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12 Attorneys for Plaintiff,
13 BRANDY RUIZ, and all others similarly situated

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

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

Plaintiff,

vs.

PRO CUSTOM SOLAR LLC, a New Jersey
limited liability company dba Momentum Solar;
and DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/13/2021 at 05:45:00 PM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

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

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE LABOR CODE
AND CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, BRANDY RUIZ (hereafter "Plaintiff"), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter "the
6 Wage Order"), against Defendants PRO CUSTOM SOLAR LLC, a New Jersey limited liability
7 company dba Momentum Solar, and DOES 1-50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her, the State of California, and other similarly situated and aggrieved current and former
10 employees who worked in California as hourly, non-exempt employees, for civil penalties and
11 other related relief. These claims are based on Defendants' failures to: (1) Pay all wages earned
12 for all hours worked at the correct rates of pay; (2) Indemnify for necessary work-related
13 expenditures; (3) Issue accurate and complete itemized wage statements; (4) Timely pay wages
14 during and upon termination of employment, and (5) Maintain accurate employment records.
15 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
16 representative action.

17 **II. THE PARTIES**

18 3. Plaintiff BRANDY RUIZ is a resident of California. On approximately January 1,
19 2020, Defendants began to employ Plaintiff in Fallbrook, San Diego County in the position of
20 remote phone agent. Defendants continuously employed her in that capacity until on or about
21 December 15, 2020, when her employment ended.

22 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
23 California Code of Regulations § 11070 and an "aggrieved employee" within the meaning of
24 Labor Code § 2699(c).

25 5. Defendant PRO CUSTOM SOLAR LLC dba Momentum Solar, is a limited
26 liability company organized and existing under the laws of New Jersey and a citizen of California
27 based on Plaintiff's information and belief.

28 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
is informed and believes and thereon alleges that said Defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.



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1 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
2 when ascertained.

3 **A. THE AGGRIEVED EMPLOYEES**

4 7. The “Aggrieved Employees” are all individuals currently and formerly employed
5 in California as non-exempt employees by Defendants, including but not limited to remote phone
6 agents paid by the hour and by commission, individuals performing work comparable to the
7 aforementioned, and individuals in similar positions, at any time during the period of August 9,
8 2020 and entry of judgment (“the PAGA Period”).

9 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
12 and scope of such agency or employment, and with the approval and ratification of each of the
13 other Defendants.

14 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
16 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
17 Employees in accordance with applicable California labor laws as alleged herein.

18 10. Plaintiff is informed and believes and thereon alleges that each and every one of
19 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
20 each acting as agents and/or employees, and/or under the direction and control of each of the other
21 defendants, and that said acts and failures to act were within the course and scope of said agency,
22 employment, and/or direction and control.

23 **III. FACTUAL ALLEGATIONS**

24 11. On approximately January 1, 2020, Defendants began to employ Plaintiff in
25 Fallbrook, San Diego County in the position of remote phone agent. Defendants continuously
26 employed her in that capacity until on or about December 15, 2020, when her employment ended.

27 12. At all relevant times, Defendants issued wages to Plaintiff and all the other
28 Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus,
commission, and piece rate. At all relevant times, Defendants classified Plaintiff and all the other
Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code
and the Wage Order.



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1 13. Defendants failed to compensate Plaintiff and the Aggrieved Employees at the
2 correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first
3 eight hours of the seventh day of the workweek. Defendants failed to include commissions and
4 bonuses Plaintiff and the Aggrieved Employees earned in the regular rate of pay for purposes of
5 calculations the overtime wages Plaintiff and the Aggrieved Employees earned when they worked
6 in excess of 40 hours per week, and in excess of eight hours per day.

7 14. Defendants failed to separately compensate Plaintiff and the Aggrieved
8 Employees for rest and recovery periods and other nonproductive time. Defendants failed to pay
9 for rest and recovery time calculated based on both hourly pay and commissions Plaintiff and the
10 Aggrieved Employees earned.

11 15. At all relevant times, Defendants required Plaintiff and all of the other Aggrieved
12 Employees to incur certain business expenses in the course of performing their duties. Defendants
13 required Plaintiff and all the other Aggrieved Employees to supply mobile phones, telecom, tools,
14 equipment, supplies, home office and storage, and computers/laptops to perform their job duties.
15 However, Defendants did not provide these items and did not reimburse Plaintiff and the other
16 Aggrieved Employees for these items. Defendants required Plaintiff and the Aggrieved
17 Employees to purchase or use computers, phones, telecom services, and work spaces that they
18 owned or otherwise paid for to perform their job duties from home.

19 16. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
20 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
21 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state
22 on the wage statements they issued to Plaintiff and all the other Aggrieved Employees the unpaid
23 wages discussed above. The wage statements fail to state all hours worked at the correct rates of
24 pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all
25 rest and recovery time wages earned.

26 17. Defendants failed to provide Plaintiff and all the other Aggrieved Employees with
27 statements of the total hours of compensable rest and recovery periods, the rate of compensation,
28 and the gross and net wages paid for those activities during the pay period. Defendants failed to
state on the wage statements they issued to Plaintiff and the Aggrieved Employees the pay for
rest and recovery time calculated based on both hourly pay and commissions and bonuses Plaintiff
and the Aggrieved Employees earned.



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1 18. Defendants failed to provide signed and complete commission agreements to
2 Plaintiff and the Aggrieved Employees.

3 19. Defendants also failed to timely pay Plaintiff and all the other Aggrieved
4 Employees all earned wages as described above during and at the conclusion of employment.

5 20. Defendants failed to maintain accurate employee records of Plaintiff and all of the
6 other Aggrieved Employees.

7 21. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
8 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

9 A. Not paid all wages earned, including, but not limited to, regular and
10 overtime wages for work performed while clocked out;

11 B. Not separately compensated for rest and recovery periods and other
12 nonproductive time;

13 C. Not indemnified for all necessary business expenditures incurred during
14 the discharge of their duties;

15 D. Not provided with accurate and complete wage statements;

16 E. Not provided with statements of the total hours for compensable rest and
17 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
18 pay period;

19 F. Not provided with signed and complete commission agreements;

20 G. Not timely paid all earned and unpaid wages during their employment with
21 Defendants and at the time such employment ended.

22 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

23 **CIVIL PENALTIES**

24 **(Lab. Code §§ 2698, et seq.)**

25 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against**
26 **all Defendants)**

27 22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

24. Section 2 of the Wage Order defines "hours worked" as "the time during which an



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1 employee is subject to the control of an employer, and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

3 25. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to employees 18 years of
6 age or over and to employees 16 or 17 years of age who are not required by law
7 to attend school and are not otherwise prohibited by law from engaging in the
8 subject work. Such employees shall not be employed more than eight (8) hours in
9 any workday or more than 40 hours in any workweek unless the employee
10 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
11 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
12 a day’s work. Employment beyond eight (8) hours in any workday or more than
13 six (6) days in any workweek is permissible provided the employee is
14 compensated for such overtime at not less than:

15 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
16 worked in excess of eight (8) hours up to and including 12 hours in any workday,
17 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
18 work in a workweek.

19 (b) Double the employee’s regular rate of pay for all hours worked in excess of
20 12 hours in any workday and for all hours worked in excess of eight (8) hours on
21 the seventh (7th) consecutive day of work in a workweek.

22 (c) The overtime rate of compensation required to be paid to a nonexempt full-
23 time salaried employee shall be computed by using the employee’s regular hourly
24 salary as one-fortieth (1/40) of the employee’s weekly salary.

25 26. Section 4 of the Wage Order requires an employer to pay non-exempt employees
26 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
27 an employer has actual or constructive knowledge that employees are working.

28 27. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
in one workday and any work in excess of 40 hours in any one workweek and the
first eight hours worked on the seventh day of work in any one workweek shall
be compensated at the rate of no less than one and one-half times the regular rate
of pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an
employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate
of pay of an employee. Nothing in this section requires an employer to combine



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1 more than one rate of overtime compensation in order to calculate the amount to
2 be paid to an employee for any hour of overtime work.

3 28. Labor Code section 1194 invalidates any agreement between an employer and an
4 employee to work for less than the minimum wage required under the applicable Wage Order.

5 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee
6 less than the minimum wage required under the applicable Wage Order for all hours worked
7 during a payroll period.

8 30. Labor Code section 1198 makes it unlawful for an employer to employ an
9 employee under conditions that violate the Wage Order.

10 31. In conjunction, these provisions of the Labor Code require employers to pay non-
11 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
12 worked, including unrecorded hours when the employer knew or reasonably should have known
13 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
14 Cal.4th 575, 585.)

15 32. At all relevant times during the applicable limitations period, Defendants failed to
16 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
17 limited to overtime wages for all overtime hours they worked at the correct rates of pay, and for
18 all off-the-clock hours they worked at the correct rates of pay.

19 33. Labor Code § 226.2 states,

20 For employees compensated on a piece-rate basis during a pay period, the
21 following shall apply for that pay period:

22 (1) Employees shall be compensated for rest and recovery periods and other
23 nonproductive time separate from any piece-rate compensation.

24 34. Pursuant to Labor Code § 226.2, the Wage Order and *Vaquero v. Stoneledge*
25 *Furniture LLC* (2017) 9 Cal.App.5th 98, Defendants were also required to separately
26 compensate Plaintiffs and the Aggrieved Employees for rest periods of at least 10 minutes for
27 each four-hour period of work or major fraction thereof, whether or not rest periods were
28 provided and for all nonproductive time in addition to their commission. Defendants failed to
compensate Plaintiffs and the Aggrieved Employees separately for their 10-minute rest and
recovery time and for other nonproductive time.

35. At all relevant times during the applicable limitations period, Defendants failed to



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1 separately compensate Plaintiff and all of the other Aggrieved Employees for rest and recovery
2 periods and other nonproductive time. Defendants failed to pay for rest and recovery time
3 calculated based on both hourly pay and commissions Plaintiff and the Aggrieved Employees
4 earned.

5 36. With respect to overtime wages, the regular rate of pay under California law must
6 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
7 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
8 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
9 must be included in the regular rate whether they are the sole source of the employee’s
10 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
11 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

12 37. At all relevant times during their work for Defendants, Plaintiff and all of the other
13 Aggrieved Employees earned bonuses, commissions, and monetary incentives during pay periods
14 in which they worked hours qualifying for overtime and/or double time premium pay rates.
15 However, Defendants failed to pay to Plaintiff and all of the other Aggrieved Employees overtime
16 and double time premium pay on such bonuses, commissions, and monetary incentives.

17 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
19 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
20 required by California law.

21 **B. FAILURE TO INDEMNIFY**

22 39. In pertinent part, California Labor Code § 2802(a) states:

23 “An employer shall indemnify his or her employee[s] for all
24 necessary expenditures incurred by the employee in direct
25 consequence of the discharge of his or her duties.”

26 40. California Labor Code § 1198 prohibits employers from employing their
27 employees under conditions prohibited by the Wage Order.

28 41. At all relevant times during the applicable limitations period, Defendants required
Plaintiff and the other Aggrieved Employees to incur certain business expenses in the course of
performing their duties. Defendants required Plaintiff and all the other Aggrieved Employees to
supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal



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1 computers or laptops to perform their job duties. However, Defendants did not provide these
2 items and did not reimburse Plaintiff and the other Aggrieved Employees for these items.
3 Defendants required Plaintiff and the Aggrieved Employees to purchase or use computers,
4 phones, telecom services, and workspaces that they owned or otherwise paid for to perform their
5 job duties from home.

6 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
8 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
9 incurred during the course of performing their duties.

10 **C. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

12 43. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
13 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
14 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
15 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
16 each hourly rate by the employee.

17 44. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
18 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
19 the employer fails to provide accurate and complete information as required by California Labor
20 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
21 alone one or more of the following:

22 A. The amount of the gross wages or net wages paid to the employee during
23 the pay period or any of the other information required to be provided on the itemized wage
24 statement pursuant to California Labor Code § 226(a);

25 B. Which deductions the employer made from gross wages to determine the
26 net wages paid to the employee during the pay period;

27 C. The name and address of the employer and, if the employer is a farm labor
28 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her
social security number or an employee identification number other than a social security number;
and



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1 E. The number of piece-rate units earned and the piece rate.

2 45. "Promptly and easily determine," as stated in California Labor Code § 226(e),

3 means a reasonable person would be able to readily ascertain the information without reference

4 to other documents or information.

5 46. Labor Code § 226.2(a) states:

6 (2) The itemized statement required by subdivision (a) of Section 226 shall, in

7 addition to the other items specified in that subdivision, separately state the

8 following, to which the provisions of Section 226 shall also be applicable:

9 (A) The total hours of compensable rest and recovery periods, the rate of

10 compensation, and the gross wages paid for those periods during the pay period.

11 (B) Except for employers paying compensation for other nonproductive time in

12 accordance with paragraph (7), the total hours of other nonproductive time, as

13 determined under paragraph (5), the rate of compensation, and the gross wages

14 paid for that time during the pay period.

15 47. As alleged herein, at all relevant times during the applicable limitations period,

16 Defendants violated Labor Code section 226 and 226.2 As alleged herein, at all relevant times

17 during the applicable limitations period, Defendants violated Labor Code section 226 because

18 they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net

19 wages earned, the total hours worked, the corresponding number of hours worked at each rate by

20 the Aggrieved Employee and other requirements of Labor Code section 226 and 226.2.

21 Defendants failed to state in the wage statements they issued to Plaintiff and all of the other

22 Aggrieved Employees all their hours worked and wages earned, including, but not limited to,

23 regular and overtime wages for work they performed off-the-clock after clocking-out (as

24 described above). Defendants knowingly and intentionally failed to state on the wage statements

25 they issued to Plaintiff and all of the other Aggrieved Employees the earned but unpaid wages

26 described above. The wage statements do not state all hours worked at the correct rates of pay,

27 all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest

28 and recovery time wages earned.

48. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with

accurate wage statements was knowing and intentional. Defendants had the ability to provide

Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally

provided wage statements that Defendants knew were not accurate.



1 49. As a result of being provided with inaccurate wage statements by Defendants,
2 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
3 accurate wage statements were violated and they were misled about the amount of wages they
4 had actually earned and were owed. In addition, the absence of accurate information on their wage
5 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
6 discovery and mathematical computations to determine the amounts of wages owed, has caused
7 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
8 submission of inaccurate information about wages to state and federal government agencies.
9 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
10 statements whether Defendants complied with their obligations under California Labor Code
11 section 226(a).

12 **D. UNTIMELY WAGES DURING EMPLOYMENT**

13 50. Labor Code § 204 states

14 (a) All wages, other than those mentioned in Section 201,
15 201.3, 202, 204.1, or 204.2, earned by any person in any
16 employment are due and payable twice during each
17 calendar month, on days designated in advance by the
18 employer as the regular paydays. Labor performed
19 between the 1st and 15th days, inclusive, of any calendar
20 month shall be paid for between the 16th and the 26th day
21 of the month during which the labor was performed, and
22 labor performed between the 16th and the last day,
23 inclusive, of any calendar month, shall be paid for
24 between the 1st and 10th day of the following month. ...

25 (b) (1) Notwithstanding any other provision of this
26 section, all wages earned for labor in excess of the normal
27 work period shall be paid no later than the payday for the
28 next regular payroll period.

(2) An employer is in compliance with the
requirements of subdivision (a) of Section 226 relating to
total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay
period are itemized as corrections on the paystub for the
next regular pay period. Any corrections set out in a
subsequently issued paystub shall state the inclusive dates
of the pay period for which the employer is correcting its
initial report of hours worked.



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1 (c) However, when employees are covered by a collective
2 bargaining agreement that provides different pay
3 arrangements, those arrangements shall apply to the
4 covered employees.

5 (d) The requirements of this section shall be deemed satisfied
6 by the payment of wages for weekly, biweekly, or
7 semimonthly payroll if the wages are paid not more than
8 seven calendar days following the close of the payroll
9 period.

10 51. Defendants paid wages to employees on regular intervals. However, Defendants
11 failed to compensate Plaintiff and the Aggrieved Employees for wages earned, including
12 minimum wages, regular wages, overtime wages, doubletime wages, at the intervals stated above.
13 As a result, Defendants failed to timely pay all earned wages due during employment within the
14 time periods set by Labor Code section 204.

15 **E. UNTIMELY FINAL WAGES**

16 52. Labor Code § 201 provides that all earned and unpaid wages of an employee who
17 is discharged are due and payable immediately at the time of discharge.

18 53. Labor Code § 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours notice before quitting are due and payable at the time of
20 quitting and that all earned and unpaid wages of an employee who quits without providing at
21 least 72-hours notice before quitting are due and payable within 72 hours.

22 54. By failing to pay earned minimum, regular, overtime, and premium wages to
23 Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and
24 unpaid wages in violation of Labor Code § 201 or § 202.

25 55. Labor Code section 203 provides that the wages of an employee continue on a
26 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
27 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

28 56. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
willful in that, at all relevant times, Defendants have deliberately maintained policies and
practices that violate the requirements of the Labor Code and the Wage Order, even though at all
relevant times, they have had the ability to comply with those legal requirements.

F. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION



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1 **AGREEMENTS**

2 57. Labor Code § 2751 states:

- 3 a) Whenever an employer enters into a contract of employment with an employee
- 4 for services to be rendered within this state and the contemplated method of
- 5 payment of the employee involves commissions, the contract shall be in writing
- 6 and shall set forth the method by which the commissions shall be computed and
- 7 paid.
- 8 b) The employer shall give a signed copy of the contract to every employee who is
- 9 a party thereto and shall obtain a signed receipt for the contract from each
- 10 employee. In the case of a contract that expires and where the parties
- 11 nevertheless continue to work under the terms of the expired contract, the contract
- 12 terms are presumed to remain in full force and effect until the contract is
- 13 superseded or employment is terminated by either party.
- 14 c) As used in this section, “commissions” has the meaning set forth in Section 204.1.
- 15 For purposes of this section only, “commission” does not include any of the
- 16 following:
- 17 1. Short-term productivity bonuses such as are paid to retail clerks.
- 18 2. Temporary, variable incentive payments that increase, but do not decrease,
- 19 payment under the written contract.
- 20 3. Bonus and profit-sharing plans, unless there has been an offer by the
- 21 employer to pay a fixed percentage of sales or profits as compensation for
- 22 work to be performed.

23 58. At all relevant times, Defendants have failed to provide Plaintiff and the Aggrieved

24 Employees with signed commission agreements. As a result, the Defendants have violated Labor

25 Code § 2751.

26 59. On information and belief, Defendants have willfully failed to provide the

27 commission agreements required by § 2751.

28 **G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

 60. Labor Code § 1174 states:

 Every person employing labor in this state shall:

 ...

 (c) Keep a record showing the names and addresses of all employees

 employed and the ages of all minors.

 (d) Keep, at a central location in the state or at the plants or establishments

 at which employees are employed, payroll records showing the hours worked

 daily by and the wages paid to, and the number of piece-rate units earned by

 and any applicable piece rate paid to, employees employed at the respective

 plants or establishments. These records shall be kept in accordance with rules

 established for this purpose by the commission, but in any case shall be kept

 on file for not less than three years. An employer shall not prohibit an



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employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

61. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

62. Section 7 of the Wage Order states,

(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation, and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

63. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

64. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

H. CIVIL PENALTIES SOUGHT

65. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and



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the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

66. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

67. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2751, and 2802.

68. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

69. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2751, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation



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(penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7, 1194, 1198, 2751, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

70. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated August 9, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated August 9, 2021 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

71. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved



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1 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
2 connection with their claims for civil penalties.

3 **VI. PRAYER FOR RELIEF**

4 72. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
5 for relief and judgment against Defendants as follows:

- 6 A. Civil penalties;
7 B. Costs of suit;
8 C. Reasonable attorneys' fees; and
9 D. Such other relief as the Court deems just and proper.

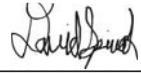
10 **VII. DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury
12 trial on all issues so triable.

13 Respectfully submitted,

14 THE SPIVAK LAW FIRM

15 Dated: December 13, 2021

16 By 
17 DAVID SPIVAK,
18 CAROLINE TAHMASSIAN,
19 MAYA CHEAITANI, Attorneys for Plaintiff,
20 BRANDY RUIZ, and all others similarly
21 situated
22
23
24
25
26
27
28



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 9, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Brandy Ruiz / Momentum Solar

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Brandy Ruiz (hereafter “Ruiz” or “Complainant”) provides notice that Pro Custom Solar LLC dba Momentum Solar, a New Jersey limited liability company, and related entities (collectively “the Momentum Solar Employers” or “the Employers”) violated her rights and those of all other individuals the Momentum Solar Employers have employed or otherwise contracted with in California as non-exempt employees, including but not limited to remote phone agents paid by the hour and by commission, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 1174, 1194, 1197, 1198, 2751, and 2802. On behalf of herself and all other Aggrieved Employees, Ruiz hereby provides this notice to the Labor & Workforce Development Agency and the Momentum Solar Employers and their agents and representatives.

// /
// /

At all relevant times, the Momentum Solar Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ruiz and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 1, 2020, the Momentum Solar Employers began to employ Ruiz in Fallbrook, San Diego County in the position of remote phone agent. The Momentum Solar Employers continuously employed her in that capacity until on or about December 15, 2020 when her employment ended.

At all relevant times, the Momentum Solar Employers issued wages to Ruiz and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus, commission, and piece rate. At all relevant times, the Momentum Solar Employers classified Ruiz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Momentum Solar Employers failed to include commissions and bonuses Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions Ruiz and the Aggrieved Employees earned.

At all relevant times, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and computers/laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home.

At all relevant times, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period. The Momentum Solar Employers failed to state on the wage statements they issued to Ruiz and the Aggrieved Employees the pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned.

The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees.

The Momentum Solar Employers also failed to timely pay Ruiz and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Momentum Solar Employers failed to maintain accurate employee records of Ruiz and all of the other Aggrieved Employees.

For the reasons stated herein, Ruiz alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Momentum Solar Employers failed to indemnify Ruiz and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The Momentum Solar Employers knowingly and intentionally failed to provide Ruiz and all of the other Aggrieved Employees with accurate wage statements;
- (e) The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;

- (f) The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees;
- (g) The Momentum Solar Employers willfully failed to timely pay Ruiz and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Momentum Solar Employers and when their employment ended; and
- (h) The Momentum Solar Employers failed to maintain accurate employment records pertaining to Ruiz and all of the other Aggrieved Employees.

Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Momentum Solar Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Momentum Solar "Employers, Ruiz, and all of the Aggrieved Employees were covered by the Wage Order because the Momentum Solar Employers operated, and Ruiz, and all of the Aggrieved Employees worked for, one or more establishments operated for solar power installations, devices, and equipment sales. Accordingly, Ruiz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay **(Lab. Code §§ 510, 1194, 1197, and 1198)**

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from

engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half ($1\frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Momentum Solar Employers failed to include commissions Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate

whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Momentum Solar Employers, Ruiz and all of the other Aggrieved Employees earned bonuses, commissions, and monetary incentives during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Momentum Solar Employers failed to pay to Ruiz and all of the other Aggrieved Employees bonuses, commissions, monetary incentives overtime and double time premium pay on such bonuses, commissions, and monetary incentives.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

/ / /

/ / /

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal computers or laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home. Accordingly, Ruiz seeks civil penalties for these Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Momentum Solar Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Momentum Solar Employers failed to state in the wage

statements they issued to Ruiz and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. Accordingly, Ruiz seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the

26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, and rest and recovery time, at the intervals stated above. As a result, the Momentum Solar Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Ruiz now seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ruiz, including overtime wages, doubletime wages, rest and recovery time. Additionally, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Ruiz and all of the other Aggrieved Employees as set forth above at the end of employment, the Momentum Solar Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Ruiz seeks civil penalties from the Momentum Solar Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in

which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

/ / /

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an

offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the Momentum Solar Employers have failed to provide Ruiz and all of the other Aggrieved Employees with signed commission agreements,. As a result, the Momentum Solar Employers have violated Labor Code § 2751. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours

worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be

made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. As a result, the Momentum Solar Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Ruiz and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Brandy Ruiz will

seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Brandy Ruiz
Walter L. Haines Esq.

Pro Custom Solar LLC dba Momentum Solar
c/o Agent for service of process
COGENCY GLOBAL INC. (C2003899)
122 E. 42ND ST., 18TH FL
NEW YORK, NY 10168

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United States
Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9 On Monday, December 13, 2021, I served the foregoing document described
10 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
11 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

12 Doug Plazak
13 Reid & Hellyer
14 3685 Main Street, Suite 300
Riverside, CA 92502-1300
dplazak@rhlaw.com

15
16 Eric Steinert
Chris Crosman
17 Seyfarth Shaw
560 Mission Street, Suite 3100
18 San Francisco, CA 94105-2930
Esteinert@seyfarth.com
19 Ccrosman@seyfarth.com

20
21 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
22 electronic service addresses listed above from my electronic service address
nora@spivaklaw.com.

23 EXECUTED on Monday, December 13, 2021, at Burbank, California.

24 XXXX (State) I declare under penalty of perjury under the laws of the State of
25 California that the above is true and correct.

26 

27 _____
NORA GREER