

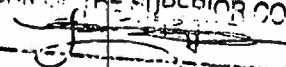


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FILED
ALAMEDA COUNTY

MAR - 6 2019

CLERK OF THE SUPERIOR COURT
 By 
 DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA

Handwritten: 19009823

11 LISA MEES,

Case No.

12 Plaintiff,

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR VIOLATION
 OF THE FAIR CREDIT REPORTING
 ACT (15 U.S.C. §1681, *ET SEQ.*);**

13 vs.

14 VIVINT SOLAR, INC.; VIVINT SOLAR
 15 DEVELOPER, LLC; and DOES 1 through 20,
 inclusive,

Unlimited Civil Case

16 Defendants.

JURY TRIAL DEMANDED

18 INTRODUCTION

19 1. Plaintiff LISA MEES ("Plaintiff") brings this action for damages and injunctive
 20 relief as an individual against Defendants VIVINT SOLAR, INC., VIVINT SOLAR
 21 DEVELOPER, LLC (collectively "VIVINT"); and DOES 1 through 20, under the Federal Fair
 22 Credit Reporting Act ("FCRA"), 15 U.S.C. §1681, *et seq.* regarding VIVINT's unlawful
 23 accessing of Plaintiff's consumer report, under false pretenses, without any permissible purpose
 24 or authorization. VIVINT, as a part of its routine business practice, regularly obtains consumer
 25 credit reports from consumers in California and elsewhere upon false pretenses, without
 26 authorization by the consumer, and without a permissible purpose. VIVINT has been placed on
 27 notice of this illegal activity repeatedly, but has refused to discontinue the practice. On
 28 information and belief, Plaintiff alleges the following:

BY FAX

1 **PARTIES**

2 2. Plaintiff LISA MEES is an individual over the age of 18 years. At all times
3 relevant herein, Plaintiff LISA MEES was, and currently is, a resident of the State of California.

4 3. Defendant VIVINT SOLAR, INC. is, and at all times relevant herein was, a
5 Delaware corporation, with its principal place of business in Lehi, Utah.

6 4. Defendant VIVINT SOLAR DEVELOPER, LLC, is, and at all times relevant
7 herein was, a Delaware limited liability company with its principal place of business in Lehi,
8 Utah.

9 **DOE DEFENDANTS**

10 5. Plaintiff does not know the true names and capacities, whether corporate,
11 partnership, associate, individual or otherwise, of Defendants sued herein as DOES 1 through 20,
12 inclusive, pursuant to §474 of the California Code of Civil Procedure. Nonetheless, Plaintiff
13 alleges that Defendants DOES 1 through 20, inclusive, are in some manner responsible for the
14 acts, occurrences and transactions set forth herein and are legally liable to Plaintiff. Plaintiff will
15 seek leave to amend this complaint to set forth the true names and capacities of said fictitiously-
16 named Defendants, together with appropriate charging allegations, when ascertained.

17 **AGENCY AND ALTER EGO**

18 6. At all times mentioned herein each Defendant, whether actually or fictitiously
19 named herein, was the principal, agent (actual or ostensible), or employee of each other
20 Defendant and in acting as such principal or within the course and scope of such employment or
21 agency, took some part in the acts and omissions hereinafter set forth, by reason of which each
22 Defendant is liable to Plaintiff for the relief prayed for herein.

23 **JURISDICTION AND VENUE**

24 7. Venue is proper in Alameda County under Civil Code §1780(d) because VIVINT
25 SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC conduct business in Alameda County.
26 In addition, VIVINT SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC have not
27 designated with the California Secretary of State a principal place of business within the State of
28 California pursuant to Corporations Code §2105(a)(3). Accordingly, VIVINT SOLAR, INC.

1 and VIVINT SOLAR DEVELOPER, LLC can be sued in any county in the State of California,
2 including Alameda County.

3 8. This Court has jurisdiction over Plaintiff's claims because Plaintiff is a resident of
4 California and because VIVINT SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC are
5 qualified to do business in California and regularly conduct business in California. Furthermore,
6 the acts and omissions complained of occurred at locations in California.

7 **ACTS OF DEFENDANTS**

8 **VIVINT Obtained Plaintiff's Consumer Credit Report Under False Pretenses**

9 9. On or about September 20, 2018, Plaintiff and her husband Jeffrey Mees
10 answered the front door of their home in San Bernardino, California and were met by an
11 individual who identified himself as an "energy consultant" with VIVINT named Kemo Smith.

12 10. Smith told Plaintiff that he would provide her with an information package
13 regarding the installation of solar panels on her roof, but that he would need Plaintiff to sign his
14 iPad, so that, according to Smith, he could pull information regarding Plaintiff's electrical use
15 from Southern California Edison.

16 11. Smith did not ask or suggest that he, VIVINT, or any VIVINT affiliate would pull
17 Plaintiff's credit report and Plaintiff did not consent to VIVINT obtaining her credit report.

18 12. Plaintiff was not provided with a brochure and was not provided with any copies
19 of any documents that she had signed.

20 13. After Smith left, Plaintiff and her husband searched online and found a number of
21 negative reviews for VIVINT.

22 14. On September 21, 2018, Plaintiff's husband called Smith, told him not to come
23 back, and told him that they did not want VIVINT solar panels.

24 15. On September 23, 2018, Plaintiff received a notification that there had been a
25 "hard pull" by VIVINT of her consumer credit reports.

26 16. At no point did Smith mention pulling Plaintiff's credit, nor did he ask permission
27 to do the same. Plaintiff was not provided, nor given the opportunity to review, any paperwork
28 or documents, either paper or electronic.

1 17. Defendants surreptitiously and intentionally obtained Plaintiff's consumer report
2 from the consumer reporting agencies.

3 18. Plaintiff did not authorize Defendants to obtain Plaintiff's consumer reports at any
4 time.

5 19. By obtaining Plaintiff's credit report, VIVINT has received and now possesses
6 Plaintiff's sensitive and private credit and personal data.

7 **Limitations on Permissible Credit Pulls Under the Fair Credit Reporting Act**

8 20. Pursuant to 15 U.S.C. §1681b of the FCRA, a consumer report can be obtained
9 only for the specific purposes stated thereunder, including for use in connection with a credit
10 transaction that the consumer initiated, a firm credit offer, employment purposes, or a business
11 transaction in which an individual has accepted personal liability for business credit. Section
12 1681b provides an exhaustive list of the purposes for which a consumer report can be used or
13 obtained.

14 21. Obtaining a consumer report without a permissible purpose constitutes a violation
15 of the FCRA. 15 U.S.C. §1681b(f)

16 22. VIVINT never had a permissible purpose to obtain Plaintiff's credit report.

17 23. VIVINT obtained Plaintiff's consumer report under false pretenses to the credit
18 bureaus because Plaintiff never provided authorization for a credit pull, nor sought any extension
19 of credit.

20 24. Defendant knew or should have known that Plaintiff did not authorize any inquiry
21 into her credit information at any time, nor initiated any credit transaction.

22 **Invasion of Plaintiff's Consumer Privacy**

23 25. As a result of Defendants' willful, wanton, reckless, and/or negligent action,
24 Plaintiff has been damaged.

25 26. The consumer reports obtained by VIVINT included a trove of sensitive personal
26 and private information about Plaintiff, such as credit history profile, pay histories, employer
27 information and the like.

28 27. Plaintiff's privacy has been invaded as a result of the willful, wanton, reckless

1 and/or negligent conduct of Defendants.

2 28. Approximately ten years ago, Plaintiff and her husband went through a
3 bankruptcy. They have been carefully trying to improve their credit over the years. They are
4 wary of authorizing "hard pulls" on their credit as they understand that this negatively impacts
5 their credit score. They are also protective of their privacy and would not have authorized
6 VIVINT or its representative, Kemo Smith, to access Plaintiff's credit. As a result of VIVINT's
7 unauthorized pull, Plaintiff's credit score has diminished.

8 29. Plaintiff has lost trust and is suspicious, and has been constrained to monitor her
9 credit regularly to prevent unauthorized access to her sensitive credit information.

10 30. Plaintiff has suffered mental and emotional distress, worry, and aggravation as a
11 result of Defendant's actions.

12 **VIVINT's Pattern and Practice of Impermissible Credit Pulls**

13 31. VIVINT, as a pattern and practice, regularly obtains consumer reports on
14 consumers without a permissible purpose and/or under false pretenses.

15 32. Consumers across California and across the country have complained to VIVINT
16 that VIVINT and its agents pulled their credit without consent or authorization.

17 33. Consumers across California and across the country have complained to VIVINT
18 that VIVINT and its agents have obtained credit reports upon false pretenses, a federal crime.

19 34. Some of these irate consumers have filed lawsuits.

20 35. Despite ample notice of this problem, VIVINT continues to allow its salespeople
21 to routinely invade the privacy of consumers and violate the FCRA by pulling credit reports
22 without a permissible purpose.

23 36. Even after Plaintiff's complaints, VIVINT and its salespersons continued to prey
24 on California consumers, obtaining credit reports without a permissible purpose.

25 **FIRST CAUSE OF ACTION**

26 (Violation of the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.*)
27 (Against VIVINT and Applicable DOES)

28 37. Plaintiff realleges and incorporates by reference as though fully set forth herein
each and every allegation contained in the paragraphs above.

1 38. Plaintiff is a “consumer” as defined in 15 U.S.C. §1681a(c) in that she is an
2 individual and a natural person.

3 39. VIVINT SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC are both
4 “persons” as defined in 15 U.S.C. §1681a(b).

5 40. The credit information of Plaintiff’s that VIVINT obtained on September 23, 2018
6 was a “consumer report” as defined in 15 U.S.C. §1681a(d)(1).

7 41. Defendants violated 15 U.S.C. §1681(b)(f) of the Fair Credit Reporting Act by
8 willfully and/or negligently obtaining the Plaintiff’s consumer report without a statutorily
9 permissible purpose.

10 42. Plaintiff has suffered actual damages as a result of Defendants’ unlawful acts,
11 including but not limited to invasion of privacy, mental and emotional distress, worry,
12 aggravation, credit damage, and court costs.

13 43. Defendants’ violations of the FCRA were negligent, entitling Plaintiff to recover
14 actual damages pursuant to 15 U.S.C. §1681o(a)(1).

15 44. Defendants’ violations of the FCRA were willful, entitling Plaintiff to recover
16 actual damages and punitive damage pursuant to 15 U.S.C. §1681n(a).

17 45. Plaintiff is entitled to an award of attorneys’ fees and costs pursuant to 15 U.S.C.
18 §§1681n(a)(3), 1681o(a)(2).

19 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

22 (1) For actual damages and compensatory damages in excess of the jurisdictional minimum
23 of this court;

24 (2) For punitive damages;

25 (3) For a declaration that the conduct complained of herein violates provisions of the Fair
26 Credit Reporting Act, 15 U.S.C. §1681b;

27 (4) For an order requiring the return of Plaintiff’s confidential consumer report and
28 destruction of any copies;


1 (5) For an award of attorneys' fees, costs, and expenses incurred in the investigation, filing,
2 and prosecution of this action; and

3 (6) For such other and further relief as this Court shall deem just and proper.

4 Dated: March 6, 2019

KEMNITZER, BARRON & KRIEG, LLP

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By: 
BRYAN KEMNITZER
ELLIOT J. CONN

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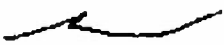
JURY TRIAL DEMANDED

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

Dated: March 6, 2019

KEMNITZER, BARRON & KRIEG, LLP

By:



BRYAN KEMNITZER
ELLIOT J. CONN



21196268
CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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ATTORNEY FOR (Name): Lisa Mees

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
STREET ADDRESS: 1225 Fallon St., Room 209
MAILING ADDRESS:
CITY AND ZIP CODE: Oakland, CA 94612
BRANCH NAME: NORTHERN DIVISION

CASE NAME: MEES v. VIVINT SOLAR, INC.

FOR COURT USE ONLY
FILED
ALAMEDA COUNTY
MAR - 6 2019
CLERK OF THE SUPERIOR COURT
By DEPUTY

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
RG19009829
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|--|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
<p>Non-PI/PD/WD (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 6, 2019
Elliot Conn

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

BY FAX