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11 Attorneys for Plaintiff:
12 MITCHELL LINEHAN

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

16 MITCHELL LINEHAN)

17)
18 Plaintiff,)

19)
20 vs.)

21)
22 VIVINT SOLAR, INC. and DOES 1)
23 through 20,)

24 Defendant.)
25)
26)
27)
28)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/27/2018 at 12:50:09 PM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

Case No. 37-2018-00032142-CU-MC-CTL

COMPLAINT FOR DAMAGES

[DEMAND FOR JURY TRIAL]

1 Plaintiff MITCHELL LINEHAN alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff MITCHELL LINEHAN (hereinafter referred to as “Plaintiff” or
4 “Linehan”), 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”) and the Rosenthal Fair Debt Collection Practices Act (“Rosenthal
7 FDCPA”).

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

11 **PARTIES**

12 3. Plaintiff is a “debtor” as the term is defined by the Rosenthal FDCPA.

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

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

18 6. Plaintiff is informed and believes, and thereupon alleges that Vivint is a
19 debt collector as the term is defined by Civil Code section 1788.2(c).

20 7. Vivint attempted to collect a consumer debt as the term is defined by the
21 Rosenthal FDCPA.

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

1 defendants.

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

7 **JURISDICTION**

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

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

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

17 **RELEVANT FACTS**

18 **VIVINT'S THEORETICAL CANVASSING/SALES APPROACH**

19 13. Vivint is a residential solar provider that designs, installs, and maintains
20 solar panel systems that generate energy for home owners.

21 14. Defendant reaches out to prospective consumers by using salesmen to
22 engage in door-to-door canvassing of residential communities.

23 15. Defendant offers a 20-year contract for the design, installation, and
24 maintenance of the solar panel systems.

25 16. When both Defendant and a prospective consumer agree to the solar
26 panel system, a 20-year contract is drawn up and signed by both parties.

27 17. Generally, Defendant obtains a consumer's signature electronically by
28 having their salesman present the 20-year contract to the consumer via a tablet

1 computer.

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

4 19. Thereafter, the system is activated, and the customer receives a monthly
5 bill for the appropriate charges from Defendant.

6 **PLAINTIFF LINEHAN'S ENCOUNTER**

7 20. Sometime in early December of 2017, an unknown male, claiming to be
8 working with SDG&E, approached Linehan's residence to discuss the savings he can
9 reap by installing solar panels.

10 21. This unknown male presented himself as Ben Stern ("Stern") and told
11 Linehan he should consider solar panels.

12 22. Stern also represented to Linehan that he qualifies to receive free solar
13 panels, would not incur any costs, and would cut his electric bill in half.

14 23. Linehan, proceeding with a healthy amount of skepticism, inquired
15 numerous times as to whether there would be any contracts between the parties.

16 24. Stern responded that no contracts were necessary and that there would be
17 no costs.

18 25. The solar panels were ultimately installed on Linehan's roof in January
19 2018.

20 26. On March 18, 2018, Defendant requested Linehan's signature via
21 Docusign on an SDG&E form.

22 27. The solar panels were activated towards the end of March 2018.

23 28. In May of 2018, Linehan received a bill from Defendant.

24 29. Upon review, Linehan contacted Defendant to cease services.

25 30. During the conversation with Defendant, Linehan was apprised of the
26 existence of a 20-year contract.

27 31. Linehan emphatically told Defendant that he was neither presented with
28 nor signed any contract. Defendant notated his remarks, and told him that they would

1 research the issue and get back to him within a week.

2 32. Upon review of his online account, Linehan discovered that the 20-year
3 contract was forged and that he had never been presented with the contract.

4 33. In an attempt to resolve the matter with Defendant, on May 17, 2018,
5 Linehan completed a Federal Trade Commission Identity Theft Victim's Complaint
6 and Affidavit ("Affidavit"), and filed a police report ("Police Report).

7 34. On May 18, 2018, Linehan's attorney mailed, via certified mail, a letter
8 including the corresponding Affidavit and Police Report to Defendant, informing
9 Defendant that Linehan was an identity theft victim. Plaintiff's letter also demanded
10 that Defendant investigate the dispute and notify Plaintiff's attorney immediately
11 regarding the outcome of the investigation.

12 35. Defendant received Plaintiff's written notice on or about May 23, 2018.

13 36. Defendant has yet to provide a response to Plaintiff's dispute.

14 37. Defendant has yet to cease any of its collection efforts, and has continued
15 its collection efforts in a manner that has caused Linehan stress and anxiety.

16 **FIRST CAUSE OF ACTION**
17 **(VIOLATIONS OF CITA)**

18 38. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

19 39. Plaintiff sent written notice that a situation of identity theft may exist to
20 Vivint on May 18, 2018. In particular, that his signature was used without
21 authorization and/or forged on the 20-year contract.

22 40. The written notice was provided to Vivint at least thirty days prior to
23 filing this action.

24 41. After receiving Plaintiff's written notice, Vivint failed to diligently
25 investigate Plaintiff's identity theft claim.

26 42. Vivint continued to pursue its claim against the Plaintiff by attempting to
27 collect on the account. For example, Vivint continues to send collection notices,
28 attempting to collect a debt.

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

1 44. Plaintiff brings this action for actual damages, and declaratory and
2 injunctive relief, pursuant to Civil Code section 1798.93, based on the fact that
3 Plaintiff was the victim of identity theft.

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

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

9 47. Pursuant to Civil Code section 1798.93(c)(3), Plaintiff is entitled to an
10 injunction restraining Vivint from collecting or attempting to collect from her on its
11 alleged claims, from enforcing or attempting to enforce any security interest or other
12 interest in connection with Vivint's claims, and from enforcing or executing on any
13 judgment against Plaintiff on such claims.

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

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

20 50. The forgoing act(s) by Vivint were willful and knowing violations of
21 Civil Code section 1798.93.

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

25 **SECOND CAUSE OF ACTION**
26 **(VIOLATION OF ROSENTHAL FDCPA)**

27 52. Plaintiff re-alleges paragraphs above as if fully set forth herein.

28 53. Any violation of the Fair Debt Collection Practices Act is a violation of

1 California Civil Code section 1788.17 of the Rosenthal FDCPA, because section
2 1788.17 incorporates the FDCPA.

3 54. Vivint violated Civil Code section 1788.17 by violating 15 U.S.C.
4 section 1692c(a)(2) because it contacted Plaintiff directly, in an attempt to collect a
5 debt, despite knowing that Plaintiff was represented by an attorney.

6 55. Vivint also violated Civil Code section 1788.14 because it contacted
7 Plaintiff directly, in an attempt to collect a debt, despite knowing that Plaintiff was
8 represented by an attorney.

9 56. Vivint also violated Civil Code section 1788.18 by continuing to engage
10 in collection activities after Plaintiff provided it with documents pursuant to
11 California Civil Code sections 1788.18(a) and 1788.18(b). Vivint failed to make a
12 determination in good faith that Plaintiff was a victim of identity theft and that he was
13 not responsible for the incurred debt after Plaintiff provided Vivint with an Identity
14 Theft Victim's Complaint and Affidavit and police report. Vivint failed to notify
15 Plaintiff in writing of its determination that Plaintiff failed to establish that he was a
16 victim of identity theft or that he was not responsible for the specific debt in question.
17 Instead, Vivint continued to attempt to collect on the account, knowing that Plaintiff
18 was a victim of identity theft.

19 57. As a result of each and every violation of the Rosenthal FDCPA,
20 Plaintiff has suffered actual damages and harm resulting from Vivint's actions or
21 inactions as heretofore alleged, including but not limited to worry, emotional distress,
22 anxiety, humiliation, and out-of-pocket expenses the exact amount of which is to be
23 proven at trial.

24 58. As a result of each and every violation of the Rosenthal FDCPA,
25 Plaintiff is entitled to actual damages pursuant to California Civil Code section
26 1788.30(a); statutory damages pursuant to California Civil Code section 1788.17;
27 civil penalties for a knowing or willful violation pursuant to California Civil Code
28 section 1788.30(b); and reasonable attorneys' fees and costs pursuant to California


1 Civil Code section 1788.30(c).

2 **PRAYER FOR RELIEF**

- 3 1. For actual damages;
- 4 2. For statutory damages;
- 5 3. For civil penalties
- 6 4. For attorneys' fees;
- 7 5. For injunctive relief;
- 8 6. For declaratory relief;
- 9 7. For costs of suit herein incurred;
- 10 8. For interest according to law; and
- 11 9. For other and further relief as the court may deem proper.

12 DATED: June 27, 2018

MASHIRI LAW FIRM
A Professional Corporation

13
14 By: 
15 Alex Asil Mashiri
16 Attorney for Plaintiff
17 MITCHELL LINEHAN

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