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11 Attorneys for Plaintiff:
12 JOSE GARCIA

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

16 JOSE GARCIA

18 Plaintiff,

20 vs.

22 VIVINT SOLAR, INC. and DOES 1
23 through 20
24 Defendant.

) Case No. 37-2018-00031927-CU-MC-CTL
)
)
) **COMPLAINT FOR DAMAGES**
)
)
) **[DEMAND FOR JURY TRIAL]**
)
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1 Plaintiff JOSE GARCIA alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff JOSE GARCIA (hereinafter referred to as “Plaintiff” or
4 “Garcia”), brings this lawsuit against Defendant Vivint Solar, Inc. (hereinafter
5 referred to as “Vivint” or “Defendant”) for violations of the California Identity Theft
6 Act (“CITA”).

7 2. Plaintiff seeks actual damages, statutory damages, penalties, injunctive
8 relief, declaratory relief, attorneys’ fees and costs, and other relief the Court deems
9 appropriate.

10 **PARTIES**

11 3. Plaintiff is informed and believes, and thereupon alleges, that Vivint is,
12 and at all times mentioned herein was, conducting and engaging in business in the
13 County of San Diego, California.

14 4. Plaintiff is informed and believes, and thereupon alleges that Vivint is a
15 claimant as the term defined by Civil Code section 1798.92(a).

16 5. Plaintiff is ignorant of the true names and capacities of those defendants
17 sued herein as DOES 1 through 20, and therefore sues those defendants by such
18 fictitious names. Plaintiff will amend this complaint to allege their true names and
19 capacities when such names and responsibilities are ascertained. Plaintiff is informed
20 and believes and on that basis alleges that each of the fictitiously named defendant is
21 responsible in some manner for the occurrences alleged in this complaint, and that
22 Plaintiff’s claims alleged in this complaint were proximately caused by such
23 defendants.

24 6. Plaintiff is informed and believes and thereupon alleges that at all times
25 herein mentioned each of the defendant’s agents, servants, employees, or partners, in
26 committing the acts and omissions hereinafter alleged, was acting within the course
27 and scope of such agency, employment, partnership, or other business relationship,
28 and the defendant is responsible for their acts and omissions alleged in this complaint.

JURISDICTION

1
2 7. Pursuant to Article VI, §10 of the California Constitution, subject matter
3 jurisdiction is proper in the Superior Court of California, County of San Diego, State
4 of California because Plaintiff alleges claims arising under California law.

5 8. This Court has jurisdiction over the Vivint because each is an
6 association, corporation, business entity, or individual that conducts substantial
7 business in the State of California, County of San Diego.

8 9. Pursuant to § 395 of the California Code of Civil Procedure, venue is
9 proper in the Superior Court of California for the County of San Diego because this is
10 where Vivint does business.

RELEVANT FACTS

VIVINT'S THEORETICAL CANVASSING/SALES APPROACH

11
12
13 10. Defendant is a residential solar provider that designs, installs, and
14 maintains solar panel systems that generate energy for home owners.

15 11. Defendant reaches out to prospective consumers by using salesmen to
16 engage in door-to-door canvassing of residential communities.

17 12. Defendant offers to design, install, and maintain a solar panel system for
18 the production of energy as an alternative to the production of energy from the local
19 Gas and Electric Utility provider.

20 13. When both Defendant and a prospective consumer agree to the solar
21 panel system, Defendant presents a 20-year contract.

22 14. Generally, Defendant obtains a consumer's signature electronically by
23 having their salesman present the 20-year contract to the consumer via a tablet
24 computer or some other electronic means.

25 15. Thereafter, the Defendant requests that the consumer complete a request
26 for Renewable Meter Adaptor form which, in turn, is submitted to the local Gas and
27 Electric Utility company so that the existing electrical panel of the residence can be
28 upgraded to network with the new solar panel system.

1 16. Within a few weeks after the 20-year contract has been signed, the solar
2 panels are installed on the customer’s home.

3 17. Thereafter, the system is inspected and activated, and Defendant sends
4 the customer a monthly bill for the respective power consumption.

5 **PLAINTIFF GARCIA’S ENCOUNTER**

6 18. Sometime in August 2016, an unknown male, claiming to be affiliated
7 with SDG&E, approached Garcia’s residence to discuss a unique government
8 program that provides select home owners with solar panels.

9 19. This unknown male presented himself as Trae Providence (“Trae”) and
10 told Garcia he should consider solar panels for both of his homes.

11 20. Trae represented to Garcia that through this government program Garcia
12 was qualified to receive free solar panels, would not incur any costs, and would even
13 profit from the new solar panels.

14 21. The solar panels were ultimately installed on both of Garcia’s homes and
15 activated in 2017.

16 22. During the months following the installs on both homes, Garcia began
17 receiving bills from Defendant.

18 23. Upon review, Garcia contacted Defendant to explain the considerable
19 charges based on the representations previously made Trae.

20 24. As a result of these conversations, Garcia was ultimately provided with a
21 copies of two 20-year contracts.

22 25. Upon review of the 20-year contracts, Garcia discovered that the
23 contracts were forged and that he had never been presented with either contract.

24 26. On August 20, 2017, Garcia sent Defendant a letter notifying Defendant
25 that the signatures were not his, were unauthorized, and appear to be forged;
26 ultimately requesting that the contracts be cancelled. Garcia also emailed and called
27 Defendant on multiple occasions regarding the forged contracts, but nothing was
28 done.

1 27. Defendant did not conduct a diligent investigation of Garcia’s dispute
 2 regarding the forged and/or unauthorized 20-year contracts.

3 28. Defendant has yet to cease any of its collection efforts, and has continued
 4 its collection efforts on a daily basis in a manner that has caused Garcia stress and
 5 anxiety.

CAUSE OF ACTION
(VIOLATION OF CITA)

7 29. Plaintiff re-alleges the paragraphs above, as if fully set forth herein.

8 30. Plaintiff sent written notice that a situation of identity theft may exist to
 9 Vivint on August 20, 2017. In particular, that his signature was used without
 10 authorization and/or forged on the 20-year contracts.

11 31. The written notice was provided to Vivint at least thirty days prior to
 12 filing this action.

13 32. After receiving Plaintiff’s written notice, Vivint failed to diligently
 14 investigate Plaintiff’s identity theft claim.

15 33. Vivint continued to pursue its claim against the Plaintiff by attempting to
 16 collect on the account.

17 34. Plaintiff brings this action to establish that he is a victim of identity theft.

18 35. Plaintiff brings this action for actual damages, and declaratory and
 19 injunctive relief, pursuant to Civil Code section 1798.93, based on the fact that
 20 Plaintiff was the victim of identity theft.

21 36. Pursuant to Civil Code section 1798.93(c)(1), Plaintiff is entitled to a
 22 declaration that she is not obligated on any claim of Vivint for money or property.

23 37. Pursuant to Civil Code section 1798.93(c)(2), Plaintiff is entitled to a
 24 declaration that any security interest or other interest that Vivint may have is void
 25 and/or unenforceable, including a property lien.

26 38. Pursuant to Civil Code section 1798.93(c)(3), Plaintiff is entitled to an
 27 injunction restraining Vivint from collecting or attempting to collect from her on its
 28 alleged claims, from enforcing or attempting to enforce any security interest or other

1 interest in connection with Vivint's claims, and from enforcing or executing on any
2 judgment against Plaintiff on such claims.

3 39. Pursuant to Civil Code section 1798.93(c)(6), Plaintiff is entitled to a
4 civil penalty of up to \$30,000.00 against Vivint.

5 40. As a result, Plaintiff has suffered actual damages and harm resulting
6 from Vivint's actions as heretofore alleged, including but not limited to worry,
7 emotional distress, anxiety, humiliation, and out-of-pocket expenses the exact amount
8 of which is to be proven at trial.

9 41. The forgoing act(s) by Vivint were willful and knowing violations of
10 Civil Code section 1798.93.


11 42. Plaintiff has incurred reasonable and necessary costs and attorney fees in
12 the preparation and prosecution of this action and seeks reimbursement of his
13 attorney's fees and costs pursuant to California Civil Code section 1798.93(c)(5).

14 **PRAYER FOR RELIEF**

- 15 1. For actual damages;
- 16 2. For statutory damages;
- 17 3. For attorneys' fees;
- 18 4. For injunctive relief;
- 19 5. For declaratory relief;
- 20 6. For costs of suit herein incurred;
- 21 7. For interest according to law; and
- 22 8. For other and further relief as the court may deem proper.

23 DATED: June 27, 2018

MASHIRI LAW FIRM
A Professional Corporation

24
25 By: 
26 Alex Asil Mashiri
27 Attorney for Plaintiff
28 JOSE GARCIA