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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GARY BRUCKNER,

Plaintiff,

vs.

SUNWORKS, INC., CHARLES CARGILE,
DANIEL GROSS, RHONE RESCH, JUDITH
HALL, and STANLEY SPEER,

Defendants.

) Case No.

)
)
) **COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

) **JURY TRIAL DEMANDED**
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Plaintiff Gary Bruckner (“Plaintiff”), on behalf of himself and all others similarly situated, upon information and belief, including an examination and inquiry conducted by and through his counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal belief, alleges the following for his Complaint:

NATURE OF THE ACTION

1
2 1. This is an action brought by Plaintiff against Sunworks, Inc. (“Sunworks” or the
3 “Company”) and the members of Sunworks’ Board of Directors (the “Board” or the “Individual
4 Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934
5 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission
6 (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9, and to enjoin the vote on a proposed transaction, pursuant
7 to which Sunworks will be acquired by The Peck Company Holdings, Inc. (“Peck”) through its wholly
8 owned subsidiary Peck Mercury, Inc. (“Merger Sub”) (the “Proposed Transaction”).
9

10 2. On August 10, 2020, Sunworks and Peck issued a joint press release announcing that
11 they had entered into an Agreement and Plan of Merger dated August 10, 2020 (the “Merger
12 Agreement”) to sell Sunworks to Peck. Under the terms of the Merger Agreement, each holder of
13 Sunworks common stock will receive 0.185171 shares of Peck common stock for each share of
14 Sunworks common stock that they own (the “Merger Consideration”). Upon closing of the Proposed
15 Transaction, Sunworks stockholders will own approximately 36.54%, and Peck stockholders will
16 own approximately 63.46%, of the combined company.
17

18 3. On October 15, 2020, Sunworks filed a Definitive Proxy Statement on Schedule 14A
19 (“Proxy Statement”) with the SEC. The Proxy Statement, which recommends that Sunworks
20 stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information
21 concerning, among other things: (i) the Company’s and Peck’s financial projections, which are *wholly*
22 *omitted* from the Proxy Statement; (ii) the data and inputs underlying the financial valuation analyses
23 that support the fairness opinion provided by the Company’s financial advisor, Holthouse Carlin &
24 Van Trigt LLP (“HCVT”); and (iii) HCVT’s and Company insiders’ potential conflicts of interest.
25 Defendants authorized the issuance of the false and misleading Proxy Statement in violation of
26 Sections 14(a) and 20(a) of the Exchange Act.
27
28

1 4. In short, unless remedied, Sunworks' public stockholders will be irreparably harmed
2 because the Proxy Statement's material misrepresentations and omissions prevent them from making
3 a sufficiently informed voting decision on the Proposed Transaction. Plaintiff seeks to enjoin the
4 stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are
5 cured.

6 **JURISDICTION AND VENUE**

7
8 5. This Court has jurisdiction over the claims asserted herein for violations of Sections
9 14(a) and 20(a) of the Exchange Act and Rule 14a-9 promulgated thereunder pursuant to Section 27
10 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

11 6. The Court has jurisdiction over defendants because each defendant is either a
12 corporation that conducts business in and maintains operations in this District, or is an individual who
13 has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this
14 Court permissible under traditional notions of fair play and substantial justice.

15
16 7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §
17 78aa, as well as under 28 U.S.C. § 1391 because defendants have received substantial compensation
18 in this District by doing business here and engaging in numerous activities that had an effect in this
19 District.

20 **THE PARTIES**

21 8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of
22 Sunworks.

23
24 9. Defendant Sunworks is a Delaware corporation, with its principal executive offices
25 located at 1030 Winding Creek Road, Suite 100, Roseville, California 95678. The Company is a
26 premier provider of high-performance solar power systems. Sunworks' common stock trades on the
27 NASDAQ Capital Market under the ticker symbol "SUNW."
28

1 10. Defendant Charles Cargile (“Cargile”) has been Chairman of the Board since January
2 2020, Chief Executive Officer (“CEO”) of the Company since April 2017, and a director of the
3 Company since September 2016.

4 11. Defendant Daniel Gross (“Gross”) has been a director of the Company since March
5 2018.

6 12. Defendant Rhone Resch (“Resch”) has been a director of the Company since
7 November 2016.

8 13. Defendant Judith Hall (“Hall”) has been a director of the Company since October
9 2019.

10 14. Defendant Stanley Speer (“Speer”) has been a director of the Company since May
11 2018.

12 15. Defendants identified in paragraphs 10-14 are referred to herein as the “Board” or the
13 “Individual Defendants.”
14

15 **OTHER RELEVANT ENTITIES**

16
17 16. Peck is a Delaware corporation, with its principal executive offices located at 4050
18 Williston Road, #511, South Burlington, Vermont 05403. Peck is one of the largest commercial solar
19 engineering, procurement and construction (“EPC”) companies in the country and is expanding across
20 the Northeastern United States.

21 17. Merger Sub is a Delaware corporation and a wholly owned subsidiary of Peck.
22

23 **SUBSTANTIVE ALLEGATIONS**

24 **Background of the Company**

25 18. Sunworks provides photovoltaic (“PV”) based power systems for the agricultural,
26 commercial, industrial (“ACI”), public works, and residential markets in California, Nevada,
27
28

1 Massachusetts, Oregon, New Jersey and Hawaii, with direct sales and/or operations personnel in
2 California, Massachusetts, and Oregon.

3 19. Through its operating subsidiaries, the Company designs, arranges financing,
4 integrates, installs, and manages systems ranging in size from 2 kilowatts for residential projects to
5 multi megawatt systems for larger ACI and public works projects. ACI installations have included
6 installations at office buildings, manufacturing plants, warehouses, service stations, churches, and
7 agricultural facilities such as farms, wineries, and dairies. Public works installations have included
8 school districts, local municipalities, federal facilities and higher education institutions. Sunworks
9 provides a full range of installation services to its solar energy customers including design, system
10 engineering, procurement, permitting, construction, grid connection, warranty, system monitoring
11 and maintenance.
12

13 20. On August 10, 2020, Sunworks announced its second quarter 2020 financial results,
14 reporting net loss of \$1.5 million, or \$0.09 per basic and diluted share, compared to a net loss of \$6.7
15 million, or \$0.60 per basic and diluted share in the first quarter of 2020; and operating loss of \$1.3
16 million, compared to operating loss of \$6.5 million in the previous quarter of 2020. Defendant Cargile
17 commented on the results, stating:
18

19 Our second quarter 2020 results reflect our effort to manage operations while dealing
20 with the impact COVID-19 has had on Sunworks' employees, customers, partners,
21 and other stakeholders. We are proud of our team's ability to continue driving revenue
22 and gross margin improvements, while reducing our operating expenses in this
23 difficult business environment. Additionally, our ability to maximize our cash
24 position was augmented by the PPP loan which provided a welcome increase in our
25 overall cash balance. Since we were able to leverage the PPP loan to successfully
26 maintain a level of headcount required for effective field operations, we anticipate the
27 majority of the \$2.8 million will be forgiven. As we head into the third quarter of
28 2020, we are focused on sustaining our cash balance and increasing our backlog by
winning new projects, while continuing to minimize our overhead costs.

We have seen marked improvement in the operating environment subsequent to the
end of the second quarter, although operational limitations and challenges as a result
of COVID persist. Since the end of the quarter, we have been awarded a follow-on
public works project totaling \$3 million, a follow-on project of almost \$2 million with

1 one of our large agriculture customers, and an increase of residential sales in both
2 Northern and Southern California. We are encouraged by these developments and will
3 continue to prudently navigate through the challenges of the current environment as
we work to advance the recently announced business combination with The Peck
Company.

4 **The Proposed Transaction**

5 21. On August 10, 2020, Sunworks and Peck issued a joint press release announcing the
6 Proposed Transaction. The press release states, in relevant part:

7 SOUTH BURLINGTON, Vt. and ROSEVILLE, Calif., Aug. 10, 2020 -- The Peck
8 Company Holdings, Inc. (NASDAQ: PECK) ("Peck"), a leading commercial solar
9 engineering, procurement and construction (EPC) company and Sunworks, Inc.
10 (NASDAQ: SUNW) ("Sunworks"), a provider of solar power solutions for
11 agriculture, commercial and industrial ("ACI"), public works and residential markets,
12 today announced that they have entered into a definitive agreement under which Peck
13 will acquire Sunworks in an all-stock transaction, pursuant to which each share of
14 Sunworks common stock will be exchanged for 0.185171 shares of Peck common
stock (subject to certain adjustments). Assuming no adjustments, Sunworks'
stockholders would receive an aggregate of approximately 3,079,207 shares of Peck
common stock, representing approximately 36.54% of Peck common stock
outstanding after the merger.

15 **Merger Rationale and Highlights**

- 16
- 17 • Combination creates a national leader with a coast-to-coast presence poised to
capitalize on significant cost synergies.
 - 18 • Improves scale and strengthens national presence, with pro forma revenue of
19 \$88 million if the companies had been combined in 2019, and a combined
20 backlog of \$76.8 million if the companies had been combined as of June 30,
2020.
 - 21 • Management has identified approximately \$6 million in anticipated annualized
22 cost synergies, including supply chain management leverage, redundant public
company costs and various operating expenses.
 - 23 • The transaction is expected to be accretive to earnings and free cash flow after
24 integration synergies have been implemented.
 - 25 • Combined company will have significantly expanded addressable market to
26 leverage Sunworks' core capabilities in agriculture and public works.
 - 27 • Combination leverages Peck's strategic partnership with GreenBond Advisors
28 to provide project development and financing to fuel growth and solar project

1 ownership improving the conversion of Sunworks' pipeline and expanding its
2 addressable market.

- 3 • Peck and Sunworks installed a combined 62,973kW in 2019, which would rank
4 41st overall and would be the 16th largest EPC contractor based on the latest
5 Sun Power World ranking list.

6 **Management Commentary**

7 Jeffrey Peck, Chairman of the Board and Chief Executive Officer of Peck, commented,
8 "This is a transformational combination, leveraging the respective strengths of the two
9 organizations and creating a national leader in the fast-growing and resilient solar
10 energy industry. It provides Peck expansion, scale, an enhanced financial profile and
11 a stronger platform from which we can continue to build more solar projects. Our
12 integration with Sunworks will extend our presence to the west coast and broaden our
13 offerings to agriculture and public works. The transaction solidifies our three-pronged
14 growth strategy that we announced a year ago when we listed on Nasdaq through a
15 SPAC merger. Since we have been public, we (1) delivered organic growth of revenue
16 from \$16 million to \$28 million in the first year, (2) partnered with GreenBond
17 Advisors to access capital that provides EPC revenue as well as asset ownership in the
18 solar projects we build for the partnership, and now (3) we are delivering on the third
19 prong of our strategy with an exciting accretive acquisition. We have been focused on
20 executing these important initiatives for our shareholders and expect the acquisition of
21 Sunworks to provide many more opportunities for long term growth and profitability."

22 Chuck Cargile, Chairman of the Board and Chief Executive Officer of Sunworks,
23 added, "By joining with Peck, our vision for spreading clean solar energy throughout
24 the U.S. is amplified and expanded. Peck has demonstrated the ability to grow revenue
25 and maintain profitability, and we believe that the combination of our teams,
26 customers, projects and partners will materially accelerate revenue growth and
27 earnings. Peck's strong partnership with GreenBond Advisors will allow us to offer
28 financing to a broader range of customers and increase our addressable market.
Additionally, our expanded scale will enable us to source solar panels and equipment
through Peck's established relationships at lower costs, benefiting our profit margins.
Being part of Peck's platform is exciting, and in the best interest of Sunworks
shareholders, customers, business partners and employees."

29 **Transaction Details**

30 The transaction is expected to close during the fourth quarter of 2020, subject to
31 approval by shareholders of both companies and other customary closing conditions.

32 The Board of Directors of Peck and Sunworks have each unanimously voted in favor
33 of the definitive transaction agreement.

34 As part of the agreement, after the transaction closes, Jeff Peck will continue as
35 Chairman of the Board and Chief Executive Officer of the combined company. The
36 Board of Directors of the combined company will be comprised of four members of

1 the Peck Board of Directors and three members appointed by the Sunworks Board of
2 Directors. Because the combined company will be in competition with SunPower
3 Corporation in some markets, Doug Rose, who is also a Vice President at SunPower
4 Corporation, has resigned from the Board of Directors of Peck to avoid conflicts of
5 interests.

4 **Insiders' Interests in the Proposed Transaction**

5 22. Sunworks insiders are the primary beneficiaries of the Proposed Transaction, not the
6 Company's public stockholders. The Board and the Company's executive officers are conflicted
7 because they will have secured unique benefits for themselves from the Proposed Transaction not
8 available to Plaintiff and the public stockholders of Sunworks.
9

10 23. Notably, certain Company insiders will secure positions for themselves with the
11 combined company. Specifically, the Peck board will be expanded to add three directors who will be
12 designated by Sunworks' Board, which is expected to include defendants Gross, Resch, and Hall. In
13 addition, the Proxy Statement provides that it is possible that certain officers of Sunworks may
14 continue their employment with Peck if the Proposed Transaction is consummated. *See* Proxy
15 Statement at 143.
16

17 **The Proxy Statement Contains Material Misstatements or Omissions**

18 24. The defendants filed a materially incomplete and misleading Proxy Statement with the
19 SEC and disseminated it to Sunworks' stockholders. The Proxy Statement misrepresents or omits
20 material information that is necessary for the Company's stockholders to make an informed decision
21 whether to vote in favor of the Proposed Transaction.
22

23 25. Specifically, as set forth below, the Proxy Statement fails to provide Company
24 stockholders with material information or provides them with materially misleading information
25 concerning, among other things: (i) the Company's and Peck's financial projections; (ii) the data and
26 inputs underlying the financial valuation analyses that support the fairness opinion provided by the
27 Company's financial advisor, HCVT; and (iii) HCVT's and Company insiders' potential conflicts of
28

1 interest. Accordingly, Sunworks stockholders are being asked to vote for the Proposed Transaction
2 without all material information at their disposal.

3 ***Material Omissions Concerning Sunworks' and Peck's Financial Projections***

4 26. The Proxy Statement omits material information regarding Sunworks and Peck's
5 financial projections.

6 27. For example, the Proxy Statement sets forth:

7
8 In connection with HCVT's opinion, HCVT, with Sunworks' approval . . . reviewed
9 the following documents and information prepared and/or provided by the
management of Sunworks to HCVT:

10 * * *

11 certain information relating to the historical, current and future operations, financial
12 condition and prospects of Sunworks and Peck including, and in the case of Sunworks,
13 internal financial projections (and adjustments thereto) prepared by the management
of Sunworks relating to Sunworks for the fiscal years ending 2020 through 2025 and
cash flow projections for the 13 weeks through October 18, 2020.

14 *Id.* at 132.

15
16 28. The Proxy Statement, however, ***wholly omits*** the financial projections for both the
17 Company and Peck, including, in the case of Sunworks, internal financial projections (and
18 adjustments thereto) prepared by the management of Sunworks relating to Sunworks for the fiscal
19 years ending 2020 through 2025 and cash flow projections for the 13 weeks through October 18,
20 2020.

21 29. Additionally, the Proxy Statement fails to disclose the "estimates of cost and revenue
22 synergies and other pro forma effects, including the costs to achieve such synergies and other pro
23 forma effects, referred to as the estimated synergies, that Peck could achieve after completion of the
24 Merger" that "Peck's management prepared and provided to the Peck Board, members of Sunworks
25 management and the Sunworks Board." *Id.* at 141.
26
27
28

1 30. The omission of this material information renders the statements in the “Opinion of
2 Sunworks’ Financial Advisor” and “Certain Estimated Synergies” sections of the Proxy Statement
3 false and/or materially misleading in contravention of the Exchange Act.

4 ***Material Omissions Concerning HCVT’s Financial Analyses***

5 31. The Proxy Statement omits material information regarding HCVT’s financial
6 analyses.

7
8 32. The Proxy Statement describes HCVT’s fairness opinion and the various valuation
9 analyses performed in support of its opinion. However, the description of HCVT’s fairness opinion
10 and analyses fails to include key inputs and assumptions underlying these analyses. Without this
11 information, as described below, Sunworks’ public stockholders are unable to fully understand these
12 analyses and, thus, are unable to determine what weight, if any, to place on HCVT’s fairness opinion
13 in determining whether to vote in favor of the Proposed Transaction.

14
15 33. With respect to HCVT’s *Discounted Cash Flow Analysis*, the Proxy Statement fails to
16 disclose: (i) as set forth above, the internal financial projections (and adjustments thereto), prepared
17 by the management of Sunworks and provided to HCVT, for fiscal years ending 2020 through 2025,
18 including the Company’s unlevered free cash flows and the line items underlying the unlevered free
19 cash flows; (ii) Sunworks’ projected EBITDA for 2025; (iii) quantification of the inputs and
20 assumptions underlying the discount rates ranging from 11.0% to 13.0%; and (iv) the implied per
21 share range resulting from the analysis.

22
23 34. Additionally, the Proxy Statement sets forth that “for the purpose of the discounted
24 cash flow analysis, HCVT disregarded any benefit from the Company’s net operating loss balances,
25 which were accounted for separately in the implied range of per share consideration and in the
26 enterprise value analysis.” *Id.* at 140. The Proxy Statement fails, however, to disclose any benefit
27 from the Company’s net operating loss balances.
28

1 35. Without such undisclosed information, Sunworks stockholders cannot evaluate for
2 themselves whether the financial analyses performed by HCVT were based on reliable inputs and
3 assumptions or whether they were prepared with an eye toward ensuring that a positive fairness
4 opinion could be rendered in connection with the Proposed Transaction. In other words, full
5 disclosure of the omissions identified above is required in order to ensure that stockholders can fully
6 evaluate the extent to which HCVT's opinion and analyses should factor into their decision whether
7 to vote in favor of or against the Proposed Transaction.
8

9 36. The omission of this material information renders the statements in the "Opinion of
10 Sunworks' Financial Advisor" section of the Proxy Statement false and/or materially misleading in
11 contravention of the Exchange Act.

12 ***Material Omissions Concerning HCVT's and Company Insiders' Potential Conflicts of Interest***

13 37. The Proxy Statement fails to disclose material information concerning the potential
14 conflicts of interest faced by HCVT and Company insiders.
15

16 38. For example, the Proxy Statement fails to disclose whether HCVT provided any past
17 financial advisory or financing services to the Company and the fees received for such services.

18 39. Full disclosure of investment banker compensation and all potential conflicts is
19 required due to the central role played by investment banks in the evaluation, exploration, selection,
20 and implementation of strategic alternatives.

21 40. Additionally, the Proxy Statement fails to disclose material information concerning
22 the potential conflicts of interest faced by Company insiders.
23

24 41. For example, the Proxy Statement sets forth:

25 At the completion of the Merger, the Peck Board will be expanded to add three
26 directors who will be designated by Sunworks' Board, which is expected to include
27 Daniel Gross, Rhone Resch and Judith Hall. In addition, it is possible that certain
28 officers of Sunworks may continue their employment with Peck after the Merger.

1 *Id.* at 143. The Proxy Statement fails, however, to disclose the specific details of all employment and
2 retention-related discussions and negotiations that occurred between Peck and Sunworks executive
3 officers and directors, including who participated in all such communications, when they occurred
4 and their content. The Proxy Statement further fails to disclose whether Peck’s proposals mentioned
5 management retention in the combined company and compensation and benefits programs applicable
6 to the executive officers of the surviving company.

7
8 42. Communications regarding post-transaction employment and merger-related benefits
9 during the negotiation of the underlying transaction must be disclosed to stockholders. This
10 information is necessary for stockholders to understand potential conflicts of interest of management
11 and the Board, as that information provides illumination concerning motivations that would prevent
12 fiduciaries from acting solely in the best interests of the Company’s stockholders

13
14 43. The omission of this material information renders the statements in the “Opinion of
15 Sunworks’ Financial Advisor,” “Background of the Merger” and “Interests of Sunworks’ Directors
16 and Executive Officers in the Merger” sections of the Proxy Statement false and/or materially
17 misleading in contravention of the Exchange Act.

18
19 44. The Individual Defendants were aware of their duty to disclose the above-referenced
20 omitted information and acted negligently (if not deliberately) in failing to include this information
21 in the Proxy Statement. Absent disclosure of the foregoing material information prior to the
22 stockholder vote on the Proposed Transaction, Plaintiff and the other stockholders of Sunworks will
23 be unable to make an informed voting decision in connection with the Proposed Transaction and are
24 thus threatened with irreparable harm warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder

45. Plaintiff repeats all previous allegations as if set forth in full.

46. During the relevant period, defendants disseminated the false and misleading Proxy Statement specified above, which failed to disclose material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

47. By virtue of their positions within the Company, the defendants were aware of this information and of their duty to disclose this information in the Proxy Statement. The Proxy Statement was prepared, reviewed, and/or disseminated by the defendants. It misrepresented and/or omitted material facts, including material information about the Company's and Peck's financial projections, the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by HCVT, and HCVT's and Company insiders' potential conflicts of interest. The defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

48. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder would consider them important in deciding how to vote on the Proposed Transaction.

49. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

50. Because of the false and misleading statements in the Proxy Statement, Plaintiff is threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure defendants' misconduct is corrected.

COUNT II

**Claims Against the Individual Defendants for
Violations of Section 20(a) of the Exchange Act**

1
2
3 51. Plaintiff repeats all previous allegations as if set forth in full.

4
5 52. The Individual Defendants acted as controlling persons of Sunworks within the
6 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as
7 officers and/or directors of Sunworks, and participation in and/or awareness of the Company's
8 operations and/or intimate knowledge of the false statements contained in the Proxy Statement filed
9 with the SEC, they had the power to influence and control and did influence and control, directly or
10 indirectly, the decision-making of the Company, including the content and dissemination of the
11 various statements which Plaintiff contends are false and misleading.

12
13 53. Each of the Individual Defendants was provided with or had unlimited access to copies
14 of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to and/or
15 shortly after these statements were issued and had the ability to prevent the issuance of the statements
16 or cause the statements to be corrected.

17
18 54. In particular, each of the Individual Defendants had direct and supervisory
19 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
20 the power to control or influence the particular transactions giving rise to the securities violations as
21 alleged herein, and exercised the same. The Proxy Statement at issue contains the unanimous
22 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
23 were, thus, directly involved in the making of the Proxy Statement.

24
25 55. In addition, as the Proxy Statement sets forth at length, and as described herein, the
26 Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed
27 Transaction. The Proxy Statement purports to describe the various issues and information that they
28 reviewed and considered—descriptions the Company directors had input into.

1 56. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of
2 the Exchange Act.

3 57. As set forth above, the Individual Defendants had the ability to exercise control over
4 and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9,
5 promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as
6 controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a
7 direct and proximate result of defendants' conduct, Sunworks' stockholders will be irreparably
8 harmed.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including
12 injunctive relief, in his favor on behalf of Sunworks, and against defendants, as follows:

- 13 A. Preliminarily and permanently enjoining defendants and all persons acting in concert
14 with them from proceeding with, consummating, or closing the Proposed Transaction
15 and any vote on the Proposed Transaction, unless and until defendants disclose and
16 disseminate the material information identified above to Sunworks stockholders;
17
18 B. In the event defendants consummate the Proposed Transaction, rescinding it and
19 setting it aside or awarding rescissory damages to Plaintiff;
20
21 C. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act,
22 as well as SEC Rule 14a-9 promulgated thereunder;
23
24 D. Awarding Plaintiff the costs of this action, including reasonable allowance for
25 Plaintiff's attorneys' and experts' fees; and
26
27 E. Granting such other and further relief as this Court may deem just and proper.
28

JURY DEMAND

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Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: October 23, 2020

WESSLAW LLP

Joel E. Elkins

By: /s/ Joel E. Elkins

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-and-

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GARY BRUCKNER

(b) County of Residence of First Listed Plaintiff Orange County, Florida. (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joel E. Elkins, WeissLaw LLP 9107 Wilshire Blvd., Suite 450, Beverly Hills, CA 90210 Telephone: 310/208-2800 Facsimile: 310/209-2348

DEFENDANTS

SUNWORKS, INC., CHARLES CARGILE, DANIEL GROSS, RHONE RESCH, JUDITH HALL, and STANLEY SPEER

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78n(a), 78t(a)

Brief description of cause: Violations of the Federal Securities Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/23/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joel E. Elkins

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.