

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

INNERCITY RECYCLING SERVICE LLC;)	
KENNETH SERAPIGLIA; K & R AUTO SALVAGE, INC.;)	
RHODE ISLAND RECYCLED METALS, LLC and)	
other similarly situated businesses and individuals)	
)	
Plaintiffs)	
)	
vs.)	C.A. 13-648ML
)	
SMM NEW ENGLAND CORPORATION;)	
JOHN DOE COMPANY)	
)	
Defendants)	

FIRST AMENDED CLASS ACTION COMPLAINT

1. The plaintiffs, Inncity Recycling Service LLC; Kenneth A. Serapiglia; K&R Auto Salvage, Inc. and Rhode Island Recycled Metals, LLC on behalf of themselves and all other similarly situated businesses and individuals, allege, upon personal knowledge as to themselves and on information and belief as to other matters, as follows:

INTRODUCTION

2. This class action lawsuit challenges the manner in which SMM New England Corporation operates its metal recycling facilities and fails to lawfully compensate its scrap metal suppliers.
3. As a result, these plaintiffs have suffered damages.
4. On behalf of themselves and other similarly situated businesses and individuals, plaintiffs seek the relief of this Court.

PARTIES

5. Plaintiff, Inncity Recycling Service LLC ("Inncity") is a Rhode Island corporation with a principal place of business at 85 Carlsbad Street, Cranston, Rhode Island.
6. Plaintiff, Kenneth Serapiglia ("Serapiglia") is the president of Inncity and a resident of Swansea, Massachusetts.
7. Plaintiff, K&R Auto Salvage, Inc. ("K&R Auto") is a Rhode Island corporation with a principal place of business at 950 Smithfield Road, North Providence, Rhode Island.

8. Plaintiff, Rhode Island Recycled Metals, LLC ("RI Metals") is a Rhode Island corporation with its principal place of business at 434 Allens Avenue, Providence, Rhode Island.
9. On information and belief, defendant SMM New England Corporation ("SMM" or "Sims") is a Delaware corporation with its principal place of business in North Haven, Connecticut. SMM operates two metal recycling facilities in Rhode Island located at 30 Fields Point Drive, Providence and 242 Allens Avenue, Providence. SMM also operates a metal recycling facility in North Haven, CT.
10. The defendant, John Doe Company, named pursuant to R.I.G.L. §9-5-20, is a business entity, whose identity and business structure(s) is unknown, and is engaged in buying and/or selling scrap metal and did in fact do business with SMM at one or all of its locations in Rhode Island and/or Connecticut.

CLASS ACTION REPRESENTATION ALLEGATION

11. Plaintiffs bring this Class Action pursuant to R.I. R. Civ. P. 23 on behalf of themselves and all scrap metal recyclers who sell to, could sell to or in the future will sell to SMM and who have been or in the future will be subjected to unlawful reductions to their loads by way of manual weights, adjustments for non-conforming materials, deductions and/or re-allocation, false identification or rejection of non-ferrous materials.
12. All Plaintiffs are members of the class they seek to represent.
13. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether the federal and state statutory rights of the class members are being violated; (2) whether the rights of the class members are violated as a consequence of the policies promulgated by or practices and procedures employed or condoned by the Defendant; and (3) whether injunctive relief and other equitable remedies for the class are warranted.
14. The members of the class identified herein are so numerous that joinder of all members is impracticable. The exact number of members of the class is unknown.
15. The representative Plaintiffs' claims are typical of the claims of the class. Each of the named Plaintiffs have sold scrap metal to SMM and had their loads of scrap adjusted to their detriment and to the benefit of SMM. Each named Plaintiff has been or is currently subject to the wrongful policies, practices, and procedures of SMM and/or the RICO enterprise. Each named Plaintiff has suffered harm as a result.
16. The representative Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. The Plaintiffs have retained counsel competent and experienced in complex class action and state and federal RICO litigation.

17. Class certification is appropriate pursuant to Rhode Island Superior Court Rules of Civil Procedure Rule 23 because Defendants have acted or refused to act on grounds generally applicable to the members of the class, making final declaratory and/or equitable relief appropriate as well as class-wide damages.

COUNT I

FRAUD IN THE FACTUM (Innercity and Serapiglia Only)

18. Serapiglia knew Anthony Izzo ("Izzo"), current president of SMM, when they were both children and worked for Izzo when Izzo's family operated Izzo Trucking and a metal recycling business.
19. In or about March 2011, Serapiglia operated a business called Cove Metal, a metal recycling business, with another individual. Cove Metal did business with a company known as Schnitzer Steel ("Schnitzer") which was also in the metal recycling business. Schnitzer's president for part of that time was Izzo, although Izzo subsequently left Schnitzer and became president of SMM. Serapiglia decided to leave Cove Metal by the end of March 2011.
20. The same day Serapiglia ended his business relationship with Cove Metal, Izzo called him and stated that SMM would provide funding for Serapiglia to start a new metal recycling business if Serapiglia would agree to an exclusive supplier contract with SMM. Izzo did not put any other conditions on the funding.
21. At Izzo's direction, Serapiglia began looking for a location for his business. In or about June 2011, he found a location suitable for a metal recycling business at 85 Carlsbad Street, Cranston, Rhode Island ("the premises"). The premises was owned by George Arpin & Sons, Inc. ("Arpin"). Arpin agreed to rent the premises to Serapiglia subject to a lease agreement.
22. On or about April 26, 2012, Serapiglia incorporated Innercity.
23. Innercity began operating on or about August 23, 2012.
24. In or about September 2012, Serapiglia met with Izzo at Izzo's SMM office. Izzo provided Serapiglia with a contract to review. The contract consisted of a few pages and included provisions respecting money that SMM was loaning to Serapiglia's new company and an exclusive supplier agreement to SMM. The contract did not contain a so-called "buyout" provision or onerous conditions constituting any potential default by Innercity and/or Serapiglia under the contract.
25. In or about September 2012, Serapiglia had an attorney review the contract. The attorney said there was nothing unusual about the contract.
26. Serapiglia signed the contract and returned it to William Huling ("Huling"), SMM Director of Operations at the direction of Izzo. Serapiglia did not receive a copy of it.

27. In or about October 2012, Huling called Serapiglia at Izzo's direction and told him he would have to sign a different contract because SMM had loaned additional monies to Innercity after the first contract was signed. Huling did not inform Serapiglia that this different contract would contain any different terms from the one Serapiglia had previously reviewed and signed other than the amount of money being loaned.
28. On or about October 5, 2012, Serapiglia went to SMM office location and met with Izzo and Huling. Izzo was not present for the entirety of the meeting. At Izzo's direction, Huling presented a contract with so-called "sign here" stickers on two pages to Serapiglia. Huling flipped through the contract to those pages and told Serapiglia to sign on those pages. Huling did not tell Serapiglia that this contract had any provisions different from the first contract Serapiglia reviewed and signed nor did Huling or Izzo suggest Serapiglia read the contract before signing it or give Serapiglia an opportunity to read the contract before signing it.
29. The contract dated October 5, 2012 and signed by Serapiglia contains numerous provisions different from the contract that Serapiglia had reviewed and signed previously.
30. Huling at the direction of Izzo subsequently called Serapiglia and told him that he needed to sign an agreement with respect to a revolving credit line for money SMM had or would provide.
31. The total amount of the "start up" loan from SMM to Innercity and Serapiglia totaled \$150,000.00. The funds were provided from August to December 2012 as follows: \$50,000 August 14, 2012; \$25,000.00 on September 10, 2012; \$30,000.00 on October 3, 2010; \$20,000.00 on October 16, 2012; \$20,000.00 on November 1, 2012; and \$5,000.00 on December 24, 2012. At or about the time that each sum was received, Serapiglia signed a term promissory note or revolving promissory note as to each amount.
32. The October 5, 2012 contract includes a term promissory note for \$80,000.00 and a revolving promissory note for \$25,000.00. Serapiglia never received a copy of the note(s) for the remaining \$45,000.00 start up loan.
33. In selling scrap metal materials to SMM, Innercity (and the other Plaintiffs) understood that SMM would utilize its automated scales to obtain the gross weight of the trucks loaded with scrap metal, i.e. "the gross weight," use the scales to obtain the weight of the trucks after the trucks had dumped their load at SMM, i.e. "the tare" and then pay to the plaintiffs the difference in the two weights, i.e. "the net weight" multiplied by an agreed upon value per pound or ton of the load.
34. In selling non-ferrous scrap to SMM, Innercity (and other parties similarly situated) would separate each type of non-ferrous scrap (i.e. copper or brass) into individual cardboard boxes known as gaylords. Before leaving Innercity's facility, the gaylords would be weighed and the weights would be recorded on a document along with the agreed upon price for that particular material. Innercity provided that document to the

SMM driver who picked up the load. On information and belief, SMM weighed the gaylords separately and paid Innerscity based on the weight multiplied by an agreed upon value per pound depending on the type of non-ferrous material.

35. In addition, SMM would be allowed to deduct from the weight of the load the amount of any non-conforming material in the load, e.g., dirt, mud, tires, wood, etc. However, SMM represented that any such deduction for non-conforming materials would be according to its standardized procedures. Moreover, Plaintiffs understood that the custom in the industry is to document by photograph or otherwise, any such non-conforming material including its approximate weight.
36. In or about June 2013, employees of Innerscity reviewed the books and records of Innerscity and discovered a discrepancy between the amount of scrap metal it had purchased from its customers and the amount it had sold to SMM according to SMM's payments. As Innerscity exclusively sold its scrap metal to SMM, the amounts should have been the same however Innerscity estimated that the discrepancy totaled about 95,000 pounds from January 2013 through May 2013. Innerscity then reviewed its records with its accountants on or about June 12, 2013. The accountants' calculated that the dollar amount of the discrepancy totaled \$117,000.
37. Innerscity contacted SMM to request an explanation for the discrepancy. It did not receive a satisfactory response.
38. Innerscity subsequently heard from another company that SMM utilized a computer system provided by a third party known as Systems Alternatives International ("SAI") and that Innerscity should be able to get access through the internet to SMM's SAI records of Innerscity's deliveries to SMM and other related information.
39. On or about August 2013, Innerscity contacted SMM, was told how to get access to the SAI system and began reviewing the records of its deliveries. It was then that Innerscity first learned of SMM's practice of changing or otherwise adjusting the weights of the loads it purchased from Innerscity. Specifically, SMM recorded "manual" weights to the gross and/or the tare of the loads without recording the actual weight(s) reflected on the scale(s); reducing either the gross or net weight of a load; increasing the tare weight of a load; recording adjustments for alleged non-conforming materials and/or re-allocating, falsely identifying or rejecting the type of materials within the loads. SMM's practice of modifying and/or changing the weights always resulted in reducing the amount of Innerscity's load(s) for which SMM paid Innerscity.
40. Innerscity contacted SMM and requested an explanation for the manual weights, adjustments, deductions, and/or re-allocation, false identifications or rejection of the types of materials within the loads. SMM informed Innerscity that certain changes were made to the tare weights to account for changes in the weight of the delivery truck between the time it left Innerscity's facility and arrived at SMM, usually because the truck's driver had filled the truck's gas tank en route. The distance between Innerscity's facility and SMM's facility is between 3 and 4 miles, depending on the route. However,

upon information and belief, SMM utilizes two scales; one scale to weigh the truck on the way into SMM's facility and the other to weight the truck on its way out therefore any change in the tare weight would be minimal.

41. SMM further responded to Innercity's concerns by stating that mechanical problems with the scale(s) resulted in the necessity to record manual weights.
42. In July 2013 Innercity began recording the weights of its loads before they left Innercity's facility. When Innercity was subsequently paid for a lesser amount than what they had recorded, they again complained to SMM. SMM did not provide a satisfactory response.
43. A review of the SAI records respecting Innercity revealed that, SMM subsequently began making adjustments to the loads for "mud/dirt", "wood", "garbage", "rubber tires" or other non-conforming materials that it claimed were included in the loads of scrap metal received by SMM beginning in June 2013. Such adjustments resulted in a reduction of the weight upon which Innercity was paid. However, Innercity's scrap is kept indoors or on its paved lot and does not typically include such non-conforming material. Further, any alleged mud or dirt would usually be eliminated by virtue of Innercity's utilization of an excavator with a claw to load the materials. Before this time, Innercity had never previously received an adjustment for any non-conforming materials.
44. When Innercity further questioned SMM as to the adjustments on their loads, the records of the SAI system were deleted by or at the direction of SMM. SMM further directed Innercity to its "guidelines" respecting deductions for non-conforming materials, a copy of which neither Innercity nor Serapiglia has ever received.
45. Innercity learned that SMM would re-allocate, falsely identify or reject the non-ferrous material before issuing payment to Innercity. The re-allocation, false identification or rejection would not change the total net weight upon which Innercity was paid however certain higher priced non-ferrous material, such as composition brass with a higher copper content, would be re-allocated and weighed with lower priced non-ferrous material, such as brass, or rejected and falsely identified as brass by SMM without notice so that the value of the load would be decreased.
46. When Innercity questioned SMM as to the re-allocation, false identification or rejection of the non-ferrous materials, SMM did not provide a satisfactory response.
47. Innercity subsequently learned that SMM had changed the identifying ticket numbers of certain loads sold to SMM. Such action resulted in Innercity's inability to track its load(s).

COUNT II

FRAUD IN THE INDUCEMENT (Innercity and Serapiglia only)

48. Plaintiffs incorporate herein by reference its allegations in Paragraphs 1 through 47 as though fully set forth herein.

49. On information and belief, SMM and Izzo made the alleged representations as to the terms of the contract(s) to induce Innercity to sign the exclusive contract with SMM and to get Serapiglia to sign the personal guarantee.
50. These representations regarding the terms of the contract(s) were material in that Innercity and Serapiglia believed them and were the basis their decision to sign the agreements.
51. Innercity and Serapiglia reasonably relied on SMM's and Izzo's representations.
52. However, SMM's and Izzo's representations were false. On information and belief, SMM made these representations to Innercity and Serapiglia in order to guaranty the sale of scrap metal to SMM, to meet the necessary quota for outgoing shipments and to compete with their competition, Schnitzer.

COUNT III
DECLARATORY JUDGMENT
(Innercity and Serapiglia only)

53. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 52 as though fully set forth herein.
54. The contract(s) between Innercity and Serapiglia and SMM, including but not limited to the contract dated October 5, 2013, contain terms and conditions to which Innercity and Serapiglia did not consent.
55. SMM has breached the contract(s) by failing to pay Innercity for the full value of its loads by recording manual weights, adjusting the loads for alleged non-conforming materials; making additional deductions to the load; and/or re-allocation, false identification or rejection of the materials within the loads without notice and opportunity to retrieve the material, failing to provide the top tier prices that Innercity was entitled to pursuant to the contract(s) and failing to pay Innercity for their loads on the next day business day.

COUNT IV
BREACH OF CONTRACT (All Plaintiffs)

56. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 55 as though fully set forth herein.
57. Pursuant to the supplier contract or the customs and practices in the industry, Plaintiffs were entitled to full payment for all ferrous and non-ferrous scrap sold to SMM.
58. Innercity was entitled to top tier market price for all ferrous scrap sold to SMM. Innercity was further entitled to payment from SMM on all loads the next business day.

59. SMM failed to pay Plaintiffs the full value of the scrap by recording manual weights, making adjustments for alleged non-conforming materials, making deductions and/or re-allocating, falsely identifying or rejecting the types of materials within the loads.
60. SMM further failed to provide top tier pricing to Innerscity on ferrous scrap sold to SMM and failed to pay Innerscity on their load by the next business day.
61. Innerscity and/or Serapiglia communicated their concerns to SMM and requested that SMM abide by the terms of the contract by paying the full value of their loads, to provide top tier pricing to the scrap sold by Innerscity and to pay on the next day basis. Plaintiffs communicated their concerns and requested a basis for the manual weights, adjustments for alleged non-conforming materials, deductions, and/or re-allocation, false identification or rejection of the types of materials within the loads. SMM has failed to comply.
62. As a result of SMM's breach(s), Plaintiffs have suffered damages.

COUNT V
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(All Plaintiffs)

63. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 62 as though fully set forth herein.
64. SMM breached its obligation of good faith and fair dealing by failing to pay Plaintiffs for the full value of its loads by recording manual weights, making adjustments for alleged non-conforming materials, making deductions, and/or re-allocating, falsely identifying or rejecting the materials within the loads.
65. As a result of SMM's breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages.

COUNT VI
UNJUST ENRICHMENT
(All Plaintiffs)

66. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 65 as though fully set forth herein.
67. Plaintiffs conferred a benefit on SMM by selling ferrous and non-ferrous scrap to SMM. Plaintiffs detrimentally relied upon SMM to pay the full value of such scrap.
68. SMM had knowledge of and was aware of the benefit being conferred and under the circumstances of inequitable conduct by SMM, it would be unjust for SMM to retain the benefit without full payment to Plaintiffs.
69. SMM has derived substantial benefit from purchasing Plaintiffs' scrap.

70. SMM has not paid for all of the scrap it has obtained from Plaintiffs.

71. SMM will be unjustly enriched if it does not pay Plaintiffs the full value of the scrap.

COUNT VII
QUANTUM MERUIT
(All Plaintiffs)

72. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 71 as though fully set forth herein.

73. SMM has derived benefits from the purchase of Plaintiffs' scrap.

74. SMM has not paid for all of the scrap and benefits it has obtained from Plaintiffs.

75. SMM will be unjustly enriched if it does not pay Plaintiffs for the full value of the scrap and the benefits derived therefrom.

COUNT VIII
FRAUD (All Plaintiffs)

76. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 75 as though fully set forth herein.

77. In or about July 2011 through April 2013, RI Metals was selling ferrous and non-ferrous scrap metal to SMM. RI Metals' scrap was delivered to SMM by RI Metals' own trucks or through contracts with third party transporting companies.

78. As of March 2012 through August 2013, K&R Auto was selling ferrous and non-ferrous scrap metal to SMM in the form of automobiles and car parts to SMM. K&R sold its scrap to both SMM's Connecticut and Rhode Island locations.

79. In or about August 2012, Innercity began buying ferrous and non-ferrous scrap metal and selling it to SMM. Innercity would place the scrap metal in large metal containers or on a much less frequent basis, the scrap was delivered to SMM by a separate company. Innercity further loaded the non-ferrous materials into separate gaylords per type of non-ferrous material. In the event that Innercity loaded the scrap into containers or gaylords for pickup, SMM would send its trucks or the trucks of third party trucking contractors to pick up the containers or gaylords and transport them to one of SMM's locations.

80. SMM's facility on Allens Avenue in Providence utilizes more than one scale for weighing scrap. The trucks arriving at the SMM facility were weighed on one scale ("the incoming scale") filled with the scrap metal. This provided the "gross weight." The trucks would then be unloaded. The trucks would then be weighed again on another scale

("the outgoing scale") without any scrap. This provided the "tare/tare weight." At all relevant times, the Allens Avenue location had two automated scales that recorded the weights in a computer software system created by a third party company called SAI. Plaintiffs are without knowledge as to whether the other SMM locations utilized two scales however it is known that all of the locations utilized the SAI database to input information regarding the loads.

81. SMM was obligated to pay the Plaintiffs for the net weight of each truck's load, i.e., the difference between the gross weight and the tare weight, multiplied by a price per ton or per pound for the particular kind of scrap metal in the container, e.g., ferrous or non-ferrous.
82. Upon information and belief, however, SMM was recording manual weights as opposed to recording the readings of the scales themselves. The manual weights recorded by SMM either decreased the gross weight and/or increased the tare. The result being to reduce the net weight of the material upon which the amount paid to Plaintiffs was governed. The SAI records indicate that an "M" following a weight represents a weight that was manually entered" whereas an "A", "B", "C", or "D" indicates the weight recorded by a specific scale.
83. SMM failed to provide a satisfactory reason for the manual weights.
84. On information and belief, SMM made further adjustments either to the gross weight by deducting an amount for alleged non-conforming material such as dirt, mud, wood, rubber tires or garbage. On information and belief, many of these deductions were unlawful as certain non-conforming materials were expected by SMM and figured into the price (e.g. SMM's price per ton for crushed cars on any given day took into account the fact that cars would include non-conforming materials such as plastic, tires, glass and other materials).
85. Upon information and belief it is the practice in the industry to provide proof of an adjustment with a photograph depicting the non-conforming materials found within a load. Upon information and belief, SMM knew of the industry practice and had the means to provide proof but did not provide evidence for all such adjustments in contradiction of the industry standard.
86. On information and belief, SMM further made additional deductions to either the gross or net weight and/or increased the weight of the tare without any basis. Many, if not all, of these additional deductions were identical in weight to the adjustments for alleged non-conforming materials.
87. On information and belief, SMM re-allocated, falsely identified or rejected the non-ferrous material. The re-allocation, false identification or rejection would not change the total net weight upon which payments were based however certain higher priced non-ferrous material, such as composition brass with a higher content of copper, would either be re-allocated and weighed with lower priced non-ferrous material, such as brass, or

rejected and falsely identified as a brass by SMM without notice so that the value of the load would be decreased.

88. On information and belief, Izzo and other SMM employees had full authority to delete and recreate tickets and other identifying information regarding loads in the SAI system. Such authority allowed them to change the weight of a net load and/or to determine whether a load received an adjustment for any alleged non-conforming material. On more than one occasion, Izzo knowingly caused SMM to pay a supplier for the full weight of a load which included known non-conforming materials in order to keep that supplier's business.
89. Plaintiffs are entitled to their damages caused by Defendant's fraud, including lost profits.

COUNT IX
OBTAINING MONEY UNDER FALSE PRETENSES AND RHODE ISLAND
RACKETEERING AND CORRUPT ORGANIZATIONS ACT
(All Plaintiffs)

90. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 89 as though fully set forth herein.
91. SMM's and Izzo's representations to Plaintiffs as well as their manual weights, adjustments, deductions and/or re-allocations, false identifications or rejections of the types of materials within the loads of the scrap metal shipped to SMM constitute larceny by false pretenses pursuant to R.I.G.L. §11-41-4.
92. Such larceny by false pretenses constitutes racketeering activity pursuant to R.I.G.L. 7-15-1(c) hereinafter, "RI RICO".
93. Upon information and belief, SMM is an enterprise with its officers, directors and/or employees of SMM and others unknown, conducting the affairs of the enterprise in violation of the statute by acting in concert to target and defraud Plaintiffs for their own financial benefit.
94. Upon information and belief, the "association-in-fact" enterprise consists of SMM and/or its officers, directors and/or employees and a third party and/or its officers, directors or employees, which sells scrap to SMM, conducting the affairs of the enterprise in violation of the statute by acting in concert to target and defraud Plaintiffs for their own financial benefit.
95. Upon information and belief, the "association-in-fact" enterprise consists of SMM and/or its officers, directors and/or employees and a third party and/or its officers, directors or employees, which is not engaged in business but rather created for the sole purpose of concealing the funds resulting from the enterprise's fraudulent actions, by acting in concert to target and defraud Plaintiffs for their own financial benefit.

96. Upon information and belief, the “association-in-fact” enterprise consists of SMM and/or its officers, directors and/or employees and the computer systems and programs of SAI which company controls the weighing software and assists SMM and/or certain unknown SMM employees in violation of the statute by acting in concert to target and defraud Plaintiffs, conceal the actual weights of Plaintiffs’ loads, by making adjustments or deductions to the weights and/or re-allocating, falsely identifying or rejecting the types of the materials within the loads for their own financial benefit.
97. On information and belief, the enterprise(s) as set forth in Paragraphs 93 through 96 used or invested the money obtained from Plaintiffs in the operation of the “association-in-fact” enterprise or enterprises in violation of R.I.G.L. §7-15-2(a).
98. On information and belief, the enterprise(s) as set forth in Paragraphs 93 through 96 used the money obtained from Plaintiffs to maintain an interest in the “association-in-fact” enterprise or enterprises in violation of R.I.G.L. §7-15-2(b).
99. On information and belief, the enterprise(s) as set forth in Paragraphs 93 through 96 used the money obtained from Plaintiffs to conduct or participate in the affairs of the “association-in-fact” enterprise or enterprises in violation of R.I.G.L. §7-15-2(c).
100. As a result of these actions, Plaintiffs have been injured in their property and are entitled to recover their damages.

COUNT X
FEDERAL RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS ACT
(All Plaintiffs)

101. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1 through 100 as though fully set forth herein.
102. SMM’s practice of mailing payments to the Plaintiffs for the loads reflecting the fraudulent adjustments, deductions, manual weights and/or re-allocation, false identification or rejection of the materials within the loads constitutes mail fraud. 18 USC § 1961(1)(B)
103. Such mail fraud constitutes racketeering activity pursuant to 18 USC §§1961-1968 hereinafter, “Federal RICO”.
104. Defendants engaged in such a pattern of racketeering by committing mail fraud each time it mailed or caused to be mailed to Plaintiffs their payments for loads, which payments reflected the fraudulent adjustments, deductions, manual weights and/or re-allocation, false identification or rejection of material.
105. The enterprise(s) as defined in Paragraphs 93 through 96 was/were engaged in and its/their activities affected interstate commerce.

106. As a result of the actions of the enterprise(s), Plaintiffs have suffered injuries to their business and/or property and are entitled to damages.

WHEREFORE, Plaintiffs hereby demand judgment for the amount of their actual damages, treble damages and reasonable attorney's fees pursuant to R.I.G.L. §7-15-4(c) and 18 USC § 1964(c), punitive damages and reasonable attorney's fees pursuant to R.I.G.L. §6-13.1-5.2(a), and reasonable attorney's fees, pursuant to R.I.G.L. §7-11-605(a), and costs. Plaintiffs further hereby demand:

1. Certification of this case as a class action on behalf of the proposed class; and
2. Designation of Named Plaintiffs as representatives of the class.

In addition, plaintiffs Innercity and Serapiglia seek equitable remedies as follows:

1. A judgment declaring that SMM fraudulently caused and induced them, to enter into a contract(s); that SMM has breached any and all contracts with Innercity and Serapiglia; neither Innercity nor Serapiglia have breached any contract(s) with SMM; that any and all contract(s) between Innercity and Serapiglia with SMM are void; and ordering SMM to refund Innercity the amount of the manual adjustments to the gross and/or tare weights, the amount of the alleged non-conforming materials adjustments, the amount of deductions to the gross weight, the amount of additions to the tare weight and the value of the re-allocation, false identifications or rejections of non-ferrous materials; and
2. Other equitable remedies available under state statutes or as the court may find appropriate.


Plaintiffs,
By their attorney


/s/ Thomas W. Lyons
Thomas W. Lyons #2946
Diane M. Kildea #8144
Strauss, Factor, Laing & Lyons
One Davol Square, Suite 305
Providence, R.I. 02903
Phone: 401-456-0700
Fax: 401-421-4730
ilyons@straussfactor.com

Plaintiffs hereby demand trial by jury.

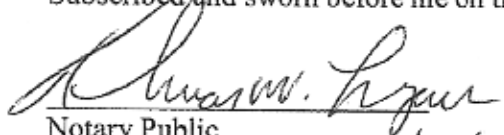
S:\TWL\Innercity Recycling\Drafts\First Amended Innercity Draft Complaint.docx

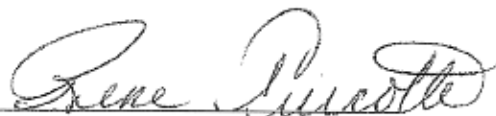
I have read the allegations of the above Complaint and state that the allegations contained in the Counts specifically relating to me, the individual Plaintiff, and/or the Plaintiff business are true and accurate to the best of my knowledge and belief.


Kenneth Serapiglia, Indiv.


Innerscity Recycling Service LLC

Subscribed and sworn before me on this 29 day of September 2013.


Notary Public
My commission expires: 4/26/2014



K&R Auto Salvage, Inc. (only as to Counts IV to X)

Subscribed and sworn before me on this 24 day of September 2013.

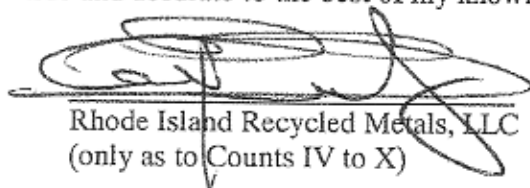


Notary Public

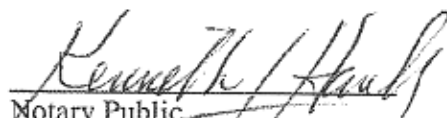
My commission expires:

MICHELLE M. CARRASCO
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES 04/04/2017

I have read the allegations of the above Complaint and state that the allegations contained in the Counts specifically relating to me, the individual Plaintiff, and/or the Plaintiff business are true and accurate to the best of my knowledge and belief.


Rhode Island Recycled Metals, LLC
(only as to Counts IV to X)

Subscribed and sworn before me on this 25th day of SEPTEMBER 2013.


Notary Public
My commission expires:

Kenneth L. Hanley
Notary Public
State of Rhode Island
My Commission Expires: 11/30/16