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Brenda L. McCormick
Executive Officer and Clerk

Erica Martinez
Erica Martinez

Andrew C. Ellison, SBN 283884
STRAUSS & STRAUSS, APC
226 W. Ojai Avenue #101-325
Ojai, CA 93023
Telephone: (805) 641-6600
Email: andrew@strausslawyers.com

Attorneys for Plaintiffs Huckleberry Taylor and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

HUCKLEBERRY TAYLOR, an
Individual, for himself and those similarly
situated,

Plaintiffs,

v.

NUSUN POWER, LLC, a Delaware
limited liability company; RISE ENERGY,
LLC, a Delaware limited liability company;
JORDAN BINING, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. 2023CUOE013641

CLASS ACTION

COMPLAINT

Plaintiff HUCKLEBERRY TAYLOR (hereinafter "Plaintiff"), by and through his
attorneys of record, hereby alleges on personal knowledge as to himself, and on information
and belief as to all others, as follows:

PARTY ALLEGATIONS

1. Defendant NUSUN POWER, LLC ("NUSUN") is a limited liability company

1 organized and existing under the laws of the State of Delaware, which lawfully or unlawfully
2 does business in California. Although NUSUN purportedly conducts sales and installation of
3 solar equipment in the State of California, NUSUN is not licensed by the California Contractor's
4 State License Board.

5 2. Defendant RISE ENERGY, LLC ("RISE") is a limited liability company
6 organized and existing under the laws of the State of Delaware which lawfully or unlawfully
7 does business in California as "Rise Energy." Although Rise Energy purportedly conducts sales
8 and installation of solar equipment in the State of California, RISE is not licensed by the
9 California Contractor's State License Board.

10 3. Defendant JORDAN BINING ("BINING"), is an individual, a resident of state
11 unknown and the founder and Manager of Defendants NUSUN and RISE. As such, BINING
12 was an owner, director, officer, managing agent and other person acting on behalf of NUSUN
13 and RISE in connection with the creation, management and enforcement of the wage, hours and
14 working conditions, classifications and decisions described in this Complaint, was responsible
15 for causing and supervising RISE and NUSUN's business and employment activities occurring
16 in Ventura County and the State of California, knowing advised NUSUN in connection with the
17 foregoing, and therefore, is personally liable for the obligations of Defendants RISE and
18 NUSUN arising under this Complaint pursuant, inter alia, to Labor Code Sections 226.8, 558.1,
19 1197.1, 2753 and 2698, et seq. BINING is also the alleged alter ego of Defendants RISE and
20 NUSUN, and each of the other Defendants. NUSUN, RISE, and BINING are collectively
21 referred to as "DEFENDANTS"

22 4. Plaintiff HUCKLEBERRY TAYLOR is an adult resident of the State of
23 California. Plaintiff Huckleberry Taylor was hired by Defendants in or about May 2021 and
24 worked in door-to-door lead generation and door-to-door sales of residential solar systems for
25 DEFENDANTS in California during the one and four-year periods preceding the filing of the
26 original Complaint.

27 5. In 2023, purported independent contractors and employees working on behalf of
28 RISE began to be required to report to and were paid by NUSUN.

1 6. This action is brought to seek remedies from DEFENDANTS for misclassification
2 and certain wage and hour violations that were committed by DEFENDANTS both during the
3 time that RISE and NUSUN employed Plaintiff and the Class Members (as defined below) and
4 during the one- and four-year periods preceding the date of this Complaint until the date of
5 Judgment.

6 7. Each Defendant, including those named as DOES 1 through 100, was an owner,
7 director, officer, managing agent and other person acting on behalf of DEFENDANTS in
8 connection with the creation, management and enforcement of the wage, hours and working
9 conditions, classifications and decisions described in this Complaint, was responsible for
10 causing and supervising DEFENDANTS' business and employment activities occurring in
11 Ventura County and the State of California, knowing advised DEFENDANTS in connection
12 with the foregoing, and actively and directly participated in the unlawful and unfair business
13 practices as alleged in this Complaint.

14 8. The true names and capacities, whether individual, corporate, associate, or
15 otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
16 to Plaintiffs, who therefore sue such DOE Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that each Defendant
18 named herein, including DOES 1 through 100, is legally responsible for in some manner for the
19 unlawful acts alleged herein, and acted in all respects pertinent to this action on behalf of and/or
20 as the joint employer of Plaintiff and the Class by deriving simultaneous benefit from the hours
21 worked by DEFENDANTS' employees, exercising direct and indirect control over Plaintiff and
22 the Class, controlling Plaintiff's and the Class's conditions of employment, determining the rate
23 and method of payment of wages, and maintaining employment records. Further, Plaintiff and
24 the Class were agents of the joint employer DOE Defendants as demonstrated by branded
25 uniforms and work apparel, continuous access and use of the joint employer DOE Defendant's
26 sales portal software for the benefit of the joint employer DOE Defendants, entering into sales
27 and service contracts on behalf of the joint employer DOE Defendants, quoting of pricing and
28 contract terms on behalf of the joint employer DOE Defendants, and receiving training and

1 direction by the joint employer DOE Defendants on required policies and procedures. Each
2 Defendant named herein, including DOES 1 through 100, acted as an agent of the other
3 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
4 and the acts of each Defendant are legally attributable to the other Defendants.

5 9. Plaintiff is are informed and believes and thereon alleges that each of the
6 Defendants is the agent, joint venture, managing agent, alter ego and/or employee of each of the
7 remaining Defendants and in doing the things hereinafter alleged, each was acting within the
8 course and scope of said agency, employment and/or joint venture with the advance knowledge,
9 acquiescence or subsequent ratification of each and every remaining Defendant in exercising
10 control over the wages, hours and working conditions of Plaintiff and the Class, suffered or
11 permitted Plaintiff and the Class to work, and otherwise engaged Plaintiff and the Class to work.

12 **ALTER EGO ALLEGATIONS**

13 10. Plaintiff is informed and believes and thereon alleges that some of the individuals,
14 corporations, limited liability companies, and entities named as Defendants herein, including as
15 Defendants DOES 1 through 100, (hereinafter occasionally collectively referred to as the
16 "ALTER EGO DEFENDANTS"), and each of them, were at all times relevant the alter ego
17 individuals, corporations, limited liability companies or entities of each other Defendant by
18 reason of the following:

19 11. Plaintiff is informed and believes and thereon alleges that said Defendants, and
20 each of them, at all times herein mentioned, dominated, influenced and controlled each other
21 Defendant and each of the ALTER EGO DEFENDANTS and the officers and managers thereof
22 as well as the business, property, and affairs of each of said individuals, corporations, limited
23 liability companies or entities or entities.

24 12. Plaintiff is informed and believes and thereon alleges that, at all times herein
25 mentioned, there existed and now exists a unity of interest and ownership between
26 DEFENDANTS, and each of them, and each of the ALTER EGO DEFENDANTS; the
27 individuality and separateness of said Defendants and each of the ALTER EGO DEFENDANTS
28 have ceased.

1 13. Plaintiff is informed and believes and thereon alleges that, at all times since the
2 incorporation of each, each ALTER EGO DEFENDANT has been and now is a mere shell and
3 naked framework which said Defendants, and each of them, used as a conduit for the conduct
4 of their personal business, property and affairs.

5 14. Plaintiff is informed and believes and thereon alleges that, at all times herein
6 mentioned, DEFENDANTS, and each of them, and each of the ALTER EGO DEFENDANTS
7 was organized by said Defendants as a device to avoid individual liability and for the purpose
8 of substituting financially irresponsible employer corporations, limited liability companies or
9 entities in the place and stead of said individual defendants, limited liability companies or
10 entities and each of them, and accordingly, each ALTER EGO DEFENDANT was formed with
11 capitalization totally inadequate for the business in which said corporation, limited liability
12 company or entity was engaged.

13 15. Plaintiff is informed and believes and thereon alleges that, at all times herein
14 mentioned, DEFENDANTS, and each of them, and each of the ALTER EGO DEFENDANTS
15 are and were an owner, director, officer, managing agent and other person or entity acting on
16 behalf of RISE and NUSUN in connection with the creation, management and enforcement of
17 the wage, hours and working conditions, classifications and decisions described in this
18 Complaint, was responsible for causing and supervising DEFENDANTS' business and
19 employment activities occurring in Ventura County and the State of California, knowing advised
20 DEFENDANTS in connection with the foregoing, and therefore, is personally liable for the
21 obligations of DEFENDANTS arising under this Complaint, inter alia, pursuant to Labor Code
22 Sections 226.8, 558.1, 1197.1, 2753, and 2698 et seq.

23 16. Plaintiff is informed and believes and thereon alleges that, at all times herein
24 mentioned, DEFENDANTS, and each of them, and each of the ALTER EGO DEFENDANTS
25 are and were the joint employers of Plaintiff and the putative Class because the ALTER EGO
26 DEFENDANT derived simultaneous benefit from the hours worked by NUSUN and RISE
27 employees and exercised direct and indirect control over Plaintiff and the Class through
28 mandatory directions to NUSUN and RISE that control NUSUN's and RISE's employees. The

1 ALTER EGO DEFENDANTS, as joint employers, controlled Plaintiffs' and the Class'
2 conditions of employment, determined the rate and method of payment of wages, and
3 maintained employment records. Further, Plaintiff and the Class were agents of the joint
4 employer ALTER EGO DEFENDANTS as demonstrated by branded uniforms and work
5 apparel, joint employer sales software portal access, entering into sales and service contracts on
6 behalf of the joint employer ALTER EGO DEFENDANTS, quoting of pricing and contract
7 terms on behalf of the joint employer ALTER EGO DEFENDANTS, and receiving training and
8 direction by the joint employer ALTER EGO DEFENDANTS on required policies and
9 procedures.

10 17. Plaintiff is informed and believes and thereon alleges that each Defendant and/or
11 ALTER EGO DEFENDANT is insolvent and that profits of said ALTER EGO DEFENDANTS
12 were taken by said ALTER EGO DEFENDANTS.

13 18. By virtue of the foregoing, adherence to the fiction of the separate corporate
14 existence of each of the ALTER EGO DEFENDANTS would, under the circumstances, sanction
15 a fraud and promote injustice in that Plaintiffs would be unable to realize upon any judgment in
16 their favor.

17 19. Plaintiff is informed and believes and thereon alleges that, at all times relevant
18 hereto, the individual defendants and the ALTER EGO DEFENDANTS acted for each other in
19 connection with the conduct hereinafter alleged and that each of them performed the acts
20 complained of herein or breached the duties herein complained of as agents of each other and
21 each is therefore fully liable for the acts of the other.

22 **JURISDICTION & VENUE**

23 20. This Court has jurisdiction over this controversy under Article 6, § 10 of the
24 California Constitution and California Code of Civil Procedure § 410.10 and various provisions
25 of the Labor Code as alleged herein. Venue as to each Defendant is proper in this judicial district,
26 pursuant to Code of Civil Procedure § 395(a) and Labor Code § 925 in that Plaintiff and a
27 substantial number of members of the Class on whose behalf this action is brought work or
28 worked in DEFENDANTS' facilities in this judicial district and otherwise performed

1 employment services in this judicial district, a substantial part of the events or omissions giving
2 rise to the claims stated herein arose within this judicial district and and/or each Defendant either
3 is found, maintains offices, transacts business, and/or has an agent therein.

4 21. This Court has both general and specific personal jurisdiction over Defendants
5 NUSUN, RISE and BINING, because each Defendant has purposefully established minimum
6 contacts in the State of California such that maintenance of this lawsuit against them in
7 California does not offend the traditional notions of fair play and substantial justice.

8 22. This Court has general personal jurisdiction over Defendants NUSUN, RISE and
9 BINING, because each has substantial, continuous and systematic minimum contacts with
10 California so that they should reasonably anticipate being hailed into court in here by
11 maintaining a substantial, continuous and systematic economic presence in California by
12 conducting sales and business activities in California; maintaining California offices; coming to
13 California several times each year to meet with the Class Members at NUSUN locations
14 throughout the state to conduct sales meetings, trainings, seminars; recruiting California
15 employees, at various California locations, throughout California; selling products and services
16 on behalf of businesses headquartered in California; traveling to California to meet with
17 business partners headquartered in California; conducting a substantial majority of their sales
18 and revenue from California; and promoting solar products for sale to California consumers by
19 California employees, including Plaintiff and the Class. Indeed, NUSUN was introduced in
20 California in September 2022, when BINING recruited out of state employees to travel to
21 Ventura for meetings, interviews, hiring and training in the launch NUSUN where BINING
22 personally presented the compensation plans, and personally hired and signed up the new
23 employees from RISE.

24 23. This Court also has specific personal jurisdiction over Defendants NUSUN, RISE
25 and Bining, because 1) each purposefully availed themselves of California benefits as described
26 in this Complaint, 2) this controversy arises out of their contacts and employment activities
27 within California as described in this Complaint, and 3) this Court's exercise of personal
28 jurisdiction comports with fair play and substantial justice.

1 24. Jurisdiction over Defendants NUSUN, RISE, and Bining, comports with fair play
2 and substantial justice because this lawsuit is directly related to each Defendant's activities and
3 contacts in California, the vast majority of available evidence and witnesses are located in
4 California, the costs and burdens of bringing this action in a forum outside of California would
5 be extremely high to the Plaintiff and the Class, and California's public policy (Labor Code §
6 925) of protecting California employees would be best achieved in California.

7 **GENERAL ALLEGATIONS**

8 25. This is an action for relief from DEFENDANTS' misclassification of their
9 California door-to-door sales and lead-generation employees (hereafter "Sales Representatives"
10 and "Lead Generators," respectively) also known as "direct sellers," who were improperly
11 treated as independent contractors and, in the process, denied numerous protections of the
12 California Labor Code afforded employees, as further alleged herein.

13 26. DEFENDANTS and DOES 1 through 100 are solar contractors in the State of
14 California who sell and install residential solar systems to California residents. As such,
15 DEFENDANTS are operating as a "contractor" as defined by Business and Professions Code §
16 7150.1 and, more specifically, a "home improvement contractor," as defined in Business and
17 Professions Code § 7150.1.

18 27. To facilitate the sales of solar systems, DEFENDANTS and DOES 1 through 100
19 employ numerous California residents as Sales Representatives and Lead Generators to conduct
20 door-to-door sales and lead generation in counties throughout the State of California. Each
21 person employed as a Sales Representative was required by California law to obtain a "home
22 improvement salesperson" license issued by the Contractor's State Licensing Board as defined
23 by Business and Professions Code § 7150.1 (the "HIS License").

24 28. During the one- and four-year periods preceding the filing of this Complaint,
25 DEFENDANTS and DOES 1 through 100 required Plaintiff and the Class to enter into a
26 "Energy Consultant Agreement" or "Solar Representative Agreement" (the "Employment
27 Agreements") upon hiring which outlined their duties and obligations and compensation
28 structure. The Employment Agreements provided that Plaintiff and the Class were not and

1 would be not treated as employees for federal and state tax purposes, but instead as independent
2 contractors and “direct sellers.” However, Plaintiff and similarly situated Sales Representatives
3 and Lead Generators, who were classified as direct sellers, were actually misclassified as
4 independent contractors for all purposes. Upon information and belief, DEFENDANTS and
5 DOES 1 through 100 did not provide worker’s compensation or unemployment insurance or
6 afford Plaintiff and members of the Class any of the rights or protections afforded to employees
7 under the California Labor Code, as alleged herein.

8 29. During all relevant times, DEFENDANTS and DOES 1 through 100 treated
9 Plaintiff and the putative class as independent contractors and not employees by failing to pay
10 minimum wage for mandatory training time and non-exempt work time, failing to reimburse for
11 business expenses, failing to provide accurate itemized wage statements, failing to pay the
12 employer’s share of payroll taxes and benefits, and otherwise denying Plaintiff and the putative
13 class numerous protections of the California Labor Code afforded to employees, as further
14 alleged herein.

15 30. Plaintiff and the putative Class were not properly classified as independent
16 contractors because:

17 (a) California Labor Code § 2750.5 imposes a presumption that a worker performing
18 services for which a license is required pursuant to the Contractor’s State License Law, or who
19 is performing such services for a person who is required to obtain such a license, is an employee
20 rather than an independent contractor.

21 (b) California Unemployment Insurance Code §§ 621.5 and 13004.5 define as a statutory
22 employee any individual who is an employee, pursuant to § 2750.5 of the Labor Code, of a
23 person who holds or is required to obtain a valid California contractor’s license.

24 31. In addition to being statutory employees under California Labor Code § 2750.5
25 and California Unemployment Insurance Code §§ 621.5 and 13004.5, Plaintiff and the Class
26 Members were not properly classified as independent contractors because DEFENDANTS and
27 DOES 1 through 100 cannot establish Plaintiff and the Class Members were independent
28 contractors pursuant to the standards set forth in *S.G. Borello & Sons, Inc. v. Dept. of Industrial*

1 *Relations* (1989) 48 Cal.3d 341 or *Dynamex Operations West, Inc. v. Superior Court of Los*
2 *Angeles*, 4 Cal.5th 903 (“*Dynamex*”).

3 32. Pursuant to the California Supreme Court’s holding in *Dynamex*, DEFENDANTS
4 and DOES 1 through 100 have the burden of proving that Plaintiff and the Class members were
5 independent contractors, not intended to be included in the applicable Wage Order coverage, by
6 proving each of the following three factors: (a) Plaintiff and the Class members were free from
7 control and direction of DEFENDANTS and DOES 1 through 100 in connection with the
8 performance of the work, both under contract for such work, and in fact; (b) Plaintiff and the
9 Class members performed work outside the usual course of business of DEFENDANTS and
10 DOES 1 through 100; and (c) Plaintiff and the Class members are/were customarily engaged in
11 an independently established trade, occupation or business of the same nature as the work
12 performed (commonly referred to as the “ABC Standard”). Absent all three factors, a worker
13 hired by an entity is presumed an employee and protected under the applicable Wage Orders,
14 under California law

15 33. In addition to the other reasons set forth herein, Plaintiff and the Class Members
16 were misclassified as independent contractors because:

17 (a) Plaintiff and the putative Class, both contractually and actually, were not
18 free from the control and direction of DEFENDANTS and DOES 1 through 100 in connection
19 with performance of the sales duties or lead generation activities because, inter alia,
20 DEFENDANTS and DOES 1 through 100 established and approved prices sold to customers,
21 established territories and sales quotas, required mandatory training and meetings, required
22 Sales Representatives and Lead Generators to report in from the field, required Sales
23 Representatives and Lead Generators to train new hires, required the wearing of uniforms,
24 required Sales Representatives and Lead Generators to utilize their lead-generation and bidding
25 software, disciplined Sales Representatives and Lead Generators for not meeting sales or lead
26 quotas, failing to attend mandatory meetings and trainings, or failing to comply with other
27 company policies, and required Sales Representatives and Lead Generators to provide exclusive
28 services to DEFENDANTS and DOES 1 through 100 that were terminable at will by

1 DEFENDANTS and DOES 1 through 100;

2 (b) Plaintiff and the putative Class did not perform work that was outside the
3 usual course of the work of DEFENDANTS and DOES 1 through 100 because they generated
4 leads for and sold residential solar systems for installation by DEFENDANTS and DOES 1
5 through 100 or their affiliates;

6 (c) Plaintiff and the Class Members were not involved in an independently
7 established business because they were required to provide exclusive service to DEFENDANTS
8 and DOES 1 through 100, and many were terminated for referring leads to other solar
9 companies;

10 (d) Although DEFENDANTS and DOES 1 through 100 treated Plaintiff and
11 the Class Members as independent contractors for all purposes, there were numerous cumulative
12 factors indicating that the actual relationship was not a bona fide independent contractor
13 relationship because, inter alia, Plaintiff and the Class Members (i) had no substantial investment
14 other than personal services in the business, (ii) were precluded from holding themselves to be
15 in business independently, (iii) were not bargaining for a contract to complete a specific project
16 for compensation by project and had no ability to negotiate the amount of compensation to be
17 paid for their services, (iv) did not control the time and place where the work was performed
18 because they were subject to mandatory sales and training meetings and were required to check
19 in from the field, (v) did not create or supply the sales and marketing materials or the software
20 used to complete sales; (vi) did not hire their own employees to assist of facilitate sales, (vii)
21 performed work that is solely in the course of the work of DEFENDANTS and DOES 1 through
22 100, (viii) performed work that required no particular skill independent of the business of
23 DEFENDANTS and DOES 1 through 100; and (ix) the relationship was severable or terminable
24 at will by DEFENDANTS and DOES 1 through 100. Plaintiff is informed and believes that
25 during all relevant times, DEFENDANTS and DOES 1 through 100 improperly classified
26 Plaintiff and the Class as exempt employees to avoid paying minimum wage, lawful overtime
27 and paid rest periods for non-exempt worktime, such as mandatory training, meetings, and other
28 non-sales tasks for which lawful minimum wage, overtime, and paid rest periods were not

1 provided.

2 **CLASS ACTION ALLEGATIONS**

3 34. This action may be properly maintained as a class action pursuant to § 382 of the
4 Code of Civil Procedure. The putative classes are sufficiently numerous, since they are estimated
5 to include hundreds of persons throughout California, the joinder of whom in one action is
6 impracticable, and the disposition of whose claims in a class action will provide substantial
7 benefits to both the parties and the Court.

8 35. Class Definition: Without prejudice to later revision, the Class which Plaintiff
9 seeks to represent and certify is composed of: All Sales Representatives and Lead Generators
10 who performed services as purported independent contractors for Nusun Power, LLC and/or
11 Rise Energy, LLC and/or any of their subsidiaries and/or predecessors within the four years
12 prior to the filing of this action through the time of trial (the "Class Period").

13 36. **Ascertainable Class:** The Class is ascertainable in that each member can be
14 identified using information contained in the records of DEFENDANTS and DOES 1 through
15 100.

16 37. **Common Questions of Law or Fact Predominate:** There is a well-defined
17 community of interest in the questions of law and fact involved affecting the parties to be
18 represented in the Class. The questions of law and fact common to the Class predominate over
19 questions which may affect individual members of the Class. These questions of law and fact
20 include, but are not limited to, the following:

21 (a) Whether DEFENDANTS and DOES 1 through 100 misclassified Plaintiff
22 and the Class members as independent contractors for all purposes, and thereby deprived them
23 of the benefits and protections afforded employees under California law;

24 (b) Whether DEFENDANTS and DOES 1 through 100 paid Plaintiff and the
25 Class members all earned wages promptly when earned;

26 (c) Whether DEFENDANTS and DOES 1 through 100 required Plaintiff and
27 the Class members to pay necessary expenses or losses incurred by them in direct consequence
28 to the discharge of their duties while employed by DEFENDANTS and DOES 1 through 100 ,

1 in violation of § 2802;

2 (d) Whether DEFENDANTS and DOES 1 through 100 failed to pay Plaintiff
3 and the Class members for all worked hours at the applicable minimum rates in violation of §§
4 1194, 1194.2, 1197 & 510.

5 (e) Whether DEFENDANTS and DOES 1 through 100 failed to promptly pay
6 Plaintiff and the Class members all wages owed within 72 hours of the date they quit or were
7 terminated in violation of Labor Code §§ 201, 202, and 203;

8 (f) Whether DEFENDANTS and DOES 1 through 100 failed to provide
9 Plaintiff and the Class members with accurate itemized wage statements, in violation of §
10 226(a);

11 (g) Whether DEFENDANTS and DOES 1 through 100 coerced Plaintiff and
12 the Class members to wear uniforms and other products from DEFENDANTS and DOES 1
13 through 100 ;

14 (h) Whether DEFENDANTS and DOES 1 through 100 violated Sections 201,
15 202, 203, 204, 218, 218.5, 218.6, 221, 226(a), 226.8, 432.5, 558.1, 1194, 1194.2, 1197, 1197.1,
16 2753 and 2698 & 2802 of the California Labor Code, and § 17200 of the California Bus. & Prof.
17 Code and the applicable IWC Orders, as alleged herein;

18 (i) Whether DEFENDANTS and DOES 1 through 100 should be ordered to
19 disgorge all monies unlawfully and unfairly received from Plaintiffs and Class Members; and

20 (j) Whether DEFENDANTS and DOES 1 through 100 should be ordered to
21 take corrective actions and provide notice regarding its violations of California's Labor Code.

22 38. **Numerosity:** The Class is so numerous that the individual joinder of all members
23 is impractical under the circumstances of this case. While the exact number of members of the
24 Class is unknown to Plaintiff at this time, Plaintiff is informed and believes the Class consists
25 of hundreds of individuals. Individual joinder of each member of the Class is also impracticable
26 because the individual members are geographically disbursed throughout California.

27 39. **Typicality:** Plaintiff and the Class members' claims arise from and were caused
28 by the wrongful conduct of DEFENDANTS and DOES 1 through 100. Plaintiff is asserting

1 claims that are typical of the claims of each member of the Class. Plaintiff is like all other
2 members of the Class because Plaintiff have suffered the same harm as those suffered by the
3 Class. Since Plaintiff's claims and the claims of each member of the Class all derive from a
4 common nucleus of operative facts, Plaintiff is asserting claims that are typical of the claims of
5 the entirety of the Class.

6 40. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests
7 of the Class in that he has no disabling conflicts of interest that would be antagonistic to those
8 of the other members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the
9 members of the Class, and the infringement of the rights and the damages he has suffered are
10 typical of all other members of the Class so that he will adequately represent the Class. Plaintiff
11 has retained competent counsel experienced in class action litigation to further ensure such
12 protection and intends to prosecute this action vigorously.

13 41. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
14 and Class make the use of the class action format a particularly efficient and appropriate
15 procedure to afford relief to Plaintiff and Class for the wrongs alleged because:

16 (a) The individual damages involved, while not insubstantial, are such that
17 individual actions or other individual remedies are impracticable and litigating individual
18 actions would be too costly;

19 (b) This case involves multiple large businesses and a large number of
20 individual residents with many relatively small claims with common issues of law and fact;

21 (c) If each member of the Class were required to file an individual lawsuit,
22 DEFENDANTS and DOES 1 through 100 would necessarily gain an unconscionable advantage
23 since they would be able to exploit and overwhelm the limited resources of each individual
24 member of the Class with their vastly superior financial and legal resources;

25 (d) The costs of individual suits could unreasonably consume the amounts that
26 would be recovered;

27 (e) Proof of a common business practice or factual pattern which Plaintiff
28 experienced is representative of that experienced by the Class and will establish the right of each

1 of the members to recover on the causes of action alleged; and

2 (f) Individual actions would create a risk of inconsistent results and would be
3 unnecessary and duplicative of this litigation.

4 42. Notice to the members of the Class may be made by e-mail or first-class mail
5 addressed to all persons who have been individually identified by DEFENDANTS and DOES 1
6 through 100 through access to their records. Alternatively, if DEFENDANTS and DOES 1
7 through 100 cannot produce a list of Class members' email addresses or names and addresses,
8 the members of the Class may be notified by publication in the appropriate media outlets, and
9 by posting notices in places of business of DEFENDANTS and DOES 1 through 100 in the State
10 of California.

11 43. Plaintiff and the Class have all similarly suffered irreparable harm and damages
12 as a result of the unlawful and wrongful conduct of DEFENDANTS and DOES 1 through 100.
13 This action will provide substantial benefits to Plaintiff and the Class and the public since, absent
14 this action, Plaintiff and the members of the Class will continue to suffer losses, thereby allowing
15 violations of law by DEFENDANTS and DOES 1 through 100 to proceed without remedy and
16 allowing DEFENDANTS and DOES 1 through 100 to retain the proceeds of their unlawful
17 practices.

18 **FIRST CAUSE OF ACTION**

19 **Violation of Labor Code § 2802 – Expense Reimbursement**

20 **As Against DEFENDANTS and DOES 1-100**

21 44. Plaintiff hereby incorporates all previous paragraphs by this reference.

22 45. Labor Code § 2802(a) provides, that “[a]n employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties...”

25 46. During the Class Period, DEFENDANTS and DOES 1 through 100 misclassified
26 Plaintiff and the Class members as “direct sellers” and independent contractors, rather than as
27 employees, and failed to pay including but not limited to, the defendants’ lawful portion of state
28 income tax contributions, state unemployment insurance contributions, and contributions to the

1 state disability fund. As a result of the misclassification of Plaintiff and the Class members as
2 “direct sellers” and independent contractors, Plaintiff and the Class members were required to
3 pay one hundred percent of all payroll taxes incurred in direct consequence to the discharge of
4 their duties while employed by DEFENDANTS and DOES 1 through 100 during the Class
5 Period.

6 47. During the Class Period, DEFENDANTS and DOES 1 through 100 additionally
7 failed to indemnify from and reimburse Plaintiff and the Class members for all business
8 expenses incurred by them, including rent, uniforms, personal cellular phones, data plans and
9 personal vehicle usage, in violation of this section.

10 48. During the Class Period, Plaintiff and the Class members were required to connect
11 remotely to NUSUN’s server through a proprietary sales program (app), through which
12 management monitored their locations via GPS. If Plaintiff and the Class members were unable
13 to connect to NUSUN’s server through the sales platform, they were unable to complete the
14 work order process for sales made while out in the field. The sales platform was only compatible
15 with Apple brand devices. As a result, Plaintiff and the Class members were required to
16 purchase iPads, iPhones, and/or other similar Apple devices, as necessary to complete work
17 orders in direct consequence to discharge of their duties. DEFENDANTS and DOES 1 through
18 100 failed to indemnify from and reimburse Plaintiff and the Class members for same, in
19 violation of this section.

20 49. The acts, omissions, and practices of DEFENDANTS and DOES 1 through 100
21 as alleged herein constituted violations of Labor Code § 2802.

22 50. Pursuant to § 2802, subd. (c), as representative of the Class, Plaintiff seeks to
23 recover all necessary expenditures or losses incurred by Plaintiff and the Class members,
24 including all reasonable costs, attorneys’ fees and interest accruing from the date of expenditure
25 or loss.

26 **SECOND CAUSE OF ACTION**

27 **Violation of Labor Code §§ 201, 202, 204 & 218 – Unpaid Wages**

28 **As Against DEFENDANTS and DOES 1-100**

1 51. Plaintiff hereby incorporates all previous paragraphs by this reference.

2 52. California has a strong public policy that favors full and prompt payment of wages
3 due an employee because “[i]t has long been recognized that wages are not ordinary debts, that
4 they may be preferred over other claims, and that, because of the economic position of the
5 average worker and, in particular, his dependence on wages for the necessities of life for himself
6 and his family, it is essential to the public welfare that he receive his pay when it is due.” (*Kerr’s*
7 *Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 326, internal
8 quotes omitted.)

9 53. Labor Code §§ 201, 202, 204, and 218 require that an employer pay all wages
10 earned and due to an employee promptly when earned, but not less than semi-monthly.

11 54. While Plaintiff and the Class members were employed by DEFENDANTS and
12 DOES 1 through 100 during the Class Period, DEFENDANTS and DOES 1 through 100
13 engaged in a pattern of practice of withholding payment of Plaintiff and the Class members’
14 earned commissions at the time they were earned (or otherwise capable of being calculated),
15 and failing to pay these commissions in the legally mandated period. Instead of paying the
16 entirety of such commissions when they are earned, i.e., when the solar energy
17 equipment/system sold by the Class members was installed or connected to the utility grid,
18 DEFENDANTS and DOES 1 through 100 paid only a portion of these wages when earned, and
19 often withheld the remainder in an effort to ensure longer employee retention, or to confuse and
20 discourage the employee. Often employees were cut off by DEFENDANTS and DOES 1
21 through 100, constructively terminated, and simply not paid commissions. DEFENDANTS and
22 DOES 1 through 100 therefore willfully failed to pay Plaintiff and the Class all commissions
23 earned by them in violation of this section.

24 55. DEFENDANTS and DOES 1 through 100 illegally deducted housing costs from
25 the wages of Plaintiff and the members of the Class.

26 56. While Plaintiff and the Class members were employed by DEFENDANTS and
27 DOES 1 through 100 during the Class Period, DEFENDANTS and DOES 1 through 100
28 engaged in a pattern of practice of manipulating commissions and applying unlawful deductions

1 to deny Plaintiff and the Class full commissions earned, including not paying all earned wages
2 upon termination of employment.

3 57. DEFENDANTS and DOES 1 through 100 also failed to timely pay Plaintiff and
4 the Class promptly for all earned wages withheld to buy uniforms and other expenses for the
5 benefit of customers.

6 58. The acts, omissions, and practices of DEFENDANTS and DOES 1 through 100,
7 as alleged herein constituted violations of Labor Code §§ 201, 202, 204 and 218.

8 59. Pursuant to §§ 201, 202, 204 and 218, as representative of the Class, Plaintiff seeks
9 to recover all earned and unpaid wages, including all penalties, reasonable costs, attorneys' fees
10 and interest accruing from the date such wages were earned.

11 **THIRD CAUSE OF ACTION**

12 **Violation of Labor Code §§ 1194, 1194.2 & 1197 – Unpaid Minimum Wage**

13 **Against DEFENDANTS and DOES 1-100**

14 60. Plaintiff hereby incorporates all previous paragraphs by this reference.

15 61. Labor Code § 1197 requires an employer to pay an employee no less than the
16 minimum wage, as established by the Industrial Welfare Commission, for each hour worked.

17 62. Labor Code § 1194 entitles an employee receiving less than the minimum wage
18 to recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon,
19 reasonable attorney's fees, and costs of suit.

20 63. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage
21 to recover liquidated damages in an amount equal to the unpaid minimum wages and interest
22 thereon.

23 64. During the Class Period, Plaintiff and the Class were regularly required to
24 complete non-exempt work, such as initial training and non-exempt lead generation work, and
25 to attend mandatory training and work-related activities, outside of, and in addition to, regular
26 sales work. Plaintiff and the Class consistently attended mandatory employee training meetings,
27 and mandatory training sessions, both in-person and on-line, including Nusun YouTube training
28 videos. These non-sales tasks are not exempt work and Plaintiff and the Class were not paid

1 minimum wage for such work.

2 65. All of the foregoing caused Plaintiff and the Class to be compensated by
3 DEFENDANTS and DOES 1 through 100 at a rate that is less than the applicable minimum wage
4 rate in violation of California law. As a result, Plaintiff, as representative of the Class, seeks to
5 recover all earned and unpaid minimum wage, rest period premiums, including all liquidated
6 damages, reasonable costs, penalties, attorneys' fees and interest accruing from the date such
7 wages were earned.

8 **FOURTH CAUSE OF ACTION**

9 **Violation of Labor Code §§ 510 & 1194 – Unpaid Overtime**

10 **Against DEFENDANTS and DOES 1-100**

11 66. Plaintiff hereby incorporates all previous paragraph by this reference.

12 67. Labor Code § 510 requires an employer to pay overtime compensation to all
13 employees, unless they are made exempt from the overtime pay requirements by the Legislature
14 or the IWC. Plaintiff and the Class have not qualified for any exemption from the requirements
15 of Labor Code § 510 at any time relevant to this action. Therefore, Plaintiff and the Class
16 members have, at all times relevant to this action, been entitled to be paid overtime
17 compensation for all non-exempt overtime hours worked.

18 68. Labor Code § 1194 entitles an employee, receiving less than the legally required
19 overtime compensation rate for overtime worked, to recover, in a civil action, the unpaid balance
20 of overtime compensation owing, plus interest thereon, reasonable attorney's fees, and costs of
21 suit.

22 69. During the Class Period, Plaintiff and the Class regularly required, suffered, or
23 permitted to work more than eight hours per day and/or forty hours a week, and to work on all
24 seven days of the workweek, including hours in excess of eight hours on the seventh day of the
25 workweek without receiving overtime compensation for non-exempt as required by Labor Code
26 § 510.

27 70. All of the foregoing caused Plaintiff and the Class to be compensated by
28 DEFENDANTS and DOES 1 through 100 at a rate that is less than the applicable overtime rate

1 in violation of California law. As a result, Plaintiffs, as representatives of the Class, seeks to
2 recover all earned and unpaid overtime, including all liquidated damages, reasonable costs,
3 penalties, attorneys' fees and interest accruing from the date such wages were earned.

4 **FIFTH CAUSE OF ACTION**

5 **Violation of Labor Code §§ 201, 202, 203 & 204 – Waiting Time Penalties**

6 **Against DEFENDANTS and DOES 1-100**

7 71. Plaintiff hereby incorporates all previous paragraphs by this reference.

8 72. Labor Code § 201 requires an employer who discharges an employee to pay all
9 compensation due and owing to that employee immediately upon discharge.

10 73. Labor Code § 202 requires an employer to pay all compensation due and owing
11 to an employee who quits within 72 hours of that employee quitting, unless the employee
12 provides at least 72 hours' notice of quitting, in which case all compensation is due at the end
13 of the employee's final day of work.

14 74. Labor Code § 203 provides that if an employer willfully fails to pay compensation
15 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting
16 time penalties in the form of continued compensation of up to 30 workdays

17 75. As asserted above, during the Class Period, DEFENDANTS and DOES 1 through
18 100 engaged in a pattern of practice of intentionally and willfully withholding payment of
19 Plaintiff and the Class members' earned wages at the termination of employment.

20 76. As a result, Plaintiff, as the representative of the Class, seeks to recover statutory
21 penalties pursuant to Labor Code §§ 201-203, attorneys' fees, and interest accruing from the
22 date such wages were earned.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of Labor Code § 226(a) – Inaccurate Itemized Wage Statements**

25 **As Against DEFENDANTS and DOES 1-100**

26 77. Plaintiff hereby incorporates all previous paragraphs by this reference.

27 78. Labor Code § 226(a) requires that employers furnish accurate itemized wage
28 statements showing no less than: (1) gross wages earned, (2) total hours worked by the

1 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
2 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
3 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
5 and only the last four digits of his or her social security number, (8) the name and address of the
6 legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
7 and the corresponding number of hours worked at each hourly rate by the employee.

8 79. During the Class Period and especially during such times that Plaintiff and the
9 Class engaged in non-exempt work activities, the wage statements provided by DEFENDANTS
10 and DOES 1 through 100 to Plaintiffs and the Class failed to comply with the requirements of §
11 226(a) by not providing all the information required by this section.

12 80. Plaintiff and the Class have therefore suffered an injury as a result of defendants'
13 knowing and intentional violation of § 226(a).

14 81. Plaintiff, as representative of the Class, seeks to recover the greater of all actual
15 damages or \$50.00 for the initial pay period in which a violation occurred and \$100.00 for each
16 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, attorney
17 fees, and costs of suit under Labor Code §226(e). Plaintiff also seeks injunctive relief in the form
18 of an order enjoining DEFENDANTS and DOES 1 through 100 from further violations of the
19 law.

20 **SEVENTH CAUSE OF ACTION**

21 **Violation of Labor Code § 226.7 – Rest Period Premiums**

22 **As Against DEFENDANTS and DOES 1-100**

23 82. Plaintiff hereby incorporates all previous paragraphs by this reference.

24 83. California employees are entitled to “a *paid* 10-minute rest period per four hours
25 of work.” (8 Cal. Code Regs., § 11070, subd. 12(A).)

26 84. “If an employer fails to provide an employee a ... rest ... period in accordance
27 with a state law..., the employer shall pay the employee one additional hour of pay at the
28 employee’s regular rate of compensation for each workday that the ... rest ... period is not

1 provided.” (Lab. Code, § 226.7, subd. (c).)

2 85. By not paying Plaintiff and the Class for their rest periods, DEFENDANTS and
3 DOES 1 through 100 did not provide rest periods in accordance with California law. Plaintiff
4 therefore seeks one additional hour of pay at each employee’s regular rate of compensation for
5 each workday that such paid rest period was not so provided to Plaintiff and the Class, pursuant
6 to § 226.7.

7 86. Plaintiff seeks interest pursuant to law on all amounts owed for rest period
8 premiums under § 226.7.

9 87. Plaintiff further seeks attorney’s fees and costs pursuant to law.

10 **EIGHTH CAUSE OF ACTION**

11 **Violation of California’s Unfair Competition Law**

12 **As Against DEFENDANTS and DOES 1-100**

13 88. Plaintiff hereby incorporates all previous paragraphs by this reference.

14 89. The acts, omissions, and practices of DEFENDANTS and DOES 1 through 100
15 alleged herein constituted unlawful and unfair business acts and practices within the meaning of
16 § 17200 et seq. of the California Business & Professions Code.

17 90. During the Class Period, DEFENDANTS and DOES 1 through 100 engaged in
18 “unlawful” business acts or practices in that DEFENDANTS and DOES 1 through 100 violated,
19 inter alia, all prior allegations in this complaint, including §§ 201, 202, 203, 204, 218, 218.5,
20 218.6, 221, 226(a), 226.7, 226.8, 432.5, 1194, 1194.2, 1197, 1197.1, 2753, & 2802 of the
21 California Labor Code, also 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, Unemployment Insurance
22 Code §§ 976, 986, 987, 1110, and 13020, and by classifying Plaintiff and the Class members as
23 “direct sellers” and independent contractors, when Plaintiff and the Class members did not
24 qualify as “direct sellers” and independent contractors under California law, and withholding
25 earned but unpaid wages earned during non-exempt work time.

26 91. DEFENDANTS and DOES 1 through 100 engaged in “unfair” business acts or
27 practices in that the harm caused by their actions violates the policy or spirit of California law,
28 because its effects are comparable to a violation of the law, and it provided DEFENDANTS and

DOES 1 through 100 with an unfair competitive advantage over those businesses that abide by California law. DEFENDANTS and DOES 1 through 100 also engaged in “unfair” business acts or practices in that the harm caused by their misconduct outweighs its benefits, is immoral, unethical, oppressive, unscrupulous, or substantially injurious to the public.

92. Pursuant to § 17203 of the Business & Professions Code, as representative of the Class, Plaintiff seeks an order of this court awarding Plaintiff and the Class full restitution of all monies wrongfully acquired by DEFENDANTS and DOES 1 through 100 by their unlawful and unfair conduct, including but not limited to unpaid wages and business expenses paid or incurred by Plaintiff and the Class members, so as to restore all monies to Plaintiff and the Class that were unlawfully acquired and obtained by the unlawful and unfair conduct if DEFENDANTS and DOES 1 through 100.

93. Pursuant to § 17203 of the Business & Professions Code, as representative of the Class, Plaintiff seeks an order of the court for equitable or injunctive relief requiring DEFENDANTS and DOES 1 through 100 to take corrective actions and provide notice regarding violations of California’s Labor Code.

94. Plaintiff also seeks attorneys’ fees and interest accruing from the date such wages were wrongfully withheld by DEFENDANTS and DOES 1 through 100.

NINTH CAUSE OF ACTION

Code Civ Proc. § 1060 & Cal. Const. Art. XV § 1 – Declaratory Relief

As Against DEFENDANTS and DOES 1-100

95. Plaintiff hereby incorporates all previous paragraphs by this reference.

96. An actual controversy has arisen and now exists between Plaintiff and the Class, on the one hand, and DEFENDANTS and DOES 1 through 100, on the other. As described above, Plaintiff contends that the policies, practices, guidelines and/or procedures of DEFENDANTS and DOES 1 through 100 by which representatives like Plaintiff and the Class were classified, and thus compensated, reimbursed, and provided wage statements, are inconsistent and in violation of the laws and regulations of the State of California. Plaintiff seeks that the Court declare that Plaintiff and the Class members were unlawfully classified as

1 “direct sellers” and independent contractors and should have been classified as employees for
2 all purposes.

3 97. Another actual controversy has arisen and now exists between Plaintiff and the
4 Class, on the one hand, and DEFENDANTS and DOES 1 through 100, on the other. Plaintiff
5 contends that certain provisions and clauses of Plaintiffs’ and the Class members’ Employment
6 Agreements with DEFENDANTS and DOES 1 through 100 are void and in violation of
7 applicable California laws and regulations, including without limitation Labor Code § 432.5.
8 Plaintiff alleges that at the time of hire, DEFENDANTS and DOES 1 through 100 required as a
9 condition of employment that Plaintiff and the Class members to agree to unlawful contractual
10 provisions including, but not limited to, choice of law, choice of venue, non-competition, non-
11 solicitation, and mutual attorney fees, all of which are unlawful agreements imposed upon
12 California employees. Plaintiff seeks that the Court declare that these provisions are unlawful
13 and void as to Plaintiff and the Class members.

14 98. A third actual controversy has arisen and now exists between Plaintiff and the
15 Class, on the one hand, and DEFENDANTS and DOES 1 through 100, on the other. Plaintiff
16 contends that provisions of the Employment Agreements, regarding “Clawback Commissions;”
17 i.e., deductions from earned but yet to be paid commissions, and reimbursements to
18 DEFENDANTS and DOES 1 through 100 of earned and already paid commissions, are void
19 and in violation of California laws and regulations, including Labor Code § 432.5. Plaintiff
20 further contends that the policies, practices, and procedures of DEFENDANTS and DOES 1
21 through 100 related to the deductions of, or demands for reimbursement of, these “Clawback
22 Commissions,” are in violation of California laws and regulations, including Labor Code § 224.
23 Plaintiff alleges that DEFENDANTS and DOES 1 through 100 engaged in a pattern of practice
24 of making deductions from earned but yet-to-be-paid commissions, and unlawfully demanding
25 return of earned and already-paid commissions, for up to a 12-month period after completion of
26 all of Plaintiff’s duties and responsibilities, and based on circumstances wholly out of Plaintiff’s
27 control or influence. Such commission wages have already been earned where no other action
28 is required on the part of the employee to complete the sale leading to the commission payment.

1 (See *Schacter v. Citigroup, Inc.*, (2009) 47 Cal.4th 610, 622). Plaintiff seeks that the Court
2 declare that these provisions are unlawful and void as to Plaintiff and the Class members, and
3 the policies, practices, and procedures by which these provisions are enforced and executed are
4 unlawful.

5 99. A judicial determination of these issues and of the respective duties of Plaintiffs,
6 the Class, and DEFENDANTS and DOES 1 through 100, is necessary and appropriate at this
7 time under the circumstances.

8 100. Plaintiff also seeks an order of the court for equitable or injunctive relief requiring
9 DEFENDANTS and DOES 1 through 100 to take corrective actions and cease all future
10 enforcement of the above-referenced provisions, policies, practices, and procedures, and provide
11 notice regarding violations of California's Labor Code.

12 **TENTH CAUSE OF ACTION**

13 **Violation of California Private Attorneys General Act of 2004 –**

14 **As Against DEFENDANTS and DOES 1-100**

15 101. Plaintiff incorporates by reference and re-alleges each and every one of the
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
17 forth herein, and asserts the following on behalf of himself and all those similarly situated
18 employees of Defendants.

19 102. Pursuant to *Labor Code* sections 2698, *et seq.*, Plaintiff is entitled to recover civil
20 penalties on behalf of himself and other persons who are or were employed by the alleged
21 violator and against whom one or more of the alleged violations was committed. Plaintiff is
22 pursuing civil penalties for violations of the *Labor Code* sections set forth below.

23 103. One or more of the alleged violations set forth below was committed against
24 Plaintiff, and Plaintiff is therefore an "aggrieved employee" under *Labor Code* Section 2699(c),
25 which provides in relevant part, "(c) For purposes of this part, "aggrieved employee" means any
26 person who was employed by the alleged violator and against whom one or more of the alleged
27 violations was committed."
28

1 104. Plaintiff alleges that Plaintiff herein has violated numerous *Labor Code* sections,
2 including, but not limited to sections: 201, 202, 203, 221, 226, 226.7, 512, 1194, 2699(f), 2802;
3 and IWC Wage Order 4-2001.

4 105. *Labor Code* section 201 requires immediate payment of all wages owed at the
5 termination of employment. Within the last year, on information and belief, it is alleged that
6 members of the class have left or been terminated from Defendants' employ, and are still owed
7 commissions/wages.

8 106. *Labor Code* section 202 requires payment of all wages owed within 72 hours of
9 the resignation of an employee, unless the employee gives more than 72-hours' notice, in which
10 case wages are owed at the employee's resignation. Within the last year, on information and
11 belief, Plaintiff and other members of the Class have resigned and have not received their wages
12 owed in a timely fashion as required by section 202.

13 107. *Labor Code* section 203 establishes a statutory penalty for willful violations of
14 *Labor Code* sections 201 or 202. It is alleged that there has been a willful violation of *Labor*
15 *Code* sections 201 and 202, because Defendants have failed to pay the outstanding wages owed
16 to Plaintiff and the Class.

17 108. *Labor Code* section 221 provides that "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee."

20 109. *Labor Code* section 226, subdivision (a) requires employers to put specific
21 information on their employees' paycheck stubs. This information includes the actual number
22 of hours worked and the applicable rates of pay. Defendants herein failed to provide proper
23 itemized pay stubs to Plaintiff, and it is further alleged, on information and belief, that the
24 violations of *Labor Code* section 226, subdivision (a), extends to other members of the Class
25 whom Defendants employ(ed). *Labor Code* section 226.3 defines the applicable civil penalties
26 for violating section 226.

1 110. *Labor Code* section 226.7(a) provides “No employer shall require any employee
2 to work during any meal and rest period mandated by an applicable order of the Industrial
3 Welfare Commission.”

4 111. *Labor Code* section 512(a) provides, in relevant part, that “An employer shall not
5 employ an employee for a work period of more than five hours per day without providing the
6 employee with a meal period of not less than 30 minutes, except that if the total work period per
7 day of the employee is no more than six hours, the meal period may be waived by mutual consent
8 of both the employer and employee. An employer shall not employ an employee for a work
9 period of more than 10 hours per day without providing the employee with a second meal period
10 of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the
11 second meal period may be waived by mutual consent of the employer and the employee only
12 if the first meal period was not waived.”

13 112. *Labor Code* sections 2800 and 2802 require that employers indemnify employees
14 for all necessary expenditures incurred by the employee in direct consequence of the discharge
15 of their duties. In this case, it is alleged aforesaid that Plaintiff has not been fully reimbursed
16 these business expenses and, on information and belief, it is alleged that the Class also has not
17 been properly reimbursed.

18 113. The civil penalties provided under PAGA are set forth in the *Labor Code*, as
19 follows:

20 a. *Labor Code* section 226.3 provides:

21 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
22 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
23 violation in an initial citation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the
25 employee a wage deduction statement or fails to keep the records required in
26 subdivision (a) of Section 226.”

27 b. *Labor Code* section 2699 provides for a civil penalty for the violation of
28 *Labor Code* sections that lack a civil penalty provision of their own, as follows:

“If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

c. IWC Wage Order 9-2001, applicable to the relevant Industry herein, also provides for a civil penalty to be assessed against an employer who violates its provisions. Section 20 thereof states, in relevant part:

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

114. Defendants are subject to civil penalties for the abovementioned illegal conduct, pursuant to *California Labor Code* section 2699.

115. Plaintiff has fully complied with the statutory requirements of *California Labor Code* section 2699.3. Correspondence was sent as required on or about June 26, 2023 which gave written notice by certified mail to the California Labor and Workforce Development Agency and the employer of the specific provisions of the *Labor Codes* alleged to have been violated, including the facts and theories to support the alleged violations (attached hereto as Exhibit “A”). More than 65 days have passed since Plaintiff gave written notice, yet Plaintiff has not yet received notice that the Labor and Workforce Development Agency intends to pursue an action for penalties against Defendants.

116. Pursuant to *Cal. Lab. Code* § 2699.3(a)(2)(C), “[n]otwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause

1 of action arising under this part at any time within 60 days of the time periods specified in this
2 part.”

3 117. Defendants’ failure to pay Plaintiff the wages due and owing, as indicated in prior
4 paragraphs, was willful. Defendants have knowingly refused to pay the amounts due and owing
5 Plaintiff. Further, Defendants have not taken any actions to “cure” the Labor Code violations
6 pursuant to *California Labor Code* section 2699 *et seq.*

7 118. By failing to pay Plaintiff and the Class herein, Defendants have violated
8 numerous *California Labor Code* sections, including, but not limited to California Labor Code
9 sections 201, 202, 203, 204, 510, 512, 558, 558.1 221, 226, 226.7, 226.8, 2753, 432.5, 2751,
10 1174, 1021, 1021.5, 1194, 1198, 1199 and 2802. Civil penalties are appropriate.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and all members of the Class, prays for
14 relief against DEFENDANTS and DOES 1 through 100, and each of them, as follows:

- 15 1. For unreimbursed business expenses under Labor Code § 2802 according to proof;
- 16 2. For minimum wage, overtime, and doubletime premium wages owed under
17 California law according to proof;
- 18 3. For rest period premiums according to proof;
- 19 4. For all wages unlawfully deducted from commissions according to proof;
- 20 5. For all unpaid commissions according to proof;
- 21 6. For restitution of all unreimbursed expenses, unpaid and unlawfully deducted
22 commissions, unpaid and overtime, doubletime, and rest period premium wages;
- 23 7. For liquidated damages under Labor Code § 1194.2 according to proof;
- 24 8. For prejudgment interest pursuant to Labor Code §§ 218.6, 1194, 2802, and Civil
25 Code sections 3288 and 3291 on all amounts claimed;
- 26 9. For attorney’s fees and costs pursuant to Labor Code §§ 218.5, 226, 1194, and
27 2802;
- 28 10. For waiting-time penalties under Labor Code § 203;

- 1 11. For statutory penalties under Labor Code § 226;
2 12. For declaratory relief;
3 13. For injunctive relief;
4 14. For costs of suit; and
5 15. For such other and further relief, in law or equity, as this Court may deem
6 appropriate and just.

7 Dated: August 31, 2023

STRAUSS & STRAUSS, APC

8
9 By: 
10 Andrew C. Ellison
11 Attorneys for Plaintiff

12 **JURY DEMAND**

13 Plaintiff hereby demands a trial by jury.

14 Dated: August 31, 2023

STRAUSS & STRAUSS, APC

15
16
17 
18
19 By: _____
20 Andrew C. Ellison
21 Attorneys for Plaintiff and the Putative Class
22
23
24
25
26
27
28

EXHIBIT "A"

STRAUSS & STRAUSS A.P.C.

MICHAEL A. STRAUSS
JENNA H. STRAUSS
ANDREW C. ELLISON
ARIS E. KARAKALOS

226 W. OJAI AVE., #101-325
OJAI, CA 93023
PHONE: (805) 641-6600
FACSIMILE: (805) 641-6607
WWW.STRAUSSLAWYERS.COM
ARIS@STRAUSSLAWYERS.COM

June 26, 2023

PAGA Administrator
Labor and Workforce Development Agency
<https://dir.tfaforms.net/308>

FILED ONLINE

Agent for Service of Process
Corporation Service Company
84 State Street
Boston, MA 02109

VIA CERTIFIED MAIL

GABRIEL PFEIFER
JORDAN BINNING
Managers
3400 N 1200 W
Lehi, UT 84043

VIA CERTIFIED MAIL

**Re: *Hucklebery Taylor, et al. v. NUSUN Power, LLC.*
Notice of Labor Code Violations (Labor Code § 2699.3)**

To Whom It May Concern:

This office represents Plaintiff Huckleberry Taylor regarding his claims for violations of California wage-and-hour statutes and regulations by his former employer, NUSUN Power LLC. ("NUSUN").

Plaintiff's intentions are to bring civil claims, on behalf of himself and all other similarly situated employees, against NUSUN to recover wages, paystub penalties, unpaid reimbursements, waiting-time penalties, under all applicable statutes and regulations.

Additionally, Plaintiff's intentions are to seek the recovery of all available civil penalties under the California Labor Code Private Attorneys General Act ("PAGA"). This correspondence is being sent pursuant to the provisions of *California Labor Code* section 2699.3 to allow Plaintiff to collect the civil penalties associated with the violations of the following statutes and regulations for himself and all others similarly situated in a civil lawsuit against NUSUN.

July 11, 2023

Page 2 of 10

Taylor, et al. v. NUSUN – Letter to LWDA re PAGA Violations

These are the relevant facts as we presently understand them:

NUSUN sells solar throughout Southern California. Plaintiff worked for NUSUN as a sales representative, selling solar, and energy storage systems during the applicable statute of limitations period.

Plaintiff no longer is employed by NUSUN. However, while employed by NUSUN, Plaintiff was misclassified as an independent contractor. Commissions were withheld, unlawful deductions were withheld from pay, and business expenses were not reimbursed.

NUSUN required Plaintiff and those similarly situated to travel between prospective customers during the day but did not reimburse Plaintiff for any travel related expenses – either mileage or gas or otherwise. Plaintiff also was required to carry a cell phone so that he could be contacted by NUSUN, and to interact with their app. Plaintiff was never reimbursed for any expenses associated with maintaining and using that cell phone.

Plaintiff had his rent illegally deducted from his commission checks, and additionally commissions were not paid according to California law.

As a result of the above policies and practices, NUSUN failed to:

1. Pay wages in accordance with California law;
2. Provide Plaintiff with accurate paystubs that reflect the commissions earned;
3. Reimburse Plaintiff for his travel related expenses; and
4. Reimburse Plaintiff for his cell phone related expenses.

Plaintiff will seek unpaid wages, reimbursement, and statutory penalties against NUSUN for various violations of California law, as follows:

THE LAW

Labor Code section 201 requires immediate payment of all wages owed at the termination of employment. It is believed that within the last year, NUSUN employees in California, have been terminated and have not received all overtime, double-time pay owed at their termination. There is no civil penalty associated with violation of section 201, but Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

Labor Code section 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72-hours' notice, in which case wages are owed at the employee's resignation. It is believed that within the last year,

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NUSUN employees in California have resigned and have not received all minimum wages, overtime/double-time wages in a timely fashion after their resignation. There is no civil penalty associated with violation of section 202, but Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

Labor Code section 203 establishes a statutory penalty for willful violations of Labor Code sections 201 or 202. There has been a willful violation of Labor Code sections 201 and 202 because NUSUN cannot hide behind its ignorance of the California's overtime law. Further evidence of NUSUN's willful disregard for Labor Code sections 201 and 202 is likely to be adduced at trial. Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly situated as permitted by law.

Labor Code section 204 requires the payment of wages earned no less frequently than twice a month. NUSUN violated section 204 by not paying all minimum wages, overtime/double-time wages, each pay period in which they were incurred. The statutory penalty for violations of section 204 is found in Labor Code section 210. Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly situated under Labor Code section 210.

Labor Code section 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that NUSUN will argue that these employees agreed to forfeit their minimum wages, overtime/double-time wages each pay period or at termination/resignation, NUSUN will have violated Labor Code section 219. There is no civil penalty associated with violation of section 219, but Plaintiff intends to pursue civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

Labor Code section 226, subdivision (a), requires a California employer to include specific information on an employee's paycheck stub. The required information includes the total number of hours worked and the correct rates of pay for each of those hours, and the name and address of the legal entity that is the employer. (Lab. Code § 226(a).) Subdivision (e) sets forth statutory penalties for the violation of section 226(a). Plaintiffs intend to bring suit to recover said penalties on behalf of himself and all others similarly situated. Labor Code section 226.3 sets forth civil penalties for violation of section 226, subdivision (a). Plaintiff intends to seek said penalties against NUSUN on behalf of himself and all other similarly situated employees for violation of section 226, subdivision (a).

Waiting Time Penalties

Plaintiff was not and has not been paid all wages owed at the time of termination. California law holds that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. See *California Labor*

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Code section 201. In *Pressler v. Donald L. Bren Company* (1982) 32 Cal.3d 831, 837, 187 Cal.Rptr.449, 654 P.2d 219, the court stated:

“Public policy has long favored the ‘full and prompt payment of wages due an employee.’ . . . ‘[W]ages are not ordinary debts . . . [B]ecause of the economic position of the average worker and, in particular, his family, it is essential to the public welfare that he receive his pay promptly.’”

Labor Code section 204 sets timetables for when wages are due each pay period. In effect, most wages earned during a pay period must be paid at the conclusion of that pay period or the conclusion of the next pay period (in the case of wages earned for labor in excess of the normal work period). Here, overtime wages were owed each pay period in which individuals worked overtime hours, and yet NUSUN did not timely pay the earned overtime in the correct amounts.

Labor Code section 203 establishes a statutory penalty for willful violations of Labor Code sections 201 or 202. The civil penalty associated with violation of section 203 is found in Labor Code section 256. Here, Plaintiff has not been paid all wages owed within the time provided. California Labor Code section 203 relates that if an employer willfully fails to pay “without abatement or reduction, in accordance with sections 201, 201.5, and 202, any wages of any employee who is discharged or who quits, the wages of such employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced.” Plaintiff intends to pursue said civil penalty on behalf of himself and all other similarly situated persons.

When computing penalties, California Labor Code section 203 will require the payment of 30 days’ wages to Plaintiff. The purpose of this statute is to make sure that employers provide prompt payment of wages. See *Triad Data Services, Inc. v. Jackson* (1984) 153 Cal.App.3d Supp. 1, 200 Carper. 418.

In fact, the term “willful” as used in *Labor Code* section 203 (providing for an assessment against an employer for a willful failure to pay wages as required by law), does not mean that the refusal to pay these wages must necessarily be based on a deliberate or evil purpose, or to defraud workers of wages which the employer knows to be due. Such term in its ordinary use merely means that one intentionally fails or refuses to perform an act which is required to be done. See *Triad, supra*

Labor Code section 219 provides that an employer may not circumvent by way of private agreement the requirements of the wage-and-hour laws of the Labor Code. To

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the extent that NUSUN will argue that Plaintiff agreed to forfeit overtime premium wages at termination, NUSUN will have violated Labor Code section 219. There is no civil penalty associated with violation of section 219, but Plaintiff intends to pursue civil penalties on behalf of herself and all others similarly situated under Labor Code section 2699, subd. (f).

Wage Statement Violations

Labor Code section 226, subdivision (a) requires employers to put specific information on their employees' paycheck stubs. NUSUN failed to provide any itemized pay stubs to Plaintiff.

As it is alleged that NUSUN violated Labor Code section 226, subdivision (a), Plaintiff will seek, on behalf of herself and the PAGA Class, the civil penalties available under Labor Code section 226.3.

Willful Misclassification

Plaintiff was not an independent contractor under relevant California law. Plaintiff worked under the supervision and direction of superiors. The dates, hours and location of their work was dictated by NUSUN, and their work was part of the routine daily work of NUSUN's core business.

As a result of this misclassification, Plaintiff must be paid for all hours worked, including overtime. Moreover, Labor Code section 226.8 provides that "[i]t is unlawful for any person or employer to engage in ... [w]illful misclassification of an individual as an independent contractor."

Unreimbursed Business Expenses

Plaintiff was not reimbursed for business expenses. Plaintiff was required to keep and use cell phones for business purposes, but was not reimbursed for equipment or service. Plaintiff drove a personal vehicles in the service of NUSUN without compensation.

1. Civil Penalties Sought.

Labor Code section 203 provides: "(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9,

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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..." As it is alleged that NUSUN has violated Labor Code sections 201 and 202, Plaintiff will, on behalf of themselves and all other similarly-situated individuals, seek the civil penalties available under Labor Code section 203.

Labor Code section 210 establishes a civil penalty for violations of Labor Code section

204. Every person who fails to pay the wages of each employee as provided in section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and

(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.

As it is alleged that NUSUN violated Labor Code section 204, Plaintiff will, on behalf of the

PAGA Class, seek the civil penalties available under Labor Code section 210.

Labor Code section 226.3 provides:

Any 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 citation 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 records required in subdivision (a) of Section 226.

As it is alleged that NUSUN violated Labor Code section 510, Plaintiff will seek, on behalf of herself and all other similarly-situated individuals, the civil penalties available under Labor Code section 558.

Labor Code section 1194.2(a) provides for liquidated damages for payment of a wage less than the minimum wage fixed by an order of the commission or by statute. Section 1194.2(a) entitles the employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Plaintiff alleges that NUSUN may have violated section 1194.2(a) by failing to pay minimum wages to the PAGA Class.

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Labor Code section 1194.3 provides for the recovery of attorney's fees and costs incurred to enforce a court judgment pursuant to unpaid wages pursuant to Labor Code section 1194. Plaintiff alleges that NUSUN violated section 1194 by failing to pay minimum wage and overtime, and that Plaintiff is therefore entitled to recover attorney's fees.

Labor Code section 1197.1 provides for recovery for employees who are paid a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission. For an initial violation that is intentionally committed, the penalty is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to section 203. For each subsequent violation for the same specific offense, the penalty is 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. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 and recovered pursuant to this section shall be paid to the affected employee.

Labor Code section 2699 provides for a civil penalty for the violation of Labor Code sections that lack a civil penalty provision of their own. The civil penalty is as follows: "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Plaintiff alleges that NUSUN has potentially violated the following civil-penalty-Is Labor Code sections: 201, 202, and 203.

IWC Wage Order 5-2001 provides for a civil penalty to be assessed against an employer who violates its provision. Section 20 thereof states, in relevant part:

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

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{1} Initial Violation - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

{2} Subsequent Violations - \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

Plaintiff will seek, on behalf of himself and all other similarly-situated individuals, this additional civil penalty against NUSUN for its violation of IWC Wage Order 5-2001, section 3{A}, as well as any additional violation of said Wage Order.

Labor Code section 558 provides for a civil penalty against employers who violate Labor

Code section 510. The civil penalty is as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. See also, *Thurman v. Bayshore Transit Mgmt.*, link., 203 Clap. 4th 1112 (2012).¹

Labor Code section 558 provides for a civil penalty against employers who violate Labor Code section 510. The civil penalty is as follows:

The Plaintiff will seek penalties pursuant to California Labor Code sections 98.6, 201, 202, 203, 204, 219, 226, 226.3, 226.8, 510, 558, 1194, 1198.5 and 2699(f); IWC Wage Order 5-2001 and Labor Code section 2699 which provides for a civil penalty for the violation of Labor Code sections that lack a civil penalty provision of their own. The civil penalty is as follows: "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

The penalty for willful misclassification of employees under Labor Code section 226.8 is "a civil penalty of not less than five thousand dollars (\$5,000) and not more than

¹ In *Thurman*, the court provided that employees, in certain circumstances, could seek the entire amount of alleged underpaid wages as penalties in a PAGA action. As pointed out by Thurman, PAGA provides "any provision of this code [California Labor Code] that provides for a civil penalty ... for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee" (Emphasis added.)

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fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

Plaintiff and the PAGA class will be owed their unreimbursed business expenses pursuant to Labor Code 2802, as well as interest and penalties under Labor Code § 2699(f)(2).

In the event that an employer is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8. Plaintiff intends to pursue all available civil penalties on behalf of themselves and all others similarly situated under Labor Code section 226.8

Pursuant to Labor Code 1102.5, Defendant-employers who retaliate against a whistleblower may be ordered to reinstate the employee with back pay and benefits, pay the employee’s compensatory damages, including lost wages, lost benefits, front pay, and emotional distress, and pay a civil penalty of (\$10,000) for each violation.

Labor Code section 1174(d) requires an employer to keep, “at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” Plaintiff intends to seek said penalties against NUSUN on behalf of himself and all other similarly situated employees for violation of sections 1174(d), 1174.5 and 2810.5.

Reservation of right to pursue additional civil penalties: Plaintiff intends to pursue the aforementioned civil penalties for these specific violations of law. However, should any other civil penalties be available by virtue of NUSUN’s unlawful practices as enumerated herein, Plaintiff reserves the right to pursue such additional civil penalties.

CONCLUSION

Pursuant to California Labor Code section 2699 and 2699.5, a violation of the above-cited statutes and regulations may form the basis for a PAGA action against NUSUN. However, as required by law, aggrieved employees like The plaintiff must first give the Labor and Workplace Development Agency the opportunity to pursue the

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offending employer before bringing his own PAGA action to collect civil penalties associated with the violation of the above-cited statutes and regulations.

As such, please let me know if your agency intends to investigate the matter. If not, my clients intend to pursue a civil action pursuant to law.

Very truly yours,

Strauss & Strauss

A Professional Corporation

A handwritten signature in black ink, appearing to read 'A. Ellison', written in a cursive style.

Andrew C. Ellison