

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
SUREN N. WEERASURIYA, State Bar No. 278521
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: sweerasuriya@aegislawfirm.com

Attorneys for Plaintiff Francisco Sanchez, individually,
and on behalf of all others similarly situated.

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 7/27/2020 12:19 PM
Reviewed By: R. Walker
Case #20CV365816
Envelope: 4663460**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

FRANCISCO SANCHEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

BLOOM ENERGY CORPORATION; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 20CV365816

Assigned to Hon. Brian C. Walsh

Dept. 1

**[Amended and Filed as a matter of right,
under Labor Code section 2699.3(a)(2)(C)]**

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*
9. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

1 Plaintiff Francisco Sanchez, individually and on behalf of all others similarly situated,
2 alleges:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Francisco Sanchez (“Plaintiff”) brings this putative class and
5 representative action under the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et*
6 *seq.*, against defendant Bloom Energy Corporation and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on Plaintiff’s own behalf and on behalf of California citizens who
8 are and were employed by Defendants as non-exempt employees throughout California.

9 2. Defendants provide energy products and services throughout California.

10 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay the minimum wage for all hours worked;
- 17 (b) failing to pay overtime wages for all hours worked;
- 18 (c) failing to pay overtime wages at the correct rate of pay;
- 19 (d) failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (e) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (f) failing to reimburse necessary business-related costs;
- 23 (g) failing to provide accurate itemized wage statements; and
- 24 (h) failing to pay all wages due upon separation of employment.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
26 others similarly situated in California to recover, among other things, unpaid wages, un-
27 reimbursed business expenses, benefits, interest, attorneys’ fees, costs and expenses, and
28 penalties under Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,

1 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of Civil
2 Procedure section 1021.5.

3 **JURISDICTION AND VENUE**

4 6. This is a class action under California Code of Civil Procedure section 382. The
5 monetary damages and restitution sought by Plaintiff exceed the minimum jurisdictional limits of
6 the Superior Court and will be established according to proof at trial.

7 7. This Court has jurisdiction over this action under the California Constitution,
8 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those
9 given by statutes to other courts. The statutes under which this action is brought do not specify
10 any other basis for jurisdiction.

11 8. This Court has jurisdiction over all Defendants because, upon information and
12 belief, they are citizens of California, have sufficient minimum contacts in California, or
13 otherwise intentionally avail themselves of the California market to render the exercise of
14 jurisdiction over them by the California courts consistent with traditional notions of fair play and
15 substantial justice.

16 9. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
18 took place in this county.

19 **THE PARTIES**

20 10. Plaintiff is a resident of California and worked for Defendants during the relevant
21 periods as alleged herein.

22 11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
23 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
24 employers, whose employees were and are engaged throughout this county and the State of
25 California.

26 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
27 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
28

1 Complaint and serve such fictitiously named defendants once their names and capacities become
2 known.

3 13. Plaintiff is informed and believes that DOES 1 through 20 are or were the
4 partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant
5 times.

6 14. Plaintiff is informed and believes that each defendant acted in all respects
7 pertinent to this action as the agent of the other defendant, carried out a joint scheme, business
8 plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally
9 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
10 and/or joint employer of Plaintiff and the class members.

11 15. Plaintiff is informed and believes that each and all of the acts and omissions
12 alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20,
13 acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The
14 acts of any Defendants were in accordance with, and represent, the official policy of Defendants.

15 16. At all relevant times, Defendants, and each of them, acted within the scope of
16 such agency or employment or ratified every act or omission complained of herein. At all
17 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
18 and all the other Defendants in proximately causing the damages herein alleged.

19 17. Plaintiff is informed and believes that each of the said Defendants is in some
20 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
21 and transactions alleged herein.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings this action under Code of Civil Procedure section 382 on
24 Plaintiff's behalf and on behalf of all others similarly situated who were affected by Defendants'
25 Labor Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

26 19. All claims alleged herein arise under California law for which Plaintiff seeks
27 relief authorized by California law.

28 ///

1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California within four years prior to the filing of
5 this action to the date the class is certified ("Class").

6 21. Plaintiff also seeks to certify the following subclasses of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendants at any
9 time within three years prior to the filing of this action to the date the classes are
10 certified ("Waiting Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses or modify or re-define any class or subclass definition as appropriate based on an
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
20 (including minimum wages and overtime wages) for all hours worked by
21 Plaintiff and Class Members.

22 (b) Whether Defendants required Plaintiff and Class Members to work over
23 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
24 (40) hours per week and failed to pay them proper overtime compensation
25 for all overtime hours worked.

26 ///

27 ///

28 ///

- 1 (c) Whether Defendants failed to pay Plaintiff and Class Members overtime
2 wages at the correct rate of pay by excluding non-discretionary incentive
3 compensation from their regular rate of pay when paying overtime wages.
- 4 (d) Whether Defendants deprived Plaintiff and Class Members of timely meal
5 periods or required Plaintiff and Class Members to work through meal
6 periods without legal compensation.
- 7 (e) Whether Defendants deprived Plaintiff and Class Members of rest breaks
8 or required Plaintiff and Class Members to work through rest breaks.
- 9 (f) Whether Defendants failed to reimburse Plaintiff and Class Members for
10 necessary business-related costs expended for the benefit of Defendants.
- 11 (g) Whether Defendants failed to provide Plaintiff and Class Members
12 accurate itemized wage statements.
- 13 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
14 wages due upon termination or within seventy-two (72) hours of
15 resignation.
- 16 (i) Whether Defendants' conduct was willful or reckless.
- 17 (j) Whether Defendants engaged in unfair business practices in violation of
18 Business and Professions Code §§ 17200, *et seq.*

19 25. There is a well-defined community of interest in this litigation, and the proposed
20 Class and subclasses are readily ascertainable:

21 (a) Numerosity: The Class Members are so numerous that joinder of all
22 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
23 on information and belief, the Class is estimated to be greater than fifty (50) individuals. The
24 identities of the Class Members are readily ascertainable by inspection of Defendants'
25 employment and payroll records.

26 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
27 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
28 provisions of California's wage and hour laws entitled each Class Member to similar pay,

1 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
2 sustained by the Class Members because they arise out of and are caused by Defendants'
3 common course of conduct as alleged herein.

4 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
5 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
6 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
7 class counsel, are competent and experienced in litigating large employment class actions and
8 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
9 incurred and, throughout this action, will continue to incur attorneys' fees and costs that have
10 been and will be necessarily expended for the prosecution of this action for the substantial
11 benefit of the Class Members.

12 (d) Superiority: The nature of this action makes use of class action
13 adjudication superior to other methods. A class action will achieve economies of time, effort, and
14 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
15 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
16 Subclass at the same time. If appropriate, this Court can and is empowered to fashion methods to
17 manage this case as a class action, efficiently.

18 (e) Public Policy Considerations: Employers in the State of California violate
19 employment and labor laws every day. Current employees are often afraid to assert their rights
20 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
21 because they believe their former employers might damage their future endeavors through
22 negative references or other means. Class actions provide class members who are not named in
23 the Complaint with a type of anonymity that allows for the vindication of their rights while
24 affording them privacy protections.

25 **GENERAL ALLEGATIONS**

26 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
27 California residents as non-exempt employees or employees throughout California at
28 Defendants' California business location(s).

1 27. Defendants continue to employ non-exempt employees or employees within
2 California.

3 28. Plaintiff is informed and believes that at all times herein mentioned, Defendants,
4 were advised by skilled lawyers, employees, and other professionals who were knowledgeable
5 about California's wage and hour laws, employment, and personnel practices, and the
6 requirements of California law.

7 29. Defendants knew or should have known that they had an obligation to pay, and
8 thus, that Plaintiff and the other Class Members were entitled to receive at least the minimum
9 wage for all hours they worked. However, Defendants failed to pay Plaintiff and the other Class
10 Members the minimum wage for all hours they worked. Due to job demands and pressures, and
11 inadequate scheduling practices, Plaintiff and the Class Members often had to work during their
12 meal periods while clocked out. Defendants knew or should have known about this work, but
13 still failed to pay Plaintiff and the other Class Members for this work.

14 30. Defendants knew or should have known that Plaintiff and the other Class
15 Members were entitled to receive certain wages for overtime compensation, including overtime
16 wages for work more than 8 hours a day and 40 hours a week, and any work on a seventh
17 consecutive day of the week. Also, Defendants knew they were supposed to pay overtime wages
18 at one and one-half times Plaintiff's and the Class Members' regular rate of pay, which
19 Defendants should have determined by factoring in non-discretionary bonuses and commissions
20 it agreed to pay and did pay Plaintiff, and, upon information and belief, the Class Members.
21 Nevertheless, Defendant failed to pay Plaintiff and, upon information and belief, the other Class
22 Members, overtime wages at the correct rate of pay. Defendants failed to include non-
23 discretionary bonuses, commissions, and other incentive payments in calculating Plaintiff's and,
24 upon information and belief, the Class Members' regular rates of pay, and thus, did not pay
25 Plaintiff and the other Class Members the proper overtime rate of pay. Further, when Plaintiff
26 and the Class Members regularly worked off-clock, during meal periods, they worked overtime
27 hours. However, Defendant did not pay them any wages, let alone overtime wages, for this work.

28 ///

1 31. Defendants knew or should have known that they were required to provide
2 Plaintiff and the other Class Members timely, uninterrupted, 30-minute meal periods or the
3 payment of one (1) additional hour of pay at Plaintiff's and the other Class Members' regular
4 rate of pay when Defendants did not provide them timely, uninterrupted 30-minute meal
5 periods. Defendants violated the Labor Code and IWC Wage Orders by failing to provide
6 Plaintiff and the other Class Members as their meal periods or the payment of one (1)
7 additional hour of pay at Plaintiff's and the other Class Members' regular rate of pay.
8 However, Defendants failed to provide compliant meal periods. And thus, Plaintiff and the
9 Putative Class Members were deprived of compliant meal periods. Thus, they regularly missed
10 meal periods or took late or short meal periods. Moreover, Plaintiff and the Class Members
11 regularly worked during their meal periods, while clocked out.

12 32. Defendants knew or should have known that they had an obligation to authorize
13 and permit Plaintiff and the other Class Members to take rest breaks or pay them one (1)
14 additional hour of pay at Plaintiff's and the other Class Members' regular rate of pay when
15 they did not receive rest breaks. Defendants violated the Labor Code and IWC Wage Orders
16 by failing to permit Plaintiff and the other Class Members to take their rest breaks and by
17 failing to pay Plaintiff and the other Class Members one (1) additional hour of pay at their
18 regular rates of pay when they did not receive rest breaks. However, Defendants failed to
19 permit and authorize compliant rest breaks. And thus, Plaintiff and the Putative Class
20 Members were deprived of compliant rest breaks. Thus, they regularly missed rest breaks or
21 took short rest breaks.

22 33. Plaintiff is informed and believes that Defendants knew or should have known
23 that Plaintiff and Class Members were entitled to reimbursement and/or indemnification for all
24 necessary business expenditures or losses as a direct consequence of the discharge of their duties,
25 or of their obedience to the directions of Defendants. In violation of the Labor Code and IWC
26 Wage Orders, Plaintiff and Class Members incurred necessary business expenses or losses but
27 were not reimbursed nor indemnified of such expenses or losses that were incurred as a direct
28

1 consequence of the discharge of their duties, or of their obedience to the directions of
2 Defendants.

3 34. Plaintiff is informed and believes that Defendants knew or should have known
4 that Plaintiff and Class Members were entitled to receive itemized wage statements that
5 accurately showed the following information pursuant to the Labor Code: (1) gross wages
6 earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and
7 any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
8 provided that all deductions made on written orders of the employee may be aggregated and
9 shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the
10 employee is paid; (7) the name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security number; (8)
12 the name and address of the legal entity that is the employer; and (9) all applicable hourly rates
13 in effect during the pay period and the corresponding number of hours worked at each hourly
14 rate by the employee. In violation of the Labor Code, Plaintiff and Class Members were not
15 provided with accurate itemized wage statements. For example, the wage statements
16 inaccurately stated the applicable overtime rates of pay, gross and net wages earned, and hours
17 worked.

18 35. Defendants knew or should have known that they had an obligation to pay to
19 Plaintiff and the other Class Members all wages due to them, upon the separation of their
20 employment from Defendants. Defendants knew or should have known that they were
21 required to immediately pay all wages they owed to the employees that they terminated; and
22 that they were required to pay all wages owed to employees that resigned within 72 hours of
23 resignation. Indeed, Defendants failed to timely pay Plaintiff and the other Class Members
24 unpaid wages, *e.g.*, the unpaid overtime wages for off-clock work, the minimum wage for off-
25 clock work, and overtime wages at the correct rate of pay.

26 ///

27 ///

28 ///

36. Plaintiff is informed and believes that Defendants knew or should have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do so to increase Defendants' profits.

37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover, among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period premium payments, unpaid rest period premium payments, unreimbursed business expenditures, interest, attorneys' fees, penalties, costs, and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

39. Labor Code sections 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

40. Plaintiff and Class Members were employees entitled to the protections of Labor Code sections 1194 and 1197.

41. During the relevant time, Defendants failed to pay Plaintiff and Class Members all wages owed when Defendants did not pay for all hours worked, including, but not limited to, hours spent working off-the-clock, through meal periods while clocked out, among others.

42. During the relevant time, Defendants failed to pay at least minimum wage to Plaintiff and Class Members for all hours worked under Labor Code sections 1194 and 1197.

43. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code sections 1194 and 1197. Under these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

1 44. Under Labor Code section 1194.2, Plaintiff and Class Members are entitled to
2 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
3 interest thereon.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

7 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 46. Labor Code section 1198 and the applicable IWC Wage Order provide that it is
10 unlawful to employ persons without compensating them at a rate of pay either one and one-half
11 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
12 worked by the person on a daily or weekly basis.

13 47. Specifically, the applicable IWC Wage Orders provide that Defendants are and
14 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
15 and one-half times (1½) their regular rate of pay when working and for all hours worked more
16 than eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight
17 (8) hours of work on the seventh day of work in a workweek.

18 48. The applicable IWC Wage Orders further provide that Defendants are and were
19 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
20 their regular rate of pay when working and for all hours worked more than twelve (12) hours in a
21 day or excess of eight (8) hours on the seventh day of work in a workweek.

22 49. Labor Code section 510 codifies the right to overtime compensation at one and
23 one-half (1½) times the regular hourly rate for hours worked more than eight (8) hours in a day
24 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
25 day of work, and overtime compensation at twice the regular hourly rate for hours worked more
26 than twelve (12) hours in a day or excess of eight (8) hours in a day on the seventh day of work
27 in a workweek.

1 50. Labor Code section 510 and the applicable IWC Wage Orders provide that
2 employment of more than six days in a workweek is only permissible if the employer pays
3 proper overtime compensation as set forth herein.

4 51. Plaintiff and Class Members were employees entitled to the protections of Labor
5 Code sections 510 and 1194.

6 52. During the relevant time, Defendants required Plaintiff and Class Members to
7 work more than eight (8) hours in a day, forty (40) hours in a week, or on a seventh consecutive
8 day of work, entitling them to overtime wages.

9 53. During the relevant time, Defendants failed to pay Plaintiff and Class Members
10 overtime wages for all overtime hours worked when Defendants failed to pay for time spent
11 working off-the-clock, through meal periods, among other reasons. To the extent these hours
12 qualify for the payment of overtime wages, Plaintiff and Class Members were not paid proper
13 overtime wages. Further, when Defendants paid overtime wages, they were sometimes
14 miscalculated because, among other reasons, Defendants did not include all non-discretionary
15 pay in the calculation.

16 54. In violation of California law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
18 all hours worked.

19 55. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code
21 sections 510 and 1198, and is therefore unlawful.

22 56. Under Labor Code section 1194, Plaintiff and Class Members are entitled to
23 recover their unpaid overtime and double-time compensation as well as interest, costs, and
24 attorneys' fees.

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18
19
20
21
22
23
24
25
26
27
28

23
24
25
26
27
28

27

28

28

1 63. Labor Code section 226.7(b) and section 11 of the applicable IWC Wage Order
2 require an employer to pay an employee one (1) additional hour of pay at the employee's regular
3 rate of compensation for each work day that a compliant meal period is not provided.

4 64. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
5 period premiums for missed, late, and/or short meal periods under Labor Code section 226.7(b)
6 and section 11 of the applicable IWC Wage Order.

7 65. As a result of Defendants' failure to pay Plaintiff and Class Members an
8 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
9 Class Members suffered and continue to suffer a loss of wages and compensation.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PERMIT REST BREAKS**

12 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

13 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 67. Labor Code section 226.7(a) provides that no employer shall require an employee
16 to work during any rest period mandated by the IWC Wage Orders.

17 68. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
19 the middle of each work period[.]" and the "[a]uthorized rest period time shall be based on the
20 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
21 fraction thereof[.]" unless the total daily work time is less than three and one-half (3½) hours.

22 69. During the relevant time, Plaintiff and Class Members did not receive a ten (10)
23 minute rest period for every four (4) hours or major fraction thereof worked, including working
24 more than ten (10) hours in a day because they were required to work through their rest periods
25 and/or were not authorized to take their rest periods.

26 70. Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order
27 requires an employer to pay an employee one (1) additional hour of pay at the employee's
28 regular rate of compensation for each work day that a compliant rest period is not provided.

1 71. At all relevant times, Defendants failed to pay Plaintiff, and Class Members rest
2 period premiums for missed, late, and/or interrupted rest periods under Labor Code section
3 226.7(b) and section 12 of the applicable IWC Wage Order.

4 72. As a result of Defendants' failure to pay Plaintiff and Class Members an
5 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
6 Members suffered and continue to suffer a loss of wages and compensation.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

9 (Violation of Labor Code §§ 2800, 2802)

10 73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 74. Labor Code section 2800 states that "[a]n employer shall in all cases indemnify
13 his employee for losses caused by the employer's want of ordinary care."

14 75. Labor Code section 2802(a) states that "[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
17 the employer"

18 76. Labor Code section 2802(b) states that "[a]ll awards made by a court . . . for
19 reimbursement of necessary expenditures under this section shall carry interest at the same rate
20 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
21 the necessary expenditure or loss."

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

25 78. During the relevant time, Plaintiff and Class Members incurred necessary
26 business-related costs that were not fully reimbursed by Defendants, including, but not limited
27 to, cell phone use required for work.

28 ///

1 79. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
2 indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and
3 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's
4 and Class Members' work and job duties.

5 80. As a direct result, Plaintiff and Class Members have suffered and continue to
6 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
7 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
8 enforcing the rights under Labor Code section 2802, including, but not limited to attorneys' fees.

9 **SIXTH CAUSE OF ACTION**

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

11 (Violation of Labor Code § 226; Violation of IWC Wage Order)

12 81. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 82. Labor Code section 226(a) requires Defendants to provide each employee with an
15 accurate wage statement in writing showing nine pieces of information, including, the following:
16 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
17 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
18 deductions, provided that all deductions made on written orders of the employee may be
19 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
20 which the employee is paid, (7) the name of the employee and the last four digits of his or her
21 social security number or an employee identification number other than a social security number,
22 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate by the employee.

25 83. During the relevant time, Defendants have knowingly and intentionally failed to
26 comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and
27 Class Members. The deficiencies include, among other things, the failure to correctly state the
28

1 gross and net wages earned, total hours worked, all applicable hourly rates in effect and the
2 number of hours worked at each hourly rate by Plaintiff and Class Members.

3 84. As a result of Defendants' knowing and intentional failure to comply with Labor
4 Code section 226(a), Plaintiff and Class Members have suffered injury and damage to their
5 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
6 injury under Labor Code section 226(e) where, as here, Defendants intentionally violated Labor
7 Code section 226(a). Plaintiff and Class Members were denied both their legal right to receive
8 and their protected interest in receiving accurate itemized wage statements under Labor Code
9 § 226(a). Also, because Defendants failed to provide the accurate rates of pay on wage
10 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
11 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file
12 this lawsuit to analyze the extent of the underpayment, thereby causing Plaintiff to incur
13 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
14 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
15 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
16 Defendants.

17 85. Plaintiff and Class Members are entitled to recover from Defendants the greater of
18 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
19 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
20 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
21 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

22 86. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
23 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
24 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
25 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
26 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
27 to proof at trial.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

6
7
8
9
20
21
22
23
24
25
26
27
28

19
20
21
22
23
24
25
26
27
28

24
25
26
27
28

28

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

3 (Violation of Business and Professions Code §§ 17200, *et seq.*)

4 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 94. Business and Professions Code section 17200, *et seq.*, prohibits acts of unfair
7 competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

8 95. A violation of California Business and Professions Code sections 17200, *et seq.*,
9 may be predicated on a violation of any state or federal law. In the instant case, Defendants’
10 policies and practices violated state law, causing Plaintiff and Class Members to suffer and
11 continue to suffer injuries-in-fact.

12 96. Defendants’ policies and practices violated state law in at least the following
13 respects:

14 (a) Failing to pay all wages earned (including minimum wage and overtime
15 wages) to Plaintiff and Class Members for all hours worked, and at the
16 proper rate, in violation of Labor Code sections 510, 1194, 1194.2, 1197,
17 and 1198.

18 (b) Failing to provide compliant meal periods without paying Plaintiff and
19 Class Members premium wages for every day said meal periods were not
20 provided in violation of Labor Code sections 226.7 and 512.

21 (c) Failing to authorize or permit compliant rest breaks without paying
22 Plaintiff and Class Members premium wages for every day said rest
23 breaks were not authorized or permitted in violation of Labor Code section
24 226.7.

25 (d) Failing to reimburse Plaintiff and Class Members for necessary business-
26 related expenses in violation of Labor Code sections 2800 and 2802.

27 (e) Failing to provide Plaintiff and Class Members with accurate itemized
28 wage statements in violation of Labor Code section 226.

1 (f) Failing to maintain accurate payroll records in violation of Labor Code §
2 1174 and 1174.5.

3 (g) Failing to timely pay all earned wages to the members of the Waiting
4 Time Subclass upon separation of employment in violation of Labor Code
5 §§ 201, 202, and 203.

6 97. As alleged herein, Defendants systematically engaged in unlawful conduct in
7 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
8 (minimum and overtime wages), failing to provide meal periods and rest breaks or
9 compensation in lieu thereof, failing to reimburse necessary business-related costs and
10 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
11 owing upon separation of employment promptly to the Waiting Time Subclass, all to decrease
12 their costs of doing business and increase their profits.

13 98. At all relevant times herein, Defendants held themselves out to Plaintiff and Class
14 Members as being knowledgeable concerning the labor and employment laws of California.

15 99. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
16 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of
17 doing business to undercut their competitors and establish or gain a greater foothold in the
18 marketplace.

19 100. By violating the foregoing statutes and regulations as herein alleged, Defendants'
20 acts constitute unfair and unlawful business practices under Business and Professions Code
21 sections 17200, *et seq.*

22 101. As a result of the unfair and unlawful business practices of Defendants as alleged
23 herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
24 restitution in an amount to be shown according to proof at trial.

25 102. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure section 1021.5. Defendants' conduct, as alleged herein, has
27 been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
28 general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members

1 are entitled to an award of attorneys' fees under California Code of Civil Procedure section
2 1021.5.

3 **NINTH CAUSE OF ACTION**

4 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

5 103. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs
6 as though fully set forth herein.

7 104. Under Labor Code section 2699(a), any provision of the Labor Code that provides
8 for a civil penalty to be assessed and collected by the Labor and Workforce Development
9 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
10 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
11 action brought by an aggrieved employee on behalf of himself or herself and other current or
12 former employees under the procedures specified in Labor Code section 2699.3.

13 105. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
15 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
16 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
17 subsequent pay period in which Defendants violated these provisions of the Labor Code.

18 106. Defendants' conduct violates numerous Wage Order and Labor Code sections,
19 including, but not limited to, the following:

- 20 a. violation of Labor Code sections 201-203, 204, 210, 510, 1182.12, 1194,
21 1197, and 1198 for failure to timely pay all earned wages (including
22 minimum wage and overtime wages) owed to Plaintiff and other
23 aggrieved employees during employment and upon separation of
24 employment as herein alleged;
- 25 b. violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1,
26 1198, and 2698, *et seq.* for failure pay Plaintiff and other aggrieved
27 employees at least the minimum wages for all work they performed,
28

overtime wages for all overtime hours worked, and overtime wages at the correct rate of pay;

c. violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

d. violation of Labor Code section 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

e. violation of Labor Code section 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

f. violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and

g. violation of Labor Code sections 2800 and 2802 for failure to reimburse business expenses incurred by aggrieved employees.

107. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

108. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is, therefore, able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

109. Under Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

110. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. For certification under Code of Civil Procedure section 382 of the proposed Class and any other appropriate subclass;
2. For the appointment of Francisco Sanchez as class representative;
3. For the appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages under Labor Code section 1194.2;
8. For statutory penalties to the extent permitted by law, including those under the Labor Code and IWC Wage Orders;
9. For injunctive relief, as provided by the Labor Code and Business and Professions Code sections 17200, *et seq.*;
10. For restitution, as provided by Business and Professions Code sections 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired through any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure section 1021.5, Labor Code sections 226(e), 1194, and 2698 *et seq.*; and

FIRST AMENDED COMPLAINT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: July 27, 2020

AEGIS LAW FIRM, PC

By



Suren N. Weerasuriya
Attorneys for Plaintiff Francisco Sanchez

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over the age
3 of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address
is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On July 27, 2020, I served the foregoing document entitled:

- 5 • **[Amended and Filed as a matter of right, under Labor Code section 2699.3(a)(2)(C)]**
6 **FIRST AMENDED COMPLAINT**

7 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
copy thereof enclosed in sealed envelope(s) addressed as follows:

8 Kerry Friedrichs (SBN 198143)
9 kfriedrichs@seyfarth.com
Parnian Vafaenia (SBN 316736)
10 pvafaenia@seyfarth.com
SEYFARTH SHAW LLP
11 560 Mission Street, 31st Floor
San Francisco, California 94105
12 Telephone: (415) 397-2823
Facsimile: (415) 397-8549

13 *Attorneys for Defendant:*
14 BLOOM ENERGY CORPORATION

15 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
17 on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid if postage
cancellation date or postage meter date is more than one day after date of deposit for mailing this
affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

18 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of
19 Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I
caused such document(s) described herein to be deposited for delivery to a facility regularly
20 maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ.*
Proc. 5(c).)

21 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic
22 transmission to the addressee(s) listed above on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6);
Fed. R. Civ. Proc. 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on July 27, 2020, at Irvine, California.

25 

26
27 Andrea Drocco
28