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VIVINT SOLAR DEVELOPER, LLC, dba VIVINT
8 SOLAR, and TY WILLIAMS

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/15/2018 at 01:29:00 PM
Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
11 CENTRAL JUDICIAL DISTRICT

13 SUSANN RITTER,

14 Plaintiff,

15 v.

16 VIVINT SOLAR DEVELOPER, LLC, dba
17 VIVINT SOLAR, TY WILLIAMS, and
18 JOSHUA GARCIA, individually and DOES 1
through 10, inclusive.

19 Defendants.

Case No. 37-2018-00039688-CL-FR-CTL

**VERIFIED ANSWER TO VERIFIED
COMPLAINT FOR FRAUD AND
DECEIT, TRESPASS, FINANCIAL
ELDER ABUSE AND FOR DAMAGES**

20 Defendants Vivint Solar Developer, LLC, dba Vivint Solar, and Ty Williams (together,
21 “**Defendants**”) hereby answer the verified Complaint (the “**Complaint**”) of Plaintiff Susann
22 Ritter (“**Plaintiff**”) as follows:

23 **PRELIMINARY STATEMENT**

24 1. Defendants lack sufficient knowledge or information to admit or deny the
25 allegations contained in this paragraph of the Complaint, and on that basis deny them.

26 2. This paragraph of the Complaint contains legal conclusions to which no response
27 is required. Defendants lack sufficient knowledge or information to admit or deny the factual
28

1 allegations contained in this paragraph, and on that basis deny them.

2 3. Defendants lack sufficient knowledge or information to admit or deny the
3 allegations contained in this paragraph of the Complaint, and on that basis deny them.

4 4. Defendants lack sufficient knowledge or information to admit or deny the
5 allegations contained in this paragraph of the Complaint, and on that basis deny them.

6 5. Defendants admit the allegations contained in this paragraph of the Complaint.

7 6. Defendants admit that Joshua Garcia and Ty Williams are or at one time were
8 employed by Vivint Solar Developer, LLC. Defendants lack sufficient knowledge or information
9 to admit or deny the allegations contained in this paragraph of the Complaint, and on that basis
10 deny them. Defendants further state that the allegations in this paragraph regarding Exhibit 1 to
11 the Complaint relate to a written document that speaks for itself. To the extent that a further
12 response is deemed necessary, Defendants deny.

13 7. Defendants state that the allegations in this paragraph regarding Exhibit 1 to the
14 Complaint relate to a written document that speaks for itself. Defendants lack sufficient
15 knowledge or information to admit or deny the allegations contained in this paragraph of the
16 Complaint, and on that basis deny them.

17 8. Defendants state that the allegations in this paragraph regarding Exhibit 1 to the
18 Complaint relate to a written document that speaks for itself. Defendants admit that
19 representatives of Vivint Solar Developer, LLC completed a partial installation of solar
20 photovoltaic panels at 243 Middlebush Drive, San Diego, California (the "**Property**"), but later
21 removed the panels and returned the roof and exterior cladding of the Property to a watertight and
22 structurally sound condition.

23 9. Defendants admit that they received a letter from Plaintiff's counsel on April 9,
24 2018. Defendants deny all remaining factual allegations contained in this paragraph of the
25 Complaint.

26 **FIRST CAUSE OF ACTION**

27 (Against All Defendants – FRAUD and DECEIT)

28 10. In response to Paragraph 10, Defendants incorporate by reference their answers to

1 all of the preceding paragraphs of the Complaint as if fully set forth herein.

2 11. Defendants deny the allegations contained in this paragraph of the Complaint.

3 12. Defendants deny the allegations contained in this paragraph of the Complaint.

4 13. This paragraph of the Complaint contains legal conclusions to which no response
5 is required. Defendants deny the factual allegations contained in this paragraph.

6 14. This paragraph of the Complaint contains legal conclusions to which no response
7 is required. To then extent any statements in this paragraph are considered factual allegations,
8 Defendants deny those allegations.

9 15. Defendants deny the allegations contained in this paragraph of the Complaint.

10 **SECOND CAUSE OF ACTION**

11 (Against All Defendants – TRESPASS)

12 16. In response to Paragraph 16, Defendants incorporate by reference their answers to
13 all of the preceding paragraphs of the Complaint as if fully set forth herein.

14 17. Defendants admit that representatives of Vivint Solar Developer, LLC completed a
15 partial installation of solar photovoltaic panels at the Property, but later removed the panels and
16 returned the roof and exterior cladding of the Property to a watertight and structurally sound
17 condition. Defendants deny all other allegations contained in this paragraph of the Complaint.

18 18. Defendants admit that representatives of Vivint Solar Developer, LLC completed a
19 partial installation of solar photovoltaic panels at the Property, but later removed the panels and
20 returned the roof and exterior cladding of the Property to a watertight and structurally sound
21 condition. Defendants deny all other allegations contained in this paragraph of the Complaint.

22 19. This paragraph of the Complaint contains legal conclusions to which no response
23 is required. Defendants deny the factual allegations contained in this paragraph.

24 20. This paragraph of the Complaint contains legal conclusions to which no response
25 is required. To then extent any statements in this paragraph are considered factual allegations,
26 Defendants deny those allegations.

27 21. This paragraph of the Complaint contains legal conclusions to which no response
28 is required. To then extent any statements in this paragraph are considered factual allegations,

1 Defendants deny those allegations.

2 **THIRD CAUSE OF ACTION**

3 (Against all Defendants – ELDER ABUSE)

4 22. In response to Paragraph 22, Defendants incorporate by reference their answers to
5 all of the preceding paragraphs of the Complaint as if fully set forth herein.

6 23. This paragraph of the Complaint contains legal conclusions to which no response
7 is required. Defendants lack sufficient knowledge or information to admit or deny the factual
8 allegations contained in this paragraph, and on that basis deny them.

9 24. Defendants deny the allegations contained in this paragraph of the Complaint.

10 25. This paragraph of the Complaint contains legal conclusions to which no response
11 is required. To then extent any statements in this paragraph are considered factual allegations,
12 Defendants deny those allegations.

13 26. This paragraph of the Complaint contains legal conclusions to which no response
14 is required. To then extent any statements in this paragraph are considered factual allegations,
15 Defendants deny those allegations.

16 27. This paragraph of the Complaint contains legal conclusions to which no response
17 is required. To then extent any statements in this paragraph are considered factual allegations,
18 Defendants deny those allegations.

19 **AFFIRMATIVE DEFENSES**

20 28. Further answering the Complaint by way of affirmative defenses, Defendants
21 allege as follows as to each and every cause of action asserted against them:

22 **FIRST AFFIRMATIVE DEFENSE**

23 29. Plaintiff's Complaint and claim for relief alleged therein fail to state facts
24 sufficient to constitute a claim for relief against Defendants.

25 **SECOND AFFIRMATIVE DEFENSE**

26 30. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in
27 part, by the doctrine of estoppel.

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THIRD AFFIRMATIVE DEFENSE

31. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

32. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in part, by the applicable statute of frauds.

FIFTH AFFIRMATIVE DEFENSE

33. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in part, by the defense of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

34. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in part, the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

35. The damages sustained by Plaintiff, to the extent any exist, were either wholly or in part negligently caused by and/or the fault of persons, firms, corporations, or entities other than Defendants, and said negligence and/or fault, comparatively reduces the percentage of negligence and/or fault, if any, by Defendants.

EIGHTH AFFIRMATIVE DEFENSE

36. The injuries and damages alleged by Plaintiff in the Complaint, to the extent any exist, were directly and proximately caused by the superseding, intervening acts and omissions of a third party or third parties for which Defendants are neither responsible nor liable.

NINTH AFFIRMATIVE DEFENSE

37. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in part, because Plaintiff has not sustained any damages, or in the alternative, has overstated her damages.

TENTH AFFIRMATIVE DEFENSE

38. Plaintiff's claim for elder abuse is barred because Defendants have received no financial benefit whatsoever from their dealings with Plaintiff, whether in the form of money, real

1 property or otherwise.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 39. Plaintiff has not used reasonable care and diligence to mitigate her losses, if any,
4 and the damages, if any, allegedly suffered by Plaintiff are therefore barred, in whole or in part.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 40. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in
7 part, because Plaintiff consented to and approved all the acts and omissions about which she now
8 complains.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 41. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in
11 part, because Plaintiff has waived her cause of action against Defendants by reason of her
12 knowing and voluntary acts, omissions and representations.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 42. Prior to the commencement of this action, Defendants duly performed, satisfied
15 and discharged all duties and obligations they may have owed to Plaintiff arising out of any and
16 all agreements, representations, or contracts made by or on behalf of Defendants, and this action
17 is, therefore, barred, in whole or in part, by the provisions of California Civil Code § 1473.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 43. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in
20 part, due to the presence of a mandatory, binding arbitration agreement present in the contract
21 between Plaintiff and Defendants. Defendants reserve the right to seek to compel arbitration.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 44. Plaintiff's Complaint and claim for relief alleged therein are barred, in whole or in
24 part, because punitive damages, attorneys' fees, and/or other requested remedies are not available
25 to Plaintiff under the contract between the parties or under California law.

26 Defendants reserve the right to amend their answer to assert further affirmative defenses
27 that are not presently known but may become known and available through further investigation
28 and discovery.

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DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by way of her Complaint and that judgment be entered in favor of Defendants;
2. The Defendants be awarded costs of suit, including reasonable attorneys' fees; and
3. For such further and other relief as the Court deems just and proper.

DATED: October 15, 2018

SNELL & WILMER L.L.P.

By: 

Michael A. Gehret
Sean M. Mosman

Attorneys for Defendant
Vivint Solar, Inc.
Vivint Solar Developer, LLC

1 VERIFICATION

2 I, Shalis Larsen, am a Paralegal at Vivint Solar Developer, LLC, a party to the
3 above-entitled matter, and I make this verification for that reason. I have read the
4 foregoing VERIFIED ANSWER TO PLAINTIFF SUSANN RITTER'S VERIFIED
5 COMPLAINT and know the contents thereof. The matters stated in the foregoing
6 document are true of my own knowledge except as to those matters stated upon
7 information and belief, and as to those matters I believe them to be true.

8 Executed on October 12, 2018, in Salt Lake City, Utah.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.
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14 Shalis Larsen
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SNELL & WILMER

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LAW OFFICES
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PROOF OF SERVICE BY MAIL


I am a citizen of the United States and employed in County, Utah. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 15 West South Temple, Suite 1200, Gateway Tower West, Salt Lake City, Utah 84101. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On October ~~8~~¹⁵, 2018, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s): VERIFIED ANSWER TO COMPLAINT FOR FRAUD AND DECEIT, TRESPASS, FINANCIAL ELDER ABUSE AND FOR DAMAGES in a sealed envelope, postage fully paid, addressed as follows:

David A. Stevens, Esq.
3115 Fourth Avenue
San Diego, CA 92103

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of Utah that the above is true and correct.

Executed on October 15, 2018, at Salt Lake City, Utah.



Sean M. Mosman