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12 and other aggrieved employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 JOSHUA ARGUELLES, on behalf of himself
16 and other aggrieved employees,

17 Plaintiff,

18 vs.

19 TESLA ENERGY OPERATIONS, INC., a
20 Delaware corporation; and DOES 1 through
21 25,

22 Defendants.

Case No.: 20STCV41704

*Assigned to Hon. Anthony Mohr
Department 54*

**FIRST AMENDED COMPLAINT
FOR RECOVERY OF CIVIL
PENALTIES UNDER PRIVATE
ATTORNEYS GENERAL ACT
("PAGA")**

Jury Trial Demanded

Case Filed: October 30, 2020

23 **PARTIES, JURISDICTION AND VENUE**

24 1. Plaintiff Joshua Arguelles is an individual and resident of Santa Clarita,
25 California. Plaintiff worked for Defendants as a solar panel installer and glass installer.

26 2. Plaintiff is informed and believes and based upon such information and belief
27 alleges that Defendant Tesla Energy Operations, Inc. is a corporation company organized
28 under the laws of the state of Delaware and is registered to do and does conduct business
within California and within this County.

1 3. Plaintiff does not know the true names or capacities of the Defendants sued
2 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
3 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
4 of said fictitious Defendants are and were responsible in some manner for the injuries
5 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously named
6 Defendants pursuant to Code of Civil Procedure Section 474 once their identities become
7 known.

8 4. The relief sought by Plaintiff on behalf of himself and other aggrieved
9 employees exceeds the minimal jurisdictional limits of the Superior Court and will be
10 established according to proof at trial. The Court has personal jurisdiction over each of the
11 parties because they are citizens of California and are doing business in California.

12 5. Venue is proper in this County, as Plaintiff worked for Defendants in this
13 County.

14 6. Plaintiff is informed and believes and, based thereon, alleges that the
15 Defendants were at all times relevant hereto members of, and engaged in, a joint venture,
16 partnership, association or common enterprise, and acting within the course and scope of,
17 and in pursuance of, said joint venture, partnership, association or common enterprise.
18 Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times
19 relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or
20 acted as agents or employees of each other with respect to, the commission of the acts
21 complained of herein. Defendants are therefore jointly and severally liable for the injuries
22 complained of herein.

23 7. Plaintiff brings this lawsuit as a representative action on behalf of the LWDA
24 under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §§
25 2698-2699.5. In pursuing his PAGA claim, Plaintiff represents the same legal right and
26 interest as state labor law enforcement agencies. PAGA permits Plaintiff to recover civil
27 penalties that otherwise would have been assessed and collected by the LWDA.
28

1 8. Plaintiff brings his PAGA claim to recover penalties on behalf of all other
2 non-exempt employees of Defendants within the state of California who worked installing
3 residential solar energy systems.

4 9. Plaintiff has complied with the notice requirements of Labor Code section
5 2699.3. On August 20, 2020, Plaintiff's representative notified the LWDA and Defendant in
6 writing of the Labor Code violations set forth herein. Sixty-five days later, the LWDA had
7 not responded to Plaintiff's initial notice. Pursuant to section 2699.3(a)(2)(A), Plaintiff was
8 entitled to commence this action.

9 **Unlawful Failure to Pay all Hours Worked**

10 10. At all times relevant hereto, Labor Code Sections 1194 and 1997 and the
11 applicable IWC Wage Order applied to Defendant's employment of Plaintiff and the rest of
12 the aggrieved employees. At all times relevant hereto, Labor Code Sections 1194 and 1997
13 and the applicable IWC Wage Order required Defendants to compensate Plaintiff and the
14 aggrieved employees at a minimum wage and provided that a payment of a lesser wage than
15 the minimum is unlawful.

16 11. At all relevant times, Defendants knowingly failed to pay Plaintiff and other
17 aggrieved employees the minimum wage for all work performed as required under Labor
18 Code Sections 1194 and 1197. Among other things, Defendants did not pay aggrieved
19 employees for time spent working while off the clock on meal breaks and did not pay
20 aggrieved employees for all time spent traveling.

21 12. Due to the forgoing violations, Plaintiff is entitled to recover civil penalties
22 pursuant to Labor Code section 2699.

23 **Unlawful Failure to Pay Overtime Wages**

24 13. At all relevant time, Labor Code section 510 required employers like
25 Defendants to pay employees premium wages when they work more than eight hours in a
26 day and/or more than 40 hours in a week.

27 14. Aggrieved employees have worked more than eight hours in a day and/or
28 more than 40 hours in a week. Yet Defendants have not always paid these employees the

1 overtime premium wages required by section 510. Among other things, Defendants did not
2 pay aggrieved employees for time spent working while off the clock on meal breaks and did
3 not pay aggrieved employees for all time spent traveling. In addition, Defendants did not
4 correctly include employee bonuses in calculating overtime wages.

5 15. Due to the forgoing violations, Plaintiff is entitled to recover civil penalties
6 pursuant to Labor Code section 2699.

7 **Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods**

8 16. At all times relevant hereto, the applicable IWC Wage Order and Labor Code
9 Section 512 applied to Defendant's employment of Plaintiff and the rest of the aggrieved
10 employees. At all times relevant hereto, the applicable IWC Wage Order and Labor Code
11 Section 512 required that an employer may not require, cause or permit an employee to
12 work for a work period of more than five (5) hours per day without providing the employee
13 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total
14 work period per day of the employee is no more than six (6) hours, the meal period may be
15 waived by mutual consent of both the employer and employee.

16 17. At all times relevant hereto, the applicable IWC Wage Order and Labor Code
17 Section 512 further required that an employer may not require, cause or permit an employee
18 to work for a work period of more than ten (10) hours per day without providing the
19 employee with a second uninterrupted meal period of not less than thirty (30) minutes,
20 except that if the total work period per day of the employee is no more than twelve (12)
21 hours, the meal period may be waived by mutual consent of both the employer and
22 employee if the first meal period was not waived.

23 18. Defendants have required Plaintiff and other aggrieved employees to work
24 during their 30-minute meal periods and Defendants have failed to provide meal periods at
25 all.

26 19. Defendants further violated Labor Code Section 226.7 and the applicable
27 IWC Wage Order by failing to pay Plaintiff and other aggrieved employees who were not
28 provided with a compliant meal period one additional hour of compensation at each

1 employee's regular rate of pay for each workday that a meal period was not properly
2 provided.

3 20. Defendants have violated Labor Code Sections 226.7, 510, 1194 and 1197 by
4 failing to compensate Plaintiff and other aggrieved employees for all hours worked during
5 their meal periods.

6 21. Due to the forgoing violations, Plaintiff is entitled to recover civil penalties
7 pursuant to Labor Code section 2699.

8 **Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods**

9 22. At all times relevant hereto, the applicable IWC Wage Order applied to
10 Defendant's employment of Plaintiff and the rest of the aggrieved employees. At all times
11 relevant hereto, the applicable IWC Wage Order required that non-exempt employees be
12 authorized and permitted to take rest breaks of 10 uninterrupted minutes for every four hours
13 of work or major fraction thereof.

14 23. Defendants have failed to provide Plaintiff and other aggrieved employees
15 with the required 10-minute rest periods.

16 24. Defendants further violated Labor Code Section 226.7 and the applicable
17 IWC Wage Order by failing to pay Plaintiff and other aggrieved employees who were not
18 authorized and permitted to take required rest periods one additional hour of compensation
19 at each employee's regular rate of pay for each workday that a rest period was not properly
20 authorized and permitted.

21 25. Due to the forgoing violations, Plaintiff is entitled to recover penalties
22 pursuant to Labor Code section 2699.

23 **Unlawful Failure to Furnish Accurate Wage Statements**

24 26. At all times relevant hereto, Labor Code Section 226(a) applied to
25 Defendants' employment of Plaintiff and the rest of the aggrieved employees and required
26 that employers such as Defendants furnish to their employees, semi-monthly or at the time
27 of each payment of wages, an accurate itemized statement in writing showing such matters
28 as "(1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
2 basis, (4) all deductions, provided that all deductions made on written orders of the
3 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
4 dates of the period for which the employee is paid, (7) the name of the employee and only
5 the last four digits of his or her social security number or an employee identification number
6 other than a social security number, (8) the name and address of the legal entity that is the
7 employer . . . and (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee.”

9 27. The wage statements that Defendants provided to Plaintiff and the aggrieved
10 employees did not include all of the information required by sections 226(a) and 226.2. As a
11 result of other violations alleged herein, the wage statements did not include the correct
12 amount of gross wages, total hours worked, net wages earned or the correct hourly rate for
13 overtime compensation. In addition, the wage statements did not list all hourly rates paid for
14 overtime and the amount of overtime hours.

15 28. Therefore, Defendants violated Labor Code Sections 226(a) and 226.2 and
16 Plaintiff is entitled to recover civil penalties pursuant to Labor Code section 2699.

17 **Unlawful Failure to Pay Wages Due Upon Separation**

18 29. At all times relevant hereto, Labor Code Sections 201, 202, and 203 applied
19 to Defendant’s employment of Plaintiff and the rest of the aggrieved employees. At all times
20 relevant hereto, Labor Code Section 201 provided that, if an employer such as Defendants
21 discharged an employee, the wages earned and unpaid at the time of discharge were due and
22 payable immediately. Furthermore, at all relevant times Labor Code Section 202 provided
23 and provides that, if an employee voluntarily leaves his or her employment, the wages
24 earned and unpaid must be paid by the employer within seventy-two (72) hours thereafter,
25 unless the employee has given seventy-two (72) hours previous notice of his or her intention
26 to leave, in which case the employee is entitled to receive his or her wages immediately at
27 the time of quitting.

1 30. During the relevant period, Plaintiff and aggrieved employees separated from
2 employment with Defendants, but Defendants did not pay them all of the wages that were
3 due to them within the time required by sections 201 and 202. Among other things,
4 Defendants failed to pay Plaintiff and aggrieved employees all of the unpaid wages alleged
5 herein.

6 31. Due to the forgoing violations, Plaintiff is entitled to recover civil penalties
7 pursuant to Labor Code section 2699.

8 **Unlawful Failure to Reimburse Necessary Expenses**

9 32. At all relevant times, Labor Code Section 2802 applied to the employment of
10 Plaintiff and the aggrieved employees and required Defendants to reimburse employees for
11 all necessary expenditures and losses incurred in order to discharge their duties for
12 Defendants.

13 33. During the relevant time period, Plaintiff and the other aggrieved employees
14 were required to drive their own vehicles from Defendants' warehouses to job sites, but
15 Defendants failed and refused to reimburse Plaintiff and the aggrieved employees for these
16 expenses. Moreover, Defendants required Plaintiff and the aggrieved employees to
17 download applications onto their mobile phones and use these applications and their own
18 mobile phones to perform such functions as clocking in and out, requesting paid time off
19 and reviewing wage statements. Defendants did not compensate or reimburse Plaintiff and
20 the aggrieved employees for the use of their own mobile phones.

21 34. Due to the foregoing violations, Plaintiff is entitled to recover civil penalties
22 pursuant to Labor Code section 2699.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment on behalf of himself and the other
25 aggrieved employees and against Defendants as follows:

- 26 1. For civil penalties;
27 2. For prejudgment interest;

1 3. For reasonable attorney's fees and costs pursuant to California Labor Code
2 section 2699(g); and

3 4. For such further relief as the Court may deem appropriate.
4

5 DATED: January 19, 2021

GUNDZIK GUNDZIK HEEGER LLP

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7 By: _____
8 Aaron Gundzik
9 Attorneys for Plaintiff Joshua Arguelles, on
10 behalf of himself and all other aggrieved
11 employees
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: January 19, 2021

GUNDZIK GUNDZIK HEEGER LLP



By: _____
Aaron Gundzik
Attorneys for Plaintiff Joshua Arguelles, on
behalf of himself and all other aggrieved
employees

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On January 19, 2021, I served the following document described as

- **FIRST AMENDED COMPLAINT FOR RECOVERY OF CIVIL PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

(XX) BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	() BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on January 19, 2021, at Sherman Oaks, California.



Nicole Salazar

SERVICE LIST

CT Corporation 818 West Seventh Street, Suite 930 Los Angeles, CA 90017 <i>Agent for Service of Process for Tesla Energy Operations, Inc.</i>	Marshall A. Caskey, Esq. Daniel M. Holzman, Esq. N. Cory Barari, Esq. CASKEY & HOLZMAN 24025 Park Sorrento, Ste. 400 Calabasas, CA 91302 Telephone: (818) 657-1070 Facsimile: (818) 297-1775 Email: mcaskey@caskeyholzman.com dholzman@caskeyholzman.com nbarari@caskeyholzman.com <i>Attorneys for Joshua Arguelles, on behalf of himself and other aggrieved employees</i>
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