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MELISSA KNIGHT,

Plaintiff,

v.

VIVINT SOLAR and PHILIP
CHAMBERLAIN,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CAMDEN COUNTY

DOCKET NO. CAM-L-002852-18

CIVIL ACTION

**DEFENDANT VIVINT SOLAR DEVELOP, LLC’S ANSWER TO PLAINTIFF’S
COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant Vivint Solar Developer, LLC, improperly named Vivint Solar in the Complaint (“Vivint Solar”), by its undersigned counsel, hereby submits its answer to Plaintiff Melissa Knight (“Plaintiff”) complaint (“Complaint”).

I. AS TO INTRODUCTION

1. Denied as conclusions of law to which no response is required.
2. Admitted in part. Vivint Solar, admits only that it engages in door-to-door sales for residential solar energy solutions in New Jersey homes. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the allegations are denied.
3. Denied. It is specifically denied that Vivint Solar “baited and set a trap.” It is further specifically denied that Vivint Solar “hooks consumers into paying more for energy.”

4. Admitted in part. Vivint Solar admits only that Philip Chamberlain is a Sales Manager. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the allegations are denied.

5. Denied. It is specifically denied that Vivint Solar engaged in any conduct to “hide its fraud.” After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the allegations are denied.

6. Admitted in part. Vivint Solar admits only that solar panels were requested by Plaintiff and installed on her home per her request. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the allegations are denied.

7. Denied.

II. AS TO PARTIES

8. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

9. Admitted in part. Vivint Solar admits only that its principal office is in Utah.

10. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

11. Admitted in part, Vivint Solar admits only that Philip Chamberlain is currently a Co-District Manager.

III. AS TO STATEMENT OF CLAIM

12. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

13. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

14. Admitted.

15. Denied as conclusions of law to which no response is required.

16. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

17. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

18. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

19. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

20. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

21. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and,

therefore, the allegations are denied.

22. Admitted in part. Vivint Solar admits only that Plaintiff signed the Power Purchase Agreement on the iPad device.

23. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

24. Admitted in part. Vivint Solar admits only that Plaintiff's signed a Residential Solar Power Purchase Agreement. Vivint Solar denies the remaining allegations of this paragraph.

25. Denied.

26. Admitted in part. Vivint Solar admits only that it installed solar panels on Plaintiff's roof at her request. Vivint Solar denies the remaining allegations of this paragraph.

27. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

28. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

29. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

30. Denied.

31. Admitted in part. Vivint Solar admits only that it was contacted in 2017

by a lawyer purporting to represent Plaintiff. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

32. Admitted. By way of further response, Plaintiff did not attach any exhibits to the Complaint.

33. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied. By way of further response, Vivint Solar denies Plaintiff's characterization of the Residential Solar Power Purchase Agreement ("PPA") in this paragraph as "Agreement."

34. Denied. The allegations of this paragraph characterize a document which speaks for itself. To the extent a response is required, the allegations are denied. By way of further response, Vivint Solar denies Plaintiff's characterization of the PPA in this paragraph as "Agreement."

35. Admitted in part. Vivint Solar admits only that, based upon review of public records, James Reilly once owned the home occupied by Plaintiff. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the remaining allegations are denied.

36. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

37. After reasonable investigation, Vivint Solar is without knowledge or

information sufficient to form a belief as to the truth of the allegations of this paragraph.

38. Denied.

39. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

40. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

41. Denied.

42. Admitted.

43. Denied.

44. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

45. Denied. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, the allegations are denied.

46. The allegations of this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Vivint Solar denies these allegations. After reasonable investigation, Vivint Solar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, the remaining allegations are denied.

47. Denied.

48. The allegations of this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Vivint Solar denies these allegations.

49. The allegations of this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Vivint Solar denies these allegations.

50. Denied.

51. Denied as conclusions of law to which no response is required.

52. Denied as conclusions of law to which no response is required.

53. Denied.

54. Denied.

55. Denied.

56. Denied. The allegations of this paragraph include conclusions of law to which no response is required. To the extent a response is required, Vivint Solar denies the allegations of this paragraph.

AS TO COUNT I
(New Jersey Consumer Fraud Act)

57. Vivint Solar incorporates by reference its preceding responses as if fully stated herein.

58. Denied as conclusions of law to which no response is required.

59. Denied as conclusions of law to which no response is required.

60. Denied as conclusions of law to which no response is required.

61. Denied as conclusions of law to which no response is required.

62. Denied as conclusions of law to which no response is required.

63. Denied as conclusions of law to which no response is required.

64. Denied as conclusions of law to which no response is required.

65. Denied.

66. Denied.

WHEREFORE, Defendant Vivint Solar requests that judgment be entered in its favor and against Plaintiff, together with such other relief, including costs and attorney's fees, as the Court deems just and proper.

AS TO COUNT II
(Uniform Commercial Code)

67. Vivint Solar incorporates by reference its preceding responses as if fully stated herein.

68. Denied as conclusions of law to which no response is required.

69. Denied.

70. Denied.

AS TO COUNT III
(Fraud)

71. Vivint Solar incorporates by reference its preceding responses as if fully stated herein.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

WHEREFORE, Defendant Vivint Solar requests that judgment be entered in its

favor and against Plaintiff, together with such other relief, including costs and attorney's fees, as the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state any claim upon which relief may be granted.
2. Plaintiff lacks standing to bring or maintain the claims asserted in the Complaint as she has not suffered any actual damages.
3. Plaintiff's claims are barred by the applicable statutes of limitations.
4. Plaintiff's claims are subject to a binding Arbitration Agreement, and are being pursued in the wrong forum.
5. Plaintiff is barred from relief against Vivint Solar inasmuch as any alleged harm suffered by Plaintiff was not caused in fact or proximately caused by any act, action, or omission of Vivint Solar or any of its employees, agents, or ostensible agents.
6. Plaintiff has failed to mitigate her damages, if any.
7. Any and all damages sustained by Plaintiff are the direct result of her own actions or omissions or the acts or omissions of unrelated third parties over which Vivint Solar had no control.
8. Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands, equitable estoppel, laches, acquiescence, and other doctrines of equitable relief.
9. Vivint Solar has acted in good faith and not willfully, maliciously, recklessly, wantonly, and/or negligently.
10. Vivint Solar has acted with due care at all times and complied with all applicable laws, regulations and standards and otherwise acted reasonably.

11. Vivint Solar has violated no duty or obligation owed to the Plaintiff under common law, by statute, under any applicable contract, affidavit, or otherwise.

12. Vivint Solar reserves the right to assert additional defenses at such time and to such extent as warranted by discovery and the factual developments of this case.

WHEREFORE, Defendant Vivint Solar, Inc. denies any liability whatsoever, and demands judgment in its favor and against Plaintiff.

COUNTERCLAIM OF DEFENDANT VIVINT SOLAR

Defendant/Counterclaimant Vivint Solar Developer, Inc. improperly named Vivint Solar in the Complaint (“Vivint Solar”), by its undersigned counsel, hereby counterclaims against Plaintiff Melissa Knight (“Knight”) and states as follows:

FACTUAL ALLEGATIONS

1. Vivint Solar is a Delaware limited liability company with a principal office in Utah.
2. Knight is the current record owner of the property known as 1313 Mulberry Lane, Williamstown, NJ (the “Property”).
3. Knight requested a quote and feasibility assessment from Vivint Solar regarding the installation of solar panels on the Property.
4. Vivint Solar sent a sales representative to Knight at the Property at her request.
5. During that visit, Knight signed a “Residential Solar Power Purchase Agreement” (or “PPA”), attached hereto as Exhibit 1.

6. In accordance with its obligations under the PPA, Vivint Solar installed a solar energy system on the roof of the Property.

7. Knight has benefitted from the power produced by the solar energy system on the roof the Property for more than two years.

8. Knight has received a monthly financial benefit by receiving power produced by the solar energy system that offsets her energy needs from the local utility company, thereby reducing her monthly payments to the local utility company.

9. Knight had knowledge of the benefits that she received from the solar energy system on the Property.

10. Knight filed a lawsuit in which she claims there was fraud in the inducement of her signature on the PPA and that there is no contract between the parties.

11. Knight remains in possession of the solar energy system on the Property.

COUNT I
(Unjust Enrichment)

12. The allegations contained in paragraphs 1-11 are incorporated by reference herein.

13. Vivint Solar conferred a benefit upon Knight by installing the solar energy system she requested.

14. Knight benefited from the solar energy system in monthly energy cost savings.

15. Knight accepted and acknowledge the benefits she received as a result of the solar energy system on the Property.

16. Despite receiving the benefits of the solar panels, Knight remains in possession of the solar energy system without paying for the cost.

17. Despite receiving the benefits of the solar energy system, Knight seeks to invalidate the PPA.

18. Under the circumstances it is inequitable for Knight to retain the benefits she received without payment for the solar energy system itself, or at a minimum, payment for the energy produced by the system.

WHEREFORE, Vivint Solar requests the Court enter an order awarding Vivint Solar an amount equal to the amounts due under the PPA, and entering judgment in favor of Vivint Solar and against Knight in an amount equal to Vivint Solar's attorney's fees and costs incurred in filing this action.

COUNT II
(In the Alternative, Breach of Contract)

19. The allegations contained in paragraphs 1-18 are incorporated by reference herein.

20. In the alternative, Vivint Solar and Knight were parties to the PPA, a validly executed contract.

21. As of the date of the filing of this Complaint, the total amount Knight owes Vivint Solar under the PPA is \$3,573.59.

22. At all times, Vivint Solar has performed the terms of the PPA that were to be performed on its part in the manner specified in the PPA. Knight, however, has failed and refused, and still fails and refuses, to perform terms of the PPA to be performed on her part.

23. As a result of the breach of the PPA by Knight, Vivint Solar has been damaged in the amount of past due payments, plus interest, and late fees. Vivint Solar damages continue to accrue under the PPA.

WHEREFORE, Vivint Solar requests judgment against Knight for all damages

appropriate under the PPA, together with attorneys' fees and costs of suit, and any other relief the Court deems proper.

Respectfully Submitted,

Dated: December 21, 2018

/s/ Jenny N. Perkins

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CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1, I hereby certify to the best of my knowledge that the above-captioned action is not subject to any other action pending in any court or the subject of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated at this time. I know of no other party who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that in accordance with R. 4:25-4, Daniel JT McKenna of the firm of Ballard Spahr LLP is hereby designated as trial counsel for Vivint Solar in the above-captioned litigation.

BALLARD SPAHR LLP
A Pennsylvania Limited Liability Partnership
Attorneys for Defendant Vivint Solar, LLC

By: /s/ Jenny N. Perkins
Daniel JT McKenna
Jenny N. Perkins

Dated: December 21, 2018

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CIVIL ACTION

CERTIFICATE OF SERVICE

I certify that on December 21, 2018, I caused the foregoing Answer, Affirmative Defense and Counterclaim to be served via eCourts.

Dated: December 21, 2018

/s/ Jenny N. Perkins
Jenny N. Perkins