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16 Attorneys for Plaintiff ADAM MACHADO,  
17 on behalf of the general public as private attorney general.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF SAN MATEO**

20 ADAM MACHADO, on behalf of the general  
21 public as private attorney general,

22 Plaintiff,

23 v.

24 RECOLOGY INC.; RECOLOGY DAVIS; and  
25 DOES 1-50, inclusive,

26 Defendants.

CASE NO.: 22-CIV-04928

**PAGA REPRESENTATIVE ACTION  
COMPLAINT PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT  
(Labor Code §§ 2698 et seq).**

Electronically  
**FILED**  
11/21/2022  
by Superior Court of California, County of San Mateo  
ON  
By /s/ Jennifer Torres  
Deputy Clerk

1 Plaintiff ADAM MACHADO (“Plaintiff”), on behalf the general public and all non-  
2 exempt aggrieved employees, acting on behalf of the California Attorney General as private  
3 attorney general, asserts claims against Defendants RECOLOGY INC.; RECOLOGY DAVIS; and  
4 DOES 1-50, inclusive (collectively “Defendants”) as follows:

## 5 **I. INTRODUCTION**

6 1. This is a representative action for recovery of penalties under the Private Attorneys  
7 General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved  
8 employees” to bring a lawsuit as a representative action on behalf of the general public as private  
9 attorney general and all other current and former aggrieved employees, to recover civil penalties  
10 and address an employer’s violations of the California Labor Code.

11 2. In this case, Defendants violated various provisions of the California Labor Code.  
12 As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a)  
13 failure to pay wages including overtime; (b) failing to pay timely wages required by Labor Code §  
14 203; (c) failing to provide accurate itemized wage statements; (d) failing to reimburse expenses;  
15 and (e) unlawful deductions from wages. As a result Plaintiff seeks penalties under Labor Code  
16 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved  
17 employees.

## 18 **II. JURISDICTION AND VENUE**

19 3. The California Superior Court has jurisdiction over this action pursuant to  
20 California Constitution Article VI, Section 10, which grants the Superior Court “original  
21 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under  
22 which this action is brought do not give jurisdiction to any other court.

23 4. This Court has jurisdiction over Defendants because, upon information and belief,  
24 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally  
25 avails itself of the California market so as to render the exercise of jurisdiction over it by the  
26 California Courts consistent with traditional notions of fair play and substantial justice.

27 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of  
28 Civil Procedure section 395. Defendants are doing business throughout California, including but

not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other aggrieved employees within the State of California. Defendants employ numerous aggrieved employees in in the State of California.

6. On information and belief, Defendants have conducted business within the State of California during the purported liability period and continue to conduct business throughout the State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the similarly situated non-exempt aggrieved employees within California.

7. The California Superior Court also has jurisdiction in this matter because on information and belief there are no federal questions at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, the IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

8. On information and belief, during the statutory liability period and continuing to the present (“liability period”), Defendant consistently maintained and enforced against Defendant’s Non-Exempt aggrieved Employees, among others, the following unlawful practices and policies, in violation of California state wage and hour laws: (a) failure to pay wages including overtime; (b) failing to pay all wages earned and owed upon separation from Defendant’s employ; (c) failing to provide accurate itemized wage statements; (d) failing to reimburse expenses; and (e) unlawfully deducting wages.

9. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and seeking penalties, interest, attorneys' fees and costs.

### III. PARTIES

### A. Plaintiff

10. Plaintiff, ADAM MACHADO was, at all times relevant to this action, a resident of

1 California. Plaintiff was employed by Defendants in approximately November 16, 2020, as a Non-  
2 Exempt Employee with the title of Garbage Truck Driver (Class-B Driver) and worked during the  
3 liability period for Defendants until Plaintiff's separation from Defendants' employ in  
4 approximately September 15, 2021. Plaintiff's duties included but were not limited to: driving  
5 around the city picking up trash-cans and bins, conducting waste management.

6 11. As Defendant's employee, Plaintiff, and all other aggrieved employees were  
7 regularly required to and subsequently suffered:

- 8 a) perform work subject to the control of the employer without being compensated all  
9 wages including overtime and minimum wages, all in violation of California labor laws,  
10 regulations, and the Industrial Welfare Commission Wage Order ("IWC");
- 11 b) not provided accurate itemized wage statements;
- 12 c) not reimbursed for expenses;
- 13 d) not timely paid wages;
- 14 e) unlawful deductions from wages; and
- 15 f) conducting and engaging in unfair business practices.

16 12. On information and belief, Defendants willfully failed to pay all earned wages in  
17 the form regular wages, minimum wages, overtime wages to its Non-Exempt Employees and  
18 Aggrieved Employees; nor have Defendants returned to Plaintiff or Aggrieved Employees, upon  
19 or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks  
20 penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney  
21 general and all other aggrieved employees.

22 **B. Defendants**

23 13. Defendants RECOLOGY INC. and RECOLOGY DAVIS operates as a waste  
24 management business. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who  
25 work or have worked for Defendants over the last year.

26 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,  
27 relationships and extent of participation in the conduct alleged herein, of the defendants sued as  
28 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are

1 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by  
2 such fictitious names. Plaintiff will amend this complaint when their true names and capacities are  
3 ascertained.

4 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly  
5 or indirectly, or through agents or other persons, employed Plaintiff and other Aggrieved  
6 Employees, and exercised control over their wages, hours, and working conditions. Plaintiff is  
7 informed and believes and thereon alleges that each defendant acted in all respects pertinent to this  
8 action as the agent of the other defendants, carried out a joint scheme, business plan or policy in  
9 all respects pertinent hereto, and the acts of each defendant are legally attributable to the other  
10 defendants.

#### 11 **IV. GENERAL ALLEGATIONS**

12 16. At all times set forth herein, Defendants employed Plaintiff and other persons in the  
13 capacity of non-exempt positions, however titled, throughout the state of California.

14 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent  
15 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing  
16 rules and regulations of the IWC California Wage Orders.

17 18. Defendants continue to employ Non-Exempt Employees, however titled, in  
18 California and implement a uniform set of policies and practices to all non-exempt employees, as  
19 they were all engaged in the job duties related to Defendants' waste management business.

20 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and  
21 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge  
22 of the requirements of California's wage and employment laws.

23 20. Plaintiff is informed and believes that during the relevant time frame, all Aggrieved  
24 Employees are citizens of the state of California.

25 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved  
26 Employees based upon an hourly rate.

27 22. On information and belief, Defendants also required Plaintiff and Aggrieved  
28 Employees to work off-the-clock. For instance, Plaintiff, and on information and belief Aggrieved

1 Employees, were required to conduct pre-trip inspections of the truck and equipment, for which  
2 Plaintiff and Aggrieved Employees were not compensated for. On a near daily basis, Defendant's  
3 management required Plaintiff to arrive at least 30 minutes early to conduct pre-trip inspections.  
4 Plaintiff would arrive approximately 45 minutes early to do these required inspections prior to  
5 clocking-in. Despite such time spent performing pre-trip inspections, Defendants failed to  
6 compensate Plaintiff and Aggrieved Employees for this off the clock work.

7         23. Defendants also failed to compensate Plaintiff and Aggrieved Employees for off  
8 the clock work performed while donning and doffing uniforms. Defendants required Plaintiff and  
9 Aggrieved Employees to wear uniforms with the Company logo. Uniforms were kept in Company  
10 lockers at work. The lockers were located before reaching the time clocks. These uniforms  
11 consisted of a button up shirt, long pants with the Company logo, boots, gloves, and a mask.  
12 Defendants required Plaintiff and Aggrieved Employees to put on their uniforms at work prior to  
13 clocking-in. Similarly, Defendants required Plaintiff and Aggrieved Employees to remove their  
14 uniforms after clocking-out for the day. Accordingly, Defendants failed to compensate Plaintiff  
15 and Aggrieved Employees for their off-the-clock time spent donning and doffing required  
16 uniforms.

17         24. Defendants also failed to adequately reimburse Plaintiff and Aggrieved Employees  
18 for business expenses incurred pursuant to Labor Code section 2802. For instance, Plaintiff and  
19 Aggrieved Employees were required to use their personal cell phones for work related purposes.  
20 Plaintiff and Aggrieved Employees used their personal cellphones to stay in contact with  
21 Defendants management, for GPS purposes, to clock-in and clock-out via the ADP application,  
22 and to respond to texts from Defendants. Defendants required Plaintiff to use his personal cell  
23 phone to text message instead of using the company radio. Despite these realities of the job,  
24 Defendants failed to reimburse Plaintiff for the business use of his personal cellphone. Such  
25 business expenditures incurred were incurred in direct consequence of Plaintiff's and Aggrieved  
26 Employees' duties pursuant to Labor Code § 2802.

27         25. Defendants further failed to reimburse Plaintiff and Aggrieved Employees for  
28 necessary business expenses as it relates to costs associated from working from home. For

1 instance, Plaintiff was required to work from home and attend zoom meetings, but Plaintiff was  
2 never reimbursed for his computer or internet expenses.

3       26. Defendants also failed to provide accurate, lawful itemized wage statements to  
4 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In  
5 addition, upon information and belief, Defendants omitted an accurate itemization of total hours  
6 worked, overtime pay, gross pay and net pay figures from Plaintiff and the Aggrieved Employees'  
7 wage statements.

8       27. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
9 mentioned Defendants unlawfully deducted wages from Plaintiff's and Aggrieved Employees' pay  
10 pursuant to Labor Code § 221. For instance, on occasion, Plaintiff's health insurance premiums for  
11 Kaiser Permanente were deducted from his paychecks. Plaintiff went to Kaiser Permanente for  
12 care and was told that he was in fact not covered by any insurance plan, despite Defendants  
13 deducting wages from Plaintiff's paychecks for health insurance. Plaintiff was paying the monthly  
14 premiums by way of the deductions from his paycheck, but was not actually covered by any health  
15 insurance plan. Thus, Defendants unlawfully deducted wages from Plaintiff and Aggrieved  
16 Employees' paychecks.

17       28. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
18 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
19 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
20 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,  
21 meal and rest period premiums, and that Defendants had the financial ability to pay such  
22 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
23 because of the above-specified violations.

24       29. Upon information and belief, Defendants knew and or should have known that it is  
25 improper to implement policies and commit unlawful acts such as:

- 26       (a) failing to pay overtime and minimum wages;
- 27       (b) failing to provide accurate itemized wage statements;
- 28       (c) failing to timely pay Plaintiff and Aggrieved Employees ;

- (d) failure to reimburse business expenses;
- (e) unlawfully deducting wages; and
- (f) conducting and engaging in unfair business practices.

30. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

Plaintiff and Aggrieved Employees they seek to represent are covered by, and Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

#### **REPRESENTATIVE CLAIMS**

##### **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

31. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

32. On September 14, 2022, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

33. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

34. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,

1 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,  
2 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and  
3 California Code of Regulations, Title 8, section 11000 *et seq.*

4 35. At all times relevant, Plaintiff and all other aggrieved employees regularly  
5 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and  
6 rest break requirements of the applicable IWC wage order and the Labor Code.

7 36. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to  
8 accurately pay at least minimum wages due as a result of Defendants' requiring Plaintiff and  
9 aggrieved Employees to work off-the-clock as outlined above.

10 37. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay  
11 overtime wages owed as discussed above due Defendants' requiring Plaintiff and aggrieved  
12 Employees to work off-the-clock as outlined above. Therefore, Defendants violated section 510,  
13 and 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight  
14 hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the  
15 right to overtime compensation at the rate of one and one-half times the regular rate of pay for all  
16 hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to  
17 overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12)  
18 hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular  
19 work week.

20 38. Defendants also willfully violated Labor Code sections 201-203 by failing to  
21 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require  
22 Defendants to pay their employees all wages due either at time of firing, or within seventy-two  
23 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an  
24 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay  
25 the subject employee's wages until the back wages are paid in full or an action is commenced.  
26 The penalty cannot exceed 30 days of wages.

27 39. Plaintiff and all other aggrieved employees who were separated from employment  
28 are entitled to compensation for all forms of wages earned, including but not limited to

1 compensation regular and overtime wages, but to date have not received such compensation,  
2 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

3 40. On information and belief, Defendants willfully failed to pay all wages due and  
4 owing upon separation from employment. These wages include but are not limited to regular and  
5 overtime wages.

6 41. On information and belief, Defendants failed to provide accurate itemized wage  
7 statements which failed to include the rate of pay and total hours worked per pay period, failed to  
8 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful  
9 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant  
10 to Labor Code section 226(a).

11 42. Defendants have failed to provide Plaintiff and aggrieved Employees rates of pay  
12 and the hours for which they worked for any given pay period.

13 43. Defendants have failed to accurately record all time worked.

14 44. Plaintiff and aggrieved Employees have been injured as they were unable to  
15 determine whether they had been paid correctly for all hours worked per pay period among other  
16 things.

17 45. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)  
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee  
20 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
21 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

22 46. On information and belief, Defendants failed to reimburse Plaintiff and aggrieved  
23 Employees for business expenses incurred as described above. Labor Code § 2802 requires  
24 Defendants to indemnify Plaintiff and aggrieved Employees for necessary expenditures incurred in  
25 direct consequences of the discharge of his or her duties. Despite these realities of the job,  
26 Defendants failed to provide reimbursements.

27 47. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or  
28 implied, made by any employee to waive the benefits of this article or any part thereof is null and

1 void, and this article shall not deprive any employee or his or her personal representative of any  
2 right or remedy to which he is entitled under the laws of this State.

3 48. Additionally, Defendants have no accurate records relating to aggrieved  
4 employees' work periods, total daily hours worked, total hours worked per payroll period and  
5 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain  
6 accurate records relating to hours worked daily in violation of Labor Code sections 1174(d),  
7 1174.5.

8 49. As a result of Defendants' unlawful conduct, Plaintiff and aggrieved employees  
9 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours  
10 worked.

11 50. Plaintiff and the Representative aggrieved Employees are entitled to recover  
12 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 15 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 16 2. For reasonable attorneys' fees and costs; and
- 17 3. For such other and further relief as the Court deems proper.
- 18
- 19

20 Dated: November 21, 2022

JAMES HAWKINS APLC

21 By: 

22 JAMES R. HAWKINS, ESQ.  
23 GREGORY MAURO, ESQ.  
24 MICHAEL CALVO, ESQ.  
25 LAUREN FALK, ESQ.  
26 AVA ISSARY, ESQ.  
27 Attorneys for Plaintiff ADAM MACHADO  
28 on behalf of the general public as private  
attorney general

# EXHIBIT A

# JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

**September 14, 2022**

**Via LWDA Website**

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

**Via Certified Mail**

RECOLOGY INC.

RECOLOGY DAVIS

Agent for Service of Process:

Roxanne L Frye

50 California Street, 24<sup>th</sup> Floor

San Francisco, CA 94111

Receipt No.: 7021 1970 0000 9061 0942

**Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff ADAM MACHADO, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, RECOLOGY INC., and RECOLOGY DAVIS through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint