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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PARKER CRAWLEY, CASSIA)
CARRAWAY, CHARLES DAVIS, AND)
HUCKLEBERRY TAYLOR,)
individually and on behalf of others)
similarly situated,)

Plaintiffs,
vs.

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

Defendants.

Case No.: 30-2023-01336866-CU-OE-CXC

THIRD AMENDED CLASS ACTION
COMPLAINT FOR:

(1) FAILURE TO PAY MINIMUM WAGES;
(2) FAILURE TO PAY OVERTIME
WAGES;
(3) FAILURE TO PROVIDE REST
PERIODS;
(4) FAILURE TO PROVIDE MEAL
PERIODS;
(5) IMPROPER DEDUCTIONS FROM
WAGES;
(6) VIOLATION OF WAGE ORDER - RENT
CHARGED TO EMPLOYEES;
(7) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;
(8) FAILURE TO REIMBURSE BUSINESS
EXPENDITURES AND LOSSES;
(9) UNFAIR COMPETITION; AND
(10) PRIVATE ATTORNEY GENERAL ACT
(CALIFORNIA LABOR CODE § 2698, *ET*
SEQ. [PAGA])

JURY TRIAL DEMANDED

Plaintiffs Parker Crawley ("Crawley"), Cassia Carraway ("Carraway"), Charles Davis ("Davis"), and Huckleberry Taylor ("Taylor") (collectively, "Plaintiffs") hereby submit their Third Amended Class Action Complaint ("FAC") against Defendant Rise Energy, LLC ("Rise Energy"), doing business as "NuSun Power, LLC", and Jordan Kent Binning ("Binning"), and Does 1 through 100 (hereinafter collectively referred to as "Defendants") on behalf of themselves and a class of all other similarly situated individuals employed by Defendant Rise Energy, LLC (currently named NuSun Power, LLC), under common circumstances and facts. Plaintiffs allege, on information and belief (except as to those allegations relating to Plaintiffs themselves, which are asserted on personal knowledge), as follows:

PARTIES

Plaintiffs

1. Crawley is an individual over 18 years of age who at all relevant times herein resided in the City of Anaheim, County of Orange, State of California. Crawley worked for Defendants from approximately October 4, 2022 until February 13, 2023.

2. Carraway is an individual over 18 years of age who at all relevant times herein resided in the City of Anaheim, County of Orange, State of California. Carraway worked for Defendants from approximately October 4, 2022, until January 10, 2023.

3. Davis is an individual over 18 years of age who at all relevant times herein resided in the City of Anaheim, County of Orange County, State of California. Davis worked for Defendants from approximately October 2022 until March 2023.

4. Taylor is an individual over 18 years of age who at all relevant times herein resided in the City of Canoga Park County of Los Angeles, State of California. Taylor worked for Defendants from approximately May 2021 until May 2023.

Defendants

5. Defendant Rise Energy, LLC doing business as “Rise Energy” and now named “Nusun Power, LLC” was, and is, a limited liability company located in Lehi, Utah. At all relevant times, Defendant Rise Energy, LLC now named “Nusun Power, LLC” employed Plaintiffs and similarly situated employees within the State of California. Defendant Rise Energy, LLC, was,

1 and is, at all relevant times herein doing business in Orange County and elsewhere throughout
2 California. Defendant Nusun Power, LLC, is the same limited liability company as Rise Energy,
3 LLC. On February 10, 2023, the name of Defendant Rise Energy, LLC, was amended and replaced
4 to Nusun Power, LLC. Plaintiffs are informed and believe, and thereon allege, that this was done
5 in an effort to avoid liability for wage-and-hour violations and this lawsuit. All of the same
6 allegations are asserted against Nusun Power, LLC, as against Defendant Rise Energy, LLC.

7 6. Defendant Jordan Kent Binning ("Binning" or, collectively with other individually
8 named defendants, "Individual Defendants"), was, and is, an individual residing in the State of
9 California, and was and/or is the owner, director, officer and/or managing agent of Defendant Rise
10 Energy, LLC, now named "NuSun Power, LLC," and was Plaintiffs' supervisor within the meaning
11 of California Government Code section 12926 (t). Plaintiffs are informed and believe that
12 Defendant Binning is also Plaintiffs' joint employer such that he is liable for the applicable wage
13 and hour claims because he caused the Labor Code violations alleged at length herein and for the
14 following non-exhaustive reasons: (1) Defendant Binning exercised control over the labor
15 practices of Defendant Rise Energy, LLC, now named "NuSun Power, LLC," where Plaintiffs
16 worked; (2) Defendant Binning owns and controls Defendant Rise Energy, LLC, now named
17 "NuSun Power, LLC;" (3) Defendant Binning owns a majority of shares and is responsible for
18 setting policies concerning the classification of employees as independent contractors, the payment
19 of wages at Defendant Rise Energy, LLC, now named "NuSun Power, LLC;" (4) Defendant
20 Binning exercised control over Plaintiffs' schedules, commission payment schedules, and payment
21 of Plaintiffs' wages as well as other compensation, including incentive pay.

22 7. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
24 to Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil
25 Procedure section 474. Plaintiffs are informed and believe and based thereon allege that each of
26 the defendants designated herein as DOE is legally responsible in some manner for the unlawful
27 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
28 true names and capacities of the defendants designated hereinafter as DOES when such identities

1 become known. Plaintiffs are informed and believe and based thereon allege that each defendant
2 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
3 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
4 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
5 reference is made to "Defendants," it shall include Rise Energy, LLC, and the Individual
6 Defendants, and any of their parent, subsidiary, or affiliated companies within the State of
7 California, as well as DOES 1 through 100 identified herein.

8 8. Plaintiffs are informed and believe, and based thereon allege, that all the times
9 mentioned herein, each of the Defendants was the agent, principal, employee,
10 employer, representative, joint venture or co-conspirator of each of the other defendants,
11 either actually or ostensibly, and in doing the things alleged herein acted within the course and
12 scope of such agency, employment, joint venture, and conspiracy.

13 9. All of the acts and conduct described herein of each and every corporate
14 defendant was duly authorized, ordered, and directed by the respective and collective
15 defendant corporate employers, and the officers and management-level employees of said
16 corporate employers. In addition thereto, said corporate employers participated in the
17 aforementioned acts and conduct of their said employees, agents, and representatives, and
18 each of them; and upon completion of the aforesaid acts and conduct of said corporate
19 employees, agents, and representatives, the defendant corporation respectively and collectively
20 ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise
21 approved of each and all of the said acts and conduct of the aforementioned corporate
22 employees, agents and representatives.

23 10. Plaintiffs are informed and believe and based thereon allege that the Individual
24 Defendants violated, or caused to be violated, the above-referenced and below-referenced
25 Labor Code provisions in violation of Labor Code section 558.1.

26 11. Plaintiffs are informed and believe and based thereon allege that there exists such
27 a unity of interest and ownership between Defendants, and each of them, that their individuality
28 and separateness have ceased to exist.

1 12. Plaintiffs are informed and believe and based thereon allege that despite the
2 formation of the purported corporate existence of Rise Energy, LLC, and DOES 1 through 50,
3 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with
4 the Individual Defendants and DOES 51 through 100 (“Individual Defendants”), and each of
5 them, due to, but not limited to, the following reasons:

6 A. The Alter Ego Defendants are completely dominated and controlled by the
7 Individual Defendants who personally committed the wrongful and illegal acts and
8 violated the laws as set forth in this Complaint, and who have hidden and currently
9 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent
10 statutes, or accomplish some other wrongful or inequitable purpose;

11 B. The Individual Defendants derive actual and significant monetary benefits by
12 and through the Alter Ego Defendants’ unlawful conduct, and by using the
13 Alter Ego Defendants as the funding source for the Individual Defendants’
14 own personal expenditures;

15 C. The Individual Defendants and the Alter Ego Defendants, while really one and
16 the same, were segregated to appear as though separate and distinct for
17 purposes of perpetrating a fraud, circumventing a statute, or accomplishing
18 some other wrongful or inequitable purpose;

19 D. The business affairs of the Individual Defendants and the Alter Ego Defendants
20 are, and at all relevant times mentioned herein were, so mixed and intermingled
21 that the same cannot reasonably be segregated, and the same are inextricable
22 confusion. The Alter Ego Defendants are, and at all relevant times mentioned
23 herein were, used by the Individual Defendants as mere shells and conduits for
24 the conduct of certain of their, and each of their affairs. The Alter Ego Defendants
25 are, and at all relevant times mentioned herein were, the alter egos of the Individual
26 Defendants;

27 E. The recognition of the separate existence of the Individual Defendants and the Alter
28 Ego Defendants would promote injustice insofar that it would permit defendants to

1 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
2 Code, and other statutory violations. The corporate existence of these defendants
3 should thus be disregarded in equity and for the ends of justice because
4 such disregard is necessary to avoid fraud and injustice to Plaintiff herein;

5 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the
6 Individual Defendants (and vice versa), and the fiction of their separate
7 corporate existence must be disregarded;

8 13. As a result of the aforementioned facts, Plaintiffs are informed and believe, and
9 based thereon allege, that Defendants, and each of them, are joint employers.

10 **JURISDICTION AND VENUE**

11 14. Jurisdiction exists in the Superior Court of the State of California because each
12 Defendant is either a resident of California, has sufficient minimum contacts in California, or
13 otherwise intentionally avails itself or himself of the California market so as to render the exercise
14 to jurisdiction over it by the California Courts consistent with traditional notions of fair play and
15 substantial justice.

16 15. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure § 395. Defendants conduct business and commit Labor Code violations
18 in Orange County, and each Defendant is within the jurisdiction of this Court for service of process
19 purposes. The unlawful acts alleged have a direct effect on Plaintiffs and those similarly situated
20 with the State of California and within Orange County. Plaintiff were employed by Defendants
21 and suffered the alleged Labor Code violations in Orange County.

22 **GENERAL ALLEGATIONS**

23 16. For at least four years prior to the filing of this action, Defendants have employed
24 approximately 700 individuals in California.

25 17. California Labor Code section 226.8 makes it unlawful for any person or employer
26 to willfully misclassify an individual as an independent contractor. Defendants willfully
27 misclassified Plaintiff and the Proposed Class as independent contractors when they are actually
28 employees.

1 18. At all relevant times herein, Plaintiffs and members of the Proposed Class worked
2 for Defendants in the business of selling home solar power installations. Plaintiffs are informed
3 and believe, and thereon allege, that Defendants utilized policies and practices intended to deprive
4 employees such as Plaintiffs proper compensation including minimum wage and overtime, as well
5 as meal periods and rest periods, by misclassifying those individuals as independent contractors
6 rather than employees. Plaintiffs and members of the Proposed Class worked in the "Mercantile
7 Industry" as that term is defined for purposes of Industrial Welfare Commission Order No. 7-2001
8 ("Wage Order 7"), and this order applies to the employment of Plaintiffs and members of the
9 Proposed Class by Defendants. Further, Plaintiffs and members of the Proposed Class lived in
10 lodging owned or leased by Defendants and were subject to illegal deductions of wages without a
11 written agreement and in excess of the maximum amounts allowed by Wage Order 7.

12 19. Salespeople employed by Defendants were divided into "setters," "setter captains,"
13 "closers," and "managers." Plaintiffs and members of the Proposed Class were engaged by
14 Defendants to work in these and similar positions. Their hours and routes were set by Defendants.
15 They lived at apartments owned or leased by Defendants. Some lived in individual apartments
16 and others shared apartments or shared rooms. None of them had a written agreement for the
17 amount of rent. Typically, their day would begin with a morning meeting before being organized
18 into carpools and driven by supervisors to various neighborhood locations chosen by Defendants.
19 Each setter was assigned to a geographic area to walk the neighborhood and knock on doors on all
20 of the houses, trying to set appointments for the closer to come back and sell a solar power
21 installation. Setters did not have access to bathroom or rest facilities during this time, a typical
22 schedule being from 11:00 AM until 7:30 PM on weekdays or 9:30 AM until 6:00 PM on
23 weekends. If the employee needed to use the restroom, they could call for a supervisor to pick
24 them up, but there was not always someone available. Usually, on the way to the drop-off in the
25 morning, each carpool would be driven to a fast-food restaurant so the employees could eat and
26 use the restrooms, on the assumption they would not be able to do these things during their shifts.
27 Setters also did not have a place to store food or to eat while working, unless they walked out of
28 the neighborhood to a shopping center, which was often not feasible. They did not have adequate

1 facilities to take a rest or meal break, nor did their schedules typically allow them to do so. At the
2 end of each day, a supervisor or another employee would pick them up from the area and drive
3 them back to their company apartment. Setters such as Plaintiffs and members of the Proposed
4 Class were paid only if they made an appointment for the closer and the deal went through. They
5 were otherwise paid nothing for their time. Plaintiffs and members of the Proposed Class were
6 also required to attend videoconference meetings at least weekly and other mandatory company
7 events without pay.

8 20. Plaintiffs and members of the Proposed Class did not receive itemized statements
9 showing their hours worked or their wages. Instead, they received, on a sporadic basis, statements
10 showing pay according to the number of deals eventually closed by the closers, along with the
11 deductions for rent according to Defendants' sole discretion. No prior agreement for rent was
12 reached with Plaintiffs or other members of the Proposed Class. Plaintiffs and members of the
13 Proposed Class were charged excessive amounts on a weekly basis for apartments, shared
14 apartments, or shared rooms. For example, Plaintiff Crawley was charged \$300 per week for an
15 apartment he shared with Plaintiff Carraway, who was also charged \$300 per week to the extent
16 of her earnings. Plaintiff Davis was in a shared room paying rent that varied from about \$1100 to
17 about \$2200 per month for each person.

18 21. Despite working more than 40 hours each week, Plaintiffs and members of the
19 Proposed Class were paid less than the minimum wage for their actual hours worked and no
20 overtime wages. For example, Plaintiff Crawley worked full-time for Defendants, more than 40
21 hours per week, for the last three months of 2022 and was paid only \$3,100.00. Plaintiff Crawley
22 worked full-time for Defendants, more than 40 hours per week, for the first six weeks of 2023 and
23 was paid only \$1,800.00. Plaintiff Carraway worked full-time for Defendants, more than 40 hours
24 per week, for more than two months in 2022 and was paid a total of \$150.00. Plaintiff Davis was
25 working 7 days per week but not paid enough after deductions to afford enough food; when he
26 told a supervisor that he had taken a day off to apply for an EBT card, the supervisor mocked him,
27 saying he should work harder and that "you're living like poor people."

28 22. Plaintiffs and members of the Proposed Class were acting as employees and not

1 independent contractors for Defendants at all relevant times herein. They were not free from the
2 direction and control of Defendants in the performance of the work. Rather, they attempted to
3 make appointments for Defendants' other employees to sell Defendants' solar power systems to
4 homes selected by Defendants, to which Plaintiffs and members of the Proposed Class were
5 assigned and dropped off, using specific instructions for sales techniques prescribed by
6 Defendants. Plaintiffs and members of the Proposed Class did not perform work outside of
7 Defendants' usual course of business, and in fact were integral to the core business of selling solar
8 power installations. Plaintiffs and members of the Proposed Class were not engaged in any
9 independently established trade, occupation, or business of the same nature as the work performed,
10 and in fact were prohibited from doing so by the terms of their compensation agreements.

11 23. As a result of Defendants misclassifying Plaintiffs and members of the Proposed
12 Class as "independent contractors," Defendants have regularly failed to indemnify Plaintiffs and
13 members of the Proposed Class for employment-related expenses, including use of cell phones, i-
14 Pads, and mileage expenses.

15 24. In perpetrating the acts and omissions alleged herein, Defendants acted pursuant to,
16 and in furtherance of, a policy and practice of denying earned compensation to Plaintiffs and
17 members of the Proposed Class, including minimum wage and overtime, as well as denying proper
18 meal and rest periods, and deducting excessive amounts of rent for company lodging without
19 agreement, all of which was contrary to law. As a direct and proximate result of the unlawful
20 actions of Defendants, Plaintiffs and members of the Proposed Class have suffered and continue
21 to suffer from loss of earnings, reimbursement of business expenses and penalties in amounts yet
22 to be ascertained, in excess of \$75,000.00, but subject to proof at trial.

23 25. Written agreements presented to Plaintiffs and members of the Proposed Class that
24 include Utah forum selection and choice of law clauses are voidable by the employee, pursuant to
25 California Labor Code section 925. Additionally, any written agreements involving commissions
26 that do not contain Defendants' signature violate California Labor Code section 2751. By
27 commencing this action, Plaintiffs request that these provisions be voided and the matter
28 adjudicated in California. Written agreements between Defendants and Plaintiffs and members of

1 the Proposed Class also may include a provision entitled "Waiver of Right to Participate in Class
2 Action" or similar provision. The agreements do not provide for arbitration. Any provisions
3 purporting to waive the rights of Plaintiffs and members of the Proposed Class to participate in
4 any type of representative action against Defendants are void under California law. These
5 agreements further evidence an employee-employer relationship.

6 **NOTICE REQUIRED BY THE PRIVATE ATTORNEY GENERAL ACT ["PAGA"]**

7 26. On September 6, 2023, more than 65 calendar days before filing this amended
8 complaint, Plaintiff Parker Crawley provided written notice to the Labor and Workforce
9 Development Agency ("LWDA") and to Defendants of the specific provisions of the California
10 Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code section
11 2699.3. (Attached as "**Exhibit A**" and incorporated by reference as though fully set forth herein
12 is the PAGA notice.) The LWDA did not notify Plaintiff that it intends to investigate the Labor
13 Code violations that he raised. Accordingly, Plaintiff Crawley has taken all steps necessary to
14 exhaust his administrative remedies with regarding to the PAGA Claim.

15 27. On June 26, 2023, more than 65 calendar days before filing this amended
16 complaint, Plaintiff Huckleberry Taylor provided written notice to the Labor and Workforce
17 Development Agency ("LWDA") and to Defendants of the specific provisions of the California
18 Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code section
19 2699.3. (Attached as "**Exhibit B**" and incorporated by reference as though fully set forth herein
20 is the PAGA notice.)

21 **CLASS ACTION ALLEGATIONS**

22 28. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
23 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
24 litigation and Proposed Class is easily ascertainable. Plaintiffs propose the following class
25 ("Proposed Class"):

26 All persons who worked as setters, setter captains, closers, or managers in California for
27 Defendants and were classified by Defendants as independent contractors during the period
28 commencing four years prior to the filing of Plaintiff's complaint through the final

1 disposition of this action.

2 29. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
3 the class description with greater particularity or further division into subclasses or limitation to
4 particular issues.

5 30. **Numerosity and Ascertainability:** The members of the Proposed Class are so
6 numerous that joinder of all members would be impractical, if not impossible. While the precise
7 number of Proposed Class members has not been determined at this time, Plaintiffs are informed
8 and believe that Defendants employ or, during the Class Period, employed, more than 700
9 members of the Proposed Class within the State of California. The identity of the members of the
10 Proposed Class is readily ascertainable by review of Defendants' records, including payroll records
11 and personnel files.

12 31. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
13 necessary steps to represent fairly and adequately the interests of the class defined above.
14 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the Class and
15 individual Plaintiffs. Counsel who represent Plaintiffs and the Proposed Class are competent and
16 have experience with wage-and-hour representative and class actions in the past in California
17 courts.

18 32. **Commonality:** Defendants uniformly administered a corporate policy, practice of
19 the following violations: Misclassification as Independent Contractors (Labor Code § 226.8);
20 Failure to Provide Code-Compliant Written Commission Agreements (Labor Code § 2751);
21 Failure to Provide Written Notice of Terms Pertaining to Employment (Labor Code § 2810.5);
22 Failure to Pay State Minimum Wages and Failure to Pay Overtime Compensation (Labor Code §§
23 510, 1194 et seq., 1197.1, 1198, IWC Wage Order); Failure to Provide Meal Periods (Labor Code
24 §§ 226.7, 512, 1198, IWC Wage Order); Failure to Provide Rest Periods (Labor Code §§ 226.7,
25 512, 1198, IWC Wage Order); Improper Deductions From Wages (Labor Code § 224); Violation
26 of Wage Order - Rent Charged to Employees (Labor Code § 1198); Failure to Provide Accurate
27 Itemized Statements (Labor Code §§ 226, 1198, and IWC Wage Order); Failure to Reimburse for
28 Business Expenditures and Losses (Labor Code § 2802); Failure to Pay Wages When Due and

1 Waiting Time Penalties (Labor Code §§ 200-204, 558, 1198, IWC Wage Order) and Unfair
2 Competition (Business and Professions Code § 17200, et seq.[UCL]).

3 33. **Common Question of Law and Fact:** There are predominant common questions
4 of law and fact and a community of interest amongst Plaintiff and the claims of the Proposed Class
5 concerning Defendants' policy and practice of the following: Misclassification as Independent
6 Contractors (Labor Code § 226.8); Failure to Provide Code-Compliant Written Commission
7 Agreements (Labor Code § 2751); Failure to Provide Written Notice of Terms Pertaining to
8 Employment (Labor Code § 2810.5); Failure to Pay State Minimum Wages and Failure to Pay
9 Overtime Compensation (Labor Code §§ 510, 1194 et seq., 1197.1, 1198, IWC Wage Order);
10 Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 1198, IWC Wage Order); Failure to
11 Provide Rest Periods (Labor Code §§ 226.7, 512, 1198, IWC Wage Order); Improper Deductions
12 From Wages (Labor Code § 224); Violation of Wage Order - Rent Charged to Employees (Labor
13 Code § 1198); Failure to Provide Accurate Itemized Statements (Labor Code §§ 226, 1198, and
14 IWC Wage Order); Failure to Reimburse for Business Expenditures and Losses (Labor Code §
15 2802); Failure to Pay Wages When Due and Waiting Time Penalties (Labor Code §§ 200-204,
16 558, 1198, IWC Wage Order) and Unfair Competition (Business and Professions Code § 17200,
17 et seq.[UCL]). The questions of law and fact common to the Class include, without limitation:

- 18 a. Whether Proposed Class members have served Defendants as employees
19 rather than independent contractors under California law;
- 20 b. Whether Defendants' willful misclassification of Proposed Class members
21 as independent contractors constitutes an unlawful, unfair, and/or fraudulent
22 business practice, under California Business & Professions Code § 17200,
23 et seq.;
- 24 c. Whether Defendants have failed to pay Proposed Class members minimum
25 wages for all hours worked, in violation of Labor Code §§ 1194 and 1197,
26 General Minimum Wage Order, and IWC Wage Orders;
- 27 d. Whether Defendants have failed to provide Code-compliant written
28 commission agreements to Proposed Class Members, in violation of Labor

Code § 2751;

- e. Whether Defendants' failure to provide Code-compliant written commission agreements constitutes an unlawful, unfair, and/or fraudulent business practice, under California Business & Professions Code § 17200, *et seq.*;
- f. Whether Defendants have failed to provide written notice of terms pertaining to employment, in violation of Labor Code § 2810.5;
- g. Whether Defendants' failure to provide written notice of terms pertaining to employment constitutes an unlawful, unfair, and/or fraudulent business practice, under California Business & Professions Code § 17200, *et seq.*;
- h. Whether Defendants have failed to pay Proposed Class members overtime compensation when Proposed Class members worked in excess of eight hours in a day or forty in a workweek, in violation of Labor Code § 510 and IWC Wage Orders;
- i. Whether Defendants' failure to pay Proposed Class members minimum wage for all hours worked constitutes an unlawful, unfair, and/or fraudulent business practice, under California Business & Professions Code § 17200 *et seq.*;
- j. Whether Defendants' failure to pay Proposed Class members overtime compensation for all hours worked in excess of eight hours in a day or forty hours in a workweek constitutes an unlawful, unfair, and/or fraudulent business practice, under California Business & Professions Code § 17200 *et seq.*;
- k. Whether Defendants have failed to provide Proposed Class members adequate off-duty meal periods and missed meal period compensation, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Orders;
- l. Whether Defendants' failure to provide Class members adequate off-duty

1 meal periods and missed meal period compensation constitutes an unlawful,
2 unfair, and/or fraudulent business practice under California Business &
3 Professions Code § 17200 et seq;

4 m. Whether Defendants have failed to provide Proposed Class members
5 adequate rest periods and missed rest period compensation, in violation of
6 Labor Code §§ 226.7 and 512 and IWC Wage Orders;

7 n. Whether Defendants' failure to provide Class members adequate rest
8 periods and missed rest period compensation constitutes an unlawful,
9 unfair, and/or fraudulent business practice under California Business &
10 Professions Code § 17200 et seq.;

11 o. Whether Defendants have improperly deducted from wages of Proposed
12 Class Members, in violation of Labor Code section 224;

13 p. Whether Defendants' improper deductions from wages of Proposed Class
14 Members constitute an unlawful, unfair, and/or fraudulent business practice
15 under California Business & Professions Code § 17200 et seq.;

16 q. Whether Defendants have charged rent to Proposed Class Members, in
17 violation of the applicable IWC Wage Order and Labor Code section 1198;

18 r. Whether Defendants' charges of rent to Proposed Class Members constitute
19 an unlawful, unfair, and/or fraudulent business practice under California
20 Business & Professions Code § 17200 et seq.;

21 s. Whether Proposed Class members have necessarily incurred employment-
22 related expenses and losses in carrying out their duties for Defendants;

23 t. Whether Defendants have failed to indemnify Proposed Class members for
24 their necessarily incurred employment-related-expenses and losses, in
25 violation of Labor Code section 2802;

26 u. Whether Defendants' failure to indemnify Class members for necessarily
27 incurred employment-related expenses and losses constitutes an unlawful,
28 unfair, and/or fraudulent business practice, under California Business &

Professions Code § 17200 et seq;

- v. Whether Defendants knowingly and intentionally failed to provide Proposed Class members with an itemized statement with each payment of wages as required by Labor Code § 226 and IWC Wage Orders;
- w. Whether Defendants' failure to provide an itemized statement showing total hours worked with each payment of wages constitutes an unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code § 17200 et seq.; and
- x. The nature and extent of class-wide injury and the measure of damages for the injury.

34. **Typicality:** Plaintiffs' claims are typical of the claims of the Proposed Class they seek to represent. As set forth herein, Defendants' common course of conduct causes Plaintiffs and similarly situated individuals employed by Defendants the same or similar injuries and damages. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the Proposed Class.

35. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all employees is not practicable and questions of law and fact common to all Proposed Class members predominate over any questions affecting only individual Proposed Class member. Each Proposed Class member has been damaged and is entitled to recovery by reason of benefit of the entire Proposed Class and will result in the creation of a common fund.

36. The nature of this action and the format of laws available to Plaintiffs and members of the Proposed Class make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each misclassified employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Proposed Class member to pursue an individual remedy would also discourage the assertion of

1 lawful claims by employees who would be disinclined to file an action against their former and/
2 or current employer for real and justifiable fear of retaliation and permanent damage to their
3 careers at subsequent employment.

4 37. Moreover, the prosecution of separate actions by the individual class members,
5 even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with
6 respect to individual class members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual class members which would, as a practical matter, be dispositive of the interest of the
9 other Proposed Class members not parties to the adjudications or which would substantially impair
10 or impede the ability of the Proposed Class members to protect their interests. Further, the claims
11 of the individual members of the Proposed Class are not sufficiently large to warrant vigorous
12 individual prosecution considering all of the concomitant costs and expenses.

13 38. Plaintiffs are unaware of any difficulties in managing this case that should preclude
14 class action.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 MISCLASSIFICATION AS INDEPENDENT CONTRACTORS

18 [CALIFORNIA LABOR CODE SEC. 226.8]

19 **(Against All Defendants)**

20 39. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
21 though set forth fully herein.

22 40. From the time of their hire, Plaintiffs and members of the Proposed Class were
23 improperly classified as independent contractors. But Plaintiffs and members of the Proposed
24 Class were employees as defined by California Labor Code section 2775, as described above.

25 41. Plaintiffs are informed and believe, and thereon allege, that Defendants lowered
26 their cost of doing business by means of, but not limited to, not reporting or paying the employer's
27 share of federal or state payroll taxes with respect to Plaintiffs and members of the Proposed Class
28 and not providing worker's compensation or state disability insurance for them.

1 42. As a direct and proximate result of the aforementioned violations of California law
2 committed by Defendants, Plaintiffs and members of the Proposed Class suffered, and continue to
3 suffer, substantial losses related to the loss of the employer's share of payroll taxes, the use and
4 enjoyment of such employee benefits, and the expenses and attorneys' fees in seeking to compel
5 Defendants to perform their obligations under state law.

6 43. Plaintiffs are informed and believe that their misclassification was willful.
7 Plaintiffs are further informed and believe that Defendants have engaged in, or are engaging in, a
8 pattern or practice of such violations.

9 44. Pursuant to Labor Code section 226.8, Defendants' willful misclassification entitled
10 Plaintiffs and members of the Proposed Class to civil penalties. Defendants should further be
11 ordered, pursuant to subsection (e)(1), to prominently display a notice on the company's website
12 that states a court "has found that the person or employer has committed a serious violation of the
13 law by engaging in the willful misclassification of employees." Plaintiffs and members of the
14 Proposed Class are further entitled to attorney' fees pursuant to Code of Civil Procedure section
15 1021.5.

16 **SECOND CAUSE OF ACTION**

17 FAILURE TO PAY MINIMUM WAGES

18 [CALIFORNIA LABOR CODE SEC. 1194)]

19 **(Against All Defendants)**

20 45. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
21 though set forth fully herein.

22 46. Plaintiffs and members of the Proposed Class performed work for Defendants.

23 47. Plaintiffs and members of the Proposed Class were paid less than the minimum
24 wage by Defendants for some or all hours worked.

25 48. Plaintiffs and members of the Proposed Class are owed unpaid wages for all hours
26 worked for which they were not paid at least the applicable minimum wage, in amounts subject to
27 proof at trial. Plaintiffs and members of the Proposed Class are further owed liquidated damages
28 and waiting time penalties pursuant to Labor Code sections 1194.2 and 203, respectively, in

1 amounts subject to proof.

2 49. The minimum wage for labor performed from January 1, 2021 to December 31,
3 2021 was \$14.00 per hour. The minimum wage for labor performed from January 1, 2021 to
4 December 31, 2021 was \$15.00 per hour. The minimum wage for labor performed since January
5 1, 2023 is \$15.50 per hour.

6 50. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
7 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

8 **THIRD CAUSE OF ACTION**

9 FAILURE TO PAY OVERTIME WAGES

10 [CALIFORNIA LABOR CODE SEC. 1194]

11 **(Against All Defendants)**

12 51. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
13 though set forth fully herein.

14 52. Plaintiffs and members of the Proposed Class performed work for Defendants.

15 53. Plaintiffs and members of the Proposed Class worked overtime hours (meaning,
16 more than eight hours in a single day or more than 40 hours in a workweek), and Defendants knew
17 or should have known that Plaintiffs and members of the Proposed Class had worked overtime
18 hours.

19 54. Plaintiffs and members of the Proposed Class were not paid for some or all of the
20 overtime hours worked. Plaintiffs and members of the Proposed Class are owed unpaid overtime
21 wages for all overtime hours worked for which they were not paid, in amounts subject to proof at
22 trial. Plaintiffs and members of the Proposed Class are further owed waiting time penalties for the
23 unpaid wages pursuant to Labor Code section 203, in amounts subject to proof.

24 55. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
25 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 FAILURE TO PROVIDE REST PERIODS

3 [CALIFORNIA LABOR CODE SEC. 226.7]

4 **(Against All Defendants)**

5 56. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
6 though set forth fully herein.

7 57. Defendants were required to provide Plaintiffs and members of the Proposed Class,
8 pursuant to Wage Order 7, with a ten-minute rest period in a suitable place at least once for each
9 four hours of work.

10 58. Defendants did not authorize and permit Plaintiffs and members of the Proposed
11 Class to take paid 10-minute rest periods because there was no suitable place for employees to rest
12 while doing door-to-door sales, with restrooms or other facilities typically being at least a 15-
13 minute walk away. Moreover, Plaintiffs and members of the Proposed Class were not
14 compensated for time spent during rest periods, so to the extent they did take time to rest during a
15 shift, it was unpaid time, all in violation of California Labor Code section 226.7.

16 59. Plaintiffs and members of the Proposed Class are entitled to recover one hour's pay
17 for each workday on which they were not authorized or permitted to take paid 10-minute rest
18 periods, in amounts subject to proof.

19 60. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
20 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

21 **FIFTH CAUSE OF ACTION**

22 FAILURE TO PROVIDE MEAL PERIODS

23 [CALIFORNIA LABOR CODE SEC. 226.7]

24 **(Against All Defendants)**

25 61. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
26 though set forth fully herein.

27 62. Defendants were required to provide Plaintiffs and members of the Proposed Class,
28 pursuant to Wage Order 7, with a 30-minute uninterrupted meal period during each working period

1 of more than five hours.

2 63. Defendants did not authorize and permit Plaintiffs and members of the Proposed
3 Class to take uninterrupted 30-minute meal periods because there was no suitable place for
4 employees to eat while doing door-to-door sales, with restaurants or other facilities typically being
5 at least a 15-minute walk away, meaning that the entire break period would be used up to walk to
6 and from such facilities. Defendants intentionally planned for Plaintiffs and members of the
7 Proposed Class to have no meal periods and brought those workers to drive-through fast food
8 restaurants before their shifts to avoid them having to eat during their shifts.

9 64. Plaintiffs and members of the Proposed Class are entitled to recover one hour's pay
10 for each workday on which they were not authorized or permitted to take a 30-minute uninterrupted
11 meal period, in amounts subject to proof.

12 65. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
13 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

14 **SIXTH CAUSE OF ACTION**

15 **IMPROPER DEDUCTIONS FROM WAGES**

16 [CALIFORNIA LABOR CODE SEC. 224]

17 **(Against All Defendants)**

18 66. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
19 though set forth fully herein.

20 67. Plaintiffs and members of the Proposed Class were subject to withholding and
21 diversion of portions of their wages without agreement or other authorization, in violation of
22 California Labor Code section 224.

23 68. Among other miscellaneous unlawful deductions, Plaintiffs and members of the
24 Proposed Class were subject to withholding and diversion of rent from their wages in amounts
25 exceeding the maximum rent allowed by Wage Order 7. At no time did Defendants have written
26 agreements with Plaintiffs and members of the Proposed Class for the amount of rent.

27 69. Defendants acted willfully by withholding and diverting wages of Plaintiffs and
28 members of the Proposed Class without authorization, and Plaintiffs and members of the Proposed

1 Class were damaged by the unlawful withholding or diversion of their wages, in amounts subject
2 to proof at trial.

3 70. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
4 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

5 **SEVENTH CAUSE OF ACTION**

6 VIOLATION OF WAGE ORDER - RENT CHARGED TO EMPLOYEES

7 [CALIFORNIA LABOR CODE SEC. 1198]

8 **(Against All Defendants)**

9 71. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
10 though set forth fully herein.

11 72. Plaintiffs and members of the Proposed Class were charged rent to live in
12 apartments owned or leased by Defendants. There were no written agreements for the amount of
13 rent. The amounts charged by Defendants to Plaintiffs and members of the Proposed Class were
14 in excess of the maximum amounts permitted by Wage Order 7.

15 73. Defendants acted willfully by withholding and diverting wages of Plaintiffs and
16 members of the Proposed Class for paying rent in excess of the maximum amounts established by
17 the Wage Order, and Plaintiffs and members of the Proposed Class were damaged by this unlawful
18 withholding or diversion of their wages, in amounts subject to proof at trial.

19 74. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
20 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

21 **EIGHTH CAUSE OF ACTION**

22 FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

23 [CALIFORNIA LABOR CODE SEC. 226]

24 **(Against All Defendants)**

25 75. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
26 though set forth fully herein.

27 76. Plaintiffs and members of the Proposed Class were not provided with accurate
28 itemized wage statements as required by California Labor Code section 226.

1 77. Plaintiffs and members of the Proposed Class did not received itemized wage
2 statements as to their hours worked, hourly rate of pay, gross and net wages earned, and the other
3 information required by section 226, at any time while working for Defendants.

4 78. Plaintiffs and members of the Proposed Class suffered injury because they did not
5 receive any wage statements from which their hours worked, total net and gross wages, and other
6 required information could be promptly and easily determined.

7 79. Plaintiffs and members of the Proposed Class are entitled to damages of \$50 for the
8 first pay period in which this violation occurred and \$100 for each subsequent pay period, up to a
9 maximum of \$4,000 per person, pursuant to Labor Code section 226, subdivision (e).

10 80. Pursuant to the Labor Code, Plaintiffs and members of the Proposed Class are
11 further entitled to recover all costs and expenses of this litigation including attorneys' fees.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES AND LOSSES**

14 **[CALIFORNIA LABOR CODE SEC. 2802]**

15 **(Against All Defendants)**

16 81. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
17 though set forth fully herein.

18 82. Pursuant to Labor Code section 2802(a), “[a]n employer shall indemnify his or
19 her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
21 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
22 believed them to be unlawful.”

23 83. As a pattern and practice, Defendants regularly failed to reimburse and indemnify
24 Plaintiffs and Proposed Class members for numerous business expenses, including without
25 limitation: mileage and gasoline and maintenance costs associated with having to drive personal
26 vehicles to conduct business; auto insurance; cell phone and i-Pad charges incurred in the
27 discharge of their duties, among other expenses as described more fully above, to the extent
28 applicable.

84. Pursuant to Labor Code section 2802, Plaintiffs and Proposed Class members are entitled to recover unreimbursed business expenses. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code section 2802 (c), Plaintiffs and Class members are also entitled to recover interest, costs, and attorneys' fees. Plaintiffs and Class members are further entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

[CALIFORNIA BUSINESS AND PROFESSIONS CODE SEC. 17200, ET SEQ.]

(Against All Defendants)

85. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as though set forth fully herein.

86. A violation of California Business and Professions Code §§ 17200, et seq., may be predicated on the violation of any state or federal law. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §17200, et seq. Defendants have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by: Misclassification as Independent Contractors (Labor Code § 226.8); Failure to Provide Code-Compliant Written Commission Agreements (Labor Code § 2751); Failure to Provide Written Notice of Terms Pertaining to Employment (Labor Code § 2810.5); Failure to Pay State Minimum Wages and Failure to Pay Overtime Compensation (Labor Code §§ 510, 1194 et seq., 1197.1, 1198, IWC Wage Order); Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 1198, IWC Wage Order); Failure to Provide Rest Periods (Labor Code §§ 226.7, 512, 1198, IWC Wage Order); Improper Deductions From Wages (Labor Code § 224); Violation of Wage Order - Rent Charged to Employees (Labor Code § 1198); Failure to Provide Accurate Itemized Statements (Labor Code §§ 226, 1198, and IWC Wage Order); Failure to Reimburse for Business Expenditures and Losses (Labor Code § 2802); Failure to Pay Wages When Due and Waiting

1 Time Penalties (Labor Code §§ 200-204, 558, 1198, IWC Wage Order) and Unfair Competition
2 (Business and Professions Code § 17200, et seq. [UCL]).

3 87. Plaintiff and Proposed Class members have also been personally aggrieved by
4 Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money
5 and/or property.

6 88. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
7 unfair, unlawful, and harmful to Plaintiff and Proposed Class members, Defendants' competitors,
8 and the general public. Plaintiffs seek to enforce important rights affecting the public interest
9 within the meaning of the California Code of Civil Procedure § 1021.5.

10 89. Pursuant to California Business and Professions Code § § 17200, et seq., Plaintiffs
11 and Proposed Class members are entitled to an injunction prohibiting Defendants from further
12 violating the Labor Code and requiring the establishment of appropriate and effective means to
13 prevent further violations, as well as restitution of the wages withheld and retained by Defendants
14 during the relevant time period; an award of attorneys' fees pursuant to Labor Code § 1194; and
15 California Code of Civil Procedure § 1021.5; interest; and an award of costs.

16 **ELEVENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEY GENERAL ACT**

18 (California Labor Code § 2698 *et seq.* [PAGA])

19 **(By Plaintiffs Crawley and Taylor Against All Defendants)**

20 90. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
21 though set forth fully herein.

22 91. Labor Code § 2698, *et seq.*, Private Attorney General Act of 2004 ("PAGA")
23 violations derived from the various underlying Labor Code and IWC Wage Order claims are
24 brought against Defendant Jordan Kent Binning, pursuant to the provisions of California Labor
25 Code § 558.1 which permit liability of an owner, director, officer, or managing agent of the
26 employer who violates the California Labor Code sections referenced herein or the applicable
27 IWC Wage Order. Defendant Jordan Kent Binning is individually liable because he exercised
28 sufficient economic and operational control over Plaintiff's employment relationship. In his

1 capacity as owner, director, officer, or managing agent of Defendants Rise Energy, LLC, and
2 Nusun Power, LLC, Defendant Binning knew or should have known that failing to pay Plaintiff
3 for all hours worked violated the state wage and hour laws, yet he failed to prevent the violations
4 articulated herein.

5 92. PAGA authorizes an aggrieved employee, on behalf of himself or other current or
6 former employees, to bring a civil action to recover civil penalties against his employer pursuant
7 to the procedures specified in Labor Code section 2699.3. Plaintiff Crawley is an aggrieved
8 employee within the meaning of the PAGA, and pursuant to the PAGA, Plaintiff is entitled to
9 recover civil penalties on behalf of himself and other similarly aggrieved persons who are, or
10 were employed, by Defendant Rise Energy, LLC, and Nusun Power, LLC, and against whom
11 one or more of the alleged violations were committed. If the employee prevails as private
12 attorney general, the employer may be subject to civil penalties, of which the aggrieved
13 employee is entitled to 25 percent. Cal. Lab. Code, § 2699, subd. (h).

14 93. Plaintiff Crawley has complied with the procedures for bringing suit under
15 PAGA. Specifically, by letter dated and postmarked September 6, 2023, Plaintiff gave written
16 notice by certified mail to the California Labor & Workforce Development Agency (“LWDA”)
17 and to Defendants of the specific provisions of the California Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations. (See Exhibit A.)
19 Pursuant to California Labor Code section 2699.3, the LWDA must give written notice by
20 certified mail to the parties that it intends to investigate the alleged violations of the California
21 Labor Code within 65 days of the date of the complainant’s written notice. More than 65 days
22 have passed since the notice and the LWDA did not provide the parties notice that it intended to
23 investigate his claims.

24 94. Plaintiff Taylor has complied with the procedures for bringing suit under PAGA.
25 Specifically, by letter dated and postmarked June 26, 2023, Plaintiff gave written notice by
26 certified mail to the California Labor & Workforce Development Agency (“LWDA”) and to
27 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
28 including the facts and theories to support the alleged violations. (See Exhibit A.) Pursuant to

1 California Labor Code section 2699.3, the LWDA must give written notice by certified mail to
2 the parties that it intends to investigate the alleged violations of the California Labor Code within
3 65 days of the date of the complainant's written notice. More than 65 days have passed since
4 the notice and the LWDA did not provide the parties notice that it intended to investigate his
5 claims.

6 95. During the one-year period preceding the filing of Plaintiff Tylor's PAGA notice
7 to the LWDA, Defendants violated California Labor Code Sections 200-204, 221, 224, 226,
8 226.7, 226.8, 2751, 2753, 432.5, 1174, 1021, 1021.5, 1194, 1199, 2810.5, 1197, 1198, 510, 512,
9 552, 558, 558.1, 2800 and 2802, and Sections 3, 7, and 10 of the applicable IWC Wage Order.

10 96. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and
11 2699(g)(1), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection
12 with her claims for civil penalties.

13 97. As such, Plaintiff seeks all relief entitled under PAGA for any penalties assessed
14 against Defendants in connection with its Labor Code violations, plus attorneys' fees and costs.

15 **PRAYER FOR RELIEF**

16 Now, therefore, Plaintiffs hereby pray for relief against Defendants as follows, subject to
17 proof:

18 1. For compensatory damages of not less than \$10,000,000.00 for unpaid wages in the
19 applicable amounts and for unpaid premiums, rent charged, and unreimbursed expenses not paid
20 to Plaintiffs and members of the Proposed Class;

21 2. For applicable penalties on behalf of Plaintiffs and members of the Proposed Class,
22 of at least \$5,000,000.00, including without limitation, penalties under PAGA;

23 3. For an order enjoining Defendants from continuing to commit the labor violations
24 described herein;

25 4. For applicable prejudgment and post judgment interest at the legal rate;

26 5. For attorney fees and costs as provided or allowed by law; and

27 6. For such other or further relief as the Court finds equitable and just.

28 ///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

3
4 Dated: May 17, 2024

SOLMER LAW CORPORATION

5
6 By:



Lilit Solmer
Thomas Solmer
Christopher A. Adams
Andrew C. Ellison
Attorneys for Plaintiffs
PARKER CRAWLEY,
CASSIA CARRAWAY,
CHARLES DAVIS,
HUCKLEBERRY TAYLOR

Exhibit A

SOLMER LAW CORPORATION

Lilit Solmer
LS@SOLMERLAW.COM

Thomas Solmer
TS@SOLMERLAW.COM

7755 Center Avenue
Suite 1100
Huntington Beach, CA 92647

P: 714.794.8558
F: 818.927.2179

September 6, 2023

Via Online Filing Only

Attn: PAGA Administrator
Labor & Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Via Certified Mail

Rise Energy, LLC
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Nusun Power, LLC
c/o CSC - Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Jordan Kent Binning
1204 Lanai Ct
Carlsbad, CA 92008

Charles Lazarus
7147 Fay Avenue
La Jolla, CA 92037

Jake Robert Harrison
10140 Grayling Avenue
Whittier, CA 90603

PRIVATE ATTORNEY GENERAL ACT (PAGA) NOTICE
PURSUANT TO LABOR CODE § 2699

This firm has been retained to represent Mr. Parker Crawley ("Employee") in connection with various Labor Code and other violations arising from his employment with Rise Energy, LLC doing business as "Rise Energy" and now named "NuSun Power, LLC," (collectively, "Employer") and individuals Jordan Kent Binning, Charles Lazarus, and Jacob "Jake" Harrison (collectively, "Individuals"), the affiliate entities of Rise Energy LLC (now named Nusun Power, LLC), and all other owners, directors, officers, and/or managing agents and all other persons acting on behalf of an employer, who violated or caused to be violated various provisions of the California Labor Code and Industrial Welfare Commission Order No. 7-2001 ("Wage Order 7") regulating wages, hours and working conditions in the mercantile industry.

This notice is brought on behalf of Mr. Crawley and all other aggrieved current and former non-exempt employees of Rise Energy, LLC or Nusun Power, LLC in California, whether or not such persons were nominally classified as independent contractors (the "Aggrieved Employees"), including, without limitation, employees in the positions entitled "setters," "setter captains," "closers," and "managers." Mr. Crawley was hired by Rise Energy performing the duties of an employee, but classified as an independent contractor. Mr. Crawley worked for Employer and Individuals from approximately October 4, 2022 until February 13, 2023.

Mr. Crawley is informed and believes that Mr. Binning, Mr. Lazarus, and Mr. Harrison are jointly liable for the Labor Code violations identified in this correspondence under Labor Code section 558.1 because they were and/or are the owners, directors, officers and/or managing agents of Employer. The Individuals exercised control over the labor practices of the Employer. The Individuals own and control the Employer. The Individuals are responsible for setting policies concerning the classification of employees as independent contractors, the payment of wages at Rise Energy, LLC (now named "NuSun Power, LLC"), the scheduling of duties, the manner in which the duties are performed, and all other facts and circumstances relevant to the Labor Code violations identified in this correspondence. In this regard, the Individuals exercised control over the Aggrieved Employees schedules, commission payment schedules, and payment of Plaintiffs' wages as well as other compensation, including incentive pay.

The Aggrieved Employees were misclassified as independent contractors in violation of **Labor Code section 226.8**. The Aggrieved Employees were not free from the direction and control of Rise Energy (now named "NuSun Power, LLC") in the performance of their work. They were assigned to engage in efforts to sell solar power installations, either making appointments ("setters"), negotiating the actual final deal ("closers"), or performing various other related duties while misclassified as independent contractors in the titles of "setter captains" and "managers", all based on Employer's instructions. They were given specific areas for door-to-door sales and dropped off on the schedule determined by Employer. They followed the instructions of Employer with regard to their sales methods. They did not perform work outside of Employer's usual course of business, and in fact were integral to the core business of selling solar power installations. They were required to adhere to various company policies, including Employer's Code of Conduct, Non-Competition and Non-Interference with Customers, Non-solicitation, and Non-disparagement. They were not engaged in any independently established trade, occupation, or business of the same nature as the work performed for Employer, and they were prohibited from doing so by the terms of their compensation agreements.

Aggrieved Employees were promised a schedule of commission payments, but those wage payments were subject to unauthorized and illegal deductions, including excessive deductions for rent and various arbitrary and substantial other deductions. A valid written commission agreement did not exist that would set forth the method by which the commissions were to be computed or paid to the Aggrieved Employees, contrary to the **Labor Code section 2751**.

Since the Aggrieved Employees were misclassified as independent contractors at the time of hire, the Aggrieved Employees were not provided with a written notice of the information required by Labor Code section 2810.5, including regarding rate of pay and basis thereof, allowances, the regular payday, the name of the employer, including any doing business as, the physical address of the employer's main office or principal place of business, the telephone number of the employer, the name, address, and telephone number of the employer's workers' compensation insurance carrier, that an employee may accrue and use sick leave (and corresponding requirements). Accordingly, Employer violated **Labor Code section 2810.5**.

The Aggrieved Employees were not paid wages for their hours worked and instead received only some of the "commissions" promised, subject to unauthorized and illegal deductions. In some instances, Aggrieved Employees worked for Employer more than 40 hours per week but were paid substantially below minimum wage. For example, at least one former employee worked for Employer more than 40 hours each week for more than two months, yet was paid total wages of \$150.00. The failure to pay wages was in violation of **Labor Code section 204**.

As a result of being misclassified as independent contractors and due to the unauthorized and unlawful deductions, the Aggrieved Employees were paid less than the minimum wage for some or all hours worked, in violation of **Labor Code section 1197**. For example, one former employee was paid less than \$2 per hour.

The Aggrieved Employees were also subject to withholding and diversion of their wages – without agreement or authorization. Since the Aggrieved Employees were misclassified as independent contractors and were instead employees, this practice constitutes unauthorized and improper deductions in violation of **Labor Code section 224**.

The Aggrieved Employees were commonly required to work more than eight hours in a day and more than 40 hours in a week, but they were not compensated with overtime wages for those hours, in violation of **Labor Code section 510** and **Wage Order 7, section 3**.

Employer did not maintain records showing when any of the Aggrieved Employees began and ended each of their work periods, or the total hours worked in each pay period, in violation of **Labor Code section 226** and **Wage Order 7, section 7**.

As a result of misclassifying the Aggrieved Employees as independent contractors, the Aggrieved Employees were not permitted or authorized to take legally compliant 10-minute rest periods or meal breaks, in violation of **Labor Code section 226.7** and **512**. The Aggrieved Employees were not permitted to take any rest breaks at all because they were considered independent contractors. Employer intentionally enforced a schedule that prevented Aggrieved Employees from taking meal breaks within the legally required timeframe. Specifically, Employer brought the employees to drive-through fast food

restaurants before shifts to avoid them having to eat during their shifts. Despite this, the Aggrieved Employees were not paid any premium pay for non-compliant meal or rest breaks.

Employer deducted excessive amounts for rent from the Aggrieved Employees' wages, without any written agreement as to the amount, including for those in shared rooms, shared apartments, and whole apartments, with deductions for shared rooms (for example) of \$300.00 per week or more, compared to the 2023 maximum of \$60.16 per week, in violation of **Labor Code section 221** and **Wage Order 7, section 10**, enforced under **Labor Code section 1198**.

Employer engaged the Aggrieved Employees to work all seven days on various workweeks, in violation of **Labor Code section 552**.

As a result of Employer misclassifying the Aggrieved Employees as independent contractors, Employer regularly failed to reimburse and indemnify the Aggrieved Employees for numerous business expenses, including without limitation: mileage and gasoline and maintenance costs associated with having to drive personal vehicles to conduct business; auto insurance; cell phone and i-Pad and other charges incurred in the discharge of their duties. Moreover, Employer deducted excessive amounts of rent for company lodging expenses incurred by the Aggrieved Employees, without a written agreement authorizing this and failed to reimburse the Aggrieved Employees for any rent related expenses. As a result, Employer failed to indemnify the Aggrieved Employees necessarily incurred employment-related-expenses and losses, in violation of **Labor Code section 2802 and 2800**.

Thank you for your consideration of this notice. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,
SOLMER LAW CORPORATION

Lilit Solmer

Lilit Solmer

Exhibit B

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