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9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 ANTONIO HURTADO,
14 CHRISTOPHER ORTEGA, JOSE
QUINTERO, MARITZA
15 QUINTERO, JORGE URQUIZA, and
MARIA VALADEZ, individually and
16 on behalf of a class of all others
similarly situated,

17 Plaintiffs,

18 vs.

19 RAINBOW DISPOSAL CO., INC.
EMPLOYEE STOCK OWNERSHIP
20 PLAN COMMITTEE, GERALD
MOFFATT, JEFF SNOW,
21 GREGORY RANGE, JON BLACK,
CATHARINE ELLINGSEN, BILL
22 EGGLESTON, GREATBANC
TRUST COMPANY, REPUBLIC
23 SERVICES, INC.,

24 Defendants,

25 and

26 RAINBOW DISPOSAL CO., INC.
EMPLOYEE STOCK OWNERSHIP
27 PLAN.

28 Nominal Defendant.

Case No:

**COMPLAINT FOR
VIOLATIONS OF ERISA
CLASS ACTION**

1 Plaintiffs Antonio Hurtado, Christopher Ortega, Jose Quintero, Maritza
2 Quintero, Jorge Urquiza, and Maria Valadez, by and through their attorneys, allege
3 as follows:

4 **JURISDICTION & VENUE**

5 **Subject Matter Jurisdiction.**

6 1. This Court has subject matter jurisdiction over this action pursuant to
7 28 U.S.C. § 1331 because this action arises under the laws of the United States and
8 pursuant to 29 U.S.C. § 1132(e)(1), which provides for federal jurisdiction of
9 actions brought under Title 1 of ERISA.

10 **Personal Jurisdiction.**

11 2. This Court has personal jurisdiction over Defendants because
12 Defendants transact business in and have significant contacts with this District, and
13 because ERISA provides for nationwide service of process pursuant to ERISA
14 § 502(e)(2), 29 U.S.C. § 1132(e)(2).

15 **Venue.**

16 3. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29
17 U.S.C. § 1132(e)(2), because the Rainbow ESOP is and was at the relevant times
18 administered in this District, the breaches and violations giving rise to the claims
19 occurred in this District, and at least one, and in fact many, of the Defendants may
20 be found in this District. Venue is also proper under 28 U.S.C. § 1391(b) and (c)
21 because a substantial part of the events or omissions giving rise to the claims
22 occurred in this District, and one or more of the Defendants reside in this District.

23 **NATURE OF THE ACTION**

24 4. This action is brought pursuant to the Employee Retirement Income
25 Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001 *et seq.*, by
26 Plaintiffs on behalf a class of participants in and beneficiaries of the Rainbow
27 Disposal Co., Inc., Employee Stock Ownership Plan (“the ESOP” or “the Plan”) to
28

1 restore losses to the Plan and to remedy Defendants' breaches of fiduciary duty and
2 violations of ERISA arising out of an October 2014 transaction.

3 5. Prior to October 1, 2014, the Rainbow ESOP owned 100% of
4 Rainbow Disposal. Plaintiffs are current and former employees of Rainbow
5 Disposal and participants with many years of service (or their beneficiaries) and
6 significant amounts of their retirement in the Rainbow ESOP and were invested in
7 Rainbow Disposal, 100% employee-owned company via an employee stock
8 ownership plan.

9 6. On October 1, 2014, Republic Services purchased 100% of the stock
10 of Rainbow Disposal from the Rainbow ESOP. This sale was accomplished
11 without the involvement or vote by the ESOP participants despite being referred to
12 as "employee owners" of Rainbow, was accompanied by self-dealing by Rainbow
13 officers and directors, and was approved by a trustee that has been the subject of
14 multiple lawsuits by the Department of Labor for breaches of fiduciary duty arising
15 out of multiple ESOP transactions at other companies. Both prior to and after the
16 sale, the ESOP participants were provided scant, and often confusing or misleading
17 information by the ESOP fiduciaries about the sale, the terms of the sale, the value
18 of their stock, or status of distributions of the assets from the sale. Despite relying
19 on a stale June 30, 2014 valuation to determine fair market value, the sale price
20 was significantly below the June 30, 2014 valuation.

21 7. Nearly three years after the October 1, 2014 sale, the proceeds of the
22 sale received by the Rainbow ESOP have still not been fully distributed to the
23 ESOP participants as promised. Recent ERISA-mandated disclosures revealed that
24 the current fiduciaries of the Rainbow ESOP have left approximately \$15 million
25 in Plan assets – which are supposed to be distributed to the ESOP participants –
26 essentially uninvested and undiversified for nearly three years.

27 8. Plaintiffs have attempted to obtain information and documents about
28 the sale and the status and expected distribution of the proceeds, but their efforts

1 have been rebuffed by the very fiduciaries who are supposed to be acting in their
2 best interests. The information that Plaintiffs have been able to obtain from filings
3 that the fiduciaries or Republic were legally required to disclose has often
4 conflicted with the scant information provided by the ESOP fiduciaries.

5 9. Through this action, Plaintiffs seek to enforce their rights under
6 ERISA and the Plan, to recover the losses incurred by the Plan as a result of the
7 breaches of fiduciary duty under ERISA or other violations, and to ensure that the
8 Plan and its assets have been properly administered, managed, held in trust and
9 distributed. Among the relief sought for these breaches and violations, Plaintiffs
10 request the breaching fiduciaries be ordered to pay the losses to the Plan, to
11 disgorge any profits, to provide an accounting, to have a surcharge imposed against
12 them, and appropriate equitable relief against any non-fiduciaries and that any
13 monies recovered for the Plan be allocated to the accounts of the Class.

14 **PARTIES**

15 **Plaintiffs**

16 10. Plaintiff Antonio Hurtado is a current employee of Republic Services
17 and Rainbow Disposal with over 40 years of service. As of October 1, 2014, he
18 was a vested participant in the Plan. As of October 17, 2014, Mr. Hurtado had
19 28,576.5027 shares in his Rainbow ESOP account. He is a participant of the
20 Rainbow ESOP within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7)
21 including because he has a colorable claim for additional benefits as a result of
22 Defendants' fiduciary breaches. He currently resides in Westminster, California.

23 11. Plaintiff Christopher Ortega is a former employee of Republic
24 Services and Rainbow Disposal with over 9 years of service. As of October 17,
25 2014, Ortega was a vested participant in the Plan and had 3,498.4898 shares in his
26 Rainbow ESOP account. He is a participant of the Rainbow ESOP within the
27 meaning of ERISA § 3(7), 29 U.S.C. § 1002(7) including because he has a
28

1 colorable claim for additional benefits as a result of Defendants' fiduciary
2 breaches. He currently resides in Huntington Beach, California.

3 12. Plaintiff Jose Quintero is a current employee of Defendant Republic
4 Services and Rainbow Disposal with twenty-seven years of service. As of October
5 17, 2014, Quintero was a vested participant in the Plan and had 17,960.7073 shares
6 in his Rainbow ESOP account. He is a participant of the Rainbow ESOP within the
7 meaning of ERISA § 3(7), 29 U.S.C. § 1002(7) including because he has a
8 colorable claim for additional benefits as a result of Defendants' fiduciary
9 breaches. He currently resides in Santa Ana, California.

10 13. Plaintiff Maritza Quintero is the daughter and beneficiary of Plaintiff
11 Jose Quintero. She is a beneficiary of the Rainbow ESOP within the meaning of
12 ERISA § 3(8), 29 U.S.C. § 1002(8) because she has been designed by her father as
13 one of the beneficiaries in the Rainbow ESOP. She currently resides in Santa Ana,
14 California.

15 14. Plaintiff Jorge Urquiza is a current employee of Republic Services and
16 Rainbow Disposal with over twenty years of service. As of October 17, 2014,
17 Urquiza was a vested participant in the Plan and had approximately 25,000 shares
18 in his Rainbow ESOP account. He is a participant of the Rainbow ESOP within the
19 meaning of ERISA § 3(7), 29 U.S.C. § 1002(7) including because he has a
20 colorable claim for additional benefits as a result of Defendants' fiduciary
21 breaches. He currently resides in Huntington Beach, California.

22 15. Plaintiff Maria Valadez is an employee of Republic Services and
23 Rainbow Disposal with ten years of service. As of October 17, 2014, Valdez was a
24 vested participant in the Plan and had 2,336.4928 shares in her Rainbow ESOP
25 account. She is a participant of the Rainbow ESOP within the meaning of ERISA §
26 3(7), 29 U.S.C. § 1002(7) including because she has a colorable claim for
27 additional benefits as a result of Defendants' fiduciary breaches. She currently
28 resides in Anaheim, California.

1 **Defendants**

2 16. Defendant Rainbow Disposal Co., Inc. Employee Stock Ownership
3 Plan Committee (“ESOP Committee”) is identified as the plan administrator in the
4 Summary Plan Description within the meaning of ERISA § 3(16)(A), 29 U.S.C §
5 1002(16)(A). As a result, the Committee and its members are and were fiduciaries
6 of the Rainbow ESOP within the meaning of ERISA § 3(21), 29 U.S.C § 1002(21),
7 because the Committee and its members have discretionary authority or
8 discretionary responsibility for the administration of the Plan.

9 17. Defendant Gerald (“Jerry”) Moffatt is the former Executive Chairman
10 for Rainbow Disposal, where he worked for 20 years. According to a Statement of
11 Information filed by Rainbow Disposal with the State of California Secretary of
12 State on February 3, 2014, Moffatt was the Chief Executive Officer and a member
13 of the Board of Directors at least until October 1, 2014. After Republic Services
14 acquired Rainbow Disposal on October 1, 2014, Moffatt became the General
15 Manager of Rainbow Disposal, a Division of Republic Services. Between at least
16 March 2009 until at least October 1, 2014, Moffatt was a member of the ESOP
17 Committee. As a result of his position on the ESOP Committee, and as a member
18 of the Board of Directors, Moffatt was a fiduciary of the Plan within the meaning of
19 ERISA § 3(21), 29 U.S.C § 1002(21) at least until October 1, 2014. Mr. Moffatt is
20 believed to reside at 6151 Hampshire Drive, Huntington Beach, California 92647.

21 18. Defendant Jeff Snow was, according to his Linked-In Profile, the
22 President of Rainbow Disposal between October 2010 and October 2014.
23 According to a Statement of Information filed by Rainbow Disposal with the State
24 of California Secretary of State on February 3, 2014, Moffatt was the Secretary and
25 a member of the Board of Directors at least until October 1, 2014. After Republic
26 Services acquired Rainbow Disposal, Snow became a Municipal Relationship
27 Manager at Rainbow Disposal, a division of Republic Services. As a result of his
28 position on the Board of Directors, Snow was a fiduciary of the Plan within the

1 meaning of ERISA § 3(21), 29 U.S.C § 1002(21) at least until October 1, 2014.

2 Mr. Snow is believed to reside at 7 2nd Street, Leadera Ranch, California 92694.

3 19. Defendant Gregory P. Range was a member of the Board of Directors
4 of Rainbow Disposal from at least February 3, 2014 to October 1, 2014 according
5 a Statement of Information filed by Rainbow Disposal with the State of California
6 Secretary of State. Mr. Range is and has been a Managing Director and head of the
7 Los Angeles office of Stout (f/k/a Stout Risius Ross or SRR) a financial advisory
8 firm that among other activities provides advice to and performs valuations for
9 ESOP-owned companies. According to a January 8, 2015 news release on Stout's
10 website, "Stout served as exclusive financial advisor to Rainbow in connection
11 with its sale to Republic Services and Mr. Stout "led the execution of the
12 transaction." Mr. Range is believed to reside at 3209 Laurel Avenue in Manhattan
13 Beach, California, 90266.

14 20. Defendant Jon Black became a member of the ESOP Committee as of
15 October 1, 2014. Defendant Black is and has been from at least August 2011 to the
16 present Vice President, Total Rewards & HR Systems at Republic Services Inc. As
17 a result of his position on the ESOP Committee, Defendant Black was a fiduciary
18 of the Rainbow ESOP within the meaning of ERISA § 3(21), 29 U.S.C. §
19 1002(21).

20 21. Defendant Catharine Ellingsen became a member of the ESOP
21 Committee as of October 1, 2014. Defendant Ellingsen also is and has been since
22 at least August 2011 to the present a Senior Vice President, Human Resources at
23 Republic Services Inc. From June 16, 2016 to the present, Ms. Ellingsen has been
24 Executive Vice President, Chief Legal Officer and Corporate Secretary of Republic
25 Services. As a result of her position on the ESOP Committee, Defendant Ellingsen
26 was a fiduciary of the Rainbow ESOP within the meaning of ERISA § 3(21), 29
27 U.S.C. § 1002(21).

1 22. Defendant Bill Eggleston became a member of the ESOP Committee
2 as of October 1, 2014. Defendant Eggleston was from at least January 2010 to at
3 least December 2016, Vice President & Deputy General Counsel at Republic
4 Services Inc. As a result of his position on the ESOP Committee, Defendant
5 Eggleston was a fiduciary of the Rainbow ESOP within the meaning of ERISA §
6 3(21), 29 U.S.C. § 1002(21).

7 23. The Committee, Defendant Moffatt and any other members of the
8 Committee before October 1, 2014 are referred to as the Prior ESOP Committee
9 Defendants. Defendants Black, Ellingsen and Eggleston and the Committee are
10 referred to as the New ESOP Committee Defendants. The Prior ESOP Committee
11 Defendants and the New ESOP Committee Defendants are collectively referred to
12 the ESOP Committee Defendants. By virtue of the authority pursuant to the Plan
13 Document and actual exercised by the ESOP Committee Defendants, the
14 Committee and its members were or are fiduciaries of the ESOP within the
15 meaning of ERISA § 3(21), 29 U.S.C § 1002(21), because they have discretionary
16 authority or discretionary responsibility in administering the Rainbow ESOP.
17 Defendants Moffatt, Snow and Range are collectively referred to as the Director
18 Defendants. Pursuant to Section 2 and 17 of the Plan Document, the Rainbow
19 Board of Directors had the power and authority to appoint the members of the
20 ESOP Committee and the Trustee, to accept the resignation of the ESOP
21 Committee. Pursuant to that authority, the Rainbow Board had a duty to monitor
22 the Trustee's conduct and the ESOP Committee members' conduct, to take
23 appropriate action if those fiduciaries were not adequately protecting the interests
24 of the ESOP participants. At least prior to August 25, 2014, Section 5(d) of the
25 written terms of the Rainbow ESOP provided that the power of either the
26 Committee or the Trustee "to sell shares of Company Stock to any person" was
27 "[s]ubject to the approval of the Board of Directors." By virtue of the authority
28 pursuant to the Plan Document and actual exercised by the Director Defendants

1 (including negotiations to sell Rainbow or its stock), the Board of Directors and its
2 members were fiduciaries of the ESOP within the meaning of ERISA § 3(21), 29
3 U.S.C § 1002(21). As explained by Mr. Moffatt at a meeting of employees on
4 June 7, 2013, the Rainbow Board of Directors were “appointed” by the Trustee
5 (GreatBanc). GreatBanc had that authority as Trustee of the ESOP because the
6 ESOP was the sole shareholder of Rainbow Disposal. Thus, the Board of Directors
7 appointed the Trustee and the Trustee then elected or appointed the Board of
8 Directors.

9 24. Defendant GreatBanc Trust Company is, and has been since October
10 2002, the trustee of the ESOP and is a fiduciary of the ESOP within the meaning of
11 ERISA § 3(21), 29 U.S.C § 1002(21), because it has discretionary authority and
12 discretionary responsibility in the administration of the ESOP. GreatBanc’s
13 headquarters are located at 801 Warrenville Road, Suite 500, Lisle, Illinois 60532.

14 25. Defendant Republic Services, Inc. is a Delaware corporation with its
15 principal executive office located in Phoenix, Arizona. As a result of its purchase
16 of Rainbow Disposal on October 1, 2014, Republic Services is now the parent
17 corporation of Rainbow Disposal. Republic Services does business in this District
18 and after its purchase of Rainbow Disposal, has rebranded Rainbow Disposal as
19 Republic Services, including by having Rainbow Disposal’s prior website redirect
20 to a Republic Services website and announcing that Rainbow “is now Republic
21 Services.”

22 **NOMINAL DEFENDANT**

23 26. Rainbow Disposal Co., Inc. Employee Stock Ownership Plan is an
24 “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29
25 U.S.C. § 1002(2)(A) (“the Rainbow ESOP”). Upon information and belief, the
26 Plan is or at least until October 1, 2014 was, administered in Huntington Beach,
27 California. At least prior to October 1, 2014, the Rainbow ESOP purported to be a
28 “defined contribution plan” within the meaning of ERISA § 3(34), 29 U.S.C. §

1 1002(34) and, at least until October 1, 2014, an employee stock ownership plan
2 (“ESOP”) under ERISA § 407(d)(6) that was intended to meet the requirements of
3 Section 4975(e)(7) of the Internal Revenue Code (the “Code”) and IRS
4 Regulations § 54.4975-11. The written instrument, within the meaning of ERISA §
5 402, 29 U.S.C. §1102, by which the Plan is maintained is the Rainbow Disposal
6 Co., Inc. Employee Stock Ownership Plan (the “Plan Document”), as amended and
7 restated effective as of July 1, 2004. The Rainbow ESOP Plan Document has been
8 amended several times since July 1, 2004, including most recently by Amendment
9 No. 5 on October 1, 2014. The Rainbow ESOP Plan Document has not been
10 restated since July 1, 2004. The Rainbow ESOP is named as a nominal defendant
11 pursuant to Rule 19 to ensure that complete relief can be granted as to claims
12 brought on behalf of the Rainbow ESOP.

13 **OTHER RELEVANT NON-PARTIES**

14 27. Rainbow Disposal Co. Inc. is and has been a California corporation
15 with its principal place of business located in Huntington Beach, California. As of
16 October 1, 2014, Rainbow Disposal is a wholly-owned subsidiary of Republic
17 Services. Rainbow Disposal is the plan sponsor, as defined in ERISA § 3(16)(B),
18 29 U.S.C § 1002(16)(B) of the Rainbow ESOP.

19 28. Bruce Shuman was the Chief Executive Officer for Rainbow
20 Disposal. Shuman was a member of the Administrative Committee from at least
21 July 2007 until his termination from Rainbow Disposal in September 2013.

22 29. Jeff Feltch was the Chief Financial Officer for Rainbow Disposal
23 between at least February 3, 2014 and October 1, 2014 according to the Statement
24 of Information filed by Rainbow Disposal with the State of California Secretary of
25 State.

26 **CLASS ACTION ALLEGATIONS**

27 30. Plaintiffs bring this action as a class action pursuant to Rule 23 of the
28 Federal Rules of Civil Procedure on behalf the following persons Class:

1 All persons who were vested participants in the Rainbow ESOP as of
2 October 1, 2014 and the beneficiaries of any such participants.

3 31. Excluded from the Class are Defendants and persons who were named
4 fiduciaries of the Rainbow ESOP, who are alleged to have engaged in prohibited
5 transactions or breaches of corporate fiduciary duties, or who had decision-making
6 or administrative authority relating to the administration, modification, funding, or
7 interpretation of the Rainbow ESOP, or relating to the decision to sell Rainbow.

8 **Impracticability of Joinder**

9 32. The members of the Class are so numerous that joinder of all
10 members is impracticable. According to a Form 5310 Rainbow Disposal filed with
11 the Internal Revenue Service (“IRS”) on November 21, 2014, the ESOP had 460
12 participants at the time Republic Services acquired Rainbow Disposal. Most, if not
13 all, of the ESOP participants likely had at least one beneficiary because every
14 married participant would have had at least one beneficiary and some participants
15 likely designated more than one beneficiary. As such, the class consists of at least
16 several hundred persons.

17 **Commonality**

18 33. The issues of liability are common to all members of the Class and are
19 capable of common answers as those issues primarily focus on Defendants’ acts
20 (or failure to act). The common issues include whether the fiduciary Defendants
21 breached various fiduciary duties to the Rainbow ESOP, whether Defendants
22 Moffatt, Snow and Range engaged in prohibited transactions, whether the fiduciary
23 defendants are liable for their co-fiduciaries breaches, whether Republic Services
24 knowingly participated in these breaches, whether the Rainbow ESOP suffered
25 losses as a result of the fiduciary breaches and other violations and what is the
26 appropriate relief for Defendants’ violations of ERISA.

1 **Typicality**

2 34. Plaintiffs' claims are typical of the claims of other members of the
3 Class because their claims arise from the same event, practice and/or course of
4 conduct. Specifically, Plaintiffs, on behalf of the Class, alleged that Defendants
5 breached their fiduciaries or otherwise violated ERISA in connection with the sale
6 of Rainbow Disposal to Republic Services, management of the assets of the Plan or
7 in performing their fiduciary duties to the Plan. Plaintiffs' claims are also typical
8 of the claims of the Class because they generally seek recovery and relief on behalf
9 of the Plan.

10 **Adequacy**

11 35. Plaintiffs will fairly and adequately represent and protect the interests
12 of the Class.

13 36. Plaintiffs do not have any interests antagonistic to or in conflict with
14 those of the Class.

15 37. Defendants have no unique defenses against Plaintiffs that would
16 interfere with Plaintiffs' representation of the Class.

17 38. Plaintiffs are represented by counsel with extensive experience
18 prosecuting class actions in general and ERISA class actions and particular
19 experience and expertise in ESOP litigation.

20 **Fed. R. Civ. P 23(b)(1)(A)**

21 39. The requirements of Fed. R. Civ. P 23(b)(1)(A) are satisfied.
22 Fiduciaries of ERISA-covered plans have a legal obligation to act consistently with
23 respect to all similarly situated participants and to act in the best interests of the
24 Plan and their participants. This action challenges whether Defendants acted
25 consistently with their fiduciary duties or otherwise violated ERISA as to the
26 Rainbow ESOP as a whole. As a result, prosecution of separate actions by
27 individual members would create the risk of inconsistent or varying adjudications
28 that would establish incompatible standards of conduct relating to the Plan.

1 **Fed. R. Civ. P 23(b)(1)(B)**

2 40. The requirements of Fed. R. Civ. P. 23(b)(1)(B) are also satisfied.
3 Administration of an ERISA-covered plan requires that all similarly situated
4 participants be treated the same. Resolving whether Defendants fulfilled their
5 fiduciary obligations to the Plans, engaged in prohibited transactions with respect
6 to the Plan or knowingly participated in such breaches or violations as to Plaintiffs'
7 claims would, as a practical matter, be dispositive of the interests of the other
8 participants in the Rainbow ESOP even if they are not parties to this litigation and
9 would substantially impair or impede their ability to protect their interests if they
10 are not made parties to this litigation by being included in the Class.

11 **Fed. R. Civ. P. 23(b)(2)**

12 41. The requirements of Fed. R. Civ. P. 23(b)(2) are satisfied as to the
13 Class because Defendants have acted and/or failed to act on grounds generally
14 applicable to the Class, making declaratory and injunctive appropriate with respect
15 to the Class as a whole. This action challenges whether Defendants acted
16 consistently with their fiduciary duties or otherwise violated ERISA as to the
17 Rainbow ESOP as a whole. The relief sought in this case primarily consists of
18 declarations that Defendants breached their fiduciary duties or engaged in other
19 violations of ERISA and injunctive relief. As ERISA is based on trust law, any
20 monetary relief is consists of equitable monetary relief and is either provided
21 directly by the declaratory or injunctive relief or flows as a necessary consequence
22 of that relief.

23 **Fed. R. Civ. P 23(b)(3)**

24 42. The requirements of Fed. R. Civ. P. 23(b)(3) are also satisfied. The
25 common questions of law and fact concern whether Defendants breached their
26 fiduciary duties or violated ERISA to the Rainbow ESOP. As the members of the
27 Class were participants in that Plan, their accounts were affected by those breaches
28 and violations. Common questions related to liability will necessarily predominate

1 over any individual questions precisely because Defendants' duties and obligations
2 were uniform to all participants and therefore all members of the Class. As relief
3 and any recovery will be on behalf of the Plan, common questions as to remedies
4 will likewise predominate over any individual issues.

5 43. A class action is a superior method to other available methods for the
6 fair and efficient adjudication of this action. As the claims generally are brought
7 on behalf of the Plan, resolution of the issues in this litigation will be efficiently
8 resolved in a single proceeding rather than multiple proceedings and each of those
9 individual proceedings could seek recovery for the entire Plan. Class certification
10 is a superior method of proceeding because it will obviate the need for unduly
11 duplicative litigation which might result inconsistent judgments about Defendants'
12 duties with regard to the Rainbow ESOP.

13 44. The following factors set forth in Rule 23(b)(3) also support
14 certification:

15 a. The members of the Class have an interest in a unitary
16 adjudication of the issues presented in this action for the reasons that this
17 case should be certified under Rule 23(b)(1).

18 b. No other litigation concerning this controversy has been filed
19 by any other members of the Class

20 c. This District is the most desirable location for concentrating
21 this litigation because (i) Rainbow Disposal is located in this District; (ii) the
22 Rainbow ESOP was administered in this District at least until October 1,
23 2014, (iii) the majority of the participant class members are located in this
24 District, and (iv) a number of the witnesses, including a number of relevant
25 non-party witnesses, are expected to be located in this District.

26 There are no anticipated difficulties in managing this case as a class action.
27
28

1 **FACTUAL ALLEGATIONS**

2 **Background of Rainbow Disposal**

3 45. Rainbow Disposal Co. Inc. was formed in 1970 by Henry Hohnstein,
4 Philip Hohnstein and Paul Loumena under the Corporation Code of the State of
5 California. Pursuant to its Articles of Incorporation filed January 19, 1970,
6 Rainbow “primarily to engage” in “the picking up, transporting and disposing of
7 trash and rubbish materials from residential, commercial and income properties.”
8 From 1970 until at least October 1, 2014, the principal office of Rainbow have
9 been located in Orange County, California. By 2004 and through at least 2014,
10 Rainbow became and was one of the largest Southern California waste disposal
11 and recycling companies.

12 **Rainbow Disposal Establishes the Rainbow ESOP**

13 46. According to Section 1 of the Plan Document Rainbow Disposal
14 established the Rainbow ESOP as of July 1, 1995. The Plan Document was
15 amended and restated as of July 1, 1999 and as of July 1, 2004. The Plan
16 Document has been amended several times, but has not been restated since 2004.

17 47. According to the 2007 Form 5500, there were \$3,716,525.1921 shares
18 allocated to participant accounts in the Rainbow ESOP as of June 30, 2004. As of
19 June 30, 2004, the ESOP purchased 1,600,176 Class A common stock of the
20 Company at \$15.61 per share for a total price of \$24,977,747.36. The Plan
21 borrowed the entire purchase price, \$24,977,747.36, from Rainbow Disposal under
22 a loan agreement that is collateralized by the Class A common stock.

23 48. According to the Form 5500s (which are the annual report and
24 financial statements for employee benefit plans filed under penalty of perjury with
25 the Department of Labor and Department of Treasury), the Rainbow ESOP
26 purchased all Rainbow Disposal stock in leveraged ESOP transactions. Rainbow
27 Disposal loaned those funds to the ESOP, which the ESOP used to finance its
28 purchase of Rainbow Disposal stock. It is not clear whether Rainbow Disposal

1 also borrowed the funds to loan to the ESOP, but if so, as Rainbow Disposal makes
2 contributions to the ESOP, the Rainbow ESOP makes payments on its loan with
3 Rainbow Disposal, Rainbow Disposal makes payments on its loan with the private
4 lender.

5 49. As explained and as provided Section 5(b) of the Plan Document, the
6 Rainbow shares in the ESOP that serve as collateral on the loan are held in a
7 separate Loan Suspense Account. Section 5(b) of the Plan Document specifically
8 provides that no other Trust Assets, including shares that have been allocated by
9 participants may be pledged as collateral for an Acquisition Loan. Section 5(b) of
10 the Plan Document also requires that as payments are made on the loan by the
11 Trustee, any Financed Shares must released from the Loan Suspense Account and
12 distributed to ESOP participants' accounts. Once those shares have been released
13 to Participant Accounts, those accounts no longer serve as collateral for the
14 acquisition loan.

15 50. According to the Form 5500s, the assets of the Rainbow ESOP have
16 predominantly been composed of Rainbow Disposal stock. As explained in the
17 Section 6 of the Plan Document, ESOP Participants each have two accounts in the
18 trust: a Company Stock Account and an Other Investments Account. Company
19 stock is allocated to individual participants' Company Stock Accounts as they
20 accrue shares, which the ESOP states is based on a ratio of each participant's
21 compensation to the total compensation of all such participants. Participants also
22 share in the net income or loss of the Trust, which includes the increase or decrease
23 in the fair market value of Company Stock and any ESOP expenses. Any increase
24 or decrease in stock is accounted for in a participant's Other Investments Account.
25 As a result, an increase or decrease in Rainbow Disposal's performance during any
26 given year will directly affect the ESOP's participants by increasing or decreasing
27 the value of Rainbow Disposal stock held in their accounts.

1 **Rainbow's Articles of Incorporation Required Employee Ownership**

2 51. Rainbow Disposal's Articles of Incorporation were properly amended
3 on February 12, 1999 and filed with the Secretary of State of California on
4 February 18, 1999. Among the changes to Rainbow Disposal's Articles of
5 Incorporation in February 1999 was to add an Eighth Article which required that
6 Rainbow Disposal must be owned by its employees as follows:

7 EIGHTH. Substantially all of the outstanding shares of capital stock
8 of the Corporation shall at all times be owned by: (a) employees of the
9 Corporation (or of a subsidiary of the Corporation); (b) any trust with
10 respect to which an employee of the Corporation (or of a subsidiary of
11 the Corporation) is treated as the owner of such shares for federal
12 income tax purposes; (c) the Corporation's Employee Stock
13 Ownership Plan and Trust; and/or (d) individuals or entities receiving
14 such shares as a benefit distribution pursuant to the provisions of the
15 Corporation's Employee Stock Ownership Plan and Trust (provided
16 that such individuals or entities must immediately resell such shares to
17 the Corporation). The Corporation shall enter into such agreements
18 containing restrictions on subsequent transfer of such shares and other
19 provisions as may be necessary or appropriate to ensure compliance
20 with this Article EIGHTH.

21 52. Rainbow Disposal's Restated Articles of Incorporation were properly
22 amended on June 24, 2004 and filed on filed with the Secretary of State of
23 California on June 28, 2004. The June 2004 Amendment to Rainbow Disposal's
24 Restated Articles of Incorporation included an Eighth Article to require that
25 Rainbow Disposal must be owned by its employees as follows:

26 EIGHTH. Substantially all of the outstanding shares of capital stock
27 of the Corporation shall at all times be owned by: (a) employees of the
28 Corporation (or a subsidiary of the Corporation); (b) any trust,

1 *partnership or limited liability company* with respect to which an
2 employee of the Corporation (or a subsidiary of the Corporation) is
3 treated as the owner of such shares for federal income tax purposes;
4 (c) the Corporation's Employee Stock Ownership Plan and Trust;
5 and/or (d) individuals or entities receiving such shares as a benefit
6 distribution pursuant to the provisions of the Corporation's Employee
7 Stock Ownership Plan and Trust (provided that such individuals or
8 entities must immediately resell such shares to the Corporation). The
9 Corporation shall enter into such agreements containing restrictions
10 on subsequent transfer of such shares and other provisions as may be
11 necessary or appropriate to ensure compliance with this Article
12 EIGHTH.

13 (italics indicating the changes)

14 53. The Eighth Article of Rainbow Disposal's Articles of Incorporation,
15 which required that ownership of Rainbow Disposal be limited to its employees
16 directly or indirectly (e.g. through a trust or the Rainbow ESOP), remained
17 unchanged and in full force and effect on and after October 1, 2014, the date on
18 which the Rainbow ESOP was sold to Republic. Contrary to the Eighth Article,
19 the sale on October 1, 2014 purported to divest Rainbow employees and the ESOP
20 of ownership of Rainbow. Prior to the October 1, 2014 sale, there was no vote by
21 the Board to amend the Articles of Incorporation nor, more importantly, any vote
22 by either the shareholders of Rainbow Disposal nor any vote by participants of the
23 Rainbow ESOP to amend the Articles of Incorporation.

24 **Rainbow Disposal After the 2004 ESOP Transaction**

25 54. Prior to June 30, 2004, James Brownell and Stanley Tkacz were the
26 Co-Presidents of Rainbow Disposal and Bruce Shuman was the Secretary.

1 55. Sometime after the June 30, 2004 ESOP Transaction, Rainbow
2 Disposal came under new management, except for Bruce Shuman who remained as
3 CEO and Secretary of the company until he left in 2013.

4 56. As a result of the June 30, 2004 ESOP Transaction, Rainbow owned
5 100% of the outstanding shares of Rainbow stock.

6 57. As reflected in the Benefits Payments and Withdrawals section in the
7 Notes to Financial Statements of the Form 5500s between 2006 and 2010, the per
8 share value of Rainbow Disposal's stock was as follows:

9 2006: \$9.19 per share

10 2007: \$9.47 per share

11 2008: \$11.21 per share

12 2009: \$8.44 per share

13 2010: \$10.77 per share

14 2011: \$11.43 per share

15 **Rainbow Directors & Officers Shuman and Moffatt Use Rainbow Disposal**
16 **Assets to Pursue Their Own Financial Gain**

17 58. By 2009 Rainbow Disposal was under the management of Defendants
18 Moffatt and Snow, as well as Bruce Shuman. At approximately that time, Moffatt
19 and Shuman if not also Snow began to have Rainbow Disposal expand into other
20 geographic areas outside its core business areas. Among other ventures, Rainbow
21 Disposal formed certain subsidiaries including Southeast Renewables, West
22 Florida Recycling, Agromin and a venture in New Mexico.

23 **Southeast Renewables**

24 59. In early 2010, Shuman and Moffatt formed a LLC called Southeast
25 Renewables, LLC ("Southeast Renewables"). Southeast Renewables was
26 incorporated on March 25, 2010, and formed to construct, own, and operate solid
27 waste recycling facilities and/or waste-to-energy facilities, including material
28 recovery facilities, transfer stations, refuse collection operations, recycling

1 operations, and transfer operations in the southeastern United States. These are the
2 same business activities in which Defendant Rainbow engages. According to Larry
3 Hoover and the deposition of Moffatt in other litigation, Rainbow owned 25
4 percent of Southeast Renewables.

5 60. According to his deposition, Shuman was an accountant by education
6 and training. According to Larry Hoover, Shuman obtained a 12 to 12.5 percent
7 ownership interest in Southeast Renewables. In exchange for his ownership
8 interest, he provided no capital and instead only provided recycling and waste-to-
9 energy expertise – the same skills and expertise that he developed, was
10 compensated for, and that he utilized in his employment with Rainbow Disposal.

11 61. According to Larry Hoover, Defendant Moffatt also obtained a 12 to
12 12.5 percent of Southeast Renewables starting beginning in 2010. In exchange for
13 his ownership interest, he provided no capital and instead provided facilities
14 management – the same skills that he developed, was compensated for, and that he
15 was supposed to be utilizing in his employment with Rainbow Disposal. As Mr.
16 Moffat explained in a deposition in other litigation, he “did not provide any capital
17 to Southeast Renewables. The only thing that [he] provided [was] knowledge.”

18 62. As Mr. Shuman and Mr. Moffat were already obligated as officers and
19 directors of Rainbow Disposal to provide those skills to Rainbow Disposal, there
20 was no legitimate reason why they should have been provided an ownership
21 interest.

22 63. According to a deposition of Mr. Moffat in other litigation, Moffatt
23 and Shuman obligated Rainbow Disposal to provide capital and operational
24 expertise in exchange for a 25 percent interest. Rainbow Disposal was the sole
25 member of the LLC to provide capital for the venture.

26 64. According to his deposition in other litigation, Mr. Moffat ceased
27 being an owner of Southeast in 2013 because he did not want the liability. Bruce
28 Shuman also ceased being an owner at approximately the same time.

1 West Florida Recycling

2 65. As set forth in the Application by Foreign Limited Liability Company
3 for Authorization to Transact Business in Florida filed with the Florida Secretary
4 of State, Defendants Moffatt and Shuman caused Rainbow Disposal to form West
5 Florida Recycling in May 2010 and were both managers or managing members of
6 West Florida Recycling. Rainbow Disposal owned 55% of West Florida
7 Recycling. As with SER, Rainbow contributed financial capital for West Florida
8 Recycling and neither Moffatt nor Shuman invested any significant financial capital
9 in West Florida Recycling.

10 66. According to Larry Hoover, Rainbow Disposal worked jointly with
11 Southeastern Renewables on many projects in southern Alabama and the north-
12 western part of Florida.

13 67. According to annual reports filed with the Florida Secretary of State,
14 Larry Hoover, a 26 percent owner in Southeastern Renewables, was the manager
15 of West Florida Recycling and received \$30,000 per month in compensation.

16 68. During the time that Rainbow Disposal was an owner, West Florida
17 Recycling never made a profit. During the time that Rainbow owned West Florida
18 Recycling it lost an average of \$50,000 to \$100,000 per month.

19 69. According to a July 31, 2013 letter from the Florida Department of
20 Environmental Protection, West Florida Recycling was warned of possible
21 violations of Chapter 403, Florida Statutes and Chapters 62-620 and 62-621,
22 Florida Administrative Code following a National Pollutant Discharge Elimination
23 System Stormwater inspection. The Florida Fish and Wildlife Conservation
24 Commission found West Florida Recycling was dumping the waste on commercial
25 and residential lots in a neighboring city although customers had paid the company
26 to pick up and recycle their waste.

1 70. According to a letter from Shuman dated April 8, 2013, Southeastern
2 Renewables purchased West Florida Recycling. Less than a year later, West
3 Florida Recycling filed for bankruptcy on March 31, 2014.

4 71. Rainbow Disposal is listed as a creditor on the petition for bankruptcy
5 by West Florida Recycling. Rainbow Disposal incurred losses from this deal
6 because Rainbow Disposal lost the \$6-to-8 million of capital it had contributed to
7 establish West Florida Recycling. These losses also resulted in decreases to the
8 value of the Rainbow stock held by the Rainbow ESOP.

9 **Rainbow Disposal's Stock Value 2012-2014**

10 72. As a result of its investments in Southeastern and West Florida
11 Recycling and other non-core subsidiary businesses, during 2012 or 2013 Rainbow
12 Disposal began to default on its loan covenants, according to a deposition of Mr.
13 Shuman in other litigation. According to the depositions of Mr. Moffat and Mr.
14 Shuman in other litigation, one of Rainbow Disposal's lenders, Bank of America,
15 gave Rainbow Disposal a directive, in May 2013, to cease funding to all
16 subsidiaries that were not in Huntington Beach, California.

17 73. In 2012 and 2013, the value of Rainbow Disposal stock decreased
18 dramatically from \$11.43 per share in 2011 to \$7.48 per share in 2012 and then
19 further reduced to \$6.71 per share by 2013. The decline in Rainbow Disposal's
20 stock value coincided with and upon information and belief, was caused at least by
21 Rainbow Disposal's investments in SER and WFR.

22 74. Based on statements made by Jeff Feltch to Rainbow employees in
23 June 2014, Rainbow Disposal "got killed on West Florida" and also incurred
24 significant losses in New Mexico as well.

25 75. According to statements made by Jeff Feltch in July 2014, the
26 "Florida stuff" (meaning Southeast Renewables and West Florida Recycling)
27 caused the financial problems of Rainbow Disposal. Those investments caused
28 distractions from the core business of Rainbow Disposal, required Rainbow

1 Disposal to restructure and caused Rainbow's bankers to have concern because the
2 banks "felt they were lied to."

3 76. Despite these losses (for which Rainbow Disposal did not recover), by
4 June 30, 2014, Rainbow Disposal stock was valued at \$16.67 per share according
5 to the 2013 Form 5500 filed with the Department of Labor on April 15, 2015. Had
6 Rainbow Disposal not incurred these losses or recovered these losses, its stock
7 price would have been higher.

8 77. The Rainbow ESOP's investment in company stock represented 97 of
9 the Plan's assets. The 2013 Form 5500 reported that as of June 30, 2014, the
10 3,536,952 shares allocated to participants' ESOP accounts had a reported value of
11 \$58,960,998 (or \$16.67 per share) and the 136,668 unallocated shares had a value
12 of \$2,278,252 (or \$16.67 per share) despite being the only shares serving as
13 collateral for the debt; however, that amount improperly attributes the debt to *all*
14 shares rather than just the unallocated shares, which were the only shares that
15 served as collateral for the debt. As such, the allocated shares should have been
16 valued higher.

17 78. By June 30, 2014, there was only \$4,683,302 outstanding on the
18 ESOP loan, which was scheduled to be paid on the last day of each quarter,
19 according to the 2013 Form 5500.

20 **RELEVANT PROVISIONS OF THE ESOP**

21 Definitions

22 79. Section 2 of the Plan Document includes the following definitions:

23 Committee	The Committee appointed by the Board of 24 Directors to administer the Plan.
25 Fair Market Value	The fair market value of Company Stock, as 26 determined by the Trustee for all purposes 27 under the Plan based upon a valuation by an 28

	independent appraiser (within the meaning of Section 401(a)(28)(C) of the Code).
Investment Manager	A person (1) registered as an investment adviser under the Investment Advisers Act of 1940, (2) a bank, or (3) an insurance company qualified to manage, acquire or dispose of Trust Assets under the laws of more than one state, who is appointed by the Committee pursuant to Section 402(c)(3) of ERISA to manage the investment of Trust Assets other than Company Stock, provided that such person acknowledges in writing that he is a fiduciary with respect to the Plan.
Trust Assets	The Company Stock (and any other asset held in Trust for the benefit of Participants as set forth in Section 5 of the Plan Document.
Trustee	Trustee or Trustees appointed by the Board of Directors of Rainbow Disposal Co., Inc. to serve as the trustee(s) of the Trust as set forth in Section 17 of the Plan Document.

Fiduciaries of the ESOP

The Rainbow ESOP Committee

80. Section 17(a) of the 2004 ESOP Plan Document provides that the Rainbow ESOP will be administered by a Committee composed of one or more individuals appointed by the Board of Directors. Pursuant to Section 17(a) of the the members of the Committee are named fiduciaries with authority to control and manage the operation and administration of the Rainbow ESOP. Once appointed, members of the Committee can only resign by providing notice, in writing, to the

HURTADO, et al. v. RAINBOW DISPOSAL CO., INC. EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE et al., COMPLAINT - 24

1 Board of Directors. No documents have been provided to Plaintiffs evidencing
2 that the Prior Committee Defendants properly resigned under the terms of the Plan.

3 81. Section 17(b) of the 2004 Plan Document requires that any Committee
4 action will be by a vote of a majority of the members at a meeting or by unanimous
5 written consent without a meeting. Section 17(b) also prohibits any member of the
6 Committee from voting “on any matter relating specifically to himself.”

7 82. Section 17(b) of the 2004 Plan Document also requires the Committee
8 to designate both a Chair and a Secretary. Section 17(b) authorizes only the Chair
9 or the Secretary to execute any certificate or other written direction on behalf of
10 the Committee.

11 83. Section 17(b) of the 2004 Plan Document requires that the Secretary
12 of the Committee must keep a record of the Committee’s proceedings and all dates,
13 records and documents pertaining to the administration of the Plan. No minutes of
14 any meetings discussing the sale of stock by the Rainbow ESOP stock have been
15 provided to Plaintiffs.

16 84. Section 17(c) of the 2004 Plan Document provides that the Committee
17 shall have all powers necessary to enable it to administer the Plan Document and
18 Trust Agreement in accordance with the provisions of those documents, and
19 specifically enumerates the following powers, among others:

- 20 a. authorizing and directing all disbursements of Trust Assets by
21 the Trustee
22 b. engaging any administrative, legal, accounting, clerical or other
23 services that it may deem appropriate
24 c. reviewing the performance of the Trustee with respect to the
25 Trustee’s administrative duties, responsibilities and obligations under
26 the Plan and Trust Agreement
27
28

1 *The Trustee*

2 85. Section 17(c) of the 2004 Plan Document provided that the
3 Committee was responsible for directing the Trustee as to the investment of Trust
4 Assets. Section 17(c) permitted the Committee to delegate to the Trustee the
5 responsibility for investing all or any portion of the Trust Assets; however, Section
6 17(c) required that the Committee establish a funding policy and method for
7 directing the Trustee to acquire Company Stock and for otherwise investing the
8 Trust Assets in a manner that is consistent with the objections of the Plan and the
9 objectives of the Plan and requirements of ERISA. In response to Plaintiffs'
10 request for documents pursuant to ERISA, no such funding policy or investment
11 policy has been provided.

12 *The Investment Manager*

13 86. Section 17(c) of the 2004 Plan Document provided that the
14 Committee may delegate to an Investment Manager the responsibility for investing
15 Trust Assets other than Company Stock. Between at least 2014 and the present,
16 there was no Investment Manager, within the meaning of Section 2 of the ESOP
17 Plan Document, appointed for the Rainbow ESOP.

18 *Delegation of Powers*

19 87. In the event that there was an allocation or delegation of any the
20 rights, powers, duties, and responsibilities of the Committee to any other person
21 (including the Trustee or any subset of the Committee) that allocation or delegation
22 was required pursuant to Section 17(f) of the Plan Document to be made in writing.
23 In addition, Section 17(f) of the Plan Document required that the allocation and
24 delegation "be reviewed periodically by the Committee" and any such allocation or
25 delegation be terminable by the Committee in the Committee's discretion.

1 Investment of the Assets of the Plan

2 88. Section 5(a) of the Plan Document both before and after October 1,
3 2014 required that Trust Assets will be invested by the Trustee primarily (or
4 exclusively) in Company Stock in accordance with directions from the Committee.

5 89. Section 5(a) of the Plan Document both before and after October 1,
6 2014 requires the Trustee to “invest any Trust Assets that are not invested in
7 Company Stock in such prudent investments as the Committee deems to be
8 desirable for the Trust.” Section 5(a) only allows Trust Assets to be held
9 “temporarily in cash.”

10 Sale of Company Stock Must Be For Fair Market Value

11 90. Section 5(d) of the 2004 Plan Document governs the sale of the
12 Rainbow Stock held by the Rainbow ESOP. Prior to August 25, 2014, Section
13 5(d) provided that “[s]ubject to the approval of the Board of Directors, the
14 Committee may direct the Trustee to sell shares of Company Stock to any person
15 (including the Company), provided that any such sale must be made at a price not
16 less than Fair Market Value *as of the date of the sale.*” (emphasis added)

17 91. On August 25, 2014, Gerald Moffatt executed Amendment No. 4 of
18 the Plan which purported to be retroactive to August 8, 2014. Amendment No. 4
19 modified the language in Section 5(d), entitled Sales of Company Stock, to add the
20 following paragraph:

21 Notwithstanding the foregoing provisions or any other provision in the
22 Plan or Trust to the contrary, the Trustee shall have the discretionary
23 authority (without directions from the ESOP Committee, the Board of
24 Directors or any other party) to: (i) sell all or substantially all of the
25 outstanding shares of the Company to a third party in a change of
26 control transaction, and (ii) execute and deliver instruments to effect
27 such a sale.

1 Nothing in this additional language modified the requirement that any such
2 sale must be made at a price not less than Fair Market Value *as of the date of*
3 *the sale.*”

4 92. Both before and after August 25, 2014 (at least until the Closing on
5 October 1, 2014), Section 5(d) required that any “decision to sell Company Stock
6 under this Section 5(d) must comply with the fiduciary duties applicable under
7 Section 404(a)(1) of ERISA and with the primary benefit rule of Section
8 408(b)(3)(A) of ERISA and Section 4975(d)(3)(A) of the Code.”

9 93. Section 2 of the ESOP defines “Fair Market Value” as the “fair
10 market value of Company Stock, as determined by the Trustee for all purposes
11 under the Plan based upon a valuation by an independent appraiser (within the
12 meaning of Section 401(a)(28)(C) of the Code.”

13 94. IRC § 401(a)(28)(C) requires that “all valuations of employer
14 securities which are not readily tradable on an established securities market with
15 respect to activities carried on by the plan are by an independent appraiser” which
16 means an appraiser meeting the requirements of the regulations prescribed under
17 section 170(a)(1).

18 95. Rainbow stock was not readily tradeable on an established securities
19 market.

20 Voting

21 96. Section 8 of the 2004 Plan document provides Plan participants voting
22 rights with respect to corporate matters as follows:

23 With respect to any corporate matter which involves the voting of
24 such shares at a shareholder meeting and which constitutes a merger,
25 consolidation, recapitalization, reclassification, liquidation,
26 dissolution, or the sale of substantially all the assets of a trade or
27 business or a similar transaction specified in the regulations under
28 Section 409(e)(3) of the Code . . . each Participant (or Beneficiary)

1 will be entitled to give confidential instructions as to the voting of
2 shares of Company Stock then allocated in his Company Stock
3 Account. In that event, each Participant (or Beneficiary) shall be
4 provided with the information statement and other materials provided
5 to Company shareholders in connection with each shareholder
6 meeting, together with a form upon which confidential voting
7 instructions may be given to the Trustee. The trustee shall vote shares
8 of allocated Company Stock as directed by Participants (or
9 Beneficiaries) and shall not disclose the confidential voting directions
10 of any individual Participant (or Beneficiary) to the Company, an
11 Employer or the Committee.

12 97. The March 2009 SPD, which was the one in effect prior to the October,
13 1, 2014, sale explains as follows: “The committee usually decides how shares of
14 Company Stock held by the ESOP will be voted. *In certain important corporate*
15 *matters however, such as a merger or liquidation of the Company, you may have the*
16 *right to decide how shares of Company Stock allocated to your Company Stock*
17 *Account will be voted.”* (emphasis added).

18 98. The notes to the financial statements to the Forms 5550 filed with the
19 Department of Labor between at least 2009 and 2014 describe the voting provision
20 in the Plan Document as follows: “Each participant is entitled to exercise voting
21 rights attributable to the shares allocated to his or her account.”

22 Administrative Expenses

23 99. Section 17(d) of the Plan Document allows only “reasonable expenses
24 of administering the Plan and Trust [to] be charged to and paid out of the Trust
25 Assets. The Company may, however, pay all or any portion of such expenses
26 directly, and payment of expenses by the Company shall not be deemed to be
27 Employer Contributions.”

1 100. Section 6(c) of the 2004 Plan document provides that each participant's
2 Other Investment Account will be "reduced by any expenses charged to the Trust
3 Assets for that Plan Year." Thus, expenses charged to Trust Assets are passed on to
4 and paid for by each Participant or Beneficiary.

5 **GreatBanc Is Hired as the Trustee**

6 101. GreatBanc was hired as the successor Trustee of the Rainbow ESOP
7 pursuant to a Successor Trust Agreement dated October 7, 2002. GreatBanc has
8 acted as the sole Trustee of the ESOP since the Board of Directors of Rainbow
9 appointed GreatBanc as the Trustee on October 11, 2002.

10 102. Section 14 of the October 7, 2002 Successor Trustee Engagement
11 Agreement between GreatBanc and Rainbow Disposal purports to disclaim any
12 responsibility by GreatBanc to pay for "any loss, cost, expense, or other damage,
13 including attorneys' fees suffered by any of the Indemnitees [defined as GreatBanc
14 and its officers, directors, employees, and agents] resulting from or incurred with
15 respect to any legal proceedings related in any way to the performance of services
16 by any one or more of the Indemnitees." Subsection (b) of Section 15, requires
17 Rainbow Disposal to "reimburse the Indemnitees for all reasonable costs that they
18 incur in connection with any Proceeding."

19 103. Section 17 of the Successor Trustee Engagement Agreement provides,
20 "[i]f a court of competent jurisdiction shall hold that any payment or award of
21 indemnification pursuant to the terms of this Agreement shall be unavailable to any
22 one or more of the Indemnitees from the Company for any reason other than their
23 gross negligence or willful misconduct, the Company then shall reimburse the
24 affected Indemnitees, as required by Section 14, but taking into account the basis
25 for the denial of full indemnification by the court."

26 **Relevant Sections of the Trust Agreement**

27 104. The operative Trust Agreement is entitled "Rainbow Disposal Co. Inc.
28 Employee Stock Ownership Trust Agreement As Amended and Restated Effective

1 as of January 1, 1999.” Since 1999, there have been three amendments to that
2 Agreement, but the Trust Agreement has not been restated.

3 105. Paragraph A of the Trust Agreement requires that the assets of the
4 Trust be held in trust by the Trustee. Paragraph A also specifies that, except as
5 provided in Paragraphs B(3) and B(6), the Trust Assets will be invested by the
6 Trustee as directed by the Committee (appointed to administer the Plan) pursuant
7 to the terms of the Plan and the Trust Agreement. Paragraph A also provides that
8 the Trustee will “hold, invest, reinvest, manage, administer and distribute the Trust
9 Assets as directed by the Committee.”

10 106. Paragraph B of the Trust Agreement also provides that the following
11 of the Trustee’s actions will be as directed by the Committee: (1) investment and
12 reinvestment of Trust Assets in Company Stock; (2) investment of Trust Assets in
13 other investments, but also provides that Trust Assets may only “be held
14 *temporarily* in cash.” Paragraph B(3) of the Trust Agreement provides that the
15 Committee will have responsibility and liability for the prudence of investments
16 directed by the Committee under Paragraph B.

17 107. Paragraph B(6) of the Trust Agreement provides that the Rainbow
18 Board may engage the Trustee in writing to act on any matter (without direction
19 from the Committee based upon the Trustee’s determination that the terms of the
20 transaction are fair and reasonable and in the best interests of Participants and in
21 compliance with all applicable provisions of the IRC and ERISA.

22 108. Paragraph C of the Trust Agreement provides that “as directed by the
23 Committee,” the Trustee will have the following powers among others:

- 24 (1) enter into transactions to acquire or sell stock
25 (2) vote any stocks (including Company Stock, but only as
26 provided in Section 8 of the Plan);
27 (8) “sue, defend, compromise, arbitrate or settle any suit or legal
28 proceeding or any claim due it on which it may be liable;”

1 (9) “exercise any powers of an owner with respect to Company
2 Stock and other Trust Assets;”

3 (10) employ agents, legal counsel, independent appraisers, actuaries,
4 or other persons.

5 109. Paragraph J of the Trust Agreement purports to disclaim any liability
6 for the Trustee for action the Trustee takes or refrains from taking based on proper
7 direction from the Committee. Paragraph J includes an indemnification provision,
8 but exempts breaches of fiduciary duty under ERISA.

9 110. Paragraph K of the Trust Agreement provides that “the Company
10 (through its Board of Directors)” has the ability to modify the Trust Agreement,
11 but that any amendment altering the Trustee’s duties, powers or liabilities must be
12 done only with the Trustee’s written consent.

13 111. Paragraph M of the Trust Agreement provides that the Trustee may be
14 removed by the Company and that the Board of Directors will appoint a successor
15 trustee.

16 112. Amendment No. 2 to the Trust Agreement purports to amend the
17 Trust “effective as of July 1, 2014 by adding the following sentence to the end of
18 Paragraph B” of the Trust Agreement:

19 Notwithstanding the foregoing provisions or any other provision in the
20 Plan or Trust to the contrary, the Trustee shall have the discretionary
21 authority (without directions from the ESOP Committee, the Board of
22 Directors or any other party) to: (i) sell all or substantially all of the
23 outstanding shares of the Company to a third party in a change of
24 control transaction, and (ii) execute and deliver instruments to effect
25 such a sale.

26 Amendment No. 2 has one signature, which appears to be Mr. Moffat’s but does
27 not indicate when it was signed. Nothing in Amendment No. 2 states that the
28

1 amendment has been approved by the Board of Directors as required by Paragraph
2 K of the Trust Agreement in order to make the amendment effective.

3 **GreatBanc's Settlement Agreement with the Department of Labor**

4 113. The Department of Labor has instituted a number of lawsuits against
5 GreatBanc, at least as far back as 2006 in *Chao v. Hagemeyer North America, Inc.*,
6 No. 06-cv-01173 (D.S.C.), alleging that GreatBanc breached its fiduciary duties or
7 otherwise violated ERISA in connection with transactions involving employee
8 stock ownership plans owning privately held or closely held employer stock.

9 114. In 2012, the Department of Labor filed litigation against GreatBanc
10 concerning its role in the purchase of Sierra Aluminum Company stock by the
11 Sierra Aluminum Company Employee Stock Ownership Plan, entitled *Perez v.*
12 *GreatBanc Trust Company*, No. 5:12-cv-01648-R-DTB (C.D. Cal.). In the lawsuit,
13 the Department of Labor alleged that GreatBanc (a) failed to adequately inquire
14 into an appraisal that presented unrealistic and aggressively optimistic projections
15 of Sierra Aluminum's future earnings and profitability, (b) failed to investigate the
16 credibility of the assumptions, factual bases and adjustments to financial
17 statements that went into the appraisal and (c) asked for a revised valuation opinion
18 in order to reconcile the ESOP's higher purchase price with the lower fair market
19 value of the company stock.

20 115. In a settlement agreement filed June 6, 2014 in *Perez v. GreatBanc*
21 *Trust Company*, No. 5:12-cv-01648-R-DTB (C.D. Cal.) (Dkt No. 166-1),
22 GreatBanc agreed to pay over \$4.7 million to the Sierra ESOP plus \$477,273 in
23 fines to the U.S. Department of Labor. Most significantly, and as many in the
24 ESOP "industry" have noted, as part of the settlement agreement, GreatBanc was
25 required to implement very specific policies and procedures whenever it serves as
26 a trustee or other fiduciary of an ESOP in connection with transactions in which
27 the ESOP is purchasing or selling, is contemplating purchasing or selling, or
28

1 receives an offer to purchase or sell employer securities that are not publicly
2 traded.

3 116. As then U.S. Secretary of Labor Thomas E. Perez observed in the
4 Department of Labor press release announcing the settlement, the “more
5 important[]” part of the settlement was to ensure “safeguards will be put in place to
6 protect ESOPs involved in any future GreatBanc transactions.”

7 117. Attachment A to the Settlement in *Perez v. GreatBanc Trust Co.*,
8 entitled “AGREEMENT CONCERNING FIDUCIARY ENGAGEMENTS AND
9 PROCESS REQUIREMENTS FOR EMPLOYER STOCK TRANSACTIONS”
10 consists of a 10-page set of very detailed and highly proscriptive policies that
11 GreatBanc is required to implement whenever it serves as a trustee of an ESOP and
12 is considering the purchase or sale of employer securities that are not publicly
13 traded. These policies and procedures are summarized as follows:

14 a. **Selection and Use of Valuation Advisor.**

15 i. GreatBanc is required to hire a qualified valuation
16 advisor, investigate the advisor's qualifications, and prudently
17 determine that it can rely on the advisor *before* entering into the
18 transaction.

19 ii. GreatBanc cannot use an advisor for a transaction which
20 has previously performed work for the ESOP sponsor (distinguished
21 from the ESOP), any counterparty to the ESOP involved in the
22 transaction, or any other entity that is structuring the transaction (such
23 as an investment bank).

24 iii. GreatBanc is prohibited from using an advisor that has a
25 familial or corporate relationship to itself and other transaction parties.

26 iv. In selecting an advisor for a transaction involving the
27 purchase or sale of employer securities, GreatBanc has to prepare
28

1 a *written* analysis addressing specified topics such as the reason for
2 selecting the particular advisor.

3 v. GreatBanc has to oversee the valuation process and make
4 sure the advisor documents certain required items; if the advisor does
5 not do so, GreatBanc then has to prepare supplemental documentation
6 addressing a number of matters relating to the analysis.

7 **b. Financial Statements.**

8 i. GreatBanc must request that the company provide
9 GreatBanc and its valuation advisor with audited unqualified financial
10 statements prepared by a CPA for the preceding five fiscal years,
11 unless financial statements extending back five years are unavailable.

12 ii. In the absence of such audited financial statements,
13 GreatBanc is required to take certain steps before proceeding with the
14 transaction, including additional documentation of why it has chosen
15 to proceed.

16 **c. Fiduciary Review Process.**

17 i. GreatBanc must follow a specified process and document
18 the valuation analysis that includes (a) determine the prudence of
19 relying on the financial statements, (b) critically assess the
20 reasonableness of any projections, and (c) document the basis for its
21 conclusion that the information provided was current, complete and
22 accurate.

23 ii. GreatBanc must document its analysis of the valuation
24 report in writing by assessing 16 specific items.

25 iii. GreatBanc must document that its personnel have (a)
26 read and understand the report, (b) identify and question the reports
27 assumptions, (c) make reasonable inquiry about whether the
28 information is consistent with information in the GreatBanc's

1 possession, (d) analyze whether the report's conclusions are consistent
2 with the data and analysis and (e) analyze whether the report is
3 internally consistent.

4 iv. If the valuation report does not meet these criteria, then
5 GreatBanc must not proceed with the transaction.

6 d. **Fair Market Value.** GreatBanc specifically agreed that it
7 would not cause an ESOP to purchase employer securities for more
8 than their fair market value or sell employer securities for less than
9 their fair market value.

10 118. Given the publicity of the GreatBanc-DOL Settlement Agreement at
11 least within the ESOP community, the Prior ESOP Committee Defendants should
12 have known about this Settlement. Given the attention that this settlement received
13 from the firms that regularly perform valuations for ESOPs, Defendant Range must
14 have been aware of this settlement. As a member of the Board of Directors of
15 Rainbow and as such a fiduciary of the Rainbow ESOP, Defendant Range would
16 have had a fiduciary duty to communicate such information to his fellow members
17 of the Board as well as to the members of the Rainbow ESOP Committee. In
18 addition, GreatBanc would have had a fiduciary duty as the Trustee to provide this
19 information, if not the settlement agreement itself, to the ESOP Committee and to
20 the Rainbow Board of Directors. As such, the Prior ESOP Committee Defendants
21 and the Board should have been aware of this Agreement.

22 **GreatBanc's Trustee Engagement Letter is Modified**

23 119. A little over a month after the DOL's unique and comprehensive
24 settlement with GreatBanc, on July 10, 2014, Defendant Moffat on behalf of
25 Rainbow and the Rainbow ESOP enter into an Amendment to the Trustee
26 Engagement Agreement with Great Banc. Section 2 of the Plan Document requires
27 the Trustee to be appointed by the Rainbow Disposal Board of Directors, but
28

1 neither the Amendment nor any other document provided to Plaintiffs recites that
2 the Board had authorized the Trustee to have expanded authority on July 10, 2014.

3 120. The July 10, 2014 Amendment to the Trustee Engagement Agreement
4 recites that the Amendment is being made to Original Engagement Agreement for
5 GreatBanc to “review a proposed transaction involving a sale of all of the issued
6 and outstanding stock of the Company to Republic Services.” By the time of this
7 Amended Trustee Engagement Agreement, a proposed buyer had been selected
8 and the terms of a sale had already been proposed if not negotiated.

9 121. From July 10, 2014 to at least until August 25, 2014, GreatBanc as the
10 Trustee did not have authority, without direction of the Committee to make
11 decisions pursuant to Section 5(a) of the Plan Document regarding the investment
12 of Plan assets in Company Stock. Unless authorized by the Board of Directors as
13 provided by the Plan Document, GreatBanc did not have such authority.

14 **The Plan Document Is Amended & A Stock Purchase Agreement is Executed**

15 122. On August 25, 2014, Gerald Moffatt executed Amendment No. 4 of
16 the Plan which purported to be retroactive to August 8, 2014. Amendment No. 4
17 modified the language in Section 5(d), entitled Sales of Company Stock, to add the
18 following paragraph:

19 Notwithstanding the foregoing provisions or any other provision in the
20 Plan or Trust to the contrary, the Trustee shall have the discretionary
21 authority (without directions from the ESOP Committee, the Board of
22 Directors or any other party) to: (i) sell all or substantially all of the
23 outstanding shares of the Company to a third party in a change of
24 control transaction, and (ii) execute and deliver instruments to effect
25 such a sale.

26 123. Prior to Amendment No. 4, the Trustee did not have authority to sell
27 the Company stock held by the Rainbow ESOP under the terms of the Plan
28 Document except as directed by the Committee.

1 124. The very next day after Amendment No. 4 was adopted, Republic
2 Services, the Rainbow ESOP and Rainbow Disposal entered into a Stock Purchase
3 Agreement dated August 26, 2014 setting forth that Republic would purchase all of
4 the outstanding company stock from the Rainbow ESOP contingent upon a closing
5 of the sale. The Stock Purchase Agreement was described in the Unanimous
6 Written Consent of the Directors of Rainbow by Defendants Moffat, Snow and
7 Range “effective of October 1, 2014,” was attached as an Exhibit thereto, but has
8 not been provided to Plaintiffs and was not provided to ESOP Participants.

9 **The Transaction Closes & The Plan Document Is Amended Again**

10 125. Effective October 1, 2014, Republic acquired all of the shares of
11 Rainbow, either “for net proceeds of \$50,829,073” according to the 2014 Form
12 5500 filed with the DOL on April 18, 2016” or “\$48,815,131.29” according to both
13 the Form 5310 filed with the IRS on November 26, 2014 and according to the May
14 26, 2016 letter from the ESOP Committee. No explanation has been provided for
15 the discrepancy. According to the 2014 Form 5500, in addition to the net
16 proceeds, \$16,800,000 was placed into an escrow account pursuant to a “holdback
17 arrangement” whereby the proceeds were “scheduled to be disbursed
18 approximately equally over the 36-month period ending October 1, 2017.”

19 126. According to the 2014 Form 5500, the Plan Document was amended
20 “pursuant to the Stock Purchase Agreement.” On October 1, 2014, Defendant
21 Moffatt executed Amendment No. 5 of the Plan Document and Amendment No. 3
22 to the Trust Agreement.

23 **Amendment No. 5 to the Plan Document**

24 127. Amendment No. 5 amended Section 1 of the Plan Document to
25 convert the plan from an ESOP to a Profit Sharing Plan and stated that the
26 following provisions were no longer effective among others: Section 2 definition
27 of Fair Market Value; Section 8 (Voting Company Stock).

1 128. Amendment No. 5 amended Section 4 of the Plan Document to
2 provide that a “final Employer Contribution shall be made to the Plan immediately
3 prior to effective with the Closing to be used by the Trustee to repay the
4 Acquisition Loan.” Amendment No. 5 also amended Section 6(a) of the Plan
5 Document by adding the following verbiage, “Financed Shares released from the
6 Loan Suspense Account as a result of [a final contribution by Rainbow Disposal]
7 will be allocated as of the Closing among the Accounts of Participants.” Pursuant
8 to Section 6 (b) of the 2004 Plan document and Sections 4 and 6(a) as amended by
9 Amendment No. 5, all of the remaining shares that were being held in the Loan
10 Suspense Account should have then been allocated to ESOP participants’ accounts.

11 129. Amendment No. 5 amended Section 5(d) of the Plan Document delete
12 the first and last sentences and add that the Trustee had discretionary authority to
13 enforce the provisions of the SPA “for the benefit of the Participants including
14 decisions related to any payments of escrowed funds under the SPA.” Section 5(d)
15 was also amended to expressly provide that the escrowed funds were “owned
16 solely by Purchaser” and neither the Plan nor any participant or beneficiary had
17 any interest in those funds and were not assets of the Plans until disbursed and
18 received by the Trustee.” Thus, the amounts in Escrow were not held by the
19 Trustee and were not listed as the assets on the Form 5500s.

20 130. Amendment No. 5 also amended Section 5(d) to provide that “after
21 Closing, Trust Assets will be invested primarily in investments designed to
22 preserve principal consistent with the requirements of ERISA.”

23 131. Amendment No. 5 amended Article 20 to provide the following three
24 distributions to Participants and Beneficiaries:

- 25 (i) First, “[A]n initial distribution . . . offered in an amount equal to
26 approximately 75% of all Participants’ Account balances as of the
27 closings;”

1 (ii) A second distribution “in cash in an amount equal to the
2 remainder of all Participants’ Account balances (*exclusive of any*
3 amounts held in escrow under the SPA and *the amount set aside by*
4 *the Trustee for Plan and Trust related expenses, such amounts to be*
5 *determined at the sole discretion of the Trustee)* under the Plan;

6 (iii) A third distribution that is described only as follows:

7 As soon as practicable following any distribution made to the
8 Plan from the escrow created under the SPA (whether an annual
9 distribution or the final distribution) the amounts shall be
10 allocated and become available for distribution (exclusive of any
11 amounts set aside by the Trustee for Plan and Trust related
12 expenses, such amounts to be determined at the sole discretion
13 of the Trustee).

14 No explanation or elucidation was provided as to conditions for the third
15 distribution nor what expenses could be deducted from the second distribution.

16 **Amendment No. 3 to the Trust Agreement**

17 132. Amendment No. 3 amended Paragraph B of the Trust Agreement to
18 provide that “the Trustee’s fiduciary authority with respect to the Plan shall be that
19 of a directed trustee” and direction would be provided by the ESOP Committee,
20 except with respect to matters related to or claims against the funds held in the
21 “escrow account created under the Stock Purchase Agreement.”

22 **Rainbow Amends its Articles of Incorporation**

23 133. Twenty-one days after the closing, Rainbow Disposal filed Amended
24 and Restated Articles of Incorporation on October 21, 2014. The Restated Articles
25 eliminated the requirement that Rainbow be employee-owned. The Restated
26 Articles recite that they have been approved by a vote of the shareholders, but does
27 not set forth when that vote occurred. There was no vote by the Rainbow ESOP
28 participants.

Defendants' Disclosures About the Sale of Rainbow

Defendants Announce the Sale to Employee-Participants of the ESOP

134. An undated letter signed "GreatBanc Trust Company" addressed to "ESOP Participant" delivered around October 3, 2014 informed Plaintiffs and other ESOP participants that "all of the stock in the ESOP had been sold to Republic Services." Despite the fact that GreatBanc's Trustee Agreement was not amended until July 10, 2014 and GreatBanc did not have discretionary authority under the Plan Document to sell the Rainbow stock in the ESOP until at least August 25, 2014, GreatBanc's letter claimed there was "a lengthy sale process in which the Company sought and received substantial offers from multiple bidders and resulting in the Company being sold to the highest bidder." According to notes of a telephone conversation by a Rainbow employee with Bruce Shuman in November 2014, there were other, higher offers, but Jerry Moffat and Jeff Snow did not show those proposals to GreatBanc because they were negotiating future job contracts along with the sale and put their job welfare ahead of the best deal overall.

135. In the letter delivered around October 3, 2014, GreatBanc advised the ESOP participants would "receive 75% of [their] closing cash allocation" and that the "remaining 25% (plus any additional amounts related to the post-closing adjustments of the Company's balance sheet on the closing date) will be distributed to [participants] upon IRS approval of the ESOP's termination. Any available holdback amounts will be distributed annually over 3 years, likely beginning 2015."

136. GreatBanc's October 3rd letter did not provide ESOP Participants with (a) the sale price of the ESOP's stock, (b) any assessment of the fair market value of the stock, as assessed by an independent appraiser, (c) any further details of the sale, (d) whether any consideration was provided other than purchase of the Rainbow ESOP stock, (e) with information that the prior ESOP fiduciaries had

1 resigned on October 1, 2014 or (e) the names or contact information (e.g. a
2 telephone number or email) of the new fiduciaries or any contact information of
3 anyone from whom they could ask questions about the status of their ESOP
4 accounts.

5 137. The next formal communication about the sale and its impact on the
6 ESOP and its participants was a letter dated October 17, 2014 from the ESOP
7 Committee signed with an illegible signature by an unidentified and unfamiliar
8 person (now believed to be Jon Black). This October 17, 2014 letter informed
9 Plaintiffs (and presumably all ESOP participants) that “all of the Company stock
10 held in the Trust” in the ESOP had “been sold in cash at a price of \$17.66 per
11 share” and that October 1, 2014 was “the transaction close date.”

12 138. The October 17, 2014 letter informed ESOP participants that they
13 would receive the “cash equivalents for stock allocated to” them in three separate
14 payments.

- 15 • The first payment would be the equivalent of \$9.97 per share
16 (issued in November 2014).
- 17 • The second payment would be the equivalent of up to \$3.37 per
18 share – or a total payment of \$13.34 per share (if no amount was
19 made available from the escrow), but would be “subject to the
20 receipt of [a] determination letter from the IRS expected in 12 to
21 18 months, reduced by [an] amount determined by the ESOP’s
22 Trustee for ESOP expenses.”
- 23 • The “potential” third payment of up to \$4.37 per share – or a total
24 payment of \$17.66 per share – that was “subject to closure of
25 indemnity holdback” and “will be distributed annually over 3
26 years, likely beginning in 2015 and may be reduced by any
27 liabilities that are identified during that period and reduced by an
28 amount determined by the ESOP’s Trustee for ESOP expenses.”

1 139. There was no explanation – at least in terms that could be understood
2 by the ESOP participants -- as to the reasons or conditions on which the amount of
3 their payments would depend. The October 17, 2014 letter did not (a) set forth the
4 fair market value of the stock, as assessed by an independent appraiser, (b) provide
5 any details of the sale, or an explanation of other terms and conditions of the sale,
6 (c) explain whether any consideration was provided other than purchase of the
7 Rainbow ESOP stock, (d) disclose that the prior ESOP fiduciaries had resigned on
8 October 1, 2014 or (e) provide the names or contact information (i.e. a telephone
9 number or email) of the new fiduciaries or anyone from whom they could ask
10 questions.

11 140. Despite the October 17, 2014 letter claiming that the sale prices was
12 \$17.66 per share, it was highly unlikely that the ESOP participants would receive
13 the “maximum” amount (but the ESOP Committee failed to disclose that). As the
14 Form 5310 filed with the IRS on November 26, 2014 reported that the Rainbow
15 ESOP had only received \$48,815,131.29 in net proceeds to date for 3,673,620
16 shares, that translated into a share price of only \$13.288 per share. As \$17.76 per
17 share would translate into a complete purchase price of \$64,876,129.2, that would
18 mean that the Rainbow ESOP would receive nearly all of the \$16,800,000 placed
19 in escrow. No reasonable and prudent fiduciary would have made that conclusion.

20 141. The 2012 Form 5500 filed by Rainbow Disposal on April 15, 2014
21 (the most recent Form 5500 filed before the 2014 sale), reported that the ESOP,
22 which held 100% of Rainbow stock, had approximately 3,850,473 million shares.
23 Based on a sale of 3,850,473 shares at a price of \$17.66 per share, the October
24 disclosures by the ESOP Committee suggested a total sale price of \$67.99 million.
25 There is no explanation about the decrease of 176,853 shares. More importantly, a
26 statement of a maximum payout utilizing the only information available to ESOP
27 participants at that time misleadingly conveyed a high expectation of receiving the
28 entire escrow fund, plus earnings on undistributed monies.

1 **Republic’s Announces the Acquisition to the Public & the SEC**

2 142. In a press release dated October 1, 2014, Republic announced its
3 acquisition of Rainbow which it described as “one of Southern California's largest
4 independent solid waste companies.” In the press release, Republic represented
5 that the transaction consisted of at least two components (emphasis added):

- 6 a. Republic acquired “Rainbow's state-of-the-art *business and*
7 *facilities*” including hauling routes in Huntington
8 Beach, Fountain Valley, Midway City, Westminster, Orange
9 County, Newport Beach and Irvine as well as a recycling
10 facility, a transfer station, “a compressed natural gas (CNG)
11 refueling station, and a vehicle fleet, powered by CNG.”
12 b. “*As part of the transaction*, the primary principals at
13 Rainbow, Jerry Moffatt and Jeff Snow, have joined Republic
14 Services, and will now lead a newly created business unit of the
15 Company based at the Huntington Beach campus.”

16 In the press release, Brian Bales, executive vice president, Business Development
17 at Republic represented that “Rainbow Disposal's highly favorable and growing
18 market position, long-term franchise agreements and diversified service offering
19 will make a strong addition to Republic Services.” Thus, Republic described
20 Rainbow as a company in a good financial position in a growing market.

21 143. In a Form 10-Q filed by Republic on October 31, 2014 with the
22 Securities & Exchange Commission, Republic disclosed the transaction to the SEC
23 and the public as being for \$112 million in cash plus other consideration:

24 In October 2014, we acquired all of the shares of Rainbow Disposal
25 Co., Inc. (Rainbow) for \$112 million cash and entered into
26 agreements not to compete, along with other restrictive covenants,
27 with key executives. We also assumed capital lease agreements for
28 operational facilities in Southern California. Rainbow's operations in

1 Southern California include hauling routes, a recycling facility, a
2 transfer station, a compressed natural gas (CNG) refueling station, and
3 a CNG-powered vehicle fleet.

4 144. In contrast to the disclosures made to the ESOP Participants, Rainbow
5 disclosed in its Press Release and Form 10-Q that the October 1, 2014 Transaction
6 consisted of (1) a payment of \$112 million in cash, not merely \$68 million, (2)
7 agreements with key executives and (3) assumption of lease agreements.

8 **Republic Discloses Its Intent to Terminate the Plan**

9 145. In late November 2014, a “Notice to Interested Parties” advised that
10 Republic would make an application to the IRS for a determination on whether the
11 Rainbow ESOP met the qualification requirements of the Internal Revenue Code to
12 be terminated. This Notice was issued to “all present employees with accrued
13 benefits under [the Rainbow ESOP] and their collective bargaining agent, if any,
14 and all former employees with vested benefits under the plan and all beneficiaries
15 of deceased former employees currently receiving benefits under the Plan.”

16 146. The “Notice to Interested Parties” advised that the “interested parties”
17 could either submit comments directly to the IRS or request that the Department of
18 Labor submit comments to the IRS. The Notice to Interested Parties advised that
19 in order for the Department of Labor to comment, at least 10 employees had to
20 make a request in writing by no later than December 11, 2014.

21 147. On December 8, 2014, Plaintiffs Hurtado, Ortega, Urquiza, Valadez
22 and 6 other employee-participants in the ESOP submitted a hand-delivered request
23 to the Department of Labor requesting comments by the Department of Labor on
24 the Termination of the Rainbow ESOP. Among other issues, this letter explained
25 that those participants had obtained a copy of Republic’s Form 10-Q filed with the
26 Securities & Exchange Commission in October 2014 that disclose that Republic
27 had paid \$112 million and had also entered into agreements with certain members
28 of Rainbow management.

1 148. After receiving no response from the Department of Labor, Plaintiffs
2 hired counsel to submit comments on their behalf directly to the IRS as advised in
3 the Notice to Interested Parties. On January 9, 2015, Plaintiffs' then-counsel, Kira
4 Hettinger, sent a letter via overnight delivery, submitting comments to the IRS that
5 the proposed termination did not meet the qualification requirements.

6 149. None of the Plaintiffs nor their counsel received any communication
7 from the Department of Labor or the Internal Revenue Service in response to their
8 letter submitted with respect to the requests submitted on December 8, 2014 or
9 January 9, 2015.

10 **An Application To Terminate the ESOP is Filed with the IRS**

11 150. On November 26, 2014, counsel for Republic and Rainbow sent by
12 overnight delivery an Application for Determination for Terminating Plan (IRS
13 Form 5310) for the Rainbow ESOP to the IRS.

14 151. The Form 5310 disclosed the following:

- 15 • The Rainbow ESOP was terminated on October 1, 2014 when
16 Rainbow was acquired by Republic Services.
- 17 • The Rainbow ESOP was converted from an ESOP to a profit
18 sharing plan upon its termination.
- 19 • The Rainbow ESOP had been amended on October 1, 2014.
- 20 • The Plan assets totaled \$48,820,647, of which \$48,815,131 was
21 in noninterest bearing cash and \$5,516 was in interest-bearing cash.

22 As of November 26, 2014, none of the above information had been communicated
23 to the participants in the ESOP.

24 152. Enclosed along with the Form 5310 was a redacted version of the
25 Unanimous Written Consent of the Directors of Rainbow by Defendants Moffat,
26 Snow and Range "effective of October 1, 2014," which was altered to remove
27 pages 2 and 3 (which referenced, among other items, the Stock Purchase
28 Agreement dated August 26, 2014), and did not indicate that it had been redacted.

1 Nor was the Stock Purchase Agreement, which was an Exhibit to the Unanimous
2 Written Consent, enclosed with the Form 5310. The Unanimous Consent was
3 altered in such a way to prevent a reader from realizing that the Stock Purchase
4 Agreement had been an Exhibit.

5 153. The Form 5310 enclosed the Trust Agreement with Amendments, but
6 did not include the Amendment to the Trustee Engagement Agreement dated July
7 10, 2014.

8 **Republic Files Its Annual Report with the SEC**

9 154. In its 2014 10-K annual report filed with the SEC on February 23,
10 2015, Republic Services described the terms of its acquisition of Rainbow as
11 follows:

12 In October 2014, we acquired all of the shares of Rainbow Disposal
13 Co., Inc. (Rainbow) for \$112.0 million cash, of which \$16.8 million
14 of the funds were placed into an escrow account pursuant to a
15 holdback arrangement and classified as restricted cash. We also
16 assumed a capital lease agreement with a fair value of \$25.2 million
17 for operational facilities in Southern California, and entered into
18 agreements not to compete, along with other restrictive covenants,
19 with key executives.

20 155. In its 2014 10-K annual report filed with the SEC on February 23,
21 2015, Republic Services provided the following information:

22 We allocated \$53.5 million of the purchase price to property and
23 equipment, \$34.8 million to intangible assets, and we assumed \$18.9
24 million of liabilities. Approximately \$66 million of the remaining
25 purchase price was allocated to goodwill and represents the future
26 economic benefits expected to arise from other assets acquired that
27 could not be individually identified and separately recognized.

1 156. Based on the disclosures in Republic's 10-K, the total consideration
 2 paid by Republic for Rainbow (other than agreements with Rainbow executives)
 3 appears to be \$112 million in cash plus the assumption of \$18.9 million in
 4 liabilities, or a total of \$130.9 million.

5 157. Based on the disclosures in Republic's 10-K, Republic appears to
 6 have valued its acquisition of Rainbow somewhere between \$154.3 million to
 7 \$179.5 million as illustrated below (in millions):

9	Property & Equip	\$53.5	Property & Equip	\$53.5
10	Intangible Assets	\$34.8	Intangible Assets	\$34.8
11	Goodwill	\$66.0	Goodwill	\$66.0
12			Lease	\$25.2
13	Total	\$154.3	Total	\$179.5

14 **ESOP Fiduciary Communications to Participants in 2015**

15 158. After the Notice to Interested Parties in November 2014, the next
 16 communication by any fiduciary of the Rainbow ESOP to ESOP participants
 17 concerning the sale or the distribution of proceeds occurred in late November
 18 2015. An unsigned letter from the ESOP Committee dated November 20, 2015
 19 enclosed an undated letter from GreatBanc. The GreatBanc letter disclosed to
 20 ESOP participants for the first time that “[t]he total purchase price was
 21 approximately \$112,000,000.” The GreatBanc letter stated that “\$16.8 million of
 22 the purchase price” was in an “escrow account [] to account for indemnification
 23 claims and other adjustments.”

24 159. The November 2015 letter did not explain (a) why the total purchase
 25 price was \$112 million, but the ESOP and its participants would receive far less,
 26 (b) provide any explanation as to the other components of consideration for the
 27 sale (i.e. what the \$112 million paid for), (c) provide the fair market value of the
 28 stock, as assessed by an independent appraiser, (b) provide any details of the sale,

1 or an explanation of other terms and conditions of the sale, (c) explain, at least not
2 in terms that the average participant could understand, under what circumstances
3 the ESOP participants might receive all or part of the money in Escrow, (d)
4 disclose that the prior ESOP Committee members had resigned on October 1, 2014
5 or (e) provide the names or contact information (i.e. a telephone number or email)
6 of the new fiduciaries or anyone from whom they could ask questions.

7 **ESOP Fiduciary Communications to Participants in 2016**

8 160. After the November 20, 2015 letter, the next communication by any
9 fiduciary of the Rainbow ESOP to ESOP participants concerning the sale or the
10 distribution of proceeds occurred in April 2016. A letter from the ESOP
11 Committee dated April 11, 2016 announced that the IRS has issued a favorable
12 determination letter regarding the termination of the Rainbow ESOP. The April
13 11, 2016 letter advised that there would be letter from “ESOP’s third-party
14 administrator” advising whether there are “any additional amounts” allocated to
15 participant accounts “under the ESOP.”

16 161. After the April 11, 2016 letter, the next communication by any
17 fiduciary of the Rainbow ESOP to ESOP participants concerning the sale or the
18 distribution of proceeds occurred in late November 2016. An undated letter from
19 GreatBanc received by Plaintiffs in late November 2016 informed ESOP
20 participants that issues related to the \$16.8 million in escrow had been resolved
21 and that the “Rainbow ESOP had received \$4,475,000 from the Escrow as its final
22 payment” and noted that this was ‘well ahead of the scheduled October 1, 2017
23 final payment.’ This additional amount translated into approximately \$1.16 per
24 share. The letter concluded by suggesting that “the amount remaining in the
25 Rainbow ESOP will be paid [to ESOP participants] in the near future.”

26 **ESOP Fiduciary Communications to Participants in 2017**

27 162. After the November 2016 letter, the next communication by any
28 fiduciary of the Rainbow ESOP to ESOP participants concerning the sale or the

1 distribution of proceeds occurred in August 2017. An August 14, 2017 letter
2 finally notified participants that they could complete forms to take a distribution.
3 Enclosed with the August 14, 2017 letter was (a) a Summary Plan Description
4 purportedly dated October 2014, (b) a Summary Annual Report for Plan Year
5 ending June 30, 2016 and ending June 30, 2017, and (c) benefit statements/
6 certificates of participation.

7 163. The August 14, 2017 letter enclosed a Summary Plan Description
8 purportedly dated October 2014; however, this “October 2014 SPD” had not
9 previously been furnished to ESOP participants.

10 164. The June 30, 2016 Summary Annual Report reported that the Plan had
11 incurred expenses of \$220,983, which consisted of \$208,537 in administrative
12 expenses and \$12,446 in benefits paid to participants. The 2015 Form 5500 filed
13 with the Department of Labor on April 17, 2017 revealed that all administrative
14 expenses were paid for legal fees and to a mediator. The June 30, 2016 Summary
15 Annual Report also reported that Plan assets were \$15,130,044 at the beginning of
16 the year and \$14,933,011 at the end of the year. The June 30, 2016 Summary
17 Annual Report also reported that Plan had income of only \$23,950 of which only
18 \$17,149 was investment income. As a result, Plan assets decreased by \$197,033.

19 165. The June 30, 2017 Summary Annual Report reported that the Plan had
20 incurred administrative expenses of \$154,868, plus \$14,223,381 in benefits paid to
21 participants. The June 30, 2017 Summary Annual Report also reported that Plan
22 assets were \$14,933,011 at the beginning of the year and at \$ 5,048,765 at the end
23 of the year. The June 30, 2017 Summary Annual Report reported that Plan had
24 investment income of only \$23,950. The June 30, 2017 Summary Annual Report
25 also reported other income of \$4,494,003; while the Report did not explain the
26 source of that income, presumably it was payment from the Escrow Account.

The Investment of Plan Assets (& Lack Thereof) Post-Sale

166. On October 3, 2014, the New ESOP Committee held a meeting according to the Meeting Minutes. One of the topics discussed was how the assets of the Rainbow ESOP should be invested. The only person that the ESOP Committee consulted on this matter was Bryan Ward from Hewitt EnnisKnupp, (now Aon Hewitt); Mr. Ward is an investment consultant and is not a lawyer. The ESOP Committee determined to have the Plan assets remain invested in Goldman Sachs Treasury obligations for a period of six to nine months. Based on the absence of any further meeting minutes discussing this issue and the continued investment in treasury obligations, the ESOP Committee did not reconsider this issue.

167. Based on the Form 5500s filed with the Department of Labor, from October 2014 to at least June 30, 2016, the Plan had at least \$14.9 million of assets all of which were invested entirely and exclusively in Goldman Sachs Treasury obligations. As a result, the Plan assets had investment income of 0.16% or less per year and a total cumulative return of less than 0.3%.

Plaintiffs Attempt to Obtain Documents & Information About the Sale

168. On November 6, 2014, Chris Ortega sent a letter to the Rainbow ESOP Plan Administrator requesting that the Plan provide documents pursuant to ERISA §§ 104(b) and 404(a)(1)(A) and 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A). In addition to the Plan Document, the summary plan description, the annual reports, trust agreements and other specific documents enumerated in ERISA § 104(b), Mr. Ortega's letter specifically requested the following documents as documents "under which the plan is established or operated" as provided in ERISA § 104(b) and under 404(a)(1):

- a. Any valuation or other document used to determine the price at which [his] shares were allocated;

- 1 b. A copy of the most recent valuation of the Rainbow ESOP and
- 2 other documents setting forth how the value of [his] shares
- 3 were determined;
- 4 c. Any direction issued by the Committee pursuant to Section 5(d)
- 5 of the Plan Document to the Trustee to sell the Rainbow stock;
- 6 d. A report relating to the termination of the Plan, including the
- 7 terms on which any Plan assets were sold, including any
- 8 documents sufficient to explain the indemnity holdback,
- 9 potential or additional ESOP expense;
- 10 e. Any delegation by the Committee pursuant to Section 17(c) of
- 11 the Plan Document to the Trustee as to how to invest Plan
- 12 assets;
- 13 f. A policy, as required by Section 17(c) of the Plan Document,
- 14 for investing the Trust assets;
- 15 g. Any rules and policies established by the Committee as were
- 16 required by Section 17 of the Plan Document;
- 17 h. Any documents appointing fiduciaries of the Plan or
- 18 agreements with any persons serving as fiduciaries.

19 Mr. Ortega also explained that the Ninth Circuit has held ERISA § 404(a)(1)(A)
20 and § 104(b) require the plan administrator to provide participants with documents
21 that allow the participant to “know exactly where he stands with respect to the plan
22 – what benefits he may be entitled to, what circumstances may preclude him from
23 obtaining benefits, what procedures he must follow to obtain benefits and who are
24 the persons to whom management and investment of his plan funds have been
25 entrusted.” For each of the requests, Mr. Ortega explained the reasons why those
26 documents met this Ninth Circuit standard for disclosure.

27 169. In a letter (without letterhead) dated December 5, 2014, Jon Black
28 responded (without identifying his position or relationship to the ESOP) and

1 asserted that “some of the categories of documents” that Mr. Ortega “requested
2 contain sensitive commercial, non-public information” and therefore Mr. Ortega
3 was required to sign a “Confidentiality and Non-Disclosure Agreement” by
4 December 9, 2014 in order to receive any of the requested documents. Mr. Black
5 did not identify which categories of documents were considered “confidential.”
6 None the documents requested by Mr. Ortega – including the Plan Document, the
7 summary plan description, the Form 5500– were provided along with the
8 December 5, 2014 letter.

9 170. On December 9, 2014, Mr. Ortega sent a letter via email to Jon Black
10 on behalf of the Plan Administrator (a) advising that the assertion that some
11 documents were confidential could not justify production of other documents
12 which were not confidential, (b) explaining and citing case law that documents that
13 were required to be provided pursuant to ERISA § 104(b) could not be withheld
14 based on assertions of confidentiality, (c) requesting that the Plan Administrator
15 identify which documents that the Plan Administrator contends were not subject to
16 disclosure and which documents they would provide subject to a confidentiality
17 agreement, and (d) explaining that the language in the proposed agreement was
18 overly restrictive as it would prevent him from utilizing the documents for the very
19 purpose that he needed them – i.e. to determine whether the sale was appropriate
20 and whether he received the appropriate amount for his shares. Mr. Ortega advised
21 that he would be willing to enter into an appropriate confidentiality agreement, but
22 only after the Plan Administrator specified what documents the Plan Administrator
23 was offering to provide, which documents were claimed to be confidential and
24 explained why the documents were claimed to be confidential.

25 171. A letter dated December 10, 2014 signed by Jon Black on letterhead
26 for the Greenberg Traurig law firm responded to Mr. Ortega’s letters of November
27 6, 2014, November 26, 2014 and December 9, 2014. *Despite signing the letter on*
28 *Greenberg Traurig letterhead*, Mr. Black is not a lawyer and is not associated with

1 that or any law firm. For the first time on November 10, 2014, Mr. Black suggested
2 that the documents requested were “ambiguous and unclear.” Mr. Black’s letter did
3 not identify for which categories of requested documents the Plan Administrator
4 was producing documents, whether all requested documents in a particular
5 category were being produced or what documents were being withheld based on
6 the assertion of confidentiality.

7 172. On January 20, 2015, counsel for Mr. Ortega responded to the
8 December 10, 2014 letter. The January 20, 2015 letter (a) explaining and citing
9 case law that documents that were required to be provided pursuant to ERISA §
10 104(b) could not be withheld based on assertions of confidentiality, (b) explaining
11 that Mr. Ortega’s letter contained sufficient specificity under ERISA §§ 104(b) and
12 404(a)(1) and specifically requesting the valuation report that GreatBanc was
13 required to obtain pursuant to the DOL Settlement Agreement, the Stock Purchase
14 Agreement dated August 26, 2014 and the Transaction Documents which are
15 referenced in the October 1, 2014 “Written Consent of the Board of Directors” and
16 (c) explaining and citing caselaw why the requested documents were subject to
17 production pursuant to ERISA §§ 104(b) and 404(a)(1).

18 173. A letter dated February 17, 2015 signed by an attorney, Leslie Klein,
19 on letterhead for the Greenberg Traurig law firm (an actual attorney at the firm)
20 responded to the January 20, 2015 letter from Mr. Ortega’s counsel; however, this
21 letter did not address any of the substantive points in the January 20, 2015 letter.
22 Instead, Mr. Klein’s letter merely listed the documents that had been produced
23 already. Mr. Klein’s letter did not identify whether all requested documents in a
24 particular category were being produced or which documents were being withheld
25 based on the assertion of confidentiality. The only additional document that Mr.
26 Klein offered to have the Plan Administrator produce was the “valuation of the
27 company [i.e. Rainbow] as of June 30, 2014 upon Mr. Ortega’s agreement to a
28 confidentiality agreement in a form acceptable to the Administrator.”

1 174. The June 30, 2014 valuation report did not fall into the categories of
2 valuation reports requested by Mr. Ortega. The June 30, 2014 valuation was not a
3 valuation report that properly could be used for the October 1, 2014 transaction for
4 at least the following reasons: (1) it was an annual valuation of the company and
5 not for purposes of a transaction and would be limited to the purpose for which it
6 was prepared; (2) the valuation of Rainbow for that report would have been as of
7 June 30, 2014 and not as of October 1, 2014, and (3) the valuation would not have
8 meet the IRS requirements for a variety of reasons, including because it was more
9 than 60 days old at the time of the October 1, 2014 transaction.

10 175. An undated letter by GreatBanc sent in late November 2016 around
11 Thanksgiving informed participants that the Rainbow ESOP Trustee and Republic
12 Services reached a settlement agreement over certain claims made by Republic
13 Services against “\$16.8 million of the purchase price paid by Republic to Rainbow
14 ESOP [that] was paid into an escrow account” in order “to provide for such
15 indemnification claims.” The letter informed participants that “[a]s a result” of the
16 settlement agreement, “the Rainbow ESOP received \$4,475,000 from the Escrow
17 as its final payment” and promised “the amounts remaining in the Rainbow ESOP
18 would be paid to [participants] in the near future.”

19 176. After receiving this late November 2016 letter, Plaintiffs Maritza
20 Quintero and Chris Ortega each made requests on January 3, 2017 and January 5,
21 2017 respectively pursuant to ERISA § 104(b) and 404(a)(1) for a copy of the
22 settlement agreement as the amount (i.e. benefits) from a sale is dependent on the
23 amount released from the Escrow and the settlement agreement was therefore a
24 contract or other “instrument under which the plan is operated” and also met the
25 Ninth Circuit standards for required disclosures.

26 177. In a letter dated February 3, 2017, Jon Black responded on behalf of
27 the ESOP Committee to Mr. Ortega’s letter and refused to produce the settlement
28

1 agreement by claiming that the requested document did not need to be produced
2 pursuant to ERISA § 104(b)(4).

3 178. In a letter dated January 25, 2017, Jon Black responded on behalf of
4 the ESOP Committee to Ms. Quintero's letter and claimed that "the Plan had no
5 record of [her] status as a beneficiary" of Jose Quintero and in order for her
6 "request to be considered that she "provide explanation of [her] claimed status as a
7 beneficiary under the Plan as well as documentation."

8 179. On April 4, 2017, Maritza Quintero responded by letter sent by
9 certified mail and enclosed a copy of a "Beneficiary Designation" form for the
10 Rainbow ESOP signed by her father, Jose Quintero, and his wife, Beatriz Quintero
11 on August 28, 2004 designating Maritza Quintero as one of his primary
12 beneficiaries entitled to receive 33% of his ESOP benefits.

13 180. The certified mail receipt reported that the April 4, 2017 letter was
14 received by Rainbow Disposal on April 17, 2017 and signed for by Michelle Clark,
15 Municipal & Major Accounts Manager, Rainbow Environmental Services, Inc.
16 The Plan Administrator for the Rainbow ESOP has not responded to Maritza
17 Quintero's request for documents.

18 **Plaintiff Ortega Requests Information & Attempts Informal Resolution**

19 181. On December 16, 2015, Chris Ortega submitted a claim for benefits
20 pursuant to section 18 of the Plan, on behalf of himself and all other similarly
21 situated Plan participants. In that letter, Mr. Ortega explained that the October 17,
22 2014 letter from the Rainbow ESOP Committee had explained Rainbow ESOP
23 stock "ha[d] been sold for cash at a price of \$17.66 per share" and that he other
24 other participants would "receive cash equivalents for the stock allocated" to the
25 participants. Mr. Ortega explained that as of that date, he had only received the
26 first of the three promised distributions, which amounted to only \$9.97 per share
27 and had not received a sufficient explanation as to why a substantial part of the
28

1 proceeds had not been distributed. As a result, Mr. Ortega raised the following
2 issues:

3 a. First, as the Trustee explained more than a year after the
4 transaction that the sale price was \$112 million and not \$68 million as
5 originally represented, whether the correct amount from the sale had been or
6 would be distributed to the ESOP participants.

7 b. Second, whether the Plan had received fair market value in the
8 sale as determined by an independent appraiser (as required by Section 5(d)
9 of the Plan Document and also by GreatBanc's DOL settlement agreement).

10 c. Third, the Plan appeared to be charging excessive expenses, in
11 violation of section 17(d) of the Plan, which permits only "reasonable
12 expenses."

13 d. Finally, the Plan had failed to provide ESOP participants with
14 the right to vote on the sale of Rainbow as required by Section 8 of the Plan
15 Document.

16 182. In a letter dated March 14, 2016 signed by Jon Black on behalf of the
17 Rainbow ESOP Committee, the Committee as Plan Administrator denied Mr.
18 Ortega's claim for benefits, but refused to respond to the substance of any the
19 issues by repeatedly asserting that Mr. Ortega's "December 16th letter does not set
20 forth a claim for benefits under the Plan." The Plan administrator did not cite to any
21 Plan provision or address Ortega's claims addressing Sections 5(d), 8, and 17(d) of
22 the Plan Document. Nonetheless, the Committee's March 30, 2014 advised Mr.
23 Ortega that he may not be entitled to file a lawsuit unless he timely filed an appeal
24 within 60 days of the March 14, 2016 letter.

25 183. On March 30, 2016, Chris Ortega timely appealed the ESOP
26 Committee's March 14, 2016 decision. As part of his appeal, Mr. Ortega explained
27 that he had "not received a full distribution from the sale of stock in [his] ESOP
28 account," requested an explanation for the \$44 million discrepancy and requested

1 that “the Committee reverse the initial denial of [his] claim” and “decide the
2 underlying issue[s] in [his] December 16, 2015 letter.”

3 184. In a letter dated May 26, 2016 signed by Jon Black on behalf of the
4 Rainbow ESOP Committee, the Committee as Plan Administrator denied Mr.
5 Ortega’s appeal. In its May 26, 2016 letter, the ESOP Committee stated that it
6 “continue[d] to find that the December 16th letter did not set forth a claim for
7 benefits under the Plan.” As a result, the Committee declined to address the
8 underlying issues raised in Mr. Ortega’s December 16, 2015 letter and reiterated in
9 his March 30, 2016 letter. The May 26, 2016 letter represented that the Committee
10 “ha[d] reviewed” Mr. Ortega’s claim that he had “not received the full sale price
11 for [his] shares” and then represented as follows:

- 12 • The amount initially deposited into the Plan as proceeds from the
13 sale of shares was \$48,815,131.29 representing equity value of the
14 company at the time of the sale.
- 15 • The proceeds from the sale in the amount of \$48,815,131.29
16 divided by the total number of shares in the Plan of 3,673,620.2829
17 equals a per share price of \$13.288017685.

18 In a footnote, the Committee claimed for the first time that the \$112 million
19 “relates to total enterprise value rather than equity value.” The May 26, 2016 letter
20 did not disclose or explain how or when the \$48.8 million equity value was
21 determined, or how or when the \$112 enterprise value was determined nor was
22 there any explanation of the basis for the \$63.2 million difference. The May 26,
23 2016 letter concluded by advising Mr. Ortega that he had a right to file a civil
24 action under ERISA § 502(a).

25 185. On June 15, 2016, Chris Ortega submitted a request pursuant to 29
26 C.F.R. § 2560.503-1(h)(2)(iii) and § 2560.503-1(j)(3) for copies of “all documents,
27 records, and other information relevant to [his] claim for benefits.” Pursuant to 29
28 C.F.R. § 2560.503-1(m)(8)(i) and (ii), Mr. Ortega requested “any document that

1 was relied upon in making the benefit determination” as well as any document that
2 “was submitted, considered, or generated in the course of making the benefit
3 determination, without regard as to whether such document, record, or other
4 information was relied upon in making the benefit determination.” Specifically,
5 Mr. Ortega advised that “this should include, at minimum, documents on which
6 [the Committee] based the amount that was deposited in the Plan, that this amount
7 constituted the equity value, that the \$112 million constituted the enterprise value,
8 and any documents that [the Committee] reviewed, considered, or generated in
9 arriving at the calculations in the course of deciding [his] claim for benefits [or]
10 appeal.”

11 186. A letter dated July 21, 2016 signed by Jon Black on behalf of the
12 Rainbow ESOP Committee as Plan Administrator responded to Mr. Ortega’s June
13 15, 2016 request. The Committee produced precisely 3 pages of additional
14 documents, stamped “C. Ortega 00313-315,” in response to Mr. Ortega’s June 15,
15 2016 request. The Committee did not produce documents explaining the amount
16 that was deposited in the Plan, documents explaining how the purported \$68
17 million equity value was calculated or how the purported \$112 million enterprise
18 value was calculated. The Committee did not produce any notes, emails or
19 communications between the ESOP Committee members, any advice obtained, any
20 analysis by the Committee or any advisors of the issues in Mr. Orega’s December
21 16, 2015 letter or March 30, 2016 letter nor minutes of any meeting of the
22 Committee deciding Mr. Ortega’s claim for benefits or his appeal.

23 187. Plaintiffs Antonio Hurtado, Jose Quintero, Maritza Quintero, Jorge
24 Urquiza and Maria Valadez did not submit claims for benefits. Based on the
25 response by the ESOP Committee to Mr. Ortega, the ESOP Committee would have
26 responded similarly to the other Plaintiffs if they had raised the same issues.

1 **Amounts Received By Plaintiffs**

2 188. On June 30, 2014, Plaintiff Antonio Hurtado had 28,358.8182 shares
3 in his Rainbow ESOP account. Utilizing the June 30, 2014 valuation of \$16.67 per
4 share, Mr. Hurtado's shares were valued at \$472,741.50. As of October 17, 2014,
5 Mr. Hurtado had 28,576.5027 shares in his Rainbow ESOP account. Using the
6 June 30, 2014 valuation price of \$16.67 per share, his shares would have been
7 valued at \$476,370.30. Using the \$17.66 per share price in the ESOP Committee's
8 October 17, 2014 letter, Mr. Hurtado's maximum potential value was represented
9 to be \$504,661.04. On November 25, 2014, he received \$284,907.73 as a first
10 distribution from the sale of his stock. In July 2016, Hurtado received \$111,188.15
11 as a second distribution. Based on the ESOP Committee's letter of August 14,
12 2017, Mr. Hurtado is expected to receive an additional \$35,974.84 as a final
13 payment in September. Mr. Hurtado's total payments for his 28,576.5027 shares
14 will be \$432,070.72, or \$15.12 per share. This is summarized as follows:

15	Shares as of Oct. 2014	28,576.5027
16	Value Using \$16.67 share price as of June 30, 2014	\$476,370.30
17	Value Using \$17.66 share price in Oct. 17, 2014 letter	\$504,661.04
18	First Payment (Received November 2014)	\$284,907.73
19	Second Payment (Received July 2016)	\$111,188.15
20	Final Payment (Expected September 2017)	\$35,974.84
21	Total (including Expected Payment)	\$432,070.72
22	Per Share Price Based on Expected Payment	\$15.12

23 Thus, Mr. Hurtado will not only receive far less than the maximum potential
24 amount suggested in the ESOP Committee's October 17, 2014 letter, but he will
25 receive \$44,299.58 less than what his shares were valued as of June 30, 2014.

26 189. On June 30, 2014, Christopher Ortega had 3,296.0627 shares in his
27 Rainbow ESOP account. Utilizing the June 30, 2014 valuation of \$16.67 per share,
28 Mr. Ortega's shares were valued at \$54,945.37. As of October 17, 2014, Ortega

1 had 3,498.4898 shares in his Rainbow ESOP account. Utilizing the June 30, 2014
 2 valuation of \$16.67 per share, Mr. Ortega's shares would have been valued at
 3 \$58,319.83. Using the \$17.66 per share price in the ESOP Committee's October
 4 17, 2014 letter, Mr. Ortega's maximum potential value for his shares was
 5 represented to be \$61,783.33. On November 26, 2014, he received \$34,897.94 as a
 6 first distribution from the sale of his stock. In July 2016, Ortega received
 7 \$13,175.79 as a second distribution. Based on the ESOP Committee's letter of
 8 September 6, 2017, Mr. Ortega is expected to receive an additional \$4,362.37 as a
 9 final payment in September 2017. Mr. Ortega's total payments for his 3,498.4898
 10 shares will be \$52,418.10, or \$14.98 per share. This is summarized as follows:

11	Shares as of Oct. 2014	3,498.4898
12	Value Using \$16.67 share price as of June 30, 2014	\$54,945.37
13	Value Using \$17.66 share price in Oct. 17, 2014 letter	\$61,783.33
14	First Payment (Received November 2014)	\$34,897.94
15	Second Payment (Received July 2016)	\$13,175.79
16	Final Payment (Expected September 2017)	\$4,362.37
17	Total (including expected Payment)	\$52,418.10
18	Per Share Price Based on Expected Payment	\$14.98

19 Thus, Mr. Ortega will not only receive far less than the maximum potential amount
 20 suggested in the ESOP Committee's October 17, 2014 letter, but he will receive
 21 \$2,527.27 less than what his shares were valued as of June 30, 2014.

22 190. As of October 17, 2014, Jose Quintero had 17,960.7073 shares in his
 23 Rainbow ESOP account. Using the June 30, 2014 valuation price of \$16.67 per
 24 share, his shares would have been valued at \$299,404.99. Using the \$17.66 per
 25 share price in the ESOP Committee's October 17, 2014 letter, Mr. Quintero's
 26 maximum potential value was represented to be \$317,186.09. On November 21,
 27 2014, he received \$179,068.25 as a first distribution from the sale of his stock. In
 28 July 2016, Plaintiff Quintero received \$69,622.04 as a second distribution from the

1 sale of this stock. Based on the ESOP Committee's letter of August 14, 2017, Mr.
 2 Quintero is expected to receive an additional \$22,585.59 as a final payment in
 3 September 2017. Mr. Quintero's total payments for his 17,960.7073 shares will be
 4 \$271,275.88, or \$15.10 per share. This is summarized as follows:

5 Shares as of Oct. 2014	17,960.7073
6 Value Using \$16.67 share price as of June 30, 2014	\$299,404.99
7 Value Using \$17.66 share price in Oct. 17, 2014 letter	\$317,186.09
8 First Payment (Received November 2014)	\$179,068.25
9 Second Payment (Received July 2016)	\$69,622.04
10 Final Payment (Expected September 2017)	\$22,585.59
11 Total (including Expected Payment)	\$271,275.88
12 Per Share Price Based on Expected Payment	\$15.10

13
 14 Thus, Mr. Quintero will not only receive far less than the maximum potential
 15 amount suggested in the ESOP Committee's October 17, 2014 letter, but he will
 16 receive \$28,129.11 less than what his shares were valued as of June 30, 2014.

17 191. On June 30, 2014, Jorge Urquiza had 24,814.7197 shares in his
 18 Rainbow ESOP account and his account had a vested balance of \$413,661.38.
 19 Utilizing the June 30, 2014 valuation of \$16.67 per share, Mr. Urquiza's shares
 20 were valued at \$472,741.50. As of October 17, 2014, Mr. Urquiza had 25,004.9317
 21 shares in his Rainbow ESOP account. Using the June 30, 2014 valuation price of
 22 \$16.67 per share, his shares would have been valued at \$416,832.21. Using the
 23 \$17.66 per share price in the ESOP Committee's October 17, 2014 letter, Mr.
 24 Urquiza's maximum potential value was represented to be \$441,587.09. On
 25 December 11, 2014, he received \$243,110.66 as a first distribution from the sale of
 26 his stock. In July 2016, Mr. Urquiza received \$97,273.32 as a second distribution.
 27 Based on the ESOP Committee's letter of August 14, 2017, Mr. Urquiza is
 28 expected to receive an additional \$31,476.84 as a final payment in September

1 2017. Mr. Urquiza's total payments for his 25,004.9317 shares will be
 2 \$371,860.82, or \$14.87 per share. This is summarized as follows:

3 Shares as of Oct. 2014	25,004.9317
4 Value Using \$16.67 share price as of June 30, 2014	\$416,832.21
5 Value Using \$17.66 share price in Oct. 17, 2014 letter	\$441,587.09
6 First Payment (Received November 2014)	\$243,110.66
7 Second Payment (Received July 2016)	\$97,273.32
8 Final Payment (Expected September 2017)	\$31,476.84
9 Total (including Expected Payment)	\$371,860.82
10 Per Share Price Based on Expected Payment	\$14.87

11
 12 Thus, Mr. Urquiza will not only receive far less than the maximum potential
 13 amount suggested in the ESOP Committee's October 17, 2014 letter, but he will
 14 receive \$44,971.39 less than what his shares were valued as of June 30, 2014.

15 192. As of October 17, 2014, Maria Valadez had 2,336.4928 shares in her
 16 Rainbow ESOP account and a balance of \$23,294.83. Using the June 30, 2014
 17 valuation price of \$16.67 per share, her shares would have been valued at
 18 \$38,949.34. Using the \$17.66 per share price in the ESOP Committee's October
 19 17, 2014 letter, Ms. Valadez' maximum potential value was represented to be
 20 \$41,262.46. On December 11, 2014, she received \$23,294.83 as a first distribution
 21 from the sale of her stock. In July 2016, Plaintiff Valadez received \$9,034.99 as a
 22 second distribution. Based on the ESOP Committee's letter of August 14, 2017,
 23 Ms. Valadez is expected to receive an additional \$2,936.02 as a final payment in
 24 September 2017. Ms. Valadez's total payments for her 2,336.4928 shares will be
 25 \$35,265.84, or \$15.10 per share. This is summarized as follows:

26 Shares as of Oct. 2014	2,336.4928
27 Value Using \$16.67 share price as of June 30, 2014	\$38,949.34
28 Value Using \$17.66 share price in Oct. 17, 2014 letter	\$41,262.46

1	First Payment (Received November 2014)	\$23,294.83
2	Second Payment (Received July 2016)	\$9,034.99
3	Final Payment (Expected September 2017)	\$2,936.02
4	Total Expected Payment	\$35,265.84
5	Per Share Price Based on Expected Payment	\$15.10

6 Thus, Ms. Valadez will not only receive far less than the maximum potential
7 amount suggested in the ESOP Committee's October 17, 2014 letter, but she will
8 receive \$3,683.50 less than what her shares were valued as of June 30, 2014.
9

10 COUNT I

11 **Breach of Fiduciary Duty Under ERISA § 404(a)(1)(A), (B) & (D), 29 U.S.C. § 1104(a)(1) Against the Prior Committee Defendants & GreatBanc**

12 193. Plaintiffs incorporate and re-allege by reference each of the foregoing
13 paragraphs as if fully set forth herein.

14 194. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan
15 fiduciary discharge his or her duties with respect to a plan solely in the interest of
16 the participants and beneficiaries and (A) for the exclusive purpose of (i) providing
17 benefits to participants and their beneficiaries; and (ii) defraying reasonable
18 expenses of administration of the plan, (B) with "care, skill, prudence, and
19 diligence" and (D) to act in accordance with the documents and instruments
20 governing the plan insofar as those documents and instruments are consistent with
21 ERISA.

22 195. Section 5(d) of the Plan Document, which governs the sale of
23 Company Stock, provided that the sale of Company stock "*must be made at a price*
24 *not less than Fair Market Value as of the date of the sale*" and that any "decision to
25 sell Company Stock . . . must comply with the fiduciary duties applicable under
26 Section 404(a)(1) of ERISA." (emphasis added)

27 196. The duties of loyalty under ERISA § 404(a)(1)(A) and the duty of
28 prudence under ERISA § 404(a)(1)(B) require a fiduciary to undertake an

1 appropriate investigation to determination that the Plan and its participants receive
2 adequate consideration for the assets of the Plan and the participants' accounts in
3 the Plan.

4 197. Pursuant to ERISA § 3(18), adequate consideration for an asset for
5 which there is no generally recognized market means the fair market value of the
6 asset determined in good faith by the trustee or the named fiduciary pursuant to the
7 terms of the plan and in accordance with the Department of Labor regulations. In
8 order for the trustee or other named fiduciary to make a good faith determination
9 of fair market value relying on an independent appraiser consistent with its duties
10 under ERISA § 404(a)(1)(A) and (B), a fiduciary responsible for engaging in the
11 good faith determination must investigate the expert's qualifications, provide the
12 expert with complete and accurate information, and make certain that reliance on
13 the expert's advice is reasonably justified under the circumstances.

14 198. Section 2 of the Plan Document defines Fair Market Value as the "fair
15 market value of Company Stock, as determined by the Trustee . . . based upon a
16 valuation by an independent appraiser (within the meaning of Section
17 401(a)(28)(C) of the Code.)"

18 199. As part of Defendant GreatBanc's Agreement with the Department of
19 Labor, GreatBanc was obligated to hire a qualified valuation advisor through a
20 rigorous selection process, oversee the valuation advisor and ensure proper
21 documentation of a valuation report, engage in a thorough analysis of Rainbow
22 Disposal's financial state to determine the prudence of the ESOP's sale of
23 Rainbow Disposal's stock, document its vote for or against the sale, and ensure
24 that any sale of Rainbow Disposal's stock is for not less than fair market value.

25 200. Pursuant to IRC § 401(a)(28)(C), an independent appraiser must meet
26 the requirements of the regulations of IRC § 170(a)(1). The regulations under IRC
27 § 170 (which apply to IRC § 401 and are incorporated by the terms of the Plan),
28 specifically 26 C.F.R. § 1.170A-13, require that any qualified appraisal must be

1 performed not earlier than 60 days before the applicable date, which as applied
2 here, means not earlier than 60 days before the sale of date of October 1, 2014.

3 201. In discussing the sale of stock held by the Rainbow ESOP and the
4 valuation of that stock, the 2014 Form 5500, which is dated April 18, 2016, only
5 discusses a valuation as of June 30, 2014. Moreover, the only valuation report
6 offered to be provided in response to Chris Ortega's ERISA § 104(b) request for
7 documents as dated as of June 30, 2014. Based on these facts, there was no more
8 recent valuation report performed for the October 1, 2014 sale.

9 202. As June 30, 2014 was more than 60 days before the October 1, 2014
10 sale date, the valuation of Rainbow stock performed as of June 30, 2014 was not a
11 qualified appraisal within the meaning of IRC § 170, nor within the meaning of
12 IRC § 401(a)(28)(C) and therefore nor as required by Sections 2 or 5(d) of the Plan
13 Document. Upon information and belief, neither the Trustees nor the Committee
14 obtained any additional valuation prior to the sale of Rainbow.

15 203. Amendment No. 4 to the Plan Document purported to amend Section
16 5(d) of the Plan to provide the Trustee, Defendant Great Banc, with "the
17 discretionary authority -- without directions from the ESOP Committee, the Board
18 of Directors or any other party -- to: (i) sell all or substantially all of the
19 outstanding shares of the Company to a third party in a change of control
20 transaction, and (ii) execute and deliver instruments to effect such a sale" was
21 adopted on August 25, 2014.

22 204. One day later, on August 26, 2014, GreatBanc authorized the sale of
23 all of Rainbow Disposal's shares to Republic Services, pursuant to a Stock
24 Purchase Agreement dated that same day. The one day that elapsed between the
25 grant of authority to GreatBanc to sell Rainbow Disposal's stock and GreatBanc
26 authorizing the sale did not provide Defendants GreatBanc with sufficient time to
27 obtain an assessment of the fair market value of Rainbow Disposal's stock
28 consistent with its fiduciary obligations pursuant to ERISA § 404(a)(1)(A) or (B),

1 its obligations under the terms of the Plan or its obligations under the DOL
2 Settlement.

3 205. In order to comply with its fiduciary obligations, GreatBanc was
4 required to have complied with the Plan document, its Fiduciary Agreement, and to
5 investigate the independent appraiser's qualifications, provide the independent
6 appraiser with complete and accurate information, and make certain that reliance
7 on the independent appraiser's advice was reasonably justified. Nor could
8 GreatBanc rely on the actions or activities of other persons (even other fiduciaries)
9 to comply with these requirements in order to make a good faith determination that
10 the sale of Rainbow Disposal stock was for fair market value.

11 206. Regardless of whether GreatBanc had the authority to sell the shares
12 without direction, the Prior ESOP Committee Defendants were required pursuant
13 to Section 17(c) to review any actions by the Trustee.

14 207. To the extent that Amendment No. 4 did not properly amend the terms
15 of the Plan Document, then GreatBanc could only sell the Rainbow stock held by
16 the ESOP pursuant to the direction of the ESOP Committee.

17 208. Even if a fiduciary without appropriate authority authorized the sale,
18 and the June 30, 2014 valuation which was apparently relied upon was not per se
19 stale and invalid (and assuming the data, methodologies and assumptions were
20 correct and appropriate), the June 30, 2014 valuation valued the shares at \$16.67
21 per share, but the Rainbow stock was sold for approximately \$15.10 per share, or a
22 difference of at least \$5,767,583.

23 209. As a result of causing or permitting the sale of the Rainbow stock held
24 by the Rainbow ESOP, the Committee Defendants and GreatBanc breached their
25 fiduciary duties under ERISA § 404(a)(1)(A), (B) and (D) and caused losses to the
26 Plan and the accounts of the Class Members.

COUNT II

**Breach of Fiduciary Duty Pursuant to ERISA § 404(a)(1)(A), (B) & (D),
29 U.S.C. § 1104(a)(1)(A), (B) & (D), For Failing to Require a Participant
Vote Against the Prior Committee Defendants & GreatBanc**

210. Plaintiffs incorporate and re-allege by reference each of the foregoing paragraphs as if fully set forth herein.

211. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and (A) for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; (B) with “care, skill, prudence, and diligence” and (D) to act in accordance with the documents and instruments governing the plan insofar as those documents and instruments are consistent with ERISA.

212. Pursuant to Section 8 of the Plan Document, “[w]ith respect to any corporate matter which involves the voting of such shares at a shareholder meeting and which constitutes a merger, consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business or a similar transaction specified in regulations under Section 409(e)(3) of the [Internal Revenue] Code . . . each Participant (or Beneficiary) will be entitled to give confidential instructions as to the voting of shares of Company Stock then allocated to his Company Stock Account.”

213. Section 8 of the Plan Document provides that “each participant (or Beneficiary) shall be provided with the information statement and other materials provided to Company shareholders in connection with each shareholder meeting, together with a form upon which confidential voting directions may be given to the Trustee. The Trustee shall vote shares of allocated Company Stock as directed by Participants (or Beneficiaries).”

1 214. Section 8 of the Plan Document mirrors the language of IRC §
2 409(e)(3) and was required in order for the Rainbow ESOP to be a tax-qualified
3 plan.

4 215. As part of the Tax Reform Act of 1986, IRC § 409(e)(3) was modified
5 to expand the range of instances in which plans must provide pass through voting
6 rights to participants with shares allocated to their accounts. The Report of the
7 Senate Finance Committee on the Tax Reform Act of 1986, S. Rep. 99-313, 99th
8 Cong. 2d Sess. (1986) explained that the change “modifies the voting requirements
9 applicable to an ESOP” by “mandating that voting rights be passed through to
10 participants with respect to certain enumerated issues” and requires that a plan
11 permit participants to direct the vote under employer securities allocated to the
12 participant accounts, regardless of whether the issue was required (by law or
13 charter) to be decided by more than a majority vote of the outstanding common
14 shares voted.”

15 216. Under the terms of Section 8 of the Plan Document, the acquisition of
16 Rainbow Disposal by Republic Services on October 1, 2014 was a corporate matter
17 that required the vote by the participants of the Rainbow ESOP.

18 217. IRC § 409(e)(3) and therefore Section 8 of the Plan Document also
19 requires that voting rights be passed through to participants in an ESOP when the
20 applicable state corporate law requires matter to be submitted to a shareholder
21 vote.

22 218. As Rainbow was a California Corporation on October 1, 2014, the
23 applicable state law was California. Under the California Corporations Code,
24 including Sections 1001, 1100, 1111 and 1201, the shareholders of the corporation
25 would have been entitled to vote on the transaction. As IRC § 409(e)(3) and
26 therefore Section 8 of the Plan Document requires that voting rights be passed
27 through to participants in an ESOP when a shareholder vote is required under the
28 corporate law, the acquisition of Rainbow Disposal by Republic Services on

1 October 1, 2014 was a corporate matter that required the vote by the participants of
2 the Rainbow ESOP.

3 219. The participants of the Rainbow ESOP were not provided an
4 opportunity to vote on the transaction whereby Rainbow was acquired by Republic
5 Services.

6 220. Additionally, Article Eight of Rainbow's Articles of Incorporation in
7 effect on October 1, 2014 required that "substantially all of the outstanding shares
8 of capital stock of the Corporation shall at all times be owned by: (a) employees of
9 the Corporation (or a subsidiary of the Corporation); (b) any trust, partnership or
10 limited liability company with respect to which an employee of the Corporation (or
11 a subsidiary of the Corporation) is treated as the owner of such shares for federal
12 income tax purposes; (c) the Corporation's Employee Stock Ownership Plan and
13 Trust; and/or (d) individuals or entities receiving such shares as a benefit
14 distribution pursuant to the provisions of the Corporation's Employee Stock
15 Ownership Plan and Trust (provided that such individuals or entities must
16 immediately resell such shares to the Corporation)."

17 221. California Corporation Code § 902 required that any amendments to
18 the Articles of Incorporation be approved by both the Board of Directors and also
19 by the outstanding shares, which means by shareholder vote. Prior to October 1,
20 2014, there was no vote by the shareholders or even of the Board of Directors to
21 amend the Articles of Incorporation to modify or eliminate the Eighth Article of
22 Rainbow's Article of Incorporation.

23 222. Pursuant to Section 8 of the Plan Document and consistent with the
24 requirements of IRC § 409(e)(3), the voting rights to change the Articles of
25 Incorporation were required to be passed through to the participants of the
26 Rainbow ESOP.

1 223. The participants of the Rainbow ESOP were not provided an
2 opportunity to vote on the transaction whereby Rainbow Disposal was acquired by
3 Republic Services.

4 224. By failing to follow the terms of the Plan Documents and allowing the
5 participants of the Rainbow ESOP an opportunity to vote on either the acquisition
6 of Rainbow Disposal by Republic Services on October 1, 2014 or the amendment
7 of the Articles of Incorporation, the Prior Committee Defendants and GreatBanc
8 breached their fiduciary duties under ERISA § 404(a)(1)(A), (B) and (D), 29
9 U.S.C. § 1104(a)(1)(A), (B) and (D).

10 225. Even if a vote by the ESOP participants was not required pursuant to
11 Section 8 of the Plan Document, the Prior Committee Defendants and Great Banc
12 breached their fiduciaries duties under ERISA § 404(a)(1)(A) and (B), 29 U.S.C.
13 § 1104(a)(1)(A) and (B) because no loyal and prudent fiduciary would have caused
14 or permitted a transaction to occur which would have resulted in Rainbow being in
15 violation of its Articles of Incorporation.

16 **COUNT III**

17 **Violation of ERISA § 102(a), 29 U.S.C. § 1022(a)**
18 **Against Prior Committee Defendants.**

19 226. Plaintiffs incorporate and re-allege by reference each of the foregoing
20 paragraphs as if fully set forth herein.

21 227. ERISA § 102(a), 29 U.S.C. § 1022(a), requires SPDs to “be written in
22 a manner calculated to be understood by the average plan participant” and to “be
23 sufficiently accurate and comprehensive to reasonably apprise such participants
24 and beneficiaries of their rights and obligations under the plan.”

25 228. The DOL Regulations implementing ERISA § 102, 29 C.F.R.
26 § 2520.102-2(a), reiterate that the SPD “shall be written in a manner calculated to
27 be understood by the average plan participant and shall be sufficiently
28 comprehensive to apprise the plan's participants and beneficiaries of their rights
and obligations under the plan.” 29 C.F.R. § 2520.102-2(a) specifies that in order

1 to fulfill these requirements, the plan administrator must “tak[e] into account such
2 factors such as the level of comprehension and education of the typical participants
3 in the plan and the complexity of the terms of the plan. 29 C.F.R. § 2520.102-2(a)
4 further explains that an SPD “will usually require ... the elimination of long,
5 complex sentence. . .[and] the use of clarifying examples and illustrations” to make
6 the terms of the SPD understandable to the average participant.

7 229. The most recent SPD for the Rainbow ESOP prior to the October 1,
8 2014 sale is dated March 2009. The 2009 SPD identifies Shuman (who has not
9 been employed at Rainbow since 2013 and has not been on the Committee since
10 2013) and Moffat as the members of the ESOP Committee. The failure to issue an
11 updated SPD prior to October 2014 violated the requirements of ERISA §
12 104(b)(1)(B), 29 U.S.C. § 1024(b)(1)(B).

13 230. The 2009 SPD provided the following information regarding
14 participant’s voting rights: “The committee usually decides how shares of
15 Company Stock held the ESOP will be voted. *In certain important corporate*
16 *matters* however, such as a merger or liquidation of the Company, *you may have*
17 *the right to decide how shares of Company Stock allocated to your Company Stock*
18 *Account will be voted.*” (emphasis added)

19 231. The average plan participant in the Rainbow ESOP would have and
20 did understand that they had the right to vote whether to sell the Rainbow ESOP
21 shares to Republic.

22 232. Illustrating that this language would be understood by the average
23 participant in the Rainbow ESOP that they had the right to vote on the sale of
24 Rainbow ESOP shares to Republic is the repeated statement in the Notes to the
25 Financial Statements contained in the Form 5500s filed with the Department of
26 Labor between 2009 and 2014 summarizing participants’ voting rights under the
27 Plan as follows: “Each participant is entitled to exercise voting rights attributable
28

1 to the shares allocated to his or her account and is notified by the trustee prior to
2 the time that such rights are to be exercised.”

3 233. To the extent that the terms of the Plan Document did not actually
4 provide ESOP participants with the right to vote on the sale of Rainbow to
5 Republic, the Prior Committee Defendants violated their duties under ERISA §
6 102(a), 29 U.S.C. § 1022(a) by furnishing Plaintiffs and the Class with SPDs that
7 conveyed that they would have the right to vote on certain corporate matters.

8 234. Plaintiffs and the Class were harmed as a result of the Prior
9 Committee Defendants violations with respect to the SPD because they were not
10 provided with an opportunity to vote on whether the Rainbow ESOP should sell its
11 shares to Republic.

12 **COUNT IV**

13 **Breach of Fiduciary Duty Pursuant to ERISA § 404(a)(A)(1)(A) & (B), 29** 14 **U.S.C. § 1104(a)(A)&(B) For Failure to Disclose Information About the Sale** 15 **Against The ESOP Committee Defendants & GreatBanc**

16 235. Plaintiffs incorporate and re-allege by reference each of the foregoing
17 paragraphs as if fully set forth herein.

18 236. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan
19 fiduciary discharge his or her duties with respect to a plan solely in the interest of
20 the participants and beneficiaries and (A) for the exclusive purpose of (i) providing
21 benefits to participants and their beneficiaries; and ... (B) with “care, skill,
22 prudence, and diligence.”

23 237. An ERISA fiduciary’s duty of loyalty and prudence under ERISA §
24 404(a)(1)(A) and (B) includes a duty to disclose and inform. Those duties not only
25 require that a fiduciary comply the specific disclosure provisions in ERISA, but
26 also require (a) a duty not to misinform, (b) an affirmative duty to inform when the
27 fiduciary knows or should know that silence might be harmful, and (c) a duty to
28 convey complete and accurate information material to the circumstances of the
participants and beneficiaries.

1 238. In the Ninth Circuit, a participant in an ERISA plan is entitled to
2 know exactly where he stands with respect to the plan, including the benefits to
3 which he or she may be entitled, the circumstances may preclude him from
4 obtaining benefits, what procedures he must follow to obtain benefits, and who are
5 the persons to whom the management and investment of his plan funds have been
6 entrusted.

7 239. The ESOP Committee Defendants and GreatBanc breached these
8 duties at least with regard to the following statements and omissions:

9 a. The ESOP Committee Defendants and GreatBanc failed to
10 disclose the (a) any assessment of the fair market value of the Rainbow stock
11 as assessed by an independent appraiser, (b) details about the consideration
12 paid in the sale, including the total consideration and the fact that Republic
13 had paid \$112 million in cash (until Plaintiffs let them know that they knew
14 based on SEC filings), or that Republic had entered into agreements with
15 Rainbow management as part of the sale, (c) the value which Republic had
16 placed on the acquisition of Rainbow.

17 b. The ESOP Committee Defendants and GreatBanc failed to
18 disclose the terms of the Stock Purchase Agreement or provide any
19 meaningful, understandable summary of its terms.

20 c. The New ESOP Committee Defendants and GreatBanc failed to
21 adequately disclose and explain the terms and circumstances surrounding the
22 various payments and holdbacks so that the ESOP participants could
23 understand the benefits to which they may be entitled and the circumstances
24 that may preclude them from obtaining benefits.

25 d. The New ESOP Committee misleadingly claimed in their
26 October 17, 2014 letter that the stock had been sold for \$17.66 per share –
27 which would have resulted in a total net proceeds to the Rainbow ESOP
28 based on 3,673,620 shares of \$64,876,129,20 – when the total net proceeds

1 received by the Plan, as disclosed in the 2014 Form 5500 on April 16, 2016
2 was only \$50,829,073, or \$13.836 per share or was \$48,815,131.29, or
3 \$13.288 per share as reported in the Form 5310 and by the ESOP Committee
4 on May 26, 2016. The New ESOP Committee knew or was reckless in not
5 knowing that there was no realistic possibility that the ESOP participants
6 would receive \$17.66 per share for their shares.

7 e. The New ESOP Committee Defendants and GreatBanc failed to
8 disclose to the ESOP participants why the Plan only received \$48.8 million,
9 not the \$64 million suggested by the October 17, 2014 letter or even the
10 \$50.8 million disclosed on the 2014 Form 5500.

11 f. The ESOP Committee Defendants and GreatBanc failed to
12 disclose that the Articles of Incorporation of Rainbow required employee
13 ownership, directly or indirectly, and that amendment of the Articles
14 required shareholder approval and therefore participant voting.

15 g. The ESOP Committee Defendants failed to disclose that the
16 Prior ESOP Committee Defendants had resigned, that there were New ESOP
17 Committee members or the names or contact information for any fiduciary
18 who could respond to questions from participants about their benefits and so
19 that the ESOP participants could understand the benefits to which they may
20 be entitled and the circumstances that may preclude them from obtaining
21 benefits.

22 h. GreatBanc failed to identify a single person at or contact
23 information for any person at GreatBanc who could respond to questions
24 from participants about their benefits and so that the ESOP participants
25 could understand the benefits to which they may be entitled and the
26 circumstances that may preclude them from obtaining benefits.

1 i. The New ESOP Committee Defendants and GreatBanc failed to
2 disclose to the ESOP Participants that the ESOP had been terminated on
3 October 1, 2014 and the Plan had been converted to a profit sharing plan.

4 j. The New ESOP Committee Defendants failed to disclose that
5 the Plan Document had been amended on October 1, 2014 as part of the
6 terms of the Stock Purchase Agreement or provide a summary of the terms
7 of the changed terms until August 14, 2017. The New ESOP Committee
8 Defendants then misleadingly labeled the SPD distributed in August 2017 as
9 the October 2014 SPD to suggest that it had been furnished to ESOP
10 participants three years earlier.

11 k. The New ESOP Committee Defendants failed to disclose to
12 ESOP participants until at least August 2017 (a) that the assets of the Plan
13 post-transaction were undiversified and (b) did not disclose until nearly three
14 years after the sale that the assets of the Plan post-transaction were earning
15 so little investment income that plan expenses were diminishing the amount
16 of principal.

17 240. As the ESOP participants were not provided information to know
18 where they stood with respect to the plan, including the benefits to which they
19 would receive, how the Plan assets were invested, what circumstances would
20 preclude them from obtaining benefits or who the fiduciaries were, they were
21 harmed including by being prevented from or dissuaded from taking action to
22 protect their rights and benefits.

23 **COUNT V**

24 **Prohibited Transactions in Violation of ERISA**
25 **§ 406(b)(1) & (3), 29 U.S.C. § 1106(b)(1) & (3)**
26 **Against Defendants Moffatt and Snow**

27 241. Plaintiffs incorporate and re-allege by reference each of the foregoing
28 paragraphs as if fully set forth herein.

1 242. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1) provides that “a fiduciary
2 with respect to a plan shall not deal with the assets of the plan in his own interest
3 or for his own account.”

4 243. ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3) provides that “a fiduciary
5 with respect to a plan shall not receive any consideration for his own personal
6 account from any party dealing with such plan in connection with a transaction
7 involving the assets of the plan.”

8 244. Defendant Moffat was a fiduciary of the Plan as a member of the
9 ESOP Committee prior to October 1, 2014. Defendant Moffatt and Snow were
10 fiduciaries of the Plan as members of the Board of Directors of Rainbow, which
11 had oversight over the ESOP Committee and the Trustee and because they acted on
12 behalf of the Plan in negotiating the terms of the sale of Rainbow stock owned by
13 the Plan.

14 245. In its SEC Form 10-Q, but not in communications with participants of
15 the Rainbow ESOP, Republic disclosed that as part of the October 1, 2014 sale of
16 Rainbow to Republic, Republic entered into “agreements not to compete along
17 with restrictive covenants, with key executives.”

18 246. As described in an October 1, 2014 Press Release, “[a]s part of the
19 transaction, the primary principals at Rainbow, Jerry Moffatt and Jeff Snow, have
20 joined Republic Services, and will now lead a newly created business unit of the
21 Company based at the Huntington Beach campus.”

22 247. Based on the information in the SEC Form 10-Q and the Press
23 Release, Defendants Moffatt and Snow, negotiated and entered into agreements as
24 part of the sale of Rainbow that ensured their continued employment or payments
25 after sale of Rainbow to Republic.

26 248. By negotiating the terms of the sale of the assets of the Rainbow
27 ESOP to include agreements that provided benefits, including continued
28

1 employment for themselves, Defendants Moffatt and Snow dealt with the assets of
2 the Plan in their own interest in violation of ERISA § 406(b)(1).

3 249. As a party to or beneficiary of agreements that provided consideration
4 to themselves from Republic directly or indirectly through Rainbow, Defendants
5 Moffat and Snow received consideration for their own account from a party
6 dealing with the Rainbow ESOP in connection with a transaction involving the
7 assets of the Plan in violation of ERISA § 406(b)(3).

8 **COUNT VI**

9 **Prohibited Transactions In Violation of ERISA**
10 **§ 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D)**
11 **Against Defendants GreatBanc, Moffatt and Snow**

12 250. Plaintiffs incorporate and re-allege by reference each of the foregoing
13 paragraphs as if fully set forth herein.

14 251. ERISA § 406(a)(D), 29 U.S.C. § 1106(a)(D) provides that “a fiduciary
15 with respect to a plan shall not cause the plan to engage in a transaction, if he
16 knows or should know that such transaction constitutes a direct or indirect . . .
17 transfer to, or use by or for the benefit of, a party in interest, of any assets of the
18 plan and a party in interest.”

19 252. ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A) defines a “party in
20 interest” to include “any fiduciary . . . of such employee benefit plan” as well as
21 “an employer any of whose employees are covered by such plan.” As fiduciaries of
22 the ESOP in 2014 before the October 2014 Transaction, Defendant Moffatt was a
23 party in interest pursuant to ERISA § 3(14) (A).

24 253. ERISA § 3(14)(H), 29 U.S.C. § 1002(14)(H) defines a “party in
25 interest” to include “an employee, officer, director (or an individual having powers
26 or responsibilities similar to those of officers or directors) of a person described in
27 subparagraph” (C), among other subparagraphs. Subparagraph (C) refers to
28 ERISA § 3(14)(C), 29 U.S.C. § 1002(C), which defines a party in interest to
include “an employer any of whose employees are covered by such plan.”

1 Rainbow was a party in interest pursuant ERISA § 3(14)(C). As officers and
2 directors of Rainbow, Defendants Moffat and Snow were parties in interest
3 pursuant to ERISA § 3(14)(H).

4 254. In its SEC Form 10-Q and SEC Form 10-K, but not in
5 communications with participants of the Rainbow ESOP, Republic disclosed that
6 as part of the October 1, 2014 sale of Rainbow to Republic, Republic entered into
7 “agreements not to compete along with restrictive covenants, with key executives.”

8 255. As described in an October 1, 2014 Press Release, “[a]s part of the
9 transaction, the primary principals at Rainbow, Jerry Moffatt and Jeff Snow, have
10 joined Republic Services, and will now lead a newly created business unit of the
11 Company based at the Huntington Beach campus.”

12 256. Based on the information in the SEC Form 10-Q, Form 10-K and the
13 Press Release, Defendants Moffatt and Snow, negotiated and entered into
14 agreements as part of the sale of Rainbow that ensured their continued employment
15 or payments after sale of Rainbow to Republic.

16 257. Any difference between what Republic paid or would have paid or
17 what was received by Rainbow ESOP participants, that would have increased the
18 amount that the funds received by the Rainbow ESOP participants from the sale of
19 the assets of the Plan if Defendants Moffat and Snow not received the benefits of
20 these agreements that ensure their continued employment constitutes a direct or
21 indirect transfer to, use by or for the benefit of a party interest of the assets of the
22 Rainbow ESOP and two parties in interest, Defendants Moffat and Snow, within
23 the meaning of ERISA § 406(a)(D), 29 U.S.C. § 1106(a)(D).

24 258. As the language of Amendment No. 4 modified Section 5(d) of the
25 Plan Document to provide the Trustee with the discretionary authority to sell the
26 shares of Rainbow held by the Rainbow ESOP, Defendant Great Banc knew or
27 should have known of these agreements and caused the Rainbow ESOP to engage
28 in the transaction for the sale of the Rainbow ESOP. By causing the Rainbow

1 ESOP to engage in a transaction which included such agreements, Defendant Great
2 Banc caused the plan to engage in a prohibited transaction in violation of ERISA §
3 406(a)(D), 29 U.S.C. § 1106(a)(D).

4 259. By negotiating the terms of the sale of the assets of the Rainbow
5 ESOP to include agreements that provided benefits at time when the Committee
6 had discretionary authority to act before the enactment of Amendment No. 4,
7 Defendant Moffat caused the plan to engage in a prohibited transaction in violation
8 of ERISA § 406(a)(D), 29 U.S.C. § 1106(a)(D).

9 260. As parties in interest, Defendants Moffat and Snow are liable for the
10 violations of ERISA § 406(a)(D), 29 U.S.C. § 1106(a)(D) pursuant to ERISA §
11 502(a)(3).

12 **COUNT VII**

13 **Prohibited Transactions in Violation of ERISA** 14 **§ 406(b)(1) & (3), 29 U.S.C. § 1106(b)(1) & (3)** 15 **Against Defendant Range**

16 261. Plaintiffs incorporate and re-allege by reference each of the foregoing
17 paragraphs as if fully set forth herein.

18 262. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1) provides that “a fiduciary
19 with respect to a plan shall not deal with the assets of the plan in his own interest
20 or for his own account.”

21 263. ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3) provides that “a fiduciary
22 with respect to a plan shall not receive any consideration for his own personal
23 account from any party dealing with such plan in connection with a transaction
24 involving the assets of the plan.”

25 264. Defendant Range was a fiduciary of the Plan as a member of the
26 Board of Directors of Rainbow, which had oversight over the ESOP Committee
27 and the Trustee and because he acted on behalf of the Plan in negotiating the terms
28 of the sale of Rainbow stock owned by the Plan.

1 (8) “sue, defend, compromise, arbitrate or settle any suit or legal
2 proceeding or any claim due it on which it may be liable;”

3 (10) “employ agents, legal counsel, independent appraisers,
4 actuaries, accountants or other persons ... for such purposes as the
5 Trustee considers desirable; and”

6 (11) “perform all acts which the Trustee shall deem necessary or
7 appropriate and exercise all powers and authority under this
8 Agreement.

9 270. Pursuant to Section 17(c) of the Plan Document, the ESOP Committee
10 also had “all powers necessary to enable it to administer the Plan and Trust
11 Agreement in accordance with their provisions, including without limitation the
12 following:”

13 (6) engaging any administrative, legal, accounting, clerical or other
14 services that it may deem appropriate;

15 (9) reviewing the performance of the Trustee with respect to the
16 Trustee’s administrative duties, responsibilities and obligations under
17 the Plan and Trust Agreement.

18 271. Among the assets of an employee benefit plan under ERISA is a
19 “chase in action” – the right to bring an action to recover a debt, money or a thing
20 – including to institute a lawsuit for a breach of fiduciary duties or other violations.

21 272. ERISA fiduciaries are prohibited from engaging in transactions under
22 ERISA § 406(a) or 406(b) unless there is an exception or an exemption. In a 100%
23 ESOP owned company, a misuse of company assets arises to a misuse of Plan
24 assets because the Plan’s value is directly related to the company’s value such that
25 a misuse in company funds negatively affects the company’s value and in turn the
26 ESOP’s value. As a result, one of the assets of the Plan was a claim against Moffat
27 and Shuman for engaging in prohibited transactions and associated breaches of
28

1 fiduciary duty by engaging in the transactions such as Southeastern Renewables
2 and West Florida Recycling for their own benefit.

3 273. California Corporate Code voids self-dealing transactions and under
4 California corporate law, makes it a violation of the fiduciary duty of officers or
5 directors to give away or appropriate to themselves corporate assets, including
6 corporate opportunities. As a result, one of the assets of the Plan, as the sole
7 shareholder, was a claim against Moffat and Shuman for engaging in breaches of
8 their corporate fiduciary duty by engaging in the transactions such as Southeastern
9 Renewables and West Florida Recycling for their own benefit.

10 274. Moffatt and Shuman breached their corporate fiduciary duties and
11 violated ERISA by utilizing the assets of Rainbow Disposal to invest in
12 Southeastern Renewables and West Florida Recycling and arranging for
13 themselves to have a personal ownership interest in transactions in which their
14 only contribution for ownership interest was to contribute the expertise and skills
15 for which Rainbow Disposal was already compensating them. Without the prospect
16 for personal enrichment from Southeastern Renewables and West Florida
17 Recycling, Moffat and Shuman would not have caused Rainbow Disposal to invest
18 in these companies. As a result of the investments in Southeastern Renewables and
19 West Florida Recycling, Rainbow incurred significant losses.

20 275. As explained in Note 2 to Rainbow ESOP's June 30, 2013 Financial
21 Statement attached to the Form 5500, "[s]ignificant changes in the Company's
22 operating results will impact the value of the common stock and, accordingly, the
23 Plan is subject to the same risks as the Company's operations and related
24 concentrations. . . A reduction in the Company's cash flow . . . impact[s] the ability
25 of the Company to provide cash to the Plan for the redemption of stock from
26 participants."

27 276. The value of Rainbow stock decreased by 35 percent between 2011
28 and 2012 and then an additional 10 percent from 2012 to 2013. This decline

1 coincided with and was primarily caused by Rainbow Disposal's investment in
2 non-core businesses such as West Florida Recycling and Southeastern Renewables.

3 277. As fiduciaries of the Rainbow ESOP, the ESOP Committee and the
4 Trustee had the ability to bring actions on behalf of the Plan pursuant to ERISA §
5 502(a)(2) and ERISA § 502(a)(3).

6 278. As the sole shareholder of Rainbow, the ESOP through its fiduciaries
7 could have taken action or exercised its authority to require the Board to take
8 action to pursue any claims under California corporate law.

9 279. Neither the ESOP Committee Defendants nor GreatBanc took any
10 action, including any legal action or exercise another authority under the Plan
11 Document or the Trust Agreement with respect to these claims and properly
12 manage this chose in action.

13 280. Had either the Prior ESOP Committee Defendants or GreatBanc filed
14 an action or properly raised these claims prior to the October 1, 2014 sale, under
15 California law, claims of self-dealing and breaches of fiduciary duty must be
16 considered by an appraiser in considering the fair value of a shareholder's stock.

17 281. By failing to take action or properly manage this chose in action, the
18 ESOP Committee Defendants and Defendant GreatBanc violated ERISA §§
19 404(a)(1)(A), (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D). As a result of
20 the breaches, the Plan suffered a loss and the ESOP participants who are members
21 of the Class correspondingly suffered losses to their particular accounts.

22 **COUNT IX**

23 **Failure to Provide Documents Upon Request Pursuant to ERISA § 104(b)(4),**
24 **29 U.S.C. § 1024(b)(4) & ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A)**
25 **Against New ESOP Committee Defendants**
26 **By only Plaintiffs Ortega and Maritza Quintero.**

27 282. Plaintiffs incorporate and re-allege by reference each of the foregoing
28 paragraphs as if fully set forth herein.

1 283. ERISA § 104(b)(4) provides that the administrator of an employee
2 benefit plan “shall, upon written request of any participant or beneficiary, furnish a
3 copy of certain enumerated documents as well as “other instruments under which
4 the plan is established or operated” to the requesting participant or beneficiary
5 within 30 days of the Request.

6 284. In the Ninth Circuit, the documents that a plan administrator must
7 provide pursuant to ERISA § 104(b)(4) are those that allow the participant to
8 “know[] exactly where he stands with respect to the plan—what benefits he may
9 be entitled to, what circumstances may preclude him from obtaining benefits, what
10 procedures he must follow to obtain benefits, and who are the persons to whom the
11 management and investment of his plan funds have been entrusted.”

12 285. The Ninth Circuit has recognized that a fiduciary’s duty under ERISA
13 § 404(a)(1)(A) to disclose is not limited to those specified in the statute, but
14 extends to additional disclosures to the extent that they relate to the provision of
15 benefits or the defrayment of expenses.

16 286. Plaintiff Chris Ortega sent a letter to the Rainbow ESOP Plan
17 Administrator requesting that the Plan provide specified documents pursuant to
18 ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A), on
19 November 6, 2014.

20 287. The Plan Administrator, the New ESOP Committee Defendants, did
21 not provide all of the documents requested pursuant to Mr. Ortega’s November 6,
22 2014 letter within 30 days as required by ERISA §§ 104(b) and 404(a)(1)(A), 29
23 U.S.C. §§ 1024(b) and 1104(a)(1)(A),

24 288. On January 3, 2017, Maritza Quintero sent a letter to the Rainbow
25 ESOP Plan Administrator requesting that the Plan provide a copy of the settlement
26 agreement between the Rainbow Trustee and Republic Services pursuant to ERISA
27 §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A), on January
28 3, 2017. As the amount of benefits that participants and beneficiaries is entitled to

1 receive is dependent on the amount released from the Escrow account, which is
2 based on the settlement agreement, the settlement agreement is a contract or other
3 instrument under which the plan is operated” and required to be disclosed pursuant
4 to ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A).

5 289. The Plan Administrator, the New ESOP Committee Defendants, failed
6 to produce the document(s) requested pursuant to Ms. Quintero’s January 3, 2017
7 letter within 30 days as required by ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C.
8 §§ 1024(b) and 1104(a)(1)(A). The Plan Administrator, the New ESOP Committee
9 Defendants, also failed to produce the document(s) requested pursuant to Ms.
10 Quintero’s January 3, 2017 letter within 30 days after she provided them with
11 documentation proving that she was a beneficiary under the Plan.

12 290. On January 5, 2017, Chris Ortega sent a letter to the Rainbow ESOP
13 Plan Administrator requesting that the Plan provide a copy of the settlement
14 agreement between the Rainbow Trustee and Republic Services pursuant to ERISA
15 §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A), on January
16 3, 2017. As the amount of benefits that participants and beneficiaries is entitled to
17 receive is dependent on the amount released from the Escrow account, which is
18 based on the settlement agreement, the settlement agreement is a contract or other
19 instrument under which the plan is operated” and required to be disclosed pursuant
20 to ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A).

21 291. The Plan Administrator, the New ESOP Committee Defendants, failed
22 to produce the document(s) requested pursuant to Ms. Quintero’s January 3, 2017
23 letter within 30 days as required by ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C.
24 §§ 1024(b) and 1104(a)(1)(A).

25 292. Pursuant to ERISA § 502(a)(1)(A) a participant may sue for the relief
26 provided in ERISA § 502(c). Pursuant to ERISA § 502(c), 29 U.S.C. § 1132(c),
27 “[a]ny administrator . . . who fails or refuses to comply with a request for any
28 information which such administrator is required by [ERISA] to furnish” by

1 mailing the requested material to “the requesting participant . . . within 30 days
2 after such request” may be liable for up to \$110 per day in civil penalties. As a
3 result of the New ESOP Committee Defendants’ failure to produce the requested
4 documents, they are liable for the penalties available under ERISA § 502(c).

5 **COUNT X**

6 **Breach of Fiduciary Duty Under ERISA § 404(a)(1)(A), (B), (C) & (D), 29**
7 **U.S.C. § 1104(a)(1) For Failing to Properly Invest Plan Assets After October**
8 **1, 2014 Against the New ESOP Committee Defendants and GreatBanc**

9 293. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan
10 fiduciary discharge his or her duties with respect to a plan solely in the interest of
11 the participants and beneficiaries and (A) for the exclusive purpose of (i) providing
12 benefits to participants and their beneficiaries; and (B) with “care, skill, prudence,
13 and diligence” and (C) by diversifying the investments of the plan so as to
14 minimize the risk of large losses, unless under the circumstances it is clearly
15 prudent not to do so; and (D) to act in accordance with the documents and
16 instruments governing the plan insofar as those documents and instruments are
17 consistent with ERISA.

18 294. Section 5(a) of the Plan Document provides that the “Trustee shall
19 invest any Trust Assets that are not invested in Company Stock in such prudent
20 investments as the Committee deems to be desirable for the Trust, or the Trust
21 Assets may be held temporarily in cash.”

22 295. According to the 2014 Form 5500 filed with the Department of Labor
23 dated April 18, 2016 and the 2015 Form 5500 filed with the Department of Labor
24 dated April 17, 2017, all of the Plan’s assets, approximately \$14.9 million, has
25 been invested entirely in short-term treasury obligations since the sale.

26 296. By definition, investment of 100% of the Plan assets in a single type
27 of asset, even in treasury obligations, is undiversified.
28

1 297. Based on the October 17, 2014 letter from the New ESOP Committee
2 that was sent to all ESOP participants, the Committee estimated that these funds
3 would not be distributed for at least 12 to 18 months.

4 298. A letter from GreatBanc Trust Company received by participants in
5 late November 2016 acknowledged that it had originally estimated final payment
6 on October 1, 2017.

7 299. Based on the estimated payment dates, both GreatBanc and the New
8 ESOP Committee Defendants were aware that there was no need for all of these
9 funds to be invested in short term investments.

10 300. No prudent or loyal fiduciary would have invested 100% of the assets
11 of the Plan in short term treasury obligations over 12 to 18 months (or even over 9
12 months) or longer. As this period of time was not temporary, nor was the expected
13 period of time temporary, investing 100% of the Plan's assets in short term
14 treasury obligations also was inconsistent with the terms of the Plan.

15 301. To the extent that Section 5(a) is construed to expressly provided that
16 the Trustee is subject to the direction of the Committee and does not have
17 discretion to invest the Plan assets without direction, GreatBanc knew or should
18 have known that the Committee's direction to invest 100% of the assets in a single
19 investment was inconsistent with the terms of the Plan and was also contrary to
20 ERISA.

21 302. To the extent that the language of Section 5(d) as amended by
22 Amendment No. 5 was construed to suggest that the Plan's assets should not be
23 diversified, a prudent fiduciary would have disregarded that instruction in favor of
24 diversification as the Supreme Court had expressly held on June 25, 2014 in *Fifth*
25 *Third Bancorp v. Dudenhoeffer*, 134 S.Ct 2459 (2014) that ERISA § 404(a)(1)(D),
26 29 U.S.C. § "makes clear that the duty of prudence trumps the instructions of a
27 plan document," even an instruction in the plan to invest exclusively in a particular
28 investment.

1 303. If merely 60% of these Plan assets (i.e. \$9 million) had been invested
2 in an S&P 500 index fund between October 1, 2014 and July 7, 2017, those assets
3 would have returned 32.11% or \$2.89 million dollars. (Calculations performed
4 using <https://dqydj.com/sp-500-return-calculator/>). If the other 40% of these Plan
5 assets were investment in AAA corporate bonds, those assets would have returned
6 12.138% or \$728,280 (Calculations performed using [https://dqydj.com/investment-
7 grade-corporate-bond-total-return-calculator-aaa-aa-a/](https://dqydj.com/investment-grade-corporate-bond-total-return-calculator-aaa-aa-a/)). A prudent, but very
8 conservative alternative investment of these Plan assets would have yielded at least
9 \$3.618 million. By contrast, the Plan only earned \$17,149 in interest from July 1,
10 2015 through June 30, 2016 and \$18,723 in interest from July 1, 2016 through June
11 30, 2017.

12 304. By failing to prudently invest and diversify the assets of the Plan after
13 October 1, 2014, the New Committee Defendants and GreatBanc breached their
14 fiduciary duties under ERISA § 404(a)(1)(A), (B), (C) and (D), 29 U.S.C.
15 § 1104(a)(1)(A), (B), (C) and (D).

16 **COUNT XI**

17 **Breach of Duty to Monitor Pursuant to** 18 **ERISA § 404(a)(1)(A) & (B), 29 U.S.C. § 1104(a)(1)(A) & (B)** 19 **Against the ESOP Plan Committee Defendants and the Director Defendants**

20 305. Plaintiffs incorporate and re-allege by reference each of the foregoing
21 paragraphs as if fully set forth herein.

22 306. Pursuant to Section 17(c)(9) of the Plan Document, the ESOP
23 Committee had the authority and responsibility to “review[] the performance of the
24 Trustee with respect to the Trustees’ administrative duties, responsibilities and
25 obligations under the Plan and Trust Agreement.”

26 307. Pursuant to Section 2 of the Plan Document, the Board of Directors of
27 Rainbow appointed the Trustee and the ESOP Committee. Pursuant to the
28 authority, the Rainbow Board had a duty to monitor the Trustee’s conduct and the

1 ESOP Committee members' conduct, to take appropriate action if those fiduciaries
2 were not adequately protecting the interests of the ESOP participants.

3 308. The Prior Committee Defendants, and the Board of Directors
4 (Moffatt, Snow and Range) knew or in the exercise of reasonable diligence, should
5 have known that GreatBanc as Trustee (a) had failed to conduct a reasonable and
6 good faith investigation of the price of Rainbow stock, (b) had failed to determine
7 whether the sale was consistent with the terms of the Plan Document, (c) had
8 caused or permitted the Plan to engage in prohibited transactions, and (d) had
9 failed to properly manage a chose in action.

10 309. The Rainbow Board of Directors (Moffatt, Snow and Range) knew or
11 in the exercise of reasonable diligence, should have known that the ESOP
12 Committee (a) had failed to determine whether the sale was consistent with the
13 terms of the Plan Document including by failing to hold a vote by participants, (b)
14 had caused or permitted the Plan to engage in prohibited transactions, and (c) had
15 failed to properly manage a chose in action.

16 310. The New Committee Defendants knew or in the exercise of
17 reasonable diligence, should have known that GreatBanc as Trustee (a) had failed
18 to conduct a reasonable and good faith investigation of the price of Rainbow stock,
19 (b) had caused the Rainbow ESOP to engage in a transaction for and receive less
20 than adequate consideration for Rainbow stock, (c) had failed to make sufficient
21 and accurate disclosures to ESOP participants about material terms about the sale,
22 (d) had failed to act consistent with the terms of the Plan Document, including by
23 failing to hold a vote by participants, (e) had caused or permitted the Plan to
24 engage in prohibited transactions, and (f) had failed to properly manage a chose in
25 action.

26 311. By failing to properly monitor and/or take appropriate action against
27 the Trustee, the ESOP Committee Defendants and the Board of Directors (Moffatt,
28

1 Snow and Range) breached their fiduciary duties under ERISA § 404(a)(1)(A) &
2 (B), 29 U.S.C. § 1104(a)(1)(A) &(B).

3 312. By failing to properly monitor and/or take appropriate action against
4 the Prior ESOP Committee Defendants, the Board of Directors (Moffatt, Snow and
5 Range) breached their fiduciary duties under ERISA § 404(a)(1)(A) & (B), 29
6 U.S.C. § 1104(a)(1)(A) &(B).

7 **COUNT XII**

8 **Co-Fiduciary Liability Pursuant to ERISA § 405, 29 U.S.C. § 1105**
9 **Against the ESOP Committee Defendants, Moffatt, Snow, Range and**
10 **GreatBanc**

11 313. Plaintiffs incorporate and re-allege by reference each of the foregoing
12 paragraphs as if fully set forth herein.

13 314. ERISA § 405, 29 U.S.C. § 1105, makes a fiduciary of a Plan liable for
14 another fiduciary of the same plan's breach when (1) "he participates knowingly
15 in, or knowingly undertakes to conceal, an act or omission of such other fiduciary,
16 knowing such act or omission of such other fiduciary is a breach;" (2) "by his
17 failure to comply with section 404(a)(1) in the administration of his specific
18 responsibilities which give rise to his status as a fiduciary, he has enabled such
19 other fiduciary to commit a breach;" or (3) "he has knowledge of a breach by such
20 other fiduciary, unless he makes reasonable efforts under the circumstances to
21 remedy the breach."

22 315. The Prior ESOP Committee Defendants violated ERISA § 405(a)(1)-
23 (3) when they knowingly participated in each other's violations when they acted as
24 a Committee because (1) they each participated knowingly in the actions taken as a
25 Committee and knew or were reckless in not knowing it was a breach, (2) failed to
26 fulfill their duties as members of the Committee set forth in the Plan Document
27 and (3) had knowledge of those breaches and made no apparent efforts to remedy
28 the breach. As such, each of the Prior ESOP Committee Defendants is liable for

1 the breaches of the other members of the Committee pursuant to ERISA §
2 405(a)(1), (2) and (3), 29 U.S.C. § 1105(a)(1), (2) and (3).

3 316. The Prior ESOP Committee Defendants violated ERISA § 405(a)(2)
4 and/or (3) with respect to GreatBanc as follows because they had an obligation
5 pursuant to Section 17(c)(9) to review the following breaches of the Trustee and
6 either failed to fulfill those duties or had knowledge of the breaches and failed to
7 make any efforts to remedy the breaches:

8 a. The Prior ESOP Committee Defendants knew or should have
9 known consistent with their responsibilities that GreatBanc did not have an
10 independent appraiser's assessment of the fair market value of the ESOP's
11 stock as of the date of sale and failed to take steps to ensure that the sale was
12 for no less than fair market value;

13 b. The Prior ESOP Committee Defendants knew or should have
14 known consistent with their responsibilities that GreatBanc did not provide
15 the ESOP participants with the opportunity to vote their shares of stock for
16 or against the sale to Republic Services;

17 c. The Prior ESOP Committee Defendants knew or should have
18 known consistent with their responsibilities that GreatBanc had failed to
19 properly manage a chose in action against Moffat and Shuman;

20 d. The Prior ESOP Committee Defendants knew or should have
21 known consistent with their responsibilities that GreatBanc had executed an
22 indemnification provision that violates ERISA § 410 and is thus void as
23 against public policy.

24 As such, the Prior ESOP Committee Defendants are liable for the breaches of
25 Great Banc pursuant to ERISA § 405(a) (2) and (3), 29 U.S.C. § 1105(a) (2) and
26 (3).

27 317. GreatBanc, Moffatt, Snow and Range violated ERISA 405(a)(1)-(3)
28 when they participated knowingly in the respective prohibited transactions

1 because (1) they each participated knowingly in the respective prohibited
2 transactions, (2) failed to fulfill their duties as members of the Committee set forth
3 in the Plan Document and (3) had knowledge of those breaches and made no
4 apparent efforts to remedy the breach. As such, each of them is liable for the
5 breaches of the other members of the others as to each of those transactions
6 pursuant to ERISA § 405(a)(1), (2) and (3), 29 U.S.C. § 1105(a)(1), (2) and (3).

7 318. The New ESOP Committee Defendants violated ERISA § 405(a)(1)-
8 (3) when they knowingly participated in each other's violations when they acted as
9 a Committee because (1) they each participated knowingly in the actions taken as a
10 Committee and knew or were reckless in not knowing it was a breach, (2) failed to
11 fulfill their duties as members of the Committee set forth in the Plan Document
12 and (3) had knowledge of those breaches and made no apparent efforts to remedy
13 the breach. As such, each of the New ESOP Committee Defendants is liable for the
14 breaches of the other members of the Committee pursuant to ERISA § 405(a)(1),
15 (2) and (3), 29 U.S.C. § 1105(a)(1), (2) and (3).

16 319. The New ESOP Committee Defendants violated ERISA § 405(a)(2)
17 and/or (3) with respect to GreatBanc's Disclosures to ESOP Participants regarding
18 the Sale because (1) they participated knowingly in at least some of the disclosures
19 by transmitting the disclosures and knew or were reckless in not knowing it was a
20 breach, (2) they had an obligation pursuant to ERISA § 404(a)(1)(A) and the Plan
21 Document to ensure complete and accurate information was being transmitted to
22 participants and pursuant to Section 17(c)(9) of the Plan Document to review the
23 actions of the Trustee or (3) had knowledge that the communications were not
24 complete and accurate or were misleading because they had knowledge of the full
25 truth and failed to make any efforts to remedy the breaches:

COUNT XIII

Knowing Participation in Breaches of Fiduciary Duties & Prohibited Transactions Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) Against Defendant Republic Services

320. Plaintiffs incorporate and re-allege by reference each of the foregoing paragraphs as if fully set forth herein.

321. Defendant Republic Services knew about the existence of the Rainbow ESOP as the Stock Purchase Agreement expressly provided that the Plan would be terminated after the sale and because Republic Services was purchasing all of the Rainbow shares from the Rainbow ESOP.

322. Defendant Republic Services also knew that Defendants Moffat, Snow, and Range were fiduciaries of the ESOP as a result of either their membership on the ESOP Committee and/or membership on the Board of Directors of Rainbow. Defendant Republic Services also knew that GreatBanc was the trustee of the Rainbow ESOP.

323. Defendant Republic Services would have known at least of the following breaches of fiduciary duty and prohibited transactions in the October 2014 Transaction and at the time of the October 2014 Transaction as a result of its due diligence:

- a. The sale was not for adequate consideration within the meaning of ERISA § 3(18);
- b. The fiduciaries of the Rainbow ESOP had not held a vote by the ESOP participants on the sale consistent with the terms of the Plan Document;
- c. Rainbow's Articles of Incorporation required employee ownership, the Articles of Incorporation could not be changed without shareholder vote, and the fiduciaries of the Rainbow ESOP had not held a vote by the ESOP participants;

1 d. Moffat, Snow and Range had engaged in the transactions which
2 constitute prohibited transactions; and

3 e. The corporate officers and directors, including Moffat, had
4 engaged in breaches of their corporate fiduciary duty, which
5 had caused losses to Rainbow, negatively affecting the value of
6 Rainbow and its stock and these breaches had not been
7 remedied.

8 324. Despite knowledge of these breaches and violations, Defendant
9 Republic Services proceeded to close the transaction to purchase Rainbow
10 Disposal on October 1, 2014.

11 325. By knowingly participating in these breaches and violations,
12 Defendant Republic Services is subject to appropriate equitable relief including
13 disgorgement of any profits, having a constructive trust placed on any proceeds
14 received (or which are traceable thereto), having the sale rescinded, requiring all or
15 part of stock to be restored to the Rainbow ESOP accounts or be subject other
16 appropriate equitable relief.

17 **COUNT XIV**

18 **Violation of ERISA § 410 & Breach of Fiduciary Under ERISA**
19 **§§ 404(a)(1)(A) and (B), 29 U.S.C. § 1110 & §§ 1104(a)(1)(A) and (B)**
20 **Against Fiduciary Defendants**

21 326. Plaintiffs incorporate and re-allege by reference each of the foregoing
22 paragraphs as if fully set forth herein.

23 327. ERISA § 410(a), 29 U.S.C. § 1110(a), provides in relevant part (with
24 exceptions not applicable here) that “any provision in an agreement or instrument
25 which purports to relieve a fiduciary from responsibility or liability for any
26 responsibility, obligation, or duty under this part [ERISA Part IV] shall be void as
27 against public policy.” As Part IV of ERISA includes ERISA §§ 404, 405, and
28 406, 29 U.S.C. §§ 1104, 1105 and 1106, any provision that attempts to relieve a

1 fiduciary of liability is void pursuant to ERISA § 410(a), unless there is an
2 exception or exemption. No such exception or exemption is applicable here.

3 328. The DOL Regulations promulgated under ERISA § 410, 29 C.F.R.
4 § 2509.75-4, renders “void any arrangement for indemnification of a fiduciary of
5 an employee benefit plan by the plan” because it would have “the same result as an
6 exculpatory clause, in that it would, in effect, relieve the fiduciary of responsibility
7 and liability to the plan by abrogating the plan’s right to recovery from the
8 fiduciary for breaches of fiduciary obligations.”

9 329. For a 100% ESOP-owned company, a provision requiring indemnity
10 by the ESOP-owned company is treated as an indemnity provision by the Plan
11 because it effectively requires ESOP participants to pay for the costs of the
12 breaching fiduciaries’ liability.

13 330. Section 17(g) of the Plan Document purports to “indemnify each
14 member of the Committee (to extent permitted by law) against any personal
15 liability or expense, including reasonable attorneys’ fees resulting from his service
16 on the Committee, except such liability or expense as may result from his own
17 willful misconduct.”

18 331. To the extent that Section 17(g) of the Plan Document attempts to
19 relieve the ESOP Committee Defendants from their responsibility or liability for
20 their breaches of fiduciary duties under ERISA or have Rainbow (while it was an
21 ESOP-owned company) or thereby the Rainbow ESOP be responsible for their
22 liability or breaches Section 17(g) is void as against public policy.

23 332. Section 14 of the October 7, 2002 “Successor Trustee Engagement
24 Agreement” between GreatBanc and Rainbow Disposal purports to disclaim any
25 responsibility by GreatBanc to pay for “any loss, cost, expense, or other damage,
26 including attorneys’ fees suffered by any of the Indemnitees [defined as GreatBanc
27 and its officers, directors, employees, and agents] resulting from or incurred with
28 respect to any legal proceedings related in any way to the performance of services

1 by any one or more of the Indemnitees.” Section 15(b) of Successor Trustee
2 Engagement Agreement purports to require Rainbow Disposal to “reimburse the
3 Indemnitees for all reasonable costs that they incur in connection with any
4 Proceeding.” Section 17 of the Successor Trustee Engagement Agreement states,
5 “[i]f a court of competent jurisdiction shall hold that any payment or award of
6 indemnification pursuant to the terms of this Agreement shall be unavailable to any
7 one or more of the Indemnitees from the Company for any reason other than their
8 gross negligence or willful misconduct, the Company then shall reimburse the
9 affected Indemnitees, as required by Section 14, but taking into account the basis
10 for the denial of full indemnification by the court.”

11 333. To the extent that Sections 14, 15, and 17 of the Successor Trustee
12 Engagement Agreement attempts to relieve the ESOP Committee Defendants from
13 their responsibility or liability for their breaches of fiduciary duties under ERISA
14 or have Rainbow (while it was an ESOP-owned company) or thereby the Rainbow
15 ESOP be responsible for their liability or breaches Sections 14, 15, and 17 are void
16 as against public policy.

17 334. To the extent that any fiduciaries of the Plan would agree to such an
18 indemnity provision that is against public policy under ERISA § 410, that fiduciary
19 breached his or her fiduciary duties under ERISA by failing to discharge their
20 duties with respect to the Plan solely in the interest of the participants and
21 beneficiaries (A) for the exclusive purpose of providing benefits to participants and
22 beneficiaries and (B) with the care, skill, prudence and diligence under the
23 circumstances then prevailing that a prudent person acting in a like capacity and
24 familiar with such matters would use in the conduct of an enterprise of like
25 character and aims, in violation of ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C.
26 §§ 1104(a)(1)(A) and (B).

1 **ENTITLEMENT TO RELIEF**

2 335. By virtue of the violations set forth in the foregoing paragraphs,
3 Plaintiff and the Class are entitled to sue each of the Fiduciary Defendants pursuant
4 to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), for relief on behalf of the Plan as
5 provided in ERISA § 409, 29 U.S.C. § 1109, including for recovery of any losses
6 to the Plan, the recovery of any profits resulting from the breaches of fiduciary
7 duty, and such other equitable or remedial relief as the Court may deem
8 appropriate.

9 336. By virtue of the violations set forth in the foregoing paragraphs,
10 Plaintiff and the Class are entitled pursuant to ERISA § 502(a)(3), 29 U.S.C. §
11 1132(a)(3), to sue any of the Defendants for any appropriate equitable relief to
12 redress the wrongs described above.

13 **PRAAYER FOR RELIEF**

14 Wherefore, Plaintiffs, on behalf of themselves and the Class, pray that
15 judgment be entered against Defendants on all claims, and request that the Court
16 order or award the following relief:

17 A. Declare that each of the above fiduciary Defendants breached his, her
18 or its fiduciary duties under ERISA.

19 B. Require each fiduciary found to have breached his/her/its fiduciary
20 duties to the Plans to jointly and severally restore all losses to the Plans that resulted
21 from the breaches of fiduciary duty, or by virtue of liability pursuant to ERISA §
22 405, to disgorge any profits.

23 C. Declare that Plaintiffs and the Class were and are entitled to vote on
24 whether the Rainbow ESOP should be sold to Republic Services either under the
25 terms of the Plan or reforming the terms of the Plan consistent with the SPD and
26 requiring such a vote to be take place.

27 D. Require that the Trustee and the ESOP Committee Defendants be
28 required to provide an accounting of the proceeds of the sale to Republic Services.

1 E. Declare any transaction that constitutes a prohibited transaction void
2 and (1) requiring any fiduciary or party-in-interest to disgorge any profits made, (2)
3 declaring a constructive trust over the proceeds of any such transaction or (3) any
4 other appropriate equitable relief, whichever is in the best interest of the Rainbow
5 ESOP.

6 F. Require that the proceeds of any recovery for the Rainbow ESOP be
7 allocated to the accounts of participants in the Rainbow ESOP (other than any
8 Defendants) in proportion to the injury that they suffered as a result of the breach of
9 fiduciary duty.

10 G. Require the forfeiture of any interest in the Rainbow ESOP of any
11 fiduciary alleged to have breached his fiduciary duty to the Plan to the extent
12 necessary to make whole the innocent participants of the Rainbow ESOP who were
13 participants at the time of the 2014 Transaction.

14 H. Order the removal any of the breaching fiduciaries from their position
15 as fiduciaries for the Rainbow ESOP and enjoin any of the breaching fiduciaries
16 from acting as fiduciaries for any plan that covers any Rainbow employees or any
17 members of the Class.

18 I. Appoint an Independent Fiduciary to manage the Rainbow ESOP to
19 the extent necessary.

20 J. Order (i) a constructive trust be placed on the proceeds received by
21 Republic Service in the sale, (ii) disgorgement of profits made by the Republic
22 Services, (iii) rescission of the sale of stock by Republic Services, or (iv) any other
23 appropriate equitable relief against the Republic Services, whichever is in the best
24 interest of the Rainbow ESOP.

25 K. Order pursuant to ERISA § 206(d)(4) that any amount to be paid to
26 the ESOP accounts of the Class can be satisfied by using or transferring any
27 breaching fiduciary's ESOP account in the Plan (or the proceeds of that account) to
28 the extent of that fiduciary's liability.

1 L. Declare that any indemnification agreement between Defendants and
2 the Rainbow ESOP or Rainbow Disposal violated ERISA § 410, 29 U.S.C. § 1110
3 and is therefore null and void.

4 M. Award Plaintiffs Christopher Ortega and Maritza Quintero statutory
5 penalties in the amount of \$110 per day, per violation, for the failure to provide
6 each of the requested documents that the New ESOP Committee Defendants failed
7 to provide.

8 N. Require Defendants to pay attorney's fees and the costs of this action
9 pursuant to ERISA §502(g)(1), 29 U.S.C. § 1132(g)(1) and/or ordering the payment
10 of reasonable fees and expenses of this action to Plaintiffs' Counsel on the basis of
11 the common benefit and/or common fund doctrine (and/or other applicable law) out
12 of any money or benefit recovered for the Class and Subclasses in this action.

13 O. Award pre-judgment and post-judgment interest.

14 P. Award any such other relief that the Court determines that Plaintiffs
15 and the Class are entitled pursuant to ERISA §502(a), 29 U.S.C. § 1132(a) and
16 pursuant to Rule 54(c) of the Federal Rules of Civil Procedure or otherwise.

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