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CIVIL BUSINESS OFFICE
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 IRMA ELIZALDE, an individual,) Case No.: 37-2019-00001757-CU-BT-CTL
12)
13 Plaintiff,) **COMPLAINT AND DEMAND FOR**
14) **JURY TRIAL**
15 v.)
16)
17 VIVINT SOLAR, INC., a corporation;)
18 YGRENE ENERGY FUND INC., a)
19 corporation; PACIFIC HOME)
20 REMODELING, INC., a corporation;)
21 and DOES 1 through 10 inclusive,)
22)
23 Defendants.)
24)

25 **I. INTRODUCTION**

26 1. This is an action for damages brought by an individual consumer against
27 Defendants for violations of the Consumers Legal Remedies Act ("CLRA"), Civil Code
28 §1750 *et seq.*; for unfair business acts and practices in violation of California Business &
Professions Code §17200 *et seq.*; for rescission; for violation of the Home Solicitation Sales
Act ("HSSA"), Civil Code § 1689 *et seq.*; and for fraud, or in the alternative, negligent
misrepresentation.

1 **II. PARTIES**

2 2. Plaintiff Irma Elizalde is a natural person residing in San Diego, California.

3 3. Defendant VIVINT SOLAR, INC. ("Vivint") at all times relevant was a
4 company doing business in California operating from an address at 1800 W. ASHTON
5 BLVD., LEHI, UT 84043.

6 4. Defendant YGRENE ENERGY FUND INC. ("Ygrene") at all times relevant
7 was a company doing business in California operating from an address at 2100 S.
8 MCDOWELL BLVD., PETALUMA, CA 94954.

9 5. Defendant PACIFIC HOME REMODELING, INC. ("PHR") at all times
10 relevant was a company doing business in California operating from an address at 6242
11 WESTCHESTER PARKWAY, SUITE 160, LOS ANGELES, CA 90045.

12 6. The true names and capacities, whether individual, corporate (including officers
13 and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through
14 10, inclusive, are unknown to Plaintiffs, who therefore sues these Defendants by such
15 fictitious names. Plaintiffs are informed and believe, and allege that each Defendant
16 designated as a DOE is involved in or is in some manner responsible as a principal,
17 beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or
18 otherwise, for the agreements, transactions, events and/or acts hereinafter described, and
19 thereby proximately caused injuries and damages to Plaintiffs. Plaintiffs request that when
20 the true names and capacities of these DOE Defendants are ascertained, they may be inserted
21 in all subsequent proceedings, and that this action may proceed against them under their true
22 names.

23
24 **III. FACTUAL ALLEGATIONS**

25 7. In 2016, Defendant PHR on behalf of itself and Defendant Ygrene, unsolicited,
26 approached Plaintiff regarding the installation of solar panels on her home.

27 8. PHR's representative communicated with Plaintiff in Spanish without providing
28 any translated copies of any documents; Plaintiff is a Spanish speaker and reader.

1 9. Unbeknownst to Plaintiff, Defendants PHR and Ygrene placed Plaintiff into a
2 financing agreement around mid-January 2016 for the solar panel installation; Plaintiff was
3 not presented at any point with any financing agreement documents to sign, yet alone any
4 translated in Spanish.

5 10. Defendant PHR later admitted on November 2, 2018 that they are not set up to
6 work with any other languages besides English.

7 11. Later on or about December 13, 2017, Defendant Vivint's agent/employee Vic
8 Marion, unsolicited, approached Plaintiff regarding financing and installation of additional,
9 new solar panels.

10 12. Mr. Marion represented that Plaintiff would be paying approximately \$14 to \$15
11 a month on energy bills; this has not been the case as payments have increased and there has
12 been no reduction in what Plaintiff is paying. Mr. Marion further represented additional
13 panel installation would be free.

14 13. Mr. Marion further, unbeknownst to Plaintiff, placed Plaintiff into a financing
15 agreement dated December 13, 2017. Plaintiff was not presented at any point with any
16 financing agreement documents to sign, yet alone any translated in Spanish, and never
17 signed any financing agreement with Vivint.

18 14. Mr. Marion placed an "Alba Elizalde" on the alleged Vivint agreement.
19 Plaintiff's first name is Irma, not Alba, and a forged signature appears on Vivint's alleged
20 agreement.

21 22 **IV. FIRST CAUSE OF ACTION**

23 **(Against All Defendants For Violations of the CLRA)**

24 15. Plaintiff repeats, realleges, and incorporates by reference all the foregoing
25 paragraphs.

26 16. The solar panel services and equipment constitute "services" and/or "goods" by
27 Defendants to Plaintiff primarily for personal, family or household purposes pursuant to
28 Civil Code §1761(b).

1 17. Plaintiff is a consumer pursuant to Civil Code §1761(c).

2 18. The solar panel installation and alleged agreements between Defendants and
3 Plaintiff were “transactions” pursuant to Civil Code §1761(e).

4 19. Defendants’ actions violated the Consumer Legal Remedies Act, Civil Code
5 §§1770(a)(5), (7), and (14).

6 20. Plaintiff sent Defendants a notification letter pursuant to Civil Code § 1782(a)
7 thirty days or more prior to commencing this action.

8 21. As a result of this breach, Plaintiff was harmed in an amount to be determined
9 at trial.

10
11 **V. SECOND CAUSE OF ACTION**

12 **(Against All Defendants For Unfair Business Acts and Practices)**

13 22. Plaintiff repeats, realleges, and incorporates by reference all the foregoing
14 paragraphs.

15 23. Section 17200 of the California Business & Professions Code (“Unfair
16 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent” business
17 practice.

18 24. As a result of the aforesaid actions, Defendants have engaged in acts of unfair
19 competition as defined in Business and Professions Code § 17200 *et seq.*

20 25. Defendants’ conduct caused and continues to cause substantial injury to
21 Plaintiff. Plaintiff suffered injury in fact, including but not limited to damage to lost money
22 as a result of Defendants’ unfair conduct.

23 26. Pursuant to Business and Professions Code § 17203, the Defendants should be
24 enjoined from engaging in unfair competition and must be required to remit to Plaintiff all
25 money they have obtained from Plaintiff.

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28 ////

1 **VI. THIRD CAUSE OF ACTION**

2 **(Against All Defendants For Rescission)**

3 27. Plaintiff repeats, realleges, and incorporates by reference all the foregoing
4 paragraphs.

5 28. Civil Code §1632 holds at subdivision (b):

6
7 “Any person engaged in a trade or business who negotiates
8 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
9 orally or in writing, in the course of entering into any of the
10 following, shall deliver to the other party to the contract or
11 agreement and prior to the execution thereof, a translation of the
12 contract or agreement in the language in which the contract or
13 agreement was negotiated, that includes a translation of every term
14 and condition in that contract or agreement....”

15 29. Plaintiff is a Spanish speaker.

16 30. Defendants’ representative(s) communicated with Plaintiff in Spanish without
17 providing any translated copies of any documents in contravention of Civil Code §1632. All
18 discussions and/or negotiations regarding the solar panels between Plaintiff and Defendants
19 occurred in Spanish.

20 31. Plaintiff, pursuant to Civil Code §§1632(k) and 1689(b) hereby rescinds any
21 alleged agreement(s) between Plaintiff and Defendants as referenced above.

22 **VII. FOURTH CAUSE OF ACTION**

23 **(Against All Defendants For Violation of the HSSA)**

24 32. Plaintiff repeats, realleges, and incorporates by reference all the foregoing
25 paragraphs.

26 33. The California legislature passed the HSSA to protect consumers like Plaintiff
27 from the kind of business tactics utilized by Defendants in this case. The HSSA provides that
28 the seller must provide a contract in the language in which the contract was negotiated and

1 the right to cancel a home solicitation contract until midnight of the third business day after
2 the day.

3 34. Defendants violated Civ. Code § 1689.7(a)(1) by failing to provide the contract
4 in the language in which it was negotiated, Spanish. Here, all the discussions and
5 negotiations were in Spanish. The alleged agreements in this matter are in English.
6 Defendants never provided Plaintiff any purported agreements in Spanish prior to the
7 parties' alleged execution of the alleged agreements.

8 35. The alleged agreements' notice of cancellation further do not comply with the
9 requirements of Civ. Code § 1689.7(a).

10 36. Defendants further failed to provide Plaintiff the required oral notice in
11 violation of Civ. Code §1689.7(f).

12 37. Plaintiff suffered actual harmed.

13 38. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

14
15 **VIII. FIFTH CAUSE OF ACTION**

16 **(Against Defendant VIVINT SOLAR and DOES 1-5 For Fraud,**
17 **or in the Alternative, Negligent Misrepresentation)**

18 39. Plaintiff repeats, realleges, and incorporates by reference all the foregoing
19 paragraphs.

20 40. Defendants, having no reasonable basis for believing so, misrepresented (1) the
21 amounts Plaintiff would pay under the alleged financing agreement for solar panels, (2) that
22 Plaintiff would be saving money on electricity bills, and (3) installation was free.

23 41. Defendants forged Plaintiff's signature(s) to the alleged financing agreement
24 paperwork.

25 42. Defendants knew that the representations and promises were false when they
26 made them or they made the representations recklessly and without regard for its truth.

27 43. Defendants intended that Plaintiff rely on the above representations and
28 promises.

1 44. Plaintiff reasonably relied on Defendants' representations and promises. But for
2 these representations and promises, Plaintiff would not have agreed to solar panel
3 installation.

4 45. As direct and proximate result of Defendants' false and misleading promises
5 and representations, Plaintiff suffered harm.

6 46. Plaintiff's reliance on Defendants' representations was the substantial factor
7 and primary factor in causing Plaintiff's harm.

8 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered against
9 Defendants, and each of them, for the following:

- 10 (a) Actual damages;
- 11 (b) Statutory damages;
- 12 (c) Punitive damages;
- 13 (d) Rescission of any and all agreements between Plaintiff and Defendants;
- 14 (e) That Plaintiff's home be restored to substantially as good of condition as it
15 was at the time the services were rendered pursuant to Civ. Code §
16 1689.11;
- 17 (f) Declaratory relief, pursuant to Civ. Code § 1689.7(g), that the agreements
18 are cancelled and that, pursuant to Civ. Code § 1689.11(a), the solar panels
19 are now Plaintiff's property as Defendants failed to recover after being
20 provided access and opportunity to do so;
- 21 (g) Declaratory relief that, pursuant to Civ. Code § 1689.11, that Defendants
22 are not entitled to compensation performed prior to the cancellation;
- 23 (h) Costs and reasonable attorneys' fees; and
- 24 (i) For such other and further relief as the Court may deem just and proper.

25
26 Date: January 10, 2019



27 _____
28 Octavio Cardona-Loya II,
Attorney for Plaintiff

1 **DEMAND FOR JURY TRIAL**


2 Please take notice that Plaintiff demands trial by jury in this action.

3
4
5 Date: January 10, 2019

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7 _____
8 Octavio Cardona-Loya II,
9 Attorney for Plaintiff

10 **AFFIDAVIT PURSUANT TO CIVIL CODE SECTION 1780(d)**

11 I, Octavio Cardona-Loya II, acting as the attorney of record for the Plaintiff Irma
12 Elizalde in the above commenced action, act now with agency and authority to execute this
13 affidavit on her behalf. This action is brought in the County of San Diego, in which Plaintiff
14 Irma Elizalde resides, in which all named Defendants are doing business and in which the
15 underlying transaction(s) occurred. I hereby declare under penalty of perjury under the laws
16 of the State of California that the foregoing is true and correct. Executed this 10th day of
17 January, 2019 at Chula Vista, California.

18 
19 _____
20 Octavio Cardona-Loya II,
21 Attorney for Plaintiff