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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

ETHAN SARACENO-OLIVERI, individually and on behalf of all others similarly situated,

Plaintiff,

No.

CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

SOLGEN POWER, LLC, a Delaware limited liability company; and DOES 1-20,

Defendants.

Plaintiff Ethan Saraceno-Oliveri ("Plaintiff"), individually and on behalf all others similarly situated (the "Class" as defined at 5.1 of this Complaint), by and through his attorneys, complains and alleges against Defendant Solgen Power, LLC ("Defendant") as follows:

#### I. **BRIEF INTRODUCTION**

- 1.1 Defendant unlawfully requires its workers, as a condition of employment, to agree to post-employment noncompetition covenants and restricts them from having second jobs during their employment.
- 1.2 Prior to the passage of ESHB 1450, employers often foisted unreasonable noncompetition covenants on workers and then waited for a court to reform them.
- 1.3 The Legislature found that "workforce mobility is important to economic growth and development" and "that agreements limiting competition or hiring" may be unreasonable. RCW 49.62.005. It elaborated:

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The bill makes employers rethink the language in noncompetes and consider what is really needed to protect business interests. They are often overly broad and the employers just wait to see if a court rewrites the noncompete. Employers should make them reasonable to begin with.

- S. B. Rep. ESHB 1450, at 3 (Wash. 2019).
- 1.4 ESHB 1450, eventually codified at RCW 49.62, was passed to give employers a choice: either pay workers better wages in return for agreeing to noncompetition covenants, or refrain from presenting noncompetition covenants in the first place. The Legislature intended to stop employers from misleading their workers into believing they cannot compete with their employers after their employment, or moonlight with a competitor during their employment.
- 1.5 RCW 49.62, effective January 1, 2020, imposes significant restrictions on both new and existing noncompetition covenants. Relevant to this action: (1) A noncompetition covenant is void and unenforceable against an employee unless his or her annual earnings from the employer exceed \$100,000, as adjusted annually in accordance with RCW 49.62.040; (2) A noncompetition covenant entered into after the commencement of employment is void and unenforceable unless the employer provides independent consideration for the covenant; and (3) Employers are prohibited from restricting employees earning less than twice the applicable state minimum wage from having an additional job. RCW 49.62.020(1)(a)(ii), RCW 49.62.020(1)(b), RCW 49.62.070(1).
- 1.6 This class action seeks injunctive relief and declaratory judgment regarding the noncompetition covenants Defendant required its current and former employees to enter into, which are void and unenforceable under Washington law.

### II. JURISDICTION AND VENUE

- 2.1 This Court has jurisdiction over this cause of action pursuant to RCW 2.08.010 and RCW 7.24.
- 2.2 Venue is proper in this Court pursuant to RCW 4.12.025 because Defendant transacts business in King County, and therefore resides in King County, Washington.

2.3 Federal jurisdiction is inappropriate under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A), because: (a) greater than two-thirds of the putative Class members are residents of Washington, or were residents of Washington, during their employment with Defendant; (b) Defendant is registered to conduct business, and regularly transacts business, within Washington; (c) the alleged conduct of Defendant occurred within Washington; (d) the injuries to Plaintiff and the Class occurred within Washington; and (e) during the three-year period preceding the filing of this action, no other class action has been filed asserting the same or similar factual allegations against Defendant on behalf of the same persons. Alternatively, federal jurisdiction is inappropriate under the Class Action Fairness Act because: (a) pursuant to 28 U.S.C. § 1332 (d)(4)(B), more than two-thirds of the Class resides in Washington; and (b) pursuant to 28 U.S.C. § 1332(2), the amount in controversy does not exceed the sum or value of \$5,000,000, exclusive of interest and costs.

#### III. PARTIES

- 3.1 Plaintiff Saraceno-Oliveri is a resident of Thurston County, Washington, and worked for Defendant in King County, Washington. Plaintiff was at all relevant times an employee of Defendant as such term is defined in the statutes listed herein.
- 3.2 Defendant Solgen Power, LLC is a Delaware limited liability company licensed to, and therefore conducts, business in King County, Washington. Defendant was at all relevant times an employer as such term is defined in the statutes listed herein.

### IV. BACKGROUND FACTS

- 4.1 Defendant is a solar energy equipment company that provides solar energy to residential properties.
- 4.2 On or around May 16, 2022, Plaintiff was hired by Defendant as a Solar Installation Inspector.
- 4.3 On or around May 13, 2022, Defendant required Plaintiff to execute an At-Will Employment Agreement ("Agreement") as a condition of hire. A true and correct copy of the Agreement is attached hereto as Exhibit A.

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- 4.4 The Agreement a contains noncompetition covenant.
- 4.5 Section 9 of the Agreement governs noncompetition and provides in relevant part:

**NON-COMPETE.** In addition to the covenants expressed in the other sections of this Agreement and as a separate and independent covenant to protect Solgen's interests. Employee agrees that during the Prohibited Period, either directly or indirectly, alone or in combination with any person or entity, whether as a proprietor, officer, Employee, partner, shareholder, consultant, independent contractor, investor, or owner, render services to any prospective or existing client of Solgen with whom Employee communicated with or had contact with during the period of Employee's employment with Solgen. Employee agrees that so long as he or she is an employee of Solgen that he or she will not undertake the planning or organizing or any business activity competitive with the work he or she performs. Employee agrees that he or she will not, following termination of employment with Solgen, for any reason, directly or indirectly solicit any of Solgen's affiliates or employees to work for or with Employee or any other competitor of Solgen.

- 4.6 At Section 12, the Agreement defines the "Prohibited Period" as the "time during which Employee is employed by Company, plus an additional two (2) years after the termination of Employee's employment with Solgen for any reason."
  - 4.7 Defendant required Plaintiff to sign the Agreement as a condition of employment.
  - 4.8 On May 13, 2022, Plaintiff signed the Agreement.
- 4.9 Plaintiff's rate of pay was \$23 per hour. Plaintiff earned less than \$100,000 annually at all times during his employment with Defendant.
- 4.10 From January 1, 2020 to the present, Defendant has required Class members to enter into noncompetition covenants as a condition of initial and/or continued employment.
- 4.11 Defendant did not provide independent consideration to Plaintiff and Class members for the noncompetition covenants entered into after the commencement of employment.
- 4.12 Class members' annual earnings from Defendant were less than \$100,000 in 2020, less than \$101,390 in 2021, less than \$107,301.04 in 2022 and/or less than \$116,593 in 2023.
- 4.13 Defendant's use of the noncompetition covenants unreasonably restricts Plaintiff's and Class members' ability to work.

- 4.14 Defendant's use of the noncompetition covenants compromises Plaintiff's and Class members' economic growth and development and limits workforce mobility.
- 4.15 The geographic and temporal restrictions in the noncompetition covenants are unreasonable and unenforceable.
- 4.16 Plaintiff and Class members have been damaged as a result of Defendant's noncompetition covenants.

#### V. CLASS ACTION ALLEGATIONS

5.1 <u>Class Definition</u>. Under Civil Rule 23(a) and (b)(3), Plaintiff brings this case as a class action against Defendant on behalf of the Class defined as follows (the "Class"):

All current and former Washington employees of Defendant Solgen Power, Inc. who entered into a noncompetition covenant between May 19, 2020 and the date of final disposition of this matter and whose annual earnings were less than were less than the threshold amount set by RCW 49.62.020(1)(b), as adjusted annually in accordance with RCW 49.62.040.

Excluded from the Class are the following individuals:

Independent contractors and Defendant Corporation's owners, partners, officers, and shareholders.

- 5.2 <u>Numerosity</u>. There are potentially dozens of individuals who were employed by Defendant and entered into noncompetition covenants within the time period relevant to this matter. Joinder of all such individuals is impracticable. Further, the disposition of all claims of the Class in a single action will provide substantial benefits and efficiency to all parties and to the Court.
- 5.3 <u>Commonality</u>. Because Defendant's employees entered into identical noncompetition covenants, this is a straightforward matter of determining whether the noncompetition covenants violate Washington law and, if so, assessing statutory damages.
- 5.4 <u>Typicality</u>. Plaintiff's claims are typical of the claims of the Class. Plaintiff's claims, like the claims of the Class members, arise out of the same conduct by Defendant and are based on the same legal theories.

5.5 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent and capable attorneys with substantial experience in complex class action litigation. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither the Plaintiff nor his counsel have interests that are contrary to or that conflict with those of the Class.

- 5.6 <u>Predominance</u>. Defendant has engaged in a common course of abuse of its employees. The common issues arising from Defendant's unlawful conduct that affect Plaintiff and Class members predominate over any individual issues. Adjudication of these common issues in a single action has the important and desirable advantages of judicial economy.
- 5.7 <u>Superiority</u>. Plaintiff and the Class have suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action, however, most Class members would find the cost of litigating their claims prohibitive, especially when that cost is balanced against each individual's respective potential award. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for claimants with smaller cases and those with few resources, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action. The Class members and the noncompetition covenants they entered into are readily identifiable from Defendant's records.

### VI. CAUSES OF ACTION

# FIRST CAUSE OF ACTION ILLEGAL NONCOMPETITION COVENANT IN VIOLATION OF RCW 49.62 Claim of Relief for Plaintiff and the Class

- 6.1 Plaintiff incorporates by reference all foregoing factual allegations.
- 6.2 As described more fully above, Defendant required Plaintiff and the Class, who earned less than the threshold amounts (\$100,000 in 2020, \$101,390 in 2021, \$107,301.04 in 2022 and/or \$116,593 in 2023) to execute and be bound by noncompetition covenants in violation of RCW 49.62.020(1)(b).

- 6.3 Defendant did not provide independent consideration to Plaintiff and Class members for noncompetition covenants they entered into after the commencement of employment in violation of RCW 49.62.020(1)(a)(ii).
- 6.4 As a result of Defendant's actions and omissions, Plaintiff and the Class Members have been damaged in amounts to be proven at trial.

# SECOND CAUSE OF ACTION INJUNCTIVE RELIEF Claim of Relief for Plaintiff and the Class

- 6.5 Plaintiff incorporates by reference all foregoing factual allegations.
- 6.6 Defendant required Plaintiff and the Class members to enter into noncompetition covenants that are void and unenforceable under Washington law pursuant to RCW 49.62.020 and RCW 49.62.070.
  - 6.7 Plaintiff's and Class members' equitable and legal rights to work are clear.
- 6.8 The unenforceability of the noncompetition covenants and anti-moonlighting covenants is clear.
- 6.9 Plaintiff has a well-grounded fear that Defendant will continue to interfere with Plaintiff's and Class members' ability to work during the pendency of this action, resulting in substantial, irreparable, and continuing injury to Plaintiff and the Class.
- 6.10 The noncompetition covenants have a chilling effect on Plaintiff and the Class. Plaintiff and Class members are reluctant to seek additional employment due to the fear of being sued by Defendant. Likewise, Plaintiff and Class members are reluctant to leave their employment with Defendant due to the broad post-employment restrictions in the noncompetition covenants.
- 6.11 For example, the noncompetition states Plaintiff "will not undertake the planning or organizing or any business activity competitive with the work he or she performs..." Exhibit A, at Section 9. The Agreement is so unreasonably broad binding employees to it "nationwide and covers each and every state (in each state's entirety) within the United State in which Solgen operates or conducts any business now or at any time in the future" and for a period of 2 years after termination of employment as defined by the Prohibited Period. *Id.*, at Section 12-13.

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	6.12	If Defendant prohibits Plaintiff and the Class members from seeking additional
emplo	yment,	or from working for its competitors after their employment ends, Plaintiff and the
Class	membe	rs will be irreparably injured.

6.13 The balance of equities favors Plaintiff and the Class and requires that Defendant be temporarily and permanently restrained from employing the noncompetition covenants to restrict employees' ability to work.

# THIRD CASUE OF ACTION DECLARATORY RELIEF Claim of Relief for Plaintiff and the Class

- 6.14 Plaintiff incorporates by reference all foregoing factual allegations.
- 6.15 There is an actual, present, and existing dispute between the parties as to the enforceability of the noncompetition covenants.
- 6.16 Plaintiff and Defendant have genuine and opposing interests in the noncompetition covenants that are direct and substantial.
- 6.17 Plaintiff and the Class are entitled to a final judicial determination that the noncompetition covenants are void and unenforceable pursuant to RCW 49.62.020, RCW 49.62.070, and public policy.
- 6.18 Plaintiff and the Class are entitled to a final judicial determination of the amounts owing to Plaintiff and the Class as a result of the noncompetition covenants.

### VII. REQUEST FOR RELIEF

Plaintiff, individually and on behalf of the members of the Class, prays for the following relief:

- 1. An Order certifying that this action be maintained as a class action and appointing Plaintiff as Class Representative and her counsel as Class Counsel;
- 2. A temporary restraining order enjoining Defendant from enforcing the noncompetition covenants and from restricting Plaintiff's and Class members' ability to work;
- 3. A permanent injunction enjoining Defendant from enforcing the noncompetition covenants and from restricting Plaintiff's and Class members' ability to work;

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### **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Solar Energy Company Solgen Power Violated Washington Non-Compete Law, Class Action Alleges</u>