

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS THOMAS HOLBERT, individually and on behalf of all persons similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Delaware County, PA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Shanon J. Carson, Sarah R. Schalman-Bergen, Camille Fundora, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA 19103 215-875-3000</p>	<p>DEFENDANTS WASTE MANAGEMENT, INC.</p> <p>County of Residence of First Listed Defendant <u>Harris County, Texas</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

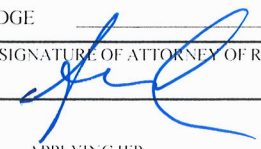
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Fair Labor Standards Act, 29 U.S.C. sec. 201, et seq.

Brief description of cause:
 Unpaid wages and overtime compensation

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 6/22/2018 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING FEP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS HOLBERT, individually and on	:	Civil Action No.:
behalf of all persons similarly situated,	:	
	:	Complaint— Class and Collective Action
Plaintiff,	:	
	:	Jury Trial Demanded
v.	:	
	:	
WASTE MANAGEMENT, INC.	:	
	:	
Defendant.	:	

CLASS AND COLLECTIVE ACTION COMPLAINT

Plaintiff Thomas Holbert (“Plaintiff”), through his undersigned counsel, individually and on behalf of all persons similarly situated, files this Complaint against Defendant Waste Management, Inc. (“WM” or “Defendant”) seeking all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) and Pennsylvania state law. The following allegations are based on personal knowledge as to Plaintiff’s own conduct and on information and belief as to the acts of others.

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff’s FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff’s state law claims because those claims derive from a common nucleus of operative facts.
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to Plaintiff’s and Class Members’ claims occurred within this judicial district. Plaintiff and other Class Members performed work in this judicial district and were paid pursuant to Defendant’s unlawful pay policy in this judicial district, and Defendant routinely

conducts business in this judicial district.

4. Venue in this Court is also proper pursuant to 28 U.S.C. § 1391(b)(1) & (d) in that Defendant resides in this judicial district and is subject to personal jurisdiction in this judicial district.

PARTIES

5. Plaintiff Thomas Holbert was employed by Defendant as a Waste collector for the Delaware Valley South location in Pennsylvania between approximately August 1990 and May 31, 2017, and pursuant to 29 U.S.C. § 216(b), has consented in writing to being a Plaintiff in this action. *See* Exhibit A.

6. Defendant Waste Management, Inc. is a corporation with its principal place of business in Houston, Texas. Defendant provide sanitation and trash collection services to customers throughout the U.S. “Waste Management is the largest environmental solutions provider in North America, serving more than 21 million municipal, commercial and industrial customers in the U.S. and Canada.” About Us, WASTE MANAGEMENT, INC., <https://www.wm.com/about/index.jsp> (last visited May 24, 2018).

7. Defendant employed Plaintiff and continues to employ similarly situated employees.

8. Defendant employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

9. Defendant’s annual gross volume of business exceeds \$500,000.

10. Defendant is not an independently owned and controlled local enterprise within the meaning of 29 U.S.C. § 207(b)(3).

CLASS DEFINITIONS

11. Plaintiff brings this lawsuit for Count I pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of himself and the following class of potential opt-in litigants:

All current or former waste collectors of Waste Management, Inc. (“WM”) who performed work in the United States at any time between June 22, 2015 and the present, who were paid hourly (the “FLSA Class”).

12. Plaintiff brings this lawsuit for Counts II and III as a class action pursuant to FED. R. CIV. P. 23, on behalf of himself and the following class:

All current or former waste collectors of Waste Management, Inc. (“WM”) who performed work in Pennsylvania at any time between June 22, 2014¹ and the present, who were paid hourly (the “Pennsylvania Class”).

13. The FLSA Class and the Pennsylvania Class are together referred to as the “Classes.”

14. Plaintiff reserves the right to redefine the Classes prior to notice or class certification, and thereafter, as necessary.

FACTS

15. Defendant employs waste collectors, such as Plaintiff, who perform a variety of sanitation services for Defendant’s residential and corporate clients in this judicial district and throughout the United States.

16. Between August 1990 and May 31, 2017, Plaintiff was employed as a non-exempt hourly waste collector with Defendant, performing sanitation services for residential and commercial clients.

17. Plaintiff and the Class Members are blue collar workers who are primarily engaged

¹ The statute of limitations on Plaintiff’s unjust enrichment claim is four years. Therefore, employees may be members of the Pennsylvania Class if they were employed on or after June 22, 2014 for at least one of the Claims alleged on behalf of the Pennsylvania Class.

in manual labor duties.

18. Defendant has a policy or practice of failing to compensate Plaintiff and the Classes for all hours worked, including overtime compensation.

19. Defendant paid Plaintiff and the Class Members an hourly rate.

20. Waste collectors begin their workday by checking into the Waste Management facility, picking up and preparing their equipment to begin their work route following a mandatory morning meeting. Waste collectors are required to have their equipment and vehicles ready prior to the morning meetings.

21. Prior to the mandatory morning meetings, Plaintiff and Class Members are required to pick up their equipment from Waste Management necessary for the day, such as protective personal equipment, review the day's work on Waste Management computer tablets, change work orders, retrieve and review paperwork and proper manifests, and finalize the day's route. Plaintiff and Class Members were required to have completed these tasks before the meeting in order to begin their route immediately after the morning meeting.

22. Plaintiff and Class Members are also required to perform pre- and post-trip inspections of their assigned Waste Management vehicles and document the inspections.

23. These activities before the morning meetings Plaintiff and Class Members were required to perform are integral and indispensable to their principal activities. Waste Management employed Plaintiff and Class Members to operate the Waste Management vehicles and collect residential and/or business waste or recyclable material. Plaintiff and Class Members reviewed the day's work orders to retrieve the necessary equipment to complete the day's activities, and ensure the proper paperwork is completed in order to perform his/her work.

24. Plaintiff was permitted to and often did perform his pre-check inspection prior to

the morning meeting.

25. Despite performing these work activities, Plaintiff and Class Members were not compensated for any time prior to the beginning of the morning meetings.

26. Waste collectors are required to clock in and out electronically using the timekeeping system called Kronos.

27. Defendant has a policy where a waste collector cannot clock in until about 15 minutes before the morning meeting.

28. While waste collectors are allowed to clock in 15 minutes prior to the morning meeting, they are not paid for those 15 minutes, even though waste collectors are performing the required tasks integral and indispensable to their performance at Defendant's locations.

29. Supervisors were made aware of the off-the-clock work prior to the meetings, including General Manager Steve Mitchell. Nonetheless, no changes were made and Class Members remained uncompensated for their time.

30. In addition, Plaintiff was required to take a 30-minute lunch break each day. However, due to the workload, Plaintiff would work through his lunch on average three (3) times per week. Defendant automatically deducted 30 minutes for lunch each workday whether or not Plaintiff worked through his lunch break.

31. Plaintiff was not paid for the time spent working through lunch. Plaintiff observed that the members of the Classes routinely work through lunch and were also not compensated for this time.

32. Accordingly, on average Plaintiff would work 2 hours and 45 minutes to 3 hours off-the-clock each workweek. Plaintiff observed other Class Members work similar off-the-clock hours each workweek.

33. Defendant does not maintain accurate records of the hours that Plaintiff and the Class Members worked each workday and the total number of hours worked each workweek as required by the FLSA. *See* 29 C.F.R. § 516.2(a)(7).

34. Plaintiff routinely worked five (5) days per week and every other Saturday. Each day he worked, he routinely worked between eight (8) to ten (10) hours per day. Plaintiff observed that the members of the Classes routinely worked similar schedules.

35. In actuality, Plaintiff and Class Members regularly worked more than forty (40) hours per workweek in executing their duties with off-the-clock work. Defendant did not properly pay Plaintiff and Class Members overtime compensation for hours worked in excess of forty (40) per workweek.

36. As a nationwide corporation, there is no question that Defendant has access to human resource expertise and legal counsel who can advise Defendant on its FLSA compliance obligations.

37. Defendant acted willfully and/or with reckless disregard of the applicable FLSA and Pennsylvania state law provisions, by failing to properly compensate Plaintiff and the Classes for hours worked in excess of forty (40) during the workweek.

38. Moreover, during the entire relevant time period, Defendant were aware that the Classes were not properly compensated under the FLSA and Pennsylvania state law when supervisors received complaints regarding the timekeeping system. Also, Defendant has been the subject of numerous similar FLSA lawsuits in courts across the United States.

39. Furthermore, Defendant failed to properly track, monitor or record the actual number of hours per day that the FLSA Class Members worked, as required by the FLSA. *See* 29 U.S.C.A. § 211(c); 29 C.F.R. §§ 516.5(a), 516.6(a)(1), 516.2(c) (requiring employers to maintain

payroll records for three years and time sheets for two years, including the exact number of hours worked each day and each week).

COLLECTIVE ACTION ALLEGATIONS

40. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the FLSA Class defined above.

41. Plaintiff desires to pursue his FLSA claim on behalf of any individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).

42. Plaintiff and the FLSA Class are “similarly situated,” as that term is used in 29 U.S.C. § 216(b), because, *inter alia*, all such individuals worked pursuant to Defendant’s previously described common pay practices and, as a result of such practices, were not paid the full and legally mandated overtime compensation for hours worked over forty (40) during the workweek. Resolution of this action requires inquiry into common facts, including, *inter alia*, Defendant’s common compensation, timekeeping and payroll practices.

43. The similarly situated employees are known to Defendant, are readily identifiable, and may be located through Defendant’s records and the records of any payroll companies that Defendant utilizes.

44. Defendant employs many FLSA Class Members throughout the United States. These similarly situated employees may be readily notified of this action through direct U.S. mail and/or other appropriate means, and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys’ fees and costs under the FLSA.

CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action as a class action pursuant to FED. R. CIV. P. 23 on behalf

of himself and the Pennsylvania Class defined above.

46. The members of the Pennsylvania Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are more than forty (40) members of the Pennsylvania Class.

47. Plaintiff will fairly and adequately represent and protect the interests of the Pennsylvania Class because there is no conflict between the claims of Plaintiff and those of the Pennsylvania Class, and Plaintiff's claims are typical of the claims of the Pennsylvania Class. Plaintiff's counsel are competent and experienced in litigating class actions and other complex litigation matters, including wage and hour cases like this one.

48. There are questions of law and fact common to the proposed Pennsylvania Class, which predominate over any questions affecting only individual Class Members, including, without limitation: whether Defendant has violated and continues to violate Pennsylvania law through its policy or practice of not paying its day rate employees overtime compensation.

49. Plaintiff's claims are typical of the claims of the Pennsylvania Class in the following ways, without limitation: (a) Plaintiff is a member of the Pennsylvania Class; (b) Plaintiff's claims arise out of the same policies, practices and course of conduct that form the basis of the claims of the Pennsylvania Class; (c) Plaintiff's claims are based on the same legal and remedial theories as those of the Pennsylvania Class and involve similar factual circumstances; (d) there are no conflicts between the interests of Plaintiff and the Pennsylvania Class Members; and (e) the injuries suffered by Plaintiff are similar to the injuries suffered by the Pennsylvania Class Members.

50. Class certification is appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Pennsylvania Class predominate over any questions affecting only

individual Class Members.

51. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Pennsylvania Class is readily identifiable from Defendant's own employment records. Prosecution of separate actions by individual members of the Pennsylvania Class would create the risk of inconsistent or varying adjudications with respect to individual Pennsylvania Class Members that would establish incompatible standards of conduct for Defendant.

52. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Further, the amounts at stake for many of the Pennsylvania Class Members, while substantial, are not great enough to enable them to maintain separate suits against Defendant.

53. Without a class action, Defendant will retain the benefit of its wrongdoing, which will result in further damages to Plaintiff and the Pennsylvania Class. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I
Violation of the FLSA
(On Behalf of the FLSA Class)

54. All previous paragraphs are incorporated as though fully set forth herein.

55. The FLSA requires that covered employees be compensated for all hours worked

in excess of forty (40) hours per week at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed. *See* 29 U.S.C. § 207(a)(1).

56. Defendant is subject to the wage requirements of the FLSA because Defendant is an “employer” under 29 U.S.C. § 203(d).

57. During all relevant times, Plaintiffs and the FLSA Class are covered employees entitled to the above-described FLSA’s protections. *See* 29 U.S.C. § 203(e).

58. Defendant’s compensation and timekeeping scheme applicable to Plaintiff and the FLSA Class failed to comply with either 29 U.S.C. § 207(a)(1).

59. Defendant knowingly failed to compensate Plaintiff and the FLSA Class at a rate of one and one-half (1 ½) times their regular hourly wage for all hours worked in excess of forty (40) hours per week, in violation of 29 U.S.C. § 207(a)(1).

60. Defendant also failed to make, keep, and preserve records with respect to Plaintiffs and the FLSA Class sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.5(a), 516.6(a)(1), 516.2(c).

61. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

62. Pursuant to 29 U.S.C. § 216(b), employers such as Defendant, who intentionally fail to pay an employee wages in conformance with the FLSA shall be liable to the employee for unpaid wages, liquidated damages, court costs and attorneys’ fees incurred in recovering the unpaid wages.

COUNT II
Violation of the Pennsylvania Minimum Wage Act
(On Behalf of the Pennsylvania Class)

63. All previous paragraphs are incorporated as though fully set forth herein.

64. The Pennsylvania Minimum Wage Act of 1968 (“PMWA”) requires that covered employees be compensated for all hours worked. See 43 P.S. § 333.104(a) and 34 PA. CODE § 231.21(b).

65. The PMWA also requires that covered employees be compensated for all hours worked in excess of forty (40) hours per week at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed. See 43 P.S. § 333.104(c) and 34 PA. CODE § 231.41.

66. Defendant is subject to the overtime requirements of the PMWA because Defendant is an employer under 43 P.S. § 333.103(g).

67. During all relevant times, Plaintiff and the Pennsylvania Class were covered employees entitled to the above-described PMWA’s protections. See 43 P.S. § 333.103(h).

68. Defendant’s compensation scheme that is applicable to Plaintiff and the Pennsylvania Class failed to comply with 43 P.S. §§ 333.104(a) and (c), 34 PA. CODE §§ 231.1(b) and 43(b).

69. Defendant knowingly failed to compensate Plaintiff and the Pennsylvania Class at a rate of one and one-half (1 ½) times their regular hourly wage for hours worked in excess of forty (40) hours per week, in violation of 43 P.S. § 333.104(c) and 34 PA. CODE § 231.41.

70. Defendant fails to accurately track all of the hours that Plaintiffs and the Pennsylvania Class work. See 43 P.S. § 333.108 and 34 PA. CODE § 231.31.

71. Pursuant 43 P.S. § 333.113, employers, such as Defendant, who intentionally fail to pay an employee wages in conformance with the PMWA shall be liable to the employee for the wages or expenses that were intentionally not paid, court costs and attorneys’ fees incurred in recovering the unpaid wages.

72. In violating the PMWA, Defendant acted willfully and with reckless disregard of clearly applicable PMWA provisions.

COUNT III
Unjust Enrichment
(On Behalf of the Pennsylvania Class)

73. All previous paragraphs are incorporated as though fully set forth herein.

74. Defendant has received and benefited from the uncompensated labors of Plaintiff and the Pennsylvania Class, such that to retain said benefit without compensation would be inequitable and rise to the level of unjust enrichment.

75. At all relevant times hereto, Defendant devised and implemented a plan to increase its earnings and profits by fostering a scheme of securing work from Plaintiff and the Pennsylvania Class without paying overtime compensation for all hours worked.

76. Contrary to all good faith and fair dealing, Defendant induced Plaintiff and the Pennsylvania Class to perform work while failing to pay overtime compensation for all hours worked as required by law.

77. By reason of having secured the work and efforts of Plaintiff and the Pennsylvania Class without paying overtime compensation as required by law, Defendant enjoyed reduced overhead with respect to its labor costs, and therefore realized additional earnings and profits to its own benefit and to the detriment of Plaintiff and the Pennsylvania Class. Defendant retained and continues to retain such benefits contrary to the fundamental principles of justice, equity, and good conscience.

78. Accordingly, Plaintiff and the Pennsylvania Class are entitled to judgment in an amount equal to the benefits unjustly retained by Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks

the following relief:

- A. An order permitting this litigation to proceed as an FLSA collective action pursuant to 29 U.S.C. § 216(b);
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all potential FLSA Class Members;
- C. An order permitting this litigation to proceed as a class action pursuant to FED. R. CIV. P. 23 on behalf of the Pennsylvania Class;
- D. Back pay damages (including unpaid overtime compensation, unpaid spread of hours payments, and unpaid wages) and prejudgment interest to the fullest extent permitted under the law;
- E. Liquidated damages to the fullest extent permitted under the law;
- F. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- G. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury for all issues of fact.

Dated: June 22, 2018

Respectfully submitted,

BERGER & MONTAGUE, P.C.



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Sarah R. Schalman-Bergen (PA 206211)
Camille Fundora (PA 312533)
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cfundora@bm.net

*Attorneys for Plaintiff and the Proposed
Classes*

Exhibit A

OPT-IN CONSENT FORM

Unpaid Wages and Overtime Litigation – Waste Management, Inc.

Complete And Mail (or Email) To:

WASTE MANAGEMENT, INC. OVERTIME LITIGATION
ATTN: CAMILLE FUNDORA
BERGER & MONTAGUE, P.C.
1622 LOCUST STREET
PHILADELPHIA, PA 19103
Email: cfundora@bm.net
Phone: (215) 875-3033
Fax: (215) 875-4604

Name: <u>Thomas Holbert</u> <small>(Please Print)</small>	Phone No.: [REDACTED]
Address: [REDACTED]	Email: [REDACTED]

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act, 29 U.S.C. § 216(b)

1. I consent and agree to pursue my claims arising out of alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* in connection with the above-referenced lawsuit.
2. I have worked for Waste Management, Inc. (“Defendant” or “WM”) in (state(s)) Pennsylvania from on or about (dates(s)) 8/20/90 to on or about (dates(s)) 5/31/17.
3. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I hereby agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
4. I specifically authorize the attorneys, Berger & Montague, P.C., as my agents to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this case.

<u>5/31/2018</u> <small>(Date Signed)</small>	<u>Thomas Holbert</u> <small>(Signature)</small>
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****IMPORTANT NOTE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Clifton Heights, PA
 Address of Defendant: 1001 Fannin Street, Houston, Texas
 Place of Accident, Incident or Transaction: Delaware Valley, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/25/2018 _____ 206211
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

CIVIL: (Place a in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases

(Please specify): Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Sarah R. Schalman-Bergen, counsel of record or pro se plaintiff, do hereby certify:

Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

Relief other than monetary damages is sought.

DATE: 06/25/2018 _____ 206211
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.