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8 *Counsel for Plaintiff and the Proposed Class*

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **LESLIE ARTHUR THOMAS,**  
12 **individually and on behalf of all others**  
13 **similarly situated,**

14 **Plaintiff,**

15 **v.**

16 **SOLARCITY FINANCIAL COMPANY,**  
17 **LLC,**

18 **Defendant.**

Case No. '17CV0820 LAB BGS

**CLASS ACTION AND FAIR LABOR  
STANDARDS ACT COLLECTIVE  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

21 **Complaint Filed: \_\_\_\_\_**

22 **Trial Date:           None Set**

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**CLASS ACTION AND FAIR LABOR STANDARDS ACT COLLECTIVE ACTION  
COMPLAINT**

1 Plaintiff Leslie Arthur Thomas (Plaintiff), on behalf of himself and all others  
 2 similarly situated, brings this Class Action and Fair Labor Standards Act Collective  
 3 Action Complaint against SolarCity Financial Company, LLC (SolarCity or Defendant),  
 4 and alleges as follows:

5 **I. JURISDICTION & VENUE**

6 1. This Court has jurisdiction over the subject matter of this action under 29  
 7 U.S.C. § 216(b) and 28 U.S.C. §§ 1331.

8 2. This Court also has original jurisdiction over this action under the Class  
 9 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1)  
 10 there are 100 or more Class members; (2) at least some Class members have a different  
 11 state of citizenship than Defendant; and (3) the amount put in controversy by Class  
 12 members' aggregate claims is more than \$5,000,000.

13 3. This Court has jurisdiction over Plaintiff's state law claims under 28 U.S.C.  
 14 § 1367 because the state law claims and the federal claims are so closely related that they  
 15 form part of the same case or controversy under Article III of the United States  
 16 Constitution.

17 4. This Court is empowered to issue a declaratory judgment pursuant to 28  
 18 U.S.C. §§ 2201 and 2202.

19 5. This Court has specific and general personal jurisdiction over Defendant  
 20 because (i) it employed Plaintiff, FLSA Collective members, and California Class  
 21 members in California and committed violations in California that give rise to the causes  
 22 of action included in this Complaint, and (ii) it maintains its principal place of business  
 23 in California and has purposefully availed itself of the privileges of conducting activities  
 24 in the state of California, creating minimum contacts sufficient to confer jurisdiction and  
 25 demonstrating that assumption of jurisdiction over it will not offend traditional notions  
 26 of fair play and substantial justice nor violate Constitutional requirements of due process.

27 6. Venue is proper in the Southern District of California because a substantial  
 28 portion of the events forming the basis of this lawsuit occurred in this district.

1 **II. PARTIES**

2 **A. Named Plaintiff Leslie Arthur Thomas**

3 7. Plaintiff Leslie Arthur Thomas is an individual who is a resident and citizen  
4 of California. Plaintiff has lived in Fallbrook, California at all times during the relevant  
5 time period. From approximately December 1, 2014 to May 2, 2016, Plaintiff worked for  
6 Defendant as a Field Energy Specialist (FES), and later as a Retail Energy Consultant  
7 (REC) and acting Senior REC at various locations in San Diego County, including Home  
8 Depot, Best Buy, and mall kiosk locations.

9 8. Defendant classified Plaintiff and other sales personnel as salaried,  
10 nonexempt employees. Plaintiff and other sales employees were paid based on a regular  
11 hourly rate and were also eligible for and regularly received commissions and  
12 nondiscretionary bonuses.

13 9. Plaintiff worked uncompensated hours during numerous weeks of his  
14 employment, including but not limited to at least 508 hours between December 13, 2015  
15 and April 16, 2016. A more precise number of his uncompensated hours of work will be  
16 determinable once Defendant produces additional records.

17 10. As required under the FLSA, Plaintiff has signed a written Consent-To-Join  
18 Form, which is attached as Exhibit 1.

19 **B. Defendant SolarCity Financial Company, LLC**

20 11. Defendant SolarCity Financial Company, LLC is a for-profit California  
21 limited liability company doing business in California. SolarCity maintains its principal  
22 place of business in San Mateo, California. SolarCity employs individuals in California  
23 and throughout the country to work in various locations selling products to and installing  
24 products for residential and business consumers.

25 **III. FACTUAL ALLEGATIONS**

26 12. Defendant does business in California and throughout the country. It sells  
27 and leases solar power systems for homes, businesses, and government agencies, and  
28 provides installation, maintenance, and repair services for those customers. It conducts

1 business throughout the United States, including in Arizona, California, Colorado,  
2 Connecticut, Delaware, Washington, D.C., Hawaii, Maryland, Massachusetts, Nevada,  
3 New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode  
4 Island, Texas, Vermont, and Washington.

5 13. Defendant is the largest solar energy services provider in the country and  
6 have over 10,000 employees nationwide, including several thousand in California. At  
7 least several thousand of their employees are in nonexempt sales positions. In their own  
8 words, Defendant and SolarCity Corporation “dually employ” salaried, nonexempt sales  
9 employees.

10 14. Defendant employed Plaintiff Les Thomas in salaried, nonexempt sales  
11 positions for nearly 18 months from around December 1, 2014 to May 2, 2016. From  
12 December 2014 to November 2015, Plaintiff worked in multiple Home Depot and Best  
13 Buy locations in San Diego County as a “Field Energy Specialist” (FES). Around  
14 December 2015, he moved into a “Retail Energy Consultant” (REC) position where he  
15 worked in mall kiosk locations in San Diego County. He was later given the  
16 responsibilities of a “Senior Retail Energy Consultant” (Senior REC), although he  
17 learned he was never officially promoted or compensated as a Senior REC.

18 15. In each of Plaintiff’s positions he was responsible for generating “leads” and  
19 obtaining sales or leases of solar power systems, both individually and in collaboration  
20 with other sales personnel. He was treated and held out by Defendant as an employee and  
21 he performed job duties that reflected this status.

22 16. During his 18 months of work, Plaintiff worked with many of Defendant’s  
23 other employees and managers. His experience gave him a thorough understanding of  
24 Defendant’s employment policies and practices, particularly as they relate to nonexempt  
25 employees in sales positions. He personally witnessed Defendant engaging in unlawful  
26 and unfair business practices and routinely denying him and other nonexempt sales  
27 employees the basic rights guaranteed by the FLSA, California Labor Code, and Unfair  
28

1 Competition Law. Upon information and belief, Defendant continues to commit these  
2 unlawful and unfair business practices to this day.

3 **A. Minimum and Overtime Wage Violations**

4 17. As a matter of policy and practice, Defendant has failed to pay Plaintiff and  
5 other sales employees the required minimum and overtime wages for all hours worked.  
6 Defendant have committed these violations in multiple ways.

7 18. First, Defendant does not maintain accurate and complete time records  
8 showing when its employees actually perform work, including regular and overtime  
9 work. Instead of keeping track of when employees start and stop working on a daily or  
10 weekly basis, Defendant simply has employees complete and submit a timesheet at the  
11 end of each pay period. Plaintiff and other employees are sent by email a prompt around  
12 every two weeks asking them to log on to Defendant's system, recall and record the total  
13 hours they worked each day during the previous two weeks, and "verify" that they always  
14 took their meal periods and rest breaks or that they voluntarily elected not to do so. This  
15 imprecise timekeeping method, in combination from direct and indirect pressure from  
16 managers, ensures that employees systematically underreport the actual number of hours  
17 they work in a given day or week and overreport the number of full, uninterrupted meal  
18 periods and rest breaks they were provided.

19 19. Second, Defendant regularly schedules sales employees for nine-hour  
20 shifts—e.g., 9:00 a.m. to 6:00 p.m.—but the default payment for working an entire shift  
21 is only eight hours of regular pay. This practice allows Defendant to receive up to nine  
22 hours of work but only pay employees for eight regular hours of work and no overtime  
23 during that shift. It also allows Defendant to presume, without real-time documentation  
24 or other forms of verification, that employees take both of their mandatory rest breaks  
25 and a full, uninterrupted one-hour meal period each day. Even when employees regularly  
26 report that they voluntarily chose not to take a meal period or rest breaks, Defendant does  
27 not inquire about this practice or reprimand such employees for failing to follow written  
28 policies that require employees to take all meal periods and rest breaks. Nor does

1 Defendant pay employees for the work they performed during a “waived” meal period.  
2 Defendant essentially has built into its timekeeping system undocumented, unpaid  
3 overtime work, and automatic verification of compliant meal periods and rest breaks  
4 regardless of employees’ actual experiences.

5 20. Third, Defendant’s managers instruct nonexempt sales employees not to  
6 record overtime hours if they want to have their timesheets approved and get paid. Even  
7 though sales employees are classified as “salaried, nonexempt,” Defendant’s managers  
8 focus on the “salaried” portion of the classification and tell employees they are not  
9 entitled to overtime pay. Thus, sales employees are expected to work “as long as it takes”  
10 to generate a lead or make a sale, and they are expected to rely on commissions, not  
11 overtime wages, as compensation for work over eight hours in a day or 40 hours in a  
12 week.

13 21. Fourth, Defendant requires many sales employees—including RECs in  
14 particular—to work off the clock following up on “leads” in the field and trying to  
15 generate more potential leads and sales by “door knocking” in neighborhoods where  
16 home visits or installations are already scheduled. As an REC and acting Senior REC,  
17 Plaintiff was told he needed to work as long as it takes to make a sale and earn potential  
18 commissions, and Defendant set his and other employees’ quotas for creating sales  
19 “opportunities” and “closing sales” unreasonably high to prompt more off-the-clock  
20 work. After (and sometimes during) Plaintiff’s scheduled shifts at a mall kiosk, he was  
21 instructed to perform the duties of a “Field Energy Consultant” (FEC) by following up  
22 on leads and then visiting all of the surrounding houses to see if any neighbors would  
23 also be interested in buying or leasing a solar power system. Because of Defendant’s  
24 practice of avoiding paying overtime and Plaintiff’s classification as a “salaried”  
25 employee, he was told not to submit any overtime hours because his timesheet would not  
26 be approved and he would not be paid. During his time as an REC (while also doing the  
27 work of an FEC), Plaintiff started recording by hand the number of off-the-clock hours  
28 he worked, which totaled over 500 hours of unpaid overtime in a four-month period.

22. Fifth, even when sales employees are paid for their recorded overtime hours that managers approved, Defendant miscalculates the proper amount of overtime wages. Defendant fixes the base hourly rate for nonexempt sales employees like Plaintiff (e.g., FES, REC, FEC personnel and those in similar positions) at a specific amount and never adjust the amount to reflect additional commission and non-discretionary bonus-based compensation. For example, Plaintiff's regular rate as an FES was \$14.42 and his regular rate as an REC and acting Senior REC was \$12.25. Defendant never increased those rates for purposes of calculating overtime wages during pay periods in which he also earned commissions and bonuses. As a result, Defendant never paid the correct overtime rate to Plaintiff and other sales employees who were eligible to earn both overtime pay and commissions or bonuses. Defendant's payment of wages for reported and approved overtime hours is always miscalculated and too small.

**B. Unlawful Commission Deductions**

23. Defendant recruits and incentivizes sales employees like Plaintiff by emphasizing their ability to earn commissions for selling or leasing solar power systems to consumers. Even though their base hourly rate is relatively low (e.g., Plaintiff's base rate as an FES and an REC was \$14.42 and \$12.25, respectively), sales employees are told they can make substantially more money by closing sales. Like their other practices, Defendant's compensation system may seem reasonable and lawful on its face, but the actual terms and enforcement of their commission deduction policy are unlawful and unconscionable.

24. Defendant imposes on sales employees like Plaintiff an unlawful practice of clawing back commissions under the guise of simply recovering "advances" that Defendant says are never "earned." It is nearly impossible, however, for employees to determine when and how a commission can be "earned" because Defendant's Sales Compensation Plan is drafted in highly complex legalese, is grossly one-sided in Defendant's favor, and vests Defendant with complete discretion to deem commissions



1 as “subject to reconciliation” based on indefinite criteria completely outside of sales  
2 employees’ control.

3 25. The actual terms of Defendant’s Sales Compensation Plan are unfair to  
4 employees, and the manner in which Defendant interprets and enforces the Plan violates  
5 provisions of the California Labor Code designed to protect employees from having their  
6 earned wages deducted, rebated, or otherwise reduced. Defendant’s unlawful deductions  
7 of what should constitute “earned” commissions are also another reason why sales  
8 employees’ wages are under-recorded and underpaid.

9 **C. Meal Period and Rest Break Violations**

10 26. Defendant systematically fails to provide uninterrupted 30-minute meal  
11 periods to nonexempt sales employees and fails to compensate them for missed,  
12 shortened, or on-duty meal periods. Defendant pressures nonexempt sales employees like  
13 Plaintiff to skip or shorten their meal periods on a daily basis to increase their odds of  
14 generating a lead or making a sale (which is necessary for them to meet the unreasonably  
15 high sales “quotas” and earn commissions and bonuses). In many cases, these employees  
16 are never relieved of all duties during the meal periods they do take because they are  
17 expected to be available to customers during their entire shift.

18 27. On top of actively discouraging employees to take a full meal period of at  
19 least 30 uninterrupted minutes, Defendant’s system of recording meal periods necessarily  
20 overreports the number and length of any meal periods that employees do take and  
21 underreports the instances where employees work through part or all of a meal period.  
22 Instead of keeping daily or weekly records of when employees start and stop their meal  
23 periods, Defendant simply instructs employees to record at the end of every two-week  
24 pay period that they either (i) took an exactly 30-minute meal period each day, or (ii)  
25 were provided a 30-minute meal period but voluntarily elected not to take one. This  
26 imprecise, after-the-fact time and meal period recording system also enables Defendant  
27 to hide or ignore any untimely meal periods (e.g., meal periods that do not start within  
28 the first five hours of work). Whether or not sales employees actually took a meal period,



1 worked through a meal period, or took a shortened meal period, they are instructed to  
2 record in lock-step that they took or voluntarily waived a 30-minute meal period.

3 28. Defendant treats sales employees' rest breaks similarly to how it treats sales  
4 employees' meal periods. Employees are told not to interrupt or miss a possible sale just  
5 to take a break. As an REC in particular, Plaintiff was asked whether he preferred to  
6 "make a sale or take a break?" and was told that "rest breaks are for pussies." Under  
7 direct and indirect pressure, he thus recorded that he was always provided and took or  
8 voluntarily waived his rest breaks. On their biweekly timesheets, employees are  
9 instructed to check a box "verifying" that they took their full 10-minute "rest break(s)"  
10 or they voluntarily chose not to, whether or not this was actually true that day.  
11 Conveniently for Defendant, the box that employees check in the system is vague and  
12 does not make clear whether an employee took compliant rest breaks or waived the rest  
13 breaks.

14 29. Importantly, Defendant's written policy requires all sales employees to take  
15 their mandated meal periods and rest breaks or to report immediately why they were  
16 prevented from doing so. Yet throughout Plaintiff's entire employment Defendant never  
17 (i) questioned him as to why he voluntarily waived his meal periods and rest breaks on a  
18 regular basis, (ii) reprimanded him for not adhering to the written policy, (iii) paid him  
19 regular or overtime wages for work he performed in lieu of taking a full meal period, or  
20 (iv) paid him a premium wage for interrupted, missed, or on-duty meal periods or rest  
21 breaks. Regardless of what Defendant's written policies may say, Defendant's actual  
22 practices systematically favor over-recording compliant meal periods and rest breaks and  
23 underpaying employees minimum, overtime, and premium wages.

#### 24 **D. Business Expense Reimbursement Violations**

25 30. Defendant does not track or reimburse sales employees' necessary  
26 expenditures and losses they incur in connection with Defendant's practice of requiring  
27 them to work off-the-clock hours following up on leads and knocking on neighbors'  
28 doors. Specifically, as Plaintiff experienced firsthand as an REC, Defendant does not ask

1 for receipts or reports from sales employees for their field work, nor do they reimburse  
2 these employees for mileage, gas, and other automobile expenses incurred on these non-  
3 commute travels. Defendant also does not reimburse sales employees for mobile phone  
4 voice and data usage when managers require them to field text messages and phone calls  
5 on their personal phones concerning their sales efforts. Through his entire employment,  
6 Plaintiff was never asked to report expenses or losses incurred while performing  
7 uncompensated field work, and when he attempted to report such costs, he was denied  
8 reimbursement.

9 **E. Payment Upon Termination Violations**

10 31. Defendant fails to timely and accurately pay sales employees all due but  
11 unpaid wages when they are terminated or quit, and it does not pay any wages as waiting  
12 time penalties.

13 32. As already alleged, Defendant does not accurately record all hours worked  
14 by sales employees and all meal period and rest breaks taken, missed, or shortened. Nor  
15 does it accurately calculate sales employees' regular rates of pay, at least in pay periods  
16 when such employees earn commissions or bonuses. Defendant also unlawfully and  
17 unfairly deducts employees' commission wages. Consequently, when Defendant paid  
18 Plaintiff and has paid other former sales employees their final paychecks, these final  
19 payments were all miscalculated and too small.

20 **F. Record-Keeping Violations**

21 33. As alleged above, Defendant intentionally does not maintain accurate or  
22 complete records of their sales employees' regular and overtime rates of pay, regular and  
23 overtime hours worked, and meal periods and rest breaks taken or waived. Nor does  
24 Defendant pay regular and overtime wages calculated at the correct rate of pay, or pay  
25 premium wages for missed, interrupted, or on-duty meal periods and rest breaks.  
26 Defendant also has failed to provide Plaintiff and other sales employees with accurate  
27 and complete wage statements for these same reasons.

34. Defendant's record-keeping failures have harmed Plaintiff and other employees by unfairly shifting the burden to employees to remember up to 14 days after-the-fact the precise number of hours they worked in a given day, and whether and when they took a full 30-minute meal period and full 10-minute rest breaks in the middle of each four-hour work period. Employees are thus required to justify any overtime hours reported, and all missed or shortened meal periods or rest breaks, days or weeks later without the necessary documentation (i.e., daily clock-in/out records or time sheets).

35. Moreover, Defendant does not even comply with its own timekeeping system's requirements. Employees' timesheets state that by signing the timesheets they are "certifying" that all of the information is true and accurate, but employees are not required to sign their time sheets, managers are not required to sign their approvals, and employees never see any changes to the timesheets made after they are submitted. This process creates records that are unreliable, internally inconsistent, and untethered from the employees' daily experiences.

36. All of these record-keeping failures favor Defendant's desire to pay less overtime and premium wages and to avoid monitoring and enforcing meal period and rest break practices. This "honor system" style of management and recordkeeping places employees in an unfair position where they must push back against their managers' instructions and the system itself to get paid what they are owed.

#### **IV. FLSA COLLECTIVE ACTION ALLEGATIONS**

37. Plaintiff incorporates all prior paragraphs.

##### **A. FLSA Coverage**

38. At all relevant time periods alleged herein, Defendant has controlled the hours to be worked by Plaintiff and other FLSA Collective members; provided training to Plaintiff and other FLSA Collective members; directed the work of Plaintiff and other FLSA Collective members; maintained communication with Plaintiff and other FLSA Collective members and received updates as to the status of their work; and provided

1 direction on how each assigned task was to be performed by Plaintiff and other FLSA  
2 Collective members.

3 39. Consequently, during the time period covered in the proposed FLSA  
4 Collective definition and all relevant time periods alleged herein, Defendant has been an  
5 employer within the meaning of 29 U.S.C. § 203(d). Defendant and its managers,  
6 supervisors, and other agents have directly or indirectly acted in Defendant's own  
7 interests in relation to FLSA Collective members.

8 40. At all relevant time periods alleged herein, Defendant also has, through  
9 unified operation or common control, engaged in related activities for a common business  
10 purpose, including the employment of FLSA Collective members to sell Defendant's  
11 products and services; has employed employees engaged in commerce or the production  
12 of goods for commerce or employees handling, selling, or working on goods or materials  
13 that have been moved in or produced for trade, commerce, transportation, transmission,  
14 or communication among the several States or between any State and any place outside  
15 thereof; and has had an annual gross volume of sales or business volume of not less than  
16 \$500,000.

17 41. Consequently, during the time period covered in the proposed FLSA  
18 Collective definition and all relevant time periods alleged herein, Defendant has been an  
19 enterprise within the meaning of 29 U.S.C. § 203(r)(1). Defendant has also been an  
20 enterprise in commerce or in the production of goods for commerce within the meaning  
21 of 29 U.S.C. § 203(s)(1) because it has had and continues to have employees engaged in  
22 commerce.

23 **B. Proposed FLSA Collective**

24 42. Plaintiff brings this FLSA Collective Action on behalf of members of the  
25 following proposed FLSA Collective:

26 **FLSA Collective**

27 All salaried, nonexempt sales employees anywhere in the United  
28 States who worked for Defendant during the period starting three

1 years prior to the date this Complaint was filed to the present and  
2 who worked over 40 hours in at least one workweek but were  
3 uncompensated or undercompensated for the time worked over  
4 40 hours.

5 43. Plaintiff has actual knowledge that he and other FLSA Collective members  
6 have been denied minimum wage for all hours worked and denied overtime pay for hours  
7 worked over 40 hours per workweek, and that Defendant has failed to record all hours  
8 worked by him and other FLSA Collective members. Plaintiff worked with other FLSA  
9 Collective members for approximately 18 months and has personal knowledge of their  
10 existence, their status as nonexempt employees of Defendant, the lack of records and  
11 compensation for all time spent working, and overtime violations.

12 44. The FLSA Collective members are similarly situated to Plaintiff and to each  
13 other. Other FLSA Collective members worked for Defendant in a similar capacity and  
14 in the same or similar positions as Plaintiff, including but not limited to as “Field Energy  
15 Specialists,” “Retail Energy Consultants,” “Senior Retail Energy Consultants,” “Field  
16 Energy Consultants,” and similar positions using other titles.

17 45. Plaintiff’s experiences concerning his work over 40 hours in a workweek  
18 and his overtime compensation are also typical of the experiences of other FLSA  
19 Collective members. FLSA Collective members regularly work or have worked more  
20 than 40 hours during a workweek and have not been properly compensated. These FLSA  
21 Collective members likewise were and are subject to Defendant’s deficient  
22 recordkeeping systems, and though they regularly work or have worked more than 40  
23 hours during a workweek, they have not been paid minimum wages for all hours worked  
24 and overtime hours worked at the rate of one-and-one-half their regular rate (or double  
25 their regular rate, as applicable).

26 46. Plaintiff and other FLSA Collective members also were not paid the proper  
27 amount of overtime wages based on Defendant’s failure to include commission and non-  
28

discretionary bonus-based compensation in the calculation of Plaintiff's and other FLSA Collective members' regular rates of pay.

47. Plaintiff estimates that Defendant has employed several thousand FLSA Collective members nationwide during the three years prior to the date this Complaint was filed who were paid based on an hourly rate, including FLSA Collective members working in Arizona, California, Colorado, Connecticut, Delaware, Washington, D.C., Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, and Washington.

48. Defendant's failure to pay minimum and overtime compensation at the rate required by the FLSA results from generally applicable policies and practices and does not depend on the personal circumstances of the FLSA Collective members. Any variation in specific job titles or precise job responsibilities or locations of each FLSA Collective member does not prevent collective treatment.

49. All FLSA Collective members are entitled to accurate record keeping, minimum wage compensation, and overtime compensation calculated in accordance with the FLSA's requirements. All FLSA Collective members are entitled to have their overtime compensation calculated properly, which includes rates of pay that take into account commission and bonus-based compensation in addition to a base hourly rate.

50. Although the exact amount of damages may vary among FLSA Collective members, the damages for the FLSA Collective members can be readily calculated by reference to Defendant's records and, if necessary, representative testimony.

51. Plaintiff's and other FLSA Collective members' claims arise from a common nucleus of facts, and Defendant's liability is based on a systematic course of wrongful conduct that has caused harm to all FLSA Collective members.

## **V. CALIFORNIA CLASS ALLEGATIONS**

52. Plaintiff incorporates all prior paragraphs.

53. Plaintiff brings this action under Rule 23(a), (b)(1), (b)(2), (b)(3) of the Federal Rules of Civil Procedure on behalf of members of the following proposed California Class and Subclasses:

**California Class**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present.

**Overtime Wages Subclass**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present and who were not paid the correct amount or rate of pay for all hours worked over eight hours in a day or 40 hours in a workweek.

**Commission Deductions Subclass**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present and who had one or more commission payments deducted, reduced, or otherwise reconciled pursuant to the terms of Defendant's then-applicable Sales Compensation Plan.

**Meal Periods Subclass**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present and who were not provided a timely, uninterrupted 30-minute meal period for each shift of greater than five hours or paid a premium wage in lieu thereof.



**Rest Breaks Subclass**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present and who were not provided timely, uninterrupted 10-minute rest breaks for each 4-hour work period or major fraction thereof, or paid a premium wage in lieu thereof.

**Unreimbursed Expenses Subclass**

All salaried, nonexempt sales employees who performed work for Defendant in California during the period starting four years prior to the date this Complaint was filed to the present and who were not reimbursed or indemnified for necessary expenses or losses incurred during work performed in the field.

54. The California Class members and Subclass members are similarly situated to Plaintiff and to each other. California Class and Subclass members worked for Defendant in a similar capacity and in the same or similar positions as Plaintiff, including but not limited to positions such as “Field Energy Specialists,” “Retail Energy Consultants,” “Senior Retail Energy Consultants,” “Field Energy Consultants.”

55. **Numerosity.** Plaintiff estimates that there are at least five hundred California Class members, and at least several hundred members in each California Subclass. The number of California Class members makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual California Class member as a plaintiff in this action is impracticable. The identity of California Class members will be determined from Defendant’s records, as will the amount of compensation that was and should have been paid to them.

56. Based on the size of the California Class, a class action is a reasonable and practical means for resolving California state law claims. To require individual actions would prejudice California Class members and Defendant.

57. **Typicality**. Plaintiff's claims are typical of those of other California Class members. Like other California Class members, Plaintiff was subject to Defendant's uniform policies and practices and was compensated in the same manner as other employees in the California Class. Defendant failed to provide uninterrupted meal periods and rest breaks to Plaintiff and other California Class members, failed to provide them with accurate wage statements, and failed to pay them for (1) all hours worked; (2) all missed, interrupted, and on-duty meal periods and rest breaks; (3) all overtime hours worked; and (4) all expenses incurred in direct performance of their duties. Defendant also failed to properly calculate and pay all of the overtime wages that should have been paid to Plaintiff and California Class members because Defendant used a regular rate of pay that did not account for commission and bonus-based compensation, and Defendant wrongly deducted earned commissions based on the terms of an unlawful and unfair Sales Compensation Plan.

58. **Adequacy**. Plaintiff is a representative party who will fairly and adequately protect the interests of the California Class because it is in his interest to effectively prosecute the claims herein alleged to obtain the unpaid wages and penalties required under California law. Plaintiff also worked in multiple sales positions in multiple locations for multiple managers for nearly 18 months. Plaintiff has retained counsel competent in both class action and wage-and-hour litigation. Plaintiff does not have any interest that may be contrary to or in conflict with the claims of the California Class he seeks to represent.

59. **Commonality**. Common issues of fact and law predominate over any individual questions in this action. Common issues of fact include, but are not limited to:

- a. Whether Defendant failed to provide full, uninterrupted meal periods and rest breaks to Plaintiff and California Class members;
- b. Whether Defendant failed to accurately record and verify all meal periods and rest breaks that Plaintiff and California Class members were actually provided each day;

- c. Whether Defendant failed to pay regular wages to Plaintiff and California Class members for work performed during a meal period;
- d. Whether Defendant failed to identify and pay premium wages to Plaintiff and California Class members for missed, shortened, or on-duty meal periods and rest breaks;
- e. Whether Defendant directly or indirectly required Plaintiff and California Class members to work more than eight hours in a day or 40 hours in a workweek but to record fewer hours than they actually worked;
- f. Whether Defendant's uniform timekeeping system failed to accurately record all of the hours that Plaintiff and California Class members worked each day, including overtime hours;
- g. Whether Defendant failed to pay Plaintiff and California Class members minimum wage for all hours worked and any overtime wages due for all hours worked over eight hours in a day or 40 hours in a workweek;
- h. Whether Defendant failed to accurately calculate the regular rate of pay for Plaintiff and California Class members by failing to take into account commission and bonus-based compensation;
- i. Whether Defendant improperly deducted from Plaintiff's and California Class members' wages commissions that should have been "earned," but that were instead deemed "subject to reconciliation;"
- j. Whether Defendant failed to provide Plaintiff and California Class members timely and accurate wage statements that reflected all hours worked, all rates of pay, and all compensation due;
- k. Whether Defendant failed to immediately pay all wages due to Plaintiff and California Class members upon termination of employment; and

1           1.     Whether Defendant failed to indemnify employees for their expenses  
2                   or losses incurred while performing their duties.

3       60.   Common issues of law include, but are not limited to:

- 4           a.     Whether Defendant provided and recorded meal periods and rest  
5                   breaks in compliance with California law;  
6           b.     Whether Defendant calculated, recorded, and paid all wages due for  
7                   overtime hours in compliance with California law;  
8           c.     Whether Defendant reimbursed or indemnified Plaintiff and  
9                   California Class members as required under California law;  
10          d.     Whether, under California law, Defendant owes Plaintiff and  
11               California Class members premium or penalty wages for missed,  
12               interrupted, or on-duty meal periods and rest breaks, insufficient  
13               overtime pay, or failure to pay all wages due upon termination;  
14          e.     Whether Defendant unlawfully or unfairly deducted earned wages  
15               from Plaintiff and California Class members under the terms of the  
16               Sales Compensation Plan; and  
17          f.     Whether any of Defendant's violations of California law were willful.

18       61.   **Application of Rule 23(b)(1).** Separate actions by individual, nonexempt  
19 sales employees would likely result in inconsistent and varying decisions about whether  
20 Defendant complied with the California Labor Code and whether their violations were  
21 willful. This in turn would result in conflicting and incompatible standards of conduct for  
22 the Defendant.

23       62.   **Application of Rule 23(b)(2).** Defendant has acted and failed to act  
24 according to uniform policies and practices that apply generally to the proposed  
25 California Class, so that final injunctive or corresponding declaratory relief is appropriate  
26 respecting the Class as a whole.

27       63.   **Application of Rule 23(b)(3).** As alleged above, because Defendant's  
28 violations of California law emanate from Defendant's uniform policies and practices,

1 questions of law and fact common to the proposed California Class predominate over  
2 questions affecting only individual members. A class action is superior to other available  
3 methods for fairly and efficiently adjudicating the controversy because, even if individual  
4 California Class members could afford to pursue individual litigation against companies  
5 the size of Defendant, doing so would unduly burden the court system and would not  
6 sufficiently serve the interests of California Class members. Plaintiff's and California  
7 Class members' interests include the desire to correct Defendant's policies and practices  
8 rather than only obtain damages for past violations. Prosecution and defense of such  
9 individual actions would also create a significant risk of inconsistent or contradictory  
10 judgments and results and could establish incompatible standards of conduct for  
11 Defendant and expectations for their employees.

12         64. Concentrating litigation of Defendant's California Labor Code violations  
13 and related violations in this forum is desirable because it will establish a consistent  
14 standard of conduct for Defendant and consistent expectations for their employees  
15 throughout California; it will promote financial and judicial economy for the parties and  
16 the courts; and it will provide comprehensive supervision by a single court. Inherent  
17 difficulties in managing a class action will also be greatly reduced because Defendant's  
18 aggregated records, corporate testimony from Defendant's management, and  
19 representative testimony from Plaintiff and California Class members will provide the  
20 majority of evidence necessary for trial.

21         65. Notice of the pendency and any resolution of this action can be provided to  
22 California Class members by mail, email, print, broadcast, Internet, and/or multimedia  
23 publication. Defendant's records will identify California Class members and provide  
24 their contact information.

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**VI. CAUSES OF ACTION**

**First Cause of Action**

**Nationwide: Failure to Accurately Calculate and Pay Overtime Wages**

**(Fair Labor Standards Act, 29 U.S.C. §§ 207, 215(a)(2), 216)**

**On Behalf of Plaintiff and FLSA Collective members**

66. Plaintiff incorporates all prior paragraphs.

67. The FLSA requires each covered employer to compensate all nonexempt employees at a rate of not less than one-and-a-half times their regular rate of pay for work performed in excess of 40 hours in a workweek (overtime hours).

68. Defendant has willfully and systematically discouraged and prevented Plaintiff and FLSA Collective members from recording all overtime hours worked. Defendant's deficient timekeeping policies and practices further prevent nonexempt sales employees from recording all overtime worked and improperly place the burden on these employees to calculate any overtime hours worked after-the-fact without real-time documentation and subject to a manager's challenge, disapproval, or alteration.

69. Additionally, for any overtime hours that Plaintiff and FLSA Collective members were permitted to record, Defendant failed to accurately calculate Plaintiff and FLSA Collective members' regular rate of pay by failing to account for commission and bonus-based compensation in that calculation. As a result, when Defendant did approve and pay recorded overtime to Plaintiff and FLSA Collective members, the amounts were too small and did not amount to full payment of one-and-a-half times (or double time, as applicable) the employees' actual regular rate of pay.

70. By failing to compensate Plaintiff and FLSA Collective members at a rate of not less than one-and-a-half times their properly calculated regular rate of pay for work performed in excess of 40 hours in a workweek, Defendant has violated the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

71. Defendant's conduct as alleged herein further constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

72. As a result of Defendant's willful and unlawful failure to pay Plaintiff and FLSA Collective members all of their earned overtime wages, Plaintiff and FLSA Collective members are entitled to recover their unpaid overtime wages, penalties, costs and reasonable attorneys' fees, and the relief requested below in the Prayer for Relief.

73. Plaintiff, individually and on behalf of FLSA Collective members, seeks damages in the amount of their respective unpaid overtime compensation, liquidated damages calculated from the date three years prior to the date this Complaint was filed, plus interest and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

### **Second Cause of Action**

#### **California: Failure to Accurately Calculate and Pay Overtime Wages (California Labor Code §§ 510 and 1194)**

#### **On Behalf of Plaintiff and other California Class members**

74. Plaintiff incorporates all prior paragraphs.

75. California Labor Code section 510 requires employers to compensate all nonexempt employees for all overtime hours worked at one-and-a-half times their regular rates of pay for hours worked in excess of eight hours per day and 40 hours per workweek, and double-time for hours worked in excess of 12 hours per day.

76. Defendant has willfully and systematically discouraged and prevented Plaintiff and California Class members from recording all overtime hours worked. Defendant's deficient timekeeping policies and practices further prevent employees from recording all overtime hours worked and improperly place the burden on the employees to calculate any overtime hours worked after-the-fact without real-time documentation and subject to a manager's challenge, disapproval, or alteration.

77. Additionally, for any overtime hours that Plaintiff and California Class members were permitted to record, Defendant failed to accurately calculate Plaintiff and California Class members' regular rates of pay by failing to account for commission and bonus-based compensation in that calculation. As a result, when Defendant paid overtime



1 to Plaintiff and California Class members, the amounts were too small and did not amount  
 2 to full payment of one-and-a-half times (or double time, as applicable) the employees'  
 3 actual regular rate of pay.

4 78. Plaintiff and California Class members have been deprived of their earned  
 5 overtime wages as a direct and proximate result of Defendant's failure and refusal to pay  
 6 such compensation.

7 79. Defendant has violated California Labor Code section 510, and under  
 8 California Labor Code section 1194, Plaintiff and California Class members seek and are  
 9 entitled to recover damages for the nonpayment of overtime wages for all overtime hours  
 10 worked in excess of eight hours per day, in excess of 40 hours per workweek, and double-  
 11 time pay for hours worked in excess of 12 per day, in addition to interest on such amounts,  
 12 plus reasonable attorneys' fees and costs of suit, and the relief requested below in the  
 13 Prayer for Relief.

### 14 **Third Cause of Action**

#### 15 **Nationwide: Failure to Pay Minimum Wage**

#### 16 **(Fair Labor Standards Act, 29 U.S.C. §§ 206, 216)**

#### 17 **On Behalf of Plaintiff and FLSA Collective members**

18 80. Plaintiff incorporates all prior paragraphs.

19 81. The FLSA requires each covered employer to compensate all nonexempt  
 20 employees a minimum wage for all work performed.

21 82. Defendant has willfully discouraged and prevented Plaintiff and FLSA  
 22 Collective members from recording all hours worked. Defendant's deficient timekeeping  
 23 policies and practices further prevent employees from recording all worked and  
 24 improperly place the burden on the employees to calculate all hours worked after-the-  
 25 fact without real-time documentation and subject to a manager's challenge, disapproval,  
 26 or alteration.

83. By failing to compensate Plaintiff and FLSA Collective members for all hours worked, Defendant has violated the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 206 and § 215(a).

84. Defendant's conduct as alleged herein further constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

85. As a result of Defendant's willful and unlawful failure to pay Plaintiffs all of their earned wages, Plaintiffs are entitled to recover their unpaid wages, penalties, costs and reasonable attorneys' fees, and the relief requested below in the Prayer for Relief.

86. Plaintiff, individually and on behalf of FLSA Collective members, seeks damages in the amount of their respective unpaid compensation, liquidated damages from the date three years prior to the date this Complaint was filed, plus interest and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

#### **Fourth Cause of Action**

##### **California: Failure to Pay Minimum Wage**

**(California Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198)**

##### **On Behalf of Plaintiff and California Class members**

87. Plaintiff incorporates all prior paragraphs.

88. California Labor Code sections 1182.12 and 1197 require employers to pay a minimum wage to all nonexempt employees for all hours worked.

89. Defendant has willfully and systematically discouraged and prevented Plaintiff and California Class members from recording all hours worked. Defendant's deficient timekeeping policies and practices further prevent employees from recording all hours worked and improperly place the burden on the employees to calculate their total hours worked after-the-fact without real-time documentation and subject to a manager's challenge, disapproval, or alteration.



**Sixth Cause of Action**

**California: Failure to Provide Accurate Wage Statements**

**(California Labor Code § 226)**

**On Behalf of Plaintiff and California Class members**

96. Plaintiff incorporates all prior paragraphs.

97. California Labor Code section 226 provides that employers shall furnish their employees with accurate itemized statements in writing showing gross wages earned and total hours worked by the employee, among other items of information.

98. During all relevant times, Defendant knowingly and willfully violated California Labor Code section 226 by failing to provide Plaintiff and California Class members with accurate wage statements. Defendant knowingly and willfully violated Section 226 by providing Plaintiff and California Class members with wage statements that systematically undercounted the number of hours that Plaintiff and California Class members worked (including hours worked during meal periods that were missed, interrupted, or waived, and off-the-clock overtime hours) and under-calculated the regular rates of pay and wages due to them. Defendant is therefore liable to Plaintiff and California Class members for providing inaccurate wage statements in violation of Labor Code section 226.

99. Accordingly, Plaintiff and California Class members seek and are entitled to recover all penalties due, and the relief requested below in the Prayer for Relief.

**Seventh Cause of Action**

**California: Failure to Pay All Wages Upon Termination**

**(California Labor Code §§ 201, 202, 203, 226.7, 512 *et seq.*)**

**On Behalf of Plaintiff and California Class members**

100. Plaintiff incorporates all prior paragraphs.

101. California Labor Code section 201 provides that any discharged employee is entitled to all wages due at the time of discharge, and California Labor Code section

202 provides that, subject to few exceptions, these wages are due within 72 hours of the employee's discharge.

102. Where an employer willfully fails to pay discharged or resigning employees all wages due as required under the California Labor Code, the employer is liable to such employees under California Labor Code section 203 for waiting time penalties in the amount of one day's compensation at the employees' regular rates of pay for each day the wages are withheld, up to 30 days.

103. During all relevant times, Defendant knowingly and willfully violated California Labor Code sections 201 and 202 by failing to pay Plaintiff and California Class members no longer employed with Defendant all wages owed when their employment ended. Defendant is therefore liable to Plaintiff and California Class members no longer employed by Defendant for waiting time penalties as required by California Labor Code section 203.

104. Accordingly, Plaintiff and California Class members who are no longer employed by Defendant seek and are entitled to recover all penalties due, and the relief requested below in the Prayer for Relief.

### **Eighth Cause of Action**

#### **California: Failure to Indemnify Employees' Expenses and Losses**

#### **(California Labor Code § 2802)**

#### **On Behalf of Plaintiff and California Class members**

105. Plaintiff incorporates all prior paragraphs.

106. California Labor Code section 2802 provides that employers shall indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of their duties.

107. During all relevant times, Defendant knowingly and willfully violated California Labor Code section 2802 by failing to pay Plaintiff and California Class members all expenses incurred in the discharge of their duties, including but not limited to travel and mobile phone expenses. Defendant is therefore liable to Plaintiff and

1 members of the California Class for expenses incurred in direct consequence of the  
2 discharge of Plaintiffs' duties.

3 108. Accordingly, Plaintiff and California Class members seek and are entitled  
4 to recover all expenses and losses due, and the relief requested below in the Prayer for  
5 Relief.

6 **Ninth Cause of Action**

7 **California: Failure to Provide and Accurately Record Meal Periods**

8 **Or Pay Premium Wages In Lieu Thereof**

9 **(California Labor Code §§ 226.7, 512 *et seq.*)**

10 **On Behalf of Plaintiff and California Class members**

11 109. Plaintiff incorporates all prior paragraphs.

12 110. California Labor Code section 512 requires employers to provide an  
13 uninterrupted, off-duty 30-minute meal period if the employee works more than five  
14 hours in a day, and a second uninterrupted, off-duty 30-minute meal period if the  
15 employee works more than 10 hours in a day. These meal periods must be free of all  
16 work duties.

17 111. Defendant violated the meal period laws by failing to provide Plaintiff and  
18 California Class members complete and uninterrupted meal periods of at least 30-  
19 minutes. Defendant further has not compensated Plaintiff or California Class members  
20 for the work they performed during the unpaid meal period time or premium wages for  
21 the meal periods they were required to miss, shorten, or remain on-duty or on-call.

22 112. Accordingly, Plaintiff and California Class members seek and are entitled  
23 to recover all damages and penalties allowed under the law, including payment of one  
24 additional hour of pay at the employees' regular rates of pay for each such violation, as  
25 provided in California Labor Code section 226.7.

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**Tenth Cause of Action**

**California: Failure to Provide Rest Periods**

**Or Pay Premium Wages In Lieu Thereof**

**(California Labor Code § 226.7 and Governing Industrial Wage Order)**

**On Behalf of Plaintiff and California Class members**

113. Plaintiff incorporates all prior paragraphs.

114. Under California Labor Code section 226.7, an employer may not deprive an employee of a rest period mandated by an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

115. Under paragraph 12 of the governing Industrial Wage Order, an employer must permit its employees to take 10 minutes of rest for every four hours worked, taken in the middle of the work period unless impracticable.

116. Additionally, under California Labor Code section 226.7 and paragraph 12 of the governing Industrial Wage Order, if the employer does not provide these required rest breaks, the employer must pay the employee an additional hour of pay for each workday that the rest period is not provided.

117. Defendant violated the rest break laws by failing to provide Plaintiff and California Class members complete and uninterrupted rest breaks in the middle of their work periods of at least 10-minutes net. Defendant further has not compensated Plaintiff or California Class members by paying premium wages for the rest breaks that they were required to miss or shorten or in which they were required to remain on-duty or on-call.

118. Accordingly, Plaintiff and California Class members seek and are entitled to recover all damages and penalties allowed under the law, including payment of one additional hour of pay at the employees' regular rates of pay for each such violation, as provided in California Labor Code section 226.7.



**Eleventh Cause of Action**

**California: Unlawful Deductions of Commissions**

**(California Labor Code §§ 221, 223, 224, and 2751)**

**On Behalf of Plaintiff and California Class members**

119. Plaintiff incorporates all prior paragraphs.

120. California Labor Code sections 221, 223, and 224 protect employees against unlawful deductions of their earned wages. Under Section 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Relatedly, under Section 223, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Section 224 authorizes certain deductions that an employee “expressly authorize[s] in writing,” but forbids deductions that amount to a “rebate or deduction from the standard wage . . . pursuant to wage agreement or statute.”

121. Additionally, under California Labor Code section 2751, when an employer enters into a contract of employment and the contemplated payment method includes commissions, the contract must “set forth the method by which the commissions shall be computed and paid.”

122. Defendant’s practice under their Sales Compensation Plan of “advancing” commission payments to Plaintiff and California Class members and later deducting such commission payments by deeming them not “earned” and therefore “subject to reconciliation” violates the California Labor Code’s prohibitions against deducting employees’ wages and fails to adhere to the requirements of Section 2751.

123. Defendant’s Sales Compensation Plan is infested with so much complex legalese that is essentially incomprehensible to Plaintiff and other sales employees who are not capable of knowingly and intentionally consenting to having commissions that are paid in their paychecks later deducted through offsets to future commissions. Moreover, the terms of the Sales Compensation Plan, to the extent employees could be

1 expected to understand them, are so surprising and grossly one-sided that the agreement  
2 itself is unconscionable and therefore unenforceable against employees as a means of  
3 clawing back already paid commissions whether or not they are described as “advances.”

4 124. Defendant has violated Sections 221, 223, and 224 each time they deducted  
5 or otherwise “reconciled” Plaintiff’s and California Class members’ wages by reducing  
6 future commission payments to offset or clawback past commission payments.  
7 Defendant has further relied on methods for the computation and payment of  
8 commissions that are not set forth in the commission contract in violation of Section  
9 2751.

10 125. Accordingly, Plaintiff and California Class members seek and are entitled  
11 to recover all damages and penalties allowed under the law, including payment (with  
12 interest) of the full amount of employees’ commission compensation that was deducted,  
13 clawed back, or otherwise reconciled as well as calculation of their regular rates of pay  
14 in a manner that takes into account such commission compensation.

### 15 **Twelfth Cause of Action**

#### 16 **California: Violation of the California Unfair Competition Law (UCL)**

#### 17 **(California Business & Professions Code § 17200 *et seq.*)**

#### 18 **On Behalf of Plaintiff and California Class members**

19 126. Plaintiff incorporates all prior paragraphs.

20 127. Defendant is a “person” as defined under California Business and  
21 Professions Code section 17021.

22 128. Section 17200 of the California Business and Professions Code defines  
23 unfair competition as, *inter alia*, an “unlawful” business act or practice or an “unfair”  
24 business act or practice.

25 129. By the conduct alleged herein, Defendant has engaged and continues to  
26 engage in business practices that are both unlawful and unfair and therefore violate  
27 California law.

28 130. Defendant’s failure to pay all earned minimum and overtime wages, provide

1 meal periods and rest breaks or pay premium wages in lieu thereof, maintain and provide  
2 accurate records, reimburse necessary business expenses, and other violations described  
3 above all constitute unlawful acts and practices prohibited by California Business and  
4 Professions Code section 17200.

5 131. Defendant's failure to pay all earned minimum and overtime wages, provide  
6 meal periods and rest breaks or pay premium wages in lieu thereof, maintain and provide  
7 accurate records, reimburse necessary business expenses, and other violations described  
8 above also constitute unfair acts and practices prohibited by California Business and  
9 Professions Code section 17200 because they deprive employees of the wages, meal  
10 periods, rest breaks, expense reimbursement, and accurate records to which they are  
11 entitled, while employees have no power individually to change such practices.

12 132. Defendant's practice of deducting or "reconciling" commissions under the  
13 Sales Compensation Plan or Plans applicable to Plaintiff and California Class members  
14 is unlawful under the California Business and Professions Code section 17200 as a  
15 violation of California Labor Code sections 221, 223, 224, and 2751. It is also unfair as  
16 an independent business practice separate and apart from the California Labor Code's  
17 specific protections based on the unfair and unconscionable terms and conditions  
18 Defendant unilaterally imposes on Plaintiff and California Class members without their  
19 knowing, voluntary consent and without a meaningful ability to determine when and how  
20 commission wages become "earned."

21 133. As a result of their unlawful and unfair acts, Defendant has reaped and  
22 continues to reap unfair benefits and illegal profits at the expense of Plaintiff and  
23 California Class members.

24 134. Defendant should be made to disgorge these ill-gotten gains and restore to  
25 Plaintiff and California Class members the wrongfully withheld wages and penalty wages  
26 to which they are entitled, as well as interest on these wages.

27 135. Plaintiff and California Class members further seek all injunctive and  
28 preventive relief authorized by California Business and Professions Code sections 17202

1 and 17203.

2 136. This action is designed to ensure the enforcement of important rights  
3 affecting the public interest and a large number of employees. The necessity and financial  
4 burden of private enforcement is great, and the risks to the named Plaintiff for stepping  
5 forward are also significant. As such, Plaintiff is entitled to attorneys' fees upon  
6 prevailing, and in the interest of justice, such fees should not be paid out of the recovery.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all FLSA Collective and  
9 California Class members, prays for the following relief:

10 A. Certification of the claims in this action as a Class action under Rule 23 of  
11 the Federal Rules of Civil Procedure;

12 B. Designation of Plaintiff as Class Representative and counsel for Plaintiff as  
13 Class Counsel;

14 C. An award of actual and liquidated damages;

15 D. Individual and public equitable and injunctive relief to remedy Defendant's  
16 violations of California law, including but not necessarily limited to an order enjoining  
17 Defendant from continuing its unlawful practices;

18 E. Statutory penalties;

19 F. Restitution;

20 G. Pre-judgment and post-judgment interest as allowed by law;

21 H. Attorneys' fees and costs under applicable law, including expert fees and  
22 costs; and

23 I. Such additional and further relief as this Court may deem just and proper.

24  
25 Dated: April 24, 2017

SODERSTROM LAW PC

26 By: s/ Jamin S. Soderstrom

27 *Counsel for Plaintiff and the Proposed Class*

28 E-mail: jamin@soderstromlawfirm.com

**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury of all issues triable by jury.

Dated: April 24, 2017

SODERSTROM LAW PC

By: /s/ Jamin S. Soderstrom

*Counsel for Plaintiff and the Proposed Class*

E-mail: jamin@soderstromlawfirm.com



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Leslie Arthur Thomas, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jamin S. Soderstrom  
Soderstrom Law PC  
3 Park Plaza, Suite 100; Irvine, California 92614; (949) 667-4700

## DEFENDANTS

SolarCity Financial Company, LLC

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. sections 200 et seq. 29:0201 (mxn)

Brief description of cause:

Failure to pay minimum and overtime wages; failure to properly calculate overtime wages

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/10/17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

# Exhibit 1



**CONSENT TO JOIN COLLECTIVE ACTION**

I worked for SolarCity Financial Company, LLC (SolarCity) between December 1, 2014 and May 2, 2016 as a salaried, nonexempt sales employee.

In accordance with 29 U.S.C. section 216(b), I hereby consent to be a party plaintiff in the collective action brought in United States District Court for the Southern District of California entitled *Leslie Arthur Thomas v. SolarCity Financial Company, LLC* (S.D. Cal.) to recover unpaid wages, overtime wages, and other sums owing to me and to other, similarly situated employees under the Fair Labor Standards Act and other applicable federal and state laws.

I authorize Soderstrom Law PC to represent me as the named plaintiff in this action, and I agree to be bound by any adjudication or settlement of this action.

Dated: April 10, 2017

By: 

Leslie Arthur Thomas

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SolarCity Financial Company Pegged with Wage and Hour Class Action](#)

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