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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VANESSA R. TORRES, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

EMPOWER SOLAR, INC., a California Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CVRI2201894

FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT:

(1) FAILURE TO PAY ALL MINIMUM WAGES;
(2) FAILURE TO PAY ALL OVERTIME WAGES;
(3) MEAL PERIOD VIOLATIONS;
(4) REST PERIOD VIOLATIONS;
(5) WAGE STATEMENT VIOLATIONS;
(6) WAITING TIME PENALTIES;
(7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
(8) UNFAIR COMPETITION; and
(9) **PAGA PENALTIES**

DEMAND FOR JURY TRIAL

Plaintiffs Vanessa Torres and Francisco Moreno (collectively, "Plaintiffs") on behalf of themselves, and all other similarly situated non-exempt employees, allege and complain of defendant Empower Solar, Inc. ("Defendant"), and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

INTRODUCTION

1. Defendant Empower Solar, Inc. is a company that develops, engineers, installs, and services solar and battery systems for residential and commercial clients.

2. Plaintiffs bring this class action against Defendants for alleged violations of the California Labor Code and Business and Professions Code.

3. As set forth below, Plaintiffs allege that Defendants failed to include all forms of compensation when calculating the "regular rate of pay" used for payment of overtime wages and failed to pay for all minimum and overtime wages at the "regular rate of pay" due to their uniform timekeeping policies/practices which failed to accurately capture and record all hours worked.

4. Plaintiffs further allege that Defendants' meal and rest period policies and practices did not provide her and all other similarly situated employees with all compliant/timely meal and rest periods, or premium wages in lieu thereof.

5. Additionally, Plaintiffs allege that Defendants failed to provide non-exempt employees with accurate written itemized wage statements and failed to timely pay all final wages upon separation of employment. Finally, Plaintiffs alleges that Defendants failed to reimburse all necessary business expenses.

6. Based on these alleged Labor Code violations, Plaintiffs now bring this class and PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief on behalf of themselves and all others similarly situated.

JURISDICTION AND VENUE

7. Plaintiffs, on behalf of themselves and all others similarly situated employees hereby brings this class and PAGA representative action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7 510, 512, 516, 1194, 1197.1, 1199, 2802, 2698 *et seq*. and applicable Industrial Welfare Commission Wage Orders ("Wage

Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq*.

8. This class action is brought pursuant to the California Code of Civil Procedure § 382.

9. This Court has jurisdiction over Defendants’ violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional minimum.

10. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own/operate a facility in Riverside California within the County of Riverside, and/or otherwise are found within the County of Riverside, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

11. At all relevant times herein, Plaintiffs, who are over the age of 18, were and currently are California residents residing in the State of California.

12. Defendants employed Plaintiffs as non-exempt employees in Riverside, California in the County of Riverside.

13. Plaintiffs are informed and believe and thereon alleges that defendant Empower Solar, Inc. is a California corporation authorized to and doing business in Riverside, California, and is and/or was the legal employer of Plaintiffs and the Class Members during the applicable statutory periods. Plaintiffs was, and is, a victim of Defendants’ policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, 2802, 2698 *et seq*. and the California Business and Professions Code § 17200 *et seq*., and applicable Wage Orders.

14. Plaintiffs are informed and believe, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of San Francisco.

15. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to

amend this Complaint when such true names and capacities are discovered. Plaintiffs is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices alleged herein.

16. Plaintiffs are informed, and believe, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

17. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs alleges that all Defendants were joint employers for all purposes of Plaintiffs and all members of the Classes.

<u>COMMON FACTUAL ALLEGATIONS</u>

18. Defendants are a company that develops, engineers, installs, and services solar and battery systems for residential and commercial clients.

19. Plaintiffs were employed by Defendants as non-exempt employees during the relevant liability period.

20. Plaintiff Torres began working with Defendants in January 2022 until her separation from employment on or about April 5, 2022.

21. Plaintiff Moreno began working with Defendants as a Warehouse Clerk in December 2021 until his separation on or about May 6, 2022.

22. Plaintiffs and other non-exempt employees (including, but not limited to all installers, solar site surveyors, warehouse clerks, laborers, and other non-exempt positions) were responsible for all aspects of Defendants' business in California.

23. First, during the relevant time period, Plaintiff and other non-exempt employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. Although Plaintiffs and other non-exempt employees regularly worked overtime hours, they were not always compensated at one and one-half times their "regular rate of pay" because Defendants regularly failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when calculating the "regular rate of pay" used for payment of overtime wages.

24. Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (*See Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News*, Inc. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"].)

25. By their policy of requiring Plaintiff and the other non-exempt employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

26. Accordingly, and to the extent permitted by law, Plaintiffs and other non-exempt employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510, and 1197.1.

27. First, at all relevant times, Defendants have had a consistent practice of unfairly recording, editing, and/or rounding Plaintiffs' and other non-exempt employees' time entries,

resulting in a failure to pay all hours worked. As a result of this practice, Plaintiffs and other non-exempt employees are not compensated for all the hours that they work and all of the overtime hours they work in violation of Cal. Labor Code §§ 204, 210. 510, 1194, 1197.1, 1199, and applicable Wage Orders.

28. Here, Defendants' time recording practice is not neutral on its face as Plaintiffs and other non-exempt employees are subject to discipline, including termination for being tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants are capable of tracking the time worked by non-exempt employees to the minute, the practice itself exists not for the convenience or benefit of the employees who are trying to report their time worked accurately, but for Defendants' benefit. As a result of the unlawful time recording practice, Plaintiffs and other non-exempt employees were not paid for all hours worked, including, all minimum wages and overtime wages for hours worked in excess of eight hours per shift.

29. In addition, at all relevant times, Defendants implemented a uniform payroll practice that automatically deducts 30 minutes for meal periods, regardless of whether a 30-minute meal period was actually provided. As a result, the policy is not neutral on its face, and over a period of time, Plaintiffs and other non-exempt employees were not properly paid for all hours worked, including all minimum and overtime wages, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

30. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

31. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of

pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

32. As set forth above, Defendants failed to compensate Plaintiffs and other non-exempt employees for all hours worked, including all minimum and overtime wages, by failing to properly record non-exempt employees' hours worked and by unlawful rounding/shaving of non-exempt employees' time worked. Accordingly, to the extent permitted by law Plaintiffs and other non-exempt employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

33. Next, at all relevant times, Plaintiffs and other non-exempt employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants' uniform meal period policies/practices and work demands, Plaintiffs and other non-exempt employees were often unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work.

34. As alleged above, Defendants implemented a uniform payroll practice that automatically deducted 30 minutes from non-exempt employees' time, regardless of whether a 30-minute uninterrupted meal period was actually provided. Further, when Plaintiffs and other non-exempt employees worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

35. For each missed or non-compliant meal period, Defendants failed to maintain a mechanism by which non-exempt employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

36. Accordingly, due to Defendants' uniform meal period practices, Plaintiffs and other non-exempt employees were regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

37. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were also not provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due to Defendants' uniform rest period policies/practices and work demands. As a result, Plaintiffs and other non-exempt employees were and are often unable to take a net 10-minute duty free rest periods for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

38. By not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273.

39. Each time Plaintiffs and other non-exempt employees were unable to take a compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

40. Accordingly, due to Defendants' uniform rest period policies/practices and work demands, Plaintiffs and other non-exempt employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

41. As a result of Defendants' failure to pay Plaintiffs and other non-exempt employees for all hours they were subject to the control of Defendants, including all minimum and overtime wages, and Defendants' failure to pay for meal and rest period premiums at the "regular rate of pay", Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at

each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

42. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

43. Thus, for the violations of Labor Code section 226 described above, Plaintiffs and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiffs and other non-exempt employees are in violation of Labor Code § 226(a).

44. Finally, Defendants required Plaintiffs and other non-exempt employees to incur necessary business expenses including, but not limited to, purchase of tools and personal cell phones for work related purposes but did not reimburse non-exempt employees for these necessary expenditures. See *Cochran v. Schwan's Home Service, Inc*., (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"]. Defendants' uniform failure to reimburse Plaintiffs and other non-exempt employees for their on-going business expenses incurred in their discharge of their duties continues through the present day. Indeed, any reimbursement is absent from Plaintiffs' wage statements during her employment.

45. Finally, because of, Defendants' failure to pay all minimum and overtime wages, and meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue to fail to pay the non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203, and 256.

CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

> All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Class");
>
> All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Overtime Subclass");
>
> All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. ("Wage Statement Subclass")
>
> All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. ("Waiting Time Penalty Subclass") (collectively "the Classes")

47. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

48. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants' pay policies/practices resulted in a failure to pay all overtime wages at the "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

2. Whether Defendants' timekeeping/payroll policies/practices resulted in a failure to pay for all hours worked to the members of the Class;

3. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Class;

4. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a); and

5. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

6. Whether Defendants reimbursed all necessary business expenses, including but not limited to costs associated with their tools used for work assignments and using their personal cell phones for work related purposes, as well as other business expenses.

49. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' failure to pay for all hours worked due to their rounding/time shaving policies and practices as well as their policy of automatically deducting 30 minutes for a meal period, Defendants' failure to provide all compliant meal and rest periods or adequate compensation at the "regular rate of pay" in lieu thereof, and Defendants' resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

50. **Typicality**: The claims of Plaintiffs are typical of the claims of the Classes because Plaintiffs was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiffs, like the members of the Classes was deprived of minimum and overtime wages, was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest period policies/practices, was not provided accurate itemized wage statements, was not reimbursed necessary business expenses, and was not timely paid all wages owed upon separation of employment.

51. **Adequacy of Representation**: Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of the Classes. Plaintiffs' attorneys have prosecuted and are actively litigating several wage-and-hour class actions in state and federal courts and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

52. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with their vastly superior financial and legal resources.

53. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending

thereto. As such, the Classes identified in Paragraph 33 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

54. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

55. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

56. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to (1) Defendants' inaccurate timekeeping and rounding/time shaving practices, which resulted in members of the Class not being paid for all hours actually worked, and (2) Defendants' practice of automatically deducting 30 minutes for meal periods regardless of whether a 30-minute meal period was actually provided. Accordingly, Plaintiffs and members of the Classes were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

57. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

58. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover

economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

59. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 558, 1194 *et seq*., 1197, 1198, and Code of Civil Procedure § 1021.5.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

60. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

61. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

62. At all times relevant herein, Defendants were required to properly pay Plaintiffs and members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

63. Section 3 of the applicable Wage Order requires an employer to pay an employee "one and one-half (11⁄2) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime and hours but did not compensate Plaintiffs or members of the Classes at one and one-half times their regular rate of pay for such hours.

64. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to (1) Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive

pay, and other forms of remuneration when calculating the "regular rate of pay" used in payment of overtime wages, all of which resulted in Plaintiff and the Overtime Subclass not being paid all overtime and double time wages owed, (2) Defendants' timekeeping/rounding/time shaving practices, and (3) Defendants' practice of automatically deducting 30 minutes from a meal period regardless of whether an uninterrupted 30-minute meal period was actually provided, both of which resulted in Plaintiffs and the Classes not being paid all overtime wages owed.

65. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the members of the Classes in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

66. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

67. Plaintiffs is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiffs and members of the Class, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

68. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiffs and members of the Class at their respective regular rates of pay for each violation in accordance with *Ferra* and Labor Code § 226.7.

69. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

70. Plaintiffs re-alleges and incorporate by reference all previous paragraphs.

71. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

72. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiffs and members of the Class to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiffs and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

73. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

74. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

75. Labor Code 226(a) states in pertinent part the following:

> "(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (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 employee 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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (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."

76. As set forth above, during the Class Period, Defendants issued and continue to issue wage statements to its employees including Plaintiffs and members of the Wage Statement Subclass, which are inadequate under Labor Code Section 226(a).

77. As a result of Defendants failure to pay Plaintiffs and the Wage Statement Subclass for all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal rate, Defendants failed to include required information on Plaintiffs and the Wage Statement Subclass' wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a)(1,2,5, and 9).

78. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

79. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiffs and members of the Wage Statement Subclass are each entitled to recover an initial penalty of $50, and subsequent penalties of $100, up to an amount not exceeding an aggregate penalty of $4,000 per Plaintiffs and per every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

80. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

81. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation is corrected, or the class is certified.

82. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiffs and the Waiting Time Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

83. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

84. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked, including all minimum and overtime wages, and their meal and rest period premiums at the "regular rate of pay", prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

85. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time Subclass pursuant to Labor Code § 203. *See,* e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

<u>SEVENTH CAUSE OF ACTION</u>

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

86. **Plaintiffs** re-allege and incorporate by reference all previous paragraphs.

87. Labor Code § 2802(a) states in pertinent part the following:

> "(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

88. As set forth above, Plaintiffs and members of the Class must be compensated for all necessary business expenditures, including, but not limited to, costs associated with tools used for work assignments and personal cell phones for work related purposes, and other charges necessarily incurred in their discharge of their duties. (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17

(N.D. Cal. 2014) (granting Plaintiff's motion for partial summary judgment on Plaintiff's cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

89. At all relevant times, by failing to reimburse Plaintiffs and the Class for all necessary business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the applicable Wage Orders.

90. As a result, Defendants are liable for unreimbursed expenses, penalties and reasonable attorneys' fees and costs pursuant to Labor Code § 2802.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

91. Plaintiffs re-alleges and incorporate by reference all previous paragraphs.

92. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq*., by failing to pay for all hours worked including minimum and overtime wages, by failing to provide all legally required meal and rest periods or pay premium payments at the "regular rate of pay" in lieu thereof, by failing to provide accurate wage statements, and by failing to pay all earned wages at the time of separation from employment.

93. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

94. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

95. The acts complained of herein occurred within the last four years immediately

preceding the filing of the Complaint in this action.

96. Plaintiffs was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which are is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698 *et seq*.)

(AGAINST ALL DEFENDANTS)

97. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

98. Defendants have committed several Labor Code violations against Plaintiffs and other non-exempt employees. Plaintiffs, are "aggrieved employees" within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other non-exempt employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and (2) $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to pay Plaintiff and other non-exempt employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 210 510, 1194, 1197, 1198, and 1182.12;

b. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily mandated meal periods or compensation at the "regular rate of pay" in lieu thereof in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

c. Failing to authorize and permit Plaintiff and other non-exempt employees with all of their statutorily mandated rest periods or compensation at the "regular rate of pay" in lieu thereof in violation of Labor Code §§ 226.7, and 516;

d. Failing to timely compensate Plaintiff and other non-exempt employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203; and

e. Failing to furnish Plaintiff and other non-exempt employees with complete, accurate, itemized wage statements in violations of Labor Code § 226(a).

f. In sum, Defendant (1) failed to pay minimum, overtime, or double-time wages, failed to pay for all time worked, improperly rounded time, and failed to pay for all hours worked at correct rates, including overtime or double time at the correct regular rates; (2), and failed at related recordkeeping; (3) failed to pay accrued vacation time, failed to pay vacation time at the proper rate, failed to report accrued and paid vacation in wage statements, and failed at related recordkeeping; (4) failed to provide compliant meal periods which were instead short, later, interrupted and/or missed meal periods, failed to pay premium wages, including premiums at the correct regular rates, and failed to properly record meal periods; (5) failed to provide compliant rest breaks which were instead short, late, interrupted, or missed, or were required to be on premises, or were otherwise improperly controlled or constrained rest breaks, and failed to pay premium wages, including premiums at the correct regular rates; (6) failed to provide accurate itemized wage statements in violation of Labor Code sections 226(a)(1)-(9); (7) failed to provide timely payment of final wages in violation of Labor Code sections 201-203, or pay the related penalties; (8) failed to provide timely wage payments to current employees in violation of Section 204 of the Labor Code; and (9) failed to reimburse employees for business expenses.

99. On May 10, 2022, Plaintiff Torres notified Empower Solar, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et seq*., with respect to violations of the California Labor Code. Attached hereto as Exhibit A is a copy of Plaintiff Torres' LWDA notice letter.

100. On May 5, 2023, Plaintiff Moreno notified Empower Solar, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et seq*., with respect to violations of the California Labor Code. Attached hereto as Exhibit B is a copy of Plaintiff Moreno' LWDA notice

letter.

101. Now that sixty-five days have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

102. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other non-exempt employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2698 *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order-appointing Plaintiffs as representative of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 2802, and reasonable costs and attorneys' fees;

11. Upon the Eighth Cause of Action, for restitution to Plaintiffs and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*.;

12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiffs, other non-exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, 2802, and Code of Civil Procedure § 1021.5; and

15. For such other relief that the Court may deem just and proper.

Dated: July 26, 2023

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: ______________________________
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for **Plaintiffs** and the Putative Class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On July 31, 2023, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Doug M. Larsen, Esq.
larsen@flclaw.net
Michael W. Green, Esq.
green@flclaw.net
FISHMAN, LARSEN, & CALLISTER
7112 North Fresno Street, Suite 450
Fresno, California 93720

Counsel for defendant Empower Solar, Inc.

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 31, 2023, at Los Angeles, California.

Carlos Garcia