

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CAROLINE TAHMASSIAN (SBN 285680)
4 caroline@spivaklaw.com
5 MAYA CHEAITANI (SBN 335777)
6 maya@spivaklaw.com
7 THE SPIVAK LAW FIRM
8 8605 Santa Monica Bl
9 PMB 42554
10 West Hollywood, CA 90069
11 Telephone: (213) 725-9094
12 Facsimile: (213) 634-2485

13 Attorneys for Plaintiff(s),
14 BRANDY RUIZ, and all others similarly situated
15 (Additional attorneys for parties on following page)

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF SAN DIEGO**

18 **(UNLIMITED JURISDICTION)**

19 BRANDY RUIZ, on behalf of herself and all
20 others similarly situated, and as an “aggrieved
21 employee” on behalf of other “aggrieved
22 employees” under the Labor Code Private
23 Attorneys General Act of 2004,

24 *Plaintiff(s),*

25 vs.

26 PRO CUSTOM SOLAR LLC DBA
27 MOMENTUM SOLAR, a New Jersey limited
28 liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 37-2021-00040509-CU-OE-CTL

PAGA SETTLEMENT AGREEMENT

Action filed: September 22, 2021
Dept: C-67, The Honorable Eddie
C. Sturgeon

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
BRANDY RUIZ, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

ERIC M. STEINERT (SBN 168384)
esteinert@seyfarth.com
SEYFARTH SHAW LLP
560 Mission Street
31st Floor
San Francisco CA 94105
Telephone: (415) 554-1006
Facsimile: (415) 397-8549

Attorneys for Defendant(s),
PRO CUSTOM SOLAR LLC DBA MOMENTUM SOLAR

1 This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff
2 Brandy Ruiz (“Plaintiff”) and defendant Pro Custom Solar LLC dba Momentum Solar (“Pro
3 Custom Solar LLC dba Momentum Solar”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Pro Custom Solar LLC dba Momentum Solar captioned “Brandy Ruiz, on behalf of herself, and
8 all others similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved
9 employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Pro
10 Custom Solar LLC dba Momentum Solar, a New Jersey limited liability company; and DOES 1
11 through 50, inclusive, *Defendant(s)*,” Case No. 37-2021-00040509-CU-OE-CTL initiated on
12 September 22, 2021 and pending in Superior Court of the State of California, County of San
Diego.

13 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the
14 neutral entity the Parties have agreed to appoint to administer the Settlement.

15 1.3. “Administration Expenses Payment” means the amount the Administrator will be
16 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
17 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with approval of the Settlement.

18 1.4. “PAGA Employee” means a non-exempt call center representative and/or
19 canvassing employee of Defendant in the State of California during the period from October 9,
20 2020 through the date upon which this Agreement is fully executed by the Parties.

21 1.5. “PAGA Employee Data” means PAGA Employee identifying information in
22 Defendant’s possession including the PAGA Employee’s name, last-known mailing address,
Social Security number, and number of PAGA Pay Periods.

23 1.6. “PAGA Employee Address Search” means the Administrator’s investigation and
24 search for current PAGA Employee mailing addresses using all reasonably available sources,
25 methods and means including, but not limited to, the National Change of Address database, skip
26 traces, and direct contact by the Administrator with PAGA Employees.

27 1.7. “Court” means the Superior Court of California, County of San Diego.

1.8. “Defense Counsel” means Eric M. Steinert and Christopher A. Crosman of Seyfarth Shaw LLP.

1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment, and the period for filing of an appeal to the Judgment has passed.

1.10. “Gross Settlement Amount” means \$273,600.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.

1.11. “Individual PAGA Payment” means the PAGA Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the PAGA Employee worked during the PAGA Period.

1.12. “Judgment” means the judgment entered by the Court based upon the Court’s approval of the Settlement.

1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled to obtain distribution of 75% of the PAGA Penalties under Labor Code section 2699, subd. (i).

1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. “PAGA Counsel” means David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, the attorneys representing the Plaintiff in the Action.

1.16. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.17. “PAGA Pay Period” means any Pay Period during which a PAGA Employee worked for Defendant for at least one day during the PAGA Period.

1.18. “PAGA Period” means the period from October 09, 2020 to the date upon which this Agreement is fully executed by the Parties.

1.19. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.20. "PAGA Notice" means Plaintiff's August 09, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.21. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Employees (\$39,100.00) and 75% to LWDA (\$117,300.00) in settlement of PAGA claims. The PAGA Penalties is the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

1.22. "Plaintiff" means Brandy Ruiz, the named plaintiff in the Action.

1.23. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.24. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.25. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, legal and equitable owners, employees, supervisors, partners, agents, designees, associates, representatives, consultants, administrators, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates.

1.26. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.27. "Defendant" means named Defendant Pro Custom Solar LLC dba Momentum Solar.

2. RECITALS.

2.1. On September 22, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for unpaid wages, unreimbursed expenses, and related claims. On December 13, 2021, Plaintiff filed a First Amended Complaint alleging a single cause of action under PAGA against Defendant for unpaid wages, unreimbursed expenses, and related allegations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On March 24, 2022, the Parties participated in an all-day mediation presided over by Mr. Tripper Ortman Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of pay periods, average rates of pay, sample time records, sample payroll records, written policies, and related information.

2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant promises to pay \$273,600.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Court's Approval order:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$91,200.00 and a PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel

1 Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA
2 Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees
3 Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless,
4 and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of
any of these Payments.

5 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
6 \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the
7 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
8 Administrator will retain the remainder in the PAGA Penalties. The Parties and their counsel
9 represent that they do not have any involvement in the governance or work of the Administrator.

10 3.2.3. To the LWDA and PAGA Employees: PAGA Penalties in the
11 amount of \$156,400.00 to be paid from the Gross Settlement Amount, with 75% (\$117,300.00)
12 allocated to the LWDA PAGA Payment and 25% (\$39,100.00) allocated to the Individual PAGA
13 Payments. The PAGA Employees' Individual PAGA Payments will be treated as non-wage
14 income and reported by the Administrator on IRS Form 1099 (if applicable) to the respective
PAGA Employee and applicable governmental authorities.

15 3.2.3.1. The Administrator will calculate each Individual PAGA Payment
16 by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties (\$39,100.00)
17 by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the
18 PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay
19 Periods. PAGA Employees assume full responsibility and liability for any taxes owed on their
Individual PAGA Payment.

20 3.2.3.2. If the Court approves PAGA Penalties of less than the amount
21 requested, the Administrator will allocate the remainder to the PAGA Penalties. The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

23 **4. SETTLEMENT FUNDING AND PAYMENTS.**

24 4.1. PAGA Employee Pay Periods. Based on a review of its records to date,
25 Defendant estimates there are 157 PAGA Employees who worked a total of 1,685 PAGA Pay
26 Periods.

1 4.2. PAGA Employee Data. Within 14 days following Judgment being entered by the
2 Court, Defendant will deliver the PAGA Employee Data to the Administrator in the form of a
3 Microsoft Excel spreadsheet. To protect PAGA Employee' privacy rights, the Administrator must
4 maintain the PAGA Employee Data in confidence, use the PAGA Employee Data only for
5 purposes of this Settlement and for no other purpose, and restrict access to the PAGA Employee
6 Data to Administrator employees who need access to the PAGA Employee Data to effect and
7 perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA
8 Counsel if it discovers that the PAGA Employee Data omitted employee identifying information
9 and to provide corrected or updated PAGA Employee Data as soon as reasonably feasible.
10 Without any extension of the deadline by which Defendant must send the PAGA Employee Data
11 to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good
12 faith, to reconstruct or otherwise resolve any issues related to missing or omitted PAGA
13 Employee Data.

14 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
15 Settlement Amount by transmitting the funds to the Administrator no later than 15 business days
16 after the Effective Date.

17 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
18 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
19 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
20 Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment
21 shall not precede disbursement of Individual PAGA Payments.

22 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
23 and send them to the PAGA Employees via First Class U.S. Mail, postage prepaid. The face of
24 each check shall prominently state the date (not less than 180 days after the date of mailing) when
25 the check will be voided. The Administrator will cancel all checks not cashed by the void date.
26 Before mailing any checks, the Administrator must update the recipients' mailing addresses using
27 the National Change of Address Database.

28 4.4.2. The Administrator must conduct an PAGA Employee Address Search for
all other PAGA Employees whose checks are returned undelivered without USPS forwarding
address. Within 7 days of receiving a returned check the Administrator must re-mail checks to
the USPS forwarding address provided or to an address ascertained through the PAGA Employee

1 Address Search. The Administrator need not take further steps to deliver checks to PAGA
2 Employees whose re-mailed checks are returned as undelivered. The Administrator shall
3 promptly send a replacement check to any PAGA Employee whose original check was lost or
4 misplaced, requested by the PAGA Employee prior to the void date.

5 4.4.3. For any PAGA Employee whose Individual PAGA Payment check is
6 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
7 by such check to the California Controller's Unclaimed Property Fund in the name of the PAGA
8 Employee. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have
9 any liability for lost or stolen settlement checks, forged signatures on settlement checks,
10 unauthorized negotiation of settlement checks or failure to timely cash a settlement check within
11 the 180-day period.

12 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
13 to confer any additional benefits or make any additional payments to PAGA Employees (such as
14 401(k) contributions or bonuses) beyond those specified in this Agreement. In this regard,
15 amounts paid as Individual PAGA Payments pursuant to this Agreement shall be deemed not to
16 be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any
17 of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) for Plaintiff or
18 PAGA Employees.

19 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
20 Gross Settlement Amount, Plaintiff, PAGA Employees, and PAGA Counsel will release claims
21 against all Released Parties as follows:

22 5.1. Release by PAGA Employees: All PAGA Employees are deemed to release, on
23 behalf of themselves and their respective former and present representatives, agents, attorneys,
24 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
25 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
26 facts stated in the Operative Complaint and the PAGA Notice.

27 5.2. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
28 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
stated in the Operative Complaint and the PAGA Notice.

1 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties
2 agree to jointly prepare and file an application or motion for approval of this Settlement.

3 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
4 all documents necessary for obtaining approval of this Settlement under Labor Code Section
5 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
6 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
7 the Settlement and attesting to its willingness to serve; competency; operative procedures for
8 protecting the security of PAGA Employee Data; amounts of insurance coverage for any data
9 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
10 conflicts of interest with PAGA Employees or the LWDA; and the nature and extent of any
11 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration
12 from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary
13 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
14 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
15 subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with PAGA
16 Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall
17 aver that they are not aware of any other pending matter or action asserting claims that will be
18 extinguished or adversely affected by the Settlement.

19 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
20 responsible for expeditiously finalizing and filing the application or motion for approval of this
21 Settlement no later than 30 days after the full execution of this Agreement and, if necessary,
22 obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the
23 motion. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator.

24 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed
25 application or motion for approval of this Settlement and/or the supporting declarations and
26 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
27 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.
28 If the Court does not grant the motion for approval of this Settlement or conditions its approval
on any material change to this Agreement, PAGA Counsel and Defense Counsel will
expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in
good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

1 **7. SETTLEMENT ADMINISTRATION.**

2 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
3 Action Administration Solutions to serve as the Administrator and verified that, as a condition of
4 appointment, Phoenix Class Action Administration Solutions agrees to be bound by this
5 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
6 payment of Administration Expenses. The Parties and their Counsel represent that they have no
7 interest or relationship, financial or otherwise, with the Administrator other than a professional
relationship arising out of prior experiences administering settlements.

8 7.2 Employer Identification Number. The Administrator shall have and use its own
9 Employer Identification Number for purposes of calculating payroll tax withholdings and
10 providing reports state and federal tax authorities if needed.

11 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
12 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
Regulation section 468B-1.

13 7.4 Administrator Duties. The Administrator has a duty to perform or observe all
14 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

15 **8. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
16 of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
17 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
18 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

19 8.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
20 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
21 PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all
22 rights to appeal from the Judgment, including all rights to post-judgment and appellate
23 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
24 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
25 motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to
26 perform under this Agreement will be suspended until such time as the appeal is finally resolved
27 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
Settlement Amount.

1 **9. ADDITIONAL PROVISIONS.**

2 9.1 No Admission of Liability or Representative Manageability for Other Purposes.

3 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
4 this Agreement is intended or should be construed as an admission by Defendant that any of the
5 allegations in the Operative Complaint have merit or that Defendant has any liability for any
6 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
7 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
8 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
9 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
10 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
11 settle the Action will have no bearing on, and will not be admissible in connection with, any
12 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13 9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
14 Agreement together with its attached exhibits shall constitute the entire agreement between the
15 Parties relating to the Settlement, superseding any and all oral representations, warranties,
16 covenants, or inducements made to or by any Party.

17 9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
18 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
19 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
20 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
21 terms of this Agreement including any amendments to this Agreement.

22 9.4 Cooperation. The Parties and their counsel will cooperate with each other and
23 use their best efforts, in good faith, to implement the Settlement by, among other things,
24 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
25 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
26 the form or content of any document necessary to implement the Settlement, or on any
27 modification of the Agreement that may become necessary to implement the Settlement, the
28 Parties will seek the assistance of a mediator and/or the Court for resolution.

1 9.5 No Prior Assignments. The Parties separately represent and warrant that they
2 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
3 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
4 action, or right released and discharged by the Party in this Settlement.

5 9.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense
6 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
7 Settlement be relied upon as such within the meaning of United States Treasury Department
8 Circular 230 (31 CFR Part 10, as amended) or otherwise.

9 9.7 Modification of Agreement. This Agreement, and all parts of it, may be
10 amended, modified, changed, or waived only by an express written instrument signed by all
11 Parties or their representatives, and approved by the Court.

12 9.8 Agreement Binding on Successors. This Agreement will be binding upon, and
13 inure to the benefit of, the successors of each of the Parties.

14 9.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will
15 be governed by and interpreted according to the internal laws of the state of California, without
16 regard to conflict of law principles.

17 9.10 Cooperation in Drafting. The Parties have cooperated in the drafting and
18 preparation of this Agreement. This Agreement will not be construed against any Party on the
19 basis that the Party was the drafter or participated in the drafting.

20 9.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
21 entered during Action and in this Agreement relating to the confidentiality of information shall
22 survive the execution of this Agreement.

23 9.12 Use and Return of PAGA Employee Data. Information provided to PAGA
24 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
25 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
26 negotiations, or in connection with the Settlement, may be used only with respect to this
27 Settlement, and no other purpose, and may not be used in any way that violates any existing
28 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
electronic versions of PAGA Employee Data received from Defendant unless, prior to the
Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA

Counsel for the return, rather than the destructions, of PAGA Employee Data.

9.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

9.14 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

9.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Eric M. Steinert, Esq.
Seyfarth Shaw LLP
560 Mission Street
31st Floor
San Francisco, CA 94105
esteinert@seyfarth.com

9.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further

1 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
2 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
3 process.

4 9.18 Nullification of Settlement Agreement. In the event: (a) the Court does not
5 approve the Settlement; (b) the Court does not enter an order approving the Settlement and
6 Judgment as provided herein; or (c) the Settlement does not become final for any other reason,
7 this Settlement Agreement shall be null and void and any order or judgment entered by the
8 Court in furtherance of this Settlement shall be treated as void from the beginning. In such
9 cases, the Parties and any funds to be awarded under this Settlement shall be returned to their
10 respective statuses as of the date and time immediately prior to the execution of this Agreement,
11 and the Parties shall proceed in all respects as if this Agreement had not been executed. In the
12 event an appeal is filed from the Court's Approval Order and Judgment, or any other appellate
13 review is sought, administration of the Settlement shall be stayed pending final resolution of the
14 appeal or other appellate review, and any fees incurred by the Administrator prior to it being
15 notified of the filing of an appeal from the Court's Approval Order and Judgment, or any other
16 appellate review, shall be paid to the Administrator by the party or person that filed the appeal,
17 within thirty (30) calendar days of said notification.

18 9.19 Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Agreement valid and enforceable.

22 Dated: July 31, 2023

By: 

BRANDY RUIZ

23 Dated: July _____, 2023

By: _____

Pro Custom Solar LLC dba Momentum
Solar

1 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
2 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
3 process.

4 9.18 Nullification of Settlement Agreement. In the event: (a) the Court does not
5 approve the Settlement; (b) the Court does not enter an order approving the Settlement and
6 Judgment as provided herein; or (c) the Settlement does not become final for any other reason,
7 this Settlement Agreement shall be null and void and any order or judgment entered by the
8 Court in furtherance of this Settlement shall be treated as void from the beginning. In such
9 cases, the Parties and any funds to be awarded under this Settlement shall be returned to their
10 respective statuses as of the date and time immediately prior to the execution of this Agreement,
11 and the Parties shall proceed in all respects as if this Agreement had not been executed. In the
12 event an appeal is filed from the Court's Approval Order and Judgment, or any other appellate
13 review is sought, administration of the Settlement shall be stayed pending final resolution of the
14 appeal or other appellate review, and any fees incurred by the Administrator prior to it being
15 notified of the filing of an appeal from the Court's Approval Order and Judgment, or any other
16 appellate review, shall be paid to the Administrator by the party or person that filed the appeal,
17 within thirty (30) calendar days of said notification.

18 9.19 Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Agreement valid and enforceable.

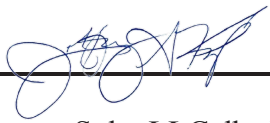
22 Dated: July 31, 2023

By:


BRANDY RUIZ

23 Dated: August 3, 2023

By:


Pro Custom Solar LLC dba Momentum
Solar

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

By: DAVID G. SPIVAK, Attorneys for
Plaintiff, BRANDY RUIZ, and all
others similarly situated

7
8
9
10
11

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, BRANDY RUIZ, and all
others similarly situated

12
13
14
15
16

By: 
CHRISTOPHER A. CROSMAN,
Attorneys for Defendant, PRO
CUSTOM SOLAR LLC DBA
MOMENTUM SOLAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *Brandy Ruiz v. Pro Custom Solar LLC dba Momentum Solar*

3 *(Superior Court of California, San Diego County*

4 *Case No. 37-2021-00040509-CU-OE-CTL*

5 <<Phoenix Class Action Administration Solutions>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”).
17 The plaintiff in the Action is Brandy Ruiz (“Plaintiff”) and the defendant is Pro Custom Solar
18 LLC dba Momentum Solar (“Defendant”). The Action seeks civil penalties for purported
19 violations of the California Labor Code on behalf of all a non-exempt call center representatives
20 and/or canvassing employees of Defendant in the State of California during the PAGA Period of
21 October 9, 2020 through <<April __, 2023>> (“PAGA Employees”). Defendant denies all
22 claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully
23 complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and
24 time in defending the Action, Defendant has settled the case and the Court has approved the
25 settlement and release of claims. By settling the Action, Defendant is not admitting that it has
26 done anything wrong. As of and subject to the occurrence of the Effective Date of the Settlement,
the Settlement resolves all claims for PAGA penalties that were alleged, or reasonably could have
been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA
Notice (“Released PAGA Claims”). The “Released Parties” are Defendant and each of its former
and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
successors, assigns subsidiaries, and affiliates.

27 By Order dated <<court approval order date>>, the Superior Court of the State of
28 California, San Diego County approved the Settlement of the PAGA claims.

29 According to the Defendant’s records, you are a PAGA Employee and therefore entitled
30 to an Individual PAGA Payment, a share of the settlement based upon the Court approved
31 allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
32 settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
33 distributed to California State Controller’s Office Unclaimed Property Fund with an
34 identification of the amount of unclaimed funds attributable to each PAGA Employee.

35 Please Note: One hundred percent (100%) of your individual PAGA payment under this
36 Settlement will be considered penalties and may be subject to local, state, or federal tax

1 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
2 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
3 nor Defendant have made any representations or warranties regarding the taxation of your
4 individual PAGA payment. Nothing within this notice or any other communication shall
5 constitute or be construed or relied upon as tax advice within the meaning of United States
6 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
7 tax forms pertaining to your payment.

8 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
9 or to ask questions about the claims process. If you have any questions, you may call or write to
10 Phoenix Class Action Administration Solutions (the Administrator) using the contact information
11 at the top of this correspondence.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
(UNLIMITED JURISDICTION)

BRANDY RUIZ, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

PRO CUSTOM SOLAR LLC DBA
MOMENTUM SOLAR, a New Jersey limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 37-2021-00040509-CU-OE-CTL

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT AGREEMENT**

Action filed: September 22, 2021
Dept: C-67, The Honorable Eddie
C. Sturgeon

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

The Court has before it the Motion for Approval of PAGA Settlement, submitted by Plaintiff Brandy Ruiz (“Plaintiff”) and Defendant Pro Custom Solar LLC DBA Momentum Solar (“Defendant”) (collectively, the “Parties”), indicating that they have reached a settlement that will resolve this matter in its entirety.

TERMS OF THE ORDER AND JUDGMENT

The Court has determined that the Settlement provides genuine and meaningful relief that benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good cause appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided herein, all capitalized terms used herein shall have the same meaning as defined in the PAGA Settlement Agreement (“Settlement Agreement” or “Settlement” or “Agreement”). The Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto, and over all parties to the action.

2. The Court finds that the Settlement has been reached as a result of serious and non-collusive, arm's-length negotiations. The Court has considered the nature of the claims, the procedural history of this case, the amounts to be paid under the Settlement, the involvement of an experienced private mediator to facilitate the Settlement, the risks of continued litigation that Plaintiff would face, the civil penalties recoverable if Plaintiff was to prevail at trial on her theories of liability under her PAGA claim, the allocation of settlement proceeds among the PAGA Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial.

3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute, was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the Settlement provides genuine and meaningful relief that benefits the public consistent with the purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

1 4. The Court therefore approves the Settlement as set forth in the Settlement
2 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in
3 the Settlement Agreement.

4 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
5 are admissions by Defendant, or any of the other Released Parties, of liability on any of the
6 allegations alleged in the Action, nor is this Order a finding of the validity of any claims in the
7 Action, or of any wrong doing by the Defendant, or any of the other Released Parties.

8 6. The Court finds that Plaintiff's Counsel has adequately represented the Plaintiff,
9 the PAGA Employees, and the LWDA for purposes of entering into and implementing the
10 Settlement.

11 7. The Court finds that the Settlement, and in particular the Gross Settlement
12 Amount ("GSA") of \$273,600.00 total to be distributed as set forth herein and in the Settlement
13 Agreement, is in all respects fair, reasonable, and adequate and is hereby approved. *See* California
14 Labor Code § 2699(1)(2).

15 8. Pursuant to the terms of the Settlement, administration costs in the amount of
16 \$6,000, which is necessary to administer the Settlement, is hereby granted and shall be paid to
17 Phoenix Class Action Administration Solutions, the designated third-party Administrator.

18 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the
19 amount of \$91,200.00 are reasonable under the common fund method and the lodestar method.
20 The GSA of a total of \$273,600.00 represents a true and common fund, as Defendant must pay
21 the full GSA and no amount of the GSA will return to Defendant under any circumstances. It is
22 recognized that attorneys who recover a common fund are entitled to a reasonable fee award from
23 the fund. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer
24 who recovers a common fund for the benefit of persons other than himself or his client is entitled
25 to a reasonable attorney's fee from the fund as a whole."); *In re Washington Public Power Supply*
26 *Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of
27 the fund should share the wealth with the lawyers whose skill and effort helped create it.");
28

Moreover, one-third of the common fund is standard in settlements similar to this one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). The Court also finds that the requested attorneys’ fees are reasonable under the lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506.

10. The Court further finds that Plaintiff’s counsel’s requested actual litigation costs of up to \$20,000 (which is currently estimated to be \$_____) are reasonable and were necessary to prosecute the action.

11. Accordingly, and consistent with California Labor Code § 2699(g)(1), which authorizes an award of attorneys’ fees in the amount of \$91,200.00 and litigation costs in the amount of up to \$20,000 are hereby granted and shall be paid to Plaintiff’s counsel.

12. After deducting Settlement Administration Costs and Attorneys’ Fees and Costs, the remainder of \$156,400, consistent with California Labor Code § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to PAGA Employees. Accordingly, \$117,300 shall be paid to the LWDA, and \$39,100 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid proportionally based on the number of pay periods that each individual employee worked for Defendant during the PAGA Period.

13. As of the Effective Date, Plaintiff, as the representative for the State of California, and on behalf of all PAGA Employees, will forever completely release and discharge the Released Parties from any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice and or the PAGA Period. It is expressly understood and agreed that this settlement includes a release of all PAGA Representative Claims based on violations of Labor Code §§ 201,

1 202, 203, 204, 210, 221, 226, 226.2, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802
2 and all accompanying and relevant IWC Wage Order provisions cited in Plaintiff's PAGA Notice
3 and/or the Operative Complaint. The release shall be effective as of the Effective Date, and it
4 shall apply to claims within the above scope impacting the PAGA Employees arising within the
5 PAGA Period. This settlement agreement shall not impact any PAGA Employee's ability to
6 assert Labor Code claims other than PAGA claims (i.e., a claim brought under California Labor
7 Code § 2698, *et. seq.*).

8 14. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*
9 (2009) 46 Cal. 4th 969, 985, a judgment in "a representative action brought by an aggrieved
10 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only
11 on the named employee plaintiff but also on government agencies and any aggrieved employee
12 not a party to the proceeding." Thus, both the named employee Plaintiff and nonparty aggrieved
13 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986.
14 However, the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to
15 assert Labor Code claims other than the PAGA claims (i.e., a claim brought under California
16 Labor Code § 2698, *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or
17 claim estoppel.

18 15. Neither this Order nor the Settlement Agreement (nor any other document referred
19 to herein, nor any action taken to carry out this Approval Order) is, may be construed as, or may
20 be used as, an admission or concession by or against Defendant or the Released Parties of the
21 validity of any claim or actual or potential fault, wrongdoing, or liability. Entering into or
22 carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall
23 not be considered as, or deemed evidence of, an admission or concession as to Defendant's
24 denials or defenses and shall not be offered or received in evidence in any action or proceeding
25 against any party hereto in any court, administrative agency or other tribunal for any purpose
26 whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order and
27 the Settlement Agreement; provided, however, that this Order and the Settlement Agreement

1 may be filed in any action against or by Defendant or the Released Parties to support a defense
2 of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or
3 reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar
4 defense or counterclaim.

5 16. Judgment in this matter is entered in accordance with the terms of the Settlement
6 Agreement and Approval Order. This judgment is intended to be a final disposition of the above
7 captioned action in its entirety, and is intended to be immediately appealable.

8 17. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the
9 purposes of supervising the implementation, enforcement, construction, administration, and
10 interpretation of the Settlement Agreement and this Approval Order.

11
12 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

13
14
15 **DATE**

15 **THE HONORABLE EDDIE C.**
16 **STURGEON**
17 **SUPERIOR COURT JUDGE**