

ENDORSED
FILED
Superior Court of California
County of San Francisco

DEC 10 2015

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

1 Matthew R. Bainer, Esq. (S.B. #220972)
2 Sonny Hoang, Esq. (S.B. #301447)
3 **SCOTT COLE & ASSOCIATES, APC**
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: mbainer@scalaw.com
9 Email: shoang@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 JESSE FAUSTO, individually, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 SUNRUN, INC.,
20 and DOES 1 through 100, inclusive,

21 Defendants.

22 Case No. CGC-15-549359

23 CLASS ACTION

24 **COMPLAINT FOR DAMAGES,
25 INJUNCTIVE RELIEF AND RESTITUTION**

26 Representative Plaintiff alleges as follows:

27 **PRELIMINARY STATEMENT**

28 1. This is a class action, brought on behalf of Jesse Fausto (hereinafter "Representative Plaintiff") and all other persons similarly situated ("Class Members") who are or were employed as salaried managers by defendants SunRun, Inc. and Does 1 through 50, inclusive (collectively "Defendant" and/or "SunRun") as California-based Solar Consultants classified as independent contractors and/or direct sellers within the applicable class period. The Representative Plaintiff, on behalf of himself and the Class Members, seeks unpaid wages, compensation for missed meal and

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 rest periods, including unpaid overtime compensation and interest thereon, liquidated damages and
2 other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,
3 inter alia, Title 8 of the California Code of Regulations, California Business and Professions Code
4 §§17200, et seq., California Code of Civil Procedure §1021.5, and various provisions of the
5 California Labor Code.

6 2. The Class Period is designated as the time from December 10, 2011 through the date
7 of trial, based upon the allegation that the violations of California's wage and hour laws, as
8 described more fully below, have been ongoing throughout that time.

9 3. During the Class Period, Defendant has had a consistent policy of (1) permitting,
10 encouraging and/or requiring its allegedly overtime-exempt Solar Consultants classified as
11 independent contractors and/or direct sellers, including Representative Plaintiff and Class Members,
12 to work in excess of eight hours per day and in excess of forty hours per week without paying them
13 overtime compensation as required by California's wage and hour laws, (2) unlawfully failing to
14 provide Representative Plaintiff and Class Members statutorily-mandated meal and rest periods, and
15 (3) willfully failing to provide Representative Plaintiff and Class Members with accurate semi-
16 monthly itemized wage statements reflecting the total number of hours each worked, the applicable
17 deductions, and the applicable hourly rates in effect during the pay period.

18 4. In addition, Representative Plaintiff alleges, on information and belief, that Defendant
19 has had a consistent policy of willfully failing to pay compensation (including unpaid overtime) in a
20 prompt and timely manner to certain Class Members whose employment with Defendant has been
21 terminated.

22 **INTRODUCTION**

23 5. SunRun, Inc. is a privately-held company that sells solar energy systems.

24 6. Representative Plaintiff is informed and believes and, on that basis, alleges that
25 within the Class Period, Defendant employed numerous individuals in California in recent years who
26 occupied Solar Consultant positions, which Defendant classified as independent contractors and/or
27 direct sellers, employment positions which did not, and currently do not, meet any known test for
28 exemption from the payment of overtime wages and/or the entitlement to meal or rest periods.

1 direct effect on Representative Plaintiff and those similarly situated within the State of California
2 and County of San Francisco.

3 **PLAINTIFFS**

4 13. Plaintiff Jesse Fausto is a natural person and was, during the relevant time period
5 identified herein, employed by SunRun, Inc. as a California-based Solar Consultants, classified as an
6 independent contractor and/or direct seller.

7 14. As used throughout this Complaint, the term “Class Members” refers to
8 Representative Plaintiff herein as well as each and every person eligible for membership in the class
9 of persons as further described and defined herein.

10 15. At all times herein relevant, Representative Plaintiff was and is now a person within
11 the class of persons further described and defined herein.

12 16. Representative Plaintiff brings this action on behalf of himself and as a class action,
13 pursuant to California Code of Civil Procedure § 382, on behalf of all persons similarly situated and
14 proximately damaged by the unlawful conduct described herein.

15 **DEFENDANTS**

16 17. Representative Plaintiff is informed and believes that, at all times herein relevant,
17 Defendant was a corporation, duly licensed, located and doing business in, but not limited to, the
18 County of San Francisco, in the State of California.

19 18. Representative Plaintiff is informed and believes and, on that basis, alleges that
20 Defendant did, and does, directly and/or indirectly employed and/or exercised control over the
21 wages, hours and working conditions of Representative Plaintiff and Class Members.

22 19. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
23 relevant times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,
24 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
25 Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein-
26 mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed, and/or
27 exercised control over the wages, hours, and/or working conditions of Plaintiff and Class Members
28 at various California locations, as identified in the preceding paragraph.

CLASS ACTION ALLEGATIONS

1 20. Representative Plaintiff brings this action individually and as a class action on behalf
2 of all persons similarly situated and proximately damaged by Defendant’s conduct including, but not
3 necessarily limited to, the following Plaintiff Class:
4

5 “All persons employed by SunRun, Inc. in the State of California and
6 classified as independent contractors and/or direct sellers in the
7 position of Solar Consultant and/or similar positions, at any time on
or after December 10, 2011.”

8 21. Defendant, its officers, and directors are excluded from the Plaintiff Class.

9 22. This action has been brought and may properly be maintained as a class action under
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
11 the litigation and the proposed Class is easily ascertainable:

12 a. Numerosity: A class action is the only available method for the fair and
13 efficient adjudication of this controversy. The members of the Plaintiff Class
14 are so numerous that joinder of all members is impractical, if not impossible,
15 insofar as Representative Plaintiff is informed and believes and, on that basis,
alleges that there are sufficient Class Members to meet the numerosity
requirement. Membership in the Class will be determined upon analysis of
employee and payroll, among other, records maintained by Defendant.

16 b. Commonality: Representative Plaintiff and the Class Members share a
17 community of interests in that there are numerous common questions and
18 issues of fact and law which predominate over any questions and issues
solely affecting individual members, including, but not necessarily limited to:

- 19 1) Whether Defendant violated IWC Wage Order and/or California
20 Labor Code § 510 by failing to pay overtime compensation to Class
Members who worked in excess of forty hours per week and/or eight
hours per day;
- 21 2) Whether Defendant violated California Business and Professions
22 Code § 17200, *et seq.* by failing to pay overtime compensation to
23 Class Members who worked in excess of forty hours per week and/or
eight hours per day;
- 24 3) Whether Defendant violated California Labor Code § 1174 by failing
25 to keep accurate records of employees’ hours of work;
- 26 4) Whether Defendant violated California Labor Code §§ 201-203 by
27 failing to pay all wages due and owing at the time that certain Class
Members’ employment with Defendant terminated;
- 28 5) Whether Defendant violated California Labor Code § 226 by failing
to provide the semimonthly itemized statements to Class Members of

SCOTT COLE & ASSOCIATES, APC
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total hours worked by each and all applicable hourly rates in effect during the pay period;

6) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code § 203; and

c. Typicality: Representative Plaintiff’s claims are typical of the claims of Class Members. Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

e. Adequacy of Representation: Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that Representative Plaintiff’s claims are typical of those of the Plaintiff Class and Representative Plaintiff has the same interest in the litigation of this case as the Class Members. Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

23. As described herein, for years Defendant has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as overtime wages and/or compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other companies.

24. Defendant has declined to pay these wages, even upon a Class Member’s termination or resignation from employment, in blatant violation of California Labor Code § 201 and/or § 202.

25. California Labor Code §§ 201 and 202 require Defendant to pay severed employees all wages due and owed to the employee immediately upon discharge or within 72 hours of

1 resignation of their positions, in most circumstances. California Labor Code § 203 provides that an
2 employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the subject
3 employees' wages until the back wages are paid in full or an action is commenced, and the payment
4 of such penalty shall continue for a period of time up to 30 days.

5 26. Furthermore, despite its knowledge of Representative Plaintiff and the Class
6 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
7 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
8 by members of the class. Defendant also failed to provide Representative Plaintiff and Class
9 Members with accurate semimonthly itemized statements of the total number of hours worked by
10 each, and all applicable hourly rates in effect, during the pay period, in violation of California Labor
11 Code § 226. In failing to provide the required documents, Defendant has not only failed to pay its
12 workers the full amount of compensation due but the company has also, until now, effectively
13 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
14 wrongdoing that such documents might otherwise have led workers to discover.

15 27. Representative Plaintiff and all persons similarly situated are entitled to unpaid
16 compensation, yet, to date, have not received such compensation despite many of the same having
17 been terminated by and/or resigned from Defendant. More than 30 days have passed since certain
18 Class Members have left Defendant's employ.

19 28. As a consequence of Defendant's willful conduct in not paying former employees
20 compensation for all hours worked in a prompt and timely manner, certain Class Members are
21 entitled to up to 30 days wages as a penalty under California Labor Code § 203, together with
22 attorneys' fees and costs.

23 29. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
24 Representative Plaintiff and Class Members have sustained damages, as described above, including
25 compensation for loss of earnings for hours worked on behalf of Defendant, in an amount to be
26 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
27 forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant to
28 California Labor Code § 203) and penalties for failure to provide semimonthly statements of hours

1 worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an amount to be
2 established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set
3 forth herein, Representative Plaintiff and Class Members are also entitled to recover costs and
4 attorneys’ fees pursuant to California Labor Code § 1194 and/or California Civil Code § 1021.5 and
5 1032, among other authorities.

6 30. Representative Plaintiff seeks injunctive relief prohibiting Defendant from engaging
7 in the complained-of illegal labor acts and practices in the future. Representative Plaintiff also seeks
8 restitution of costs incurred by Representative Plaintiff and Class Members under California’s Unfair
9 Competition Law. Unless enjoined, Defendant’s unlawful conduct will continue unchecked, while
10 Representative Plaintiff and Class Members bear the financial brunt of Defendant’s unlawful
11 conduct. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth
12 herein, Representative Plaintiff and the Plaintiff Class are also entitled to recover costs and
13 attorneys’ fees, pursuant to statute.

14 31. Plaintiff has complied, or will comply, with the procedures for bringing suit specified
15 in California Labor Code §2699.3, by letter dated December 10, 2015. Plaintiff gave written notice
16 by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the
17 specific provisions of the California Labor Code alleged to have been violated, including the facts
18 and theories to support these violations.

19
20 **FIRST CAUSE OF ACTION**
21 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
22 **(Violation of IWC Wage Order 7 and Labor Code 510, 1194, and 1198)**

23 32. Representative Plaintiff incorporates in this cause of action each and every allegation
24 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

25 33. During the Class Period, Representative Plaintiff and the Class Members worked, on
26 many occasions, in excess of eight hours in a workday and/or 40 hours in a workweek. The precise
27 number of overtime hours will be proven at trial.
28

1 34. During the Class Period, Defendant refused to compensate Representative Plaintiff
2 and Class Members for all of the overtime wages earned, in violation of the applicable IWC Wage
3 Order and provisions of the California Labor Code.

4 35. Moreover, during said time period, many of the Class Members herein were
5 employed by and thereafter terminated or resigned from their positions with Defendant yet were not
6 paid all wages due upon said termination or within 72 hours of said resignation of employment there
7 from. Said non-payment of all wages due was the direct and proximate result of a willful refusal to
8 do so by Defendant.

9 36. At all relevant times, Defendant was aware of, and was under a duty to comply with,
10 the overtime provisions of the California Labor Code including, but not limited to, California Labor
11 Code §§510, 1194 and 1198.

12 37. California Labor Code §510(a), in pertinent part, provides:

13 Any work in excess of eight hours in one workday and any work in
14 excess of 40 hours in any one workweek and the first eight hours
15 worked on the seventh day of work in any one workweek shall be
16 compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee.

18 38. California Labor Code §1194(a), in pertinent part, provides:

19 Notwithstanding any agreement to work for a lesser wage, any
20 employee receiving less than the legal minimum wage or the legal
21 overtime compensation applicable to the employee is entitled to
22 recover in a civil action the unpaid balance of the full amount of this
23 minimum wage or overtime compensation, including interest thereon,
24 reasonable attorneys' fees, and costs of suit.

25 39. California Labor Code §1198, in pertinent part, provides:

26 The maximum hours of work and the standard conditions of labor
27 fixed by the commission shall be the maximum hours of work and the
28 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.

 40. By refusing to compensate Representative Plaintiff and Class Members for overtime
wages earned, Defendant violated those California Labor Code provisions cited herein as well as the
applicable IWC Wage Order(s).

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41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

**SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)**

42. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

43. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code §226.7 and §512.

44. California Labor Code §226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

45. Moreover, California Labor Code §512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1 46. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
2 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
3 misclassified) employees.

4 47. Section 11 of the applicable IWC Wage Order provides:

5 (A) No employer shall employ any person for a work period of more
6 than five (5) hours without a meal period of not less than 30
7 minutes...

8 (B) An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee
10 with a second meal period of not less than 30 minutes...

11 (C) If an employer fails to provide an employee a meal period in
12 accordance with the applicable provisions of this order, the
13 employer shall pay the employee one (1) hour of pay at the
14 employee's regular rate of compensation for each workday that
15 the meal period is not provided.

16 48. Moreover, Section 12 of the applicable IWC Wage Order provides:

17 (A) Every employer shall authorize and permit all employees to
18 take rest periods, which insofar as practicable shall be in the
19 middle of each work period. The authorized rest period time
20 shall be based on the total hours worked daily at the rate of
21 ten (10) minutes net rest time per four (4) hours or major
22 fraction thereof

23 (B) If an employer fails to provide an employee a rest period in
24 accordance with the applicable provisions of this order, the
25 employer shall pay the employee one (1) hour of pay at the
26 employee's regular rate of compensation for each workday
27 that the rest period is not provided.

28 49. By failing to consistently provide uninterrupted thirty-minute meal periods within the
first five hours of work each day and/or uninterrupted net ten-minute rest periods to Representative
Plaintiff and the Class Members, Defendant violated the California Labor Code and applicable IWC
Wage Order provisions.

50. Representative Plaintiff is informed and believes and, on that basis, alleges that
Defendant has never paid the one hour of compensation to any Class Members due to its violations
of the California Labor Code and applicable IWC Wage Order provisions.

1 51. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
2 Representative Plaintiff and Class Members have sustained damages, including lost compensation
3 resulting from missed meal and/or rest periods, in an amount to be established at trial.

4 52. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth
5 herein, certain Class Members are entitled to recover “waiting time” and other penalties, in amounts
6 to be established at trial, as well as recovery of attorneys’ fees and costs, pursuant to statute.

7
8 **THIRD CAUSE OF ACTION**
9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
10 **(California Labor Code §§ 226 and 1174)**

11 53. Representative Plaintiff incorporates in this cause of action each and every allegation
12 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

13 54. California Labor Code §226(a) provides:

14 Each employer shall semimonthly, or at the time of each payment of
15 wages, furnish each of his or her employees either as a detachable
16 part of the check, draft or voucher paying the employee’s wages, or
17 separately when wages are paid by personal check or cash, an
18 itemized wage statement in writing showing: (1) gross wages earned;
19 (2) total number of hours worked by each employee whose
20 compensation is based on an hourly wage; (3) all deductions,
21 provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item; (4) net wages earned; (5)
23 the inclusive date of the period for which the employee is paid; (6)
24 the name of the employee and his or her social security number; and
25 (7) the name and address of the legal entity which is the employer.

26 55. Moreover, California Labor Code §226(e) provides:

27 An employee suffering injury as a result of a knowing and intentional
28 failure by an employer to comply with subdivision (a) is entitled to
recover the greater of all actual damages or fifty dollars (\$50) for the
initial pay period in which a violation occurs and one hundred dollars
(\$100) per employee for each violation in a subsequent pay period,
not exceeding an aggregate penalty of four thousand dollars (\$4,000),
and is entitled to an award of costs and reasonable attorney’s fees.

56. Finally, California Labor Code §1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a central
location in the state...payroll records showing the hours worked daily
by and the wages paid to...employees.... These records shall be kept
in accordance with rules established for this purpose by the
commission, but in any case shall be kept on file for not less than two
years.

1 57. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees
2 under these provisions on behalf of himself and on behalf of all Class Members.

3 58. Defendant has failed to provide timely, accurate itemized wage statements to the
4 Representative Plaintiff and Class Members in accordance with California Labor Code §226.
5 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
6 statements provided by Defendant accurately reflected actual gross wages earned, net wages earned,
7 or the appropriate deductions of such Class Members.

8 59. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
9 Representative Plaintiff and Class Members have sustained damages in an amount to be established
10 at trial, and are entitled to recover attorneys' fees and costs of suit.

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PAY WAGES ON TERMINATION**
14 **(California Labor Code § 203)**

15 60. Representative Plaintiff incorporates in this cause of action each and every allegation
16 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

17 61. California Labor Code §203 provides that:

18 If an employer willfully fails to pay, without abatement or reduction,
19 in accordance with Sections 201 and 202, any wages of an employee
20 who is discharged or who quits, the wages of the employee shall
21 continue as a penalty from the due date thereof at the same rate until
22 paid or until an action therefor is commenced; but the wages shall not
23 continue for more than 30 days.

24 62. Numerous Class Members were employed by SunRun, Inc. during the class period
25 and were thereafter terminated or resigned from their positions, yet they were not paid all premium
26 (overtime) wages due upon said termination or within 72 hours of said resignation of employment
27 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
28 Defendant.

63. More than thirty days has elapsed since certain Class Members were involuntarily
terminated or voluntarily resigned from Defendant's employ.

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JURY DEMAND

Representative Plaintiff, on behalf of himself and the Plaintiff Class, hereby demands a trial by jury.

Dated: December 10, 2015

SCOTT COLE & ASSOCIATES, APC

By: 
Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800