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and on behalf of all others similarly situated.

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Case #20CV365816
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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. Sunil R. Kulkarni
Dept. 1*

**SECOND AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE §§ 2698, ET SEQ.)**

1 Plaintiff Francisco Sanchez, individually and on behalf of all other aggrieved employees,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Francisco Sanchez (“Plaintiff”) brings this representative action, on
5 behalf of Plaintiff and all non-exempt employees currently or formerly employed by defendant
6 Bloom Energy Corporation and DOES 1 through 20, inclusive (collectively, “Defendants”),
7 within the State of California.

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

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

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

20 4. Plaintiff brings this action seeking monetary relief against Defendants on behalf
21 of himself and all others aggrieved employees in California to recover, among other things, civil
22 penalties pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expenses.

23 **JURISDICTION AND VENUE**

24 5. This is a representative action pursuant to Private Attorneys General Act of 2004
25 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
26 minimal jurisdictional limits of the Superior Court and will be established according to proof at
27 trial.

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

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

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

THE PARTIES

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

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

11. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

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

13. Plaintiff is informed and believes that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business

1 plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally
2 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
3 and/or joint employer of Plaintiff and the class members.

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

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

12 16. Plaintiff is informed and believes that each of the said Defendants is in some
13 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
14 and transactions alleged herein.

15 **GENERAL ALLEGATIONS**

16 17. At all relevant times mentioned herein, Defendants employed Plaintiff and other
17 persons as non-exempt employees

18 18. Defendants employed Plaintiff and other persons at Defendants' California
19 business location(s) during the relevant time period.

20 19. Defendants continue to employ non-exempt employees within California.

21 20. Plaintiff is informed and believes that at all times herein mentioned, Defendants,
22 were advised by skilled lawyers, employees, and other professionals who were knowledgeable
23 about California's wage and hour laws, employment, and personnel practices, and the
24 requirements of California law.

25 21. Defendants knew or should have known that they had an obligation to pay, and
26 thus, that Plaintiff and the other aggrieved employees were entitled to receive at least the
27 minimum wage for all hours they worked. However, Defendants failed to pay Plaintiff and the
28 other aggrieved employees the minimum wage for all hours they worked. Due to job demands

1 and pressures, and inadequate scheduling practices, Plaintiff and the other aggrieved employees
2 often had to work during their meal periods while clocked out. Defendants knew or should have
3 known about this work, but still failed to pay Plaintiff and the other aggrieved employees for this
4 work.

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

20 23. Defendants knew or should have known that they were required to provide
21 Plaintiff and the other aggrieved employees timely, uninterrupted, 30-minute meal periods or
22 the payment of one (1) additional hour of pay at Plaintiff's and the other aggrieved employees'
23 regular rate of pay when Defendants did not provide them timely, uninterrupted 30-minute
24 meal periods. Defendants violated the Labor Code and IWC Wage Orders by failing to provide
25 Plaintiff and the other aggrieved employees as their meal periods or the payment of one (1)
26 additional hour of pay at Plaintiff's and the other Class Members' regular rate of pay.
27 However, Defendants failed to provide compliant meal periods. And thus, Plaintiff and the
28 other aggrieved employees were deprived of compliant meal periods. Thus, they regularly

1 missed meal periods or took late or short meal periods. Moreover, Plaintiff and the other
2 aggrieved employees regularly worked during their meal periods, while clocked out.

3 24. Defendants knew or should have known that they had an obligation to authorize
4 and permit Plaintiff and the other aggrieved employees to take rest breaks or pay them one (1)
5 additional hour of pay at Plaintiff's and the other aggrieved employees' regular rate of pay
6 when they did not receive rest breaks. Defendants violated the Labor Code and IWC Wage
7 Orders by failing to permit Plaintiff and the other aggrieved employees to take their rest breaks
8 and by failing to pay Plaintiff and the other aggrieved employees one (1) additional hour of
9 pay at their regular rates of pay when they did not receive rest breaks. However, Defendants
10 failed to permit and authorize compliant rest breaks. And thus, Plaintiff and the other
11 aggrieved employees were deprived of compliant rest breaks. Thus, they regularly missed rest
12 breaks or took short rest breaks.

13 25. Plaintiff is informed and believes that Defendants knew or should have known
14 that Plaintiff and other aggrieved employees were entitled to reimbursement and/or
15 indemnification for all necessary business expenditures or losses as a direct consequence of the
16 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
17 Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees incurred necessary
18 business expenses or losses but were not reimbursed nor indemnified of such expenses or losses
19 that were incurred as a direct consequence of the discharge of their duties, or of their obedience
20 to the directions of Defendants.

21 26. Plaintiff is informed and believes that Defendants knew or should have known
22 that Plaintiff and other aggrieved employees were entitled to receive itemized wage statements
23 that accurately showed the following information pursuant to the Labor Code: (1) gross wages
24 earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and
25 any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
26 provided that all deductions made on written orders of the employee may be aggregated and
27 shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the
28 employee is paid; (7) the name of the employee and only the last four digits of his or her social

1 security number or an employee identification number other than a social security number; (8)
2 the name and address of the legal entity that is the employer; and (9) all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee. In violation of the Labor Code, Plaintiff and other aggrieved employees
5 were not provided with accurate itemized wage statements. For example, the wage statements
6 inaccurately stated the applicable overtime rates of pay, gross and net wages earned, and hours
7 worked.

8 27. Defendants knew or should have known that they had an obligation to pay to
9 Plaintiff and the other aggrieved employees all wages due to them, upon the separation of their
10 employment from Defendants. Defendants knew or should have known that they were
11 required to immediately pay all wages they owed to the employees that they terminated; and
12 that they were required to pay all wages owed to employees that resigned within 72 hours of
13 resignation. Indeed, Defendants failed to timely pay Plaintiff and the other aggrieved
14 employees unpaid wages, *e.g.*, the unpaid overtime wages for off-clock work, the minimum
15 wage for off-clock work, and overtime wages at the correct rate of pay.

16 28. Plaintiff is informed and believes that Defendants knew or should have known
17 they had a duty to compensate Plaintiff and other aggrieved employees, and Defendants had the
18 financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do
19 so to increase Defendants' profits.

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

25 **FIRST CAUSE OF ACTION**

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

27 30. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs
28 as though fully set forth herein.

1 31. Under Labor Code section 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or
4 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
5 action brought by an aggrieved employee on behalf of himself or herself and other current or
6 former employees under the procedures specified in Labor Code section 2699.3.

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

12 33. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
13 including, but not limited to, the following:

- 14 a. violation of Labor Code sections 201-203, 204, 210, 510, 1182.12, 1194,
15 1197, and 1198 for failure to timely pay all earned wages (including
16 minimum wage and overtime wages) owed to Plaintiff and other
17 aggrieved employees during employment and upon separation of
18 employment as herein alleged;
- 19 b. violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1,
20 1198, and 2698, *et seq.* for failure pay Plaintiff and other aggrieved
21 employees at least the minimum wages for all work they performed,
22 overtime wages for all overtime hours worked, and overtime wages at the
23 correct rate of pay;
- 24 c. violation of Labor Code sections 226.7 and 512 for failure to provide
25 meal periods to Plaintiff and other aggrieved employees and failure to
26 pay premium wages for missed meal periods as herein alleged;

- 1 d. violation of Labor Code section 226.7 for failure to permit rest breaks to
2 Plaintiff and other aggrieved employees and failure to pay premium
3 wages for missed rest periods as herein alleged;
- 4 e. violation of Labor Code section 226 for failure to provide accurate
5 itemized wage statements to Plaintiff and other aggrieved employees as
6 herein alleged;
- 7 f. violation of Labor Code sections 1174 and 1174.5 for failure to maintain
8 accurate and complete records showing, among other things, the hours
9 worked daily by and the wages paid to aggrieved employees; and
- 10 g. violation of Labor Code sections 2800 and 2802 for failure to reimburse
11 business expenses incurred by aggrieved employees.

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

15 35. Plaintiff has exhausted the procedural requirements under Labor Code section
16 2699.3 as to Defendants and is, therefore, able to pursue a claim for penalties on behalf of
17 himself and all other aggrieved employees under PAGA.

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

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

23 **PRAYER FOR RELIEF**

24 On Plaintiff’s behalf and behalf of all others similarly situated, Plaintiff prays for relief
25 and judgment against Defendants, jointly and severally, as follows:

26 1. For civil penalties against Defendants on behalf of all aggrieved employees and
27 the LWDA pursuant to Labor Code § 2698, *et seq.*;

28

1 2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
2 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698
3 *et seq.*; and

4 3. For such other relief as the Court deems just and proper.
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6

7 Dated: April 20, 2021

AEGIS LAW FIRM, PC

8 By 
9 Jordan Wysocki
10 Attorneys for Plaintiff Francisco Sanchez
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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 April 23, 2021, I served the foregoing document entitled:

- 5 • **SECOND AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA**
6 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE**
§§ 2698, ET SEQ.)

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 Evan R. Moses
9 Aaron H. Cole
10 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
11 Los Angeles, CA 90071
Telephone: 213.239.9800
12 evan.moses@ogletree.com
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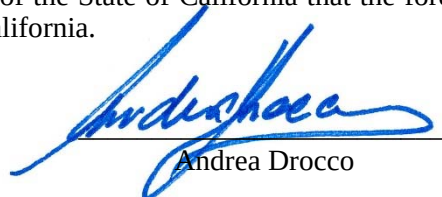
13 *Attorneys for Defendant:*
14 BLOOM ENERGY CORPORATION

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
16 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
17 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
Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I
19 caused such document(s) described herein to be deposited for delivery to a facility regularly
maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc. § 1013(c); Fed. R. Civ.*
20 *Proc. 5(c).*)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic
transmission to the addressee(s) listed above on the date below. (*Cal. Code Civ. Proc. § 1010.6(6);*
22 *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 April 23, 2021, at Irvine, California.

25 
26 Andrea Drocco
27
28