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Counsel for Plaintiff
HAROLD DUTRA, JR.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAROLD DUTRA, JR.,
Plaintiff,

CASE NO.

COMPLAINT FOR DAMAGES

v.

[Jury Trial Demanded]

BFI WASTE SYSTEMS OF NORTH AMERICA,
INC. d/b/a ALLIED WASTE SERVICES OF SAN
MATEO (BFI), now known as REPUBLIC
SERVICES, INC., and DOES 1-40,

Defendants.

JURISDICTION AND VENUE

1. This action is filed in the United States District Court, Northern District of California. The claims alleged arose in and around the County of San Mateo. Because this action involves federal claims, jurisdiction is proper here under 28 USC §1331 and 1332.

2. Venue is proper in Northern District of California because the County of San Mateo is within the jurisdictional territory of the Northern District – San Francisco.

PARTIES

3. Plaintiff HAROLD DUTRA, JR., is an adult male resident of the County of San Mateo.

4. Defendant BFI WASTE SYSTEMS OF NORTH AMERICA, INC. d/b/a ALLIED WASTE SERVICES OF SAN MATEO (BFI), now known as REPUBLIC SERVICES, INC., was at

1 all times Plaintiff's employer. Together, they are referred to as BFI unless otherwise noted. BFI,
2 as Republic, provides waste management services throughout the Bay Area.

3 5. Recology, Inc., is on information and belief, the other provider of waste
4 management services in the same part of the Bay Area as BFI. Between BFI, through Republic,
5 Recology, the Area's waste management services are controlled by two companies, who have
6 divided the Area into sections or regions within which there is no competition.

7 6. Plaintiff is ignorant of the identities of Defendants DOES 1 through 40, and
8 therefore sues such defendants as fictitiously named persons/entities, whose true identities and
9 roles in the events which are the subject matter of this complaint are presently unknown.

10 7. Plaintiff will amend this complaint to identify fictitiously named Defendants and to
11 set forth facts relating to each when same become known to Plaintiff. Plaintiff is informed and
12 believes and thereon allege that each DOE Defendant is legally responsible for events alleged
13 herein which caused injury and damage to Plaintiff.

14 8. In doing the acts or omissions alleged, the defendants and each of them were
15 acting in the course and scope of their employment with their respective agencies. In doing the
16 acts or omissions alleged, each of the defendants acted as the agent, servant, employee, and/or
17 in concert with each of the other Defendants herein.

18 **FACTS**

19 9. Plaintiff was employed by BFI. He was a driver who collected waste in San Mateo
20 County. He suffered injuries on the job while working in Redwood City (San Mateo County), and
21 was temporarily disabled.

22 10. A dispute later arose between BFI and Plaintiff.

23 11. Plaintiff proceeded through arbitration under the Collective Bargaining Agreement
24 (CBA) after BFI terminated Plaintiff without cause, and for an unlawful reason. Arbitrator David
25 Nevins on May 18, 2007, ordered Plaintiff reinstated and awarded \$75,000 as back-pay.

26 12. BFI never complied with the terms of the award.

27 13. Plaintiff did in fact attempt to return to work but was sent home on the first date of
28 his return for pre-textual reasons.

14. On about November 25, 2009, Plaintiff's bargaining unit (Local 350) and BFI settled Plaintiff's case for \$35,000. As a condition of settlement, Plaintiff was required to accept \$35,000, and to relinquish all employment rights with BFI, including re-employment. Under duress and extreme pressure from Local 350, Plaintiff accepted the \$35,000. The \$35,000 was payment for wages due under California law and the terms of the agreement.

15. BFI delayed payment of the \$35,000 by several weeks.

16. On June 28, 2012, in the Northern District of California, Plaintiff filed an action against BFI (no. 3:12-cv-03338-NC). That action was dismissed by the Court on July 22, 2013. This is thus Plaintiff's independent action under Federal Rules of Civil Procedure, Rule 60.

17. Thereafter, Plaintiff attempted to obtain employment with a waste management company in the same Area. Plaintiff has been unable, for the past year, to obtain employment because Republic, successor to BFI, essentially controls the labor market in the Area in concert with the other waste management company, as alleged above. Plaintiff is unable to obtain employment in San Mateo or San Francisco Counties, where BFI's influence and presence are particularly strong.

18. As a direct, legal, and proximate result of the acts and omissions alleged above, Plaintiff suffered damages and suffered grievous injuries. These losses and injuries were caused, in part, by the unconstitutional yet official, de facto customs, policies, practices, and patterns, which were the moving force behind Plaintiff's injuries.

19. Plaintiff is informed and believes that as a result of Defendant's actions, he suffered the violation of certain rights and was injured.

FIRST CAUSE OF ACTION

Sherman Anti-Trust Act of 1890, as amended by the Clayton Act of 1914

20. Plaintiff incorporates all previous allegations as though fully set forth below.

21. A Section 1 violation of the Sherman Anti-Trust Act of 1890 (the Act) prohibits an agreement which unreasonably restrains competition and which affects interstate commerce.

22. A Section 2 violation the Act prohibits the possession of monopoly power in the relevant market and the willful acquisition or maintenance of that power as distinguished from

1 growth or development as a consequence of a superior product, business acumen, or historic
2 accident.

3 23. Defendant BFI through Republic in fact possesses a prohibited monopoly, which
4 has prevented Plaintiff from obtaining gainful employment.

5 24. Plaintiff was harmed as a direct, legal result of conduct described. Conduct by
6 BFI (through Republic) and Recology was a substantial factor in causing Plaintiff's harm.

7 **SECOND CAUSE OF ACTION**

8 **Cartwright Anti-Trust Act**

9 **(California Business & Professions Code sections 16600, et seq.)**

10 25. Dutra is informed and believes that BFI agreed to allocate or to divide customers,
11 territories, and/or products with the two other waste management companies, Recology and
12 WMI. An agreement to allocate customers, territories, and/or products is an agreement between
13 two or more competitors not to compete with each other in particular territories with regard to
14 customers, territories, and/or products.

15 26. Plaintiff was harmed as a direct, legal result of the conduct described. Conduct by
16 BFI (through Republic) and Recology was a substantial factor in causing Plaintiff's harm.

17 27. WHEREFORE, Plaintiff prays for relief as set forth below.

18 **PRAYER**

- 19 a. Compensatory damages, according to proof, but no less than \$500,000;
- 20 b. Treble damages pursuant to law, including without limit 15 USC §15(a);
- 21 c. Attorneys' fees and costs of suit, pursuant to law;
- 22 d. Reinstatement to employment with BFI, now Republic, retroactive to March 2007,
with full benefits of employment and seniority;
- 23 e. Pre-judgment interest;
- 24 f. For a declaratory judgment that BFI, now through Republic, engaged in anti-
25 competitive practices which damaged and damages members of the public;
- 26 g. Rescission and reformation of the \$35,000 settlement agreement which would
27 permit Plaintiff to work for BFI/Republic; and,

28 ///

1 h. For such other relief as the Court deems just and proper.

2 Date: October 14, 2014

/s/ Russell A. Robinson

3 By: Russell A. Robinson
4 Law Office of Russell A. Robinson
5 Counsel for Plaintiff
6 **HAROLD DUTRA, JR.**

7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial by Jury, as is his right, and requests that this matter be
10 designated for Jury Trial on the Court's docket.

11
12 Date: October 14, 2014

/s/ Russell A. Robinson

13 By: Russell A. Robinson
14 Law Office of Russell A. Robinson
15 Counsel for Plaintiff
16 **HAROLD DUTRA, JR.**