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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

22CV402504

MICHAEL YAW, on behalf of the State of
California, as a private attorney general,

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

Plaintiff,

vs.

SUNPOWER CORPORATION, SYSTEMS, a
Corporation; and DOES 1 through 50,
inclusive,

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

Defendants.

1 Plaintiff Michael Yaw (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as private attorney general under the Labor Code Private
3 Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and
4 belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Sunpower Corporation, Systems (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Sunpower Corporation, Systems (“DEFENDANT”) is a Corporation
24 at all relevant times mentioned herein conducted and continues to conduct substantial business
25 in the state of California.

26 5. DEFENDANT specializes in designing, manufacturing and delivering solar
27 equipment.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from January of 2020
2 to February of 2022 and was at all times classified by DEFENDANT as a non-exempt
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in California,
9 including any employees staffed with DEFENDANT by a third party, and classified as non-
10 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 25, 2021
11 until a date as determined by the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
16 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
17 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
18 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
19 within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. During the PAGA PERIOD, during their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES have been required to supply their own hand tools and equipment to service and repair solar equipment for DEFENDANT's customers. Despite requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to supply their own tools and equipment to perform the job, DEFENDANT fails to pay at least two times the minimum wage to PLAINTIFF and the AGGRIEVED EMPLOYEES as mandated by the Industrial Welfare Commission Wage Orders .

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment.

1 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
2 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
3 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
4 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would
5 have been paid had they been paid for actual recorded time rather than “rounded” time.
6 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the
7 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
8 condition of employment, required these employees to submit to mandatory temperature checks
9 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s
10 timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED
11 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
12 by working without their time being correctly recorded and without compensation at the
13 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and the
14 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT’s business
15 records.

16 13. State law provides that employees must be paid overtime and meal and rest break
17 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
19 to specific elements of an employee’s performance.

20 14. The second component of PLAINTIFF’s and the AGGRIEVED EMPLOYEES’
21 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
22 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
23 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
24 hourly basis with incentive compensation when the employees met the various performance
25 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
26 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
27 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
28 employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest

1 break premium pay. Management and supervisors described the incentive program to potential
2 and new employees as part of the compensation package. As a matter of law, the incentive
3 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
4 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
5 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
6 EMPLOYEES by DEFENDANT.

7 15. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
8 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
9 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
10 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
11 for more than five (5) hours during some shifts without receiving a meal break. Further,
12 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
13 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
14 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
15 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
16 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
17 forfeit meal breaks without additional compensation and in accordance with DEFENDANT’s
18 corporate policy and practice.

19 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
20 were also required from time to time to work in excess of four (4) hours without being provided
21 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
22 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
23 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
25 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
26 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
27 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
28 provide employees with off-duty rest periods, which the California Supreme Court defined as

1 time during which an employee is relieved from all work related duties and free from employer
2 control. In so doing, the Court held that the requirement under California law that employers
3 authorize and permit all employees to take rest period means that employers must relieve
4 employees of all duties and relinquish control over how employees spend their time which
5 includes control over the locations where employees may take their rest period. Employers
6 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
7 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
8 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
9 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
10 their rest period.

11 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
12 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
13 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all
15 time worked, meaning the time during which an employee was subject to the control of an
16 employer, including all the time the employee was permitted or suffered to permit this work.
17 DEFENDANT required these employees to work off the clock without paying them for all the
18 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
19 known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all
20 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time
21 worked by working without their time being accurately recorded and without compensation at
22 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
23 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
24 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
25 1197.1.

26 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
28 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

1 provides that every employer shall furnish each of his or her employees with an accurate
2 itemized wage statement in writing showing, among other things, gross wages earned and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
5 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
6 the pay period and the total hours worked, and the applicable pay period in which the wages
7 were earned pursuant to California Labor Code Section 226(a). The wage statements
8 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify
9 such information. More specifically, the wage statements failed to identify the accurate total
10 hours worked each pay period. When the hours shown on the wage statements were added up,
11 they did not equal the actual total hours worked during the pay period in violation of Cal. Lab.
12 Code 226(a)(2). Additionally, DEFENDANT violates Cal. Lab. Code Section 226(a)(8) by
13 failing to list the correct name of the legal entity that employed PLAINTIFF and the
14 AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph,
15 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
16 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
17 time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which
18 violated Cal. Lab. Code § 226.

19 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
20 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
21 wages are paid not more than seven (7) calendar days following the close of the payroll period.
22 Cal. Lab. Code § 210 provides:

23 [I]n addition to, and entirely independent and apart from, any other penalty provided in
24 this article, every person who fails to pay the wages of each employee as provided in
25 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
26 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

27 20. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
28 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.

1 Lab. Code § 204(d).

2 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
3 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
4 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
5 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
6 underpaid sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of
7 pay.

8 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
9 employees be calculated by dividing the employee's total wages, not including overtime
10 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
11 of employment.

12 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
13 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
14 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
15 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
16 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
17 Code Section 246.

18 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
19 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
20 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
21 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
22 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
23 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

24 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer to
26 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the
27 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
28 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the

1 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
2 and thereby failed to pay these employees all wages due at each applicable pay period and upon
3 termination.

4 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
5 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
6 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
7 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
8 are required to indemnify employees for all expenses incurred in the course and scope of their
9 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
12 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
13 believed them to be unlawful."

14 27. In the course of their employment PLAINTIFF and the AGGRIEVED
15 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones as a result of and in furtherance of their job duties as employees for
17 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
18 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
19 PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their
20 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
21 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
22 which included, but were not limited to, costs related to the use of their personal cellular phones
23 all on behalf of and for the benefit of DEFENDANT.

24 28. All of the conduct and violations alleged herein occurred during the PAGA
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
26 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
27 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
28 AJDAR 12157 (Certified for Publication 12/19/18).

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1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 himself and all individuals who are or previously were employed by DEFENDANT in California,
4 including any employees staffed with DEFENDANT by a third party, and classified as non-
5 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 25, 2021
6 until a date as determined by the Court (the "PAGA PERIOD").

7 34. On May 25, 2022, PLAINTIFF gave written notice by electronic mail to the Labor
8 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
9 the specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
11 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
12 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
13 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 35. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
16 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
17 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
18 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
19 expenses, and (f) failure to pay wages when due, all in violation of the applicable Labor Code
20 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3,
21 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
22 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives
23 rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only
24 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
26 the AGGRIEVED EMPLOYEES.

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

B) An award of attorneys' fees and cost of suit, as allowable under the
g, but not limited to, pursuant to Labor Code §2699.

By: /s/ Nicholas De Blouw
 Norman B. Blumenthal
 Kyle R. Nordrehaug
 Nicholas J. De Blouw
Attorneys for Plaintiff