

Alexei Kuchinsky State Bar No. 279405
KUCHINSKY LAW OFFICE, P.C.
220 Montgomery Street, Suite 2100
Fresno, CA 94104
Tel.: (628) 200-0902
Fax.: (628) 200-0907
Email: ak@kuchinskylawoffice.com

Attorney for Plaintiff Javier Rocha

**SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

JAVIER ROCHA, on behalf of all aggrieved
employees,

PLAINTIFF,

VS.

GREENWASTE OF PALO ALTO, LLC,

DEFENDANT.

CASE NO.: 23CV423490

**COMPLAINT FOR VIOLATION AND
ENFORCEMENT OF THE PRIVATE
ATTORNEYS GENERAL ACT**

(Cal. Lab. Code §§2698 *et. seq.*)

Plaintiff Javier Rocha brings this action on behalf of all aggrieved current and former employees of Greenwaste of Palo Alto, LLC and alleges the following:

I. INTRODUCTION

1. This is a representative action brought by Plaintiff Javier Rocha ("Plaintiff") on behalf of himself and all Aggrieved Employees against GreenWaste of Palo Alto, LLC ("Defendant"), under California Labor Code sections 2698 *et. seq.* to recover civil penalties for the following violations of California Labor Code: (1) failure to pay for all hours worked; (2) unlawful deductions; (3) failure to pay overtime; (4) failure to provide compliant meal or rest breaks, and

1 failure to pay premiums for non-compliant meal and rest breaks; (5) failure to provide accurate
2 wage statements and maintain adequate records; (6) failure to reimburse work-related expenses;
3 and (7) failure to pay all wages upon separation.

4 2. Plaintiff seeks to serve as a representative of the general public to enforce and uphold
5 California's wage and hour laws as a representative and private attorneys' general as expressly
6 permitted by Labor Code sections 2698 *et seq.*, pursuant to the Private Attorneys General Act of
7 2004 (known as "PAGA"). Plaintiff has complied with all notice provisions as required by the
8 PAGA to serve as a representative on behalf of the general public. On March 8, 2023, Plaintiff
9 notified Defendant and the California Labor and Workforce Development Agency via certified
10 mail of Defendant's violations under Labor Code section 2966.3. Plaintiff has waited in excess of
11 65 days for Defendant to take remedial action or for the LWDA to intervene in accordance with
12 Labor Code section 2699.3(c). Within the statutory period, the LWDA did not intervene to
13 investigate Plaintiff's claims. Accordingly, Plaintiff files this Complaint as a representative action
14 under the Labor Code section 2699.3(a)(2)(C) and he seeks to recover civil penalties for violations
15 committed by Defendant from March 8, 2022 through the present ("PAGA Period") on behalf of
16 himself and all other current and former non-exempt drivers who worked for Defendant during the
17 PAGA Period pursuant to Labor Code section 2698 *e.t seq.* ("Aggrieved Employees")

18 3. This Complaint asserts claims against Defendant for violations of (a) California Labor
19 Code and (b) applicable Industrial Wage Commission Order ("IWC").

20 **II. VENUE AND JURISDICTION**

21 4. It is appropriate for this court to exercise jurisdiction over Defendant because it resides
22 and/or is doing business in the State of California.

23 5. Further, this Court has jurisdiction over Plaintiff's claims based on, among other statutes,
24 California Labor Code sections 2699, *et seq.* Plaintiff has complied with all requirements set forth
25 in Labor Code section 2699.3 necessary to commence a civil action under the PAGA.

26 6. Venue is proper in this Court in accordance with section 395(a) of the California Code of
27 Civil Procedure because at all relevant times Defendant employed Plaintiff in the County of Santa
28 Clara.

1 7. The damages sought in this matter exceed \$25,000.

2 **III. PARTIES**

3 **A. Plaintiff**

4 8. Plaintiff Javier Rocha is now and was, at all times mentioned herein, a natural individual,
5 residing in the County of Santa Clara, State of California.

6 **B. Defendant**

7 9. Plaintiff is informed and believes and thereon alleges that GreenWaste of Palo Alto, LLC,
8 is, and at all times mentioned herein was, and is a limited liability company registered with the
9 Secretary of State to do business in California as an LLC under Entity No. 202252518645 and that
10 it is the successor to GreenWaste of Palo Alto (“GreenWaste”).

11 **IV. GENERAL ALLEGATIONS**

12 10. Defendant employed Plaintiff as a casual pool driver from December 23, 2019 to January
13 14, 2023 (“Employment Period”). As a driver, Plaintiff was responsible for operating a company
14 collection vehicle to collect various waste materials. In essence, he was responsible for ensuring
15 that all waste containers serviced in his route were emptied and the service location remained
16 clean.

17 11. On average, Plaintiff worked 5 or 6 days per week. While his work hours varied from day
18 to day, on average he worked from 8 to 11 hours Monday through Friday. On Saturdays, he
19 worked shorter shifts that ranged from 5.5 to 8 hours.

20 12. During the Employment Period, Plaintiff was an hourly non-exempt employee, entitled to
21 all protections and benefits of the California Labor Code and Industrial Wage Order No. 9-2001.

22 13. During the relevant employment period, Defendant had a policy of deducting 30 minutes
23 from Plaintiff’s and other Aggrieved Employees’ work hours to account for a meal period that
24 Defendant expected their employees to take. These deductions were made regardless of whether
25 Plaintiff and, on information and belief, the other drivers took their 30-minute meal periods. With
26 the exception of Saturdays, Plaintiff and the drivers could not take their 30-minute meal breaks.
27 Despite Plaintiff’s and other Aggrieved Employees’ inability to take meal periods, Defendant
28 applied 30-minute deductions universally to all Aggrieved Employees.

1 14. Plaintiff and other Aggrieved Employees regularly worked periods in excess of five hours.
2 However, Plaintiff and other Aggrieved Employees were not allowed to take uninterrupted 30-
3 minute “off-duty” meal breaks. Specifically, Defendant failed to provide Plaintiff and, on
4 information and belief other Aggrieved Employees with an opportunity to take uninterrupted 30-
5 minute “off-duty” meal periods and failed to pay one additional hour of wages in lieu thereof. On
6 information and belief, Defendant did not fully compensate Plaintiff and other Aggrieved
7 Employees one additional hour of pay for its failure to provide meal periods, as required under
8 Labor Code Section 226.7.

9 15. Plaintiff and, on information and belief, other Aggrieved Employees were regularly
10 required to work periods in excess of four hours or a major fraction thereof without being provided
11 rest periods. Defendant neither permitted nor authorized Plaintiff and, on information and belief,
12 other Aggrieved Employees to take lawful rest periods.

13 16. On information and belief, Plaintiff and other Aggrieved Employees did not waive rest
14 periods during their employment period. Defendant did not fully compensate Plaintiff and, on
15 information and belief, other Aggrieved Employees one additional hour of pay for their failure to
16 provide rest breaks, as required under Labor Code Section 226.7. Defendant did not fully
17 compensate Plaintiff and, on information and belief, other Aggrieved Employees one additional
18 hour of pay for its failure to provide rest periods, as required under Labor Code Section 226.7.

19 17. On information and belief, during the Employment Period, Defendant’s auto-deduct policy
20 caused Plaintiff and other Aggrieved Employees to be underpaid at least 30 minutes per shift.
21 Defendant automatically deducted 30 minutes from each workday to account for meal breaks even
22 though the drivers did not take meal breaks. This policy resulted in systematic underpaid hours,
23 including overtime that affected Plaintiff and other drivers.

24 18. While working for Defendant, Plaintiff and other Aggrieved Employees were entitled to be
25 indemnified for all necessary expenditures or losses that they incurred in direct consequence of the
26 discharge of their duties as required in California Labor Code section 2802.

27 19. To perform their duties as drivers, Plaintiff and, on information and belief, other
28 Aggrieved Employees were required to use personal cell phones on a daily basis. (*i.e.*,

1 communication with dispatchers, supervisors, and other employees) However, Defendant failed to
2 reimburse the Aggrieved Employees' cell-phone expenses incurred in connection with work
3 performed for Defendant.

4 20. On information and belief, Defendant failed to accurately record Plaintiff's and Aggrieved
5 Employees' reporting hours, meal period premiums, rest period premiums, and overtime
6 compensation. As a result, Plaintiff and Aggrieved Employees' hours worked, gross wages and net
7 wages earned were not accurately reflected in his paystubs.

8 21. On information and belief, Defendant has declined to pay Plaintiff and other Aggrieved
9 Employees all hours worked, meal period premiums, rest period premiums, and overtime
10 compensation even upon Plaintiff and other Aggrieved Employees' termination or resignation
11 from employment, in violation of California Labor Code sections 201-204. More than thirty (30)
12 days have passed since Plaintiff has left Defendant's employ.

13 **FIRST CAUSE OF ACTION**

14 **Civil Penalties for Violation of Private Attorneys General Act of 2004**

15 **(Cal. Lab. Code §§ 2698 *et seq.*)**

16 **(Plaintiff on Behalf of Aggrieved Employees)**

17 22. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs
18 of this Complaint.

19 23. Plaintiff is an aggrieved employee withstanding to bring this cause of action under the
20 PAGA because Defendant violated the following sections of the California Labor Code:

- 21 a. Failure to pay for all hours worked (Cal. Lab. Code §§200, 201, 202, 204,
22 1194, 1194.2, 1197.1, 558, 2699(f) and Wage Order No. 9));
- 23 b. Failure to pay overtime (Cal. Lab. Code §§510, 515(d), 558, 1194, 1198,
24 2699(f); California Code of Regulations, section 11090(3)(A), and Wage
25 Order No. 9);
- 26 c. Failure to provide compliant meal breaks within the first 5 hours or one
27 additional hour of pay instead (Cal. Lab. Code §§512, 558, 226.7, 2699(f));
28 and Wage Order No. 9)

- d. Failure to provide compliant rest periods or one additional hour of pay instead (Cal. Lab. Code §226.7, 558, 2699(f) and Wage Order #9)
- e. Unlawful Deductions (Cal. Lab. Code §§221-224, and 2699(f));
- f. Failure to provide accurate itemized wage statements and maintain adequate records (Cal. Lab. Code §§226, 226.3, 1174, and 2699(f))
- g. Failure to pay all wages owed upon separation (Cal. Lab. Code §§201-203, and 2699(f)); and
- h. Failure to record employees' meal periods (Wage Order No. 9, ¶6(A)(3))
- i. Failure to reimburse work-related expenses (Cal. Labor Code §§ 2802, 2699(f)).

24. Plaintiff has satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, including, without limitation, the penalty provisions identified in Labor Code section 2699.5.

25. Because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes, but is not limited to, the following Labor Code Sections 200, 201, 202, 203, 204, 210, 221, 222, 222.5, 225.5, 223, 224, 226, 226.3, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2699(f) and the California Code of Regulations and/or Industrial Welfare Commission Wage Orders, including, but not limited to Wage Order 9-2001.

26. Plaintiff is informed and believes and thereon alleges that in addition to Plaintiff, and the other Aggrieved Employees were subjected to each and every violation set forth in the preceding paragraphs of this Complaint.

27. Plaintiff, as a personal representative of the general public, will and does seeks to recover any and all civil penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof. All civil penalties recovered will be distributed in accordance with the PAGA, with 75% being reimbursed to the State of California

1 and the LWDA, and 25% of all civil penalties to Plaintiff and/or other Aggrieved Employees.

2 28. Labor Code sections 1197.1, 558, and 2699 allow Plaintiff to recover attorney's fees and
3 costs for bringing this PAGA Action for himself and as a personal representative of the general
4 public.

5 **V. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff on behalf of himself and other Aggrieved Employees of
7 Defendant, demands judgment against Defendant as follows:

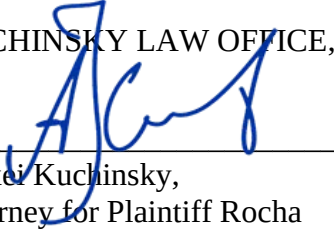
8 1) All applicable civil penalties, including but not limited to, Labor Code sections
9 226.3, 558, 1197.1, 2699(f), and Wage Order No. 9-2001, Section 20.

10 2) Reasonable attorney's fees and the costs of this suit under Labor Code sections 558
11 and 2699(g)(1).

12 3) For such other and further relief as the Court deems just and proper.

13
14 Dated: September 25, 2023

KUCHINSKY LAW OFFICE, P.C.

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16 BY 
17 Alexei Kuchinsky,
18 Attorney for Plaintiff Rocha
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