

CUMMINS & WHITE, LLP
Erick J. Becker, P.C. (Bar No. 137180)
E-mail: ebecker@cwlawyers.com
Joshua Park (Bar No. 299572)
E-mail: jpark@cwlawyers.com
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0764
Telephone: (949) 852-1800
Facsimile: (949) 852-8510

Attorneys for Plaintiffs
MARIA AREVALO MARTINEZ and
JORGE LUIS RAZO

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 5/23/2024 3:31 PM
By: Hicet Ramirez-Perez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY
(UNLIMITED JURISDICTION)

MARIA AREVALO MARTINEZ, an
individual; JORGE LUIS RAZO, an
individual,

Plaintiffs,

vs.

ECOBRITE SERVICES, LLC, a Utah
Limited Liability Company; MONTEREY-
SALINAS TRANSIT CORPORATION, a
California Nonprofit Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CV000557

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Violation of Labor Code § 1060, et seq.
(Displaced Janitor Opportunity Act)
2. Violation of Business & Professions
Code sections 17200, et seq. (Unfair
Business Practices)
3. Civil Penalties under the Private
Attorneys General Act (Labor Code §
2698 *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiffs MARIA AREVALO MARTINEZ (“MARTINEZ”), an individual, and
2 JORGE LUIS RAZO (“RAZO”), an individual (hereinafter collectively referred to as
3 “PLAINTIFFS”), bring this First Amended Complaint against Defendant ECOBRITE
4 SERVICES, LLC (“ECOBRITE”), a Utah Limited Liability Company, and DOES 1 through
5 50, inclusive and each of them, and allege as follows:

6 **JURISDICTION AND VENUE**

7 1. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, Section 10, which grants the Superior Court “original
9 jurisdiction in all causes except those given by statute to other trial courts.” The statutes under
10 which this action is brought do not specify any other basis for jurisdiction.

11 2. The California Superior Court has jurisdiction over ECOBRITE because
12 Defendant ECOBRITE does business within the State of California.

13 3. Pursuant to California Code of Civil Procedure section 395(a), venue is proper
14 in the County of Monterey because Defendants’ obligations and liability arose, at least in part,
15 therein, and because the alleged injuries sustained by PLAINTIFFS occurred in the County of
16 Monterey.

17 **PARTIES**

18 4. Plaintiff MARTINEZ is a resident of Monterey County, California, and during
19 the relevant time period, was employed as a janitorial service employee as defined in Labor
20 Code section 1060(c).

21 5. Plaintiff RAZO is a resident of Monterey County, California, and during the
22 relevant time period, was employed as a janitorial service employee as defined in Labor Code
23 section 1060(c).

24 6. ECOBRITE is a Utah Limited Liability Company which, at all relevant times,
25 has done business and continues to do business in the County of Monterey and has committed
26 the unlawful acts alleged in this Complaint in the County of Monterey. At all relevant times,
27 ECOBRITE was and is a “contractor” that entered into a “successor service contract” as
28 defined in Labor Code sections 1060(b) and 1060(g).

1 7. MONTEREY SALINAS TRANSIT DISTRICT (“MST”), at all relevant times,
2 has done business and continues to do business in the County of Monterey. At all relevant
3 times, MST was and is a “awarding authority” that awarded or otherwise entered into a
4 “successor service contract” as defined in Labor Code sections 1060(a) and 1060(g).

5 8. PLAINTIFFS are informed and believe, and upon such information and belief
6 allege that, at all times herein relevant, Defendants ECOBRITE, and DOES 1 through 50,
7 inclusive, and each of them, were the agents, partners, joint venturers, joint employers,
8 representatives, servants, employees, successors-in-interest, co-conspirators, and assigns, each
9 of the other, and all times relevant hereto were acting within the course and scope of their
10 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
11 employees, successors-in-interest, co-conspirators, and assigns, and all acts or omissions
12 alleged herein were duly committed with the ratification, knowledge, permission,
13 encouragement, authorization, and consent of each defendant designated herein.

14 9. The true names and capacities, whether corporate, associate, individual, or
15 otherwise, of defendants DOES 1 through 50, inclusive, are presently unknown to
16 PLAINTIFFS who sue said defendants by such fictitious names. PLAINTIFFS are informed
17 and believe, and upon such information and belief, allege that each of the defendants
18 designated as DOE is in some manner responsible and liable for the wrongs and damages as
19 alleged below, and in so acting, was functioning as the agent, servant, partner, and employee
20 of the codefendants; and in doing such actions mentioned below, was acting within the course
21 and scope of his or her authority as such agent, servant, partner, and employee with the
22 permission and consent of the codefendants. PLAINTIFFS will seek leave of court to amend
23 this Complaint to show the true names and capacities when the same have been ascertained.

24 10. Defendants ECOBRITE, and DOES 1 through 50, inclusive, will be hereinafter
25 collectively referred to as “DEFENDANTS.”

26 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 11. This is an action against DEFENDANTS for violations of (1) the Displaced
28 Janitor Opportunity Act (“DJOA”), as codified in California Labor Code section 1060 *et seq.*,

(2) the Unfair Competition Law, as codified in California Business and Professions Code section 17200 *et seq.*, and (3) the Private Attorneys General Act of 2004 (“PAGA”).

12. From on or around January 1, 2021 through January 14, 2024, Executive Facility Services (“EFS”) provided janitorial services for MST under a Master Agreement with MST. However, in November 2023, MST awarded a bid for janitorial services to ECOBRITE, and as a result, issued EFS a notice to terminate the Master Agreement, effective January 14, 2024.

13. At all relevant times, PLAINTIFFS performed janitorial services for MST through their employment with EFS and did so until January 14, 2024.

14. On January 15, 2024, ECOBRITE started performing janitorial work for MST pursuant to a successor service contract with MST, the principal purpose of which was to provide janitorial services for MST. The contract provided that ECOBRITE would perform essentially the same services as were previously performed pursuant to EFS’ Master Agreement with MST, and therefore constitutes a “successor service contract” as defined in Labor Code section 1060(g).

15. In violation of the DJOA, ECOBRITE failed to retain all former EFS employees, including PLAINTIFFS, who performed janitorial services for MST during the four months preceding the commencement of ECOBRITE’s successor contract with MST, who worked at least 15 hours per week and who worked primarily in the County of Monterey, California. Specifically, ECOBRITE failed to offer PLAINTIFFS and other eligible former EFS employees a legally compliant offer of employment with ECOBRITE, and/or failed to employ such members for a period of at least 60 days under Labor Code section 1060 *et seq.*

16. PLAINTIFFS seek monetary damages, interest, reasonable attorney fees and costs, injunctive relief and all other damages and equitable relief as permitted by law.

///

///

///

///

///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO OFFER EMPLOYMENT AND RETAIN FORMER EFS EMPLOYEES**
3 **FOR THE FIRST 60 DAYS IN VIOLATION OF LABOR CODE SECTION 1060 *ET.***

4 ***SEQ.***

5 **(Violation of California Labor Code § 1060 *et seq.*)**

6 **(By PLAINTIFFS Against All DEFENDANTS)**

7 17. PLAINTIFFS repeat and re-allege the allegations set forth above and
8 incorporate the same by reference as though fully set forth herein.

9 18. California Labor Code section 1061(b)(1) provides: “(A) successor contractor
10 or successor subcontractor shall retain, for a 60-day transition employment period, employees
11 who have been employed by the terminated contractor or its subcontractors, if any, for the
12 preceding four months or longer at the site or sites covered by the successor service contract
13 unless the successor contractor or successor subcontractor has reasonable and substantiated
14 cause not to hire a particular employee based on that employee’s performance or conduct while
15 working under the terminated contract. This requirement shall be stated by awarding
16 authorities in all initial bid packages that are governed by this chapter.”

17 19. Further, California Labor Code section 1061(b)(2) provides: “(The) successor
18 contractor or successor subcontractor shall make a written offer of employment to each
19 employee, as required by this section, in the employee's primary language or another language
20 in which the employee is literate. That offer shall state the time within which the employee
21 must accept that offer, but in no case may that time be less than 10 days.”

22 20. When ECOBRITE acquired a contract that required ECOBRITE to provide the
23 janitorial services previously performed by EFS for MST, ECOBRITE became a “contractor”
24 with a “successor service contract” as defined by the DJOA. (Labor Code sections 1060(b)
25 and 1060(g).)

26 21. ECOBRITE violated Labor Code section 1061(b)(1) by failing to retain all
27 former EFS employees, including PLAINTIFFS, who performed janitorial services for MST
28 during the four months preceding the commencement of ECOBRITE’s successor contract with

1 MST, who worked at least 15 hours per week and who worked primarily in the County of
2 Monterey, California. Specifically, ECOBRITE failed to offer PLAINTIFFS and other
3 eligible former EFS employees a legally compliant offer of employment with ECOBRITE,
4 and/or failed to employ such members for a period of at least 60 days under Labor Code section
5 1060 *et seq.*

6 22. As a proximate result of DEFENDANTS' actions, PLAINTIFFS have been
7 harmed in that they were denied employment required by the DJOA as a result suffered the
8 loss of wages, salary, benefits, and additional amounts of money they would have received if
9 DEFENDANTS complied with the provisions of the Act.

10 23. As a result of such unlawful conduct and consequent harm, PLAINTIFFS are
11 owed back pay and have suffered and continues to suffer damages in an amount subject to
12 proof at trial.

13 24. As a direct result of DEFENDANTS' unlawful practices, PLAINTIFFS have
14 incurred and continued to incur attorney fees and costs in an amount according to proof at trial.

15 25. Labor Code section 1062(a) provides that "[u]pon finding a violation of this
16 chapter, the court shall award back-pay, including the value of benefits, for each day during
17 which the violation has occurred and continues to occur." Labor Code section 1062(c) adds:
18 "If the employee is the prevailing party in the legal action, the court shall award the employee
19 reasonable attorney's fees and costs as part of the costs recoverable." Therefore, an award of
20 back-pay and reasonable attorney fees and costs are mandated if PLAINTIFFS prevail in this
21 action.

22 26. Because of the nature of this action, it would be against the interest of justice to
23 penalize PLAINTIFFS by forcing them to pay attorney fees from the recovery in this action.
24 Therefore, an award of attorney fees and costs is also appropriate pursuant to Civil Code
25 section 1021.5.

26 27. Labor Code section 1062(b) provides that "[t]he Court may order a preliminary
27 or permanent injunction to stop the continued violation of this chapter." PLAINTIFFS thus
28 seek the issuance of a preliminary injunction to stop DEFENDANTS' continued violation of

1 the DJOA.

2 Wherefore, PLAINTIFF prays for judgment as set forth below.

3 **SECOND CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

5 (Violation of California Business & Professions Code §§17200, et seq.)

6 (By PLAINTIFFS Against All DEFENDANTS)

7 28. PLAINTIFFS repeat and re-allege the allegations set forth above, and
8 incorporates same by reference as though fully set forth herein.

9 29. California Business and Professions Code § 17200, *et seq.* prohibits unfair
10 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

11 30. DEFENDANTS' violations of Labor Code § 1060, *et seq.*, and other applicable
12 provisions, as alleged herein, constitute unfair business practices in violation of Business &
13 Professions Code §§17200, et seq.

14 31. The knowing conduct of DEFENDANTS, as alleged herein, constitutes an
15 unlawful and/or fraudulent business practice, as set forth in California Business and
16 Professions Code §§ 17200-17208. Specifically, DEFENDANTS conducted business
17 activities while failing to comply with the legal mandates herein.

18 32. DEFENDANTS' knowing failure to adopt policies in accordance with, and/or
19 to adhere to these laws, all of which are binding upon and burdensome on its competitors,
20 engenders an unfair competitive advantage for DEFENDANTS, thereby constituting an unfair
21 business practice, as set forth in California Business and Professions Code § 17208.

22 33. Business and Professions Code § 17203 provides that the Court may restore to
23 any person in interest any money or property which may have been acquired by means of such
24 unfair competition. As a direct and proximate result of the aforementioned acts, PLAINTIFF
25 was injured and suffered the loss of money in the amount of, *inter alia*, loss of wages, salary,
26 and benefits that they were otherwise entitled to receive.

27 34. PLAINTIFFS' success in their action will enforce important rights affecting
28 the public interest. PLAINTIFFS seek, and are entitled to, injunctive relief as well as all other

1 appropriate equitable remedies. Injunctive relief is necessary and appropriate to prevent
2 DEFENDANTS from repeating the wrongful business practices alleged herein.

3 Wherefore, PLAINTIFFS pray for judgment as set forth below.

4 **THIRD CAUSE OF ACTION**

5 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

6 (By PLAINTIFFS Against All DEFENDANTS)

7 35. PLAINTIFFS repeat and re-allege the allegations set forth above, and
8 incorporates same by reference as though fully set forth herein.

9 36. PLAINTIFFS are aggrieved employees under PAGA because they suffered the
10 Labor Code violations set forth in this First Amended Complaint. PLAINTIFFS seek to
11 recover, for all current and former Aggrieved Employees employed during the applicable
12 Period, all civil penalties provided for by PAGA pursuant to Labor Code § 2699(f), i.e.,
13 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
14 pay period for those violations of the Labor Code for which no civil penalty is specifically
15 provided, based on DEFENDANTS' violations of the DJOA, California Labor Code section
16 1060 *et seq.*, as specifically set forth in Paragraphs 11 to 29 above.

17 37. PLAINTIFFS have satisfied the requirements of Labor Code § 2699.3. On
18 February 12, 2024, PLAINTIFFS served a PAGA Notice on the California Labor & Workforce
19 Development Agency ("LWDA"), Division of Labor Standards Enforcement (via the
20 LWDA's online portal) and on each of the DEFENDANTS (via certified mail). A true and
21 correct copy of the PAGA Notice is attached hereto as **Exhibit "A"**. No response from the
22 LWDA was received within sixty-five (65) days of the PAGA notice. Further, no written
23 notice from DEFENDANTS was received, or by online filing through the LWDA, that the
24 alleged violation has been cured, including a description of actions taken. Accordingly,
25 PLAINTIFFS may proceed with this PAGA action.

26 38. PLAINTIFFS were compelled to retain the services of counsel to file this court
27 action to protect their interests and the interests of other aggrieved employees, and to assess
28 and collect the civil penalties owed by DEFENDANTS. PLAINTIFFS have thereby incurred

1 attorneys' fees and costs, which they are entitled to recover under California Labor Code §
2 2699(g).

3 Wherefore, PLAINTIFFS pray for judgment as set forth below.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, PLAINTIFFS pray for judgment against DEFENDANTS, and each
6 of them, as follows:

- 7 1. For Monetary Damages, including loss of wages, salary, benefits pursuant to
8 California Labor Code section 1062;
- 9 2. For Injunctive Relief as appropriate under California Labor Code section
10 1062(b) and California Business and Professions Code section 17200, *et seq.*;
- 11 3. For an Award of Civil Penalties pursuant to PAGA;
- 12 4. For prejudgment interest on each of the foregoing at the legal rate from the date
13 on which the obligation became due through the date of judgment in this matter;
- 14 5. For post-judgment interest;
- 15 6. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure
16 section 1021.5; California Labor Code sections 1062(c) and 2699(g)(1), and/or other
17 applicable law;
- 18 7. For costs of suit incurred herein; and
- 19 8. For any other relief that is just and proper.

20 Respectfully submitted,

21
22 Dated: May 23, 2024

CUMMINS & WHITE, LLP

23
24 By: /s/ Erick J. Becker

Erick J. Becker, P.C.

25 Joshua Park

Attorney for Plaintiffs

26 MARIA AREVALO MARTINEZ and

JORGE LUIS RAZO

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFFS demand a trial by jury as to all issues so triable.

3 Respectfully submitted,

4 Dated: May 23, 2024

CUMMINS & WHITE, LLP

6 By: /s/ Erick J. Becker

Erick J. Becker, P.C.

7 Joshua Park

Attorney for Plaintiffs

8 MARIA AREVALO MARTINEZ and

9 JORGE LUIS RAZO

EXHIBIT A

February 12, 2024

BY ONLINE SUBMISSION ON THE
CALIFORNIA LWDA'S ONLINE PAGA FILING SYSTEM

California Labor and Workforce Development Agency
Attention: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0764
TEL 949-852-1800
FAX 949-852-8510
cw@cwlawyers.com

Erick J. Becker
Direct Dial: (949) 437-4071
jpark@cwlawyers.com

Our File No. : W261.1 *Martinez, et al. v. EcoBrite, LLC, et al.*
Notice Pursuant to California Labor Code Section 2699.3

Dear PAGA Administrator,

This office represents Maria Arevalo Martinez and Jorge Luis Razo (hereinafter collectively referred to as "Plaintiffs") against EcoBrite Services, LLC ("EcoBrite"), Monterey-Salinas Transit Corporation ("MST"), and all other persons acting on behalf of EcoBrite and MST, including each of their successors, current and former parents, subsidiary corporations and entities, and each of their respective owners, officers, directors, managing agents, and employees (hereinafter referred to as "Defendants").

This letter is intended to serve as the Private Attorney General Act of 2004 ("PAGA") notice to the California Labor and Workforce Development Agency, with a copy to Defendants by certified mail, pursuant to the reporting requirements of Labor Code section 2699.3.

Based on the facts and theories set forth herein, Plaintiffs allege that Defendants have violated and/or continue to violate the Displaced Janitor Opportunity Act ("DJOA"), Labor Code Section 1060-1065.

FACTS SUPPORTING THE VIOLATION OF THE DJOA

The DJOA sets forth clear and unequivocal requirements when a contract for janitorial or building maintenance services is awarded to a successor contractor. In short, the law requires a janitorial contractor to retain the employees of the predecessor contractor when they take over the contract. The DJOA first requires the successor contractor to make a written offer of employment, in the employee's primary language or another language in which the employee is literate, to each employee of the predecessor, giving them at least ten (10) days, decide whether or not to accept the offer. For those employees that accept, the successor contractor is further required to maintain their employment for at least a 60-day transition period, and then must offer continued employment to those employees if their performance was satisfactory during the transition period. Finally, the DJOA also requires the awarding authority of the successor service contract to state the requirements in their initial bid packages that a successor contractor is required to retain employees for the 60-day transition employment period. (See Labor Code section 1061(b)(1).

From on or around January 1, 2021 to January 14, 2024, Executive Facility Services (“EFS”) provided janitorial services for MST under a Master Agreement with MST. However, in November 2023, MST awarded a bid for janitorial services to Ecobrite Services, LLC (“Ecobrite”), and as a result, issued EFS a notice to terminate the Master Agreement, effective January 14, 2024. Thereafter, Ecobrite commenced its provision of janitorial services to MST on January 15, 2024.

At all relevant times, Plaintiffs, who performed janitorial services for MST through their employment with EFS till January 14, 2024, were employed by EFS for at least 4 months, worked at least 15 hours per week, and worked primarily in the County of Monterey. However, in violation of the DJOA, ECOBRITE failed to retain all eligible former employees of MST, including Plaintiffs. Specifically, ECOBRITE failed to offer PLAINTIFFS and other eligible former EFS employees a legally compliant offer of employment with ECOBRITE (including but not limited to one in the employee’s primary language or another language in which the employee is literate, and one that allowed the employee to have at least 10 days to consider the offer), and/or failed to employ such members for a period of at least 60 days under Labor Code section 1060 *et seq.* Further, MST failed to comply with the DJOA by not stating in their initial bid packages that a successor contractor is required to retain employees for the 60-day transition employment period. By failing to require specific compliance with the DJOA, MST, along with EcoBrite, damaged the employees of EFS, who have lost employment, and is liable for the violations of the DJOA.

CONCLUSION

The foregoing complaints are violations of California law. Plaintiffs, on behalf of themselves and other aggrieved employees, as well as the State of California, will commence a civil action against Defendants to collect the penalties provided for by the Labor Code, unless Defendants timely cure each violation alleged herein in compliance with the Labor Code. Plaintiffs reserve the right to add any and all additional Labor Code violations committed against them or the other aggrieved employees, if any.

Very truly yours,



Erick J. Becker, P.C.

EJB:deg

cc: (By U.S. Certified Mail with Return Receipt Requested)

EcoBrite Services, LLC
2975 W. Executive Pkwy, Ste 141
Lehi, UT 84043

California Labor and Workforce Development Agency
February 12, 2024
Page 3

Carl Sedoryk
Monterey-Salinas Transit Corporation
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940

Michael D. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

**PROOF OF SERVICE
(Declaration)
(C.C.P. §§1013(a) and 2015.5)**

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

I, the undersigned, declare:

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 2424 S.E. Bristol Street, Suite 300, Newport Beach, CA 92660-0764. .

On May 23, 2024, I served the following document(s) **FIRST AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

1505 Corporation
REGISTERED AGENTS INC.
1401 21st Street R
Sacramento, CA 95811

Agent for Service for ECOBRITE SERVICES, LLC

☒ **(By U.S. Mail)** I am readily familiar with Cummins & White, LLP's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Newport Beach, California.

Executed on May 23, 2024, at Newport Beach, California.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Christine G. Anderson
Christine G. Anderson