

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JULIANNE HEIGL, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WASTE MANAGEMENT OF NEW YORK, LLC
and WASTE MANAGEMENT, INC.,

Defendants.

Civil Action No.: 19-cv-05487

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Julianne Heigl (“Plaintiffs”), through her undersigned attorneys, Bursor & Fisher, P.A., bring this Class Action Complaint against Defendants Waste Management of New York, LLC and Waste Management, Inc. (“Defendants”), individually and on behalf of all others similarly situated, and complains and alleges upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by her attorneys:

NATURE OF THE ACTION

1. Up until at least September 2019, in direct violation of New York law, Defendants charged a \$6.50 fee, which Defendants call an “Administrative Charge,” in order for their customers to receive a paper billing statement and/or pay by United States mail.¹

2. Indeed, a portion of Defendants’ website entitled “Explanation of Common Charges,” states “The Administrative Charge is applicable to collection customers. The

¹ In a September 17, 2019 letter responding to Plaintiff’s counsel’s August 30, 2019 letter, Defendants indicated that they stopped charging the “Administrative Charge” to customers with a New York address.

Administrative Charge covers the cost of generating paper invoices and processing paper invoice payments.”²

Administrative Charge

The Administrative Charge is applicable to collection customers. The Administrative Charge covers the cost of generating paper invoices and processing paper invoice payments. By

3. Defendants’ conduct is prohibited by New York General Business Law (“GBL”) § 399-zzz, and therefore constitutes a deceptive act and practice under GBL § 349.

4. Accordingly, Plaintiff brings this putative class action on behalf of herself and all other similarly situated New Yorkers, and seeks compensatory damages, statutory damages, and injunctive relief.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because Defendant Waste Management of New York, LLC is headquartered in this District and because Defendants transact business and/or have agents within this District.

PARTIES

7. Plaintiff Julianne Heigl is a citizen of New York who resides in Hamburg, New York. For approximately 10 years, Ms. Heigl has had an account with Defendants to receive

² <https://support.wm.com/hc/en-us/articles/360028617632-Explanation-of-Common-Charges-> (last visited Sept. 19, 2019).

regular garbage collection and disposal, and since at least 2016, Defendants have charged Ms. Heigl a fee to receive a paper billing statement and/or pay by United States mail, which Ms. Heigl has paid. A screenshot of the \$6.50 Administrative Charge to receive a paper billing statement and/or pay by United States mail from Ms. Heigl's August 2019 statement is below:

Details for Service Location:		Customer ID: 17-17450-23009		
Heigl, Julie, 3600 Columbia St, Hamburg NY 14075-2714				
Description	Date	Ticket	Quantity	Amount
Recyclable material offset				2.86
Service discount	08/01/19		1.00	(6.00)
Bin service rel rcy	08/01/19		1.00	0.00
96 Gal toter rel	08/01/19		1.00	65.43
Fuel / environmental charge				19.50
Regulatory cost recovery charge				2.84
Administrative charge				6.50
Erie county/nys sales tax				8.00
Total Current Charges				99.13

8. Defendant Waste Management of New York, LLC is a New York limited liability corporation with its principal place of business at 123 Varick Avenue, Brooklyn, New York 11237. Waste Management of New York, LLC is a wholly-owned subsidiary of Waste Management, Inc., and provides residential waste management services, including garbage collection and disposal in New York.

9. Defendant Waste Management, Inc. is a Delaware corporation with its principal place of business at 1001 Fannin Street, Houston, Texas 77002. Waste Management, Inc. is one of the nation's leading providers of residential waste management services, including garbage collection and disposal.

NEW YORK GENERAL BUSINESS LAW § 399-zzz

10. Effective April 18, 2011, New York enacted GBL § 399-zzz, which provides that companies, like Defendants, shall not “charge a consumer an additional rate or fee associated

with payment on an account when the consumer chooses to pay by United States mail or receive a paper billing statement.” GBL § 399-zzz(1).

11. The statute provides that “[e]very violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter,” i.e., GBL § 349. *Id.* § 399-zzz(2) (emphasis added).

12. As the New York Legislature found “paper billing and payment fees unfairly impact consumers that do not have Internet access in their homes, as well as those that are uncomfortable using the Internet, including many senior citizens and those concerned about personal privacy.” *See* NY State Assembly Memorandum In Support of Legislation, attached as **Exhibit A**.

13. Additionally, “[p]aper billing and payment fees disproportionately affect low-income consumers, who are less likely to have access to the Internet.” *Id.*

14. “Furthermore, such policies impose an additional burden on those customers who choose to file their billing statements for later reference, as such customers will be forced to bear the cost of printing electronic billing statements on their home printer.” *Id.*

CLASS ACTION ALLEGATIONS

15. Plaintiff seeks to represent a class defined as all New York residents who were charged a fee to receive a paper billing statement and/or pay by United States mail by Defendants. Excluded from the Class is any entity in which Defendants have a controlling interest, and officers or directors of Defendants.

16. Members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but

may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants.

17. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: (a) whether Defendants charged their customers a fee in order to receive a paper billing statement; (b) whether Defendants charged their customers a fee in order to pay by United States mail; and (c) whether any such fee(s) constitutes a violation of GBL § 399-zzz.

18. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff and the Class sustained damages as a result of Defendants' uniform wrongful conduct, based upon Defendants charging their customers a fee in order to receive a paper billing statement and/or pay by United States mail.

19. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

20. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also

presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Deceptive Acts Or Practices, New York GBL § 349
(On Behalf Of The Class)

21. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

22. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendants.

23. By the acts and conduct alleged herein, Defendants committed deceptive acts and practices by charging their customers a fee in order to receive a paper billing statement and/or pay by United States mail.

24. The foregoing deceptive acts and practices were directed at consumers.

25. The foregoing deceptive acts and practices are misleading in a material way because they constitute an unlawful fee under GBL § 399-zzz.

26. Plaintiff and members of the Class were injured because they were unlawfully charged a fee in order to receive a paper billing statement and/or pay by United States mail. As a result, Plaintiff and members of the Class have been damaged in the full amount of fees they paid to Defendants in order to receive a paper billing statement.

27. On behalf of herself and other members of the Class, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty dollars,

whichever is greater, three times actual damages, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the other Class members respectfully request that the Court:

- A. Certify the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Award damages, including compensatory, exemplary, statutory, incidental, consequential, actual, and punitive damages to Plaintiff and the Class in an amount to be determined at trial;
- C. Award Plaintiff and the Class their expenses and costs of the suit, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees;
- D. Grant restitution to Plaintiff and the Class and require Defendant to disgorge their ill-gotten gains;
- E. Permanently enjoin Defendants from engaging in the unlawful conduct set forth herein; and
- F. Grant any and all such other relief as the Court deems appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: September 27, 2019

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta
Philip L. Fraietta

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New York, NY 10019
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Email: fklorczyk@bursor.com

Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JULIANNE HEIGL

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Bursor & Fisher, P.A. 888 Seventh Avenue, New York, NY 10019 646-837-7150

DEFENDANTS

WASTE MANAGEMENT OF NEW YORK, LLC and WASTE MANAGEMENT, INC.

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d) - Class Action Fairness Act

Brief description of cause: Violation of New York General Business Law Sections 349 & 399-zzz

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/27/2019 SIGNATURE OF ATTORNEY OF RECORD /s Philip L. Fraietta

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

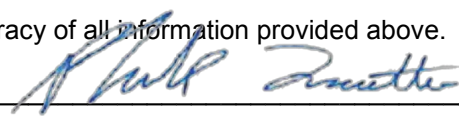
If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No
(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
 Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
 Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JULIANNE HEIGL, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

WASTE MANAGEMENT OF NEW YORK, LLC and WASTE MANAGEMENT, INC.

Defendant(s)

Civil Action No. 19-cv-05487

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Waste Management of New York, LLC
123 Varick Avenue
Brooklyn, New York 11237

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Philip L. Fraietta, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 19-cv-05487

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JULIANNE HEIGL, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

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Defendant(s)

Civil Action No. 19-cv-05487

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Waste Management, Inc. 1001 Fannin Street Houston, Texas 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Philip L. Fraietta Bursor & Fisher, P.A. 888 Seventh Avenue New York, NY 10019

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 19-cv-05487

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset