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PARKER CRAWLEY, CASSIA CARRAWAY,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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

Plaintiffs,
vs.

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

Defendants.)

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

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

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

JURY TRIAL DEMANDED

Plaintiffs Parker Crawley ("Crawley"), Cassia Carraway ("Carraway"), and Charles Davis ("Davis") (collectively, "Plaintiffs") hereby submit their First Amended Class Action Complaint ("FAC") against Defendant Rise Energy, LLC ("Rise Energy"), doing business as "NuSun Power, LLC", Jordan Kent Binning ("Binning"), Charles Lazarus ("Lazarus"), Jacob "Jake" Harrison ("Harrison"), 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.

Defendants

4. 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, and is, at all relevant times herein doing business in Orange County and elsewhere throughout California. Defendant Nusun Power, LLC, is the same limited liability company as Rise Energy,

1 LLC. On February 10, 2023, the name of Defendant Rise Energy, LLC, was amended and replaced
2 to Nusun Power, LLC. Plaintiffs are informed and believe, and thereon allege, that this was done
3 in an effort to avoid liability for wage-and-hour violations and this lawsuit. All of the same
4 allegations are asserted against Nusun Power, LLC, as against Defendant Rise Energy, LLC.

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

20 6. Defendant Charles Lazarus ("Lazarus"), was, and is, an individual residing in the
21 State of California, and was and/or is the owner, director, officer and/or managing agent of
22 Defendant Rise Energy, LLC, now named "NuSun Power, LLC," and was Plaintiffs' supervisor
23 within the meaning of California Government Code section 12926 (t). Plaintiffs are informed and
24 believe that Defendant Lazarus is also Plaintiffs' joint employer such that he is liable for the
25 applicable wage and hour claims because he caused the Labor Code violations alleged at length
26 herein and for the following non-exhaustive reasons: (1) Defendant Lazarus exercised control over
27 the labor practices of Defendant Rise Energy, LLC, now named "NuSun Power, LLC," where
28 Plaintiffs worked; (2) Defendant Lazarus owns and controls Defendant Rise Energy, LLC, now

1 named “NuSun Power, LLC,”; (3) Defendant Lazarus owns a majority of shares and is responsible
2 for setting policies concerning the classification of employees as independent contractors, the
3 payment of wages at of Defendant Rise Energy, LLC, now named “NuSun Power, LLC;” (4)
4 Defendant Lazarus exercised control over Plaintiffs' schedules, commission payment schedules,
5 and payment of Plaintiffs' wages as well as other compensation, including incentive pay.

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

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

1 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
2 each defendant are legally attributable to the other defendants. Whenever, heretofore or
3 hereinafter, reference is made to “Defendants,” it shall include Rise Energy, LLC, and the
4 Individual Defendants, and any of their parent, subsidiary, or affiliated companies within the
5 State of California, as well as DOES 1 through 100 identified herein.

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

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

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

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

27 13. Plaintiffs are informed and believe and based thereon allege that despite the
28 formation of the purported corporate existence of Rise Energy, LLC, and DOES 1 through 50,

1 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with
2 the Individual Defendants and DOES 51 through 100 (“Individual Defendants”), and each of
3 them, due to, but not limited to, the following reasons:

- 4 A. The Alter Ego Defendants are completely dominated and controlled by the
5 Individual Defendants who personally committed the wrongful and illegal acts and
6 violated the laws as set forth in this Complaint, and who have hidden and currently
7 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent
8 statutes, or accomplish some other wrongful or inequitable purpose;
- 9 B. The Individual Defendants derive actual and significant monetary benefits by
10 and through the Alter Ego Defendants’ unlawful conduct, and by using the
11 Alter Ego Defendants as the funding source for the Individual Defendants’
12 own personal expenditures;
- 13 C. The Individual Defendants and the Alter Ego Defendants, while really one and
14 the same, were segregated to appear as though separate and distinct for
15 purposes of perpetrating a fraud, circumventing a statute, or accomplishing
16 some other wrongful or inequitable purpose;
- 17 D. The business affairs of the Individual Defendants and the Alter Ego Defendants
18 are, and at all relevant times mentioned herein were, so mixed and intermingled
19 that the same cannot reasonably be segregated, and the same are inextricable
20 confusion. The Alter Ego Defendants are, and at all relevant times mentioned
21 herein were, used by the Individual Defendants as mere shells and conduits for
22 the conduct of certain of their, and each of their affairs. The Alter Ego Defendants
23 are, and at all relevant times mentioned herein were, the alter egos of the Individual
24 Defendants;
- 25 E. The recognition of the separate existence of the Individual Defendants and the Alter
26 Ego Defendants would promote injustice insofar that it would permit defendants to
27 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
28 Code, and other statutory violations. The corporate existence of these defendants

1 should thus be disregarded in equity and for the ends of justice because
2 such disregard is necessary to avoid fraud and injustice to Plaintiff herein;

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

6 14. As a result of the aforementioned facts, Plaintiffs are informed and believe, and
7 based thereon allege, that Defendants, and each of them, are joint employers.

8 **JURISDICTION AND VENUE**

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

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

20 **GENERAL ALLEGATIONS**

21 17. For at least four years prior to the filing of this action, Defendants have employed
22 approximately 700 individuals in California.

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

27 19. At all relevant times herein, Plaintiffs and members of the Proposed Class worked
28 for Defendants in the business of selling home solar power installations. Plaintiffs are informed

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

10 20. Salespeople employed by Defendants were divided into "setters," "setter captains,"
11 "closers," and "managers." Plaintiffs and members of the Proposed Class were engaged by
12 Defendants to work in these and similar positions. Their hours and routes were set by Defendants.
13 They lived at apartments owned or leased by Defendants. Some lived in individual apartments
14 and others shared apartments or shared rooms. None of them had a written agreement for the
15 amount of rent. Typically, their day would begin with a morning meeting before being organized
16 into carpools and driven by supervisors to various neighborhood locations chosen by Defendants.
17 Each setter was assigned to a geographic area to walk the neighborhood and knock on doors on all
18 of the houses, trying to set appointments for the closer to come back and sell a solar power
19 installation. Setters did not have access to bathroom or rest facilities during this time, a typical
20 schedule being from 11:00 AM until 7:30 PM on weekdays or 9:30 AM until 6:00 PM on
21 weekends. If the employee needed to use the restroom, they could call for a supervisor to pick
22 them up, but there was not always someone available. Usually, on the way to the drop-off in the
23 morning, each carpool would be driven to a fast-food restaurant so the employees could eat and
24 use the restrooms, on the assumption they would not be able to do these things during their shifts.
25 Setters also did not have a place to store food or to eat while working, unless they walked out of
26 the neighborhood to a shopping center, which was often not feasible. They did not have adequate
27 facilities to take a rest or meal break, nor did their schedules typically allow them to do so. At the
28 end of each day, a supervisor or another employee would pick them up from the area and drive

1 them back to their company apartment. Setters such as Plaintiffs and members of the Proposed
2 Class were paid only if they made an appointment for the closer and the deal went through. They
3 were otherwise paid nothing for their time. Plaintiffs and members of the Proposed Class were
4 also required to attend videoconference meetings at least weekly and other mandatory company
5 events without pay.

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

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

26 23. Plaintiffs and members of the Proposed Class were acting as employees and not
27 independent contractors for Defendants at all relevant times herein. They were not free from the
28 direction and control of Defendants in the performance of the work. Rather, they attempted to

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

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

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

21 26. Written agreements presented to Plaintiffs and members of the Proposed Class that
22 include Utah forum selection and choice of law clauses are voidable by the employee, pursuant to
23 California Labor Code section 925. Additionally, any written agreements involving commissions
24 that do not contain Defendants' signature violate California Labor Code section 2751. By
25 commencing this action, Plaintiffs request that these provisions be voided and the matter
26 adjudicated in California. Written agreements between Defendants and Plaintiffs and members of
27 the Proposed Class also may include a provision entitled "Waiver of Right to Participate in Class
28 Action" or similar provision. The agreements do not provide for arbitration. Any provisions

1 purporting to waive the rights of Plaintiffs and members of the Proposed Class to participate in
2 any type of representative action against Defendants are void under California law. These
3 agreements further evidence an employee-employer relationship.

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

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

13 28. California Labor Code section 2699.3 (a) (2) (C) provides Plaintiff a statutory
14 right to amend a complaint to add a PAGA claim, as follows: "(C) Notwithstanding any other
15 provision of law, a plaintiff may, as a matter of right amend an existing complaint to add a cause
16 of action arising under this part at any time within 60 days of the time periods specified in this
17 part." At the time of this filing, Defendants have not yet appeared in this action.

18 **CLASS ACTION ALLEGATIONS**

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

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

27 30. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
28 the class description with greater particularity or further division into subclasses or limitation to

1 particular issues.

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

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

15 33. **Commonality:** Defendants uniformly administered a corporate policy, practice of
16 the following violations: Misclassification as Independent Contractors (Labor Code § 226.8);
17 Failure to Provide Code-Compliant Written Commission Agreements (Labor Code § 2751);
18 Failure to Provide Written Notice of Terms Pertaining to Employment (Labor Code § 2810.5);
19 Failure to Pay State Minimum Wages and Failure to Pay Overtime Compensation (Labor Code §§
20 510, 1194 et seq., 1197.1, 1198, IWC Wage Order); Failure to Provide Meal Periods (Labor Code
21 §§ 226.7, 512, 1198, IWC Wage Order); Failure to Provide Rest Periods (Labor Code §§ 226.7,
22 512, 1198, IWC Wage Order); Improper Deductions From Wages (Labor Code § 224); Violation
23 of Wage Order - Rent Charged to Employees (Labor Code § 1198); Failure to Provide Accurate
24 Itemized Statements (Labor Code §§ 226, 1198, and IWC Wage Order); Failure to Reimburse for
25 Business Expenditures and Losses (Labor Code § 2802); Failure to Pay Wages When Due and
26 Waiting Time Penalties (Labor Code §§ 200-204, 558, 1198, IWC Wage Order) and Unfair
27 Competition (Business and Professions Code § 17200, et seq.[UCL]).

28 34. **Common Question of Law and Fact:** There are predominant common questions

of law and fact and a community of interest amongst Plaintiff and the claims of the Proposed Class concerning Defendants' policy and practice of the following: 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 Time Penalties (Labor Code §§ 200-204, 558, 1198, IWC Wage Order) and Unfair Competition (Business and Professions Code § 17200, et seq.[UCL]). The questions of law and fact common to the Class include, without limitation:

- a. Whether Proposed Class members have served Defendants as employees rather than independent contractors under California law;
- b. Whether Defendants' willful misclassification of Proposed Class members as independent contractors constitutes an unlawful, unfair, and/or fraudulent business practice, under California Business & Professions Code § 17200, et seq.;
- c. Whether Defendants have failed to pay Proposed Class members minimum wages for all hours worked, in violation of Labor Code §§ 1194 and 1197, General Minimum Wage Order, and IWC Wage Orders;
- d. Whether Defendants have failed to provide Code-compliant written 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 meal periods and missed meal period compensation constitutes an unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code § 17200 et seq.;

- 1 m. Whether Defendants have failed to provide Proposed Class members
2 adequate rest periods and missed rest period compensation, in violation of
3 Labor Code §§ 226.7 and 512 and IWC Wage Orders;
- 4 n. Whether Defendants' failure to provide Class members adequate rest
5 periods and missed rest period compensation constitutes an unlawful,
6 unfair, and/or fraudulent business practice under California Business &
7 Professions Code § 17200 et seq.;
- 8 o. Whether Defendants have improperly deducted from wages of Proposed
9 Class Members, in violation of Labor Code section 224;
- 10 p. Whether Defendants' improper deductions from wages of Proposed Class
11 Members constitute an unlawful, unfair, and/or fraudulent business practice
12 under California Business & Professions Code § 17200 et seq.;
- 13 q. Whether Defendants have charged rent to Proposed Class Members, in
14 violation of the applicable IWC Wage Order and Labor Code section 1198;
- 15 r. Whether Defendants' charges of rent to Proposed Class Members constitute
16 an unlawful, unfair, and/or fraudulent business practice under California
17 Business & Professions Code § 17200 et seq.;
- 18 s. Whether Proposed Class members have necessarily incurred employment-
19 related expenses and losses in carrying out their duties for Defendants;
- 20 t. Whether Defendants have failed to indemnify Proposed Class members for
21 their necessarily incurred employment-related-expenses and losses, in
22 violation of Labor Code section 2802;
- 23 u. Whether Defendants' failure to indemnify Class members for necessarily
24 incurred employment-related expenses and losses constitutes an unlawful,
25 unfair, and/or fraudulent business practice, under California Business &
26 Professions Code § 17200 et seq;
- 27 v. Whether Defendants knowingly and intentionally failed to provide
28 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.

35. **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.

36. **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.

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

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

10 39. Plaintiffs are unaware of any difficulties in managing this case that should preclude
11 class action.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **MISCLASSIFICATION AS INDEPENDENT CONTRACTORS**

15 **[CALIFORNIA LABOR CODE SEC. 226.8]**

16 **(Against All Defendants)**

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

19 41. From the time of their hire, Plaintiffs and members of the Proposed Class were
20 improperly classified as independent contractors. But Plaintiffs and members of the Proposed
21 Class were employees as defined by California Labor Code section 2775, as described above.

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

26 43. As a direct and proximate result of the aforementioned violations of California law
27 committed by Defendants, Plaintiffs and members of the Proposed Class suffered, and continue to
28 suffer, substantial losses related to the loss of the employer's share of payroll taxes, the use and

1 enjoyment of such employee benefits, and the expenses and attorneys' fees in seeking to compel
2 Defendants to perform their obligations under state law.

3 44. Plaintiffs are informed and believe that their misclassification was willful.
4 Plaintiffs are further informed and believe that Defendants have engaged in, or are engaging in, a
5 pattern or practice of such violations.

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

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **[CALIFORNIA LABOR CODE SEC. 1194)]**

16 **(Against All Defendants)**

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

19 47. Plaintiffs and members of the Proposed Class performed work for Defendants.

20 48. Plaintiffs and members of the Proposed Class were paid less than the minimum
21 wage by Defendants for some or all hours worked.

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

27 50. The minimum wage for labor performed from January 1, 2021 to December 31,
28 2021 was \$14.00 per hour. The minimum wage for labor performed from January 1, 2021 to

December 31, 2021 was \$15.00 per hour. The minimum wage for labor performed since January 1, 2023 is \$15.50 per hour.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

[CALIFORNIA LABOR CODE SEC. 1194]

(Against All Defendants)

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

[CALIFORNIA LABOR CODE SEC. 226.7]

(Against All Defendants)

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

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

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

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

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **[CALIFORNIA LABOR CODE SEC. 226.7]**

18 **(Against All Defendants)**

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

21 63. Defendants were required to provide Plaintiffs and members of the Proposed Class,
22 pursuant to Wage Order 7, with a 30-minute uninterrupted meal period during each working period
23 of more than five hours.

24 64. Defendants did not authorize and permit Plaintiffs and members of the Proposed
25 Class to take uninterrupted 30-minute meal periods because there was no suitable place for
26 employees to eat while doing door-to-door sales, with restaurants or other facilities typically being
27 at least a 15-minute walk away, meaning that the entire break period would be used up to walk to
28 and from such facilities. Defendants intentionally planned for Plaintiffs and members of the

1 Proposed Class to have no meal periods and brought those workers to drive-through fast food
2 restaurants before their shifts to avoid them having to eat during their shifts.

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

6 66. 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 **SIXTH CAUSE OF ACTION**

9 **IMPROPER DEDUCTIONS FROM WAGES**

10 **[CALIFORNIA LABOR CODE SEC. 224]**

11 **(Against All Defendants)**

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

14 68. Plaintiffs and members of the Proposed Class were subject to withholding and
15 diversion of portions of their wages without agreement or other authorization, in violation of
16 California Labor Code section 224.

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

21 70. Defendants acted willfully by withholding and diverting wages of Plaintiffs and
22 members of the Proposed Class without authorization, and Plaintiffs and members of the Proposed
23 Class were damaged by the unlawful withholding or diversion of their wages, in amounts subject
24 to proof at trial.

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

27 **SEVENTH CAUSE OF ACTION**

28 **VIOLATION OF WAGE ORDER - RENT CHARGED TO EMPLOYEES**

1 **[CALIFORNIA LABOR CODE SEC. 1198]**

2 **(Against All Defendants)**

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

5 73. Plaintiffs and members of the Proposed Class were charged rent to live in
6 apartments owned or leased by Defendants. There were no written agreements for the amount of
7 rent. The amounts charged by Defendants to Plaintiffs and members of the Proposed Class were
8 in excess of the maximum amounts permitted by Wage Order 7.

9 74. Defendants acted willfully by withholding and diverting wages of Plaintiffs and
10 members of the Proposed Class for paying rent in excess of the maximum amounts established by
11 the Wage Order, and Plaintiffs and members of the Proposed Class were damaged by this unlawful
12 withholding or diversion of their wages, in amounts subject to proof at trial.

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

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 **[CALIFORNIA LABOR CODE SEC. 226]**

18 **(Against All Defendants)**

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

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

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

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

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

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

6 **NINTH CAUSE OF ACTION**

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

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

9 **(Against All Defendants)**

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

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

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

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

1 **TENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

4 **(Against All Defendants)**

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

7 87. A violation of California Business and Professions Code §§ 17200, et seq., may be
8 predicated on the violation of any state or federal law. Defendants' policies, activities, and actions
9 as alleged herein, are violations of California law and constitute unlawful business acts and
10 practices in violation of California Business and Professions Code §17200, et seq. Defendants
11 have engaged and continue to engage in unfair and unlawful business practices in California by
12 practicing, employing and utilizing the employment practices outlined above, include, to wit, by:
13 Misclassification as Independent Contractors (Labor Code § 226.8); Failure to Provide Code-
14 Compliant Written Commission Agreements (Labor Code § 2751); Failure to Provide Written
15 Notice of Terms Pertaining to Employment (Labor Code § 2810.5); Failure to Pay State Minimum
16 Wages and Failure to Pay Overtime Compensation (Labor Code §§ 510, 1194 et seq., 1197.1,
17 1198, IWC Wage Order); Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 1198, IWC
18 Wage Order); Failure to Provide Rest Periods (Labor Code §§ 226.7, 512, 1198, IWC Wage
19 Order); Improper Deductions From Wages (Labor Code § 224); Violation of Wage Order - Rent
20 Charged to Employees (Labor Code § 1198); Failure to Provide Accurate Itemized Statements
21 (Labor Code §§ 226, 1198, and IWC Wage Order); Failure to Reimburse for Business
22 Expenditures and Losses (Labor Code § 2802); Failure to Pay Wages When Due and Waiting
23 Time Penalties (Labor Code §§ 200-204, 558, 1198, IWC Wage Order) and Unfair Competition
24 (Business and Professions Code § 17200, et seq. [UCL]).

25 88. Plaintiff and Proposed Class members have also been personally aggrieved by
26 Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money
27 and/or property.

28 89. Defendants' conduct, as alleged in this complaint, has been, and continues to be,

1 unfair, unlawful, and harmful to Plaintiff and Proposed Class members, Defendants' competitors,
2 and the general public. Plaintiffs seek to enforce important rights affecting the public interest
3 within the meaning of the California Code of Civil Procedure § 1021.5.

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

10 **ELEVENTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEY GENERAL ACT**

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

13 **(By Plaintiff Crawley Against Defendants Rise Energy, LLC, Nusun Power, LLC, and** 14 **Jordan Kent Binning)**

15 91. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
16 though set forth fully herein.

17 92. Labor Code § 2698, *et seq.*, Private Attorney General Act of 2004 ("PAGA")
18 violations derived from the various underlying Labor Code and IWC Wage Order claims are
19 brought against Defendant Jordan Kent Binning, pursuant to the provisions of California Labor
20 Code § 558.1 which permit liability of an owner, director, officer, or managing agent of the
21 employer who violates the California Labor Code sections referenced herein or the applicable
22 IWC Wage Order. Defendant Jordan Kent Binning is individually liable because he exercised
23 sufficient economic and operational control over Plaintiff's employment relationship. In his
24 capacity as owner, director, officer, or managing agent of Defendants Rise Energy, LLC, and
25 Nusun Power, LLC, Defendant Binning knew or should have known that failing to pay Plaintiff
26 for all hours worked violated the state wage and hour laws, yet he failed to prevent the violations
27 articulated herein.
28

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

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

20 95. During the one-year period preceding the filing of Plaintiff Crawley's PAGA
21 notice to the LWDA, Defendant violated California Labor Code Sections 200-204, 221, 224,
22 226, 226.7, 226.8, 2751, 2810.5, 1197, 1198, 510, 512, 552, 558.1, 2800 and 2802, and Sections
23 3, 7, and 10 of the applicable IWC Wage Order.

24 96. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and
25 2699(g)(1), Plaintiff is entitled to an award of reasonable attorney’s fees and costs in connection
26 with her claims for civil penalties.

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

1 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

14 **DEMAND FOR JURY TRIAL**

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

16
17 Dated: November 20, 2023

SOLMER LAW CORPORATION

18
19 By: Lilit Solmer
20 Lilit Solmer
21 Thomas Solmer
22 Christopher A. Adams
23 Attorneys for Plaintiffs
24 PARKER CRAWLEY
25 CASSIA CARRAWAY
26 CHARLES DAVIS
27
28

"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

PROOF OF SERVICE

I am a resident of the County of Orange. At the time of service, I was at least 18 years of age and not a party to this legal action. My business address is 4000 Barranca Parkway, Ste. 250, Irvine, CA 92604. On November 21, 2023, I served copies of the following document(s):

• **SECOND AMENDED CLASS ACTION COMPLAINT.**

I served the document(s) on the following persons at the address listed:

Defendant Jordan Kent Binning
3400 N 1200 W
Lehi, UT 84043

Defendant Rise Energy, LLC
CSC
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

Defendant Nusun Power, LLC
251 Little Falls Dr.
Wilmington, DE 19808

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above, and:

☒ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown above, or

☐ placed the envelope for collection and mailing on the date shown above, following our ordinary business practices. I am "readily familiar" with our practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Huntington Beach, California, in the ordinary course of business.

The envelope or package was placed in the mail at Irvine, CA.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2023.


Thomas Solmer