



FILED
ALAMEDA COUNTY

JAN 15 2020

CLERK OF THE SUPERIOR COURT
By Jessica Flores Deputy

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*Attorneys for Defendants Vivint Solar, Inc. and
Vivint Solar Developer, LLC*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

**SANDRA SPAYD, as successor in interest to
FLORENCE FISHER,**

Plaintiff,

v.

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

Defendants.

CASE NO. RG18915535

**DEFENDANTS VIVINT SOLAR, INC.
AND VIVINT SOLAR DEVELOPER,
LLC'S NOTICE OF DEMURRER AND
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: March 12, 2020
Hearing Time: 3:00 p.m.
Department: 517
Hon. Stephen Pulido
Reservation No. R-2152432
Action Filed: August 6, 2018
Trial Date: Unscheduled



Ballard Spahr LLP
2029 Century Park East, Suite 800
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1 TO THE COURT, PLAINTIFF AND HER ATTORNEYS:

2 PLEASE TAKE NOTICE that on March 12, 2020, at 3:00 p.m., or as soon thereafter as the
3 matter may be heard in Department 517 of the above-entitled court located at 24405 Amador
4 Street, Hayward, California 94544, Defendants Vivint Solar, Inc. and Vivint Solar Developer,
5 LLC (collectively "Defendants"), hereby refile their demurrer to Plaintiff Sandra Spayd's
6 ("Plaintiff"), as successor in interest to Florence Fisher, First Amended Complaint. Defendants
7 bring this demurrer pursuant to Code of Civil Procedure section 430.10, *et seq.*

8 Pursuant to California Code of Civil Procedure section 430.41(a)(2), counsel for
9 Defendants met and conferred with counsel for Plaintiff on January 6, 2020. Defendants and
10 Plaintiff were unable to resolve the issues contained herein. Defendants previously filed their
11 demurrer and motion contained herein but on January 30, 2019, the parties filed a Stipulation and
12 Proposed Order to Vacate the Demurrer. In the Stipulation, the parties agreed to allow Plaintiff to
13 file her Amended Complaint within three weeks. Counsel for Plaintiff then inexplicably failed to
14 file the Amended Complaint despite multiple requests from Defendants' previous counsel to file
15 the amendment. On November 11, 2019, the Court entered an order directing Plaintiff to file her
16 Amended Complaint by November 26, 2019. On November 26, 2019, Plaintiff filed her First
17 Amended Complaint. Defendants submit their demurrer as Plaintiff has failed to correct any
18 deficiencies Defendants identified in their Demurrer to Plaintiff's Complaint upon which the
19 Court has not yet ruled.

20 Defendants' demurrer and motion are based on this Notice of demurrer and Demurrer,
21 Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
22 Declaration of Melanie J. Vartabedian ("Vartabedian Decl."), and upon such further evidence as
23 may be presented at the hearing on Defendants' demurrer and motion.

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DEMURRER

I. Demurrer to Second Cause of Action – For Violations of the Consumers Legal Remedies Act (“CLRA”), Civil Code § 1750, et seq.

1. Plaintiff’s second cause of action for violations of the CLRA fails to state facts sufficient to sustain a cause of action against Defendants because Cal. Civ. Code § 1782 requires a Plaintiff to give the defendant notice and thirty (30) days to “correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation” of the CLRA before filing suit, and Plaintiff has failed to do so. Failure to satisfy this notice requirement prior to filing suit is grounds for dismissal.

2. Plaintiff’s second cause of action for violations of the CLRA fails to sustain a cause of action against Defendants because Cal Civ. Code § 1780(d) requires a plaintiff to file an affidavit concurrently with the complaint stating facts showing that plaintiff commenced the action in the proper county as described under the CLRA. Plaintiff has failed to file the necessary affidavit with her Complaint, and her failure to do so warrants dismissal.

3. Lastly, Plaintiff’s second cause of action for violations of the CLRA fails to state facts sufficient to state a cause of action against Defendants because Plaintiff has failed to identify any allegedly unconscionable provisions of the contract.

II. Demurrer to Third Cause of Action – Tort-In-Se

1. Plaintiff’s third cause of action for tort-in-se fails to state facts sufficient to sustain a cause of action against Defendants because the California Penal Code section upon which Plaintiff relies does not create a private right of action.

DATED: 1/13, 2020

Respectfully submitted,

BALLARD SPAHR LLP

BY: 

Melanie J. Vartabedian

*Attorneys for Defendants Vivint Solar, Inc.
and Vivint Solar Developer, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action arises out of a transaction between Plaintiff's mother, Florence Fisher, and
4 Vivint Solar Developer, LLC ("VSD") wherein Ms. Fisher agreed to purchase electricity
5 generated by solar panels VSD would install on the roof of Ms. Fisher's house. Plaintiff, as
6 successor in interest, accuses VSD—and a separate entity, Vivint Solar, Inc.—of various bad acts
7 associated with the transaction, including forging her signature on the agreement. Based on this
8 transaction, Plaintiff asserts causes of action against Defendants alleging violations of the Home
9 Solicitation Sales Act (first cause of action), the Consumer Legal Remedies Act (the "CLRA")
10 (second cause of action), Tort-in-Se (third cause of action), the Elder Abuse and Dependent Adults
11 Civil Protection Act (fourth cause of action), and the Unfair Competition Law (the "UCL") (fifth
12 cause of action). Plaintiff's second and third causes of action fail because Plaintiff (1) has failed
13 to allege that she has satisfied the pre-litigation notice and affidavit requirements under the CLRA
14 and has failed to identify any unconscionable provisions under the contract at issue. In addition,
15 Plaintiff's third cause of action fails because section 470 of the California Penal Code does not
16 confer a private right of action.

17 For these reasons, and as explained in more detail below, Defendants request the Court to
18 sustain Defendants' Demurrer to Plaintiff's second and third causes of action in her First
19 Amended Complaint.

20 **II. STATEMENT OF FACTUAL ALLEGATIONS**

21 Defendants dispute the allegations in Plaintiff's First Amended Complaint, and vehemently
22 deny any liability to Plaintiff. Without admitting the truth of the facts alleged in Plaintiff's First
23 Amended Complaint, the following allegations form the basis of Defendants' Demurrer:

24 Florence Fisher, now deceased, was interested in having solar panels installed on her
25 property, so she contacted VSD. FAC ¶ 12. On April 9, 2016, a sales representative from VSD
26 visited Ms. Fisher's home to discuss installing solar panels on Ms. Fisher's roof. *Id.* ¶ 13. The
27 sales representative allegedly informed Ms. Fisher that the panels "would be free and ... her tenant
28 would be responsible for any payments" to VSD. *Id.* ¶ 14. Allegedly as a result of the sales

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1 representative's representations, Ms. Fisher orally agreed to have the solar panels installed. *Id.*

2 Plaintiff alleges VSD's sales representative asked her to sign an electronic pad as a means
3 to verify that the representative had visited her home. *Id.* ¶ 15. Ms. Fisher signed the electronic
4 pad, but she alleges the representative never told her that she was signing a contract. *Id.* Plaintiff
5 alleges the agreement she signed was for the sale of solar power, which are "goods" and services".
6 *Id.* ¶ 40. Plaintiff further alleges the sales representative forged Ms. Fisher's signature, as well as
7 the signature of her daughter, Pamela Morken, who was not at Ms. Fisher's home at the time of
8 the interaction. *Id.* ¶ 16. Approximately a few months later, VSD returned to Ms. Fisher's home
9 and installed the solar panels. *Id.* ¶ 17. Plaintiff also alleges VSD has not allowed her tenant to
10 pay VSD directly, and her overall cost of electricity has increased since VSD installed the panels.
11 *Id.* ¶¶ 18-19.

12 **A. Defendants' Meet-and-Confer Efforts**

13 On January 6, 2020, Defendants' counsel met and conferred telephonically with Plaintiff's
14 counsel concerning the First Amended Complaint and explained that Plaintiff's second and third
15 causes of action contained deficiencies. Vartabedian Decl. ¶ 3. Plaintiff's counsel, however,
16 disagreed. *Id.* Accordingly, Defendants file this Demurrer to Plaintiff's second and third causes
17 of action.

18 **III. LEGAL STANDARD**

19 Pursuant to section 430.10 of the Code of Civil Procedure "[t]he party against whom a
20 complaint or cross-complaint has been filed may object, by demurrer... to the pleading on ... [the
21 grounds that] ... [t]he pleading does not state facts sufficient to constitute a cause of action ... [or]
22 [t]he pleading is uncertain." Cal. Code Civ. Pro. § 430.10(e). A demurrer functions to test the
23 sufficiency of the pleadings by raising questions of law. *Whitcombe v. County of Yolo* (1977) 73
24 Cal. App. 3d 698, 702. A party can file demurrer to challenge defects that appear on the face of
25 the pleading under attack or for matters that are judicially noticeable. *Blank v. Kirwan* (1985) 39
26 Cal. 3d. 311, 318.

27 To survive a demurrer, a complaint "must contain a statement of facts which, without the
28 aid of other conjectured facts not stated, shows a complete cause of action." *Hawkins v. Oakland*

1 *Title Ins. & Guaranty Co.* (1958) 165 Cal. App. 2d 116, 122 (quotation and citation omitted).
2 Contentions, deductions, or conclusions of law do not suffice. *Daar v. Yellow Cab Co.* (1967) 67
3 Cal. 2d 695, 713. For example, allegations that acts are “arbitrary, capricious, fraudulent,
4 wrongful, and unlawful,” like other conclusory descriptions of such proceedings, constitute mere
5 conclusions of law that are not to be deemed admitted by a demurrer. *Faulkner v. Cal. Toll Bridge*
6 *Authority* (1952) 40 Cal. 2d 317, 329 (citations omitted). Further, in order to “withstand a
7 demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.”
8 *Logan v. Southern Cal. Rapid Transit Dist.* (1982) 136 Cal. App. 3d 116, 126. Thus, where the
9 allegations fail to state a cause of action, disclose a defense or bar to recovery, or are
10 “uncertain[],” “ambigu[ous],” or “unintelligib[le],” the Court may sustain a demurrer. *Hook v.*
11 *Wren* (1941) 44 Cal. App. 2d 441, 442.

12 **IV. ARGUMENT**

13 **A. Plaintiff Fails to State a Claim for Violation of the Consumers Legal Remedies**
14 **Act (“CLRA”), Civil Code § 1750, et seq.**

15 Plaintiff’s second cause of action for violations of the CLRA fails because Plaintiff failed
16 to satisfy certain pre-litigation requirements under the CLRA and her claim also contains
17 substantive deficiencies. Defendants first address Plaintiff’s procedural violations.

18 **1. In Contravention of Cal. Civ. Code § 1782, Plaintiff Failed to Give Defendants**
19 **Notice of the Alleged CLRA Violation Prior to Filing Suit**

20 Pursuant to Cal. Civ. Code § 1782, a consumer must give the opposing party notice and
21 thirty (30) days to “correct, repair, replace, or otherwise rectify the goods or services alleged to be
22 in violation” before filing a suit for damages under the CLRA. Cal. Civ. Code § 1782(a). The
23 notice “shall be in writing and shall be sent by certified or registered mail, return receipt
24 requested.” *Id.* The notice requirement serves “to allow a defendant to avoid liability for damages
25 if the defendant corrects the alleged wrongs within 30 days after notice, or indicates within that
26 30-day period that it will correct those wrongs within a reasonable time.” *Morgan v. AT&T*
27 *Wireless Servs., Inc.* (2009) 177 Cal. App. 4th 1235, 1261, 99 Cal. Rptr. 3d 768, 789. While
28 notice is not required for claims seeking purely injunctive relief (*see* § 1782(d)), here, Plaintiff

1 also requests “any other relief that the Court deems proper” on her CLRA claim. FAC at ¶ 43.
2 Plaintiff fails to allege any facts that she has satisfied this pre-litigation notice requirement.
3 Accordingly, the Court should dismiss Plaintiff’s CLRA claim and any claim for damages under
4 the CLRA with prejudice for failing to comply with the statutory notice requirement. *See Laster*
5 *v. T-Mobile USA, Inc.*, 407 F. Supp. 2d 1181, 1195 (S.D. Cal. 2005) (dismissing plaintiff’s CLRA
6 claim for damages with prejudice because he failed to comply with the 30-day notice requirement
7 under the statute).

8 2. *Pursuant to Cal. Civ. Code § 1780(d), Plaintiff Failed to File an Affidavit of*
9 *Proper Venue*

10 Pursuant to Cal. Civ. Code § 1780(d), “[i]n any action [under the CLRA], concurrently
11 with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the
12 action has been commenced in a county described in this section as a proper place for the trial of
13 the action.” Cal. Civ. Code § 1780(d). If “a plaintiff fails to file the affidavit required by this
14 section, the court shall, upon its own motion or upon motion of any party, dismiss the action
15 without prejudice.” *Id.* (emphasis added). Here, Plaintiff failed to file the required affidavit in
16 either her Complaint or First Amended Complaint. Therefore, the Court must dismiss Plaintiff’s
17 CLRA claim.

18 3. *Plaintiff Fails to Identify Any Unconscionable Provisions of the Agreement*

19 In addition to Plaintiff’s procedural deficiencies, Plaintiff fails to plead any facts to support
20 the substance of one of her CLRA claims. The CLRA sets forth twenty-three prohibited “unfair
21 methods of competition and unfair or deceptive acts or practices.” Cal. Civ. Code § 1770(a).
22 Plaintiff alleges Defendants violated Section 1770(a)(19) by “[i]nserting an unconscionable
23 provision in the contract.” FAC ¶ 41(c); Cal. Civ. Code § 1770(a)(19). Plaintiff neither cites to
24 any provision of the Agreement that is unconscionable, nor explains how any provision of the
25 contract is unconscionable. Plaintiff merely contends that the contract is unconscionable because
26 Defendants allegedly “forged both Fisher and Morken’s signatures on a 20 Year Agreement that
27 neither had agreed to.” FAC ¶ 41(c). Even assuming arguendo that Plaintiff’s allegations are
28 true, a forged signature does not constitute a provision or term of a contract, let alone an

1 unconscionable one. Therefore, because Plaintiff does not point to any terms or provisions of the
2 Agreement that are unconscionable, Plaintiff fails to allege facts to establish a claim under §
3 1770(a)(19). Accordingly, this Court should dismiss Plaintiff's cause of action for violation of
4 this section of the CLRA.

5 **B. Plaintiff's Tort-In-Se Claim Fails Because Section 470 of California Penal**
6 **Code Does Not Create a Private Right of Action**

7 Plaintiff's tort-in-se claim fails because Section 470 of California Penal Code does not
8 create a private right of action. A tort in essence,
9 "is the breach of a nonconsensual duty owed another. Violation of a statutory duty
10 to another may therefore be a tort and violation of a statute embodying public policy
11 is generally actionable even though no specific civil remedy is provided in the statute
itself. Any injured member of the public for whose benefit the statute was enacted
may bring the action."

12 *Rezek v. Tustin*, 2012 U.S. Dist. LEXIS 164257, * 20-21 (C.D. Cal. 2012) (quoting *S. Bay Bldg.*
13 *Enterprises, Inc. v. Riviera Lend-Lease, Inc.*, (1999) 72 Cal. App. 4th 1111, 1123). Plaintiff
14 asserts Defendants committed a tort-in-se when Defendants allegedly forged her mother's
15 signature on the Agreement in violation of Penal Code § 470. FAC ¶¶ 45-46. Plaintiff, however,
16 fails to allege any facts or cite to any case law that supports Plaintiff's implicit contention that §
17 470 confers a private right of action. "A statute creates a private right of action only if the
18 enacting body so intended." *Rezek*, 2012 U.S. Dist. LEXIS 164257 at *23-24 (quoting *Farmers*
19 *Ins. Exch. v. Superior Court*, (2006) 137 Cal. App. 4th 842). "That intent need not necessarily be
20 expressed explicitly, but if not it must be strongly implied." *Id.* at *24 (citation omitted). Courts
21 rarely imply a private right of action under criminal statutes, *id.*, and Defendants request the Court
22 to decline to read a private cause of action into § 470. Plaintiff merely cites to *Laczko v. Jules*
23 *Meyers, Inc.* (1969) 276 Cal.App.2d 293, 295 to support the availability of a tort-in-se claim as a
24 cause of action, but she fails to cite to any authority showing that courts in California or the
25 California Legislature intended to create a private right of action under § 470. Accordingly,
26 Defendants request the Court dismiss Plaintiff's tort-in-se claim. See *Rezek*, 2012 U.S. Dist.
27 LEXIS 164257 (dismissing Plaintiff's tort-in-se claim under various criminal statutes because the
28 Penal Code sections did not create private rights of action).

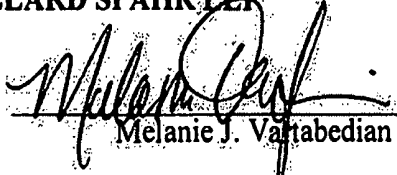
1 **V. CONCLUSION**

2 For the reasons set forth above, Defendants request that this Court sustain their demurrer to
3 Plaintiff's First Amended Complaint for failure to state facts sufficient to constitute a cause of
4 action against Defendants.

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8 DATED: 1/13, 2020

Respectfully submitted,

BALLARD SPAHR LLP

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11 BY: 
Melanie J. Vartabedian

*Attorneys for Defendants Vivint Solar, Inc.
and Vivint Solar Developer, LLC*

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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite
4 800, Los Angeles, CA 90067-2909. On January 15, 2020, I served the within documents:

5 **DEFENDANTS VIVINT SOLAR, INC. AND VIVINT SOLAR DEVELOPER, LLC'S
6 NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S FIRST AMENDED
7 COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**

- 8 **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
9 number(s) set forth below on this date before 5:00 p.m.
- 10 **BY HAND:** by personally delivering the document(s) listed above to the person(s)
11 at the address(es) set forth below.
- 12 **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
13 postage thereon fully prepaid, in the United States mail at Los Angeles, California
14 addressed as set forth below.
- 15 **BY E-MAIL:** by attaching an electronic copy of the document(s) listed above to
16 the e-mail address listed below.
- 17 **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
18 overnight delivery service company for delivery to the addressee(s) on the next
19 business day.
- 20 **BY PERSONAL DELIVERY:** by causing personal delivery by First Legal
21 Network of the document(s) listed above to the person(s) at the address(es) set forth
22 below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter

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Los Angeles, CA 90067-2909

1 date is more than one day after date of deposit for mailing in affidavit.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on January 15, 2020, at Los Angeles, California.

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6 Shari L. Green

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12 *Attorneys for Defendants Vivint Solar, Inc. and*
 13 *Vivint Solar Developer, LLC*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **FOR THE COUNTY OF ALAMEDA**

16 **SANDRA SPAYD, as successor in interest to**
 17 **FLORENCE FISHER,**

18 **Plaintiff,**

19 **v.**

20 **VIVINT SOLAR, INC.; VIVINT SOLAR**
 21 **DEVELOPER, LLC, and DOES 1 through**
 22 **20, inclusive,**

23 **Defendants.**

24 **CASE NO. RG18915535**

25 **DECLARATION OF MELANIE**
 26 **VARTABEDIAN IN SUPPORT OF**
 27 **DEFENDANTS VIVINT SOLAR, INC.**
 28 **AND VIVINT SOLAR DEVELOPER,**
LLC'S DEMURRER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT

[Filed concurrently with the Notice of
Demurrer; the Demurrer; Memorandum
of Points and Authorities; and the
Proposed Order]

Hearing Date: March 12, 2020
 Hearing Time: 3:00 p.m.
 Department: 517
 Hon. Stephen Pulido
 Reservation No. R-2152432

FILED
 ALAMEDA COUNTY

JAN 15 2020

CLERK OF THE SUPERIOR COURT
 By *Jessica Flourens* Deputy



Ballard Spahr LLP
 2029 Century Park East, Suite 800
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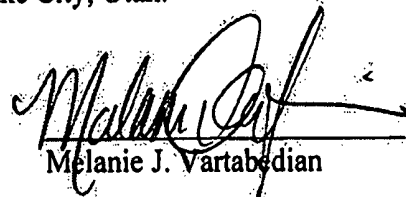
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I, MELANIE J. VARTABEDIAN, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California. I am a partner at the law offices of Ballard Spahr LLP, the attorneys of record for Defendants Vivint Solar, Inc. and Vivint Solar Developer, LLC (“Defendants”). I have personal knowledge of the facts set forth below and if called as a witness, could and would testify competently about the contents thereof.
2. On January 6, 2020, I called Andrew Milz, counsel for Plaintiff Sandra Spayd (“Plaintiff”), to meet and confer telephonically regarding apparent deficiencies in Plaintiff’s First Amended Complaint in the above-captioned matter to inform Mr. Milz of my clients’ intent to file a demurrer to the First Amended Complaint.
3. I explained to Mr. Milz the grounds of the demurrer, specifically why Plaintiff’s second and third causes of action in the First Amended Complaint failed to state a cause of action upon which the Court could grant relief, as discussed in the accompanying demurrer and memorandum of points and authorities in support of the demurrer.
4. Mr. Milz expressed his disagreement with Defendants’ position and argued that Plaintiff properly pled her second and third causes of action.
5. I informed Mr. Milz that Defendants respectfully disagreed with Plaintiff’s position and planned to file a demurrer to Plaintiff’s First Amended Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 2020, in Salt Lake City, Utah.


Melanie J. Vartabedian

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite 800, Los Angeles, CA 90067-2909. On January 15, 2020, I served the within documents:

DECLARATION OF MELANIE VARTABEDIAN IN SUPPORT OF DEFENDANTS VIVINT SOLAR, INC. AND VIVINT SOLAR DEVELOPER, LLC'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

- BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- BY E-MAIL:** by attaching an electronic copy of the document(s) listed above to the e-mail address listed below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

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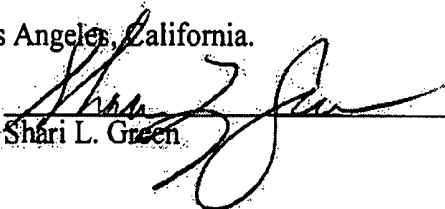
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 15, 2020, at Los Angeles, California.


Shari L. Green



22665941

JAN 15 2020

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10 *Attorneys for Defendants Vivint Solar, Inc. and*
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 **SANDRA SPAYD, as successor in interest to**
FLORENCE FISHER,

15 **Plaintiff,**

16 **v.**

17 **VIVINT SOLAR, INC.; VIVINT SOLAR**
18 **DEVELOPER, LLC, and DOES 1 through**
19 **20, inclusive,**

20 **Defendants.**

CASE NO. RG18915535

[PROPOSED] ORDER GRANTING
DEFENDANT VIVINT SOLAR, INC.
AND VIVINT SOLAR DEVELOPER,
LLC'S DEMURRER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT

[Filed concurrently with the Notice of
Demurrer; the Demurrer; and the
Memorandum of Points and Authorities]

Hearing Date: March 12, 2020
Hearing Time: 3:00 p.m.
Department: 517
Hon. Stephen Pulido
Reservation No. R-2152432

Trial date:
Date Action Filed: August 6, 2018



21 DMWEST #39618544 v1

22 [PROPOSED] ORDER GRANTING DEFENDANT VIVINT SOLAR, INC. AND VIVINT SOLAR DEVELOPER,
23 LLC'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT
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1 The Court having considered Defendant Vivint Solar, Inc. and Vivint Solar Developer,
2 LLC's ("Defendants") Demurrer to Plaintiff Sandra Spayd's ("Plaintiff") First Amended
3 Complaint, all papers submitted in connection therewith, the record in this case, and the arguments
4 of counsel at the hearing, and for good cause appearing, hereby GRANTS the demurrer and orders
5 as follows:

6 Defendants' Demurrer to Plaintiff's First Amended Complaint is sustained.

7 SO ORDERED.

8
9 DATED: _____, 2020

10 BY: _____
The Honorable Judge Stephen Pulido

11 *Attorneys for Defendants Vivint Solar, Inc. and*
12 *Vivint Solar Developer, LLC*

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is **BALLARD SPAHR LLP**, 2029 Century Park East, Suite
4 800, Los Angeles, CA 90067-2909. On January 15, 2020, I served the within documents:

5 **[PROPOSED] ORDER GRANTING DEFENDANT VIVINT SOLAR, INC. AND VIVINT
6 SOLAR DEVELOPER, LLC'S DEMURRER TO PLAINTIFF'S FIRST AMENDED
7 COMPLAINT**

- 8 **BY HAND:** by personally delivering the document(s) listed above to the person(s)
9 at the address(es) set forth below.
- 10 **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
11 postage thereon fully prepaid, in the United States mail at Los Angeles, California
12 addressed as set forth below.
- 13 **BY E-MAIL:** by attaching an electronic copy of the document(s) listed above to
14 the e-mail address listed below.
- 15 **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
16 overnight delivery service company for delivery to the addressee(s) on the next
17 business day.

18 Ronald Wilcox
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 15, 2020, at Los Angeles, California.


Shari L. Green