (Tex. 2009). This Court must reverse the JNOV and reinstate the verdict if more than a scintilla of competent evidence supports it. *Id.* More than a scintilla of evidence exists when the evidence supporting the finding "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Gharda USA, Inc. v. Control Sols., Inc.,* 464 S.W.3d 338, 347 (Tex. 2015); *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995).

The Trial Court also directed a verdict on TASI's claim for common law public nuisance, applying an incorrect legal standard. RR12:23. Similar to the review of the JNOV ruling, this Court reviews a directed verdict using the no-evidence, legal sufficiency standard. *Painter v. Amerimex Drilling I, Ltd.,* 561 S.W.3d 125, 130 (Tex. 2018).

The Trial Court granted the JNOV and the directed verdict based on the same issue: Standing. RR12:23; CR3:2444-46;APP:B. The Trial Court considered standing solely a legal question (and applied the wrong legal standard). RR12:6.

TASI respectfully urges the Trial Court was incorrect. When standing implicates a factual issue, standing becomes a mixed question of law and fact. *Cf. In re T.E.R.,* No. 06-19-00073-CV, 2020 WL 1808869, at *2 (Tex. App.—Texarkana Apr. 9, 2020, no pet.) (mem. op.) (because standing under Family Code required petitioner to "show substantial past contact," standing was "mixed question of law and fact."); *In re N.L.W.*, 534 S.W.3d 102, 109–10 (Tex. App.—Texarkana 2017, no pet.) (because standing to adopt under Family Code requires factfinder to resolve "[a] fact—substantial past contact—that ... is a necessary element to a chain of reasoning leading to a conclusion," it is mixed question of law and fact).

Ramirez argued TASI was required to prove special injury for both the common law and statutory public nuisance claims. RR12:22; CR3:2411-20. As such, assuming *arguendo* TASI was required to show special injury to have standing, because there is more than a scintilla of special injury in this case, TASI respectfully submits the Trial Court erred by granting the JNOV and directed verdict.

TASI also appeals the Trial Court's exclusion of two expert witnesses: Dr. Keith Fairchild and Jerry Arredondo. RR8:22; RR8:80. This Court reviews a trial court's exclusion of expert testimony under an abuse-of-discretion standard. *Formosa Plastics Corp., USA v. Kajima Int'l, Inc.*, 216 S.W.3d 436, 447 (Tex. App.—Corpus Christi/Edinburg 2006, pet. denied). Moreover, this Court will

evaluate whether the error is harmful. *Mentis v. Barnard,* 870 S.W.2d 14, 16 (Tex. 1994).

Finally, and in the alternative, TASI appeals the jury's failure to find private nuisance. This Court must reverse if this Court determines the jury's answer is against the great weight and preponderance of the evidence (which TASI believes this Court will clearly so find). *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996) (per curiam).

II. The Trial Court Erred By Erasing The Jury's Verdict On TASI's Statutory Public Nuisance Claim and Directing A Verdict On TASI's Common Law Public Nuisance Claim (*responsive to Issues One-Four*).

After eight years of litigation and nine days of trial, the Trial Court refused to allow the jury to consider TASI's common law public nuisance claim. RR12:23. And when the jury found Ramirez violated Chapter 16 and was a public nuisance, the Trial Court disregarded that verdict and granted a JNOV dismissing TASI's statutory public nuisance claim. CR3:2444-46;APP:B. The facts and the law confirm Ramirez—with his ten-year history of dangerously and habitually polluting the environment with highly carcinogenic toxins, silver and lead—is a public nuisance—under the common law and by City ordinance. PX30;APP:D; RR4:30; RR8:161-2, 174.

The jury heard extensive (and troubling) evidence leading it to conclude the City was derelict in its duty to enforce Chapter 16 against Ramirez and stop him

from continuing to be a public nuisance. *See, e.g.* CR3:2385-8;APP:A*;* CX8:1550-57; CX10:1583-84, 1597, 1603; RR5:100; RR8:62. This evidence and the jury's finding entitled a private citizen to file suit seeking an injunction requiring Ramirez to stop violating Chapter 16 and stop operating as a dangerous public nuisance. *American Constr. Co. v. Seelig*, 133 S.W. 429, 431 (Tex. 1911); *Bowers v. City of Taylor*, 24 S.W.2d 816, 817 (Tex. Comm'n App. 1930); *Boone v. Clark*, 214 S.W. 607, 611 (Tex. Civ. App.—Fort Worth 1919, writ ref'd); *Ort v. Bowden*, 148 S.W. 1145, 1148 (Tex. Civ. App.—Galveston 1912, n.w.h.); *see also Guetersloh v. Rolling Fork Owners Comm., Inc.,* No. 14-95-01272-CV, 1996 WL 580931, at *7, 17 (Tex. App.—Houston [14th Dist.] Oct. 10, 1996, no writ) (mem. op.) (salvage yard owner directed to mow and maintain property, terminate commercial activity, and remove certain items from yard). The jury also heard compelling evidence the pollution Ramirez allowed on his property created a dangerous risk of harm to the public and specifically to nearby property owners. *E.g.,* CX5:1504; CX10:1593-94; CX12:1625; RR7:13-17. It is undisputed TASI operates right across the street from Ramirez. Moreover, Ramirez's misconduct has stigmatized TASI and adversely affected its business interest. RR3:132-34. It was blamed for Ramirez's toxic run-off. RR3:135, 138. It is forced to fight against the moniker of being part of a disfavored industry. RR5:132. It has been subject to increased and unequal regulation by the City. *Id.* There was more than a scintilla of evidence of special

injury. So even if the City's dereliction of its duties did not confer standing to TASI, the special injury it has borne does.

A. The Trial Court erred by granting a JNOV, dismissing TASI's statutory public nuisance claim under Chapter 16; the City was derelict in its duty to enforce Chapter 16 against Ramirez, which afforded standing to a private citizen to seek injunctive relief.

1. Texas law permits recovery for public nuisance.

A public nuisance is an unreasonable interference with a right common to the general public. *United Food & Commercial Workers Int'l Union v. Wal-Mart Stores, Inc.*, No. 02-15-00374-CV, 2016 WL 6277370, at *7 (Tex. App.—Fort Worth Oct. 27, 2016, pet. denied) (mem. op.). There are two bases for public nuisance:

- Common law public nuisance, which requires proof of conduct interfering with a public right adversely affecting all or a considerable part of the community (*Walker v. Texas Elec. Serv.*, 499 S.W.2d 20, 27 (Tex. App.—Fort Worth 1973, no writ)) and

- Statutory nuisance, which requires proof of conduct classified as a public nuisance by statute, ordinance or regulation (*see, e.g.,* San Antonio, Tex., §16 Division 2 (PX30;APP:D); *see also, e.g.,* TEX. CIV. PRAC. & REM. CODE § 125.0015 (statutory nuisances); TEX. HEALTH & SAFETY CODE § 343.011(c) (same).

The Trial Court in this case directed a verdict on TASI's common law nuisance claim, incorrectly finding no evidence of special injury. RR12:23. After submitting statutory public nuisance to the jury and the jury finding such, the Trial Court granted a JNOV based on Ramirez's argument TASI lacked standing because (i) a private citizen allegedly cannot enforce a city ordinance and (ii) TASI allegedly

was required and did not present proof of special injury. CR3:2411-17. The Trial Court's rulings are wrong as a matter of law and fact.

2. In the exceptional circumstance that a City fails to enforce its laws and protect its citizens, Texas law recognizes the right of a citizen to seek injunctive relief to compel compliance with the law.

Unquestioned Texas law confers TASI standing to require Ramirez to comply with Chapter 16. While thankfully a rare circumstance, when a governmental entity—like the City—is derelict in its duty to enforce its laws, a member of the public may obtain injunctive relief on its own. *Seelig*, 133 S.W. at 431 (affirming injunction against nuisance City of Austin affirmatively allowed); *Bowers*, 24 S.W.2d at 817 (affirming injunction, holding when governmental entity abdicates its governmental functions or its police power allowing a nuisance, private citizen has standing to seek injunctive relief to address nuisance); *Boone*, 214 S.W. at 611 (holding plaintiffs could obtain injunctive relief for nuisance when county illegally allowed it to occur); *Ort*, 148 S.W. at 1148 (affirming citizen's standing to enforce city ordinance when city is derelict in its duty). The Court succinctly explained in *Ort*, a private citizen may seek recovery for statutory public nuisance:

> [W]hen the city itself has consented to the doing of the very thing which has caused the damages and without which consent the very thing would not and could not have been done, and also when, in the very suit in which the citizen asks for the correction of the wrongs from which he suffers special injury, the city joins with the other alleged wrongdoers in asking that the correction be denied.

Ort 148 S.W. at 1148.

When requesting judgment notwithstanding the verdict, Ramirez relied on *Schmitz v. Denton Cnty. Cowboy Church*, 550 S.W.3d 342, 360 (Tex. App.—Fort Worth 2018, pet. denied) to argue TASI lacked standing to bring a cause of action for public nuisance.[8] CR3:2411-19. In *Schmitz,* the Fort Worth Court of Appeals held that under the facts of that case, the private-citizen plaintiffs could not obtain injunctive relief to "enforce" municipal ordinances. *Id.* *Schmitz* is inapposite because, unlike the present case, the private-citizen plaintiffs did not seek standing under the dereliction-of-duty doctrine applied in *Seelig, Bowers*, *Boone* and *Ort*. *Compare* CR3:2385;APP:A *with Schmitz*, 550 S.W.3d at 360 (asserting nuisance but not dereliction of duty). Moreover, it has long been Texas law that when a defendant damages another as a result of violating an ordinance, "the mere fact that the city has issued a permit for the violation of the ordinance" cannot "avail as a defense." *Woods v. Kiersky*, 14 S.W.2d 825, 828 (Tex. Comm'n App. 1929, judgment adopted).

Furthermore, Ramirez assumed in his Motion for Judgment Notwithstanding the Verdict that only Chapter 16 applies to stop Ramirez's polluting conduct.

---

[8] Ramirez also cited *Nat'l Audubon Society, Inc. v. Johnson*, 317 F. Supp. 1330, 1334-35 (5th Cir. 1970), claiming it provides private citizens have no standing to pursue claims based on violations of state and federal environmental laws. CR3:2414-15. However, the plaintiffs in *Johnson* lacked standing because they did not exhaust administrative remedies—a holding that is not applicable in this case. *Id.* at ("The administrative remedies available to this Plaintiff are many and sundry. … Plaintiff should exhaust these administrative remedies before seeking relief in this Court.").

CR3:2411-19. In fact, TASI presented at trial extensive evidence of BMPs—the standard of care a metal recycler should follow. RR8:152, 177. The Trial Court's injunction would require Ramirez to comply with each of the BMPs. TASI established the importance of continuing to manage compliance. R7:32 (Ramirez's environmental expert confirming management of environmental compliance is crucial). The Trial Court's injunction would require Ramirez to institute management of compliance. TASI also presented evidence of the testing protocols to determine the extent of pollution on Ramirez's property and to remediate. RR7:11, 35. The Trial Court's injunction would require Ramirez to perform these testing protocols. TASI does not simply seek bare enforcement of Chapter 16; TASI wants Ramirez to clean up his toxic and dangerous contamination and stop polluting. RR15:13. The law certainly authorizes TASI to obtain that remedy. *Seelig*, 133 S.W. at 431; *Bowers*, 24 S.W.2d at 817; *Boone*, 214 S.W. at 611; *Ort*, 148 S.W. at 1148; *Guetersloh,* No. 14-95-01272-CV, 1996 WL 580931, at *7.

3. The Jury found the City was derelict in its duty to enforce Chapter 16 and stop Ramirez from polluting.

The evidence at trial was overwhelming that since 2008, Ramirez has repeatedly, habitually and dangerously[9]:

[9] This evidence of ten years of habitual pollution is also more than sufficient evidence of substantial interference, triggering TASI's right to submit common law public nuisance to the jury. *Wal-Mart*, No. 02-15-00374-CV, 2016 WL 6277370, at *7.

- Dumped dangerous fluids—like oil and gasoline—onto the ground: *see, e.g.,*
    - RR4:42, 46, 54, 55 (oil on the ground and under the roof);
    - RR4:56 ("massive amounts of oil and gas found on the ground");
    - RR4: 57 (oil dumped on the ground);
    - RR4:58 (liquid and hazardous waste, including refrigerant, found on the ground);
    - CX2:1486 (vehicle fluids on the soil);
    - RR4:71 (former employee testified ***Ramirez dumped oil and gas on the ground "All the time.***").
- Failed to store waste liquids in covered containers above the ground: *see, e.g.,* PX53:813, 818; DX36; CX5:1510; CX10:1593-94, 1606; RR6:124; RR4:35.
- Left parts and vehicle bodies on the ground: *see, e.g.,*
    - RR4:42, 43, 52-56 (tires, gas tanks, radiators, batteries on the ground), 57;
    - CX2:1485; CX10:1610-11 (Enforcement officer Bernal stated: ***"I've caught the location with motors on the ground, leaking fluids."***).
- Stacked salvage-related materials on the ground and higher than the surrounding fence: *see, e.g.,* RR4:42, 43, 52, 53, 56.
- Failed to store salvaged parts away from fences: *see, e.g.,* RR4:43, 44, 57.
- Failed to maintain the fence in a safe condition: *see, e.g.,* RR4:45.
- Failed to maintain a fire lane: *see, e.g.,* RR4:42, 43, 46, 52-58.
- Failed for years to obtain four required certificates of occupancy: *see, e.g.,* RR4:42; CX1:1477; CX10:1584-85 (until 2017, only one of the

structures on Ramirez's recycling operations had a certificate of occupancy).

- Allowed weeds and brush to overgrow: *see, e.g.,* RR4:46, 52, 54-55, 58; CX1:1479.

See also PX60; APP:E.

The jury heard a legion of evidence of Ramirez creating dangerous risks to the environment and public safety: He sometimes operated a car crusher on the ground—not a concrete surface—despite the absolute fact that residual toxic fluids will spill out of the vehicle and onto and into the soil. CX5:1507. The head City Code Enforcement Officer confirmed:

> Q: That's definitely a violation?
>
> A: Yes, sir.
>
> Q: No doubt in your mind about that?
>
> A: That's correct.

CX5:1507-08. When he moved the car crusher onto concrete, Ramirez did not maintain the proper concrete berm around the crushing area where toxic fluids collected. *See, e.g.,* CX5:1513 (cracks in Ramirez's berm enabled oil and gas to flow onto the ground); RR5:119 (berm exhibited a dark stain over the lip); RR5:123 (SAWS determined rainwater would overflow Ramirez's berm). This was especially hazardous because Ramirez purposely cut away the roofing above the car crusher, allowing rainwater to pour into the crushing area. PX59; RR6:61; RR11:50.

Ramirez stored tires alongside spills of gasoline and oil creating a fire hazard.[10] RR7:20; RR6:51, 60. SAWS confirmed this procedure violates environment and public safety requirements. RR5:94. When tires burn, they release pollutants into the environment. CX13:1671-72; RR7:20. And Ramirez had at least two fires on his recycling operations property. RR6:58; PX39.

The jury heard numerous eyewitness accounts of Ramirez polluting while operating his recycling yard: In 2010, Larry Garcia accompanied a friend to Ramirez's facility to help his friend exchange a motor. RR4:35, 65. Mr. Garcia was shocked at what he saw: Motor parts were strewn on the ground. RR4:37. There were oily fluids everywhere—all over the grass and the ground. RR4:35. Oil pooled on the ground up to the tip of Mr. Garcia's boot—almost as high as the top of his heel. RR4:35. The air stagnated with the strong odor of gasoline, oil and a stench from standing water that reminded Mr. Garcia of sewage. RR4:37. The tires of trucks leaving Ramirez's operation glistened with the sheen of oil.[11] RR4:39.

SAWS employees also personally witnessed Ramirez's operation polluting with toxic, dangerous fluids: On May 13, 2015, Stevens—a SAWS Environmental Protection Specialist III—visited Ramirez's operation during a rain event. RR6:113,

---

[10] SAWS confirmed Ramirez does not comply with this requirement. RR5:94; RR7:20.

[11] Even Ramirez's expert agreed truck tires spread contamination onto roads when the trucks exit a polluted area—like Ramirez's operation—and travel out onto the streets and into the community. RR7:18.

127-28. He observed Ramirez allowing fluids from engine blocks to spill over the containment berm. PX45; RR6:128.

On December 13, 2015, SAWS dispatched a "combo unit"[12] to Somerset Road to try to address a report of sludge oozing onto the road. RR6:91. Justin Mercado was the truck driver for the combo unit. RR6:88. He determined the sludge was discharging under the fence of Ramirez's operation onto the street and then into the storm drain. RR6:92-94. The putrid water smelled like oil, and it stuck to surfaces and was "black with a shiny silver color." RR6:96-98. Mercado concluded the water looked like "oil, sludge, fuel." RR6:96.

Foreman and supervisor Merlin Polasek, Jr.—a ten-year SAWS employee—witnessed Ramirez's operation pollute onto Somerset Road and into the City storm drain. RR6:101. In December 2015, he saw rancid water running off from the rear of Ramirez's operation. RR6:102-03, 140. The water looked and smelled like oil and gas. RR6:103-04, 110-11. It was a "black-ish gray color" and left a "rainbow-like" sheen characteristic of spilled oil. RR6:103. In the trip report, Mr. Polasek stated:

> At location, the ***owner is pumping out oil and water from crushed cars*** from the rear of the property. ***Water and oil mix is going into drainage.*** Notified dispatch of oil being pumped from rear of property. Downloaded pictures to work order. There is nothing wrong with the

[12] A combo unit is a sanitary system that cleans out sewer mains. RR6:88.

> three-quarter inch CC [curb stop] in the front of the address. Close out work order, 12-13-15, MP.

RR6:105, 110-11 (emphasis added). He was confident Ramirez was ***pumping out the water*** because the water meter was not moving.[13] RR6:109.

So at least two times, SAWS witnessed Ramirez pumping oily water into the storm sewer system from his property right across from TASI. RR3:134-35. The foul-smelling—"[c]loudy, dirty, smelly, stinky"—water poured out from under Ramirez's fence across from TASI and traveled down at least twenty feet into the City storm drain. RR3:137.

SAWS also witnessed systemic flaws in Ramirez's ability to prevent pollution: It found the berm Ramirez built to contain storm water—which was supposed to prevent discharge of contaminants—was wholly inadequate. RR5:123; RR6:132. As such, SAWS concluded Ramirez's operation was at risk of allowing discharge. RR5:123; RR6:132. Moreover, SAWS found Ramirez's operation had a higher potential to accumulate metals and other contaminants because he had such poor drainage.[14] RR5:123; RR6:133.

---

[13] Ramirez tried to claim the water was a result of a water line break. RR6:148.

[14] As of the 2018 trial, Ramirez had never provided the TCEQ the required data to confirm he remedied these systemic flaws. RR6:134; PX4.

Even the Texas Commission on Environmental Quality ("TCEQ")[15] confirmed Ramirez as a "repeat" polluter.[16] CX12:1625; PX4. After receiving an odor complaint, TCEQ first investigated Ramirez's operation in 2008 for improper waste management. CX12:1626; PX4. The TCEQ issued Ramirez a violation. CX12:1626, 1634; PX4.

On July 14, 2010, Sergeant Carlos Gonzales of the San Antonio Auto Theft Task Force reported a complaint to the TCEQ about hazardous waste and pollution at Ramirez's operation.[17] CX12:1623; PX4. He asked the TCEQ to immediately investigate the site. *Id*.

The TCEQ assigned Ms. Rhonda Reza to investigate that very day.[18] CX12:1623-24; PX4. She saw spills all across the facility. *Id*. She detected the strong odor of oil and gas, which she identified as air pollution. CX12:1629, 1634; PX21. She observed a large amount of automotive fluids spilled on the ground in violation of the RCRA. CX12:1624; PX21. To Ms. Reza, it was readily apparent

---

[15] The TCEQ is responsible for enforcing the Resource Conservation Recovery Act ("RCRA"), the Solid Waste Disposal Act, the Texas Clean Air Act and the Texas Water Code. CX12:1636.

[16] It is uncommon for TCEQ to find a business repeatedly violates RCRA laws. CX12:1632.

[17] Ms. Reza had never heard of a similar complaint against TASI. CX12:1635.

[18] Ms. Reza is a TCEQ industrial and hazardous waste investigator in the waste group. CX12:1621 She performs inspections at various waste facilities, including recycling operations, evaluating environmental waste procedures. CX12:1621, 1623. Ms. Reza also investigates complaints. CX12:1621.

Ramirez did not timely collect toxic fluids when they leaked onto the concrete under the car crusher, allowing them to run off onto the ground. CX12:1627; PX21. Also, Ramirez allowed containers of automotive fluids to remain uncovered, improperly managing waste. CX12:1627; PX4.

Ms. Reza took soil samples confirming contamination of toxins commonly found in gasoline, waste oil, antifreeze, and other vehicle fluids: trimethyl benzene and methylnaphthalene. CX12:1625, 1628-29; PX21. She found the level of these pollutants was ***seven times higher*** than the acceptable limit and could negatively impact the groundwater. CX12:1628-29, PX21. Moreover, these toxins are flammable. CX12:1630; PX21. She straightaway issued another written violation.[19] CX12:1624; PX21.

The evidence was overwhelming that Ramirez habitually and consistently polluted, emitting highly carcinogenic and toxic waste into the ground, air, and water.[20] TASI also presented uncontroverted evidence Ramirez's pollution invaded neighboring properties (including TASI's). *See, e.g.,* RR4:141; RR8:145, 161; RR4:60-62 (property next to Ramirez's operation was caked with sticky oil residue and suffered from noxious oil and gas fumes, along with a sewage odor, emanating

---

[19] Ramirez fought the violation, claiming the City targeted him. CX12:1633-34.

[20] Ramirez's only response to this mountain of evidence was to claim he always cleaned up spills or remedied violations "… immediately. Not two or three days later, immediately." RR10:13. Even his own environmental expert confirmed this conclusory statement was not true. RR7:29.

from Ramirez's property). TASI also presented uncontroverted evidence Ramirez's misconduct created a public health risk, endangering the entire San Antonio River ecosystem. RR8:161, 164-69, 174.[21]

Despite Ramirez habitually polluting the ground, air and water, creating a dangerous risk to TASI and the public health, the City not only neglected to stop Ramirez's misconduct, the City "consented to the doing of the very thing which has caused the damages and without which consent the very thing would not and could not have been done." *Ort,* 148 S.W. at 1148. Initially, the City had attempted to oversee recyclers using Chapter 35 of the City Code. R8:37. However, because that chapter focused on zoning, it was ineffectual to force repeat offenders—like Ramirez—to operate safely. R8:37-40.

So the City decided to draft requirements specifically for recycling operations to protect the environment and the public health.[22] R8:109; CX10:1585-86 (City enacted specific code provision to stop recyclers from contaminating the environment). The City expressly mandated that violations of Chapter 16:

- impacting the public health, safety and welfare or

[21] This evidence of unreasonable interference with the public's right to health and safety is also more than a scintilla of evidence of common law public nuisance. *Wal-Mart*, No. 02-15-00374-CV, 2016 WL 6277370, at *7-8.

[22] Many of the members of the recycling industry participated in roundtable discussions with the City during the drafting of Chapter 16. RR8:40. Ramirez attended the first two meetings, left in a huff, and never came back. RR9:91-92.

- depriving nearby property owners the safe and peaceful use of their properties

is a public nuisance. SAN ANTONIO, TEX. §16, Division 2; PX30:705;APP:D.

In Chapter 16, the City established ***all hydrocarbons are hazardous materials,*** including gasoline, oil, battery acid, antifreeze, and brake fluid. RR5:59-60. The City then inserted recycling best management practices (BMPs) into the regulatory scheme to address removal, storage, disposal and spill avoidance of these hazardous materials. SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D. RR9:44.

The City addressed the proper storage and handling of liquid waste so as to avoid contamination. RR11:67; PX30:703;APP:D ("all liquid waste shall be stored in above ground containers" and "it is unlawful for any waste to be held in a container that leaks"). The City forbade any spills or leaks. PX30:703;APP:D; PX44:766 ("All solid waste [like vehicle bodies] must be contained as to cause or allow no release or spill"). The City adopted requirements to prevent fires,[23] including maintaining a fire safety path and forbidding the placement of salvage material within ten (10) feet of the fence. PX30:700-02;APP:D. The City required recyclers to maintain their yard without weeds or brush over twelve inches. PX30:703:APP:D.

[23] A fire at a recycling operation is especially dangerous as the smoke created by burning salvage and facilities will contain toxic hydrocarbons and other dangerous chemicals. RR8:167.

The City also expressly limited recycling operations to a specific zoning and required each recycler to obtain a metal recycler license. PX30:700-02;APP:D. The license also mandated the recycling operation obtain all applicable permits and comply with all applicable Code provisions. PX30:700-02;APP:D; CX13:1660.

The City initially tried to force Ramirez to comply with Chapter 16 and thereby use BMPs to protect the environment and the public health. *See, e.g.,* PX1. Ramirez fought back, and hard. *See, e.g.,* CX1:1479-80; CX9:1561-77.

He intimidated the Code Enforcement Officers. CX1:1479-80. He was belligerent when officers found he was polluting. CX1:1479 (yelling at officer). His first victim was Enforcement Officer, Ms. Elisa Valdez. CX2:1486. She became a Code Enforcement Officer in 2008. CX9:1561. Code Compliance assigned her several recycling operations to inspect, including Ramirez's. CX9:1561-77.

Ms. Valdez took her job seriously and submitted reports tallying Ramirez's violations, including his failure to always remove the toxic fluids from the scrap vehicles. CX9:1568. He would not always correct his violations.[24] CX9:1567. When Ms. Valdez found Ramirez repeatedly polluting, she issued him eight or nine citations.[25] CX2:1487; CX9:1576.

---

[24] Ms. Valdez testified Ramirez was well aware he should be removing the fluids and clean up any spills. CX9:1569.

[25] Valdez issue zero against Hack. CX9:1576.

Ramirez became enraged. CX9:1573-74. He cussed at Ms. Valdez, threatened to have her fired, and claimed he had friends in "high places." CX9:1573-74. Ms. Valdez's supervisor ***told her to stop enforcing*** against Ramirez. *Id.*

In 2010, Code Enforcement Officer Ms. Annette Rodriguez took over inspecting Ramirez's operations. CX1:1479. At first, Ramirez sang her praises. *Id.* But when she noticed Ramirez for several Code violations, Ramirez turned back into a bully.[26] *Id*. On one inspection, Ms. Rodriguez found overgrown weeds and oil spills. CX1:1479; CX2:1486 (Ms. Rodriguez noticing Ramirez for oil on impermeable surface). Ramirez became irate. CX1:1479; CX2:1485. Like he had mistreated Ms. Valdez, Ramirez threatened Ms. Rodriguez, saying he would get her fired. CX1:1479-80. And that is exactly what happened.

After another difficult inspection, Ms. Rodriguez informed her superiors Ramirez was operating without the required certificates of occupancy, and he made good on his threat. CX1:1477-80. He called the City Office of Municipal Integrity and reported Ms. Rodriguez had asked for favors.[27] CX3:1479. She lost her job. CX1:1477-80.

---

[26] Ramirez's own testimony confirms his belligerent attitude about complying with the City requirements. RR10:77 (Ramirez admitting, "Maybe I was a little aggressive the way I was doing it.").

[27] The officer testified she called Ramirez for help when her daughter was stranded along a highway and her sister had locked herself out of her car. Ramirez took it upon himself to provide the stranded daughter a $5 part and tried to help the sister open the door. CX1:1478. He then turned in the officer to Municipal Integrity for obtaining favors. *Id.*

The City reassigned the property to two other Enforcement Officers: Moises Zuniga and Christopher Torres. CX2:1486. But when they could not help but notice Ramirez for his continuing failure to comply with Chapter 16 and repeated soil contamination, the City's Enforcement Officer Supervisor simply gave up. RR5:153. ***He waived off the violations***. RR5:142. The Enforcement Officers simply issued notices, creating zero consequences for Ramirez. *Id.*

The City effectively gave up: Ramirez continued to store vehicle parts on the ground and too close to his fence. *See, e.g.,* CX5:1515. Sometimes, Ramirez would go to the trouble of addressing a problem for which he was "noticed." RR5:101; PX1. But on the next inspection, City inspectors would find the same type of misconduct. RR5:100-02; PX1. Worse, on reinspection, the City found Ramirez had never cleaned up the previous contamination: He still had accumulations of oil on his property and engaged in "ENVIRONMENTAL DUMPING." CX5:1515.

Joseph Bernal, one of the City's Code Enforcement Officers responsible for "inspecting" Ramirez's operation in 2015-17, expressed his frustration. CX10:1582. On one trip to Ramirez's operations Bernal found Ramirez had more than ten violations relating to storage of waste, waste containment and weed and brush maintenance. CX10:1606. He also found Ramirez was not properly removing toxic liquids from his property and allowed them to leak out from the containers. CX10:1599.

Bernal explained that despite all these violations, within three months of his last inspection, Ramirez again was not properly draining hazardous fluids and waste from salvage material and liquid waste was leaking from containers. CX10:1606. The City simply allowed Ramirez to remedy the immediate obvious pollution then existing when an inspector toured the yard. *Id*. But after just a few months, Ramirez would fall out of compliance again. *Id*. Bernal described how Ramirez repeated his misconduct over and over, year after year:

> Q: So no question, not even three months ago, you saw the same two violations we've been talking about and that we've shown multiple violations at his three yards, correct?
>
> A: That's correct.
>
> Q: And, yet, after all these years, they're still operating and they're still violating Chapter 16, correct?
>
> A: Correct.

CX10:1599-1600 (testifying January 3, 2017).

Whether out of frustration or otherwise, the City abdicated its duty to enforce Chapter 16 and stop Ramirez from polluting. The City effectively consented to his misconduct, allowing him to violate the law again and again, joining him in flouting the duty of environmental stewardship:

1. While expressly requiring metal recyclers to operate only in zone I2s, for years, the City allowed Ramirez to operate outside zone 12s. RR6:21; CX13:1664. Chapter 16 states in bold: **It is unlawful to own**

or operate a metal recycling entity without the appropriate zoning classification. SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D.

2. The City granted Ramirez a metal recycler license every year for ten years, even though Ramirez indisputably did not have the certificates of occupancy the City required. CX10:1601; RR4:30. ***The City agreed it violated its own ordinance, Chapter 16-208(a)(2) by issuing Ramirez a license***.[28] CX10:1603; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D. Even the Assistant City Manager testified Code Enforcement should not have issued Ramirez the license without having a certificate of occupancy. CX8:1548. He simply could not explain why the City allowed Ramirez to operate. CX8:1548-51.

3. The City allowed Ramirez to build without a building permit, ***in violation of Chapter 16***. CX13:1651, 1657-58; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D.

4. The City then granted a permit despite two of the City's senior design reviewers counseling it should be denied because it placed a

---

[28] The City testified:

> Q: No certificate of occupancy, no [metal recycling] license, correct?
>
> A: Right.

CX10:1601.

salvage/recycling yard facility too close to a residence. CX6:1522-23; CX7:1539-40.

5. The City allowed Ramirez to avoid installing a fire sprinkler, by cutting a gap into the roof of his "canopy building" where the car crusher operates. CX13:1673, 1675; CX8:1557; CX11:1616 (roof plan showed 16,112 square feet); SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D (Chapter 16 requires metal recycling buildings over 10,000 square feet to have sprinkler system). Even worse, the gap Ramirez purposely created was right over the car crusher. PX59; RR11:50.[29]

---

[29] Even Ramirez's own environmental expert agreed this gap creates an environmental problem:

> Q: And so if there's oil and gas and radiator fluid, and if it rains, that can cause the fluids to migrate, correct?
>
> A: I would assume.
>
> Q: Out of that hole you created.
>
> A: Yes, sir.
>
> Q: And that's not good for terms of pollution, right?
>
> A: No.

RR11:50.

6. Even though the City knew it should obtain soil samples at Ramirez's operation,[30] it refused to train its inspectors on soil sampling and did not ask the TCEQ to sample.[31] CX1:1477; CX5:1505, 1509. Eventually after the police department initiated a TCEQ investigation, TCEQ's soil samples confirmed high levels of toxic pollutants: trimethylbenzene, methylnaphthalene, lead, and silver. CX5:1509; PX4.

7. The City inspector supervisor protected Ramirez, replacing investigators who cited him and waiving off complaints. CX2:1487.

8. The City drastically reduced how often it inspected Ramirez's operations: In 2016, the Director of Development Services and the Code Enforcement Supervisor moved Ramirez from monthly to bimonthly inspections. CX13:1683-84. But as a repeat offender, Ramirez did not qualify for the reduced-oversight program. CX13:1685. In fact, as of January 2017, the City had inspected Ramirez only once in six months. CX11:1617.

---

[30] Ten months before trial (and after being deposed in this case), the Code Enforcement Supervisor asked his superiors to begin soil sample testing of Ramirez's property. RR6:39-40. The City never even responded to that request. RR6:40.

[31] The Code Enforcement Supervisor testified the Enforcement officers work with TCEQ and SAWS. RR5:51. But Enforcement officers testified they had no idea they were supposed to contact TCEQ and SAWS and have never talked to anyone from those agencies. RR5:51.

The evidence inescapably established the City neglected and abandoned its duty to protect the environment and the public health from Ramirez's ten-year long polluting assault on his neighbors—including TASI—and the general public. CR3:2385;APP:A. It allied itself with Ramirez and facilitated his misconduct. The City's dereliction of duty was especially galling when it had multiple tools to force Ramirez to remedy his misconduct—tools the City readily applied to other repeat offenders and unequally applied to "clean" operations like TASI:

Chapter 16 requires recyclers to obtain a certificate of occupancy for each building in which they operate. CX13:1660; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D. If a recycler does not have a certificate of occupancy for a building, it either cannot operate out of that building or the City will not issue a recycling license. RR4:30-31; SAN ANTONIO, TEX. §16, Division 2; PX30:699;APP:D.

Did the City Enforce the Certificate of Occupancy Requirement as to Other Recyclers?	**Did the City Enforce it as to Ramirez?**
Yes; TASI was required to operate under a tent for a year while spending over $140,000 to comply with City regulations to obtain a certificate of occupancy. RR3:115.	**No**; the City issued Ramirez a license ***every year for ten years*** even though he operated out of buildings that did not have certificates of occupancy. RR4:30.

Under Chapter 16, the City requires each recycler to have proper permits. SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D.

Did the City Enforce the Permit Requirement as to Other Recyclers?	**Did the City Enforce it as to Ramirez?**
Yes; the City shut down another recycler, Ascent, when it operated without the proper permit. CX13:1645.	**No**; the City allowed Ramirez to operate without building permits for years. RR4:30.

The City has authority to order a business to vacate a property and cut off service of utilities, water and electricity when it habitually violates Chapter 16. CX13:1644; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D.

Did the City Shut Down Other Recyclers?	**Did the City Shut Down Ramirez?**
Yes; the City shut down another recycler, Ascent, when it had ten to twenty Chapter 16 violations. CX13:1645.	**No**; the City allowed Ramirez to operate despite over a hundred repeated violations, including pumping water with oil and gas out onto City streets and into storm sewers. PX53:813-14; APP:E.

From this evidence, the Jury found the City had been derelict in its duty to enforce Chapter 16 against Ramirez. CR3:2385;APP:A. The evidence was overwhelming and obviously convinced the jury that the City "consented to the doing of the very thing which has caused the damages and without which consent the very thing would not and could not have been done." *Ort,* 148 S.W. at 1148.

The vast (and distressing) evidence of the City's and Ramirez's joint conduct allowing Ramirez's operations to become and continue as a dangerous public nuisance established that TASI has standing to obtain injunctive relief. *Seelig*, 133 S.W. at 431; *Bowers*, 24 S.W.2d at 817; *Boone*, 214 S.W. at 611; *Ort*, 148 S.W. at 1148; *Guetersloh,* No. 14-95-01272-CV, 1996 WL 580931, at *7, 17. The Trial Court erred by granting the JNOV.

TASI respectfully urges this Court reverse the Judgment, reinstate the Jury's Verdict, and remand this case to the Trial Court for entry of an injunction that will finally end Ramirez's dangerous and polluting conduct.

B. The Trial Court also erred by granting the JNOV and directed verdict, thereby dismissing both the statutory and common law public nuisance claims, because there is more than a scintilla of evidence TASI suffered special injury.

1. Special injury is simply some harm different in kind than the harm suffered by the public.

Private persons, such as TASI, also have standing to enjoin a public nuisance by presenting more than a scintilla of evidence of "special injury" resulting from the

nuisance. *Jamail v. Stoneledge Condominium Owners Ass'n*, 970 S.W.2d 673, 676 (Tex. App.—Austin 1998, no pet.). The concept of "special injury" is not limited solely to nuisance jurisprudence; it is a species of the general rule that to demonstrate standing, a party must allege some interest peculiar to it individually, not just as a member of the general public. *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984); *Stein v. Killough*, 53 S.W.3d 36, 40 (Tex. App.—San Antonio 2001, no pet.). When the suit is a public action—like a public nuisance—the special-injury requirement confirms the plaintiff has an interest different from the general public. *Wal-Mart,* No. 02–15–00374–CV, 2016 WL 6277370, at * 8; *Touchy v. Houston Legal Found.,* 432 S.W.2d 690, 694 (Tex. 1968) (holding private lawyers had standing to maintain injunction suit to prevent unauthorized practice of law as they had interest different from general public); *Texas Hwy. Comm'n v. Texas Ass'n of Steel Importers*, 372 S.W.2d 525, 530–31 (Tex. 1963) (business owners had standing to maintain declaratory judgment action against Texas Highway Commission to enjoin its requirement all materials on construction contracts be manufactured in United States).

A court evaluates several factors when determining what constitutes a special injury. *Jamail*, 970 S.W.2d at 676. For example, when a nuisance creates inconvenience or danger for those near the nuisance, that adverse impact is at least some evidence of special injury. *Dipp v. Rio Grande Produce, Inc.,* 330 S.W.2d

700, 701-02 (Tex. App.—El Paso 1959, writ ref'd n.r.e.) (when nearby property obstructed the north end of alley, inconvenienced neighbor suffered special injury).

An adverse impact on another's business interest also constitutes special injury. *See Touchy,* 432 S.W.2d at 694 (Texas Supreme Court finding standing by private attorneys to enjoin unlicensed practice of law because: "… due to the special interest attorneys have in their profession, they have standing to maintain a suit to enjoin action which allegedly damages their profession."). Texas has long applied this standard in nuisance cases. *E.g., Seelig*, 133 S.W. at 431; *Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8; *Boone,* 214 S.W. at 611.

For example, in *Wal-Mart,* the defendants sought dismissal of Wal-Mart's nuisance lawsuit seeking to enjoin the defendants. *Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8. The defendants had created a nuisance by blocking a portion of a public road, which impeded road traffic in and out of a Wal-Mart store.[32] *Id.* The defendants argued Wal-Mart did not have standing, claiming the store had no evidence of special injury. *Id.*

The Fort Worth Court of Appeals analyzed whether Wal-Mart had presented some evidence of harm different from the general public. *Id.* The Court concluded (without requiring Wal-Mart to quantify damages) that the nuisance affected Wal-Mart's business interest. *Id.* The Court reasoned that harm to a party's business

[32] The defendants were attempting to stop customers from shopping at the store. *Id.*

interest is harm different in kind and degree from that of the general public. *Id.* (citing *Boone,* 214 S.W. at 611). As such, the Court found Wal-Mart had suffered a special injury and had standing to pursue injunctive relief. *Id.* (citing *Boone,* 214 S.W. at 611); *see also Texas Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 447 (Tex. 1993) (professional association had standing in public action when its individual members bore substantial risk of being assessed fines).

A plaintiff also bears a special injury when a nuisance creates a risk to its health and safety different from the general public. *Kjellander v. Smith,* 652 S.W.2d 595, 600 (Tex. App.—Tyler 1983, no writ) (when across-the-street neighbor built fence in front of his property causing driving on street to become hazardous, neighbor/plaintiff suffered special injury); *Heilbron v. St. Louis Sw. Ry. Co. of Tex.,* 113 S.W. 979, 980 (Tex. Civ. App.—1908, writ ref'd) (property owners near dangerous nuisance have standing to compel company to restore highway to safe condition).

In short, a plaintiff bears a special injury and standing if it shows the subject matter of the litigation affects him differently from other citizens. *Hunt,* 664 S.W.2d at 324; *Tri County Citizens Rights Org. v. Johnson*, 498 S.W.2d 227, 229 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.). Notably, ***there is no requirement in the law that the harm be "substantial."*** But that is the legal standard the Trial Court applied. In *sua sponte* directing a verdict on TASI's common law public nuisance claim, the

Trial Court specifically ruled that he was dismissing the claim (and would not submit it to the jury) because he found no ***substantial*** harm:

> Because I can't -- everything you've argued and all of the evidence that you've cited I don't think proved to this Court that they suffered a ***substantial*** harm in a way that gives them standing to enforce.

RR12:24 (emphasis added); *see also* RR12:9 (Court: "And to bring suit for a public nuisance, the private individual must establish that the individual suffered ***substantial*** harm. … So it's two things, ***substantial*** harm, different in kind." (emphasis added)). The record clearly shows the Trial Court erred, applying an incorrect legal standard. RR12:23-24. The Trial Court required TASI to establish a harm that was substantial. *Id.* The Court did not even reach the correct issue: harm that is different in kind. *Id.* (Court: "I can't find ***substantial*** harm. I can't get there. And therefore, therefore, I don't even have to look at whether it's different than what other members of the public suffer." (emphasis added)).

The Trial Court erred in its application of law. As a result of that error, it refused to submit common law public nuisance to the jury. This error is therefore harmful.[33] *Gharda*, 464 S.W.3d at 347. As such, TASI respectfully urges this Court

[33] As discussed above, the record is replete with compelling evidence of the other elements of common law public nuisance—ten years of habitual polluting with highly carcinogenic chemicals, along with silver and lead—all of which could and did reach the City's ecosystem. *See* Brief of Appellant pp. 1-9, 12-13, 17-25. Other than Ramirez's outlandish statement he always cleaned up spills (RR10:13), the evidence is undisputed Ramirez polluted, creating a high risk of harm to his neighbors and the public. *See* Brief of Appellant pp. . 1-9, 12-13, 17-25 The compelling evidence of Ramirez's ultra-hazardous operations created at least a fact issue regarding common law public nuisance, requiring the Trial Court to submit the issue to the jury. *Gharda,* 464 S.W.3d at 347.

to reverse the judgment and remand this case for trial of the common law public nuisance claim.

The Trial Court similarly applied the incorrect standard when granting the JNOV. Like the directed verdict, the JNOV addressed TASI's standing—this time to the statutory public nuisance claim. CR3:2444-46;APP:B. Ramirez's attorney argued when considering his request for JNOV, the Court should apply the same standard it did when considering standing for TASI's common law public nuisance claim; he argued:

> The Court's already resolved that, said that the plaintiffs don't have a special injury.

RR15:23. He reiterated:

> The Court has already determined there is no special injury to plaintiffs, otherwise, the Court would have submitted a public -- a public nuisance question. So the fact that we keep talking about the fact there's a special injury is completely irrelevant because the Court has already determined that question did not go to the jury.

RR15:44.

Ramirez invited the Trial Court into error. The Trial Court should not have required evidence of ***substantial*** harm for TASI to have standing to pursue injunctive relief based on a claim for statutory public nuisance. *Hunt,* 664 S.W.2d at 324; *Johnson*, 498 S.W.2d at 229. TASI therefore respectfully urges this Court reverse the JNOV, reinstate the jury's verdict and remand this case for entry of injunctive relief prohibiting and remediating Ramirez's polluting conduct.

2. There is more than a scintilla of—in fact there is compelling—evidence of special injury.

The Trial Court ruled on standing as a matter of law. Not only did the Trial Court apply the wrong legal standard, the Court ignore the compelling evidence of special injury. TASI offered evidence of at least two special injuries: harm to its business interest as a recycling operator and harm to TASI's property rights to enjoy his property without risk of harm to health and safety.

a. Ramirez's misconduct harmed TASI's business interests.

Several Texas cases illustrate harm to business interest affords a private citizen standing to pursue a public action like statutory public nuisance. *Seelig*, 133 S.W. at 431; *Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8; *Boone,* 214 S.W. at 611; *Touchy,* 432 S.W.2d at 694. In *Seelig*, the City of Austin's ("Austin's") existing ordinance prohibited builders from obstructing any portion of a street beyond the length of the front boundary of the construction site. *Seelig,* 133 S.W. at 430. Without properly modifying that ordinance, an Austin commissioner issued a permit allowing American Construction Company ("ACC") to obstruct 69 feet of frontage along Congress Avenue. *Id.* This allowed ACC to block neighboring property. *Id.* The blocked property owners filed suit seeking an injunction requiring ACC to comply with the existing City ordinance. *Id.* They argued that not only did

ACC's nuisance obstruct their light and air, it adversely affected their business interests. *Id.* at 431.

Ultimately, the Supreme Court affirmed the trial court's judgment, holding the trial court "rightfully enjoined" ACC. *Id.* at 431. The Supreme Court reasoned that Austin's conduct violated its own ordinance and ACC's conduct was a nuisance. *Id.* The Supreme Court also held that in light of the detrimental effect on the neighboring properties' businesses, the trial court had the authority to issue the injunction. *Id.*

In *Boone,* the Wichita County Commissioners entered into an oil and gas lease, conferring the right to drill an oil well on a public street. *Boone,* 214 S.W. at 611. Several citizens, including a property owner of neighboring land, sued the lease-holders seeking to enjoin the nuisance created by the obstruction of the county road. *Id.* at 607-08, 610-611. The trial court granted the injunction and the defendants appealed. *Id.* at 608.

The Fort Worth Court of Appeals first concluded the Commissioners Court's action of conferring the oil and gas lease was unlawful. *Id.* at 609. Next, the Court of Appeals considered the defendants' argument the plaintiffs lacked standing. *Id.* at 610-11. The Court noted the evidence that the drilling activities would partially obstruct travel and would endanger those traveling, confirming the existence of a public nuisance. *Id.* at 608, 611. The Court also concluded the nuisance not only

harmed the traveling public, the drilling operations (which created the nuisance) would also drained oil from the plaintiffs' land. *Id.* As such, permitting the nuisance adversely impacted the plaintiffs' business interests. *Id.* This negative impact served as a special injury conferring standing to the plaintiffs to enjoin the drilling operation. *Id.* at 611.

These two cases involve circumstances strikingly analogous to the present case. The governmental entities both allowed and even enabled the creation of the nuisances: unlawfully permitting the fencing along Congress Avenue in *Seelig* and entering an unlawful contract to allow the drilling operation on a county road in *Boone.* *Seelig*, 133 S.W. at 431; *Boone*, 214 S.W. at 611. That is exactly the situation in this case.

The City allowed Ramirez to unlawfully operate recycling operations, wrongfully granting him a recycling license every year for ten years. RR4:30. In direct contradiction to Chapter 16, the City allowed Ramirez to operate in an area not zoned for recycling operations (as it was near residences). RR4:32; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D. In direct violation of Chapter 16, the City illegally granted Ramirez a recycling license when he did not have (and refused to obtain) necessary certificates of occupancy. RR4:30; SAN ANTONIO, TEX. §16, Division 2; PX30;APP:D. Most galling, the City enabled Ramirez to pollute and continue to pollute—never making any attempt to shut his operation despite over a

hundred violations of Chapter 16, obvious failures to follow BMPs, multiple events of dumping water contaminated with oil and gas onto City roads and into City storm sewers. CX5:1515; PX53:813; APP:E. The evidence is overwhelming that the City—just as in *Boone* and *Seelig*—allowed and even fostered the nuisance.

In *Seelig* and *Boone,* the fencing and drilling themselves were not the nuisance. Rather, the manner in which the fencing and drilling occurred—on public road roads—constituted the nuisance. *Seelig*, 133 S.W. at 431; *Boone*, 214 S.W. at 611. The present case is exactly the same: Recycling is not a nuisance. RR6:62. Operating a recycling yard in a manner that habitually pollutes and contaminates the environment constitutes the nuisance. CX8:1551-52.

In *Seelig, Boone* and another case, *Touchy,* the nuisance adversely impacted the plaintiffs' business interest. *Seelig*, 133 S.W. at 431; *Touchy,* 432 S.W.2d at 694; *Boone*, 214 S.W. at 611. The business owners in *Seelig* complained the nuisance detrimentally affected their business. *Seelig*, 133 S.W. at 431. Similarly, TASI presented more than sufficient evidence Ramirez's misconduct detrimentally affected the recycling business. Mr. Hack testified that because of Ramirez, the City treated the recycling industry as a disfavored business, trying to push them out of the City. RR3:127. The City heightened regulation (but then did not apply those regulations to Ramirez). RR5:132. This increased the cost to operate a recycling

yard. RR3:132-34. To even begin to comply with Chapter 16, TASI had to spend over $140,000 and operate under a tent for over a year. RR3:115.

The public complained about Ramirez's operation. RR9:99; CX12:1626; PX4. Not only did that stigmatize the industry, at least once a neighbor reported TASI thinking the pollution was coming from TASI's operations. RR3:135. In fact, Ramirez was the culprit. *Id*. TASI, like the plaintiffs in *Seelig,* presented evidence of harm to its business interest. As a matter of law, that is special injury. *Seelig*, 133 S.W. at 431; *Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8.

Boone illustrates another harm to business interest similar to what TASI suffered. In that case, the illegal drilling operation that constituted the nuisance drained oil from under the plaintiff's property, harming their business interests. *Boone*, 214 S.W. at 611. TASI suffered a remarkably similar harm. The evidence at trial—to which even Ramirez agreed—is that Ramirez's operations competed directly with TASI's operation. RR9:134. So when the City unlawfully issued Ramirez contaminating operation a recycling permit for ten years, Ramirez was able to drain business from TASI. RR4:30; RR3:152-54. If the City had followed its own law and closed Ramirez's operations—TASI's primary competitor—TASI inevitably would have obtained some if not all the business Ramirez's illegal operations drained away. RR8:14.

Just like the *Boone* plaintiffs, TASI's business interest was harmed by Ramirez's illegal operation. RR8:14-15. The holding in *Boone* confirms TASI suffered a special injury. *Boone*, 214 S.W. at 611; *see also Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8 (when nuisance could limit shoppers at Wal-Mart store, Wal-Mart suffered special injury).

Furthermore—like the attorneys in *Touchy*—Mr. Hack sought to enjoin Ramirez for continuing to pollute as a means to protect the reputation of the recycling industry. Compare *Touchy,* 432 S.W.2d at 694 *with* RR3:126, 156. TASI takes very seriously the recycling industry's responsibility to be an environmental steward. RR3:125-26; RR8:147. Mr. Hack hired engineers and consultants and spent considerable sums to run a "clean" yard to protect the reputation of an industry that plays a vital role in repurposing metal waste. RR3:125-26. He and TASI stayed actively involved with the City in the creation of Chapter 16. RR8:39-40.

Clearly, TASI has a special interest in protecting its industry, just like the attorneys in *Touchy.* Following Supreme Court precedent, "… due to the special interest [recycling operators] have in their profession, they have standing to maintain a suit to enjoin action which allegedly damages their profession." *Touchy,* 432 S.W.2d at 694.

Texas law and the admitted evidence in this case confirm TASI suffered harm to its business interest, which constitutes a special injury.[34] None of the cases—*Touchy, Seelig, Boone,* nor *Wal-Mart*—required the plaintiff to quantify the amount of harm—the lost revenue or increased costs. The fact of loss was sufficient. *Touchy,* 432 S.W.2d at 694; *Seelig*, 133 S.W. at 431; *Wal-Mart,* No. 02-15-00374-CV, 2016 WL 6277370, at *8; *Boone*, 214 S.W. at 611.

However, in the event this Court were to require TASI to present financial evidence, TASI attempted to introduce such evidence. RR8:14. TASI offered Dr. Keith Fairchild—a professor and PhD in Finance—to provide his expert financial analysis of Ramirez's and TASI's operations. RR8:7. Dr. Fairchild was prepared to testify regarding the net revenues both generated. RR8:14. The Trial Court would not permit the expert financial information to be offered, determining it was not

[34] TASI also attempted to present additional evidence of the harm to its business interest by the expert testimony of Jerry Arredondo. *See* RR8:27-30, 38-39, 42-43, 59-60, 75, 78, 88-89 (qualifying Arredondo as expert on recycling industry and attempts by industry to protect itself and address pollution, operations and compliance). Mr. Arredondo had years of experience handling projects with recycling operators, from initiating the business through continued compliance with City ordinances. RR8:27-30, 38-39, 42. He was intimately involved in the creation of Chapter 16 and efforts to improve the industry. RR8:37-42, 75-76. The Trial Court declined to allow Mr. Arredondo to offer his expert testimony essentially concluding it would not be relevant or somehow believable. RR8:57, 61-64, 75-76, 117-20. This ruling was clearly wrong as Mr. Arredondo could have provided the jury and judge an even deeper understanding of the industry, the competition between Ramirez and TASI, the effect on the industry of Ramirez's misconduct and the need to improve and protect the industry. *Nabors Well Servs., Ltd v. Romero*, 508 S.W.3d 512, 545 (Tex. App.—El Paso 2016, pet. denied) (citing *Reliance Steel & Aluminum Co. v. Sevcick,* 267 S.W.3d 867, 873 (Tex. 2008). All of these topics would have been relevant and crucial if this Court were to find TASI required additional evidence of harm to business interest. In that event, TASI respectfully urges this Court reverse the Trial Court's erroneous order limiting Mr. Arredondo's testimony and reverse this case for a new trial. *Id*.

relevant. RR8:22. If this Court requires such data, TASI respectfully urges that this Court reverse the Trial Court's Judgment and remand this case to be retried, allowing Dr. Fairchild to provide the financial data. *Reliance Steel & Aluminum,* 267 S.W.3d at 873; *Nabors Well Servs.,* 508 S.W.3d at 545.

b. Ramirez's misconduct created a dangerous risk of harm to TASI's property rights.

TASI suffered another harm different from the general public. *Cf. Stoughton v. City of Fort Worth,* 277 S.W.2d 150, 152-53 (Tex. Civ. App.—Fort Worth 1955, no writ) (storing fireworks and selling of fireworks creates a risk of danger). The evidence confirmed Ramirez's operations contaminates his property with extremely dangerous levels of carcinogenic hydrocarbons, silver and lead. *See, e.g.,* CX5:1509; RR8:161-2, 174. Ramirez allowed water on his property to become infused with these toxins and then flow into the public street right in front of TASI and then into storm sewers. *See, e.g.,* CX5:1515. As such, Ramirez's operation creates a dangerous risk to the water supply, affecting the health and safety of the general public. *See, e.g.,* RR8:161.

Ramirez's operations also create a dangerous risk of harm directly to TASI. CX5:1515. When Ramirez pollutes, the toxins seep into the air. RR8:170. It is undisputed that this air pollution creates an odor and that odor has invaded the neighborhood. RR8:145; CS12:1626. Also, Ramirez has had two fires on his contaminated property. CX5:1504-05. The toxins laced the smoke resulting from

the fires. RR8:164, 167. And Ramirez's operation remains a fire hazard, creating a substantial risk of repeated events of toxin-infused smoke invading TASI. RR8:164.

Ramirez's operations created a risk to TASI's health and safety different from the general public. RR3:97; PX53:813. Property owners near a nuisance suffer a particularized or special harm from the effects of the nuisance, different from the public at large. *Spicewood Springs Rd. Tunnel Coal. v. Leffingwell*, No. 03-11-00260-CV, 2013 WL 2631750, at *2 (Tex. App.—Austin June 6, 2013, pet. dism'd) (mem. op.) (association member lived across from subject of suit created standing for himself and association); *Guetersloh,* No. 14-95-01272-CV, 1996 WL 580931, at *7, 17 (properties near salvage yard obtained injunction requiring yard to take specific actions to remediate nuisance). By routinely contaminating his own property—just across the street from TASI—coupled with the significant fire hazard he poses, Ramirez creates a dangerous risk of air pollution interfering with TASI's right to enjoy its own property. RR8:145; CX5:1504; PX1; PX4. The dangerous risk of air pollution to TASI is a special injury. *See Soap Corp. of Am. v. Reynolds,* 178 F.2d 503, 506 (5th Cir. 1949) ("Moreover, it is clearly settled that special injury may result to a person in **proximity** to it, although the injury may be occasioned by a public nuisance."); *Kjellander,* 652 S.W.2d at 600 (across-the-street property owner created danger on public street; such was special injury to neighbor); *Heilbron,* 113 S.W. at 980 (nearby property owners have standing to compel danger-

creating nuisance be remedied); *see also Guetersloh,* No. 14-95-01272-CV, 1996 WL 580931, at *7, 17 (property owners obtained injunction to address nuisance by salvage yard).

The evidence confirms TASI suffered both harm to its business interests and harm to the enjoyment of its property. Both categories of harm confirm the subject matter of the litigation—Ramirez's contaminating operations—affects TASI differently from other citizens. *Hunt,* 664 S.W.2d at 324; *Johnson,* 498 S.W.2d at 229. The Trial Court erred by concluding TASI offered no evidence of special injury. RR9:159; CR3:2444-46;APP:B. The Trial Court should not have set aside the jury verdict on statutory public nuisance nor directed a verdict on common law public nuisance. *Tanner*, 289 S.W.3d at 830. TASI therefore respectfully requests this Court set aside the Judgment and JNOV, reinstate the jury's verdict, and remand this case for entry of an injunction. In the alternative, TASI requests a new trial.

C. The Jury question to which Ramirez agreed establishes his liability for acting as a public nuisance under Chapter 16.

The Trial Court submitted TASI's statutory public nuisance claim to the jury as Question No. 3:

QUESTION NO. 3 – Public Nuisance – Pursuant to Section 16-210.07 of Chapter 16 of the City of San Antonio Municipal Code

City of San Antonio Municipal Code Section 16-210.7(b): "Conditions maintained in violation of this division which impact public health, safety, or welfare, or which deprive neighbors of their safe or peaceful use of nearby properties shall be unlawful and shall be deemed a public nuisance."

QUESTION:

Are any of the following Defendants a "public nuisance" as that term is defined by section 16-210.07(b) of the City of San Antonio Municipal Code, as set forth above?

Answer "Yes" or "No" for each of the following Defendants:

a) D D Ramirez, Inc., located at 914 Somerset Road, San Antonio, Texas.

NO

b) Danny's Recycling & Precious Metals, LLC located at 819 Somerset Road, San Antonio, Texas.

Yes

c) Danny's Recycling, Inc. located at 925 Somerset Road, San Antonio, Texas.

Yes

CR3:2385;APP:A. Ramirez did not object nor submit any offers in regard to Question No. 3. RR12:29-30.

Still, in urging the JNOV, Ramirez for the first time argued Question No. 3 did not enable the jury to make requisite findings for the Trial Court to grant the injunctive relief TASI sought. CR3:2416-17. Ramirez argued the question enabled the jury to find only the existence of a statutory public nuisance, not that Ramirez had a "breach of a duty" to trigger liability. *Id.* at 2416 (arguing Question No. 3 only

sought finding on existence of a nuisance and not "culpability"). From this premise, Ramirez argued the jury's answers to Question No. 3 were immaterial. *Id.* Ramirez's argument was incorrect.

Question No. 3 defined statutory public nuisance as a violation of Chapter 16. CR3:2386;APP:A ("Conditions maintained ***in violation*** of this division") (emphasis added). As such, to answer "Yes," the jury had to find Ramirez violated Chapter 16—that he breached his duty to comply with that ordinance. *Id*. Question No. 3 therefore established both (i) the existence of a nuisance and (ii) breach of a duty and culpability—the violation of Chapter 16. *Id*. If the Trial Court granted the JNOV, disposing of the jury's verdict, crediting Ramirez's incorrect argument, the Trial Court erred. CR3:2444-46;APP:B. Therefore, TASI respectfully requests this Court reverse the Judgment, reinstate the jury's verdict as to Question No. 3 and remand the case for entry of an injunction.

D. TASI's suit is founded on a request for injunctive—not merely declaratory—relief; however, even if TASI sought primarily declarations, the Trial Court had jurisdiction to issue them.

Quoting Section 37.004(a) of the Uniform Declaratory Judgment Act ("UDJA"), Ramirez also argued to the Trial Court it should erase the jury's verdict because any declaration based on Question No. 3 "does not fall within the statutory framework for declaratory judgments." CR3:2417. Ramirez's argument is incorrect.

Ramirez did not consider Section 37.003, which expressly creates much broader declaratory-judgment jurisdiction:

> A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.

TEX. CIV. PRAC. & REM. CODE § 37.003(a). Even more important, Section 37.003 affirmatively states Section 37.004 does not limit the broad jurisdiction afforded trial courts int Section 37.003(a):

> The enumerations in Sections 37.004 and 37.005 ***do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought*** and a judgment or decree will terminate the controversy or remove an uncertainty.

Id. at § 37.003(c) (emphasis added); *see, e.g., Lozano v. Patrician Movement,* 483 S.W.2d 369, 371 (Tex. Civ. App.—San Antonio 1972, writ ref'd n.r.e.) (holding private individual can maintain suit for declaratory judgment and enjoin alleged violation of ordinance when activity complained of creates particularized damages).

Ramirez's argument contradicts Section 37.003 and Texas case law. As such, if the Trial Court set aside the jury's verdict as to Question No. 3 based on the incorrect belief it did not have jurisdiction to render a declaratory judgment in this case, the Trial Court erred as a matter of law. TASI respectfully requests this Court reverse the Judgment, reinstate the jury's verdict as to Question No. 3 and remand the case for entry of an injunction.

III. The Great Weight And Preponderance Of The Evidence Confirms Ramirez's Operation Was A Private Nuisance For Which Ramirez Is Culpable (*responsive to Issue Five*).

The jury did not find Ramirez liable under TASI's claim of private nuisance. CR3:2384;APP:A. This finding is against the great weight and preponderance of the evidence.

As shown by TASI's outline of the mountain of evidence on pages 1-9, 12-13, 17-25, 42, 51 of this Brief of Appellant, it is all but undisputed that Ramirez's operation polluted and posed a significant risk of polluting the neighboring properties with carcinogenic chemicals, silver and lead. Even Ramirez's own environmental expert testified Ramirez's behavior created a risk of contamination. RR7:17, 33.

Dr. Elnakat testified Ramirez's operations posed a substantial risk when:

- Ramirez routinely dumps hazardous fluid and fails to remediate hazardous fluid spills;
- The toxins mix with the soil and water; and then
- Transfer into the air and spread onto neighboring property.

RR8:154-77. Dr. Elnakat explained this risk is even greater for the neighboring property owners because Ramirez allows his property to devolve into a fire hazard. RR8:154-77; *see also* RR7:20. In fact, there have already been two fires at his operation. CX7:1534. The hazardous toxins in Ramirez's soil suffuses smoke from

the fire, which then invades the neighboring property—one of which is owned by TASI. RR8:164-77. Certainly, there is overwhelming evidence Ramirez's actions created a substantial interference and has an unreasonable effect. *Crosstex*, 505 S.W.3d at 588.

The evidence is all but undisputed Ramirez does not follow the standard of care of a reasonably prudent metal recycling operator or he intentionally polluted. Both Ramirez's and TASI's environmental experts testified to the applicable standard of care, called BMPs. PX53; RR7:32; RR8:152. Both confirmed Ramirez does not follow BMPs. PX53; RR7:29; RR8:154. He has violated Chapter 16 over a hundred times, thereby failing to follow BMPs. *See, e.g.,* APP:E. The evidence was undisputed Ramirez knew the proper standard he should apply; he just chose not to. *See, e.g.,* CX9:1569.

The only evidence Ramirez did not breach the standard of care was his own declaration that he always abided by the standard and immediately remediated hazardous spills. RR10:33. Ramirez's conclusory statement is simply not credible.[35] The great weight and preponderance of the evidence established Ramirez either

[35] Ramirez was caught lying during his trial testimony: He testified he never accused Annette Rodriguez of being unethical. RR10:86. But that was blatantly untrue, which Ramirez admitted on cross examination. RR10:86-89 (PX4:102 is letter by Ramirez to TCEQ accusing Rodriguez of unethical conduct).

negligently or intentionally failed to follow the standard of care. *Crosstex*, 505 S.W.3d at 588.

Therefore, in the alternative to TASI's request that this Court reverse the Judgment, reinstate the jury's verdict on statutory public nuisance and remand for entry of injunctive relief, TASI asks this Court to remand for a new trial on private nuisance. *Ortiz*, 917 S.W.2d at 772.

CONCLUSION AND PRAYER

The metal recycling industry has been good to TASI. It has enabled TASI's owners and employees to earn a decent living. It has redirected untold tons of metal scrap from the City dump as trash to construction projects as recycled rebar. It has benefited the economy, enabling construction companies to purchase American products.

Good recyclers like TASI want the metal recycling profession to remain an asset to the community. Ramirez's polluting misconduct—his failure to follow BMPs, to comply with Chapter 16—threatens the recycling profession with the stigma of being a "dirty business" and "disfavored." The black eye Ramirez gives to the recycling industry has increased TASI's costs. TASI has even been blamed for Ramirez's contamination.

Most troubling is the risk of harm Ramirez's operation poses to the public, pouring hazardous toxins into the City water system. And the toxins fill the air and invade the neighboring property—including TASI's.

TASI simply wants Ramirez to stop polluting. The City refuses to do its duty—allowing Ramirez to operate in flagrant violation of Chapter 16. While the City can shut down polluting operations, and has shut down at least one other recycler based on fewer and less significant violations, the City has actually enabled Ramirez to continue polluting.

TASI had no other choice but to look to the courts for justice—not for money but for an order remediating and stopping Ramirez's unlawful and dangerous misconduct. After years of litigation and weeks in trial, a Bexar County jury agreed with TASI. Ramirez violated Chapter 16 and created a statutory public nuisance.

That verdict should have been honored; the Trial Court should have followed the law and proceeded with issuing an injunction. The Trial Court erred by disregarding the jury's verdict and entry judgment for Ramirez.

Therefore, TASI respectfully urges this Court reverse the Judgment, reinstate the jury's verdict and remand this case for entry of a new judgment for injunctive relief. In the alternative, TASI requests a new trial.

Respectfully submitted,

/s/ Renée Yanta
RENÉE YANTA
State Bar No. 00787483
THE LAW FIRM OF RENÉE YANTA PLLC
8000 IH-10 West, Suite 600
San Antonio, Texas 78230
Tel: 210-774-4088
formerjudge@reneeyantalaw.com

MR. JON T. POWELL
State Bar No. 0079726
MR. MICKEY JOHNSON
State Bar No. 24094002
THE POWELL LAW FIRM
1148 E. Commerce Street
San Antonio, TX 78205
Tel: 210.225.9300

Appellate Counsel for Appellants,
Texas Auto Salvage, Inc., Gary Hack and Daniel Hack

CERTIFICATE OF COMPLIANCE

Pursuant to Tex. R. App. P. 9.4, I certify this Brief contains 14,051 words, excluding portions not required to be counted. The word count of the Violations Chart (APP:E)—592 words—is included in the total word count. This is a computer-generated document created in Microsoft Word, using Times New Roman, 14-point font for all text, except for footnotes and pdf's, which are in 12-point font.

/s/ Renée Yanta

RENÉE YANTA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellants (Amended) has been served on the following counsel in accordance with Texas Rules of Appellate Procedure, on the 27th day of July 2020:

ROBERT G. GARZA
Texas State Bar No. 07737700
THE LAW OFFICE OF ROBERT G. GARZA
7800 Interstate Highway 10 West, Suite 111
San Antonio, Texas 78230
Telephone: (210) 344-5665
Email: robertggarza@cs.com

GREGORY T. VAN CLEAVE
Texas State Bar No. 24037881
THE LAW OFFICE OF ALBERT W. VAN CLEAVE, III PLLC
1520 W. Hildebrand
San Antonio, Texas 78201
Telephone: (210) 341-6588
Email: greg_v@vancleavelegal.com

SAMUEL V. "SAM" HOUSTON
Texas State Bar No. 24041135
HOUSTON DUNN, PLLC
4040 Broadway Street, Suite 515
San Antonio, Texas 78209
Telephone: (210) 775-0882
EMAIL: SAM@HDAPPEALS.COM

/s/ Renée Yanta
RENÉE YANTA

APPENDIX

Appendix Item	Record Cite	Appendix Reference
Jury Charge	CR3:2383-2401	APP:A
Order granting Judgment Notwithstanding the Verdict	CR3:2444-46	APP:B
Judgment	CR3:2438-41	APP:C
Division 2.-Metal Recycling Entities, Chapter 16 of the City of San Antonio Code	PX30	APP:D
Violations Chart (included in word count)	Compiled from PX1, PX4, PX25	APP:E

4. to vote on the questions,

5. to write your answers to the questions in the spaces provided, and

6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

PROXIMATE CAUSE

"Proximate cause" means a cause that was a substantial factor in bringing about an occurrence or injury, and without which cause such occurrence or injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the occurrence or injury, or some similar occurrence or injury, might reasonably result therefrom. There may be more than one proximate cause of an occurrence or injury.

DOCUMENT SCANNED AS FILED

QUESTION NO. 1 – Private Nuisance – Intentional or Negligent Conduct

Defendants D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and/or Danny's Recycling, Inc. located at 819, 914 and 925 Somerset Road creates a "private nuisance" if their conduct substantially interferes with Plaintiffs Texas Auto Salvage, Inc.'s, Gary Hack's, and/or Daniel Hack 's use and enjoyment of their land.

"Substantial interference" means that Defendants' D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and/or Danny's Recycling, Inc. located at 819, 914 and 925 Somerset Road conduct must cause unreasonable discomfort or annoyance to a person of ordinary sensibilities attempting to use and enjoy the person's land. It is more than a slight inconvenience or petty annoyance.

"Intentionally" means that Defendants D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and/or Danny's Recycling, Inc. located at 819, 914 and 925 Somerset Road acted with intent with respect to the nature of their conduct or to a result of their conduct when it was their conscious objective or desire to engage in the conduct or the result.

"Negligently" means that Defendants D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and/or Danny's Recycling, Inc. located at 819, 914 and 925 Somerset Road failed to use ordinary care, that is, failed to do that which a person of ordinary prudence would have done under the same or similar circumstances or did that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

QUESTION:

Did any of the following Defendants intentionally or negligently create a private nuisance?

Answer "Yes" or "No" for each of the following Defendants:

a) D D Ramirez, Inc., located at 914 Somerset Road, San Antonio, Texas. NO

b) Danny's Recycling & Precious Metals, LLC located at 819 Somerset Road, San Antonio, Texas. NO

c) Danny's Recycling, Inc., ~~is~~ located at 925 Somerset Road, San Antonio, Texas. NO

DOCUMENT SCANNED AS FILED

QUESTION NO. 2 – Public Nuisance – Dereliction of Duties

"Derelict" means the City of San Antonio and/or its employees failed to respond to their duties.

QUESTION:

Was the City of San Antonio and/or its employees derelict in their duties by not properly enforcing City of San Antonio Municipal Code Chapters 10 and 16 or by not bringing suit for a public nuisance as against Defendants D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and Danny's Recycling, Inc. located at 819, 914 and 925 Somerset Road?

Answer "Yes" or "No": Yes

DOCUMENT SCANNED AS FILED

If you answered Question 2 "Yes," then answer Question 3. Otherwise, do not answer Question 3.

QUESTION NO. 3 – Public Nuisance – Pursuant to Section 16-210.07 of Chapter 16 of the City of San Antonio Municipal Code

City of San Antonio Municipal Code Section 16-210.7(b): "Conditions maintained in violation of this division which impact public health, safety, or welfare, or which deprive neighbors of their safe or peaceful use of nearby properties shall be unlawful and shall be deemed a public nuisance."

QUESTION:

Are any of the following Defendants a "public nuisance" as that term is defined by section 16-210.07(b) of the City of San Antonio Municipal Code, as set forth above?

Answer "Yes" or "No" for each of the following Defendants:

a) D D Ramirez, Inc., located at 914 Somerset Road, San Antonio, Texas.

NO

b) Danny's Recycling & Precious Metals, LLC located at 819 Somerset Road, San Antonio, Texas.

Yes

c) Danny's Recycling, Inc. located at 925 Somerset Road, San Antonio, Texas.

Yes

DOCUMENT SCANNED AS FILED

If you answered Question 3 "Yes," then answer Question 4. Otherwise, do not answer Question 4.

QUESTION NO. 4 – Attorneys' Fees

What is a reasonable fee for the necessary services of The Powell Law Firm, attorneys in this case, stated in dollars and cents?

Consider the following factors in determining reasonable attorneys' fees:

1. The time and labor involved, the novelty of the questions involved, the skill required to perform the legal services properly;
2. the fee customarily charged in the locality for similar legal services;
3. the time limitations imposed by the client or the circumstances;
4. the amount involved and the results obtained; and
5. the experience, reputation, and ability of the lawyer or lawyers performing the services.

Answer an amount for each of the following:

A. For preparation and trial

Answer: $ 86,000

DOCUMENT SCANNED AS FILED

QUESTION NO. 5 - ARSON

Arson is defined as follows:

(a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land; or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is located on property belonging to another;

(C) knowing that it has located within it property belonging to another; or

(D) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

Tex Penal Code Sec. 28.02. ARSON.

QUESTION:

Do you find that any of the following committed Arson related to the burning of the car crusher located at 925 Somerset Rd on or about July 21, 2011?

Answer "Yes" or "No."

Texas Auto Salvage Inc. or its agent NO

Daniel Hack or his agent NO

Gary Hack or his agent NO

DOCUMENT SCANNED AS FILED

If you have answered question number 5 "Yes", then answer question number 6; otherwise, do not answer question number 6. Answer question number 6 only as to those entities or persons you answered "Yes" to in question number 5.

QUESTION NO. 6

What sum of money, if any, paid now in cash would fairly and reasonably compensate Daniel Delagarza Ramirez for his damages, if any, that resulted from the Arson related to the burning of the car crusher located at 925 Somerset Road on or about July 21, 2011?

Answer in dollars and cents, if any, for the economic damages to the car crusher.

Answer: $ n/a

DOCUMENT SCANNED AS FILED

Answer the following question No. 7, only if you unanimously answered "Yes" to Question No. 5 and answered with a dollar amount for Question No. 6. Otherwise, do not answer Question No. 7. Answer question number 7 only as to those entities or persons you answered "Yes" to in question number 5.

You are instructed that, in order to answer "Yes" to the following Question No. 7, your answer must be unanimous. You may answer "No" to the following Question No. 7 only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 7:

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means: (a) a specific intent by Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack to cause substantial injury to Daniel Delagarza Ramirez; or (b) an act or omission by Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack (i) which, when viewed objectively from the standpoint of Daniel Delagarza Ramirez at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (ii) of which Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

QUESTION:

Do you find by clear and convincing evidence that the harm to Daniel Delagarza Ramirez resulted from malice on the part of any of the following?

Answer "Yes" or "No:"

Texas Auto Salvage Inc. or its agent n/a

Daniel Hack or his agent n/a

Gary Hack or his agent n/a

DOCUMENT SCANNED AS FILED

Answer the following question No. 8, only if you unanimously answered "Yes" to Question No. 7. Otherwise, do not answer Question No. 8. Answer question number 8 only as to those entities or persons you answered "Yes" to in question number 7.

You are instructed that, in order to answer with a dollar amount to the following Question No. 8, your answer must be unanimous.

QUESTION NO. 8:

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

QUESTION:

What sum of money, if any, if paid now in cash, should be assessed against any of the following and awarded to Daniel Delagarza Ramirez as exemplary damages, if any, for the conduct found in response to Question No. 5?

Factors to consider in awarding exemplary damages, if any, are:

a. The nature of the wrong.
b. The character of the conduct involved.
c. The degree of culpability of Texas Auto Salvage, Inc. Gary Hack and/or Daniel Hack
d. The situation and sensibilities of the parties concerned.
e. The extent to which such conduct offends a public sense of justice and propriety.

Answer in dollars and cents, if any.

Answer: $ n/a

DOCUMENT SCANNED AS FILED

QUESTION NO. 9

Invasion of Privacy is defined as follows:

(1) Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack has intentionally intruded on Daniel Delagarza Ramirez's solitude seclusion or private affairs:
(2) the intrusion would be highly offensive to a reasonable person, and
(3) Daniel Delagarza Ramirez has suffered injury as a result of Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack's intrusion.

QUESTION:

Do you find that the any of the below or their agents have committed invasion of privacy against Daniel Delagarza Ramirez?

Answer "Yes" or "No."

Texas Auto Salvage Inc. or its agent NO

Daniel Hack or his agent NO

Gary Hack or his agent NO

DOCUMENT SCANNED AS FILED

If you have answered question number 9 "Yes", then answer question number 10; otherwise, do not answer question number 10. Answer question number 10 only as to those entities or persons you answered "Yes" to in question number 9.

QUESTION NO. 10

What sum of money, if any, paid now in cash would fairly and reasonably compensate Daniel Delagarza Ramirez for his damages, if any, that resulted from Invasion of Privacy committed by any of the following?

Answer in dollars and cents, if any.

A. Nominal Damages.

Answer: $ n/a

B. Mental anguish sustained in the past by Daniel Delagarza Ramirez.

Answer: $ n/a

C. Mental anguish that, in reasonable probability, Daniel Delagarza Ramirez, will sustain in the future.

Answer: $ n/a

DOCUMENT SCANNED AS FILED

Answer the following question No. 11, only if you unanimously answered "Yes" to Question No. 9 and answered with a dollar amount for Question No. 10. Otherwise, do not answer Question No. 11. Answer question number 11 only as to those entities or persons you answered "Yes" to in question number 9.

You are instructed that, in order to answer "Yes" to the following Question No. 11, your answer must be unanimous. You may answer "No" to the following Question No. 11 only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 11:

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means: (a) a specific intent by Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack to cause substantial injury to Daniel Delagarza Ramirez; or (b) an act or omission by Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack (i) which, when viewed objectively from the standpoint of Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (ii) of which Texas Auto Salvage Inc., Daniel Hack, and/or Gary Hack had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

QUESTION:

Do you find by clear and convincing evidence that the harm to Daniel Delagarza Ramirez resulted from malice on the part of any of the following?

Answer "Yes" or "No:"

Texas Auto Salvage Inc. or its agent n/a

Daniel Hack or his agent n/a

Gary Hack or his agent n/a

DOCUMENT SCANNED AS FILED

Answer the following question No. 12, only if you unanimously answered "Yes" to Question No. 11. Otherwise, do not answer Question No. 12.

You are instructed that, in order to answer with a dollar amount to the following Question No. 12, your answer must be unanimous.

QUESTION NO. 12:

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

QUESTION:

What sum of money, if any, if paid now in cash, should be assessed against any of the following and awarded to Daniel Delagarza Ramirez as exemplary damages, if any, for the conduct found in response to Question No. 9?

Factors to consider in awarding exemplary damages, if any, are:

a. The nature of the wrong.
b. The character of the conduct involved.
c. The degree of culpability of Texas Auto Salvage, Inc., Gary Hack and Daniel Hack
d. The situation and sensibilities of the parties concerned.
e. The extent to which such conduct offends a public sense of justice and propriety.

Answer in dollars and cents, if any.

Answer: $ N/a

DOCUMENT SCANNED AS FILED

If you answer "No" to question 3, answer questions 13 and 14. Otherwise do not answer questions 13 and 14.

QUESTION NO. 13 – Attorneys' Fees

What is a reasonable fee for the necessary services of Robert Garza, attorney, in this case, stated in dollars and cents?

Consider the following factors in determining reasonable attorneys' fees:

1. The time and labor involved, the novelty of the questions involved, the skill required to perform the legal services properly;
2. the fee customarily charged in the locality for similar legal services;
3. the time limitations imposed by the client or the circumstances;
4. the amount involved and the results obtained; and
5. the experience, reputation, and ability of the lawyer or lawyers performing the services.

Answer an amount for each of the following:

A. For preparation and trial

Answer: $ n/a

DOCUMENT SCANNED AS FILED

QUESTION NO. 14 – Attorneys' Fees

What is a reasonable fee for the necessary services of Gregory T. Van Cleave, attorney, in this case, stated in dollars and cents?

Consider the following factors in determining reasonable attorneys' fees:

1. The time and labor involved, the novelty of the questions involved, the skill required to perform the legal services properly;
2. the fee customarily charged in the locality for similar legal services;
3. the time limitations imposed by the client or the circumstances;
4. the amount involved and the results obtained; and
5. the experience, reputation, and ability of the lawyer or lawyers performing the services.

Answer an amount for each of the following:

A. For preparation and trial

Answer: $ N/A

DOCUMENT SCANNED AS FILED

Presiding Juror

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:
   a. Have the complete charge read aloud if it will be helpful to your deliberations;

   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

   c. give written questions or comments to the bailiff who will give them to the judge;

   d. write down the answers you agree on;

   e. get the signatures for the verdict certificate; and

   f. notify the bailiff that you have reached a verdict.

2398

DOCUMENT SCANNED AS FILED

Instructions for Signing the Verdict Certificate

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate every question. You may end up with all twelve of you agreeing on some answers, while only ten of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are some special instructions before questions 5, 7, 8, 9, 11 and 12 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

Michael E. Mery
JUDGE PRESIDING

DOCUMENT SCANNED AS FILED

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed on each and every answer. The presiding juror has signed the certificate for all of us.

(To be signed by the presiding juror if the jury is unanimous.)

_____
PRESIDING JUROR

Misty M Trevino
Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

✓ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

(To be signed by those rendering the verdict if the jury is not unanimous.)

Juror's Signatures	Juror's Printed Names
	Jesse Suarez
	Samantha Rush
	Misty M Trevino
	Lisa Martinez
	Oskaar Aguilar
	Dominador Paulma
	Johnny Flores
	Eloise Dunlop
	Seth Ketterling

2400

DOCUMENT SCANNED AS FILED

Gabriel Breaux

If you have answered Question No. 5, 7, 8, 11 and 12, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All 12 of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 of us. Please place a check mark below for the questions that were answered unanimously by the jury.

_____ Question 5

_____ Question 7

_____ Question 8

_____ Question 9

_____ Question 11

_____ Question 12

FILED
DONNA KAY McKINNEY
DISTRICT CLERK
BEXAR COUNTY
18 NOV -5 PM 2:41
DEPUTY
BY Gloria G. Perez
CRT

PRESIDING JUROR

Printed Name of Presiding Juror

2401

DOCUMENT SCANNED AS FILED

DOCUMENT SCANNED AS FILED

APPENDIX B

2010CI02500 -D037

NO. 2010-CI-02500

TEXAS AUTO SALVAGE, INC., GARY HACK, AND DANIEL HACK,	§	IN THE DISTRICT COURT
PLAINTIFFS,	§	
v.	§	37th JUDICIAL DISTRICT
DD RAMIREZ, INC., DANNY RAMIREZ RECYCLING, INC., SAN ANTONIO AUTO & TRUCK SALVAGE, DANNY'S RECYCLING & PRECIOUS METALS, LLC, DANNY'S RECYCLING, INC., AND DANIEL DELAGARZA RAMIREZ	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

On March 29, 2019, the Court heard Defendants D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto and Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez's Motion for Judgment Notwithstanding the Verdict. After considering the motion, Plaintiffs' response, and the argument of counsel, the Court finds that the motion should be GRANTED.

IT IS, THEREFORE, ORDERED that Defendants' Motion for Judgment Notwithstanding the Verdict is GRANTED.

JUL 1 1 2019

Signed on July _____, 2019.

JUDGE MICHAEL E. MERY
PRESIDING JUDGE, 37TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

07/11/2019 VOL 5156 PG 0211

DOCUMENT SCANNED AS FILED

APPROVED AS TO FORM AND SUBSTANCE:

Robert G Garza w/ permission by Samuel Houston IV

ROBERT G. GARZA
7800 IH 10 West, Suite 111
San Antonio, Texas 78230
(210) 344-5665
(210) 344-4064 Fax
E-mail: robertggarza@cs.com
State Bar No. 07737700
Attorney for Defendants

Gregory J Van Cleave w/ permission by Samuel Houston IV

GREGORY J. VAN CLEAVE
1520 W. Hildebrand
San Antonio, Texas 78201
(210) 341-6588
(210) 701-8481 Fax
E-mail: greg_v@vancleavelegal.com
State Bar No. 07737700
Attorney for Defendants

APPROVED AS TO FORM ONLY:

_____

JON POWELL
Texas State Bar No. 00797260
JOHN "MICKEY" JOHNSON
Texas State Bar No. 24094002
THE POWELL LAW FIRM
1148 East Commerce Street
San Antonio, Texas 78205
Office: (210) 225-9300
Fax: (210) 225-9301
E-mail: jon@jpowell-law.com, mickey@jpowell-law.com
Attorneys for Plaintiffs

07/11/2018 VOL 5156 PG 0212

DOCUMENT SCANNED AS FILED

APPROVED AS TO FORM AND SUBSTANCE:

ROBERT G. GARZA
7800 IH 10 West, Suite 111
San Antonio, Texas 78230
(210) 344-5665
(210) 344-4064 Fax
E-mail: robertggarza@cs.com
State Bar No. 07737700
Attorney for Defendants

GREGORY T. VAN CLEAVE
1520 W. Hildebrand
San Antonio, Texas 78201
(210) 341-6588
(210) 701-8481 Fax
E-mail: greg_vc@vancleavelegal.com
State Bar No. 07737700
Attorney for Defendants

APPROVED AS TO FORM ONLY:

Jon Powell by permission Renee Yanta

JON POWELL
Texas State Bar No. 00797260
JOHN "MICKEY" JOHNSON
Texas State Bar No. 24094002
THE POWELL LAW FIRM
1148 East Commerce Street
San Antonio, Texas 78205
Office: (210) 225-9300
Fax: (210) 225-9301
E-mail: jon@jpowell-law.com, mickey@jpowell-law.com
Attorneys for Plaintiffs

07/11/2019 VOL 5156 PG 0213

DOCUMENT SCANNED AS FILED

2010CI02500 -D037

APPENDIX C

NO. 2010-CI-02500

TEXAS AUTO SALVAGE, INC., GARY HACK, AND DANIEL HACK,	§	IN THE DISTRICT COURT
PLAINTIFFS,	§	
v.	§	37th JUDICIAL DISTRICT
DD RAMIREZ, INC., DANNY RAMIREZ RECYCLING, INC., SAN ANTONIO AUTO & TRUCK SALVAGE, DANNY'S RECYCLING & PRECIOUS METALS, LLC, DANNY'S RECYCLING, INC., AND DANIEL DELAGARZA RAMIREZ	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

FINAL JUDGMENT

October 16, 2018, this case came on to be heard and Plaintiffs Texas Auto Salvage, Inc., Gary Hack, and Daniel Hack ("Plaintiffs") appeared in person, through their attorneys of record Jon Powell and John "Mickey" Johnson, and announced ready for trial. Defendants D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto and Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez ("Defendants") appeared in person, through their attorneys of record Robert G. Garza and Gregory T. Van Cleave, and announced ready for trial.

A jury was duly accepted, impaneled, and sworn. At the conclusion of the evidence, the Court submitted definitions, instructions, and questions to the jury. After deliberation, the jury returned and announced its verdict in open court, which was duly received and filed by the Court.

I. The Jury Verdict

The jury verdict was as follows:

07/11/2019 VOL 5156 PG 0225

DOCUMENT SCANNED AS FILED

1. Private Nuisance Claim – Intentional or Negligent Conduct

On Plaintiffs' claim for private nuisance, the jury found that the following Defendants did not intentionally or negligently create a private nuisance: (1) D D Ramirez, Inc. [Question 1(a)]; (2) Danny's Recycling & Precious Metals, LLC [Question 1(b)]; and (3) Danny's Recycling, Inc. [Question 1(c)].

2. Public Nuisance – Dereliction of Duties

The jury found that the City of San Antonio and/or its employees was derelict in its duties by not properly enforcing City of San Antonio Municipal Code Chapters 10 and 16 or by not bringing suit for a public nuisance as against Defendants D D Ramirez, Inc., Danny's Recycling & Precious Metals, LLC, and Danny's Recycling, Inc. [Question 2].

3. Public Nuisance – Pursuant to Section 16-210.07 of Chapter 16 of the City of San Antonio Municipal Code

On Plaintiffs' claim for public nuisance pursuant to Section 16-210.07 of Chapter 16 of the City of San Antonio Municipal Code, the jury found that Defendant D D Ramirez, Inc. is not a "public nuisance" as that term is defined by section 16-210.07(b) of the City of San Antonio Municipal Code [Question 3(a)]. The jury found that the following Defendants are a "public nuisance" as that term is defined by section 16-210.07(b) of the City of San Antonio Municipal Code: (1) Danny's Recycling & Precious Metals, LLC [Question 3(b)]; and (2) Danny's Recycling, Inc. [Question 3(c)].

4. Attorney's Fees

The jury found reasonable fees for necessary services of Plaintiffs' attorneys in the following amount: $86,000 [Question 4].

5. Arson

On the Defendants' counterclaim for arson, the jury found that the following Plaintiffs

07/11/2019 VOL 5156 PG 0226

DOCUMENT SCANNED AS FILED

did not commit arson related to the burning of the car crusher located at 925 Somerset Rd on or about July 21, 2011 [Question 5]: (1) Texas Auto Salvage Inc. or its agent; (2) Daniel Hack or his agent; and (3) Gary Hack or his agent.

6. Invasion of Privacy

On Defendants' counterclaim for invasion of privacy, the jury found that the following Plaintiffs did not commit an invasion of privacy against Daniel Delagarza Ramirez [Question 9]: (1) Texas Auto Salvage Inc. or its agent; (2) Daniel Hack or his agent; and (3) Gary Hack or his agent.

II. Motion for Judgment Notwithstanding the Verdict

Defendants D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto and Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez filed a Motion for Judgment Notwithstanding the Verdict requesting that the Court (1) disregard the jury's affirmative answers to Questions 2, 3(b), and 3(c), and (2) enter a take nothing judgment in Defendants' favor. After considering the motion, Plaintiffs' response, and the argument of counsel, the Court signed an order granting the motion.

III. Final Disposition

For the reasons outlined above, the Court enters this final judgment and grants or denies the parties' relief as outlined below.

The Court FINDS, HOLDS, ORDERS, ADJUGES, and DECREES as follows:

I. Plaintiffs Texas Auto Salvage, Inc., Gary Hack, and Daniel Hack take nothing by their suit and claims against Defendants D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto and Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc., and Daniel Delagarza Ramirez.

07/11/2019 VOL 5496 PG 0247

2440

DOCUMENT SCANNED AS FILED

2. Defendants D D Ramirez, Inc., Danny Ramirez Recycling, Inc., San Antonio Auto and Truck Salvage, Danny's Recycling & Precious Metals, LLC, Danny's Recycling, Inc. and Daniel Delagarza Ramirez take nothing by their counterclaims against Plaintiffs Texas Auto Salvage, Inc., Gary Hack, and Daniel Hack.

3. All requests for attorneys' fees are denied.

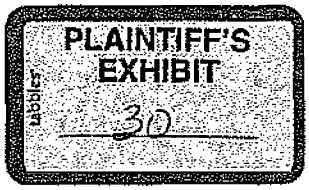
4. This judgment disposes of all parties and claims in this lawsuit, and it is a final, appealable judgment. All relief requested in this suit and not expressly granted herein is denied.

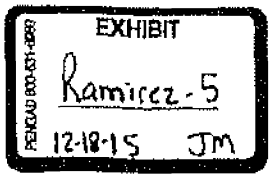
Signed on July JUL 1 1 2019, 2019.

Michael E. Mery
JUDGE MICHAEL E. MERY
PRESIDING JUDGE, 37TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

07/11/2019 VOL 5146 PG 0266

EXHIBIT D





DIVISION 2. - METAL RECYCLING ENTITIES

Sec. 16-203. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

Best management practices means a technique or series of structural and non-structural techniques which, when used in a storm water pollution prevention plan, as required by federal law, is proven to be effective in controlling industrial related runoff.

Building construction materials means copper pipe, tubing, or wiring, aluminum wire, aluminum siding, plumbing supplies, electrical supplies, metal window frames, metal doors, metal door frames, metal downspouts, metal gutters, air conditioning units and other similar materials except for obsolete, non-regulated materials.

Chief of police means the chief of police for the city and such persons as he may designate to perform his duties under this division.

City means the City of San Antonio, Bexar County, Texas.

Clear thumbprint impression means an intentional recording of the friction ridge detail on the volar pads of the thumb.

Department means the department of development services.

Director means the director of the development services department.

Hazardous material means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority of the state or the United States government, including without limitation, any material or substance which:

(1) Is defined or listed as a "hazardous material," "toxic pollutant," "hazardous waste," "hazardous substance," or "hazardous pollutant" under applicable federal, state, or local law or administrative code promulgated thereunder;

(2) Contains hydrocarbons of any kind, nature or description, including, but not limited to, gasoline, oil, and similar petroleum products, other than reclaimed asphalt pavement;

(3) Contains asbestos;

(4) Contains polychlorinated biphenyls ("PCBs"), or

(5) Contains radioactive materials.

Metal recycling entity means a business that is predominately engaged in the following and excludes used automotive parts recycling businesses.

(1) Performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;

(2) The use of raw material products described under subsection (1) in the manufacture of producer or consumer goods; or

(3) Purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by subsection (1) or (2).

Minor means any person younger than eighteen (18) years of age.

Motor vehicle means any motor driven or propelled vehicle required to be registered under the laws of this state; a trailer or semitrailer, other than manufactured housing, that has a gross weight that

exceeds four thousand (4,000) pounds; a house trailer; an all-terrain vehicle, as defined by V.T.C.A., Transportation Code § 502.001, designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course. Any metals comprising a motor vehicle are not regulated materials as defined in this article.

Non-repairable motor vehicle means a motor vehicle that:

(1) Is damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal, or

(2) Comes into this state under a title or other ownership document that indicates that the vehicle is non-repairable, junked, or for parts or dismantling only.

Person means an individual, corporation, partnership or any other group acting as a unit.

Real-time electronic web-based database means an electronic filing system in which data is organized by fields and records and that is capable of transmitting a file or responding to input immediately via the Internet.

Regulated material means aluminum material, bronze material, copper or brass material, or regulated metal.

Regulated metal means manhole covers; guardrails; metal cylinders designed to contain compressed air, oxygen, gases or liquids; beer kegs made from metal other than aluminum; historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum; unused rebar; street signs; drain gates; safes; communication, transmission, and service wire or cable; condensing or evaporator coils for central heating or air conditioning units; utility structures, including the fixtures and hardware; aluminum or stainless steel containers designed to hold propane for fueling forklifts; metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions; catalytic converters not attached to a vehicle; fire hydrants; metal bleachers or other seating facilities used in recreational areas or sporting arenas; any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad; insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation; backflow valves; and metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

Salvage materials refers to any motor vehicle, salvage motor vehicle, non-repairable motor vehicle and all their respective parts, scrap, used or obsolete ferrous and nonferrous metals, and regulated materials and regulated metals as defined in this division.

Salvage motor vehicle means:

(1) A motor vehicle that:

a. Has damage to or is missing a major component part to the extent that the cost of repairs, including parts and labor other than the cost of materials and labor for repainting the motor vehicle and excluding sales tax on the total cost of repairs, exceeds the actual cash value of the motor vehicle immediately before the damage, or

b. Is damaged and that comes into this state under an out-of-state salvage motor vehicle certificate of title or similar out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notion; and

(2) Does not include:

a. A non-repairable motor vehicle;

b. An out-of-state motor vehicle with a "rebuilt," "prior salvage," "salvaged," or similar notation; or

c. A motor vehicle for which an insurance company has paid a claim for:

1. The cost of repairing hail damage, or

2. Theft, unless the motor vehicle was damaged during the theft and before recovery to the extent described by subparagraph (1)a.

Used automotive parts recycler means a person licensed under this division to operate a used automotive parts recycling business.

Used automotive parts recycling means the dismantling and reuse or resale of used automotive parts and the safe disposal of salvage motor vehicles or non-repairable motor vehicles, including the resale of those vehicles.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-204. - Zoning requirement.

(a) Proper zoning is required for the establishment or expansion of a use as required by Chapter 35, Unified Development Code of the City Code of San Antonio, Texas.

(b) In granting any required specific use authorization, the city council may impose conditions that the applicant must comply with prior to issuance of a license and a certificate of occupancy by the director of development services for the use of land or buildings on the property pursuant to the approval. City council imposed conditions shall not be construed as conditions precedent to the granting of specific use authorization, but shall be construed as conditions precedent to the granting of a license and certificate of occupancy.

(c) It is unlawful to own or operate a metal recycling entity without the appropriate zoning classification.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-205. - License required.

(a) A person shall not own or operate a metal recycling entity without a valid city issued metal recycling entity license. A used automotive parts recycler license is required in addition to a metal recycling entity license under subsection (b) below.

(b) A person shall not dismantle and reuse or resell used automotive parts without a city issued used automotive parts recycler license.

(c) A person commits an offense under this division if they do not hold a city valid license. Under V.T.C.A., Occupations Code § 1956.003, such an offense is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted, in which event the offense is a Class A misdemeanor.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-206. - Application for license.

(a) An application for a license to operate a metal recycling entity must be made in writing to the director on a form prescribed by the director and shall, among other things, contain:

(1) The name, residence, and business address of the applicant (this information shall be listed for each member of the partnership and for each officer of a corporation);

(2) The name and nature of the proposed operation; and

(3) The present zoning, address, and legal description of the premises for which application is being applied.

(b) All applications must contain the following statement:

"The license applied for shall be subject to all provisions of the codes and ordinances of the city relating to metal recycling entities as well as all state and federal regulations relating to such operations."

(c) Reserved.

(d) All applications must be signed and sworn to by the party applying for the license (by a general partner of a partnership and by an officer of a corporation) before a notary public or other official authorized to administer oaths.

(e) The application must include:

(1) A copy of the national pollutant discharge elimination system discharge permit or notice of coverage for that location if required;

(2) A copy of the approved Texas Commission on Environmental Quality (TCEQ) storm water multi-sector permit for that location; and

(3) A SAWS letter of compliance with the Texas Pollutant Discharge Elimination System for that location dated within the last fifteen (15) months; and

(4) A copy of the State of Texas registration as a metal recycling entity.

(f) The director may require code enforcement officers to physically ascertain that supportive documents of all permits are kept on file at the metal recycling entity. In such cases, the application shall not be approved until the officers have ascertained the documents' existence and validity. Enforcement of federal or state requirements shall remain the responsibility of the appropriate agencies.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-207. - License fees.

The annual metal recycling entity license fee shall be two hundred fifty dollars ($250.00) paid to the city with the license application. The fee will be refunded in the event the license is refused. The license shall cover the period from the first day of January through the last day of December of each year. Only the first year's license may be prorated for each month or fraction thereof. The fee for issuing a duplicate license for one that is lost, destroyed or mutilated shall be ten dollars ($10.00).

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-208. - Issuance, renewal or denial of licenses.

(a) Annual licenses shall be issued by the director upon receipt of the prescribed fee and the completed application, provided that:

(1) The applicant, including partners or officers in the case of a partnership or a corporation, has not been convicted within the previous five (5) years of two (2) or more violations of this division; and

(2) After inspection, the premises are in compliance with this division and other applicable city ordinances and codes.

(b) In the event a license is denied, the applicant may appeal this decision to the city council.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-209. - Revocation of licenses.

(a) The director may revoke a license if the license holder has accrued two (2) convictions for violating this division within a 12-month period, or three (3) convictions within an 18-month period.

(b) Failure to correct multiple issues identified in a monthly inspection report under the following provisions is grounds for the director to revoke the metal recycling entity's license: Sections 16-210.2, Fencing; 16-210.3, Manner of storage; waste containment; weed and brush maintenance; fire safety path; 16-210.4, Motor vehicle crushing equipment or industrial devices; 16-210.6, Rodent and vector control.

Exception: Subsection 16-210.3(f).

(c) Section 16-210.13, Stock to be open for examination, requires that the stock or inventory of any metal recycling entity shall at any time during ordinary business hours be accessible for examination by any peace officer or authorized inspector of the director's office. Failure to comply with section 16-210.13 is grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity under this division.

(d) Section 16-210.15, Acceptance of property suspected stolen; peace officer requested holds; violation, provides that a failure to comply is grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity. Section 16-210.15 applies solely to division 2.

(e) Revocation by the director, if such should occur, may take place only after opportunity is afforded the dealer to confer with the director.

(f) In the event a license is revoked, the license holder may appeal this decision to the city council.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210. - Appeal process for license denial or revocation.

(a) License denial.

(1) The director shall issue a written notice of a metal recycling entity license denial to the applicant by certified mail, return receipt requested. The denial notice shall inform the applicant of the right of appeal and of the time limit for the written notice of appeal.

(2) The applicant shall have the right of an appeal to the city council if requested in writing and delivered to the city clerk within thirty (30) days after the applicant's receipt of the director's written notice of license denial. If currently licensed, an appeal from the order of the director shall stay all proceedings unless the director certifies, by reason of the facts stated in the certificate, a stay in his opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted by a court of proper jurisdiction. Upon disposition by city council, any stay of proceedings is lifted.

(3) The city council may uphold, reverse, or modify the director's decision or action. Failure to appeal to the city council within the prescribed period shall render the director's decision or action final.

(b) License revocation.

(1) The director shall issue the metal recycling entity a written notice of license revocation by certified mail, return receipt requested. The revocation notice shall inform the metal recycling entity of the right of appeal and of the time limit for the written notice of appeal. The revocation shall become final on the 31st day after the metal recycling entity's receipt of said notice unless an appeal is properly filed.

(2) The metal recycling entity has the right of an appeal to the city council if requested in writing and delivered to the city clerk within thirty (30) days after the receipt of the director's written notice of metal recycling entity license revocation. An appeal from the order of the director shall stay all proceedings unless the director certifies, by reason of the facts stated in the certificate, a stay in his opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted by a court of proper jurisdiction. Upon disposition by city council, any stay of proceedings is lifted.

(3) The city council may uphold, reverse, or modify the director's decision or action. Failure to file an appeal to the city council within the prescribed period shall render the director's decision or action final.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.1. - Variances.

The board of adjustment is authorized to grant, pursuant to the procedures set forth in Chapter 35, Unified Development Code of the City Code of San Antonio, Texas, a variance from the provisions of sections 16-210.2 and 16-210.3, but only due to unique circumstances on the premises or adjacent thereto (such as topography), not created by the dealer and not merely financial, and which are not a part of general conditions in the area. The board of adjustment, however, may not grant variances to subsection 16-210.3(g) nor to imposed conditions set forth by city council, nor to requirements set by state or federal regulations.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.2. - Fencing.

(a) All metal recycling entities must be enclosed on all sides (including front and rear) with a substantial and anchored wall or screen fence constructed as an adequate barrier to inhibit the migration of rodents and other vectors from the metal recycling entity to an adjacent property. The wall or screen fence must be constructed with appropriate screen drains so as not to inhibit necessary water drainage.

(b) **The wall or screen fence must be constructed such that the interior of the metal recycling entity is not visible from the exterior.** Buildings, salvage or non-repairable oversized vehicles as defined in Chapter 35, Unified Development Code of the City Code of San Antonio, Texas, and any piles of crushed vehicles or salvage materials in compliance with the International Fire Code, as amended by the city, are excluded from this requirement. **The wall or screen fence for metal recycling entities located within one hundred (100) feet of a property with a residence thereon must be constructed or modified so that it is eight (8) feet in height.** The wall or screen fence for all other existing metal recycling entities must be six (6) feet in height. All metal recycling entities established after the effective date of this ordinance change are required to maintain fences at least eight (8) feet in height.

(c) Those sections of a metal recycling entity which are contiguous with another metal recycling entity or any I-2 zoning district are exempt from subsection (b), if those sections otherwise have an adequate barrier as required by subsection (a), to inhibit the migration of rodents and other vectors between the metal recycling entities or other contiguous I-2 zoning districts.

(d) Any section of wall or screen fence located within one hundred (100) feet of a property with a residence thereon measured from property line to property line shall be constructed or modified so that it extends at least three (3) inches into the ground or base surface (impervious cover). Building up the surrounding ground to cover at least the lower three (3) inches of the section of wall or screen fence shall be considered compliance with this requirement. Should water drainage be substantially affected, the procedure in section 16-210.1 shall be followed.

(e) All walls or screen fences shall be maintained in a neat, solid, substantial, and safe condition. No wall or screen fence shall be kept in a listing, damaged, or decaying condition.

(f) Gates for access to the metal recycling entity's premises at each street or alley line must not have combined openings exceeding thirty (30) percent of the alley or street frontage. All gates for access must not swing outward and must be kept closed when the metal recycling entity is not open for business. This will not apply to access points on a railroad right-of-way.

(g) The fencing requirements in this subsection do not apply to metal recycling entities whose business is conducted solely within a completely enclosed structure or structures.

(h) In the event of a conflict between the fencing requirements of this division and the requirements of Chapter 35, Unified Development Code of the City Code of San Antonio, Texas, the most stringent requirement applies.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.3. - Manner of storage; waste containment; weed and brush maintenance; fire safety path.

(a) Salvage materials on the premises of a metal recycling entity shall be arranged so that a reasonable inspection of, or access to, all parts of the premises can be had at any time by the proper fire, health, police, code enforcement, and building authorities which inspections dealers shall permit during business hours or any reasonable period afterwards.

(b) No salvage materials shall be placed in any manner outside of the metal recycling entity's surrounding screen fence or wall.

(c) Premises shall be kept clean of any weeds and/or brush over twelve (12) inches tall where salvage materials are kept and/or within one hundred fifty (150) feet from the curb line of adjacent streets or the edge of the streets or road surface where no curb exists.

(d) Upon the metal recycling entity's possession of all salvage materials, contaminated liquid wastes along with other contaminated materials, hazardous waste, and special waste—including Freon—shall be removed from the salvage materials and contained, stored, and disposed in compliance with all applicable state and federal regulations. Disposal of accumulated contaminated liquids and materials shall be accomplished by a duly licensed contractor. The metal recycling entity shall maintain on premises all completed manifests evidencing legal disposal for a period of three (3) years from the date of disposal.

(e) All storage of liquid waste shall be subject to applicable local, state and federal regulations. In no event shall any metal recycling entity maintain a volume and weight of stored liquid waste inventory in excess of the lesser of the maximum exempt amounts allowed by the fire code as adopted within the City Code or state and federal regulations for a small quantity generator. **All liquid waste shall be stored only in above ground containers in accordance with applicable federal, state and local laws and administrative regulations.** It is unlawful for any waste to be held in a container that leaks, is in any other manner not in compliance with state and federal regulations, or in any manner fails to completely contain the material in question.

(f) All solid waste, regardless of character or category, shall be so contained as to cause or allow no release or spill of the material in question.

(g) **All metal recycling entities, as defined by this division, shall have a fire safety path. No salvage materials shall be placed within ten (10) feet of the surrounding wall or screen fence.** The fire chief shall oversee fire safety path specifications and compliance for each metal recycling entity and may alter the required number of feet in accordance with the location, use, size, and other characteristics of an individual metal recycling entity. All penalties and appellate procedures of chapter 11 of this Code shall apply to this subsection.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.4. - Motor vehicle crushing equipment or industrial devices.

(a) **Motor vehicle crushing shall be performed in compliance with TCEQ and SAWS regulations.**

(b) Motor vehicle crushing is only allowed at licensed used automotive parts recyclers or metal recycling entities.

(c) It is unlawful for motor vehicle crushing equipment or industrial devices to operate in contradiction to this section and chapter 21, Offenses and miscellaneous provisions, article III, Noise, of this Code.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.5. - Emergency contact numbers.

(a) All metal recycling entities shall place and maintain a sign on the premises that may be read from the street right-of-way listing the names and telephone numbers of at least one (1) person in the county who may be called to give admittance to the premises in case of emergency.

(b) It is unlawful to fail to place and maintain a sign as required under this section.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.6. - Rodent and vector control.

(a) All persons owning or operating metal recycling entities shall have a rodent and vector extermination treatment covering the entire premises conducted a minimum of once every six (6) months, conducted in such a manner and utilizing such chemicals as are acceptable to the director.

(b) A rodent and vector control program is the responsibility of all persons owning or operating a metal recycling entity and shall be on-going for the duration of the metal recycling entity's operation.

(c) A code enforcement officer shall inspect all metal recycling entities, as defined by this division, within the city a minimum of once every six (6) months. At the time of the inspection, the inspector shall be provided with evidence to prove that such extermination procedure has occurred within the preceding six-month period and that the person who owns or operates a metal recycling entity has an on-going program for observation, determination, and control of rodents and vectors. The presentation of evidence of a service contract with a recognized and licensed pest control contractor may satisfy this requirement.

(d) If a professional exterminator has been employed, a receipt for payment for services rendered shall be provided. If the person conducts the extermination without using a professional exterminator, the person shall request health department certification at the time the extermination occurs and furnish the code enforcement officer with such evidence sufficient to show that the control has been accomplished in an efficient manner.

(e) It is unlawful for any person to fail to have the necessary rodent and vector extermination conducted in accordance herewith, and it is also unlawful to fail to present to the code enforcement officer upon

request the necessary verification of such effective extermination or allow the required entry to the premises.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.7. - Monthly inspections; nuisance declared.

(a) The development services department is authorized to conduct monthly inspections of all metal recycling entities for the purpose of assuring compliance with the terms of this division. However, a code enforcement officer or peace officer may inspect a metal recycling entity upon reasonable suspicion of any wrongdoing at any time activity regulated under this ordinance is conducted. A form shall be devised by said department to be completed at the time of such inspections indicating the date the inspections occurred. This form indicating the date of the last inspection shall be posted by the metal recycler in a conspicuous place on the premises at all times.

(b) **Conditions maintained in violation of this division which impact public health, safety, or welfare, or which deprive neighbors of their safe or peaceful use of nearby properties shall be unlawful and shall be deemed a public nuisance.** Further, a failure to allow either monthly or other inspections or post inspections as required is unlawful.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.8. - Time limit for compliance by newly annexed metal recycling entities.

(a) Metal recycling entity businesses which are annexed into the city shall have a period of one (1) year from the effective date of the annexation to install fencing as required by this division. Persons whose metal recycling entities are annexed shall also demonstrate compliance with existing federal, state, and county laws and regulations applicable to fencing requirements for such facilities at the date of annexation.

(b) Subsequent to annexation, the director shall promptly notify affected license holders in newly annexed areas of the obligations under this division.

(c) It is unlawful for a person to fail to install fencing or demonstrate federal, state and county legal compliance as required under this section.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.9. - Records required to be kept by metal recycling entities as to regulated material.

(a) The provisions of this section apply to all business carried on at a single location. With the exception of the sale or transfer of aluminum cans, a person who owns or operates a metal recycling entity shall keep at the place of business a record in a real-time electronic web-based database, in a form and method approved by the chief of police, in which it shall be entered daily, in English, a full description of each transaction in which personal property is purchased or otherwise received at the place of business. Such description shall include:

(1) The date and time of receipt of any item;

(2) The full name and current address of the person or place of business from which each item was received;

(3) A clear thumbprint impression from the person seeking to transfer, sell or otherwise give the items that are the subject of each transaction;

(4) Verified evidence that the person transferring, selling or otherwise giving the items is at least eighteen (18) years of age by presentation of valid identification, including a photograph of the face of person transferring, selling or otherwise giving the item, in the form of:

a. A current driver's license from Texas or another state within the United States;

b. An identification card issued by the state department of public safety; or

c. United States military identification.

(5) A description of the salvage vehicle and/or trailer or other mode of transportation in or on which each item received was carried to, delivered or transported to the metal recycling entity including state and license plate number, if applicable;

(6) The individual transaction number assigned by the metal recycling entity to each item received;

(7) A description of the items received as part of the transaction including, where customary in the business, the size, weight, material, and any other designations or descriptions customarily employed in the sale and purchase of such items;

(8) A digital photo of the seller, and digital photograph of items received;

(9) The name or employee number of the employee who facilitates or conducts the transaction.

(b) The real-time electronic web-based database described in subsection (a) shall be created and maintained by the police department. The person who owns or operates the metal recycling entity or its agents or employees shall forward the required record and descriptions set forth in subsection (a) in an electronic format to the designated police department web site before the close of business on each day on which the metal recycling entity is open for business. Failure to comply with any provision of this section is unlawful and punishable as provided for in this division and is grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity under this Code.

(c) The person who owns or operates a metal recycling entity or agents or employees of such entity shall maintain copies of consecutively numbered receipts provided to the seller or transferor of the property. Such receipt shall be dated on the actual date of the transaction and shall list the items sold or otherwise transferred. A printed version of the record input and transmitted to the real-time electronic web-based database as described in this section shall satisfy this requirement. An accurate copy or record of receipts obtained shall be retained for a period of not less than one (1) year.

(d) A person who owns or operates the metal recycling entity or the agents or employees shall, upon request, submit and exhibit the various business records that are required to be maintained under this section for inspection or copying by any peace officer or authorized inspector of the director. Failure to maintain or to so permit the examination or copying of such records when requested is unlawful and punishable as provided under this division.

(e) The metal recycling entity shall be on-line with the real-time database within ninety (90) days of the approval and signing of the ordinance from which this division derives by the city council. All other sections of this division will be immediately enforced upon the approval and signing of the ordinance from which this division derives by city council.

(Ord. No. 2012-12-13-1006, §§ 2--51, 12-13-12)

Sec. 16-210.10. - Government or utility property.

(a) **It is unlawful for any person who owns or operates a metal recycling entity, or agents or employees of said entity to purchase or receive an item of property, including but not limited to street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures, on which are written or affixed the words "Property of the City of San Antonio"**

or other words or markings demonstrating ownership by the city except in the following circumstances:

(1) Where the person offering such property for sale is an employee of the city authorized by the director to make such a sale and provides the person who owns or operates a metal recycling entity or agents or employees of said entity with a written authorization from the city manager for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the director evidencing the purchase of such property by the person offering such property; or

(3) Where the person offering such property for sale presents at the time of such offer a valid authorization for the disposal of "surplus," "salvage," scrap," and e-waste" in accordance with the city procurement policy and procedures manual as part of a contract signed by the director responsible for the associated project.

(b) **It is unlawful for any person who owns or operates a metal recycling entity or agents or employees of said entity to purchase or receive an item of property that is marked with any form of the name or initials of a governmental agency, including but not limited to the state and the United States of America and their agencies and political subdivisions or that the person who owns or operates a metal recycling entity or agents or employees of said entity know or should reasonably be expected to know belongs to a governmental agency, including but not limited to street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures**, except:

(1) Where the person offering such property for sale is an employee of the governmental agency authorized by that agency to make such a sale and provides the person who owns or operates a metal recycling entity or agents or employees of said entity with a written authorization from the agency for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the governmental agency evidencing the purchase of such property by the person offering such property; or

(3) Where the person offering such property for sale presents at the time of such offer a valid authorization for the disposal of "surplus," "salvage," "scrap," and "e-waste" or analogous concepts in accordance with established policies and procedures as part of a contract signed by the agency director responsible for the associated project.

(c) It is unlawful for any person who owns or operates a metal recycling entity or agents or employees of said entity to purchase or receive an item of property that is marked with any form of the name or initials of an electrical, telephone, cable, or other public utility company or that the person who owns or operates the metal recycling entity or agents or employees of said entity know or should reasonably be expected to know belongs to a public utility unless the person offering such property for sale presents at the time of such offer a valid receipt from the public utility company evidencing the purchase of such property by the person offering such property or a contractual agreement signed by the director of the public utility company authorizing the sale and disposal of "surplus," "salvage," "scrap," and "e-waste" or analogous concepts in accordance with established policies and procedures.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.11. - Acceptance of building construction materials.

(a) It is unlawful for any person who owns or operates a metal recycling entity or agents or employees of said entity to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material unless compliance is made with sections 16-210.9 and 16-210.14.

(b) It is unlawful for any person who owns or operates a metal recycling entity or agents or employees of said entity to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material unless the person who owns or operates the metal recycling entity or agents or employees of said entity:

(1) Records, along with the description of the property, the serial number, or other identifying characteristics of each part or piece of building construction material; or

(2) Obtains a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer, that property.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.12. - Acceptance of air conditioning unit parts.

If regulated material being offered for sale includes condensing or evaporator coils for central heating or air conditioning units, the person offering it for sale must display:

(1) Their air conditioning and refrigeration contractor license issued under V.T.C.A., Occupations Code ch. 1302, subch. F or G; or

(2) Their air conditioning and refrigeration technician registration issued under V.T.C.A., Occupations Code ch. 1302, subch. K; or

(3) A receipt, bill of sale, or other documentation showing that they purchased the coils they're attempting to sell; or

(4) A receipt, bill of sale, or other documentation showing that they purchased a replacement heating or air conditioning unit.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.13. - Stock to be open for examination.

The stock or inventory of any metal recycling entity shall at any time during ordinary business hours be accessible for examination by any peace officer or authorized inspector of the director's office. Failure to comply with any provision of this section, in addition to being unlawful and punishable as provided in this division, shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity under this division.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.14. - Articles to be retained at least seventy-two (72) hours; tag; exceptions.

(a) Notwithstanding the provisions of subsections (b) and (c), it is unlawful for any person who owns or operates a metal recycling entity to process, dismantle or in any manner alter, dispose of, sell or remove from the premise any regulated metal purchased or otherwise received at the licensed place of business for seventy-two (72) hours after receipt, excluding weekends and holidays, provided that there is no requirement to keep aluminum cans for more than twenty-four (24) hours. During such 72-hour period, all items of property shall be stored or displayed at the business location, in the exact form received, and in a manner so as to be identifiable from the description entered in the database. Such property shall not be kept in such a manner so as to prevent or impede its examination.

(b) A peace officer with reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity is stolen may place the item on hold in the manner provided by V.T.C.A., Occupations Code § 1956.037.

(c) Exceptions. A person who owns or operates a metal recycling entity or an agent or employee of said entity is not required to comply with the provisions of this section if the person who owns or operates a metal recycling entity or agent or employee of said entity verifies that the person or entity seeking to sell or otherwise transfer the metal items has one of the following licenses or permits to establish that he is a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of business:

(1) A valid city-issued metal recycling entity license, which the metal recycling entity shall record by photocopying the license or recording the license number in connection with the sale and maintain for a period of not less than three (3) years, or

(2) A valid city-issued construction, demolition, or electrical permit, which the metal recycling entity shall record by photocopying the permit or recording the project number located on the permit in connection with the sale and maintain for a period of not less than one (1) year.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.15. - Acceptance of property suspected stolen; peace officer requested holds; violation.

(a) It is the duty of every person who owns or operates a metal recycling entity or the agents or employees of said entity to report immediately to the police department, by filing a formal complaint, any offer to sell to the person who owns or operates the metal recycling entity or the agents or employees of said entity, property that such person who owns or operates the metal recycling entity, or agents or employees of said entity have actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer. Such person who owns or operates the metal recycling entity or the agents or employees of said entity shall also report any property acquired by the person who owns or operates the metal recycling entity, that the person who owns or operates the metal recycling entity or agents or employees subsequently determine or reasonably suspect to be stolen property, and the person who owns or operates metal recycling entity, or agents or employees shall furnish such other information as might be helpful to the police in investigating the matter.

(b) It is the duty of every person who owns or operates a metal recycling entity or agents or employees to hold all suspected stolen property in a secure place for sixty (60) days upon request by a peace officer. The person who owns or operates a metal recycling entity or agents or employees, may not process or remove the property from the premises before the 60th day after receipt of the request from a peace officer to hold the property unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(c) Failure to comply with any provision of this section is unlawful and punishable as provided in this division and grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity under this division.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.16. - Facsimile, telecopy, or similar equipment required.

A person who owns or operates a metal recycling entity shall maintain at the place of business, or otherwise have immediate access to, a facsimile, telecopy, or other equipment of similar function on which notifications of stolen property or other notifications relating to regulated metal property may be expeditiously received from the police department. The equipment must be operable at all times during the usual and customary business hours of the metal recycling entity. The person who owns or operates

a metal recycling entity shall maintain the facsimile number or other access number of the equipment on file with the chief of police and shall notify the chief of police within twenty-four (24) hours after any change in the number. Failure to comply with this section is unlawful and punishable as provided in this division.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.17. - Purchasing or receiving goods from minors.

(a) It is unlawful for any person who owns or operates a metal recycling entity or agent or employee to purchase or otherwise receive in the course of business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor, unless;

  (1) The minor is accompanied by his parent or guardian, who shall state in writing, that such transaction is taking place with such parent's or guardian's full knowledge and consent;

  (2) The minor has a valid official identification document such as a driver's license; or

  (3) The only items offered for sale by the minor are aluminum cans, or non-regulated materials.

(b) It is the duty of such person who owns or operates a metal recycling entity or an agent or employee, to preserve and keep on file, and available for inspection, such written statements of consent for a period of not less than one (1) year. A violation of this subsection is unlawful and punishable as provided in this division.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.18. - Acceptance of property inscribed with company name.

It is unlawful for any person who owns or operates a metal recycling entity, or the agents or employees, to purchase or receive an item of property that is marked with any form of the name or initials of a private company or that the person who owns or operates a metal recycling entity or agent or employee knows or should reasonably be expected to know belongs to a private company unless the person offering such property for sale presents at the time of such offer a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.19. - Acceptance of property delivered by shopping cart.

It is unlawful for any person who owns or operates a metal recycling entity, the agents or employees to purchase or receive an item of property that is transported to the metal recycling entity by a shopping cart that is marked with any form of the name or initials of a private company or that the person who owns or operates the metal recycling entity, or agent or employee knows or should reasonably be expected to know belongs to a private company unless the person operating the shopping cart presents at the time of transportation of property to the person who owns or operates the metal recycling entity or the agent or employee a valid receipt from the owner of the shopping cart evidencing the purchase of the shopping cart by the person operating the shopping cart.

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

Sec. 16-210.20. - Violation and penalties.

It is unlawful for a person to do or perform any act prohibited by this division, or fail to do or perform any act required by this division. A violation under this division is a Class C misdemeanor offense, unless specifically stated otherwise, and upon conviction, a person shall be fined an amount not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00).

(Ord. No. 2012-12-13-1006, §§ 2—51, 12-13-12)

APPENDIX E

Violations Chart 2007-16

Date	Address	Violation
04/09/2007	925 Somerset	Vehicle parts on ground
02/05/2008	925 Somerset	Weeds Debris No building permit
06/09/2008	925 Somerset	Hazardous materials on perimeter Emergency signage Fence Vehicles stacked too high Tires on ground Tanks, radiators, batteries on ground Overgrown weeds Hazardous waste not removed
07/21/2008	925 Somerset	Fence Vehicles stacked too high Hazardous materials on perimeter Fire lane obstructed Vehicle parts on ground Weeds Hazardous waste not removed Improper storage of liquid waste
02/20/2009	819 Somerset	Vehicles on ground Hazardous materials on perimeter Weeds
02/20/2009	925 Somerset	Hazardous materials on perimeter
07/27/2009	925 Somerset	Hazardous materials on perimeter Hazardous waste not removed from vehicle Improper storage of hazardous liquids
07/14/2010	925 Somerset	Oil runoff Fluids in uncovered containers Unauthorized oil discharge onto soil Massive amounts of oil spilled
08/04/2010	925 Somerset	Improper building permits
02/09/2011	925 Somerset	Fence Tires improperly stored Hazardous materials on perimeter
06/09/2011	925 Somerset	Oil dumped on crushing pad
06/27/2011	925 Somerset	Dumping oil

		Soil contaminated Improper drainage of oil
07/07/2011	925 Somerset	Dumping oil Improper drainage of oil
08/30/2011	925 Somerset	Fence
09/27/2011	925 Somerset	Vehicles on ground Oil on ground Hazardous materials on perimeter
02/15/2012	925 Somerset	Oil pooled near crusher
03/28/2012	925 Somerset	Fence
04/03/2012	925 Somerset	Improper zoning
05/01/2012	925 Somerset	No building permit Electrical hazards
06/23/2014	925 Somerset	No certificate of occupancy No building permits
07/31/2014	925 Somerset	No certificate of occupancy
02/27/2015	925 Somerset	No building permits for multiple buildings No certificate of occupancy for multiple buildings
04/08/2015	9611 New Laredo	No certificate of occupancy Fence Hazardous materials on perimeter No rodent protection
04/15/2015	819 Somerset	Hazardous materials on perimeter No rodent protection
04/15/2015	925 Somerset	Fence Hazardous materials on perimeter Weeds No emergency contact
05/08/2015	925 Somerset	Fence Hazardous materials on perimeter
05/13/2015	9611 New Laredo	Fence Hazardous materials on perimeter Weeds
05/18/2015	925 Somerset	Engine blocks overflowing containment
06/03/2015	9611 New Laredo	Fence Hazardous materials on perimeter
06/4/2015	819 Somerset	Hazardous materials stacked too high Hazardous materials on perimeter

		Lack of required fire lane
07/08/2015	9611 New Laredo	Improper storage of auto parts Fence No rodent protection Hazardous materials on perimeter
09/04/2015	9611 New Laredo	Fence
09/11/2015	925 Somerset	No certificate of occupancy
10/08/2015	925 Somerset	No certificate of occupancy
10/14/2015	9611 New Laredo	Gate damage
12/7/2015	819 Somerset	No certificate of occupancy Operating without a license
01/20/2016	819 Somerset	Operating without license Hazardous materials on perimeter
01/21/2016	9611 New Laredo	Operating without License Fence
01/20/2016	925 Somerset	Operating without license
02/23/2016	9611 New Laredo	Operating without license Fence
03/15/2016	819 Somerset	Operating without license
03/21/2016	9611 New Laredo	Operating without license Improper storage Fence No rodent control Hazardous materials overflowing perimeter Weeds Hazardous liquids not removed Improper storage of liquid wastes Improper displaying of monthly inspection
03/25/2016	925 Somerset	Operating without license
04/28/2016	819 Somerset	Operating without license
04/28/2016	925 Somerset	Operating without license
05/11/2016	819 Somerset	Operating without license
05/11/2016	925 Somerset	Operating without license
06/01/2016	9611 New Laredo	Fence Gate damaged
06/15/2016	819 Somerset	Operating without license Fence Hazardous materials on perimeter
06/15/2016	925 Somerset	Operating without license

		Hazardous materials on perimeter Fence
07/05/2016	9611 New Laredo	Fence
07/15/2016	819 Somerset	Hazardous materials on perimeter
08/30/2016	925 Somerset	No certificate of occupancy
09/10/2016	925 Somerset	No certificate of occupancy Weeds Hazardous materials on perimeter
09/13/2016	9611 New Laredo	Weeds Fence
09/20/2016	819 Somerset	Weeds
09/20/2016	925 Somerset	No certificate of occupancy Weeds Hazardous materials on perimeter
10/28/2016	925 Somerset	No certificate of occupancy Hazardous liquids not drained Improper storage of hazardous materials

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Denise Newlin on behalf of Renée Yanta
Bar No. 787483
info@Reneeyantalaw.com
Envelope ID: 44856107
Status as of 07/28/2020 07:49:56 AM -05:00

Associated Case Party: San Antonio Auto & Truck Salvage

Name	BarNumber	Email	TimestampSubmitted	Status
Jon Todd Powell	797260	jon@jpowell-law.com	7/27/2020 2:55:02 PM	SENT
John Johnson	24094002	mickey@jpowell-law.com	7/27/2020 2:55:02 PM	SENT
Renee Yanta	787483	info@reneeyantalaw.com	7/27/2020 2:55:02 PM	SENT
Renée Yanta		former judge@Reneeyantalaw.com	7/27/2020 2:55:02 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert G. Garza	7737700	robertggarza@cs.com	7/27/2020 2:55:02 PM	SENT
Gregory Van Cleave	24037881	Greg_v@vancleavelegal.com	7/27/2020 2:55:02 PM	SENT
Samuel Vance Houston	24041135	sam@hdappeals.com	7/27/2020 2:55:02 PM	SENT