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FILED
 ALAMEDA COUNTY
 FEB 02 2018
 CLERK OF THE SUPERIOR COURT
 By *D. Oliver*
 D. OLIVER, Deputy

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

11 VASUDEV PULIPATI,

Case No. **RG18891702**

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
 DEVELOPER, LLC; and DOES 1 through 20,
 15 inclusive,

Unlimited Civil Case

16 Defendants.

JURY TRIAL DEMANDED

18 **INTRODUCTION**

19 1. Plaintiff VASUDEV PULIPATI ("Plaintiff") brings this action for damages and
 20 injunctive 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 VASUDEV PULIPATI is an individual over the age of 18 years. At all
3 times relevant herein, Plaintiff VASUDEV PULIPATI was, and currently is, a resident of the
4 State of California.

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

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

10 **DOE DEFENDANTS**

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

18 **AGENCY AND ALTER EGO**

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

24 **JURISDICTION AND VENUE**

25 7. Venue is proper in Alameda County because VIVINT SOLAR, INC. and VIVINT
26 SOLAR DEVELOPER, LLC conduct substantial business in Alameda County, and because the
27 impermissible pull occurred in Alameda County while Plaintiff was residing in Alameda County.

28 8. This Court has jurisdiction over Plaintiff's claims because Plaintiff is a resident of

1 California and because VIVINT SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC are
2 qualified to do business in California and regularly conduct business in California. Furthermore,
3 the acts and omissions complained of occurred at locations in California.

4 **ACTS OF DEFENDANTS**

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

6 9. On or about February 4, 2016, Plaintiff answered the front door of his home in
7 Castro Valley, California and was met by an individual that identified himself as a salesperson
8 from VIVINT named Matt LeStarge.

9 10. LeStarge told Plaintiff that LaStarge was doing a survey for Plaintiff's utility
10 provider, Pacific Gas and Electric ("PG&E"), for PG&E SmartMeter customers for a "potential
11 payback of \$50-\$100 a month by PG&E." LcStarge told Plaintiff that he was there to schedule
12 an appointment for the "survey."

13 11. LeStarge and Plaintiff scheduled a date for the "survey" and LeStarge informed
14 Plaintiff that the "survey" would include a roof inspection and that Plaintiff would need to
15 provide consent for a roof inspection. LeStarge inputted Plaintiff's name, address, and email
16 address into an electronic tablet, and had Plaintiff check a check box. Plaintiff was not provided,
17 nor given the opportunity to review, any paperwork or documents, either paper or electronic.
18 And at no point did Plaintiff agree for his electronic signature to constitute a valid signature.

19 12. LeStarge did not ask or suggest that he, VIVINT, or any VIVINT affiliate would
20 pull Plaintiff's credit report and Plaintiff did not consent to VIVINT obtaining his credit report.

21 13. Mere minutes after LeStarge left, Plaintiff was shocked to receive an email from
22 "matt.lestarge@vivintsolar.com" with the heading "Welcome to Vivint Solar" that included an
23 attached twenty-four page contract titled "RESIDENTIAL SOLAR POWER PURCHASE
24 AGREEMENT" for twenty years of VIVINT's services.

25 14. Plaintiff was outraged as he did not sign any contract. Page 17 of the contract
26 contains an illegible scribble that purports to be Plaintiff's signature. Plaintiff did not sign this
27 agreement and denies that this is his signature. In addition, the contract contains no information
28 for Plaintiff's wife, a co-owner of the home, and thus a necessary party to any agreement

1 involving the home.

2 15. Plaintiff has subsequently checked his credit, which revealed that VIVINT
3 obtained Plaintiff's credit report without Plaintiff's consent. Plaintiff never provided any
4 authorization to have his credit report pulled by VIVINT.

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

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

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

12 19. Immediately upon receiving the email with the purported contract, Plaintiff called
13 LeStarge and demanded that the contract, that Plaintiff never signed, be cancelled immediately.
14 LeStarge informed Plaintiff that he could not cancel the contract and that Plaintiff would have to
15 mail in a "Notice of Cancellation" in order to rescind the contract.

16 20. The next day, on February 5, 2016, furious over Defendants' conduct, Plaintiff
17 filed a Better Business Bureau (BBB) complaint regarding the transaction that was forwarded to
18 VIVINT.

19 21. That same day, VIVINT, informed the BBB that:

20 Vivint Solar has contacted this customer and informed them that we will mail
21 formal requests to have any credit inquiry made on their behalf removed. We
22 have also fully cancelled their solar agreement and account.

23 22. After the complaint was filed, VIVINT investigated and then agreed to cancel the
24 bogus contract and agreed to write to the credit bureaus to ask that the record of its inquiries be
deleted.

25 23. By obtaining Plaintiff's credit report, VIVINT has received and now possesses
26 Plaintiff's sensitive and private credit and personal data.

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

28 24. Pursuant to 15 U.S.C. §1681b of the FCRA, a consumer report can be obtained

1 only for the specific purposes stated thereunder, including for use in connection with a credit
2 transaction that the consumer initiated, a firm credit offer, employment purposes, or a business
3 transaction in which an individual has accepted personal liability for business credit. Section
4 1681b provides an exhaustive list of the purposes for which a consumer report can be used or
5 obtained.

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

8 26. VIVINT never had a permissible purpose to obtain Plaintiff's credit report.

9 27. VIVINT obtained Plaintiff's consumer report under false pretenses to the credit
10 bureaus because Plaintiff never provided authorization for a credit pull, nor sought any extension
11 of credit.

12 28. Defendant knew or should have known that Plaintiff did not authorize any inquiry
13 into his credit information at any time, nor initiated any credit transaction.

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

15 29. As a result of Defendants' willful, wanton, reckless, and/or negligent action,
16 Plaintiff has been damaged.

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

20 31. Plaintiff's privacy has been invaded as a result of the willful, wanton, reckless
21 and/or negligent conduct of Defendants.

22 32. Plaintiff has lost trust and is suspicious, and has been constrained to monitor his
23 credit regularly to prevent unauthorized access to his sensitive credit information.

24 33. Plaintiff has suffered mental and emotional distress, worry, and aggravation as a
25 result of Defendant's actions.

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

27 34. VIVINT, as a pattern and practice, regularly obtains consumer reports on
28 consumers without a permissible purpose and/or under false pretenses.

1 35. Consumers across California and across the country have complained to VIVINT
2 that VIVINT and its agents pulled their credit without consent or authorization.

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

5 37. Some of these irate consumers have filed lawsuits.

6 38. Despite ample notice of this problem, VIVINT continues to allow its salespeople
7 to routinely invade the privacy of consumers and violate the FCRA by pulling credit reports
8 without a permissible purpose.

9 39. Even after Mr. Pulipati's complaints, VIVINT and its salespersons continued to
10 prey on California consumers, obtaining credit reports without a permissible purpose.

11 **FIRST CAUSE OF ACTION**

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

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

16 41. Plaintiff is a "consumer" as defined in 15 U.S.C. §1681a(c) in that he is an
17 individual and a natural person.

18 42. VIVINT SOLAR, INC. and VIVINT SOLAR DEVELOPER, LLC are both
19 "persons" as defined in 15 U.S.C. §1681a(b).

20 43. The credit information of Plaintiff's that VIVINT obtained on February 4, 2016 was
21 a "consumer report" as defined in 15 U.S.C. §1681a(d)(1).

22 44. Defendants violated 15 U.S.C. §1681(b)(f) of the Fair Credit Reporting Act by
23 willfully and/or negligently obtaining the Plaintiff's consumer report without a statutorily
24 permissible purpose.

25 45. Plaintiff has suffered actual damages as a result of Defendants' unlawful acts,
26 including but not limited to invasion of privacy, mental and emotional distress, worry,
27 aggravation, credit damage, and court costs.

28 46. Defendants' violations of the FCRA were negligent, entitling Plaintiff to recover
actual damages pursuant to 15 U.S.C. §1681o(a)(1).

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

3 48. Plaintiff is entitled to an award of attorneys' fees and costs pursuant to 15 U.S.C.
4 §§1681n(a)(3), 1681o(a)(2).

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment as follows:

- 8 (1) For actual damages and compensatory damages in excess of the jurisdictional minimum
9 of this court;
- 10 (2) For punitive damages;
- 11 (3) For a declaration that the conduct complained of herein violations provisions of the Fair
12 Credit Reporting Act, 15 U.S.C. §1681b;
- 13 (4) For an order requiring the return of Plaintiff's confidential consumer report and
14 destruction of any copies;
- 15 (5) For an award of attorneys' fees, costs, and expenses incurred in the investigation, filing,
16 and prosecution of this action; and
- 17 (6) For such other and further relief as this Court shall deem just and proper.

18 Dated: February 1, 2018

KEMNITZER, BARRON & KRIEG, LLP

19
20 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: February 1, 2018

KEMNITZER, BARRON & KRIEG, LLP

By:



BRYAN KEMNITZER
ELLIOT J. CONN



20649097

FOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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FILED
 ALAMEDA COUNTY

ATTORNEY FOR (Name): Vasudev Pulipati
 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

FEB 02 2018
 CLERK OF THE SUPERIOR COURT
 By *[Signature]*
 D. OLIVER, Deputy
 CLERK OF COURT

CASE NAME: PULIPATI v. VIVINT SOLAR

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: **RG18891702**
 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. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. 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: February 1, 2018
 Elliot Conn

(TYPE OR PRINT NAME)

[Signature]
 (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.

Page 1 of 2

BY FAX