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15 Attorneys for Plaintiff:
16 LENIA MURO

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN DIEGO**

19 LENIA MURO)

20 Plaintiff,)

21 vs.)

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

25 Case No. 37-2018-00032144-CU-MC-CTL)

26 **COMPLAINT FOR DAMAGES**)

27 **[DEMAND FOR JURY TRIAL]**)

28
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/27/2018 at 12:54:58 PM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

1 Plaintiff LENIA MURO alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff LENIA MURO (hereinafter referred to as “Plaintiff” or
4 “Muro”), brings this lawsuit against Defendant Vivint Solar, Inc. (hereinafter referred
5 to as “Vivint” or “Defendant”) for violations of the California Identity Theft Act
6 (“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 MURO'S ENCOUNTER

6 18. Sometime on August 22, 2017, an unknown male approached Muro's
7 residence to discuss a unique government program that provides select home owners
8 with solar panels.

9 19. This unknown male presented himself as John Lyman ("Lyman") and
10 told Muro she should consider solar panels. On September 14, 2017, Lyman texted
11 Muro "Good morning Lenia, it's John. Good news, SDGE is approving you to get a
12 full electrical panel upgrade! All of your breakers will be swapped out for new ones.
13 This is paid for completely by us. You will be receiving a text, call or email soon.
14 Congratulations!"

15 20. Lyman also represented to Muro that through this government program
16 Muro was qualified to receive free solar panels, would not incur any costs, and would
17 even profit from the new solar panels.

18 21. The solar panels were ultimately installed on Plaintiff's roof in October
19 2017.

20 22. After the solar panels passed city inspection, they were ultimately
21 activated on or about April 3, 2018.

22 23. On April 4, 2018, a Permission to Operate email was sent to Lenia
23 which, among other things, directed her to register for the online Account Center.

24 24. On April 10, 2018, upon first logging into her online Account Center
25 portal, Plaintiff Muro realized that there was a 20-year contract uploaded on her
26 account dashboard.

27 25. Upon review, Muro discovered that the contract was forged and that she
28 had never been presented with the contract.

1 26. Muro immediately reached out to Lyman on April 10, 2018 “Hi John, the
2 service was finally turned on and I was confused that I never signed a contract.
3 Anthony reassured me he didn’t signed one either as he had no authority to sign one.
4 I logged on the system dashboard and I see that a contract is on there already but it
5 lists someone else’s phone number and someone else’s email. How did that happen?
6 Also in reading the contract it says that I would pay for all the electricity generated
7 not as you had explained that it would be on the electricity used. Which is it?”

8 27. Lyman responded that “[...] Regarding the contract, they should have
9 sent it out to you but may have just used your electronic signature based on when you
10 first signed to verify homeownership and good credit score. [...]”

11 28. On or about April 11, 2018, Muro called Vivint contesting the fact that
12 Vivint was charging her money for services she never signed up for. Muro informed
13 Vivint that she was deceived and that Vivint engaged in fraudulent activities. Muro
14 requested that Vivint remove the solar panels from her roof and immediately shut off
15 the system. Vivint representative indicated that she will research the situation and get
16 back to her immediately.

17 29. Muro sends two follow up emails to Vivint over the next month, and
18 receives no response from Vivint.

19 30. While a Vivint representative with the name of Jason reached out to
20 Muro on April 19, 2018, informing her that Vivint would conduct an investigation,
21 nothing has yet to be done.

22 31. Muro denies ever signing the Purchase Agreement and additionally
23 claims the signature on the agreement is not hers, does not resemble her signature,
24 and appears forged.

25 32. Muro denies ever agreeing to allow Vivint to place an electronic
26 signature on the Purchase Agreement.

27 33. Despite informing Vivint that Muro did not sign the Purchase
28 Agreement, Vivint continued its collection efforts.

1 34. Even if it purports to have done an investigation, Vivint has not provided
2 Muro with the findings of any such investigation.

3 **CAUSE OF ACTION**
4 **(VIOLATIONS OF CITA)**

5 35. Plaintiff re-alleges the paragraphs above, as if fully set forth herein.

6 36. Plaintiff, via telephone call to Vivint’s service representative on April
7 11, 2018, provided notice that her signature was used without authorization and/or
8 forged on the 20-year contract.

9 37. Plaintiff sent written notice that a situation of identity theft may exist to
10 Vivint on April 12, 2018 and April 17, 2018, via electronic mail. Vivint received
11 Plaintiff’s notice on or about April 12, 2018 and April 18, 2018.

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

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

16 40. Vivint continued to pursue its claim against the Plaintiff by attempting to
17 collect on the account. For example, Vivint continues to send collection notices,
18 attempting to collect a debt.

19 41. Plaintiff brings this action to establish that she is a victim of identity
20 theft.

21 42. Plaintiff brings this action for actual damages, and declaratory and
22 injunctive relief, pursuant to Civil Code section 1798.93, based on the fact that
23 Plaintiff was the victim of identity theft.

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

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

 45. Pursuant to Civil Code section 1798.93(c)(3), Plaintiff is entitled to an

1 injunction restraining Vivint from collecting or attempting to collect from her on its
2 alleged claims, from enforcing or attempting to enforce any security interest or other
3 interest in connection with Vivint's claims, and from enforcing or executing on any
4 judgment against Plaintiff on such claims.

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

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

11 48. The forgoing act(s) by Vivint were willful and knowing violations of
12 Civil Code section 1798.93.

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

16 **PRAYER FOR RELIEF**

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


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1 DATED: June 27, 2018

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By: 
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