

June 2, 2022

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (“LWDA”)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Sunrun, Inc.
225 Bush Street, Suite 1400
San Francisco, CA 94104

Re: Notice pursuant to California Labor Code section 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), submitted by Angel Mondragon, on behalf of himself and all other employees of Sunrun, Inc., as an individual, and as a proposed Representative of the State of California

Dear PAGA Administrator:

This letter shall serve as Angel Mondragon’s (hereafter “Claimant’s”) Notice pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698, *et seq.* regarding his claims against Sunrun, Inc. (referred to herein as “the Employer”). Claimant submits this notice on behalf of himself and all current and former employees employed by the Employer in California during the one year preceding the date of this notice who suffered one or more of the violations described herein (collectively referred to as “aggrieved employees”).

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA civil penalties on behalf of himself and all other non-exempt aggrieved employees of the Employer in the State of California. A copy of this notice is being sent to the Employer by certified mail at the address above.

Claimant and other employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violations of the Labor Code as set forth below.

FACTUAL STATEMENT

Employer prevented Claimant and aggrieved employees from taking off-duty meal and rest periods as required by California law, based on the lack of proper coverage and the scheduling of meal periods. Meal and rest periods were often late, short, or interrupted. Employer also failed to pay Claimant and aggrieved employees an additional hour at the regular rate of pay on each occasion that it failed to provide lawful meal and rest periods. Employer also violated minimum wage and overtime laws under the California Labor Code by requiring Claimant and aggrieved employees to work when they were clocked out, including during meal periods, rest periods and at the beginning and end of their shifts. For instance, Employer did not compensate Claimant and aggrieved employees for all hours worked, including off-the-clock work during breaks and for time spent responding to customers outside of work hours. Employer also underpaid employees through the maintenance of an illegal rounding and time keeping policy, wherein employees were required to record their time punches in quarter-hour increments, rather than when they actually started and ended work. Moreover, Employer failed to pay Claimant and other aggrieved employees the proper overtime and doubletime rate by failing to include bonuses, commissions, and other incentive payments in the regular rate of pay. Employer also made unlawful deductions from the wages of the aggrieved employees. Employer also violated California Labor Code §§ 2800 and 2802 by willfully failing to reimburse Claimant and other aggrieved employees for their reasonable and necessary business expenses, including but not limited to the purchase of gloves, masks, hand sanitizer, and other Personal Protective Equipment (“PPE”), and for use of their personal cellular phones and home internet usage for work-related purposes. Further, the Employer failed to pay all vacation wages at the final rate of pay. Additionally, Employer failed to provide accurate and compliant wage statements which incorrectly stated the number of hours worked, the net and gross wages earned, and the rates of pay. Further, Employer failed to provide suitable seating to Claimant and the aggrieved employees despite it not interfering with their duties. Finally, Employer failed to timely pay all wages due during employment and upon separation of employment for Claimant and aggrieved employees.

For the reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of himself and all other aggrieved employees of Employer. Claimant alleges that Employer:

1. Failed to pay Claimant and other aggrieved employees all wages due including minimum, regular, and overtime wages;
2. Unlawfully deducted wages of the Claimant and other aggrieved employees;
3. Failed to provide legally compliant off-duty meal periods or pay compensation in lieu thereof;

4. Failed to provide legally compliant duty-free rest periods or pay compensation in lieu thereof;
5. Failed to timely pay all wages due during employment and upon separation of employment; and
6. Failed to provide accurate and complete wage statements;
7. Failed to provide suitable seating; and
8. Failed to reimburse all reasonable and necessary business expenses.

Accordingly, Claimant now seeks civil penalties on behalf of himself and other non-exempt aggrieved employees based on the Employer's alleged violations of the California Labor Code and applicable IWC Wage Order. Claimant's claims are set forth below.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 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."

Labor Code section 1194(a) states: "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."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of

not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. 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. For 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.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. Claimant, and on information and belief, other aggrieved employees, regularly worked off-the-clock without receiving any compensation for these hours worked off-the-clock, including during meal and rest periods and at the beginning and end of their shifts. For instance, Claimant and other aggrieved employees were frequently required to communicate with customers off-the-clock in order to assist in closing deals, generating new customer leads, and otherwise assisting customers outside of their work hours, including after their shifts ended. In addition, Employer has and continues to have, an illegal rounding time practice and/or policy that is not neutral and undercompensates Claimant and other aggrieved employees. Moreover, Employer failed to pay Claimant and other aggrieved employees

the proper overtime and doubletime rate by failing to include bonuses, commissions, and other incentive payments in the regular rate of pay.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 221, 225.5, and 2698)

California Labor Code § 221 makes it unlawful “for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

Here, the Employer has unlawfully deducted the wages of Claimant and other aggrieved employees by making unlawful deductions from the wages, including overtime wages, earned by Claimant and aggrieved employees in violation of Labor Code § 221.

California Labor Code § 225.5 provides an independent and separate penalty for “violation of Section 212, 216, 221, 222, or 223” of the Labor Code of \$100 for any initial violation for each failure to an employee, and \$200 for any subsequent violation for each failure to pay an employee. As a result of violations of California Labor Code § 221, the Employer is liable for civil penalties pursuant to California Labor Code §§ 221, 225.5, and 2698 *et seq.*

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the

employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law, or late.

During Claimant's employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, the Employer failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 227.3, 256, 1198, and 2699)

Labor Code section 201 states: "If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states: "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."

Labor Code section 203(a) states, in relevant part: "If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any 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. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment."

Labor Code section 204(a) states, in pertinent part: "All wages . . . 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." The "Minimum Wages" Section of the applicable Wage Order further states "every employer shall pay to

each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

Labor Code section 227.3 provides in pertinent part: “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served....”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, regular, minimum, and overtime pay within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employer violated the above sections of the Labor Code.

Moreover, and in addition to this, aggrieved employees accrued unused vacation time during their employment with the Employer. However, at the time of their separation of employment, the Employer failed to pay accrued, but unused vacation wages at the “final rate” of compensation for aggrieved employees, including all non-discretionary bonuses, commissions, and other forms of incentive pay. As a result, the Employer also failed to pay all vacation wages to Claimant and the aggrieved employees.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE AND COMPLETE WAGE STATEMENTS

(Labor Code § 226 and the “Records” section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: (1) gross wages earned; (2) total hours worked by an 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 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 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.

“An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorney's fees.”

Here, for example, the Employer's wage statements incorrectly state the hours worked by the aggrieved employees, and the net and gross wages that should have been earned as a result of the Employer's policy of requiring aggrieved employees to work off-the-clock. The Employer's wage statements also fail to include the correct rate of pay due to the Employer's failure to correctly calculate overtime and vacation pay, and due to the Employer's unlawful deductions of Aggrieved Employees' wages. Moreover, the Employer's wage statements failed to include the total hours worked by Claimant and the aggrieved employees during each pay period. As a result, the Employer failed to provide Claimant and other current and former employees with accurate, timely, itemized wage statements complying with the requirements of the Labor Code and applicable IWC Wage Order.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE SUITABLE SEATING

(Labor Code § 1198 and Section 14 of the applicable IWC Wage Order)

California Labor Code section 1198 makes it illegal to employ under conditions of labor that are prohibited by the applicable Wage Order.

The Applicable IWC Wage Order Section(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonable permits the use of seats.” Section 14(B) further provides that “[w]hen employees are not engaged in the active duties of their employment and that nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

During the relevant time period, Employer violated these statutes because its employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n 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.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “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.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an 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.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100 percent of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. For example, Claimant and aggrieved employees were required to purchase masks, hand sanitizer, and other Personal Protective Equipment (“PPE”) without reimbursement. In addition, Claimant and other aggrieved employees were consistently required to use their personal cellular phone for business purposes including to communicate with customers to generate new leads, assist with closing transactions, and to attend team work meetings – without reimbursement. Furthermore, Claimant and other aggrieved employees incurred additional costs of having to use their home internet for work-related purposes without reimbursement for a reasonable percentage of the home internet costs, equipment, and fees. For example, Claimant and other aggrieved employees relied on use of their home internet to connect to their iPads and computers

in order to communicate with customers outside of work hours and to communicate with supervisors and co-workers related to their work duties, among other things. As such, the Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of their duties.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25 percent of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid. Employer maintained an illegal rounding and time keeping policy, wherein employees were required to record their time punches in quarter-hour increments, rather than when they actually started and ended work. The Employer also failed to keep full and complete records of meal breaks provided, if any. In addition, the Employer failed to keep records of compliant wage statements, if any.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages, and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25 percent of the penalty assessment. Claimant has already incurred actual

damages, costs and attorney's fees and will continue to incur as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Accordingly, Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Lebe', with a stylized flourish at the end.

Jonathan M. Lebe, Esq.
Attorney for Angel Mondragon,
Individually and on behalf of all other Aggrieved Employees