

FILED
Superior Court Of California,
Sacramento
09/20/2021
amcdonald
By _____, Deputy
Case Number:
34-2021-00308280

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Attorneys for Plaintiff PAUL MANUSZAK
individually, and on behalf of others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO – UNLIMITED JURISDICTION

PAUL MANUSZAK an individual, and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

VIVINT SOLAR, INC., a Delaware corporation;
VIVINT SOLAR HOLDINGS, INC., a
Delaware corporation, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

DEMAND FOR JURY TRIAL

BY FAX

1 PLAINTIFF PAUL MANUSZAK (“PLAINTIFF”) an individual, demanding a jury trial,
2 on behalf of himself and other persons similarly situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of Defendant VIVINT SOLAR, INC., a Delaware corporation; VIVINT SOLAR
6 HOLDINGS, INC., a Delaware corporation; and DOES 1 through 50 inclusive (collectively
7 “DEFENDANTS”) to recover penalties arising from unpaid wages earned and due, including but
8 not limited to unpaid and illegally calculated overtime compensation, illegal meal and rest period
9 policies, failure to pay all wages due to discharged or quitting employees, failure to maintain
10 required records, failure to provide accurate itemized wage statements, failure to timely pay
11 wages during employment, failure to indemnify employees for necessary expenditures and/or
12 losses incurred in discharging their duties.

13 **JURISDICTION AND VENUE**

14 2. The Superior Court of the State of California has jurisdiction in this matter because
15 PLAINTIFF is citizens and residents of the State of California and DEFENDANTS are citizens
16 and residents of, and/or regularly conduct business in, California. Further, no federal question is
17 at issue because the claims are based solely on California law.

18 3. Venue is proper in this judicial district and the County of Sacramento, California
19 because PLAINTIFF and other aggrieved employees performed work for DEFENDANTS in the
20 County of Sacramento and many of DEFENDANTS’ unlawful actions and omissions, as set forth
21 herein, occurred in the County of Sacramento.

22 **PARTIES**

23 1. PLAINTIFF PAUL MANUSZAK is a citizen and resident of the State of
24 California. At times material to this complaint, PLAINTIFF PAUL MANUSZAK was employed
25 by DEFENDANTS in the State of California as a non-exempt employee.

26 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
27 VIVINT SOLAR, INC., is, and at all times relevant hereto was, a Delaware corporation,
28 organized and existing under the laws of the State of Delaware. PLAINTIFF is further informed

1 and believes, and thereon alleges, that DEFENDANT VIVINT SOLAR, INC. is authorized to
2 conduct business in the State of California, and does conduct business in the State of California.
3 Specifically, upon information and belief, DEFENDANT VIVINT SOLAR, INC. maintains
4 offices and facilities and conducts business in, and engages in illegal payroll practices or policies
5 in, the County of Sacramento, State of California.

6 3. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
7 VIVINT SOLAR HOLDINGS, INC. is, and at all times relevant hereto was, a Delaware
8 corporation organized and existing under the laws of the State of Delaware. PLAINTIFF is
9 further informed and believes, and thereon alleges, that DEFENDANT VIVINT SOLAR
10 HOLDINGS, INC., is authorized to conduct business in the State of California, and does conduct
11 business in the State of California. Specifically, VIVINT SOLAR HOLDINGS, INC. maintains
12 offices and facilities and conducts business in, and engages in illegal payroll practices or policies
13 in, the County of Sacramento, State of California.

14 4. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
15 PLAINTIFF at this time, and PLAINTIFF therefore sues such defendants under fictitious names.
16 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a
17 DOE is in some manner highly responsible for the occurrences alleged herein, and that
18 PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
19 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of the
20 court to amend this complaint to allege the true names and capacities of such DOE defendants
21 when ascertained.

22 5. At all relevant times herein, DEFENDANTS were the joint employers of
23 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
24 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
25 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,
26 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
27 ostensible, of each other. Each defendant was completely dominated by his, her, or its co-
28 defendant, and each was the alter ego of the other.

1 6. At all relevant times herein, PLAINTIFF and other aggrieved employees were
2 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
3 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
4 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
5 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
6 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
7 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
8 itemized statements for each pay period; failing to timely pay wages during employment; failing
9 to properly compensate PLAINTIFF and other aggrieved employees for necessary expenditures;
10 and requiring, permitting or suffering the employees to work off the clock, in violation of the
11 California Labor Code (“Labor Code”) and the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order.

13 7. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
14 of the acts and omissions alleged herein were performed by, and/or attributable to, all
15 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
16 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
17 and scope of said agency, employment and/or direction and control.

18 8. As a direct and proximate result of the unlawful actions of DEFENDANTS,
19 PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet
20 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 9. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
23 Labor Code §§ 2698-2699.5, PLAINTIFF bring this action on behalf of themselves and all
24 current and former non-exempt aggrieved employees of DEFENDANTS in the State of California
25 at any time within the period beginning one (1) year and sixty five (65) days prior to the filing of
26 this action, and ending at the time this action settles or proceeds to final judgment (“PENALTY
27 PERIOD”).

28 10. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice by certified

1 mail postmarked June 11, 2018 to the California Labor and Workforce Development Agency
2 (“LWDA”) and DEFENDANTS of the specific provisions of the Labor Code and IWC Wage
3 Orders alleged to have been violated, including the facts and theories to support the alleged
4 violations. PLAINTIFF have not received any response from the LWDA. As PLAINTIFF have
5 waited more than sixty-five (65) days from the June 11, 2018 postmark date of PLAINTIFF’
6 written notice before filing this action, PLAINTIFF have complied with all of the requirements
7 set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

8 **FACTUAL ALLEGATIONS**

9 **Failure to Provide Required Meal Periods**

10 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 11]**

11 11. During the PENALTY PERIOD, as part of DEFENDANTS’ illegal policies and
12 practices to deprive their current and former non-exempt employees all wages earned and due,
13 DEFENDANTS required, suffered or permitted PLAINTIFF and other aggrieved employees to
14 take less than the 30-minute meal period, or to work through them, and have failed to otherwise
15 provide the required meal periods to PLAINTIFF and other aggrieved employees pursuant to
16 Labor Code §§ 226.7 and 512 and IWC Order No. 7-2001, § 11.

17 12. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
18 Order No. 7-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
19 who were not provided with a meal period, in accordance with the applicable IWC Wage Order,
20 one additional hour of compensation at each employee’s regular rate of pay for each workday that
21 a meal period was not provided.

22 **Failure to Provide Required Rest Periods**

23 **[Cal. Labor Code §§ 226.7; IWC Wage Order No. 7-2001, § 12]**

24 13. At all times relevant herein, as part of DEFENDANTS’ illegal policies and
25 practices to deprive their current and former non-exempt employees all wages earned and due,
26 DEFENDANTS failed to provide rest periods to PLAINTIFF and other aggrieved employees as
27 required under Labor Code § 226.7, and IWC Wage Order No. 7-2001, § 12.

28 14. DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No. 7-

2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a rest period, in accordance with the applicable IWC Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]

15. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 7-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

16. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of DEFENDANTS entitled to the protections of Labor Code §§ 510 and 1194 and IWC Wage Order No. 7-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF' and other aggrieved employees' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

17. DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours

1 worked in violation of Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 7-2001, § 3.

2 **Failure to Pay Minimum Wages**

3 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]**

4 18. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 7-
5 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
6 worked in a payroll period is unlawful.

7 19. During the PENALTY PERIOD and in violation of California Labor Code §§ 1194
8 and 1197 and IWC Wage Order No. 7-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and
9 other aggrieved employees the applicable minimum wages for all hours worked in a payroll
10 period by, among other things: requiring, suffering or permitting PLAINTIFF and other aggrieved
11 employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other
12 aggrieved employees to work through meal breaks; illegally and inaccurately recording time in
13 which PLAINTIFF and other aggrieved employees worked; failing to properly maintain
14 PLAINTIFF' and other aggrieved employees' records; failing to provide accurate itemized wage
15 statements to PLAINTIFF and other aggrieved employees for each pay period; and other methods
16 to be discovered.

17 **Failure to Timely Pay Wages During Employment**

18 **[Cal. Labor Code § 204]**

19 20. Pursuant to California Labor Code § 204, for all labor performed between the 1st
20 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
21 employees between the 16th and 26th day of the month during which the labor was performed.
22 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
23 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
24 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
25 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
26 no later than the payday of the next regular payroll period.

27 21. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
28 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by

1 the next regular payroll period as required by California Labor Code § 204.

2 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

3 **[Cal. Labor Code §§ 201, 202, 203]**

4 22. Pursuant to Labor Code § 201, 202 and 203, DEFENDANTS are required to pay
5 all earned and unpaid wages to an employee who is discharged. Labor Code § 201 mandates that
6 if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
7 discharge are due and payable immediately.

8 23. Furthermore, pursuant to Labor Code § 202, DEFENDANTS are required to pay
9 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
10 employment, unless the employee provided 72 hours previous notice of his or her intention to
11 quit, in which case the employee is entitled to his or wages at the time of quitting.

12 24. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
13 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
14 employer is liable for waiting time penalties in the form of continued compensation to the
15 employee at the same rate for up to 30 workdays.

16 25. During the PENALTY PERIOD and in violation of Labor Code §§ 201 and 202,
17 DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
18 PLAINTIFF and other aggrieved employees who were discharged or quit his or her employment.

19 **Failure to Maintain Required Records**

20 **[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7]**

21 26. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
22 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
23 and due, DEFENDANTS knowingly and intentionally failed to maintain records as required
24 under Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 7-2001, § 7, including but
25 not limited to the following records: total daily hours worked by each employee; applicable rates
26 of pay; all deductions; meal periods; time records showing when each employee begins and ends
27 each work period; and accurate itemized statements.

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1 of her his or her duties, or of his or her obedience to the directions of the employer.

2 31. During the PENALTY PERIOD, DEFENDANTS failed to indemnify PLAINTIFF
3 and other aggrieved employees for all business expenses and/or losses incurred in direct
4 consequence of the discharge of their duties while working under the direction of
5 DEFENDANTS, including but not limited to expenses for personal cell phone usage and other
6 employment-related expenses, in violation of Labor Code § 2802.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

9 **[Cal. Labor Code § 2698, *et seq.*]**

10 **(Against All DEFENDANTS)**

11 32. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 33.

13 33. PLAINTIFF is “aggrieved employees” within the meaning of Labor Code
14 § 2699(c), and proper representatives to bring a civil action on behalf of themselves and other
15 current and former non-exempt employees of DEFENDANTS pursuant to the procedures
16 specified in Labor Code § 2699.3, because PLAINTIFF were employed by DEFENDANTS and
17 one or more of the alleged Labor Code violations was committed against PLAINTIFF during the
18 PENALTY PERIOD.

19 34. PLAINTIFF seek to recover civil penalties through a representative action
20 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
21 Cal.4th 969. Thus, class certification is not required.

22 35. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seek to recover civil
23 penalties from DEFENDANTS in a representative action for the violations set forth above,
24 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512,
25 1174(d), 1194, 1197, 1198, and 2802.

26 36. Pursuant to Labor Code § 2699(a), PLAINTIFF seek civil penalties for
27 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically
28 provided, including but not limited to the following:

- 1 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
2 DEFENDANTS are subject to a civil penalty in the amount of one hundred
3 dollars (\$100) for the initial violation for each failure to pay each employee
4 and two hundred dollars (\$200) per employee for violations in subsequent
5 pay periods.
- 6 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
7 DEFENDANTS are subject to a civil penalty in the amount of two hundred
8 and fifty dollars (\$250) per aggrieved employee for the initial pay period
9 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
10 employee for violations in subsequent pay periods.
- 11 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
12 on behalf of an employer who violates, or causes to be violated, a section
13 of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission,” including Labor Code §§ 510
15 and 512, shall be subject to a civil penalty, in addition to any other penalty
16 provided by law, of fifty dollars (\$50) for initial violations for each
17 underpaid employee for each pay period for which the employee was
18 underpaid and one hundred dollars (\$100) for each subsequent violation for
19 each underpaid employee for each pay period for which the employee was
20 underpaid. In addition, PLAINTIFF seek civil penalties in the amount
21 sufficient to recover unpaid wages owed to aggrieved employees pursuant
22 to Labor Code § 558(a).
- 23 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
24 DEFENDANTS are subject to a civil penalty of five hundred dollars
25 (\$500).
- 26 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
27 paid to any employee a wage less than the minimum fixed by an order of
28 the commission, shall be subject to a civil penalty as follows: for any initial

violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

37. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFF seek such civil penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

38. PLAINTIFF additionally seek reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees, pray for relief against DEFENDANTS as follows:

1. For civil penalties according to proof, including but not limited to the amount of any unpaid wages of PLAINTIFF and other aggrieved employees and all penalties authorized by the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or any other applicable provisions providing for attorney's fees and costs; and

4. For such further relief that the Court may deem just and proper.

\\

1 DATED: September 20, 2021

Respectfully submitted,

2 **MATERN LAW GROUP, PC**

3
4 By: 

5 Matthew J. Matern
6 Joshua D. Boxer
7 Corey B. Bennett
8 Attorneys for Plaintiff
9 PAUL MANUSZAK, individually, and on
10 behalf of all other aggrieved employees
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DATED: September 20, 2021

MATERN LAW GROUP, PC

Cy Band

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