

# SUMMONS

## (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

BLOOM ENERGY CORPORATION, a Delaware corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ALEXANDER GILMORE, an individual, on behalf of the State of California, as a Private Attorney General,

E-FILED

10/2/2023 3:58 PM

Clerk of Court

Superior Court of CA,  
County of Santa Clara

23CV423581

Reviewed By: R. Walker

Envelope: 13182788

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara Superior Court

Downtown Superior Court - 191 N. First Street, San Jose, CA 95113

CASE NUMBER:

(Número de Caso)

23CV423581

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 10/2/2023 3:58 PM  
(Fecha)

Clerk of Court

Clerk, by  
(Secretario)

R. Walker

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

**JCL LAW FIRM, APC**

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SANTA CLARA**

ALEXANDER GILMORE, an individual, on  
behalf of the State of California, as a Private  
Attorney General,

Plaintiff,

v.

BLOOM ENERGY CORPORATION, a  
Delaware corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No: **23CV423581**

**REPRESENTATIVE ACTION**  
**COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE  
ATTORNEYS GENERAL ACT [LABOR  
CODE §§ 2698 ET SEQ

E-FILED

10/2/2023 3:58 PM

Clerk of Court

Superior Court of CA,

County of Santa Clara

23CV423581

Reviewed By: R. Walker

1 PLAINTIFF ALEXANDER GILMORE (“PLAINTIFF”), an individual, on behalf of the  
2 State of California, as a Private Attorney General, and on behalf of fellow current and former  
3 AGGRIEVED EMPLOYEES, defined *supra*, against BLOOM ENERGY CORPORATION, a  
4 Delaware corporation (“DEFENDANT” and/or “DEFENDANTS”), alleges on information and  
5 belief, except for his own acts and knowledge which are based on personal knowledge, the  
6 following:

### 7 **INTRODUCTION**

8 1. PLAINTIFF brings this individual and representative action pursuant to the Private  
9 Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of  
10 himself as an individual and the LWDA and other current and former aggrieved employees of  
11 DEFENDANT for engaging in a pattern and practice of wage and hour violations under the  
12 California Labor Code.

13 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT  
14 decreased their employment-related costs by systematically violating California wage and hour  
15 laws.

16 3. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order  
17 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 18 a. Failure to provide compliant meal and rest periods;
- 19 b. Failure to allow employees to take duty-free meal and rest periods;
- 20 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 21 d. Failure to correctly calculate the regular rate of pay;
- 22 e. Failure to pay within seven (7) days of the close of payroll;
- 23 f. Failure to pay for all hours worked;
- 24 g. Failure to reimburse for required business expenses;
- 25 h. Failure to provide accurate itemized wage statements; and
- 26 i. Failure to timely pay wages due during, and upon termination of employment.

27 4. PLAINTIFF brings this individual and representative action against  
28 DEFENDANT on behalf of himself, the LWDA and all other aggrieved employees of

1 DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to  
2 California Labor Code § 2699, *et seq.*

3 5. PLAINTIFF reserves the right to name additional representatives throughout the  
4 State of California.

### 5 **THE PARTIES**

6 6. Defendant BLOOM ENERGY CORPORATION (“DEFENDANT”) is a  
7 Delaware corporation that at all relevant times mentioned herein conducted and continues to  
8 conduct substantial and regular business throughout California.

9 7. The true names and capacities, whether individual, corporate, subsidiary,  
10 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are  
11 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious  
12 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
13 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
14 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
15 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
16 inclusive, are responsible in some manner for one or more of the events and happenings that  
proximately caused the injuries and damages hereinafter alleged.

17 8. The agents, servants, and/or employees of the DEFENDANTS and each of them  
18 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its  
19 authority as the agent, servant and/or employee of the Defendants, and personally participated in  
20 the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged  
21 herein. Consequently, the acts of each Defendant are legally attributable to the other  
22 DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFF and the  
23 AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the  
24 Defendant’s agents, servants and/or employees.

25 9. DEFENDANT was PLAINTIFF’s employer or person acting on behalf of  
26 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or  
27 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
28 regulating hours and days of work in any order of the Industrial Welfare Commission and, as

1 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
2 at all relevant times.

3 10. DEFENDANT was PLAINTIFF's employer or person acting on behalf of  
4 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,  
5 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
6 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
7 civil penalties for each underpaid employee.

8 11. DEFENDANT operates an energy converter manufacturing company throughout  
9 California, including in the county of Santa Clara, where PLAINTIFF worked.

10 12. PLAINTIFF was employed by DEFENDANT in California from October of 2022  
11 to December of 2022 as a non-exempt employee, paid an hourly basis and entitled to the legally  
12 required meal and rest periods and payment of minimum and overtime wages due for all time  
13 worked.

14 13. PLAINTIFF, and such persons that may be added from time to time who satisfy  
15 the requirements and exhaust the administrative procedures under the Private Attorney General  
16 Act, bring this Representative Action on behalf of the State of California with respect to himself  
17 and all individuals who are or previously were employed by DEFENDANT in California and  
18 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of  
19 July 26, 2022, and the present ("PAGA Period").

#### 20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this Action pursuant to California Code of Civil  
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
23 Court has jurisdiction over PLAINTIFF'S claims for civil penalties under the Private Attorney  
24 General Act of 2004, California Labor Code §2698, *et seq.*

25 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides  
27 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained  
28 offices and facilities in this County and/or conduct substantial business in this County, and (ii)

1 committed the wrongful conduct herein alleged in this County against PLAINTIFF and  
2 AGGRIEVED EMPLOYEES.

### 3 **THE CONDUCT**

4 16. In violation of the applicable sections of the California Labor Code and the  
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a  
6 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically  
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
8 PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay  
9 PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed compensate  
10 PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF  
11 and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate  
12 PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to  
13 reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and failed  
14 to issue to PLAINTIFF and AGGRIEVED EMPLOYEES with accurate itemized wage statements  
15 showing, among other things, all applicable hourly rates in effect during the pay periods and the  
16 corresponding amount of time worked at each hourly rate. DEFENDANT’s uniform policies and  
17 practices are intended to purposefully avoid the accurate and full payment for all time worked as  
18 required by California law which allows DEFENDANT to illegally profit and gain an unfair  
19 advantage over competitors who comply with the law. To the extent equitable tolling operates to  
20 toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD  
21 should be adjusted accordingly.

#### 22 **A. Meal Period Violations**

23 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
24 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning  
25 the time during which an employee is subject to the control of an employer, including all the time  
26 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,  
27 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying  
28 them for all the time they were under DEFENDANT’s control. Specifically, DEFENDANT

1 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S  
2 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a  
3 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited  
4 minimum wage and overtime compensation by regularly working without their time being  
5 accurately recorded and without compensation at the applicable minimum wage and overtime  
6 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other  
7 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business  
8 records.

9       18. From time to time during the PAGA PERIOD, as a result of their rigorous work  
10 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
11 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty  
12 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
13 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more  
14 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT  
15 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal  
16 period for some workdays in which these employees are required by DEFENDANT to work ten  
17 (10) hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED  
18 EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period  
19 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED  
20 EMPLOYEES were, from time to time, required to remain on duty, on call, and on the premises.  
21 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members  
22 with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF  
23 and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation  
24 and in accordance with DEFENDANT's strict corporate policy and practice.

25       **B. Rest Period Violations**

26       19. From time to time during the PAGA PERIOD, PLAINTIFF and other  
27 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being  
28 provided ten (10) minute rest periods as a result of their rigorous work requirements and

1 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied  
2 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four  
3 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some  
4 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and  
5 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
6 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED  
7 EMPLOYEES were, from time to time, required to remain on duty and/or on call and/or on the  
8 premises. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-  
9 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's  
10 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time  
11 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

12 **C. Unreimbursed Business Expenses**

13 20. DEFENDANT as a matter of corporate policy, practice, and procedure,  
14 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
15 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the  
16 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their  
17 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are  
18 required to indemnify employees for all expenses incurred in the course and scope of their  
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
23 to be unlawful."

24 21. In the course of their employment, DEFENDANT required PLAINTIFF and other  
25 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cellphones.  
26 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their  
27 personal cellphones in order to perform work related tasks. However, DEFENDANT unlawfully  
28 failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the personal

1 expenses incurred for the use of their personal cellphones. As a result, in the course of their  
2 employment with DEFENDANT, the PLAINTIFF and other AGGRIEVED EMPLOYEES  
3 incurred unreimbursed business expenses that included, but were not limited to, costs related to  
4 the use of their personal cellphones, all on behalf of and for the benefit of DEFENDANT.

5 **D. Wage Statement Violations**

6 22. California Labor Code Section 226 required an employer to furnish its employees  
7 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours  
8 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,  
9 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
10 name of the employee and only the last four digits of the employee's social security number or an  
11 employee identification number other than a social security number, (8) the name and address of  
12 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay  
13 period and the corresponding number of hours worked at each hourly rate by the employee.

14 23. From time to time during the PAGA PERIOD, when PLAINTIFF and other  
15 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed  
16 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed  
17 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage  
18 statements which failed to show, among other things, all deductions, the total hours worked and  
19 all applicable hourly rates in effect during the pay period, and the corresponding amount of time  
20 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest  
21 periods.

22 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
23 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply  
24 with Cal. Lab. Code § 226.

25 25. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES  
26 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are  
27 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or  
28 inadvertent mistake.

1     **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2           26. During the PAGA PERIOD, from time-to-time DEFENDANT failed and  
3 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours  
4 worked.

5           27. During the PAGA PERIOD, from time-to-time DEFENDANT required  
6 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This  
7 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

8           28. DEFENDANT directed and directly benefited from the undercompensated off-the-  
9 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

10          29. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
11 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

12          30. DEFENDANT was able to track the amount of time PLAINTIFF and  
13 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,  
14 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work  
15 they performed.

16          31. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,  
17 subject to the requirements of the California Labor Code.

18          32. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
19 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for  
20 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES  
21 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,  
22 DEFENDANT's policies and practices also deprived them of overtime pay.

23          33. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED  
24 EMPLOYEES' off-the-clock work was compensable under the law.

25          34. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to  
26 them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent  
27 working while off-the-clock. DEFENDANT's uniform policy and practice to not pay  
28

1 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with  
2 applicable law is evidenced by DEFENDANT's business records.

3 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
4 **and Redeemed Sick Pay**

5 35. From time to time during the PAGA PERIOD, DEFENDANT failed and continues  
6 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES  
7 for their overtime and double time hours worked, meal and rest period premiums, and redeemed  
8 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages  
9 due to them for working overtime without compensation at the correct overtime and double time  
10 rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform  
11 policy and practice not to pay the AGGRIEVED EMPLOYEES Members at the correct rate for  
12 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in  
13 accordance with applicable law is evidenced by DEFENDANT's business records.

14 36. State law provides that employees must be paid overtime at one-and-one-half times  
15 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were  
16 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
17 employee's performance.

18 37. The second component of PLAINTIFF'S and AGGRIEVED EMPLOYEES  
19 compensation was DEFENDANT'S non-discretionary incentive program that paid PLAINTIFF  
20 and AGGRIEVED EMPLOYEES incentive wages based on their performance for  
21 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly  
22 basis with bonus compensation when the employees met the various performance goals set by  
23 DEFENDANT.

24 38. However, from time to time, when calculating the regular rate of pay in those pay  
25 periods where PLAINTIFF and AGGRIEVED EMPLOYEES worked overtime, double time,  
26 paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
27 discretionary bonuses, DEFENDANT failed to accurately include the non-discretionary bonus  
28 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked

1 rather than just all non-overtime hours worked. Management and supervisors described the  
2 incentive/bonus program to potential and new employees as part of the compensation package.  
3 As a matter of law, the incentive compensation received by PLAINTIFF and AGGRIEVED  
4 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in  
5 a systematic underpayment of overtime and double time compensation, meal and rest period  
6 premium payments, and redeemed sick pay to PLAINTIFF and AGGRIEVED EMPLOYEES by  
7 DEFENDANT. Specifically, California Labor Code Section 246 mandates that paid sick time for  
8 non-exempt employees shall be calculated in the same manner as the regular rate of pay for the  
9 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
10 actually works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by  
11 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of  
12 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
13 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

14 39. In violation of the applicable sections of the California Labor Code and the  
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
16 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
17 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all  
18 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform  
19 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct  
20 overtime and double time compensation, meal and rest period premiums, and sick pay as required  
21 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage  
22 over competitors who complied with the law. To the extent equitable tolling operates to toll  
23 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA  
24 PERIOD should be adjusted accordingly.

25 **G. Violations for Untimely Payment of Wages**

26 40. Pursuant to California Labor Code section 204, PLAINTIFF and the  
27 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their  
28 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did

1 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
2 meal period premium wages, and rest period premium wages within permissible time period.

3 41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the  
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant  
5 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall  
6 become due and payable not later than 72 hours thereafter, unless the employee has given 72  
7 hours previous notice of his or her intention to quit, in which case the employee is entitled to his  
8 or her wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were,  
9 from time to time, not timely provided the wages earned and unpaid at the time of their discharge  
10 and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

11 42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely  
12 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose  
13 employment ended during the PAGA PERIOD.

#### 14 **H. Unlawful Deductions**

15 43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF  
16 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so  
17 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,  
18 DEFENDANT violated Labor Code § 221.

#### 19 **I. Sick Pay Violations**

20 44. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after  
21 July 1, 2015, works in California for the same employer for 30 or more days within a year from  
22 the commencement of employment is entitled to paid sick days as specified in this section.”  
23 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.  
24 From time to time, DEFENDANT failed to have a policy or practice in place that provided  
25 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

26 45. California Labor Code Section 246(i) requires an employer to furnish its  
27 employees with written wage statements setting forth the amount of paid sick leave available.  
28 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish

1 PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount  
2 of paid sick leave available.

3 **J. Unlawful Rounding Practices**

4 46. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANT did not have  
5 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other  
6 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including  
7 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and  
8 practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated  
9 for all of their time worked. As a result, DEFENDANT was able to and did in fact unlawfully,  
10 and unilaterally round the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF  
11 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time  
12 worked, including the applicable overtime compensation for overtime worked. As a result,  
13 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation  
14 for their time worked by working without their time being accurately recorded and without  
15 compensation at the applicable overtime rates.

16 47. Further, the mutability of DEFENDANT'S timekeeping system and unlawful  
17 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time  
18 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding  
19 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as  
20 ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-  
21 duty meal break.

22 **K. Timekeeping Manipulation**

23 48. During the PAGA PERIOD, DEFENDANT, from time-to-time, did not have an  
24 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED  
25 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each  
26 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,  
27 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in  
28 DEFENDANT'S timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order

1 to avoid paying these employees for all hours worked, applicable overtime compensation,  
2 applicable sick pay, missed meal breaks and missed rest break.

3 49. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,  
4 forfeited time worked by working without their time being accurately recorded and without  
5 compensation at the applicable pay rates.

6 50. The mutability of the timekeeping system also allowed DEFENDANT to alter  
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT'S  
8 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED  
9 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not  
10 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's  
11 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal  
12 breaks each day or otherwise compensate them for missed meal breaks.

13 51. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due  
14 them for all hours worked at DEFENDANT'S direction, control and benefit for the time the  
15 timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay  
16 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with  
17 applicable law is evidenced by DEFENDANT'S business records.

18 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
19 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
20 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
21 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
22 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
23 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
24 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
25 DEFENDANT'S policy caused PLAINTIFF to remain on-call and on-duty during what was  
26 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
27 without additional compensation and in accordance with DEFENDANT'S strict corporate policy  
28 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to

1 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF  
2 for required business expenses related to the personal expenses incurred for the maintenance of  
3 his work uniform, on behalf of and in furtherance of his employment with DEFENDANT. To  
4 date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time  
5 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.  
6 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
7 \$75,000.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

10 **(Cal. Lab. Code §§2698 et seq.)**

11 **(Alleged by PLAINTIFF against all Defendants)**

12 53. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
13 herein, the prior paragraphs of this Complaint.

14 54. PAGA is a mechanism by which the State of California itself can enforce state  
15 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the  
16 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
17 fundamentally a law enforcement action designed to protect the public and not to benefit private  
18 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means  
19 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting  
20 PAGA, the California Legislature specified that "it was ... in the public interest to allow  
21 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor  
22 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to  
23 arbitration.

24 55. PLAINTIFF, and such persons that may be added from time to time who satisfy  
25 the requirements and exhaust the administrative procedures under the Private Attorney General  
26 Act, bring this Representative Action on behalf of the State of California with respect to himself  
27 and all individuals who are or previously were employed by DEFENDANT in California and  
28

1 classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of  
2 July 25, 2022, and the present (“PAGA Period”).

3 56. At all relevant times, for the reasons described herein, and others, PLAINTIFF and  
4 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the  
5 meaning of Labor Code Section 2699(c).

6 57. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,  
7 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil  
8 action to recover civil penalties pursuant to the procedures specified in Labor Code Section  
9 2699.3

10 58. PLAINTIFF complied with the procedures for bringing suit specified in Labor  
11 Code Section 2699.3. By certified letter, return receipt requested, dated July 25, 2023,  
12 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)  
13 and to DEFENDANT of the specific provisions of the Labor Code alleged to have been violated,  
14 including the facts and theories to support the alleged violations. See Exhibit #1.

15 59. As of the date of this complaint, more than sixty-five (65) days after serving the  
16 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by  
17 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by  
18 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section  
19 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

20 60. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the  
21 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANT’S violations of  
22 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,  
23 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and  
24 2804 in the following amounts:

- 25 a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred  
26 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the  
27 initial violation and two hundred dollars (\$200) for AGGRIEVED  
28 EMPLOYEE per pay period for each subsequent violation [penalty per Labor

Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

///

61. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of 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 and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

62. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

## PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

For such other relief as the Court deems just and proper.

DATED: October 2, 2023

**JCL LAW FIRM, APC**

By:

Jean-Claude Lapuyade, Esq.  
Attorney for PLAINTIFF

# **EXHIBIT 1**

July 25, 2023

**Via Online Filing to LWDA and Certified Mail to Defendant**  
**Labor and Workforce Development Agency**  
Online Filing

**BLOOM ENERGY CORPORATION**  
c/o CSC - Lawyers Incorporating Service  
2710 Gateway Oaks Dr., Suite 150N  
Sacramento, CA 95833

*Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7028 24*

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff ALEXANDER GILMORE ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant BLOOM ENERGY CORPORATION ("Defendant"). Plaintiff was employed by Defendant from October of 2022 to December of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.**

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,  
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', is written over a large, light gray 'EXHIBIT' watermark.

Jean-Claude Lapuyade, Esq.